

TASMANIA

**GOVERNMENT BUSINESS ENTERPRISES
(SALE) BILL 2003**

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GOVERNMENT BUSINESS ENTERPRISES (SALE) BILL 2003

*(Brought in by the Minister for Education, the Honourable
Paula Catherine Wriedt)*

A BILL FOR

An Act to authorise, enable and facilitate the sale of the businesses or assets of the Civil Construction Services Corporation, the Stanley Cool Stores Board and the Tasmanian Grain Elevators Board, to provide for the repeal of the Portfolio Acts of those Government Business Enterprises and for related purposes

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

Short title

1. This Act may be cited as the *Government Business Enterprises (Sale) Act 2003*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Objects of Act

3. The objects of this Act are to enable the Crown to do any one or more of the following:

- (a) sell the whole or part of a prescribed Government Business Enterprise;
- (b) transfer to the Crown any business of a prescribed Government Business Enterprise that remains with the prescribed Government Business Enterprise after its other business is sold;
- (c) form a company under the Corporations Act and transfer to that company the business of a prescribed Government Business Enterprise;
- (d) transfer to the Crown any business of a prescribed Government Business Enterprise that remains with the prescribed Government Business Enterprise after its other business is transferred to such a company;
- (e) sell the shares in such a company that are held on behalf of the Crown.

Interpretation

4. (1) In this Act, unless the contrary intention appears –

“Board” has the same meaning as in the *Government Business Enterprises Act 1995*;

“business”, in relation to a prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise, includes –

- (a) the business conducted by the prescribed Government Business Enterprise or

- relevant prescribed Government Business Enterprise; and
- (b) the goodwill of that business; and
 - (c) the property of the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise; and
 - (d) the liabilities of the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise in relation to that business; and
 - (e) a part of the business of a prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise –

but does not include a part of the business of a prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise that the regulations exclude from the operation of this Act;

“business sale date” means the day on which the business of a prescribed Government Business Enterprise is sold under section 7(1);

“company” means a company formed under section 14;

“existing document” means –

- (a) in relation to the sale under section 7(1) of the business of a prescribed Government Business Enterprise, a document that was in effect immediately before the business sale date; or

- (b) in relation to the transfer under section 17 of the business of a relevant prescribed Government Business Enterprise to a company, a document that was in effect immediately before the transfer day; or
- (c) in relation to the transfer under section 35 of the business of a prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise to the Crown, a document that was in effect immediately before the transfer day;

“Government Business Enterprise” has the same meaning as in the *Government Business Enterprises Act 1995*;

“legal proceeding” includes arbitration and mediation;

“liability” means an actual, contingent or prospective liability, duty or obligation;

“Part 3 transfer notice” means a notice made under section 17(1);

“Part 4 transfer notice” means a notice made under section 35(1);

“Portfolio Act” has the same meaning as in the *Government Business Enterprises Act 1995*;

“Portfolio Minister” has the same meaning as in the *Government Business Enterprises Act 1995*;

“prescribed Government Business Enterprise” means –

- (a) the Civil Construction Services Corporation established under the *Civil Construction Services Corporation Act 1994*; or
- (b) the Stanley Cool Stores Board established under the *Stanley Cool Stores Act 1945*; or
- (c) the Tasmanian Grain Elevators Board constituted under the *Grain Reserve Act 1950*;

“property” means any present or future, vested or contingent, legal or equitable estate or interest in real or personal property and includes money, documents, securities, choses in action and other rights, powers, privileges and immunities (whether actual, contingent or prospective);

“purchased business” means the business of a prescribed Government Business Enterprise that is sold under section 7(1);

“purchaser” means a person who purchases the business of a prescribed Government Business Enterprise sold under section 7 or a related body corporate, within the meaning of the Corporations Act, of that person;

“relevant prescribed Government Business Enterprise” means the prescribed Government Business Enterprise whose business is transferred to a company under section 17;

“State tax” means any tax, duty, charge or application, registration or other fee imposed by an Act or other law of Tasmania;

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

“transfer day” means –

- (a) in Part 3, the day specified in a Part 3 transfer notice as the day on which that transfer notice takes effect; or
- (b) in Part 4, the day specified in a Part 4 transfer notice as the day on which that transfer notice takes effect;

“transferred business” means –

- (a) in Part 3, the whole, or any part, of the business of a prescribed Government Business Enterprise specified in, and transferred by, a Part 3 transfer notice; or
- (b) in Part 4, the whole, or any part, of the business of a prescribed Government Business Enterprise specified in, and transferred by, a Part 4 transfer notice;

“transferred employee” means –

- (a) in Part 2, a person whose employment is transferred under section 10 consequent on the sale of the business of a prescribed Government Business Enterprise under section 7(1); or
- (b) in Part 3, a person whose employment is transferred under section 18 consequent on the transfer of the business of a relevant prescribed Government Business Enterprise under section 17.

(2) In this Act, a reference to a person employed by a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise is a reference to a person employed by that Government Business Enterprise under section 21(1) of the *Government Business Enterprises Act 1995*.

Act binds Crown

5. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Relationship with *Government Business Enterprises Act 1995*

6. If a provision of this Act is inconsistent with a provision of the *Government Business Enterprises Act 1995* as it applies in respect of a prescribed Government Business Enterprise, the provision of this Act prevails and the provision of the *Government Business Enterprises Act 1995* is invalid to the extent of the inconsistency.

**PART 2 – SALE OF BUSINESS OF PRESCRIBED
GOVERNMENT BUSINESS ENTERPRISES**

Power to sell business

7. (1) On behalf of the Crown, the Treasurer may sell the whole or any part of the business of a prescribed Government Business Enterprise to any person on any conditions the Treasurer considers appropriate.

(2) Without limiting the generality of subsection (1), the Treasurer may sell or grant in conjunction with any sale under that subsection a right to use any name, trade mark, service mark, indicia or other property –

- (a) that is used for the purposes of the business of the prescribed Government Business Enterprise; or
- (b) that the purchaser would not otherwise be permitted to use.

(3) In exercising a power under this section to sell the business of a prescribed Government Business Enterprise or to sell or grant a right or other property, the Treasurer is to have regard to –

- (a) the achievement of a fair and reasonable price for the business, right or other property sold or granted; and
- (b) the preservation of accrued entitlements of employees of the prescribed Government Business Enterprise.

Treasurer may direct Board to facilitate sale

8. (1) By written notice provided to a prescribed Government Business Enterprise, the Treasurer may direct the prescribed Government Business Enterprise or its Board to do one or more of the following to facilitate the sale of the business of the prescribed Government Business Enterprise under section 7(1):

- (a) take the action specified in the notice;
- (b) take all reasonable steps and actions.

(2) A prescribed Government Business Enterprise and its Board are to comply with a direction provided under subsection (1).

(3) A prescribed Government Business Enterprise and its Board may do all things necessary or convenient to be done to enable them to comply with a direction provided under subsection (1).

Transitional provisions if business sold

9. (1) If the business of a prescribed Government Business Enterprise is sold under section 7(1), on and after the business sale date the following provisions apply except as otherwise agreed, in writing, by the Treasurer and the purchaser:

- (a) a reference in an existing document to the prescribed Government Business Enterprise or the Board of the prescribed Government Business Enterprise in relation to the business that became the purchased business is taken, where appropriate, to be or to include a reference to the purchaser;

- (b) legal proceedings that could have been instituted by or against the prescribed Government Business Enterprise immediately before the business sale date and that relate to the business that became the purchased business may be instituted by or against the purchaser;
- (c) legal proceeding instituted by or against the prescribed Government Business Enterprise that relate to the business that became the purchased business and are pending immediately before the business sale date may be continued by or against the purchaser;
- (d) a document served on the prescribed Government Business Enterprise in respect of legal proceedings referred to in paragraph (c) is taken to have been served on the purchaser;
- (e) a judgment or order of a court obtained by or against the prescribed Government Business Enterprise in relation to the business that became the purchased business may be enforced by or against the purchaser but may not be enforced by or against the prescribed Government Business Enterprise;
- (f) a contract made by the prescribed Government Business Enterprise relating to the business that became the purchased business but not performed or discharged before the business sale date is taken to have been made by the purchaser.

(2) A person who is a party to a contract made by a prescribed Government Business Enterprise is not entitled to –

- (a) terminate that contract; or

- (b) claim that there has been a breach or default of the contract; or
- (c) claim any remedy –

by reason only of the sale under section 7(1) of a business to which that contract, or part of that contract, relates or which arises from that contract or part.

Arrangements for employees affected by sale of business

10. (1) If the Treasurer sells the business of a prescribed Government Business Enterprise under section 7(1), the Treasurer may, by order provided to the prescribed Government Business Enterprise –

- (a) transfer to the purchaser the employment of a person who, immediately before the business sale date, was employed by the prescribed Government Business Enterprise or under the *State Service Act 2000* for the purposes of that business; or
- (b) terminate on any conditions the Treasurer considers appropriate the employment of a person who, immediately before the business sale date, was employed by the prescribed Government Business Enterprise for the purposes of that business.

(2) If a person employed under the *State Service Act 2000* for the purposes of a prescribed Government Business Enterprise does not have his or her employment transferred in accordance with section 10(1)(a), that person remains in employment under and subject to the *State Service Act 2000*.

(3) Before transferring or terminating the employment of a person under subsection (1), the Treasurer is to consult with the person in any manner the Treasurer considers appropriate including, but not limited to, consultation with the representatives of the person or the employee organisation to which the person belongs.

(4) In terminating the employment of a person under subsection (1)(b), the Treasurer is to do so subject to, and in accordance with, any relevant contract, award or agreement.

(5) On receipt of an order under subsection (1), the prescribed Government Business Enterprise is to give to each person whose employment is transferred or terminated by the order written notice of that transfer or termination.

(6) On the sale of the business of the prescribed Government Business Enterprise, or on the day specified in the order under subsection (1) as the day on which the employment of a person is transferred –

- (a) if the order transfers the employment to the purchaser, that person becomes an employee of the purchaser and the purchaser becomes the employer of that person; and
- (b) that person ceases –
 - (i) to be an employee of the prescribed Government Business Enterprise; or
 - (ii) to hold office or be an employee under the *State Service Act 2000*.

(7) A transferred employee –

- (a) is taken to have been employed by the purchaser for the same remuneration as he or

she was receiving immediately before the transfer; and

- (b) except where an award, agreement or any other law otherwise provides, retains all accrued entitlements as if employment as an employee of the purchaser were a continuation of employment with the prescribed Government Business Enterprise or as a State Service officer or State Service employee; and
- (c) is entitled to claim those entitlements against the purchaser; and
- (d) is not entitled to any compensation or other payment in respect of the change of employer except as provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.

(8) An award or agreement that had effect in relation to a person immediately before the person became a transferred employee continues to have effect in relation to the person as a transferred employee, except where another award or agreement or any other law provides otherwise.

(9) The period of service of a person who becomes a transferred employee with the prescribed Government Business Enterprise or as a State Service officer or State Service employee is taken to be service with the purchaser.

(10) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, agreement or law after he or she becomes a transferred employee.

(11) If an order under subsection (1) terminates the employment of a person employed by a prescribed Government Business Enterprise –

- (a) that employment is terminated immediately before the business of the prescribed Government Business Enterprise is sold or on the day specified in the order; and
- (b) that person is not entitled to any compensation or other payment in respect of the termination of employment except as provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, any other law, an award, an agreement or the conditions determined by the Treasurer under subsection (1)(b).

(12) An order under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Long service leave

11. (1) The *Long Service Leave (State Employees) Act 1994* does not apply to a transferred employee or a purchaser.

(2) Except as otherwise agreed, in writing, by the Treasurer and the purchaser, in calculating the period of service a transferred employee has completed with the purchaser for the purposes of calculating his or her entitlement to long service leave under any Act, award or agreement, the transferred employee is taken to have completed, on the day on which he or she becomes the employee of the purchaser, a period of service with the purchaser calculated in accordance with the following formula:

$$\text{Calculated service} = \frac{S \times P}{10}$$

where:

“Calculated service” is the period of service the transferred employee is taken to have completed with the purchaser on the day on which he or she becomes the employee of the purchaser;

“S” is the total period of service the transferred employee has completed with the prescribed Government Business Enterprise (including service the transferred employee is taken to have completed with the prescribed Government Business Enterprise) or under the *State Service Act 2000*;

“P” is the period of service that would have been required to be completed by the transferred employee to be entitled to long service leave under the relevant Act, award or agreement if the transferred employee had always been an employee of the purchaser.

Superannuation

12. If the Treasurer makes an order under section 10(1) on the sale of the business of a prescribed Government Business Enterprise that transfers to the purchaser the employment of a person employed by the prescribed Government Business Enterprise, the Minister administering the *Retirement Benefits Act 1993* is to make a declaration under regulation 3(1A) of the *Retirement Benefits Regulations 1994* declaring the agreement for that sale to be a prescribed arrangement for the purposes of those regulations.

Exemption from State tax

13. (1) The Treasurer may determine that State tax is not payable in respect of any document prepared in relation to, or for the purposes of, the sale of the business of a prescribed Government Business Enterprise under section 7(1) or the sale or grant of a right under section 7(2).

(2) A determination is to be made by certificate provided to the person who would otherwise be required to pay the State tax.

PART 3 – FORMATION AND SALE OF COMPANIES***Division 1 – Formation of company*****Formation of companies**

14. (1) The Treasurer may form, or participate in the formation of, one or more companies limited by shares that is or are to be registered under the Corporations Act, with each company having as its primary purposes the business of, or one or more of the functions performed by, a prescribed Government Business Enterprise.

(2) By written notice provided to a prescribed Government Business Enterprise, the Treasurer may direct the prescribed Government Business Enterprise or its Board to do one or more of the following for the purpose of facilitating the formation under subsection (1) of a company in respect of the business of, or a function performed by, the prescribed Government Business Enterprise:

- (a) take the action specified in the notice;
- (b) take all reasonable steps and actions.

(3) A prescribed Government Business Enterprise and its Board are to comply with a directions provided under subsection (2).

(4) A prescribed Government Business Enterprise and its Board may do all things necessary or convenient to be done to enable them to comply with a direction provided under subsection (2).

Membership of company

15. On the registration of a company formed in respect of the business of, or a function performed by, a prescribed Government Business Enterprise, the company is to have as its only member the Treasurer.

Shares

16. (1) The consideration for shares in a company that are issued to the Treasurer is the sum of \$1 for each share issued.

(2) Shares in a company issued to the Treasurer are held in trust for the Crown.

(3) The Treasurer must not acquire shares in a company for his or her own benefit.

(4) Any share acquired by the Treasurer in contravention of subsection (3) is taken to be held in trust for the Crown but the Crown is not liable to meet the cost of that acquisition.

Transfer of business on formation of company

17. (1) If a company is formed in respect of the business of, or a function performed by, a prescribed Government Business Enterprise, the Treasurer, by one or more notices published in the *Gazette*, may –

- (a) transfer the whole, or any part, of the business of the prescribed Government Business Enterprise to the company (whether or not that transfer is for a consideration); and
- (b) specify conditions relating to that transfer; and

- (c) provide for any matter that is incidental to that transfer.

(2) A Part 3 transfer notice may be made in anticipation of the formation of a company.

(3) Consideration for the transfer under a Part 3 transfer notice of any transferred business may be by assumption of liabilities or otherwise.

(4) On the transfer day, a Part 3 transfer notice takes effect and –

- (a) any business of a relevant prescribed Government Business Enterprise, other than a liability, specified in and transferred by a Part 3 transfer notice vests in the company; and
- (b) any business of a relevant prescribed Government Business Enterprise that is a liability and is specified in and transferred by a Part 3 transfer notice becomes the liability of the company.

(5) Except as otherwise provided in a Part 3 transfer notice, on and after the transfer day the following provisions apply:

- (a) a reference in an existing document to the relevant prescribed Government Business Enterprise, or the Board of the relevant prescribed Government Business Enterprise, in relation to the business that became the transferred business is taken, where appropriate, to be or to include a reference to the company or the Board of the company;
- (b) legal proceedings that could have been instituted by or against the relevant prescribed Government Business Enterprise immediately before the transfer day and that

relate to the business that became the transferred business may be instituted by or against the company;

- (c) legal proceedings instituted by or against the relevant prescribed Government Business Enterprise that relate to the business that became the transferred business and are pending immediately before the transfer day may be continued by or against the company;
- (d) a document served on the relevant prescribed Government Business Enterprise in respect of legal proceedings referred to in paragraph (c) is taken to have been served on the company;
- (e) a judgment or order of a court obtained by or against the relevant prescribed Government Business Enterprise in relation to the business that became the transferred business may be enforced by or against the company but may not be enforced by or against the relevant prescribed Government Business Enterprise;
- (f) a contract made by the relevant prescribed Government Business Enterprise relating to the business that became the transferred business but not performed or discharged before the transfer day is taken to have been made by the company.

(6) A person who is a party to a contract made by a relevant prescribed Government Business Enterprise is not entitled to –

- (a) terminate that contract; or
- (b) claim that there has been a breach or default of the contract; or
- (c) claim any remedy –

by reason only of the transfer, under this section, of any business to which that contract, or part of that contract, relates or which arises from that contract or a part of that contract.

(7) If any dispute arises –

- (a) as to whether any business of a relevant prescribed Government Business Enterprise is transferred business; or
- (b) as to whether any, or any part of any, contract relates to transferred business –

the Treasurer may determine the matter and is to provide the relevant prescribed Government Business Enterprise and any company interested in the matter with written notice of that determination.

(8) The determination of the Treasurer under subsection (7) is final and is binding on all persons receiving notice of it under that subsection.

(9) A Part 3 transfer notice is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Arrangements for employees on formation of company

18. (1) If the business of a prescribed Government Business Enterprise is transferred to a company under section 17, the Treasurer may, by order provided to that Government Business Enterprise –

- (a) transfer to the company the employment of a person who, immediately before the transfer day, was employed by that Government Business Enterprise or under the *State Service Act 2000* for the purposes of that business; or

- (b) terminate on any conditions the Treasurer considers appropriate the employment of a person who, immediately before the transfer day, was employed by that Government Business Enterprise for the purposes of that business.

(2) If a person employed under the *State Service Act 2000* for the purposes of a relevant prescribed Government Business Enterprise does not have his or her employment transferred in accordance with section 18(1)(a), that person remains in employment under and subject to the *State Service Act 2000*.

(3) In terminating the employment of a person under subsection (1), the Treasurer is to do so subject to, and in accordance with, any relevant contract, award or agreement.

(4) On receipt of an order under subsection (1), the relevant prescribed Government Business Enterprise is to give to each person whose employment is transferred or terminated by the order written notice of that transfer or termination.

(5) On the transfer day, or on the day specified in the order under subsection (1) as the day on which the employment of a person is transferred –

- (a) if the order transfers the employment to a company, that person becomes an employee of the company and the company becomes the employer of that person; and
- (b) that person ceases –
 - (i) to be an employee of the relevant prescribed Government Business Enterprise; or

- (ii) to hold office or be an employee under the *State Service Act 2000*.

(6) If a transfer order transfers the employment of a person to a company, that transferred employee –

- (a) is taken to have been employed by the company for the same remuneration as he or she was receiving immediately before the transfer; and
- (b) except where an award, agreement or any other law otherwise provides, retains all accrued entitlements as if employment as an employee of the company were a continuation of employment with the relevant prescribed Government Business Enterprise; and
- (c) is entitled to claim those entitlements against the company; and
- (d) is not entitled to any compensation or other payment in respect of the change of employer except as provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.

(7) An award or agreement that had effect in relation to a person immediately before the person became a transferred employee continues to have effect in relation to the person as a transferred employee, except where another award or agreement or any other law provides otherwise.

(8) The period of service of a person who becomes a transferred employee with the relevant prescribed Government Business Enterprise or as a State Service officer or State Service employee is taken to be service with the company.

(9) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, agreement or law after he or she becomes a transferred employee.

(10) If an order under subsection (1) terminates the employment of a person employed by a relevant prescribed Government Business Enterprise –

- (a) that employment is terminated immediately before the transfer day or on the day specified in the order; and
- (b) that person is not entitled to any compensation or other payment in respect of the termination of employment except as provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, any other law, an award, an agreement or the conditions determined by the Treasurer under subsection (1)(b).

(11) An order under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Exemption from State tax

19. State tax is not payable in respect of –

- (a) any document prepared in relation to, or for the purposes of, the formation of a company under section 14; or
- (b) a Part 3 transfer notice; or
- (c) any other document prepared in relation to, or for the purposes of, a Part 3 transfer notice or the transfer of the business of a relevant

prescribed Government Business Enterprise to a company.

Division 2 – Operation of company

Application of Division 2

20. This Division only applies to a company while all shares in the company are held by the Treasurer.

Status of company

21. (1) Unless this or any other Act expressly provides otherwise, a company or a subsidiary of a company –

- (a) is not, and does not represent, the Crown; and
- (b) is not exempt from any rate, tax, duty or other impost imposed under any law merely because the Crown has beneficial ownership of shares in it; and
- (c) is not subject or entitled to any prerogative right or privilege of the Crown.

(2) The Crown is not liable for any liability or obligation of a company or subsidiary of a company unless the Treasurer gives a guarantee or indemnity under section 22.

Guarantee or indemnity

22. (1) On the written request of a company or its subsidiary, the Treasurer, in writing, may guarantee or give an indemnity, or guarantee and give an indemnity, in relation to –

- (a) the repayment of any money lent or agreed to be lent to the company or subsidiary; or
- (b) the performance of an obligation undertaken by the company or subsidiary or which the company or subsidiary 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, incidental to or arising from an obligation undertaken or agreed to be undertaken; and
- (b) is subject to any conditions the Treasurer determines.

(3) The Treasurer is to make any payment required under or arising from a guarantee or indemnity out of money provided by Parliament for the purpose.

(4) This section has effect regardless of where the loan or obligation was undertaken, agreed to be undertaken or required to be repaid or performed.

Fees in respect of guarantee and indemnity

23. The provisions of Division 1 of Part 11 of the *Government Business Enterprises Act 1995* apply in relation to a company and a subsidiary of that company as if –

- (a) the company or subsidiary were a Government Business Enterprise specified in Schedule 3 to that Act; and

- (b) a reference to financial accommodation in that Division were a reference to a financial benefit arising from a guarantee given under section 22.

Tax equivalents

24. The provisions of Part 10 of the *Government Business Enterprises Act 1995* apply in relation to a company and a subsidiary of that company as if –

- (a) the company were a Government Business Enterprise specified in Schedule 2 to that Act; and
- (b) the subsidiary were a subsidiary within the meaning of that Act.

Audit

25. The Auditor-General continues to act as the auditor for a company until the members of the company appoint another person as auditor for the company.

Treasurer's Instructions

26. Any Treasurer's Instructions issued under the *Government Business Enterprises Act 1995* providing for guidelines relating to the determination, calculation and payment of income tax equivalents and guarantee fees and other related matters apply to a company or its subsidiary as if the company or subsidiary were a Government Business Enterprise under that Act.

Effect of *Financial Agreement Act 1994*

27. If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires a company to do or refrain from doing anything for the purposes of implementing the Agreement, within the meaning of that Act, the company is to comply with that requirement.

Superannuation for employees

28. (1) A company –

- (a) may make contributions to one or more superannuation schemes that comply with the law of the Commonwealth relating to superannuation; and
- (b) may participate in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.

(2) A contribution made to a complying superannuation scheme in accordance with subsection (1)(a) in respect of an employee (excluding a transferred employee) is not to be in excess of the rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.

(3) If a company under subsection (1)(b) participates in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, the company is taken to be a prescribed authority for the purposes of those Acts in respect of any of its employees who are subject to the scheme.

(4) If a company participates in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, the

company is to comply with any instruction relating to superannuation given to it by the Minister administering those Acts.

(5) A company must not establish a superannuation scheme.

Long service leave

29. If an Act regulating long service leave of employees applied to a person immediately before he or she became a transferred employee, that Act continues to apply to that person as a transferred employee.

Arrangements with Treasurer

30. (1) The company and the Treasurer may enter into an agreement under which the company or its subsidiary agrees to perform, or to cease to perform, activities.

(2) The terms of the agreement may provide for compensation or other payment to the company or its subsidiary out of money provided by Parliament for the purpose.

Division 3 – Sale of company

Sale of company

31. (1) The Treasurer may sell, on any conditions he or she considers appropriate, all the shares he or she holds in a company.

(2) In exercising the power under this section to sell shares in a company, the Treasurer is to have regard to –

- (a) the achievement of a fair and reasonable price; and
- (b) the preservation of accrued entitlements of employees of the company.

Long service leave

32. (1) On the sale by the Treasurer under section 31 of all the shares he or she holds in a company, the *Long Service Leave (State Employees) Act 1994* ceases to apply to that company and any of its employees in respect of which that Act applied before that sale.

(2) In calculating, on or after the sale by the Treasurer under section 31 of all the shares he or she holds in a company, the period of service an employee has completed with that company for the purposes of calculating his or her entitlement to long service leave under any Act, award or agreement, the employee is taken to have completed, on the day on which that sale occurred, a period of service with that company calculated in accordance with the following formula:

$$\text{Calculated service} = \frac{S \times P}{10}$$

where:

“Calculated service” is the period of service the employee is taken to have completed with the company on the day on which that sale occurred;

“S” is the total period of service the employee has completed with that company (including service the employee is taken to have completed with that company immediately before the day on which that sale occurred);

“P” is the period of service that would have been required to be completed by the employee to be entitled to long service leave under the relevant Act, award or agreement if all the shares in that company had always been owned by the person who purchased them in that sale.

Superannuation

33. If the Treasurer under section 31 agrees to sell all the shares he or she holds in a company, the Minister administering the *Retirement Benefits Act 1993* is to make a declaration under regulation 3(1A) of the *Retirement Benefits Regulations 1994* declaring the agreement for that sale to be a prescribed arrangement for the purposes of those regulations.

Exemption from State tax

34. (1) The Treasurer may determine that State tax is not payable in respect of any document prepared in relation to, or for the purposes of, the sale of shares in a company under section 31.

(2) A determination is to be made by certificate provided to the person who would otherwise be required to pay the State tax.

PART 4 – TRANSFER OF BUSINESS TO CROWN**Transfer of business to Crown**

35. (1) If a part of the business of a prescribed Government Business Enterprise is sold under section 7(1) or a company is formed under section 14 in respect of the business of, or a function performed by, a prescribed Government Business Enterprise, the Treasurer, by one or more notices published in the *Gazette*, may –

- (a) transfer to the Crown the whole or any part of the remaining business of the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise (whether or not that transfer is for a consideration); and
- (b) specify conditions relating to that transfer; and
- (c) provide for any matter that is incidental to that transfer.

(2) A Part 4 transfer notice may be made in anticipation of the sale under section 7(1) of a part of the business of a prescribed Government Business Enterprise or the formation under section 14 of a company.

(3) Consideration for the transfer under a Part 4 transfer notice of any transferred business may be by assumption of liabilities or otherwise.

(4) On the transfer day –

- (a) any business of a relevant prescribed Government Business Enterprise, other than a liability, specified in and transferred by the Part 4 transfer notice vests in the Crown; and

- (b) any business of a relevant prescribed Government Business Enterprise that is a liability and is specified in and transferred by the Part 4 transfer notice becomes the liability of the Crown.

(5) Except as otherwise provided in a Part 4 transfer notice, on and after the transfer day the following provisions apply:

- (a) a reference in an existing document to the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise, or the Board of that Government Business Enterprise, in relation to the business that became the transferred business is taken, where appropriate, to be or to include a reference to the Crown;
- (b) legal proceedings that could have been instituted by or against the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise immediately before the transfer day and that relate to the business that became the transferred business may be instituted by or against the Crown;
- (c) legal proceedings instituted by or against the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise that relate to the business that became the transferred business and are pending immediately before the transfer day may be continued by or against the Crown;
- (d) a document served on the prescribed Government Business Enterprise or the relevant Government Business Enterprise in respect of legal proceedings referred to in

paragraph (c) is taken to have been served on the Crown;

- (e) a judgment or order of a court obtained by or against the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise in relation to the business that became the transferred business may be enforced by or against the Crown but may not be enforced by or against the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise;
- (f) a contract made by the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise relating to the business that became the transferred business but not performed or discharged before the transfer day is taken to have been made by the Crown.

(6) A person who is a party to a contract made by a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise is not entitled to –

- (a) terminate that contract; or
- (b) claim that there has been a breach or default of the contract; or
- (c) claim any remedy –

by reason only of the transfer, under this section, of any business to which that contract, or part of that contract, relates or which arises from that contract or a part of that contract.

(7) If any dispute arises –

- (a) as to whether any business of a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise is transferred business; or
- (b) as to whether any, or any part of any, contract relates to transferred business –

the Treasurer may determine the matter and is to provide the prescribed Government Business Enterprise or the relevant prescribed Government Business Enterprise and any relevant Head of Agency, within the meaning of the *State Service Act 2000*, with written notice of that determination.

(8) The determination of the Treasurer under subsection (7) is final and binding on the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise and the Crown.

(9) A Part 4 transfer notice is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Arrangements for employees on transfer of business

36. (1) If the business of a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise is transferred to the Crown under section 35, the Treasurer may, by order provided to that Government Business Enterprise, terminate on any conditions the Treasurer considers appropriate, the employment of a person who, immediately before the transfer day, was employed by that Government Business Enterprise for the purpose of that business.

(2) If the business of a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise is transferred to the Crown under section 35, a person employed under the *State Service Act*

2000 for the purposes of that business immediately before that transfer remains in employment under and subject to the *State Service Act 2000*.

(3) In terminating the employment of a person under subsection (1), the Treasurer is to do so subject to, and in accordance with, any relevant contract, award or agreement.

(4) On receipt of an order under subsection (1), the prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise is to give to each person whose employment is terminated by the order written notice of that termination.

(5) If an order under subsection (1) terminates the employment of a person employed by a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise –

- (a) that employment is terminated immediately before the transfer day or on the day specified in the order; and
- (b) that person is not entitled to any compensation or other payment in respect of the termination of employment except as provided by the *Retirement Benefits Act 1993*, the *Public Sector Superannuation Reform Act 1999*, any other law, an award, an agreement or any conditions determined by the Treasurer under subsection (1).

(6) An order under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Exemption from State tax

37. State tax is not payable in respect of a Part 4 transfer notice or any other document prepared in relation to, or for the purposes of, the transfer of the business of a prescribed Government Business Enterprise or a relevant prescribed Government Business Enterprise under section 35(1).

PART 5 – PROCEEDS OF SALE OF BUSINESS OR SHARES**Proceeds of sale of business or shares**

38. (1) The proceeds of each of the following sales are to be paid into the Consolidated Fund:

- (a) the sale under section 7(1) of the business of a prescribed Government Business Enterprise;
- (b) the sale or grant under section 7(2) of a right;
- (c) the sale under section 31 of any shares in a company held by the Treasurer;
- (d) the sale of any property of the Crown or any business conducted by the Crown if that property or business is business that was transferred to the Crown under section 35.

(2) Without further appropriation than this section, the Treasurer at his or her discretion may pay from the Consolidated Fund the amounts approved by the Treasurer to meet –

- (a) the expenses reasonably incurred in connection with the sale, including expenses incurred in connection with the formation of a company; and
- (b) the liabilities that remain with a prescribed Government Business Enterprise after other business of that Government Business Enterprise has been sold under section 7, or transferred to a company or the Crown under section 17 or 35; and
- (c) the liabilities transferred to the Crown under

section 35; and

- (d) the expenses reasonably incurred in connection with the performance of the reporting, financial and other requirements of a prescribed Government Business Enterprise under its Portfolio Act, the *Government Business Enterprises Act 1995* or any other Act that must be completed before the Treasurer can make under section 39(1) a recommendation that its Portfolio Act be repealed.

PART 6 – MISCELLANEOUS**Repeal of Portfolio Acts**

39. (1) On the recommendation of the Treasurer, the Governor may, by proclamation, repeal the Portfolio Act of a prescribed Government Business Enterprise.

(2) Before making for the purposes of subsection (1) a recommendation that a Portfolio Act in respect of a prescribed Government Business Enterprise be repealed, the Treasurer is to be satisfied that –

- (a) all the business of the prescribed Government Business Enterprise has been sold under section 7(1) or transferred under section 17 or 35; and
- (b) all reporting, financial and other requirements under the Portfolio Act, the *Government Business Enterprises Act 1995* or any other Act have been completed, as so required, by the prescribed Government Business Enterprise or its Board.

(3) On the repeal of a Portfolio Act, the appointments of each member of the Board of the Government Business Enterprise and the chief executive officer of the Government Business Enterprise are terminated.

(4) A member of a Board of a Government Business Enterprise whose appointment is terminated under subsection (3) is not entitled to any compensation or other payment in respect of that termination, except as determined by the Treasurer.

(5) A chief executive officer of a Government Business Enterprise whose appointment is terminated

under subsection (3) is not entitled to any compensation or other payment in respect of that termination if, consequent on the sale of the business of the Government Business Enterprise under section 7(1) or the transfer of the business of the Government Business Enterprise to a company under section 17 –

- (a) the chief executive officer is offered employment by the purchaser or company to which the business is sold or transferred on terms no less favourable than his or her terms of employment as chief executive officer; or
- (b) the chief executive officer takes up employment with the purchaser or company to which the business is sold or transferred regardless of whether the terms of that employment are the same, more favourable or less favourable than his or her terms of employment as chief executive officer.

Regulations

40. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for all matters related to, arising from or otherwise necessary or convenient to be provided for in connection with any one or more of the following:

- (a) the sale under section 7(1) of the business of a prescribed Government Business Enterprise;
- (b) the sale or grant under section 7(2) of a right;
- (c) the formation under section 14(1) of a company;

- (d) the transfer under section 17 or 35 of the business of a relevant prescribed Government Business Enterprise or other prescribed Government Business Enterprise;
- (e) the sale under section 31 of shares held by the Treasurer in a company;
- (f) the arrangements relating to persons employed by, or under the *State Service Act 2000* for the purposes of, a prescribed Government Business Enterprise, a relevant prescribed Government Business Enterprise or a company who are affected by –
 - (i) the sale under section 7(1) of the business of a prescribed Government Business Enterprise; or
 - (ii) the transfer under section 17 or 35 of the business of a relevant prescribed Government Business Enterprise or other prescribed Government Business Enterprise; or
 - (iii) the sale under section 31 of shares held by the Treasurer in a company.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

- (a) provide that a contravention of any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a

further fine not exceeding 10 penalty units for each day during which the offence continues.

(5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Treasurer or a Portfolio Minister, or by the Treasurer and a Portfolio Minister acting jointly.

(6) The regulations may contain provisions of a savings or transitional nature consequent on –

- (a) the sale under section 7(1) of the business of a prescribed Government Business Enterprise; or
- (b) the sale or grant under section 7(2) of a right; or
- (c) the formation under section 14(1) of a company; or
- (d) the transfer under section 17 or 35 of the business of a prescribed Government Business Enterprise or relevant prescribed Government Business Enterprise; or
- (e) the sale under section 31 of shares held by the Treasurer in a company; or
- (f) the transfer or termination under section 10, 18 or 36 of the employment of a person; or
- (g) the repeal of a Portfolio Act; or
- (h) the amendment of this Act.

(7) Regulations of a kind referred to in subsection (6) may take effect on the day on which the event referred to in that subsection that gave rise to the regulation occurred or on a later day.

Administration of Act

41. 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.

Freedom of Information Act 1991 amended

42. Section 5(1) of the *Freedom of Information Act 1991* is amended by omitting subparagraph (ii) from paragraph (a) of the definition of “prescribed authority” and substituting:

- (ii) formed under section 5 of the *TT-Line Arrangements Act 1993*; or
- (iii) formed under section 14 of the *Government Business Enterprises (Sale) Act 2003*;