

TASMANIA

**WATER AND SEWERAGE CORPORATIONS BILL
2008**

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WATER AND SEWERAGE CORPORATIONS BILL 2008

*(Brought in by the Treasurer, the Honourable Michael
Anthony Aird)*

A BILL FOR

**An Act to provide for the establishment of 3 Regional
Corporations and a Common Services Corporation and for
related matters**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Water and
Sewerage Corporations Act 2008*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Purposes of Act

The purposes of this Act are to –

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- (a) provide for matters relating to the establishment and governance of 3 Regional Corporations, each having as its primary purpose the provision of water and sewerage services to its region, owned by the constituent councils of that region; and
- (b) establish a Common Services Corporation owned by the 3 Regional Corporations; and
- (c) vest the water and sewerage assets, rights and liabilities of councils and bulk water authorities in the Regional Corporations and the Common Services Corporation; and
- (d) make provision for the transfer of water and sewerage employees of councils and employees of bulk water authorities to the Regional Corporations and the Common Services Corporation.

4. Interpretation

In this Act, unless the contrary intention appears –

“additional director” means a person who is appointed under section 23(5) to the board of the Common Services Corporation;

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“Auditor-General” has the same meaning as in the *Financial Management and Audit Act 1990*;

“Australian Accounting Standards” means Accounting Standards issued by the Australian Accounting Standards Board or its successors;

“Board” means the board of directors of a Corporation;

“bulk water authority” means Hobart Water (ABN 95 327 914 139), Esk Water (ABN 41 913 557 456) and Cradle Coast Water (ABN 44 792 170 681);

“Chairperson” means the person who is the common chairperson of each Corporation;

“common director” means a person who is appointed under section 21 to hold concurrent appointments to the Boards of all Regional Corporations;

“Common Services Corporation” means the Common Services Corporation incorporated in accordance with section 6(1);

“Commonwealth Tax Act” means the *Income Tax Assessment Act 1936* of the Commonwealth and any other enactments of the Commonwealth relating to income tax;

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“constituent council” means, in relation to a Regional Corporation, a council responsible for a municipal area within the region applicable to that Regional Corporation;

“constitution” means the constitution of a Corporation;

“consulting group” means –

- (a) in relation to a Regional Corporation, the Owners’ Representatives for that Regional Corporation; or
- (b) in relation to the Common Services Corporation, the members of the Common Services Corporation;

“Corporation” means a Regional Corporation or the Common Services Corporation;

“Corporations Act” – see section 46AA of the *Acts Interpretation Act 1931*;

“Corporations legislation” – see section 46AA of the *Acts Interpretation Act 1931*;

“council” – see section 46 of the *Acts Interpretation Act 1931*;

“director” means a director of a Corporation;

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“dispose” means, in relation to any property, to sell, transfer, assign, create a security interest over, declare oneself a trustee of, or part with any benefit of, or otherwise dispose of, that property, or any interest in it, or any part of it;

“document” includes an instrument and part of a document;

“elected government official” means a person who is elected as a Member of Parliament of Tasmania or as a councillor within the meaning of the *Local Government Act 1993*;

“GBE Treasurer’s Instruction” means a Treasurer’s Instruction within the meaning of the *Government Business Enterprises Act 1995*;

“legal or other proceeding” includes arbitration proceedings and mediation proceedings;

“member”, in relation to a Corporation, means a member of that Corporation within the meaning of the Corporations Act;

“northern region” – see section 43(2) of the *Acts Interpretation Act 1931*;

“north-western region” – see section 43(2) of the *Acts Interpretation Act 1931*;

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“ordinary majority” means a majority representing more than 50% of –

- (a) in relation to the members of a Regional Corporation, all the members of that Regional Corporation; or
- (b) in relation to the Owners’ Representatives for a Regional Corporation, all the Owners’ Representatives for that Regional Corporation; or
- (c) in relation to the Owners’ Representatives for all Regional Corporations, the aggregate of all the Owners’ Representatives for all Regional Corporations;

“Owners’ Representatives”, in relation to a Regional Corporation, means the Owners’ Representatives appointed by the members of that Regional Corporation under section 18;

“principal objectives” means –

- (a) in relation to a Regional Corporation, the principal objectives of a Regional Corporation specified in section 7(1); or
- (b) in relation to the Common Services Corporation, the principal objectives of the

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Common Services Corporation
specified in section 7(2);

“region” means the northern region, the north-western region or the southern region;

“Regional Corporation” means a corporation incorporated in accordance with section 5(1);

“regional director” means a person who is appointed under section 22 to the Board of only one Regional Corporation;

“regulations” means regulations made and in force under this Act;

“Relevant Corporation” means a Corporation or a subsidiary of a Corporation, as applicable;

“Selection Committee” means the committee established under section 19(1);

“shareholders’ letter of expectation”, in relation to a Regional Corporation, means a letter issued by the members of the Regional Corporation to the Board of the Regional Corporation outlining the broad expectations of its members for the Regional Corporation and its subsidiaries;

“southern region” – see section 43(2) of the *Acts Interpretation Act 1931*;

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“special majority” means a majority representing at least 75% of –

- (a) in relation to the members of a Regional Corporation, all the members of that Regional Corporation; or
- (b) in relation to the Owners’ Representatives for a Regional Corporation, all the Owners’ Representatives for that Regional Corporation; or
- (c) in relation to the Owners’ Representatives for all Regional Corporations, the aggregate of all the Owners’ Representatives for all Regional Corporations; or
- (d) in relation to the Selection Committee, all of the members of the Selection Committee, except the Chairperson when excluded by section 19(8);

“subsidiary” has the same meaning as in the Corporations Act;

“transfer day” means a day specified by the Treasurer under section 40 to be the day on which a transfer order takes effect;

“transfer order” means an order contained in a notice published in the *Gazette* under section 40(1);

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“transferred asset, right or liability” means an asset that vests in, or a right or liability that becomes a right or liability of, an individual or body by the operation of sections 40 and 42;

“transferred employee” means an employee specified in a transfer order;

“Treasurer’s Instruction” means an instruction issued under, or deemed to be issued under section 38;

“water and sewerage functions” means –

- (a) in the case of water, any function associated with –
 - (i) the collection or storage of that water, including by way of bulk supply; and
 - (ii) the treatment of that water; and
 - (iii) the conveyance and reticulation of that water; and
 - (iv) the supply of that water; and
- (b) in the case of sewerage, any function associated with –
 - (i) the collection or storage of sewage; and

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- (ii) the conveyance and reticulation of sewage; and
 - (iii) the treatment of sewage; and
- (c) any other functions associated with the functions referred to in paragraph (a) or (b), which may include those associated with stormwater and the re-use of sewage; and
- (d) any other functions as may be prescribed by the regulations.

PART 2 – CORPORATIONS

Division 1 – Establishment and principal objectives of Corporations

5. Regional Corporations

- (1) The councils are to procure, and participate in, the incorporation of 3 Regional Corporations under the names of –
 - (a) the “Tasmanian Water and Sewerage Corporation (Northern Region) Pty Limited”, the members of which are to be, at the time of incorporation, each of the councils in the northern region; and
 - (b) the “Tasmanian Water and Sewerage Corporation (North-Western Region) Pty Limited”, the members of which are to be, at the time of incorporation, each of the councils in the north-western region; and
 - (c) the “Tasmanian Water and Sewerage Corporation (Southern Region) Pty Limited”, the members of which are to be, at the time of incorporation, each of the councils in the southern region.
- (2) The Regional Corporations are to be incorporated as proprietary companies limited by shares under the Corporations Act.

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6. Common Services Corporation

- (1) Immediately following the incorporation of the Regional Corporations, the Regional Corporations are to procure, and participate in, the incorporation of the Common Services Corporation under the name of the “Tasmanian Water and Sewerage Corporation (Common Services) Pty Limited”, the members of which are to be, at the time of incorporation, the Regional Corporations.
- (2) The Common Services Corporation is to be incorporated as a proprietary company limited by shares under the Corporations Act.

7. Principal objectives of Corporations

- (1) The principal objectives of each Regional Corporation are as follows:
 - (a) in its region, to promote the efficient delivery of water supply and provision of sewerage services;
 - (b) in its region, to encourage water conservation, demand management of water and the re-use of water on an economic and commercial basis;
 - (c) to be a successful business and, to this end –
 - (i) to operate its activities in accordance with good commercial practice; and

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-
- (ii) to maximise sustainable returns to its members.
- (2) The principal objectives of the Common Services Corporation are as follows:
- (a) to assist the Regional Corporations to fulfil their principal objectives by providing, or arranging for the provision of, services to the Regional Corporations, which may include one or more of the following:
- (i) payroll services;
- (ii) human resources services;
- (iii) information technology services;
- (iv) billing services;
- (v) financial and accounting services;
- (vi) any other service which may be of assistance to the Regional Corporations;
- (b) to be a successful business and, to this end –
- (i) to operate its activities in accordance with good commercial practice; and
- (ii) to maximise sustainable returns to its members;

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- (c) to be available to provide services to third parties, including councils, on a commercial basis.
- (3) Each of the principal objectives of a Corporation is of equal importance.
- (4) For the purpose of fulfilling the principal objective referred to in subsection (1)(c), each Regional Corporation must obtain from the Common Services Corporation any services which –
 - (a) exhibit economies of scale; or
 - (b) support the management of business risk; or
 - (c) deliver consistency in the provision of water and sewerage services in all regions where this would result in a regulatory, planning or consumer benefit.
- (5) The fee that the Common Services Corporation may charge for the provision of services to a Regional Corporation under subsection (4) must be set having regard to the extent to which the Regional Corporation can recover those costs through prices for the provision of services including the extent to which the Regulator, within the meaning of the *Water and Sewerage Industry Act 2008*, may permit the recovery of those costs.

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8. Status of Corporations

- (1) Unless this or any other Act expressly provides otherwise, a Relevant Corporation –
 - (a) is not and does not represent the constituent councils or the Crown; and
 - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State or the Commonwealth merely because a constituent council or a Regional Corporation has beneficial ownership of shares in it.
- (2) The Crown is not liable for any debt, liability or obligation of a Relevant Corporation.
- (3) A council is not liable for any debt, liability or obligation of a Relevant Corporation unless –
 - (a) that council gives a guarantee or indemnity under section 37 in relation to that debt, liability or obligation; or
 - (b) in the case of a Regional Corporation of which that council is a member, the constitution of that Regional Corporation expressly provides otherwise.

9. Application of Corporations Act

- (1) Each Relevant Corporation and each director, secretary, other officer or employee of a Relevant Corporation is declared to be an

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excluded matter for the purposes of section 5F of the Corporations Act in relation to –

- (a) the following provisions of the Corporations Act:
 - (i) sections 180, 181, 182, 183, 184 and 186;
 - (ii) Part 2M.4;
 - (iii) Chapter 6;
 - (iv) Chapter 6A;
 - (v) Chapter 6B;
 - (vi) Chapter 6C;
 - (vii) Chapter 7;
 - (viii) Chapter 8; and
 - (b) any other provisions of the Corporations legislation to the extent specified by the regulations for the purposes of this subsection.
- (2) The appointment and removal of directors of a Corporation (other than the disqualification of a person from managing a Corporation) are declared to be excluded matters for the purposes of section 5F of the Corporations Act in relation to Chapter 2D of that Act.
- (3) To the extent that any provision of this Act or the regulations is incapable of concurrent operation with the Corporations legislation, that

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provision is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

- (4) The regulations may declare a Relevant Corporation and any matter relating to that Relevant Corporation, to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to –
- (a) the whole of the Corporations legislation; or
 - (b) an Act, regulations or other instrument forming part of the Corporations legislation; or
 - (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.
- (5) A provision of the Corporations legislation that is the subject of any declaration in the regulations has effect, subject to the following modifications:
- (a) the provision applies as if the Relevant Corporation were a proprietary company and a company limited by shares;
 - (b) the provision applies as if shares in the Relevant Corporation held by the members were shares held in the Relevant Corporation as a proprietary

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company and a company limited by shares;

(c) such other modifications as may be prescribed by the regulations.

(6) Without limiting subsections (4) and (5), any regulations referred to in subsection (4) –

(a) may specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration; and

(b) may provide for the Australian Securities and Investments Commission (ASIC) to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if –

(i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11(8) or (9A)(b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth; and

(ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth; and

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-
- (c) may specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person; and
 - (d) may identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time; and
 - (e) may specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Supreme Court by any provision of the Corporations legislation to which the declaration relates.
- (7) Subsection (6) does not apply to any provision of the Corporations legislation that applies to the Relevant Corporation as a law of the Commonwealth.
- (8) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

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Division 2 – Share capital and ownership of Corporations

10. Share capital

Each Corporation is to have share capital and one or more classes of shares as provided in its constitution.

11. Ownership and restrictions on sale and issue of securities

- (1) Only the constituent councils may hold one or more shares or other securities in a Regional Corporation.
- (2) Only Regional Corporations may hold one or more shares or other securities in the Common Services Corporation.
- (3) Each member of a Regional Corporation is to at all times hold an equal number of shares and an equal number of other securities in that Regional Corporation as each other member of that Regional Corporation.
- (4) A member of a Corporation must not dispose of the shares or other securities in that Corporation held by that member.
- (5) A Corporation must not, and must ensure that each of its subsidiaries does not –
 - (a) offer shares or other securities in the Corporation or any of its subsidiaries for subscription, or invite any person to

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subscribe for any such shares or other securities; or

- (b) grant options over unissued shares or other securities in the Corporation or any of its subsidiaries; or
- (c) allot or issue shares or other securities in the Corporation or any of its subsidiaries –

other than to existing members pro rata to their existing shareholdings.

(6) In this section –

- (a) a reference to securities includes a reference to securities of a kind specified in section 92(3) of the Corporations Act; and
- (b) a reference to shares includes a reference to shares of a kind specified in section 254A(1) of the Corporations Act.

Division 3 – Corporate governance of Corporations

12. Constitutions of Corporations

- (1) Each Corporation is to have a constitution.
- (2) The members of a Corporation are to ensure that the constitution of that Corporation at all times contains –

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- (a) provisions setting out the rights attaching to each class of shares, which rights may differ between classes of shares only in respect of the payment of dividends; and
 - (b) provisions to the effect of the provisions set out in Schedule 1; and
 - (c) such other provisions as are prescribed by the regulations.
- (3) The constitution of each Corporation –
 - (a) is not to be adopted, modified or repealed unless and until –
 - (i) the provisions of section 15 have been complied with in respect of the proposed adoption, modification or repeal; and
 - (ii) a resolution approving the adoption, modification or repeal has been passed by members in accordance with the requirements of the Corporations Act; and
 - (b) is not to be inconsistent with this Act or the regulations.
- (4) Each of the items that are to be included in the constitution of a Corporation under this section is also to be included in the constitution of a subsidiary of a Corporation.

13. Shareholders' letters of expectation

- (1) On incorporation of each Regional Corporation, the members of that Corporation are to provide a shareholders' letter of expectation to the Board of the Regional Corporation in a form approved in accordance with section 15.
- (2) The shareholders' letter of expectation of a Regional Corporation must identify –
 - (a) the strategic priorities of that Regional Corporation; and
 - (b) the high-level expectations of members for the performance of the business of that Regional Corporation.
- (3) The matters specified in paragraphs (a) and (b) of subsection (2) are to be used in the development of the corporate plan of that Regional Corporation.
- (4) A shareholders' letter of expectation of a Regional Corporation –
 - (a) is not to be issued, modified or withdrawn unless and until the provisions of section 15 have been complied with in respect of the proposed issue, modification or withdrawal; and
 - (b) is not to be inconsistent with this Act, the regulations or the constitution of the Regional Corporation.

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14. Corporate plan

- (1) For each financial year, a Corporation must have a corporate plan for the Corporation and its subsidiaries.
- (2) The corporate plan is to –
 - (a) be adopted or amended in accordance with the procedure set out in section 15; and
 - (b) cover the period specified in the Treasurer’s Instructions; and
 - (c) be in a form and contain the information specified in the Treasurer’s Instructions.

15. Approval, &c., of instruments of incorporation

- (1) In this section –

“final proposal” means a proposal –

- (a) in respect of which the Treasurer has notified the consulting group of the relevant Corporation that he or she has no concerns; or
- (b) which the consulting group has given to the Treasurer and which meets the requirements of subsection (4)(f);

“final proposal date” means the date on which the consulting group receives a

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notification under paragraph (b)(i) or paragraph (d)(i) of subsection (4) or has given the Treasurer a final proposal under subsection (4)(f);

“proposal” means a proposal –

- (a) to adopt, modify or repeal the constitution of a Corporation; or
 - (b) to issue, modify or withdraw a shareholders’ letter of expectation of a Regional Corporation; or
 - (c) to adopt or amend a corporate plan for a Corporation.
- (2) Before the incorporation of each Corporation, the Treasurer is to approve the constitution of that Corporation.
- (3) The Treasurer is to approve the first corporate plan of a Corporation.
- (4) The consulting group for a Corporation is to consult the Treasurer in accordance with the following procedure before any proposal is implemented:
- (a) the consulting group is to give the Treasurer –
 - (i) in relation to a proposal relating to a constitution or shareholders’ letter of expectation, details of the proposal together with a draft

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- of all documents to which the proposal relates; or
- (ii) in relation to a proposal to adopt a corporate plan, details of the proposal together with a draft of all documents to which the proposal relates no later than 60 days before the corporate plan is intended to take effect;
- (b) within 42 days of receiving the proposal and draft documents referred to in paragraph (a), the Treasurer is to notify the consulting group in writing that –
 - (i) he or she has no concerns in relation to that proposal, in which case that proposal becomes a final proposal; or
 - (ii) he or she has concerns, set out in the notification, in relation to that proposal;
- (c) if the consulting group receives a notification under paragraph (b)(ii), within 42 days of receiving that notification the consulting group is to give the Treasurer a revised proposal in response to the concerns raised, together with a draft of all documents to which the revised proposal relates;
- (d) within 42 days of receiving a revised proposal and draft documents referred to in paragraph (c), the Treasurer is to

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notify the consulting group in writing that –

- (i) he or she has no concerns in relation to that revised proposal, in which case the revised proposal given to the Treasurer under paragraph (c) becomes a final proposal; or
 - (ii) he or she has concerns in relation to the revised proposal;
- (e) if the Treasurer has concerns in relation to the revised proposal referred to in paragraph (d)(ii), the Treasurer may –
 - (i) treat the revised proposal as a proposal for the purposes of paragraph (a); or
 - (ii) within 21 days of receiving the revised proposal, resolve the matters the subject of his or her concerns (which resolution may include amending any draft document or requiring members or the Board of the relevant Corporation, as the case may be, to implement or refrain from implementing any proposal) and notify the consulting group in writing of his or her resolution;
- (f) if the consulting group receives a notification under paragraph (e)(ii), as soon as practicable after receiving that

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notification the consulting group is to give the Treasurer a final proposal which is consistent with the Treasurer's resolution and, in all other respects, consistent with the revised proposal in respect of which that resolution is made, including all documents to which the final proposal relates and any necessary amendments to those documents.

- (5) The Treasurer is to cause a copy of each final proposal to be laid before each House of Parliament within 7 days after the final proposal date.
- (6) If the Treasurer is unable to comply with subsection (5) because a House of Parliament is not sitting on any of the 7 days following the final proposal date, the Treasurer is to –
 - (a) on or before the end of the 7th day, provide a copy of the final proposal to the clerk of that House; and
 - (b) within the first 7 sitting-days after that day, cause a copy of the final proposal to be laid before that House.
- (7) After the procedure specified in subsection (4) has been completed –
 - (a) if a final proposal relates to a constitution of a Corporation or a shareholders' letter of expectation of a Corporation, the members of that Corporation are to implement that proposal within 30 days after the final proposal date; or

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- (b) if a final proposal relates to a corporate plan of a Corporation –
- (i) the Board is to implement that final proposal; and
 - (ii) the corporate plan reflecting the final proposal takes effect on the first day of the financial year next commencing after the final proposal date or on any other day specified by the Treasurer; and
 - (iii) unless the Corporation has received written notice from the Treasurer to the contrary, each GBE Treasurer's Instruction given in relation to a corporate plan under the *Government Business Enterprises Act 1995* applies by virtue of this Act as if a reference to a Government Business Enterprise in that Treasurer's Instruction were a reference to a Corporation.
- (8) The members of a Corporation or the Board of a Corporation, as the case may be, are not to implement a proposal unless it is a final proposal resulting from the application of the procedure set out in subsection (4).

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16. Board of Regional Corporations

- (1) Each Regional Corporation is to be governed by a Board.
- (2) The Board of a Regional Corporation is to comprise –
 - (a) the chairperson appointed by the Owners' Representatives for that Regional Corporation under section 20(5)(a); and
 - (b) 3 common directors appointed by the Owners' Representatives for that Regional Corporation under section 21; and
 - (c) 2 regional directors appointed by the Owners' Representatives for that Regional Corporation under section 22.
- (3) If at any time a vacancy occurs on the Board of a Regional Corporation, the Owners' Representatives for that Regional Corporation must, as soon as is practicable, do all things necessary to appoint a person to fill that vacancy in accordance with the procedures set out in this Act.

17. Board of Common Services Corporation

- (1) The Common Services Corporation is to be governed by a Board.

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- (2) The Board of the Common Services Corporation is to comprise –
- (a) the chairperson appointed by the Regional Corporations under section 20(5)(b); and
 - (b) up to 5 other directors appointed under section 23.
- (3) If at any time a vacancy occurs on the Board of the Common Services Corporation, the Regional Corporations must, as soon as is practicable, do all things necessary to appoint a person to fill that vacancy in accordance with the procedures set out in this Act.

18. Owners’ Representatives for Regional Corporations

- (1) The members of a Regional Corporation must collectively appoint 3 persons as Owners’ Representatives for that Regional Corporation by the issue of a written notice, signed by each member, to the Treasurer.
- (2) Subject to subsection (6), each Owners’ Representative for a Regional Corporation is to hold that office for a term of 3 years from the date of his or her appointment, or such shorter period –
- (a) as set out in the constitution of the Regional Corporation; or
 - (b) as determined by the members of the Regional Corporation at the time of the

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appointment of that Owners'
Representative.

- (3) Subsection (2) does not limit the number of times a person may be appointed to the role of Owners' Representative.
- (4) If at any time a vacancy occurs in the role of an Owners' Representative for a Regional Corporation, the members of that Regional Corporation must, as soon as is practicable, do all things necessary to appoint a person to fill that vacancy in accordance with the procedures set out in this Act.
- (5) The Owners' Representatives for a Regional Corporation are to –
 - (a) consult with other Owners' Representatives and undertake such other functions imposed on Owners' Representatives for a Regional Corporation under this Act; and
 - (b) act as the official liaison between the Board of the Regional Corporation and the members of that Regional Corporation.
- (6) The members of a Regional Corporation may, by special majority, remove any person from the role of Owners' Representative for that Regional Corporation.

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19. Selection Committee

- (1) The Owners' Representatives for all Regional Corporations are to establish a committee consisting of –
 - (a) the Chairperson; and
 - (b) a person, approved by an ordinary majority of the Owners' Representatives for all Regional Corporations, with expertise in the water and sewerage sector; and
 - (c) a person, approved by an ordinary majority of the Owners' Representatives for all Regional Corporations, with expertise in corporate governance and the nomination or appointment of members of boards; and
 - (d) the Secretary of the responsible Department in relation to the *Public Account Act 1986*.
- (2) Any person, including directors of a Corporation, may nominate for consideration by the Selection Committee any one or more persons as candidates for appointment as the Chairperson or other director of a Corporation.
- (3) The Selection Committee, after making due enquiry if it considers it necessary, is to submit to the Owners' Representatives for a Regional Corporation a list of one or more names of persons suitable for appointment as –

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- (a) Chairperson; or
 - (b) the common directors of any Regional Corporation; or
 - (c) the regional directors of that Regional Corporation.
- (4) The Selection Committee, after making due enquiry if it considers it necessary, is to submit to the members of the Common Services Corporation a list of one or more names of persons suitable for appointment as additional directors of the Common Services Corporation.
- (5) Each person included in the list of names of persons referred to in subsection (3) or (4) is to be a person who, in the opinion of the Selection Committee, has –
 - (a) the experience and skills necessary to assist the relevant Corporation to achieve its principal objectives; and
 - (b) in the case of a regional director, connection or familiarity with the region applicable to the relevant Regional Corporation.
- (6) Despite subsections (2), (3), (4) and (5), none of the following persons may be appointed as a director of a Corporation:
 - (a) any current Owners' Representative;
 - (b) any current member of the Selection Committee other than the Chairperson;

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- (c) any person who has served as an elected government official at any time within the 3 years preceding the intended date of appointment;
 - (d) any person who currently holds office as an elected government official or who is currently an employee of any council.
 - (7) The Selection Committee may regulate its own proceedings as it considers appropriate, including the calling of, and the conduct of business at, its meetings.
 - (8) The current Chairperson must not be present at or take part in any consultations, discussions or decisions by the Selection Committee in relation to the appointment of any person to the role of Chairperson.
 - (9) The Selection Committee may permit its members to participate in a particular meeting or all meetings by telephone, video conference or any other means of communication and a member who participates in a meeting as permitted under this subsection is taken to be present at the meeting.
 - (10) If the number of members of the Selection Committee that constitutes a special majority signs a document containing a statement that they are in favour of a resolution or proposal set out in the document, a resolution or proposal in those terms is taken to have been passed or agreed to at a meeting of the Selection Committee on the day on which the document is

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signed or, if the members of the Selection Committee do not sign it on the same day, on the day on which the last of the members of the Selection Committee signs the document.

- (11) For the purposes of subsection (10), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Selection Committee, is taken to constitute one document.
- (12) The members of the Selection Committee are to be paid such fees and allowances as the Owners' Representatives for all Regional Corporations collectively determine from time to time.
- (13) Each Regional Corporation is required to contribute an equal share of a fee or allowance that becomes payable under subsection (12).
- (14) The Owners' Representatives for all Regional Corporations may, by special majority, remove any person other than the persons referred to in subsection (1)(a) and (d) from the role of a member of the Selection Committee.

20. Chairperson of Corporations

- (1) The Board of each Corporation is to be chaired by a common chairperson.
- (2) The chairperson of a Corporation is also a director of each Corporation for the purposes of the Corporations Act.

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- (3) Prior to the appointment of any person to fill a vacancy in the role of Chairperson, the Owners' Representatives for all Regional Corporations are to consult with each other in respect of that appointment.
- (4) From those persons recommended by the Selection Committee under section 19(3) as suitable for appointment to fill a vacancy in the role of Chairperson, an ordinary majority of the Owners' Representatives for all Regional Corporations is to identify a person to fill that vacancy.
- (5) As soon as practicable after the identification of a person to fill the vacancy in the role of Chairperson under subsection (4) –
- (a) the Owners' Representatives for each Regional Corporation are to appoint that person as the chairperson of that Regional Corporation to fill that vacancy; and
 - (b) the Regional Corporations are to appoint that person as the chairperson of the Common Services Corporation to fill that vacancy.
- (6) The Chairperson is to be appointed –
- (a) in the case of the inaugural Chairperson, for an initial term not exceeding 3 years; and

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- (b) in the case of each subsequent Chairperson, for a term set out in the constitution of each of the Corporations.

(7) Each of –

- (a) in the case of a Regional Corporation, the Owners' Representatives for that Regional Corporation; and
- (b) in the case of the Common Services Corporation, the Regional Corporations –

is to, on instruction approved by a special majority of the Owners' Representatives for all Regional Corporations, remove a person from the role of Chairperson.

(8) None of the persons referred to in subsection (7)(a) or (b) may remove a person from the role of Chairperson unless they have received an instruction approved by a special majority of the Owners' Representatives for all Regional Corporations.

(9) If a person ceases to be chairperson of any Corporation for any reason with effect from a given point in time, that person is taken to have resigned from his or her roles as –

- (a) a director of that Corporation; and
- (b) a director and chairperson of each other Corporation –

at that time.

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- (10) The common directors of the Regional Corporations present at any meeting may elect a person present to chair the meeting if –
- (a) there is a vacancy in the role of Chairperson; or
 - (b) the Chairperson is not present at the time appointed for the meeting.

21. Common directors of Regional Corporations

- (1) Prior to the appointment of any person to fill a vacancy in the role of common director, the Owners' Representatives for all Regional Corporations are to consult with each other in respect of that appointment.
- (2) From those persons recommended by the Selection Committee under section 19(3) as suitable for appointment to fill a vacancy in the role of common director, an ordinary majority of the Owners' Representatives for all Regional Corporations is to identify a person to fill each vacancy in the role of common director.
- (3) As soon as practicable after the identification of a person to fill a vacancy in the role of common director under subsection (2), the Owners' Representatives for a Regional Corporation are to appoint that person as a common director of that Regional Corporation to fill that vacancy.
- (4) The Owners' Representatives for a Regional Corporation are to remove, on instruction

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approved by a special majority of the Owners' Representatives for all Regional Corporations, a person from the role of common director of that Regional Corporation.

- (5) The Owners' Representatives for a Regional Corporation may not remove a person from the role of common director of that Regional Corporation unless they have received an instruction approved by a special majority of the Owners' Representatives for all Regional Corporations.
- (6) If a person ceases to be a common director of a Regional Corporation for any reason with effect from a given point in time, that person is taken to have resigned from his or her role as a common director of each other Corporation at that time.

22. Regional directors of Regional Corporations

- (1) Prior to the appointment of any person to fill a vacancy in the role of regional director of a Regional Corporation, the Owners' Representatives for that Regional Corporation are to consult with each other in respect of that appointment.
- (2) From those persons recommended by the Selection Committee under section 19(3) as suitable for appointment to fill a vacancy in the role of regional director, an ordinary majority of the Owners' Representatives for that Regional Corporation is to appoint a person as a regional

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director of that Regional Corporation to fill that vacancy.

- (3) The Owners' Representatives for a Regional Corporation may, by special majority, remove a person from the role of regional director of that Regional Corporation.

23. Directors of the Common Services Corporation

- (1) When a person is appointed as chief executive officer of a Regional Corporation in accordance with section 25 with effect from a given point in time, the Regional Corporations are to appoint that person as a director of the Common Services Corporation at that time.
- (2) If a person ceases to be chief executive officer of a Regional Corporation for any reason with effect from a given point in time, that person is taken to have resigned from his or her role as a director of the Common Services Corporation at that time.
- (3) If a person who is the chief executive officer of a Regional Corporation ceases to be a director of the Common Services Corporation for any reason with effect from a given point in time, that person is taken to have resigned from his or her role as chief executive officer of the Regional Corporation at that time.
- (4) The Treasurer may from time to time, by written notice given to the members of the Common Services Corporation, require –

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- (a) that the Common Services Corporation is to have up to 2 additional directors; or
 - (b) that the Common Services Corporation is to cease to have any additional directors.
- (5) As soon as is practicable after receiving written notice from the Treasurer referred to in subsection (4)(a), the members of the Common Services Corporation are to appoint by ordinary majority, from those persons recommended by the Selection Committee under section 19(4) as suitable for appointment to fill a vacancy in the role of additional director, a person as an additional director of the Common Services Corporation to fill that vacancy.
- (6) As soon as is practicable after receiving written notice from the Treasurer referred to in subsection (4)(b), the members of the Common Services Corporation are to remove all persons from the role of additional director of the Common Services Corporation.
- (7) The members of the Common Services Corporation may, by special majority, remove a person from the role of additional director of that Corporation.

24. Director's duties

- (1) Schedule 2 has effect.
- (2) The regulations may amend or replace Schedule 2.

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- (3) Any regulations referred to in subsection (2) –
- (a) may confer jurisdiction on courts in relation to the duties and liability of officers, within the meaning of Schedule 2, and associated matters; and
 - (b) may provide that a contravention of any of the provisions of the regulations constitutes an offence and, in respect of such offences, provide for the imposition of a fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years, or both.

25. Chief executive officer

- (1) The chief executive officer of a Corporation is to be appointed by, and may be removed by, the Board of that Corporation.
- (2) A person must not be appointed as chief executive officer of a Regional Corporation unless that person has given, and not withdrawn, his or her written consent to act concurrently as a director of the Common Services Corporation.

Division 4 – Operations of Corporations

26. Operation and management

- (1) All decisions relating to the operation of a Corporation are to be made by or under the authority of the Board.

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- (2) The Board of a Corporation may, by written notice, delegate to any person any of its functions or powers, other than this power of delegation.
- (3) The chief executive officer of a Corporation is, subject to subsection (1), responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.

27. Staff

- (1) A Corporation may employ such staff as it requires to exercise its functions.
- (2) A Corporation may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any Act or law.

28. Borrowings

Except where approved by the Treasurer, a Corporation or its subsidiary must not borrow from any person other than the Tasmanian Public Finance Corporation.

29. Acquisition and disposal of assets, investments and liabilities

- (1) Neither a Corporation nor any of its subsidiaries may, without the prior approval of the members of that Corporation, acquire or dispose of any

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assets or investments, including shares in a company, other than in the ordinary course of the business of the Corporation or the subsidiary, as the case may be.

- (2) Neither a Corporation nor any of its subsidiaries may acquire or dispose of any assets or liabilities in contravention of any requirements of the regulations.

30. Sale or disposal of main undertakings

- (1) A Corporation must not dispose of the main undertakings of the Corporation, or permit the disposal of the main undertakings of any of its subsidiaries.
- (2) The main undertakings of a Corporation are as specified in the most recent corporate plan of the Corporation.

Division 5 – Distributions and payments to councils

31. Distribution of dividends

- (1) The Board of a Relevant Corporation must determine a dividend policy for that Relevant Corporation.
- (2) The dividend policy of a Relevant Corporation is to –
- (a) establish the aggregate amount, and the basis of determining the aggregate

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- amount, of dividends payable to members in respect of any period; and
- (b) in the case of a Regional Corporation, be determined having due regard to the provisions of the shareholders' letter of expectation of that Regional Corporation; and
 - (c) be consistent with good commercial practice; and
 - (d) require adequate provision to be made for expected future capital requirements and operational expenditure before the payment of any dividend to members.
- (3) In setting out the rights attaching to each class of shares for the purposes of section 12(2)(a) –
- (a) the constitution of a Regional Corporation is to provide for the allocation of the aggregate amount of dividends amongst members in the amount and in the manner determined under section 34; and
 - (b) the constitution of each other Relevant Corporation (including the Common Services Corporation) must have regard, as far as reasonably practicable, to the intent and operation of paragraph (a).

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32. Payment of guarantee fees

- (1) Each Relevant Corporation is liable to pay guarantee fees determined pursuant to subsection (2).
- (2) If a Relevant Corporation borrows money in accordance with section 28 –
 - (a) Division 1 of Part 11 of the *Government Business Enterprises Act 1995* (other than section 78(1)) and, unless the Relevant Corporation has received a notice from the Treasurer to the contrary, each GBE Treasurer's Instruction given in relation to any matter the subject of that Division, applies by virtue of this Act in relation to that Relevant Corporation as if –
 - (i) the Relevant Corporation were a Government Business Enterprise specified in Schedule 3 to the *Government Business Enterprises Act 1995*; and
 - (ii) each reference to financial accommodation in that Division of the *Government Business Enterprises Act 1995* were a reference to money borrowed from the Tasmanian Public Finance Corporation in accordance with section 28; and
 - (iii) each reference to the Consolidated Fund in the

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Government Business Enterprises Act 1995 were a reference to a council; and

- (b) the Relevant Corporation is to pay the aggregate guarantee fee determined by the Treasurer pursuant to the application of paragraph (a) to councils in the amount and in the manner determined under section 34.

33. Payment of tax equivalents

- (1) Each Relevant Corporation is liable to pay an aggregate income tax equivalent in respect of each financial year determined pursuant to the application of this section to councils in the amount and in the manner determined under section 34.
- (2) Despite subsection (1), a Relevant Corporation is not liable to pay an income tax equivalent to the extent to which it is liable to pay income tax under the Commonwealth Tax Act.
- (3) Division 3 of Part 10 of the *Government Business Enterprises Act 1995* and, unless the Relevant Corporation has received a notice from the Treasurer to the contrary, each GBE Treasurer's Instruction given in relation to any matter the subject of that Division applies by virtue of this Act to the liabilities and payments that arise under subsection (1) as if –

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- (a) the Relevant Corporation or subsidiary of a Corporation were a prescribed Government Business Enterprise as defined in section 67 of the *Government Business Enterprises Act 1995*; and
 - (b) a reference to section 68 of the *Government Business Enterprises Act 1995* were a reference to subsection (1); and
 - (c) each reference to the Consolidated Fund were a reference to a council.

34. Distributions to members and councils

- (1) The aggregate of all dividends to be paid by a Relevant Corporation (other than a Regional Corporation) is to be allocated to members of that Relevant Corporation in accordance with its constitution.
- (2) Other than as contemplated in subsection (1), the aggregate of all distributions and payments to be made by Relevant Corporations under this Division are to be allocated –
 - (a) in the case of dividends to be paid by a Regional Corporation, to the constituent councils of that Regional Corporation who are members of that Regional Corporation; and
 - (b) in the case of any other distribution or payment by a Regional Corporation or a

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subsidiary of a Regional Corporation, to the constituent councils of that Regional Corporation who are members of that Regional Corporation; and

- (c) in the case of any distribution or payment by the Common Services Corporation or any of its subsidiaries, to the councils who are members of any Regional Corporation –

in accordance with the following principles:

- (d) for any such distributions and payments to be made on or before the date 5 years after the date of incorporation of the last of the Regional Corporations –
 - (i) a priority distribution and payment determined by the Treasurer is to be paid to the councils referred to in paragraph (a), (b) or (c) (as applicable) that generated positive returns from that council's water and sewerage activities on a sustainable basis from the period 1 July 2003 to 30 June 2006; and
 - (ii) a residual distribution and payment determined by the Treasurer is to be paid to the councils referred to in paragraph (a), (b) or (c) (as applicable) based on the relative

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net asset value of the assets,
rights and liabilities (as
determined by the Treasurer)
transferred by that council to the
Regional Corporation and the
Common Services Corporation
under this Act at or about the
time of formation of that
Regional Corporation or any
other time as determined by the
Treasurer; and

- (e) for any such distributions and payments to be made thereafter, a distribution and payment is to be paid to the councils referred to in paragraph (a), (b) or (c) (as applicable) based on a mechanism for allocation of those distributions and payments agreed by all those councils or otherwise determined in accordance with subsection (3).
- (3) If the councils referred to in subsection (2)(e) are unable to agree on a mechanism for allocation of the distributions and payments referred to in subsection (2)(e) within 60 days after a request to determine such a mechanism by a Relevant Corporation, the Treasurer may, by notice to the Relevant Corporation, determine such a mechanism for that and any other distribution or payment to be made by that Relevant Corporation.
- (4) The Treasurer may, in accordance with section 38, issue a Treasurer's Instruction in

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respect of any of the matters referred to in this section.

Division 6 – Other provisions

35. Accounts, records, financial statements and audits

- (1) Each Corporation must maintain financial records that accurately reflect and record the transactions and financial position and performance of the business of the Corporation and its subsidiaries.
- (2) Within 45 days after the end of a financial year, the Board of a Corporation is to –
 - (a) prepare the financial statements of the Corporation relating to that financial year; and
 - (b) if the Corporation has subsidiaries, prepare consolidated financial statements in respect of the Corporation and all its subsidiaries relating to that financial year; and
 - (c) provide the Auditor-General with the Corporation's financial statements and the consolidated financial statements.
- (3) The financial statements must –
 - (a) contain the documents, statements and information required by, and otherwise comply with, the Treasurer's Instructions; and

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- (b) subject to the Treasurer's Instructions, comply with Australian Accounting Standards; and
 - (c) be signed or certified as specified in the Treasurer's Instructions.
 - (4) The Treasurer may direct the Board of a Corporation to include in the financial statements any financial information that he or she considers appropriate.
 - (5) The provisions of Chapter 2M of the Corporations Act apply to each Corporation as if it were a large proprietary company (within the meaning given to that term by that Act) for the purposes of that Chapter.
 - (6) The Auditor-General is to be the auditor of a Corporation for the purposes of the Corporations Act.
 - (7) The Auditor-General must provide the Board of a Corporation and the Treasurer with a copy of his or her opinion in respect of the financial statements of the Corporation given under section 40 of the *Financial Management and Audit Act 1990*.

36. Provision of information to Treasurer and Parliament

- (1) The Board of each Corporation is to provide to the members of the Corporation and the Treasurer a copy of the annual report of the

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Corporation, by no later than 3 months after the end of the financial year to which the annual report relates.

- (2) The Treasurer is to cause to be laid before each House of Parliament each copy provided to the Treasurer under subsection (1) within 7 days after receiving it.
- (3) If the Treasurer is unable to comply with subsection (1) because a House of Parliament is not sitting on any of the 7 days following the receipt of each copy provided under subsection (1), the Treasurer must –
 - (a) on or before the end of the 7th day, provide copies of the annual report to the clerk of that House; and
 - (b) within the first 7 sitting-days after that day, cause copies of the annual report to be laid before that House.

37. Guarantee or indemnity

- (1) On the written request of a Relevant Corporation, any constituent council, in writing, may guarantee, give an indemnity in relation to, or guarantee and give an indemnity in relation to –
 - (a) the repayment of any money lent or agreed to be lent to the Relevant Corporation; or

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- (b) the performance of an obligation undertaken by the Relevant Corporation or which the Relevant Corporation has agreed to undertake (whether that obligation is monetary or otherwise).
 - (2) A guarantee or an indemnity –
 - (a) may include a guarantee of, or an indemnity relating to, any interest and other charges payable in respect of money lent or agreed to be lent or in respect of or arising from an obligation undertaken or agreed to be undertaken; and
 - (b) is subject to any conditions determined by the relevant constituent council and specified in the guarantee or indemnity.
 - (3) This section has effect regardless of whether the loan or obligation was undertaken, agreed to be undertaken or required to be repaid or performed in Tasmania or elsewhere.

38. Treasurer's Instructions

- (1) The Treasurer may issue instructions, in writing, in respect of guidelines, principles, practices and procedures to be observed by a Corporation.
- (2) Unless the Corporation has received notice from the Treasurer to the contrary, a GBE Treasurer's Instruction is taken to be a Treasurer's Instruction issued under subsection (1) and is to

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be read as if any reference to a Government Business Enterprise in that instruction were a reference to a Corporation.

- (3) Subject to subsection (4), a Corporation is to comply with each Treasurer's Instruction.
- (4) The Treasurer may exempt a Corporation from its obligation to comply with all or part of a Treasurer's Instruction.
- (5) A Treasurer's Instruction which is inconsistent with this Act or any other enactment is invalid to the extent of the inconsistency.
- (6) A Treasurer's Instruction to be complied with by a Corporation does not have any effect until a copy of it is provided to that Corporation.
- (7) A Treasurer's Instruction is not a statutory rule within the meaning of the *Rules Publication Act 1953*.
- (8) For the purposes of section 22 of the *Acts Interpretation Act 1931*, a Treasurer's Instruction is an instrument of a like nature to an order.
- (9) Subsections (1), (2), (3), (4), (5), (6), (7) and (8) apply to a subsidiary of a Corporation in the same manner and to the same extent as the subsections apply to a Corporation.

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**PART 3 – TRANSFER OF WATER AND SEWERAGE
ASSETS, RIGHTS, LIABILITIES AND EMPLOYEES**

39. Interpretation and application

In this Part –

“asset” means, in relation to a transferor, property of any kind whether tangible or intangible, real or personal, present or future, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective, to the extent that it relates, directly or indirectly, to the water and sewerage functions of that transferor and includes, without limitation, any –

- (a) legal or equitable estate or interest in real or personal property; and
- (b) chose in action; and
- (c) money, documents or securities; and
- (d) infrastructure; and
- (e) plant and equipment; and
- (f) intellectual property; and
- (g) goodwill; and

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(h) records; and

(i) any other right;

“employee” means, in relation to a transferor, an employee of that transferor engaged, directly or indirectly, in whole or in part, in performing the water and sewerage functions of that transferor;

“liability” means, in relation to a transferor, any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person, to the extent that it relates, directly or indirectly, to the water and sewerage functions of that transferor;

“records” means, in relation to a transferor, registers, papers, documents, minutes, receipts, books of account and other records, however compiled, recorded or stored, to the extent that they relate, directly or indirectly, to the water and sewerage functions of that transferor;

“right” means, in relation to a transferor, any right, power, privilege or immunity whether actual, contingent or prospective, to the extent that it relates, directly or indirectly, to the water and sewerage functions of that transferor;

“State tax” means any of the following if imposed by any Act or law of Tasmania:

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- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;
- (c) a charge;

“transferee” means a council, a bulk water authority or a Corporation, or a subsidiary of any of them, to which any employees, assets, rights or liabilities are transferred;

“transferor” means a council, a bulk water authority or a Corporation, or a subsidiary of any of them, or the Crown from which any employees, assets, rights or liabilities are transferred, or any person prescribed by the regulations.

40. Notice of transfer

- (1) The Treasurer may, by notice published in the *Gazette*, order the transfer to a specified transferee of such of a specified transferor’s –

- (a) assets, rights and liabilities; and
- (b) employees –

as are specified in the order.

- (2) The assets, rights and liabilities and the employees specified in the order referred to in subsection (1) need not constitute all of the

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assets, rights or liabilities or all of the employees of the transferor.

- (3) A transfer order takes effect on the day specified in the order.
- (4) A transferor that is the subject of a transfer order is to ensure that transfer of the specified assets, rights, liabilities and employees occurs on or as soon as practicable after the transfer day.
- (5) The Treasurer may publish more than one notice in respect of the transfer of assets, rights, liabilities and employees of a transferor and may specify different transfer days in respect of the transfer of those assets, rights, liabilities and employees.
- (6) The Treasurer may amend or revoke any notice published under this section.
- (7) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (8) State tax is not payable in respect of any document prepared to give effect to a transfer order.

41. Confirmation of transfer

- (1) If any dispute arises –
 - (a) as to whether an asset, right, liability or employee is transferred under a transfer order; or

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- (b) as to whether any, or any part of any, contract or document relates to an asset, right, liability or employee transferred under a transfer order –

the Treasurer may determine the matter and is to provide the concerned parties with written notice of that determination.

- (2) The determination of the Treasurer under subsection (1) is final and binding on the transferor and transferee concerned.

42. Vesting of assets, rights and liabilities in transferee

- (1) When any assets, rights or liabilities are transferred, the following provisions have effect:
 - (a) the assets of the transferor that are the subject of the transfer order vest in the transferee by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;
 - (b) the rights or liabilities of the transferor that are the subject of the transfer order become by virtue of this section the rights or liabilities of the transferee;
 - (c) all legal or other proceedings relating to the assets, rights or liabilities that are the subject of the transfer order commenced before the transfer by or against the transferor or a predecessor of the

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transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee;

- (d) any legal or other proceedings relating to the assets, rights or liabilities that are the subject of the transfer order which could have been commenced immediately before the transfer by or against the transferor or a predecessor of the transferor may be commenced by or against the transferee;
- (e) a judgment or order of a court or other tribunal obtained before the transfer by or against the transferor or a predecessor of the transferor relating to the assets, rights or liabilities that are the subject of the transfer order may be enforced by or against the transferee;
- (f) any document relating to legal or other proceedings relating to the assets, rights or liabilities that are the subject of the transfer order that has been served on or by a transferor or a predecessor of the transferor before the transfer is taken, where appropriate, to have been served on or by the transferee;
- (g) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities that are the subject of the transfer order before the transfer by, to or in respect of the transferor or a

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predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee;

- (h) a reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind to –
 - (i) the transferor; or
 - (ii) any predecessor of the transferor –

to the extent to which the reference relates to the assets, rights or liabilities that are the subject of the transfer order, is taken to be, or include, a reference to the transferee.

- (2) The operation of this section is not to be regarded –
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the

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beneficial or legal ownership of any
asset, right or liability that is the subject
of the transfer order; or

(d) as an event of default under any contract
or other instrument.

(3) No assignment to the transferee by a lessee from
the transferor is required.

(4) A transfer is subject to the terms and conditions
of the transfer order by which it is effected.

43. Transfer of interests in land

(1) A transfer order may transfer an interest in
respect of land vested in the transferor without
transferring the whole of the interests of the
transferor in that land.

(2) If the interest transferred is not a separate
interest, the order operates to create the interest
transferred in such terms as are specified in the
order.

(3) This clause does not limit any other provision of
this Act.

44. No compensation payable

No compensation is payable to any person or
body in connection with a transfer except to the
extent (if any) to which the transfer order giving
rise to the transfer so provides.

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45. Consideration for vesting

- (1) The Treasurer may, by notice published in the *Gazette*, specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

46. Transfers of employees generally

- (1) As soon as practicable after receiving notice of the transfer day specified in a transfer order, the relevant transferor is to give to each of its employees specified in the transfer order written notice that his or her employment is to be transferred on that day, by the operation of this Part, to the transferee specified in the transfer order.
- (2) Transferred employees are regarded for all purposes as having become employees of the transferee, in accordance with the terms of the transfer order, on the transfer day specified in the order.
- (3) Before, or as soon as practicable after, the employment of a person is transferred to a transferee by the operation of this Part, the transferee, by written notice provided to the person, may determine the position description, title, role or duties for the position to be occupied by the person in the transferee that is

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different from his or her position description, title, role or duties in the transferor.

- (4) A chief executive officer of a transferor whose employment is transferred to a transferee by operation of this Part is not transferred to the position of chief executive officer of the transferee unless the Board of that transferee has appointed him or her to that position.

47. General preservation of conditions of employment

- (1) A transferred employee –

- (a) is, for a period of not less than 12 months from the transfer day, to be paid by way of remuneration (excluding any bonus payments) by the transferee an amount per annum no less than the amount he or she received per annum (excluding any bonus payments) immediately before the day on which this Act receives the Royal Assent or such other date agreed by the transferee; and
- (b) is, subject to any determination made under section 46(3), to be employed by the transferee for a period of not less than 12 months from the transfer day –
- (i) in accordance with any awards, agreements and determinations which would have applied to him or her had he or she not been transferred but instead remained

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as an employee of the transferor;
and

- (ii) on terms and conditions in aggregate that are no less favourable to that transferred employee than those which would have applied to him or her immediately prior to the day on which this Act receives the Royal Assent or such other date agreed by the transferee –

except where this or any other Act or law makes specific provision in respect of superannuation; and

- (c) retains any rights to annual leave, long-service leave, sick leave, and other forms of leave, accrued or accruing during his or her employment with the transferor, and may claim any such entitlements as against the transferee.
- (2) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, industrial agreement or law after he or she becomes a transferred employee.

48. Superannuation

- (1) A Corporation may make contributions to one or more superannuation schemes that comply with the law of the Commonwealth relating to superannuation.

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- (2) A Corporation may participate in a superannuation scheme provided for under the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999* in respect of employees transferred under a transfer order who were members of those schemes immediately before being transferred.
- (3) If a Corporation participates in either of the schemes specified in subsection (2), the Corporation is taken to be a prescribed authority for the purposes of the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999* in respect of any of its employees who are subject to the scheme.
- (4) If a Corporation participates in a superannuation scheme provided for under the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, it must comply with any instruction relating to superannuation given to it by the Minister administering those Acts.
- (5) A Corporation is to make adequate provision to meet any liability it may have under the *Retirement Benefits Act 1993* to pay pension and other benefits in respect of all transferred employees.
- (6) Except where approved by the Treasurer, a Corporation or its subsidiary must not establish a superannuation scheme.

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49. No payment-out on transfer or dual benefits

- (1) Transferred employees are not entitled to receive any payment or other benefit merely because they cease to be employees of the transferor.
- (2) Transferred employees are not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

50. Delegation by Treasurer

The Treasurer may, by written notice, delegate to any person any of his or her functions or powers under this Act, other than this power of delegation.

51. General power of exemption by Treasurer

The Treasurer may, by written notice, exempt any individual or body from the application of any provision of this Act or the regulations from time to time and on such conditions as are specified in the notice.

52. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide that any act or thing, or kind of act or thing, of or relating to a Relevant Corporation is authorised for the purposes of Part IV of the *Trade Practices Act 1974* of the Commonwealth.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.

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- (4) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Treasurer.
 - (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the relevant provision or provisions of this Act.
 - (6) Regulations made under subsection (5) may take effect on the day on which the relevant provision or provisions of this Act commences or commence or a later day.

53. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

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**SCHEDULE 1 – PROVISIONS FOR INCLUSION IN
CONSTITUTION OF EACH CORPORATION**

Section 12(2)

Provisions to the effect of the following provisions are to be included in the constitution of each Corporation. Words and expressions used in these provisions have the same meaning as in this Act or, if applicable, the Corporations Act.

1. Entrenchment

The constitution may not be modified –

- (a) in a way that would result in the constitution being inconsistent with the provisions of the *Water and Sewerage Corporations Act 2008*; and
- (b) unless the provisions of section 15 of the *Water and Sewerage Corporations Act 2008* have been complied with in respect of the proposed modification.

2. Act to prevail

- (1) The provisions of the *Water and Sewerage Corporations Act 2008* prevail over any inconsistent provisions of the constitution of the company.

- (2) The company, its directors and members are expressly prohibited from exercising any of their powers in contravention of or in a manner inconsistent with any requirement of the *Water and Sewerage Corporations Act 2008*.

3. Subsidiaries

- (1) The company may not –
- (a) form, or participate in the formation of, any company, trust, managed investment scheme, other body corporate, partnership or joint venture; or
 - (b) acquire –
 - (i) any shares or other securities in a company; or
 - (ii) any interest, including any units, in any trust; or
 - (iii) any interest in any managed investment scheme; or
 - (iv) any interest in any other body corporate; or
 - (v) any interest in any partnership or joint venture –

without the prior approval of the members of the first-mentioned company.

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- (2) The company is, to the maximum extent practicable, to ensure that every subsidiary complies with its constitution (if any) and with the requirements of the *Water and Sewerage Corporations Act 2008*.

4. Replaceable rules not to apply

The replaceable rules applicable to a proprietary company contained in the Corporations Act from time to time do not apply to the company.

SCHEDULE 2 – DIRECTOR’S DUTIES

Section 24

1. Interpretation

In this Schedule –

“business judgment” means any decision to take or not take action in respect of a matter relevant to the business operations of a Relevant Corporation;

“involved” in respect of a contravention means, exclusively, where the person –

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention;

“officer” of a Relevant Corporation means –

- (a) a director or secretary of a Relevant Corporation; or
- (b) a person –

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- (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Relevant Corporation; or
 - (ii) who has the capacity to affect significantly the Relevant Corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the Relevant Corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the Relevant Corporation); or
- (c) a receiver, or receiver and manager, of the property of the Relevant Corporation; or
- (d) an administrator of the Relevant Corporation; or

- (e) an administrator of a deed of company arrangement executed by the Relevant Corporation; or
- (f) a liquidator of the Relevant Corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the Relevant Corporation and another person.

2. Care and diligence – civil obligation only

- (1) A director or other officer of a Relevant Corporation must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she –
 - (a) were a director or officer of a corporation in that Relevant Corporation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within that Relevant Corporation as, the director or officer –

having regard to the provisions of this Act.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

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- (2) A director or other officer of a Relevant Corporation who makes a business judgment is taken to meet the requirements of subclause (1), and his or her equivalent duties at common law and in equity, in respect of the judgment if the director or other officer –
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of a Relevant Corporation.
- (3) The director's or officer's belief that the judgment is in the best interests of a Relevant Corporation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

3. Good faith – civil obligations

- (1) A director or other officer of a Relevant Corporation must exercise his or her powers and discharge his or her duties –

- (a) in good faith in the best interests of a Relevant Corporation; and
- (b) for a proper purpose.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

- (2) A person who is involved in a contravention of subclause (1) contravenes this subclause.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

4. Use of position – civil obligations

- (1) A director, secretary, other officer or employee of a Relevant Corporation must not improperly use his or her position to –
 - (a) gain, directly or indirectly, an advantage for himself or herself or someone else; or
 - (b) cause detriment to the Relevant Corporation.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

- (2) A person who is involved in a contravention of subclause (1) contravenes this subclause.

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Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

5. Use of information – civil obligations

- (1) A person who obtains information because he or she is, or has been, a director or other officer or employee of a Relevant Corporation must not improperly use the information to –

- (a) gain, directly or indirectly, an advantage for himself or herself or someone else; or
- (b) cause detriment to the Relevant Corporation.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

- (2) A person who is involved in a contravention of subclause (1) contravenes this subclause.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years.

6. Good faith, use of position and use of information – criminal offences

- (1) A director or other officer of a Relevant Corporation commits an offence if he or she –

- (a) is reckless; or

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- (b) is intentionally dishonest –

and fails to exercise his or her powers and discharge his or her duties –
 - (c) in good faith in the best interests of the Relevant Corporation; or
 - (d) for a proper purpose.
- (2) A director, other officer or employee of a Relevant Corporation commits an offence if he or she uses his or her position dishonestly –
 - (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or another person, or causing detriment to the Relevant Corporation; or
 - (b) recklessly as to whether the use may result in he or she or another person directly or indirectly gaining an advantage, or in causing detriment to the Relevant Corporation.
- (3) A person who obtains information because he or she is, or has been, a director or other officer or employee of a Relevant Corporation commits an offence if he or she uses the information dishonestly –
 - (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or another person, or causing detriment to the Relevant Corporation; or

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- (b) recklessly as to whether the use may result in he or she or another person directly or indirectly gaining an advantage, or in causing detriment to the Relevant Corporation.

7. Directors and other Corporations

- (1) A director of a Relevant Corporation is taken to act in good faith in the best interests of a Relevant Corporation if –
 - (a) the director acts in good faith in the best interests of any Relevant Corporation; and
 - (b) that other Relevant Corporation is not insolvent at the time the director acts and does not become insolvent because of the director's act.
- (2) A director, secretary, other officer or employee of a Relevant Corporation is taken to have met the requirements in clauses 2, 3, 4, 5 and 6, and his or her equivalent duties at common law and in equity, even if –
 - (a) that person is a director, secretary, other officer or employee of another Relevant Corporation; or
 - (b) that person exercises powers or discharges duties as a director, secretary, other officer or employee of that Relevant Corporation in good faith in the

best interest of another Relevant Corporation and for a proper purpose in connection with that other Relevant Corporation; or

- (c) that person uses his or her position to gain, directly or indirectly, an advantage for another Relevant Corporation; or
- (d) that person uses information obtained because that person is, or has been, a director or other officer or employee of a Relevant Corporation to gain, directly or indirectly, an advantage for another Relevant Corporation; or
- (e) a conflict of interest exists because that person is a director, secretary, other officer or employee of another Relevant Corporation.

8. Interaction of clauses 2, 3, 4, 5 and 6 with other laws

- (1) Clauses 2, 3, 4, 5 and 6 have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of that person's office or employment in relation to a Relevant Corporation.
- (2) Subclause (1) does not apply to –
 - (a) subclauses (2) and (3) of clause 2 to the extent to which those subclauses operate on the duties at common law and in

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equity that are equivalent to the requirements of clause 2(1); and

- (b) clause 7 to the extent to which it operates on the duties at common law and in equity that are equivalent to the requirements of clauses 2, 3, 4, 5 and 6.