

TASMANIA

STADIUMS TASMANIA AMENDMENT (TRANSFERS) BILL 2022

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**STADIUMS TASMANIA AMENDMENT
(TRANSFERS) BILL 2022**

*(Brought in by the Minister for Hospitality and Events, the
Honourable Nicholas Adam Street)*

A BILL FOR

An Act to amend the *Stadiums Tasmania Act 2022*

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Stadiums Tasmania Amendment (Transfers) Act 2022*.

2. Commencement

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

3. Principal Act

In this Act, the *Stadiums Tasmania Act 2022** is referred to as the Principal Act.

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4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *business plan*:

CEO means the chief executive officer;

- (b) by inserting the following definition after the definition of *Ministerial statement of expectations*:

non-Crown entity means a legal entity other than the Crown;

- (c) by inserting the following definitions after the definition of *strategic plan*:

transfer agreement means an agreement made in accordance with section 23E;

transfer day means the day on which a transfer notice or transfer agreement, or the relevant part of a transfer notice or transfer agreement, takes effect;

transfer notice means –

- (a) a notice made under section 23A; or
- (b) a notice made under section 23D; or

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(c) a notice made under sections 23A and 23D; or

(d) a part of any such notice;

transferor, in relation to a transfer notice, transfer agreement or transfer day, means –

(a) the Authority if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the Crown or a non-Crown entity; or

(b) the Crown if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the Authority; or

(c) a non-Crown entity if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the Authority;

transfer recipient, in relation to a transfer notice, transfer agreement or transfer day, means –

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- (a) the Authority if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the Authority; or
- (b) the Crown if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the Crown; or
- (c) a non-Crown entity if the relevant transfer notice or transfer agreement transfers any assets, liabilities, contracts or employees to the non-Crown entity;

transferred employee means a person who becomes an employee of the Authority on the transfer day by the operation of section 23A;

5. Section 19 amended (Business plans)

Section 19 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) The Board is to prepare its first business plan, as soon as practicable, for the

financial year commencing on
1 July 2022.

6. Section 19A inserted

Before section 20 of the Principal Act, the following section is inserted in Part 4:

19A. Effect of appointment under this Part

- (1) For the avoidance of doubt, the *State Service Act 2000* does not apply to –
 - (a) the CEO in his or her capacity as the CEO; or
 - (b) an employee in his or her capacity as an employee.
- (2) Despite subsection (1), nothing in this section prevents a person from holding the position of CEO, or an employee, in conjunction with State Service employment in respect of another position.
- (3) A person appointing the CEO or appointed as the CEO, or an employee, is not a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.
- (4) For the avoidance of doubt, the *Long Service Leave (State Employees) Act 1994* applies to the CEO and each employee of the Authority.

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7. Section 20 amended (Chief executive officer)

Section 20 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The Board may appoint a person as chief executive officer of the Authority on terms and conditions that the Board considers appropriate.

(b) by inserting in subsection (2) “concurrently” after “not”;

(c) by inserting the following subsection after subsection (4):

(4A) The chief executive officer may be appointed for more than one term.

(d) by omitting subsection (7).

8. Section 23 substituted

Section 23 of the Principal Act is repealed and the following section is substituted:

23. Staff

The Authority may employ or engage any other persons that it considers necessary for the performance or exercise of its functions or powers on any terms

and conditions that it considers appropriate.

9. Parts 4A and 4B inserted

After section 23 of the Principal Act, the following Parts are inserted:

PART 4A – TRANSFER OF CEO AND EMPLOYEES

23A. Transfer of employees

- (1) Before the transfer day, the Authority is to give each person who may become a transferred employee a written offer for his or her employment to be transferred to the Authority.
- (2) The written offer is to include –
 - (a) the position title; and
 - (b) a general description of position and its location; and
 - (c) the salary, benefits and entitlements associated with the position; and
 - (d) the date, or approximate date, on which that transfer is to take effect.
- (3) The Minister, by notice published in the *Gazette*, may transfer to or from the

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Authority such employees as are specified in the notice.

- (4) A person must not be specified in a transfer notice unless that person has agreed, in writing, to the transfer of his or her employment to or from the Authority.
- (5) A transfer notice takes effect on the date specified in the notice.
- (6) On the transfer day, each employee of the transferor who has agreed, in writing, to the transfer of his or her employment to the Authority and is specified in a transfer notice –
 - (a) becomes an employee of the Authority and the Authority becomes the employer of that person; and
 - (b) ceases to be employed by the transferor.
- (7) If an employee of the transferor does not agree, in writing, to the transfer of his or her employment to the Authority, that person remains an employee of the transferor.
- (8) On the transfer day, each employee of the Authority who has agreed, in writing, to the transfer of his or her employment to the transfer recipient and is specified in a transfer notice –

- (a) becomes an employee of the transfer recipient and the transfer recipient becomes the employer of that person; and
 - (b) ceases to be employed by the Authority.
- (9) If an employee of the Authority does not agree, in writing, to the transfer of his or her employment to the transfer recipient, that person remains an employee of the Authority.

23B. General preservation of conditions of employment

- (1) Subject to the provisions of the *Fair Work Act 2009* of the Commonwealth, a transferred employee –
- (a) is to be paid by way of remuneration (excluding any bonus payments) by the transfer recipient an amount per annum no less than the amount that he or she received from the transferor per annum (excluding any bonus payments) immediately before becoming a transferred employee; and
 - (b) is to receive entitlements and benefits from the transfer recipient that are overall no less favourable than those to which he

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or she was entitled immediately before becoming a transferred employee; and

- (c) retains any rights to annual leave, long-service leave, sick leave, and other forms of leave and time off, accrued or accruing during his or her employment with the transferor, and may claim any such entitlements against the transfer recipient.
- (2) Nothing in this section prevents any of the terms of employment of a transferred employee from being altered by an award, industrial agreement or law after he or she becomes a transferred employee.
 - (3) A State Service employee or State Service officer transferred under a transfer order is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.
 - (4) The Authority must comply with any instruction in relation to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.
 - (5) The Authority is to make adequate provision to meet any liability that it may have under the *Public Sector Superannuation Reform Act 2016* to pay

pension and other benefits in respect of all applicable transferred employees.

23C. Continuation of employment

- (1) The employment of a transferred employee is taken to have been continuous for the purposes of calculating leave and entitlements, recognition of years of service and similar purposes.
- (2) If an employee of the Authority who was a State Service employee or a State Service officer, as of the date of transfer, returns to the State Service from the Authority without a break in service, the employee is to be considered as having been continuously employed in the State Service.

PART 4B – TRANSFER OF ASSETS

23D. Transfer of assets, &c., to or from Authority by notice

(1) In this section –

specified means specified in a transfer notice.

(2) The Minister, by notice published in the *Gazette*, may transfer to the Authority such –

(a) assets owned by the Crown; and

(b) liabilities of the Crown; and

(c) contracts to which the Crown is a party –

as are specified in the notice.

(3) The Minister, by notice published in the *Gazette*, may, with the consent of a non-Crown entity, transfer to the Authority such –

(a) assets owned by the non-Crown entity; and

(b) liabilities of the non-Crown entity; and

(c) contracts to which the non-Crown entity is a party –

as are specified in the notice.

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(4) The Minister, by notice published in the *Gazette*, may transfer to the Crown such –

- (a) assets owned by the Authority;
and
- (b) liabilities of the Authority; and
- (c) contracts to which the Authority is a party –

as are specified in the notice.

(5) The Minister, by notice published in the *Gazette*, may, with the consent of a non-Crown entity, transfer to the non-Crown entity such –

- (a) assets owned by the Authority;
and
- (b) liabilities of the Authority; and
- (c) contracts to which the Authority is a party –

as are specified in the notice.

(6) A transfer notice under section 23A or subsection (2), (3), (4) or (5) of this section may be combined with a transfer notice under that section or another of those subsections.

(7) A transfer notice may –

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- (a) specify conditions including, without limitation –
 - (i) conditions relating to the transfer of the assets, liabilities and contracts; and
 - (ii) conditions relating to the payment of consideration, if any is payable; and
 - (b) provide for any matter that is incidental to the transfer of the assets, liabilities and contracts.
- (8) A transfer notice takes effect on the specified day or days, whether the day is before, on or after the day on which the transfer notice is published in the *Gazette*.
- (9) On the transfer day –
- (a) the specified assets vest in the transfer recipient, in accordance with the transfer notice, without the need for any further conveyance, transfer, assignment or assurance but subject to any conditions specified in the transfer notice; and
 - (b) the specified liabilities become the liabilities of the transfer recipient, in accordance with the transfer notice, without the need

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for any further conveyance,
transfer, assignment or assurance
but subject to any conditions
specified in the transfer notice;
and

- (c) the transferor ceases to be a party to the specified contracts unless the transfer notice provides otherwise or except to the extent specified in the transfer notice.

(10) On and after the transfer day –

- (a) a specified contract is taken to have been made by the transfer recipient; and
- (b) a reference to the transferor in a specified contract is taken to be or include, as appropriate, a reference to the transfer recipient.

(11) Subsection (9)(c) and subsection (10) have effect despite any contrary provision in the specified contract.

(12) The Minister may amend or revoke a transfer notice.

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

23E. Transfer of assets, &c., to or from Authority by agreement

- (1) The Authority, the Crown and a non-Crown entity may agree to the transfer of assets, liabilities and contracts between the Authority, the Crown and the non-Crown entity.
- (2) The transfer of major assets, liabilities or contracts is of no effect unless the Minister approves the transfer agreement.
- (3) Assets, liabilities and contracts may be transferred by a combination of transfer notice and transfer agreement.

23F. Transitional provisions for transfer of assets &c.

- (1) In this section –

transferring asset means any asset specified in a transfer notice;

transferring contract means a contract specified in a transfer notice;

transferring liability means a liability specified in a transfer notice.

- (2) On and after the transfer day, the following provisions apply unless the transfer notice or transfer agreement provides otherwise:

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- (a) a reference to the transferor in a document in relation to a transferring asset, transferring liability or transferring contract is taken where appropriate to be or to include a reference to the transfer recipient;
- (b) a legal proceeding that could have been instituted by or against the transferor immediately before the transfer day and that relates to a transferring asset, transferring liability or transferring contract may be instituted by or against the transferor but not by or against the transfer recipient;
- (c) a legal proceeding instituted by or against the transferor that relates to a transferring asset, transferring liability or transferring contract and is pending immediately before the transfer day may be continued by or against the transferor but not by or against the transfer recipient;
- (d) a judgment or order of a court obtained by or against the transferor before the transfer day in relation to a transferring asset, transferring liability or transferring contract may be enforced by or against the

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transferor but not by or against the transfer recipient;

- (e) any act done or omitted to be done in relation to a transferring asset, transferring liability or transferring contract by the transferor before the transfer day is taken, where appropriate, to have been done or omitted by the transferor.
- (3) On the transfer day, the obligations of the transferor in relation to a transferring liability are discharged.
- (4) A transfer notice or transfer agreement may limit the extent to which the provisions of subsections (2) and (3) apply.

23G. Removing doubt relating to transfer

- (1) If there is any doubt –
 - (a) as to whether any asset, liability or contract, or any part of any asset, liability or contract, is transferred to the transfer recipient by the operation of section 23D(2), (3), (4) or (5); or
 - (b) as to whether any contract or other document relates to any asset, liability or contract that is transferred to the transfer

recipient by the operation of section 23D(7) –

the Minister is to determine the matter and is to provide written notice of that determination to the transfer recipient and, if the Minister considers it appropriate, a party to a contract that is relevant to the determination of the matter.

- (2) The determination of the Minister under subsection (1) is final and binding.

23H. State tax not payable

- (1) In this section –

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

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

- (2) No State tax is payable in respect of –

- (a) the transfer of Crown land or any other property, right or obligation under this Act; or

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- (b) anything that the Minister certifies as having been done as a consequence of any such transfer.

10. Sections 31A, 31B, 31C and 31D inserted

Before section 32 of the Principal Act, the following sections are inserted in Part 6:

31A. Duties of members of Board, officers and employees

- (1) In this section –

business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the Authority;

former employee means a person who ceased to be an employee within the period of 7 years immediately preceding the relevant time;

former member of the Board means a person who ceased to be a member of the Board within the period of 7 years immediately preceding the relevant time;

former officer means a person who ceased to be an officer within the period of 7 years immediately preceding the relevant time.

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(2) A member of the Board or an officer of the Authority must perform and exercise the functions and powers of his or her office in the Authority –

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

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

(3) A member of the Board or an officer of the Authority must exercise his or her powers and perform his or her functions with the degree of care and diligence that a reasonable person would exercise if he or she –

- (a) were a member of the Board or an officer of the Authority in the circumstances of the Authority; and
- (b) occupied the office held by, and had the same responsibilities within the Authority as, the member of the Board or officer.

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

(4) A member of the Board or an officer of the Authority who makes a business

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judgment is taken to meet the requirements of subsection (3), and his or her equivalent duties at common law and in equity, in respect of the judgment if the member of the Board or 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 that he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the Authority.
- (5) For the purposes of subsection (4)(d), the belief of a member of the Board or an officer of the Authority that a business judgment is in the best interests of the Authority is rational unless the belief is one that no reasonable person in the position of the member of the Board or officer would hold.
- (6) A member of the Board, officer, employee, former member of the Board, former officer or former employee of the Authority must not make improper use, in Tasmania or elsewhere, of information

acquired because of his or her office or employment in the Authority –

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or
- (b) to cause damage to the Authority or any of its subsidiaries.

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

- (7) A member of the Board or an officer or employee must not make improper use, in Tasmania or elsewhere, of his or her position as a member of the Board, an officer or employee of the Authority –

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or
- (b) to cause damage to the Authority or any of its subsidiaries.

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

31B. Duty to prevent insolvent trading

- (1) A member of the Board must prevent the Authority from incurring a debt if –
 - (a) the Authority is insolvent at that time or will become insolvent by

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- incurring at that time the debt or debts which include that debt; and
- and
- (b) at that time there are reasonable grounds for suspecting that the Authority is insolvent or would become insolvent by incurring the debt or those debts; and
- (c) the member of the Board is aware of those grounds or a reasonable person in the position of director would be aware of those grounds.
- (2) A member of the Board is guilty of an offence and liable, on conviction, to a penalty of a fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 5 years, or both, if he or she contravenes subsection (1) knowingly, intentionally or recklessly and –
- (a) dishonestly and intending to gain, directly or indirectly, an advantage for himself or herself or another person; or
- (b) intending to deceive or defraud any person.
- (3) It is a defence for an offence against subsection (2) or for a contravention of subsection (1) if it is proved –

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- (a) that, at the time when the debt was incurred, the member of the Board –
 - (i) had reasonable grounds to believe and did believe that a competent and reliable person was responsible for providing the member of the Board with adequate information as to whether the Authority was solvent; and
 - (ii) had reasonable grounds to believe and did believe that the person referred to in subparagraph (i) was fulfilling the responsibility referred to in that subparagraph; and
 - (iii) expected, on the basis of information provided by the person referred to in subparagraph (i), that the Authority was solvent at that time and would remain solvent even if it incurred the debt, or the debt and any other debts that it incurred at that time; or

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- (b) that, at the time when the debt was incurred, the member of the Board had other reasonable grounds to expect, and did expect, that the Authority was solvent and would remain solvent even if it incurred the debt, or the debt and any other debts that it incurred at that time; or
- (c) that the member of the Board took all reasonable steps to prevent the Authority from incurring the debt; or
- (d) that the member of the Board did not take part at the time in the Authority's management because of illness or for some other good cause; or
- (e) that the member of the Board informed the Minister and the Treasurer, before the debt was incurred, that the Authority was insolvent or would become insolvent if the debt, or the debt and other debts, were incurred; or
- (f) that the debt was incurred as the direct result of a direction given under this Act to the member of the Board or the Authority by the Minister and the Treasurer.

31C. False and misleading information

- (1) A member of the Board or an officer must not –
- (a) make a statement concerning the affairs of the Authority to a member of the Board, the Minister, the Treasurer or the Auditor-General that the member of the Board or officer knows is false or misleading in a material particular; or
 - (b) omit from a statement concerning the affairs of the Authority made to a member of the Board, the Minister, the Treasurer or the Auditor-General anything without which the statement is, to the member of the Board's or officer's knowledge, misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.
- (3) A member of the Board or an officer must not give to a member of the Board, the Minister, the Treasurer or the

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Auditor-General a document containing information that the member of the Board or officer knows is false, misleading or incomplete in a material particular without –

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the member of the Board or officer has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding one year, or both.

31D. Reliance on information or advice

If –

- (a) a member of the Board or an officer of the Authority relies on information, or professional or expert advice, given or prepared by –
 - (i) an employee of the Authority who the member of the Board or officer believes on reasonable grounds to be

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reliable and competent in relation to the matters concerned; or

- (ii) a professional adviser or expert in relation to matters that the member of the Board or officer believes on reasonable grounds to be within the person's professional or expert competence; or
- (iii) another member of the Board or officer in relation to matters within that member of the Board's or officer's authority; or
- (iv) a committee on which the member of the Board or officer did not serve in relation to matters within the committee's authority; and

(b) the reliance was made –

- (i) in good faith; and
- (ii) after making an independent assessment of the information or advice, having regard to the member of the Board's, or the officer's,

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knowledge of the
Authority and the
complexity of the
structure and operations
of the Authority; and

- (c) the reasonableness of the member of the Board's or officer's reliance on the information or advice arises in proceedings brought to determine whether a member of the Board or an officer has performed a duty under this Act or an equivalent general law duty –

the member of the Board's or officer's
reliance on the information or advice is
taken to be reasonable unless the
contrary is proved.

11. Section 32 amended (Annual report)

Section 32 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) The Board is to give its first annual report for the financial year commencing 1 July 2022.

12. Section 33 amended (Regulations)

Section 33 of the Principal Act is amended by inserting after subsection (3) the following subsections:

(3A) 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.

(3B) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Board or the chief executive officer.

13. Repeal of Act

This Act is repealed on the first anniversary of the day on which this Act commenced.