

## CLAUSE NOTES

### *Stadiums Tasmania Amendment (Transfers) Bill 2022*

**Clause 1      Short Title**

This clause provides that, once passed, the Bill will be cited as the *Stadiums Tasmania Amendment (Transfers) Act 2022*.

**Clause 2      Commencement**

This clause provides that, once passed, the Act commences automatically upon receiving Royal Assent.

**Clause 3      Principal Act**

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

**Clause 4      Section 3 amended (Interpretation)**

This clause amends section 3 of the Principal Act to define additional terms that are needed for the purposes of interpreting the Act.

**Clause 5      Section 19 amended (Business plans)**

This clause amends section 19 of the Principal Act to have the first business plan prepared as soon as practicable in the 2022-23 Financial Year, which is when the Board, who is responsible for preparing the Business Plan, is expected to be in place.

**Clause 6      Section 19A inserted**

This clause inserts this new section (19A) into the Principal Act. This new section clarifies that:

- the *State Service Act 2000* does not apply to the CEO or employees of Stadiums Tasmania in those capacities. This means the *Fair Work Act 2009* will govern Stadiums Tasmania's employment provisions.
- the CEO and employees of Stadiums Tasmania can hold those positions in conjunction with another position that is in State Service. Section 20(5) of the Principal Act requires the CEO to have Board approval to engage in other paid employment.
- a person appointing the CEO, or an employee of Stadiums Tasmania is not a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act*. This provision is needed for the *Fair Work Act 2009* to apply to the employees of Stadiums Tasmania.

- the *Long Service Leave (State Employees) Act 1994* applies to the CEO and employees of Stadiums Tasmania.

This is consistent with similar provisions contained in the *TasTAFE (Skills and Training Business) Act 2021*.

**Clause 7 Section 20 amended (Chief executive officer)**

This clause amends section 20 of the Principal Act to replace the temporary provision allowing the Minister to appoint the CEO, with the permanent provision of having the Board appoint the CEO on terms and conditions the Board considers appropriate.

Pursuant to the *Acts Interpretation Act 1931*, a CEO appointment made by the Minister prior to this Amendment is not nullified by this Amendment.

The Principal Act provides the Authority's functions, powers, Board, and governance provisions. Section 19A, section 20 amended, and section 23 substituted in this Amendment provide the permanent employment provisions for the Authority. The temporary ability for the Minister to appoint the CEO was in case the CEO was needed before the Authority's permanent employment provisions were in effect.

**Clause 8 Section 23 substituted**

This clause replaces section 23 of the Principal Act. The temporary provision allowing the Minister to appoint employees is being replaced with the permanent provision to have the Authority appoint its own employees on terms and conditions it considers appropriate.

Pursuant to the *Acts Interpretation Act 1931*, an employee appointment made by the Minister prior to this Amendment is not nullified by this Amendment.

The Principal Act provides the Authority's functions, powers, Board, and governance provisions. Section 19A, section 20 amended, and section 23 substituted in this Amendment provide the permanent employment provisions for the Authority. The temporary ability for the Minister to appoint employees was in case key staff was needed before the Authority's permanent employment provisions were in effect.

**Clause 9 Parts 4A and 4B inserted**

This clause inserts two new Parts into the Principal Act that relate to transferring stadiums to and from Stadiums Tasmania.

## PART 4A – TRANSFER OF CEO AND EMPLOYEES

### 23A. Transfer of employees

This section allows the Minister, by notice published in the *Gazette*, to transfer employees to and from the Authority, from stadiums that are transferring to or from the Authority.

This section stipulates that employee transfers are voluntary. Before an employee transfer occurs, the employee must first receive and accept an offer to transfer. If an employee declines the offer, the employee will remain with their current employer.

### 23B. General preservation of conditions of employment

This section prevents transferring employees receiving a reduction in pay, entitlements, and benefits upon their transfer. It also allows for transferring employees to transfer with their accrued leave, including long service leave.

This section allows for the pay, entitlements and benefits those employees transfer with to be subject to a future award, industrial agreement, or law.

This section also states that the *Public Sector Superannuation Reform Act 2016* applies to employees that transfer from the State Service. This provision specifically allows transferring State Service employees in the Tasmanian Government's defined benefits scheme to remain in the scheme upon their transfer to the Authority.

### 23C. Continuation of employment

This section allows State Service employees that transfer to Stadiums Tasmania, and then return to the State Service, to be considered as having continuous service with the State Service, for the purposes of calculating entitlements and benefits.

This is consistent with similar provisions in the *TasTAFE (Skills and Training Business) Act 2021*.

## PART 4B – TRANSFER OF ASSETS

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

This section allows the Minister, by notice published in the *Gazette*, to transfer assets, liabilities, and contracts to or from the Authority. Assets, liabilities, and contracts can be transferred to and from the Crown and non-Crown entities. Transfers from and to a non-Crown entity require the consent of the non-Crown entity.

This is consistent with similar provisions in the *Rail Company*

*Act 2009 and the Irrigation Company Act 2011.*

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

This section allows for assets, liabilities, and contracts to be transferred between the Authority and the Crown or a non-Crown entity by agreement, instead of or in conjunction with a notice published in the *Gazette*.

This section requires the Minister to approve the agreement if it involves the transfer of a major asset, liability, or contract.

### **23F. Transitional provisions for transfer of assets, &c.**

This section states that reference to the transferor in existing documentation related to assets, liabilities, or contracts that transfer, is considered to reference the transfer recipient instead, or in addition to, where appropriate.

This section also states that legal liabilities related to transferring assets, liabilities, or contracts before the transfer date remain with the transferor, unless the transfer notice or transfer agreement specifies otherwise.

### **23G. Removing doubt relating to transfer**

This section states that if there is any doubt related to the transfer of an asset, liability or contract, the Minister is to determine the matter and provide written notice of the determination.

This is consistent with similar provisions in the *Rail Company Act 2009* and the *Irrigation Company Act 2011*.

### **23H. State tax not payable**

This section states that State tax is not payable for the transfer of any property, right or obligation under this Act.

This is a common provision found in several other Acts, including the *Rail Company Act 2009*, *Irrigation Company Act 2011*, *Macquarie Point Development Corporation Act 2012*, and *Water and Sewerage Corporation Act 2012*.

## **Clause 10 Sections 31A, 31B, 31C and 31D inserted**

This clause inserts four new Sections into the Principal Act that provide duty of care provisions for members of the Board, officers, and employees of the Authority.

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

This section requires a member of the Board or an officer of the Authority to perform their role in good faith, for a proper

purpose, and with care and diligence. This section also provides the criteria for determining if these requirements have been met, and the penalties for violating these requirements.

This section also states that a current or former member of the Board, officer, or employee must not improperly use information gained from their position with the Authority and provides the penalty for such misuse.

In addition, it states a member of the Board, officer, or employee must not improperly use their position with the Authority and provides the penalty for such misuse.

This is consistent with similar provisions in the *Government Business Enterprise Act 1995* and the *Corporations Act 2001*.

### **31B. Duty to prevent insolvent trading**

This section requires a member of the Board to prevent the Authority from incurring debt if the Authority is insolvent or will become insolvent because of the debt.

This section also provides the criteria for determining if this requirement has been met, and the penalty for violating this requirement.

This is consistent with similar provisions in the *Government Business Enterprise Act 1995*.

### **31C. False and misleading information**

This section prohibits a member of the Board or an officer from making a false or misleading statement, omitting pertinent information, or providing a document with false, misleading, or incomplete content to a member of the Board, the Minister, Treasurer, or the Auditor-General.

This section also provides the criteria for determining if these requirements have been met, and the penalties for violating these requirements.

This is consistent with similar provisions in the *Government Business Enterprise Act 1995*.

### **31D. Reliance on information or advice**

This section states a member of the Board's or an officer's reliance on information or advice provided by others is taken to be reasonable unless proved otherwise. This section also provides the criteria for assessing such instances.

This is consistent with similar provisions in the *Government Business Enterprise Act 1995*.

This clause amends section 32 of the Principal Act to have the first annual report prepared for the 2022-23 Financial Year, which is when the Board, who is responsible for preparing the annual report, is expected to be in place. This amended date allows for delays with the passage of the Principal Act.

**Clause 12      Section 33 amended (Regulations)**

This clause amends section 33 of the Principal Act to insert two new subsections.

Subsection (3A) allows for a regulation that is made for the Principal Act, and that is contravened, to be considered an offence, and provides the penalty for this offense.

Subsection (3B) allows for regulations to authorize any matter to be determined, applied or regulated by the Board or CEO.

**Clause 13      Repeal of Act**

The *Stadiums Tasmania Amendment (Transfers) Act 2022* will be repealed 365 days from the day on which all provisions commence.