

TASMANIA

**GOVERNMENT BUSINESS ENTERPRISES
AMENDMENT BILL 2002**

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**GOVERNMENT BUSINESS ENTERPRISES
AMENDMENT BILL 2002**

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

A BILL FOR

**An Act to amend the *Government Business
Enterprises Act 1995***

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:

Short title

1. This Act may be cited as the *Government Business
Enterprises Amendment Act 2002*.

Commencement

2. (1) Section 32 commences on 1 January 2003.

(2) The remaining provisions of this Act commence
on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Government Business Enterprises Act 1995** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “annual report”:

“associated entity” has the meaning given by section 3A;

- (b) by inserting the following definition after the definition of “interim dividend”:

“interim report” means –

- (a) a quarterly report under section 57; and
- (b) information provided to a Minister under section 58;
- (c) by omitting “abnormal or” from paragraph (a) of the definition of “loss”;
- (d) by inserting the following definition after the definition of “main undertaking”:

“material personal interest” has the meaning given by section 3B;

- (e) by omitting the definition of “Stakeholder Minister”.

*No. 22 of 1995

Sections 3A and 3B inserted

5. After section 3 of the Principal Act, the following sections are inserted in Part 1:

Associated entities

3A. (1) In relation to a director, each of the following persons is an associated entity if the director or a relative of the director has control over the person:

- (a) a body corporate;
- (b) a partnership or other unincorporated association of persons;
- (c) a majority of trustees of a trust.

(2) For the purposes of determining whether the director has control over a person referred to in subsection (1), the following matters may be taken into account:

- (a) whether the director or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;
- (b) whether the director or his or her relative is a beneficiary in the trust of which that person is a trustee;
- (c) any other matter or relationship that is relevant.

(3) For the purposes of determining whether the relative of a director has control over a person referred to in subsection (1), the following matters may be taken into account:

- (a) whether the relative or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;
- (b) whether the relative or his or her relative is a beneficiary in the trust of which that person is a trustee;
- (c) any other matter or relationship that is relevant.

Material personal interest

3B. (1) In this Act, “**material personal interest**”, in respect of a director of a Government Business Enterprise, includes –

- (a) a direct or indirect interest; and
- (b) a pecuniary or non-pecuniary interest; and
- (c) the interest of a relative of the director; and
- (d) the interest of an associated entity; and
- (e) an interest in a corporation, within the meaning of the *Corporations Act 2001* of the Commonwealth; and
- (f) the director’s employment by a person with a direct or indirect interest in that Government Business Enterprise of which the director is a director; and
- (g) the holding by the director of an office where there arises or may arise a conflict between his or her duties in that office and his or her duties as director of

that Government Business Enterprise;
and

- (h) the holding by the director of the office of member in another statutory authority or in the governing authority of another statutory authority; and
- (i) any other interest that does, or may, give rise to a conflict of interest.

(2) A director of a Government Business Enterprise does not have a material personal interest by reason only of the director also being a State Service employee or State Service officer.

(3) A director of a Government Business Enterprise does not have a material personal interest by reason only of an interest in a contract with the Government Business Enterprise for a good or service ordinarily supplied by the Government Business Enterprise and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.

Section 7 amended (Principal objectives of Government Business Enterprise)

6. Section 7(1)(a) of the Principal Act is amended by omitting subparagraph (ii) and substituting the following subparagraph:

- (ii) achieving a sustainable commercial rate of return that maximises value for the State in accordance with its corporate plan and having regard to the economic and social objectives of the State; and

Section 10 amended (Limitation on powers)

7. Section 10 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “memorandum and articles that are to be the memorandum and articles” and substituting “constitution that is to be the constitution”;
- (b) by omitting from subsection (4) “memorandum or articles” and substituting “constitution”;
- (c) by omitting from subsection (5)(a) “memorandum and articles that are” and substituting “constitution that is”;
- (d) by omitting from subsection (5)(b) “memorandum or article” twice occurring and substituting “constitution”.

Section 11 amended (Board)

8. Section 11 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “recommendation of the” and substituting “joint recommendation of the Treasurer and”;
- (b) by omitting subsection (3) and substituting the following subsections:

(3) The Treasurer and Portfolio Minister must not make a recommendation under subsection (2) unless –

- (a) they have considered any recommendations made by the Board of the Government Business Enterprise under subsection (3A); and

- (b) they are satisfied that the person recommended has the experience and skills necessary to enable the Government Business Enterprise to achieve its objectives.

(3A) The Board may provide the Treasurer and Portfolio Minister with its recommendations, in writing, in respect of the appointment of a chairperson or another director.

Section 12 amended (Role of Board)

9. Section 12 of the Principal Act is amended by inserting “and Treasurer, jointly” after “Minister”.

Section 13 amended (Duty to notify Treasurer and Portfolio Minister of adverse developments)

10. Section 13(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “participates.” and substituting “participates; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) otherwise significantly affect the Government Business Enterprise in any manner.

Section 18 amended (Chief executive officer)

11. Section 18 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (2):

(2A) Except as provided by subsection (2D), a person must not be recommended to the Premier for appointment as a chief executive officer of a Government Business Enterprise unless that person has been nominated for recommendation by the Board.

(2B) If a person is to be appointed as chief executive officer of a Government Business Enterprise, the Portfolio Minister may require the Board, within the period specified in the requirement –

- (a) to nominate a person it considers suitable to hold the office of chief executive officer; and
- (b) to provide a recommendation in respect of the remuneration and allowances for the chief executive officer; and
- (c) to provide details of the performance appraisal system the Board intends to use to review the performance of the chief executive officer.

(2C) If the Portfolio Minister does not consider the person nominated by the Board under subsection (2B)(a) to be suitable to hold the office of chief executive officer, the Portfolio Minister may, under that subsection, require the Board to provide the name of another person it considers suitable to hold that office.

(2D) If the Board fails to nominate a person as required under subsection (2B), the Portfolio Minister may recommend for the purposes of subsection (2) a person who the Portfolio Minister considers suitable but who has not been nominated by the Board.

- (b) by omitting subsection (5) and substituting the following subsection:

(5) The Premier, on the recommendation of the Portfolio Minister or the Board, may revoke the appointment of a chief executive officer made under subsection (2) –

- (a) if the instrument of appointment makes provision in respect of the early termination of the appointment, in accordance with the instrument of appointment; or
- (b) if the instrument of appointment does not make such provision, on the terms determined by the Premier.
- (c) by omitting from subsection (6) “subsection (2) or (5)” and substituting “subsection (5)”;
- (d) by inserting the following subsection after subsection (6):

(6A) The Board must not make a recommendation under subsection (5) unless it has first consulted with the Portfolio Minister.

- (e) by omitting subsection (8).

Sections 20A and 20B inserted

12. After section 20 of the Principal Act, the following sections are inserted in Division 1:

Effect of chief executive officer ceasing to be chief executive officer

20A. (1) If a person holds both the office of chief executive officer of a Government Business Enterprise and the office of director in that Government Business Enterprise, on the termination of his or her appointment as chief executive officer –

- (a) his or her appointment as director is revoked; and
- (b) any appointment of that person as director in a subsidiary of that Government Business Enterprise is revoked; and
- (c) any membership of that person in any committee created by the Board or other managing authority of that Government Business Enterprise or subsidiary ceases.

(2) Subsection (1) does not affect the eligibility of the person to be reappointed to an office referred to in that subsection.

Annual performance review

20B. (1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer during that financial year.

(2) The review of the performance of the chief executive officer is to be completed not later than 90

days after the end of the financial year in respect of which it is conducted.

(3) The Board is to provide the Portfolio Minister with a copy of its findings in the review of the performance of the chief executive officer within 14 days after completing the review.

Part 5: Heading amended

13. Part 5 of the Principal Act is amended by omitting “**DUTIES**” from the heading to that Part and substituting “**POWERS AND DUTIES**”.

Sections 23A and 23B inserted

14. Before section 24 of the Principal Act, the following sections are inserted in Part 5:

Power of former director to access records

23A. (1) In this section, “**former director**” means a person who ceased to be a director within the period of 7 years immediately preceding the relevant time.

(2) A former director of a Government Business Enterprise may inspect and make copies of the records of the Government Business Enterprise, including its accounting records, financial statements and interim reports, at any reasonable time for the purpose of a legal proceeding –

- (a) to which the former director is a party;
or
- (b) that the former director proposes in good faith to bring; or

- (c) that the former director has reason to believe will be brought against him or her.

(3) The Government Business Enterprise must allow a former director to exercise his or her powers under this section to inspect and make copies of records.

Penalty: Fine not exceeding 500 penalty units.

(4) This section does not limit any right of access to the records of a Government Business Enterprise that a former director has apart from this section.

Power of director to access records

23B. (1) A director may inspect and make copies of the records of the Government Business Enterprise, including its accounting records, financial statements and interim reports, at any reasonable time.

(2) A director or officer must not prevent a director from exercising his or her powers under this section to inspect and make copies of records.

Penalty: Fine not exceeding 50 penalty units.

Section 24 substituted

15. Section 24 of the Principal Act is repealed and the following section is substituted:

Duties of officers and employees

24. (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 Government Business Enterprise;

“former employee” means a person who ceased to be an employee 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.

(2) An officer of a Government Business Enterprise must perform and exercise the functions and powers of his or her office in that Government Business Enterprise –

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

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

(3) An officer of a Government Business Enterprise 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 an officer of a Government Business Enterprise in the circumstances of the Government Business Enterprise; and

- (b) occupied the office held by, and had the same responsibilities within the Government Business Enterprise as, the officer.

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

(4) An officer of a Government Business Enterprise who makes a business judgment is taken to meet the requirements of subsection (2), and his or her equivalent duties at common law and in equity, in respect of the judgment if the 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 the Government Business Enterprise.

(5) For the purposes of subsection (4)(d), the belief of an officer of a Government Business Enterprise that a business judgment is in the best interests of the Government Business Enterprise is rational unless the belief is one that no reasonable person in the position of the officer would hold.

(6) An officer, employee, former officer or former employee of a Government Business Enterprise must not make improper use, in

Tasmania or elsewhere, of information acquired because of his or her office or employment in the Government Business Enterprise –

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

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

(7) An officer or employee must not make improper use, in Tasmania or elsewhere, of his or her position as an officer or employee of a Government Business Enterprise –

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

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

Section 25 amended (Duty to prevent insolvent trading)

16. Section 25(3)(f) of the Principal Act is amended by omitting “or Stakeholder Minister” and substituting “and Treasurer”.

Section 26 amended (False or misleading information)

17. Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “the Stakeholder Minister,”;
- (b) by omitting from subsection (1)(b) “the Stakeholder Minister,”;
- (c) by omitting from subsection (3) “the Stakeholder Minister,”.

Sections 27 and 28 substituted

18. Sections 27 and 28 of the Principal Act are repealed and the following sections are substituted:

Reliance on information or advice

27. If –

- (a) an officer of a Government Business Enterprise relies on information, or professional or expert advice, given or prepared by –
 - (i) an employee of the Government Business Enterprise who the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person’s professional or expert competence; or

- (iii) another officer in relation to matters within the officer's authority; or
 - (iv) a committee of officers on which the 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 officer's knowledge of the Government Business Enterprise and the complexity of the structure and operations of the Government Business Enterprise; and
- (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a duty under this Act or an equivalent general law duty –

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

Director to disclose material personal interest

28. (1) A director who has or may have a material personal interest in a matter that relates to the affairs of the Government Business Enterprise must give the other directors notice of the interest except where –

- (a) the interest –
- (i) arises in relation to the director's remuneration as a director of the Government Business Enterprise; or
 - (ii) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Government Business Enterprise (but only if the contract does not make the Government Business Enterprise or a related body the insurer); or
 - (iii) relates to any payment by the Government Business Enterprise or a related body in respect of an indemnity permitted under section 35; or
 - (iv) is in a contract, or proposed contract, with or for the benefit of, or on behalf of, a related body and arises because the director is a director of the related body; or
 - (v) is a beneficial interest in shares in a public company, within the meaning of the *Corporations Act 2001* of the Commonwealth, and the total number of shares in which the director has a beneficial interest does not exceed 5% of the total number of shares issued by the company; or

- (b) all of the following conditions are satisfied:
 - (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise to all directors under this subsection;
 - (ii) if after the time when notice of the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise under this subsection was given a person who was not a director of the Government Business Enterprise at that time is appointed as a director, that notice is given to the new director;
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest under section 28B and the notice is still effective in relation to the interest.

Penalty: Fine not exceeding 500 penalty units.

(2) For the purposes of subsection (1), a body is a related body in respect of a Government Business Enterprise if –

- (a) the body is a subsidiary of the Government Business Enterprise; or
- (b) the Government Business Enterprise is the body's subsidiary; or

- (c) the body and the Government Business Enterprise are both subsidiaries of another Government Business Enterprise.

(3) The notice of a director's material personal interest in a matter that relates to the affairs of the Government Business Enterprise must –

- (a) include details of –
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Government Business Enterprise; and
- (b) be given at a meeting of the Board as soon as practicable after the director becomes aware of his or her interest in the matter.

(4) The details of the notice of a director's material personal interest in a matter that relates to the affairs of the Government Business Enterprise must be –

- (a) recorded in the minutes of the meeting at which the notice is given; and
- (b) provided to the Portfolio Minister and Treasurer.

(5) A contravention of subsection (1) by a director does not affect the validity of an act or proceeding of the Board or of any person (including that director) acting pursuant to any direction of the Board.

Board may declare material personal interest

28A. (1) If a Board is of the opinion that a director has a material personal interest in a matter that relates to the affairs of the Government Business Enterprise, it may pass a resolution declaring –

- (a) that the director has such an interest; and
- (b) the nature and extent of the interest; and
- (c) the relation of the interest to the affairs of the Government Business Enterprise.

(2) If a declaration is made under subsection (1), the director declared to have a material personal interest is taken to have that interest.

(3) The details of a declaration made under subsection (1) must be provided to the Portfolio Minister and Treasurer.

(4) The making of a declaration under subsection (1) does not preclude the taking of proceedings for an offence against section 28(1) in respect of the failure of the director to give notice of the material personal interest.

Standing notice of director's interest

28B. (1) A director who has an interest, whether direct or indirect, in a matter may give the other directors of the Government Business Enterprise standing notice of the nature and extent of the interest.

(2) The standing notice may be given at any time and whether or not the matter relates to the

affairs of the Government Business Enterprise at the time the notice is given.

(3) The standing notice must –

- (a) include details of the nature and extent of the interest; and
- (b) be given –
 - (i) at a meeting of the Board, either in writing or orally; or
 - (ii) to the other directors individually in writing.

(4) Standing notice given to the directors individually –

- (a) must be tabled at the next meeting of the Board after it has been given; and
- (b) is given when it has been given to every director.

(5) The details of the standing notice given at or tabled at a meeting of the Board must be –

- (a) recorded in the minutes of the meeting; and
- (b) provided to the Portfolio Minister and Treasurer.

(6) A standing notice –

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a director of the Government Business Enterprise at the time when

the notice was given is appointed as a director.

(7) A standing notice that has ceased to have effect under subsection (6) recommences to have effect if it is given to the new director referred to in that subsection.

(8) A standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

Restriction on director's participation in case of material personal interest

28C. (1) If a director has a material personal interest in a matter being considered at a meeting of the Board, the director must not, except as allowed by the Board under subsection (4) –

- (a) be present while the matter is being considered; and
- (b) vote on the matter.

(2) If –

- (a) a director has a material personal interest in a contract that the Government Business Enterprise has with a person; and
- (b) either –
 - (i) the director, in compliance with subsection (1), was not present while the Board considered whether to enter into the contract and did not vote on the matter; or

- (ii) the director was allowed under subsection (4) to be present while the Board considered whether to enter into the contract and to vote on the matter –

the Government Business Enterprise, by reason of the director holding that interest, cannot avoid the contract and the director is not liable to account to the Government Business Enterprise for any profits derived from that interest.

(3) If –

- (a) a director has a material personal interest in a contract that the Government Business Enterprise has with a person; and
- (b) the director, in contravention of subsection (1), was present while the Board considered whether to enter into the contract or voted on the matter –

the Government Business Enterprise, by reason of the director holding that interest, may avoid the contract and the director is liable to account to the Government Business Enterprise for any profits derived from that interest if the Board so determines by written notice provided to the director.

(4) If a director has a material personal interest in a matter being considered by the Board and the Board, in the absence of the director, passes a resolution that –

- (a) identifies the director, the nature and extent of the interest and its relation to the affairs of the Government Business Enterprise; and

- (b) states that the interest should not disqualify the director from being present when the matter is considered by the Board or from voting on the matter –

the director may be present when the matter is considered by the Board and may vote on the matter.

(5) Nothing in subsection (4) affects the duty of the Board to provide notice of the material personal interest to the Portfolio Minister and Treasurer under section 28(4), 28A(3) or 28B(5).

Director may be required to divest of material personal interest

28D. If the Portfolio Minister and Treasurer consider that a material personal interest held by a director is such that holding the interest is not consistent with the proper discharge of his or her duties as director, the Portfolio Minister and Treasurer, jointly, may require the director to either divest himself or herself of the interest or resign as director.

Section 29 amended (Civil penalty order)

19. Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “section 24(1), (2), (3) or (4) or 25(1),” and substituting “section 24(2), (3), (6) or (7) or section 25(1), the Government Business Enterprise or”;
- (b) by omitting from subsection (3) “that a person has contravened section 24(1), (2), (3) or (4) or 25(1),” and substituting “of the matters specified in subsection (3A),”;

- (c) by inserting the following subsection after subsection (3):

(3A) Before making an order under subsection (3), the court must be satisfied that –

- (a) the person has contravened section 24(2), (3), (6) or (7) or section 25(1); and
 - (b) the contravention of that section –
 - (i) materially prejudices the interests of the Government Business Enterprise; or
 - (ii) materially prejudices the ability of the Government Business Enterprise to pay its creditors; or
 - (iii) is serious.
- (d) by omitting subsection (5) and substituting the following subsection:
- (5)** The court must not make an order under subsection (3)(b) if the court or any other court has ordered the person to pay punitive damages because of the act or omission constituting the contravention.
- (e) by omitting from subsection (6) “section 24(1), (2), (3) or (4) or 25(1)” and substituting “section 24(2), (3), (6) or (7) or section 25(1)”;
- (f) by inserting the following subsection after subsection (7):

(7A) Proceedings may be commenced and determined under this section whether or not proceedings for an offence against section 24(2), (3), (6) or (7) or section 25(2) have been commenced or determined.

Section 31 amended (Proceedings for offence)

20. Section 31 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) Proceedings for an offence against section 24(2), (3), (6) or (7) or section 25(2) may be commenced and determined whether or not proceedings under section 29 in respect of the contravention of section 24(2), (3), (6) or (7) or section 25(1) have been commenced or determined.

Section 33 amended (Compensation and other payments for contravention of this Part)

21. Section 33(2) of the Principal Act is amended by omitting “section 24(5) or 25(2)” and substituting “section 24(2), (3), (6) or (7) or section 25(2)”.

Section 34 substituted

22. Section 34 of the Principal Act is repealed and the following section is substituted:

Indemnifying officers

34. (1) A Government Business Enterprise must not exempt a person, whether directly or through an interposed person, from a liability to –

- (a) that Government Business Enterprise;
or
- (b) a subsidiary of that Government
Business Enterprise –

incurred as an officer.

(2) A subsidiary of a Government Business Enterprise must not exempt a person, whether directly or through an interposed person, from a liability to –

- (a) that subsidiary; or
- (b) that Government Business Enterprise;
or
- (c) another subsidiary of that Government
Business Enterprise –

incurred as a person who is concerned with, or takes part in, the management of that subsidiary, Government Business Enterprise or other subsidiary.

(3) A Government Business Enterprise or subsidiary of a Government Business Enterprise must not indemnify a person, whether by agreement or by making a payment and whether directly or through an interposed person, against any of the following liabilities incurred as an officer of the Government Business Enterprise:

- (a) a liability owed to the Government
Business Enterprise, that subsidiary or
another subsidiary of that Government
Business Enterprise;
- (b) a liability to pay compensation under an
order made under section 33;

- (c) a liability that is owed to someone other than that Government Business Enterprise, that subsidiary or another subsidiary of that Government Business Enterprise and that did not arise out of conduct in good faith.

(4) Subsection (3) does not apply to a liability for legal costs.

(5) A Government Business Enterprise or subsidiary of a Government Business Enterprise must not indemnify a person, whether by agreement or by making a payment and whether directly or through an interposed person, against legal costs incurred in defending an action for a liability incurred as an officer of that Government Business Enterprise if the costs are incurred –

- (a) in defending or resisting proceedings in which the person is found to have a liability for which he or she could not be indemnified under subsection (3); or
- (b) in defending or resisting proceedings for an offence in which the person is found guilty.

(6) For the purposes of subsection (5), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

(7) An instrument is void so far as it provides for a Government Business Enterprise to do something that is prohibited by this section.

(8) The *Statutory Authorities (Protection from Liability of Members) Act 1993* does not apply in

respect of a Government Business Enterprise or its directors or chief executive officer.

Section 35 amended (Premiums for certain liabilities of officers)

23. Section 35 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “regardless of whether those costs are incurred in respect of conduct referred to in subsection (1)(b)” after “outcome”;
- (b) by inserting the following subsection after subsection (2):

(2A) This section applies to a premium whether it is paid directly or through an interposed person.

Section 36 amended (Ministerial charter)

24. Section 36 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and Treasurer, jointly,” after “Minister”;
- (b) by inserting in subsection (2) “and Treasurer, jointly,” after “Minister”;
- (c) by omitting from subsection (2) “his or her” and substituting “their”;
- (d) by omitting subsection (3) and substituting the following subsection:

(3) Before or while preparing a ministerial charter or an amendment to a

ministerial charter, the Portfolio Minister and Treasurer, jointly, must consult with the Government Business Enterprise.

- (e) by inserting in subsection (4) “and Treasurer” after “Minister”;
- (f) by omitting subsection (5);
- (g) by omitting from subsection (7) “providing a copy of it to the Stakeholder Minister.” and substituting “it has been signed as required by subsection (4).”.

Section 37 amended (Contents of ministerial charter)

25. Section 37(1) of the Principal Act is amended by inserting “and Treasurer” after “Minister”.

Section 39 amended (Corporate plan)

26. Section 39 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:
 - (2)** The corporate plan is to –
 - (a) cover the period specified in the Treasurer’s Instructions; and
 - (b) be in a form and contain the information specified in the Treasurer’s Instructions; and

- (c) be consistent with the ministerial charter for the Government Business Enterprise.
- (b) by omitting from subsection (3) “Minister, Stakeholder”;
- (c) by omitting from subsection (3) “90” and substituting “60”;
- (d) by inserting the following subsection after subsection (3):
- (3A)** The Portfolio Minister or the Treasurer may authorise the Board to provide the draft of a corporate plan under subsection (3) by a day that is later than the day specified in that subsection.
- (e) by omitting from subsection (4) “the Portfolio Minister” and substituting “both the Portfolio Minister and Treasurer”;
- (f) by inserting in subsection (5) “and Treasurer, jointly,” after “Minister”;
- (g) by omitting from subsection (5) “section 40, by not later than 30 days before the day on which the corporate plan will take effect.” and substituting “section 40.”;
- (h) by inserting in subsection (6) “and Treasurer or, if a day for its commencement is specified in that approval, on that day” after “Minister”;
- (i) by inserting the following subsection after subsection (7):

(7A) An amendment to a corporate plan may be in the form of a new corporate plan that replaces the existing corporate plan.

- (j) by omitting subsections (8) and (9) and substituting the following subsections:

(8) An amendment of a corporate plan takes effect –

- (a) when it has been approved by both the Portfolio Minister and Treasurer; or
- (b) if a day for its commencement is specified in the approval of the Portfolio Minister and Treasurer, on that day.

(9) The approval of an amendment of a corporate plan may specify that the amendment is to take effect on –

- (a) the day when it has been approved by both the Portfolio Minister and Treasurer; or
 - (b) a later day; or
 - (c) an earlier day.
- (k) by omitting from subsection (10) “otherwise approves,” and substituting “and Treasurer jointly approve otherwise,”.

Section 40 amended (Consultation with Portfolio Minister and Treasurer)

27. Section 40 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “jointly” after “subsidiaries,”;

- (b) by inserting in subsection (1)(a) “and Treasurer” after “Minister”;
- (c) by inserting in subsection (2) “and Treasurer, jointly,” after “The Portfolio Minister”;
- (d) by omitting from subsection (2)(b) “considers” and substituting “and Treasurer consider”;
- (e) by omitting subsection (4) and substituting the following subsection:

(4) Subject to subsection (5), the Board must comply with a direction given under this section if it is in writing and is signed by both the Portfolio Minister and Treasurer.

Section 41 amended (Statement of corporate intent)

28. Section 41(2) of the Principal Act is amended by omitting “considers” and substituting “and Treasurer, jointly, consider”.

Section 45 amended (Borrowing from Treasurer)

29. Section 45(2) of the Principal Act is amended by omitting “Stakeholder Minister and”.

Section 52 amended (Financial statements)

30. Section 52 of the Principal Act is amended as follows:

- (a) by omitting subsection (2);
- (b) by omitting paragraph (a) from subsection (3) and substituting the following paragraph:

- (a) contain the documents, statements and information required by, and otherwise comply with, the Treasurer's Instructions; and
- (c) by inserting in subsection (4) "and Treasurer, jointly," after "Minister";
- (d) by omitting from subsection (4) "the Portfolio Minister considers" and substituting "they consider".

Section 54 amended (Opinion of Auditor-General)

31. Section 54 of the Principal Act is amended by omitting "Minister, the Stakeholder".

Section 55 amended (Annual report)

32. Section 55 of the Principal Act is amended by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:

- (2)** The annual report must contain –
 - (a) the details of any direction given under section 65; and
 - (b) the details of any direction relating to a dividend, interim dividend or special dividend; and
 - (c) the details of any direction given under section 40(2) or (3); and
 - (d) the details of any waiver granted under Part 10 or 11; and

- (e) the documents, statements and information required by the Treasurer's Instructions.

(3) The annual report must comply with the Treasurer's Instructions.

(4) The Portfolio Minister and the Treasurer, jointly, may direct a Board to include in the annual report any information that they consider appropriate.

Section 58 amended (Additional information)

33. Section 58(1) of the Principal Act is amended by omitting "Minister, at his or her discretion or on the request of the Treasurer or the Stakeholder Minister," and substituting "Minister and the Treasurer, jointly,".

Section 61 amended (Declaration of community service obligation)

34. Section 61 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

(4) A declaration under subsection (2) takes effect on the day specified in the declaration.

Section 62 amended (Costing basis for community service obligation)

35. Section 62 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(2) The costing basis must be in accordance with the Treasurer's Instructions and is to be provided to the Government Business Enterprise.

Section 63 substituted

36. Section 63 of the Principal Act is repealed and the following section is substituted:

Funding of community service obligation

63. (1) The method and basis on which a Government Business Enterprise will be funded in whole or in part for undertaking a community service obligation is to be determined by the Treasurer in accordance with the Treasurer's Instructions.

(2) Before determining the method and basis on which a Government Business Enterprise will be funded, the Treasurer is to consult the Portfolio Minister and the Government Business Enterprise.

Section 64 amended (Review of costing basis and funding arrangement)

37. Section 64(4) of the Principal Act is amended by omitting "Stakeholder Minister, Portfolio Minister and Treasurer, jointly," and substituting "Treasurer".

Section 64A inserted

38. After section 64 of the Principal Act, the following section is inserted in Part 9:

Amendment or revocation of declaration of community service obligation

64A. (1) The Treasurer may amend or revoke, by notice provided to the Government Business Enterprise and the Portfolio Minister, a declaration made under section 61(3).

(2) Before amending or revoking a declaration made under section 61(3), the Treasurer must consult with the Board and the Portfolio Minister.

(3) The amendment or revocation of a declaration made under section 61(3) takes effect on the day specified in the notice referred to in subsection (1).

Section 80 amended (Penalty for late payment of guarantee fee)

39. Section 80(1) of the Principal Act is amended by omitting “until it is paid.” and substituting “from that day to and including the day on which it is paid.”.

Section 83 amended (Recommendation for dividend payable)

40. Section 83(1) of the Principal Act is amended by omitting “Treasurer, the Stakeholder Minister” and substituting “Treasurer”.

Section 84 amended (Determination of dividend)

41. Section 84 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(3) As soon as practicable after a recommendation is approved, or a direction is given, under subsection (1), the Government Business Enterprise must be notified of the approval or direction.

Section 85 amended (Interim dividend)

42. Section 85 of the Principal Act is amended as follows:

(a) by omitting subsection (5) and substituting the following subsection:

(5) As soon as practicable after a recommendation is approved, or a direction is given, under subsection (3), the Government Business Enterprise must be notified of the approval or direction.

(b) by omitting from subsection (6) “the Treasurer and”.

Section 86 amended (Special dividend)

43. Section 86 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

(5) Within 5 sitting days after giving a direction under subsection (1), the Treasurer must lay a copy of the direction before each House of Parliament.

Section 88 amended (Penalty for late payment of dividend, interim dividend or special dividend)

44. Section 88(1) of the Principal Act is amended by omitting “until it is paid.” and substituting “from that day to and including the day on which it is paid.”.

Section 97 amended (Transfer of Crown land)

45. Section 97(6) of the Principal Act is amended by omitting “joint recommendation of the Stakeholder Minister and” and substituting “recommendation of the”.

Section 98 amended (Transfer of property other than Crown land)

46. Section 98(8) of the Principal Act is amended by omitting “joint recommendation of the Stakeholder Minister and” and substituting “recommendation of the”.

Section 107 amended (Service of documents)

47. Section 107 of the Principal Act is amended by omitting subsection (2).

Section 114 amended (Treasurer’s Instructions)

48. Section 114(1)(g) of the Principal Act is amended by omitting “expressly”.

Section 117 amended (Validity of act not affected by failure to consult, &c.)

49. Section 117 of the Principal Act is amended by omitting “Minister, Stakeholder”.

Section 118 amended (Delegation by Portfolio Minister or Treasurer)

50. Section 118(1) of the Principal Act is amended by omitting paragraph (a).

Section 120 amended (Regulations)

51. Section 120(5) of the Principal Act is amended by omitting “Stakeholder Minister,”.

Sections 121, 122, 122A and 123 repealed

52. Sections 121, 122, 122A and 123 of the Principal Act are repealed.

Schedule 5 amended (Directors)

53. Schedule 5 to the Principal Act is amended as follows:

- (a) by inserting in clause 2(1) “who is not also the chief executive officer” after “director”;
- (b) by inserting the following subclause after subclause (1) in clause 2:

(1A) A director who is also the chief executive officer holds the office of director while he or she is the chief executive officer.

- (c) by inserting in clause 8(1) “and Treasurer, jointly,” after “The Portfolio Minister”;
- (d) by omitting paragraph (a) from clause 8(1);
- (e) by omitting from clause 8(1)(b) “pecuniary interest as required under clause 7 of Schedule 6” and substituting “material personal interest”;
- (f) by omitting from clause 8(1)(e) “considers” and substituting “and Treasurer consider”;
- (g) by omitting from clause 8(1)(f) “considers” and substituting “and Treasurer consider”;
- (h) by omitting from clause 8(1)(i) “years.” and substituting “years; or”;
- (i) by inserting the following paragraphs after paragraph (i) in clause 8(1):
 - (j) the director fails to comply with a requirement under section 28D; or
 - (k) the Portfolio Minister and Treasurer consider it appropriate or necessary to do so for any other reason.
- (j) by inserting in clause 8(2) “joint” after “on the”;
- (k) by inserting in clause 8(2) “and Treasurer” after “Minister”;
- (l) by omitting subclause (3) from clause 8.

Schedule 6 amended (Meetings of Board)

54. Schedule 6 to the Principal Act is amended by omitting clause 7.

Schedule 8 amended (Government Business Enterprises that are not the Crown)

55. Schedule 8 to the Principal Act is amended as follows:

- (a) by omitting

Hydro-Electric Commission

and substituting the following item:

Hydro-Electric Corporation

- (b) by omitting the following item:

Hydro-Electric Commission Enterprises Corporation

- (c) by omitting the following item:

Totalizator Agency Board

Schedule 9 repealed

56. Schedule 9 to the Principal Act is repealed.

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Substitutions

57. Each of the provisions of the Principal Act specified in Column 1 of Schedule 1 is amended by omitting “Stakeholder Minister” on the number of occurrences specified in Column 2 of that Schedule and substituting “Treasurer”.

SCHEDULE 1 - SUBSTITUTIONS

Section 57

Column 1 Provision amended	Column 2 Number of occurrences
Paragraph (b) of the definition of "financial year" in section 3(1)	1
Section 7(2)	1
Section 7(3)	1
Section 10(1)(b)	1
Section 10(2)	1
Section 10(3)	1
Section 10(4)	1
Section 10(5)	1
Section 10(6)	1
Section 10(7)	1
Section 13(1)	1
Section 25(3)(e)	1
Section 40(1)(b)	1
Section 40(3)	1
Section 51(c)	1
Section 53(1)	1

Column 1	Column 2
Provision amended	Number of occurrences
Section 53(3)	first only
Section 53(3)(b)	1
Section 53(4)	1
Section 55(6)	1
Section 57(2)	first only
Section 57(2)(b)	1
Section 60(1)	1
Section 60(5)	1
Section 61(1)(a)	1
Section 61(1)(b)	1
Section 61(1)(c)	1
Section 61(2)	1
Section 61(3)	2
Section 62(1)	1
Section 64(1)	1
Section 64(2)	1
Section 64(3)	1
Section 65(1)	1
Section 65(3)	1

Column 1 Provision amended	Column 2 Number of occurrences
Section 65(6)(c)	1
Section 65(7)	1
Section 84(1)	1
Section 84(2)	1
Section 84(4)	1
Section 85(1)	1
Section 85(2)	1
Section 85(3)	1
Section 85(4)	1
Section 85(6)	1
Section 86(1)	1
Section 86(2)	1
Section 88(2)	1
Section 89(1)	1
Section 89(2)	1
Section 89(3)	2
Section 89(4)	2
Section 89(5)	4
Section 97(1)(a)	1

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Column 1	Column 2
Provision amended	Number of occurrences
Section 98(2)	1
Section 102(1)	1
Clause 8(4) of Schedule 5	1
Clause 2(1) of Schedule 7	1