

WATER AND SEWERAGE CORPORATION BULL 2008

NOTES ON CLAUSES

- Clause 1 Short title and citation.
- Clause 2 Specifies that the provisions of the proposed Act are to commence on proclamation.
- Clause 3 The clause sets out the purposes of the proposed Act, which are to establish commercially-orientated water and sewerage businesses that operate under clear and transparent governance and reporting arrangements that are analogues to those that apply to State-owned Companies; and make provision for the transfer of assets, liabilities and employees from local government entities to the corporations.
- Clause 4 This clause sets out a glossary of terms within the proposed Act that have a defined meaning to aid in ensuring correct interpretation of clauses.
- Clause 5 This clause provides that the councils within each region are collectively to incorporate a Regional Corporation and be its members (i.e. its shareholders).
- Each Regional Corporation is to have a specific name and be incorporated as a propriety company limited by shares under the Corporations Act.
- Clause 6 This clause provides that the Regional Corporations are to immediately incorporate the Common Services Corporation and be its members (i.e. its shareholders).
- The Common Services Corporation is to have a specific name and be incorporated as a propriety company limited by shares under the Corporations Act
- Clause 7 This clause sets out the principal objectives of the Regional Corporations and those of the Common Services Corporation.
- In order to ensure that costs to consumers are minimized, the Regional Corporations are required to obtain services from the Common Services Corporation where the services: exhibit economies of scale; support the management of business risk; or deliver consistency in the provision of water and sewerage services in all regions where this would result in a regulatory, planning or consumer benefit.
- The fees to be charged by the Common Services Corporation must be set having regard to the ability of the Regional Corporation to recover costs

under the regulatory environment established under the *Water and Sewerage Industry Act 2008* This will ensure that the fees of the Common Services Corporation are reasonable.

Clause 8 This clause sets out the status of the Regional Corporations and the Common Services Corporation. In particular, a Corporation and its subsidiaries established under the proposed Act established under the proposed Act are not representatives of the Crown, the State or the councils and are not exempt from State taxes, duties or other imposts.

The Crown is not liable for any debt, liability or obligation of a Corporation or those of a Corporation's subsidiaries.

A council is not liable for any debts, liabilities or obligations of a Corporation or those of a Corporation's subsidiary unless the council gives a guarantee or indemnity or is liable to contribute funding under the Constitution of the Corporation.

Clause 9 This clause adopts relevant parts of the Corporations Law and excludes those parts of the Corporations Law that are inconsistent with the specific structural reform solution agreed between the State Government and Local Government. This approach of general inclusion is consistent with the arrangements that apply to State-owned companies.

Sub-clauses (1) and (2) have the effect of excluding the operation of the specified sections or Chapters of the Australian Government's *Corporations Act 2001* in relation to the Corporations, either because the proposed Act provides alternative provisions in respect of that subject matter or because the specified sections of the Corporations Act are not relevant to the current model.

Provisions of the Corporations Act that are excluded include:

- Officers duties (substantially similar duties are re-included in Schedule 2, with amendment);
- The appointment and removal of the auditor (instead the proposed Act provides for the Auditor-General to be the auditor);
- The procedure of corporate takeovers (this Chapter is not relevant to the model);
- Fundraising by the issue of securities (instead, the proposed Act specifically prohibits the issuing of securities);

- The provision of financial services, the financial markets, insider trading and prohibited conduct in relation to financial products (this Chapter is not relevant to the model);
- The recognition of offers of securities in jurisdictions other than Australia (this Chapter is not relevant to the model); and
- The appointment and removal of directors – other than the disqualification of directors (instead, the proposed Act deals with the appointment and removal of directors).

Sub-clause (3) ensures, in a manner permitted by the Corporations Act, that the Australian Government and State laws operate without inconsistency. It provides generally that where there is an inconsistency between the Corporations Act and the provisions of the proposed Act or the regulations of the proposed Act, the proposed Act will prevail.

Consistent with the Corporations Act Scheme, sub-clauses (4), (5) and (6) allow various matters excluded under (1) or (2) to be adopted by regulation as a matter of Tasmanian law; and for consequential administrative arrangements relating to those matters. The provisions adopt the procedure currently contemplated by the *Corporations (Ancillary Provisions) Act 2001*.

Clause 10 This clause provides that the corporations must have share capital.

Clause 11 This clause deals with the ownership of the Regional Corporations and the Common Services Corporation. It ensures that public ownership of water and sewerage assets by all councils cannot be sold down or otherwise diluted.

The constituent councils of each region are each to own an equal number of shares in the Regional Corporation of that region. The regional Corporations are to own the Common Services Corporation, but not necessarily in equal proportions.

Clause 12 This clause requires each corporation and subsidiary of a corporation to have a constitution which addresses specified matters, including the rights of councils to dividends which, unlike all other shareholder rights, are expected to vary between councils.

A constitution cannot be adopted, modified or repealed unless the specified requirements are met, including the procedure for Treasurer consultation in clause 15.

Clause 13 This clause provides that on incorporation, the members are to give the Board of each Regional Corporation a shareholder's letter of expectation. These are to be consistent with the proposed Act, the regulations and the constitution of the Corporation. The requirement to have a shareholder's letter of expectation is consistent with the State-owned Company model.

A letter of expectation can only be issued, modified or withdrawn if the procedure in clause 15 is followed.

Clause 14 This clause requires each corporation and each subsidiary of a corporation to have a corporate plan. The corporate plan must cover the period, be in the form and cover matters specified by the Treasurer. These requirements are consistent with the State-owned Company model.

The corporate plan may only be adopted or amended if the procedure in clause 15 is followed.

Clause 15 This clause sets out the procedure to be followed before a corporation can implement a proposal to:

- Adopt, modify or repeal its constitution;
- Issue, modify or withdraw the shareholder's letter of expectation; or
- Adopt or amend a corporate plan.

The procedure involves consultation between the Treasurer and a "consulting group" for a corporation. The 'consulting group' is the Owner's Representatives in the case of a Regional Corporation, or the Regional Corporations in the case of the Common Services Corporation.

This process will ensure that the agreed structural reform model is implemented and maintained and that there is an appropriate level of transparency and consultation around any subsequent changes to the key governance instruments.

Sub-clauses (2) and (3) require that the Treasurer approve the first constitution and corporate plan.

Sub-clause (4) sets out the stages in the consultation process.

Clause 16 This clause provides that a Board is to govern each Regional Corporation, and specifies the composition of that Board.

The Board of each Regional Corporation must include:

- A common Chairperson: see clause 20;
- 3 common directors: see clause 21; and
- 2 regional directors: see clause 22.

This structure ensures the benefits gained from a degree of state-wide consistency are appropriately balanced against the need to ensure specific regional circumstances are accommodated.

Clause 17 This clause provides that a Board is to govern the Common Services Corporation, and specifies the composition of that Board.

The Board of the Common Services Corporation must include:

- A Chairperson: see clause 20;
- The chief executive officers of the Regional Corporation: see clause 23(1); and
- Up to 2 additional directors: see clause 23(4).

This structure ensures that the Common Services Corporation will explicitly work to support the needs of the Regional Corporations.

Clause 18 This clause provides that the members of each Regional Corporation are to select 3 people to act as Owner's Representatives. The role of the Owner's Representatives is to make and implement decisions on behalf of the members of the Regional Corporations, including the selection and appointment of directors, and act as liaison with councils.

Sub-clauses (1) to (3) set out the process and terms of appointment of an Owners' Representative. They are to be appointed by councils and to hold that position for up to 3 years, or a shorter period as provided, with the possibility of subsequent reappointment. Sub-clause (4) requires any vacancy in the role of Owners' Representative for a Regional Corporation to be filled as soon as is practicable.

Sub-clause (5) provides that the Owners Representatives of each Regional Corporation are to perform the functions under the proposed Act and act as liaison between that Regional Corporation and its members.

This role is analogous to the role of the shareholder Ministers under the State-owned Company model.

Sub-clause (6) provides that members of a Regional Corporation may remove an Owners Representative by at least 75 per cent majority vote.

Clause 19 This clause requires Owners' Representatives to establish a Selection Committee which is to be responsible for compiling lists of appropriate persons to fill a role on the Board of a corporation. Owners' Representatives will select and appoint the Board Members for the Regional Corporations from this list. No person can be appointed to a Board unless that person's name appears on a list composed by the Selection Committee.

Sub-clause (1) specifies the composition of the Selection Committee and sub-clauses (5) and (6) set out the criteria to be used by the Selection committee to compile the lists of suitable persons. With the exemption of the common Chairperson, members of the Selection Committee may not be considered for appointment to any of the Regional Corporation Boards.

Sub-clauses (7) through (13) set out the administrative processes of the Selection Committee. Sub-clause (14) allows the Owners' Representatives for all Regional Corporations to remove certain members of the Selection Committee (other than the Chairperson and Secretary referred to in sub-clause (1)) by at least 75 per cent majority vote.

Clause 20 This clause provides that a common Chairperson is to sit on the Board of, and act as director of, each Corporation. The common Chairperson is collectively chosen by all of the Owners' Representatives from a relevant list (see clause 19) and subsequently appointed by the Owners' Representatives for the Regional Corporation. The members of the Common Services Corporation are also required to appoint that person as Chairperson and director of that Corporation.

Sub-clauses (1) to (5) set out the procedures for the selection, by more than 50 per cent majority of all Owners' Representatives and appointment of the common Chairperson.

Sub-clause (6) provides for the term of appointment of the Chairperson, which for the inaugural Chairperson is to be for an initial term of no more than three years and for others for the term set out in the constitutions of each of the Corporations.

Sub-clause (7) requires the Owners' Representative for each Regional Corporation, or the members of the Common Services Corporation, to

remove the common Chairperson upon instruction from the Owners Representatives, acting by at least 75 per cent majority vote.

Sub-clause (8) provides that a common Chairperson cannot be removed from that position in a Corporation otherwise than in accordance with an instruction from the Owners' Representatives for all Regional Corporations.

Sub-clause (9) deems any cessation of office of the Chairperson to be effective across the Boards of all Corporations, and also deems the person to have resigned as a director of all Corporations. The common directors can also appoint an alternative person to chair a meeting in any of the situations set out in Sub-clause (10).

Clause 21 This clause provides that three common directors are to sit on the Board of each Regional Corporation. Each common director is collectively chosen by all of the Owners' Representatives for all Regional Corporations from a relevant list (see clause 19) and subsequently appointed by the Owners' Representatives for each Regional Corporation.

Sub-clauses (1) to (3) set out the procedure for the selection, by more than 50 per cent majority of all Owners' Representatives, and appointment of each common director.

Sub-clauses (4) to (5) enable the Owners' Representatives for all Regional Corporations acting by at least 75 per cent majority vote, to remove a common director by instructing the Owners' Representatives for each Regional Corporation to remove that person from the role of common director of that Regional Corporation.

Sub-clause (6) deems any cessation of office of a common director of one Regional Corporation and deems the person to have resigned from that role in all other Regional corporations.

Clause 22 This clause provides that two regional directors are to sit on the Board of a Regional Corporation. Each regional director is chosen and appointed by the Owners' Representatives of the relevant Corporation from a relevant list (see clause 19).

In contrast to the selection process set out in clauses 20 and 21, this selection process is not carried out in consultation with the other Owners' Representatives for the other Regional Corporations, i.e. the Owners' Representatives for each corporation make the decision independently.

Sub-clause (1) to (2) set out the procedure for the selection and appointment by more than 50 per cent majority of the Owners' Representatives of that Regional Corporation of each regional director.

Sub-clause (3) provides that the Owners' Representatives of a Regional Corporation, acting by at least 75 per cent majority vote, may remove a regional director.

Clause 23 This clause provides that each chief executive officer of a Regional Corporation is to be automatically appointed as a director of the Common Services Corporation. It also provides the flexibility to bring in additional board members on an 'as required' basis to accommodate possible future evolution of the water and sewerage sector and of the Common Services Corporation.

Sub-clauses (1) to (3) set out the procedure for the appointment, resignation or removal of a director of the Common Services Corporation in connection with that person's position as CEO of a Regional Corporation.

Sub-clause (4) sets out the procedure allowing the Treasurer to require the appointment or removal of additional directors.

Sub-clauses (5) to (7) enable members of the Common Services Corporation, by more than 50 per cent majority, to appoint an additional director and by at least 75 per cent majority, to remove an additional director.

Clause 24 This clause replaces the law regulating the duties of directors, other officers and employees (previously excluded in clause 9) with the provisions in Schedule 2.

This replacement will ensure that corporation directors are subject to a set of duties which are appropriate for the specific model being implemented rather than the generic arrangements provided for under the Corporations Act.

Sub-clause (2) allows the Treasurer to amend or replace Schedule 2.

Sub-clause (3) allows the regulations to confer jurisdiction on courts in relation to Schedule 2 and allows them to provide for circumstances where contravention of the regulations will constitute an offence, and sets upper limits on the punishment to be imposed.

Clause 25 This clause provides that the Board can appoint and remove a chief executive officer.

Sub-clause (2) takes into account the structure of the model by providing that no CEO of a Regional Corporation can be appointed without also agreeing to become a director of the Common Services Corporation.

- Clause 26 This clause sets out that the Board of a Corporation is responsible for all operational decisions, that the Board may delegate powers, and that the CEO of a Corporation is responsible for the day-to-day management of that Corporation.
- Clause 27 This clause empowers a Corporation to hire staff according to its needs. The Corporation may, subject to any other Act or law, fix salary, wages and conditions. A subsidiary of a Corporation has the same powers except as otherwise provided for in negotiations.
- Clause 28 This clause prevents a Corporation or a subsidiary of a Corporation from borrowing from any person other than the Tasmanian Public Finance Corporation, unless the Treasurer approves otherwise. This is consistent with arrangements that apply to State-owned Companies which seek to optimize the terms of public sector borrowing.
- Clause 29 This clause prohibits the acquisition and disposal of assets or investments by a Corporation 9or a subsidiary of a Corporation) outside the ordinary course of business or in contravention of the regulations. This will ensure that privatization cannot occur without the explicit future consideration of Parliament.
- Clause 30 This clause prevents the disposal of the main undertakings of a Corporation or its subsidiaries. This will ensure that privatization cannot occur without the explicit future consideration of Parliament.
- Clause 31 This clause provides that a Board is to determine a dividend policy to form the basis for determining the aggregate dividend distribution to members and for the specific allocation of that dividend to councils in the manner determined under clause 34.

Sub-clause (1) requires a Board to establish a dividend policy.

Under sub-clause (2), that policy is to establish the basis for determining the aggregate dividends to members, and the Board must have regard to any shareholders' letter of expectation (for a Regional Corporation only) and good commercial practice (including making appropriate provisions).

Sub-clause (3) requires the constitution of Regional Corporations to provide for distribution of the aggregate dividends to councils in the manner determined under clause 34. The constitution of the Common

Services Corporation is to have regard to the constitution of the Regional Corporation in relation to this.

Clause 32 This clause provides for the calculation of the aggregate payment by Corporations of any guarantee fees in respect of borrowings in accordance with relevant provisions of the *Government Business Enterprises Act 1995* (and any associated Treasurers' Instructions) and for the specific allocation of those guarantee fees back to councils in the manner determined under clause 34.

Clause 33 This clause provides for the calculation and payment of income tax-equivalents. Corporations will be nominated by the State Government under the National Tax Equivalent Regime arrangements. Under these arrangements, the tax that would be payable if the Commonwealth Income Tax Assessment Act applied is assessed by the Australian Taxation Office. On the basis of those assessments, each Corporation will make payments of tax equivalents direct to their owners, using the allocations determined in accordance with Clause 34.

The tax-equivalents provisions (certain provisions of Part 10) of the *Government Business Enterprises Act 1995* and any GBE Treasurers Instruction apply to a Corporation or a subsidiary of a Corporation unless that Corporation has received notice to the contrary from the Treasurer.

Clause 34 This clause sets out the general principles within which the Treasurer will determine the allocation of returns to owner councils (being the sum of guarantee fees, tax equivalents and dividends) in the 5 years from the establishment of the new businesses that is based on the relative returns to councils on the water and sewerage assets between 2003 and 2006 and on the relative net asset value of the assets and liabilities contributed by councils. It also provides for a post 5-year allocation to be determined by owner councils in the first instance and by the Treasurer if councils are unable to reach agreement. The final allocation is to be determined by the Treasurer.

Clause 35 This clause sets out the requirements imposed on a Corporation and its subsidiaries in respect of the: maintenance of financial records; preparation of annual financial statements (in accordance with any relevant Treasurers' Instruction); and provision of financial statements to the Auditor-General.

This clause appoints the Auditor-General as auditor of a Corporation and provides him or her with all necessary information required to fulfill the auditing requirements in accordance with Chapter 2M of the Corporations Act.

Sub-clause (5) requires a Corporation to maintain financial records and comply with the reporting requirements of Chapter 2M of the Corporations Act, which sets out the financial reporting requirement. Chapter 2M is to be applied to each Corporation as if it is a “large proprietary company”.

Sub-clause (6) provides that the Auditor-General is to be the auditor of each Corporation and, under sub-clause (7) is required to provide his opinion in respect of the financial statements to a Corporation.

- Clause 36 This clause provides that any annual report created by a Board of a Corporation in fulfilling obligations under the proposed Act is to be provided to the Treasurer within three months after the end of the financial year and that subsequently, the Treasurer is to cause the documents to be laid before Parliament.
- Clause 37 This clause provides that a Corporation may obtain a guarantee or an indemnity from a council in relation to the repayment of any money lent (or to be lent) to that Corporation, or the performance of an obligation undertaken (or to be undertaken) by that Corporation.
- Clause 38 This clause provides that a Corporation must comply with a Treasurers’ Instruction, given directly or indirectly, relating to the guidelines, principles, practices and procedures to be followed by that Corporation or a subsidiary. However, the Treasurer may provide notice that an indirect instruction does not apply to a Corporation or a subsidiary. These arrangements ensure that the Corporations operate under arrangements analogous to those that apply to State-owned Companies.
- Clause 39 This clause is a glossary of terms within the proposed Act that have a defined meaning to aid in ensuring correct interpretation of clauses in this Part.
- Clause 40 This clause provides that the Treasurer may transfer any relevant assets, rights, liabilities or employees or part thereof, held or employed by a council, bulk water authority, Corporation, or subsidiary or the Crown, to a Corporation or to a council or bulk water authority. The inclusion of the Crown in this definition provides the flexibility to transfer relatively minor Crown water and sewerage assets, such as fluoridation assets, held by the Crown to the new entities in the future.

Sub-clauses (1) and (2) give the Treasurer the power to order the transfer of all or part of specified employees, assets, rights and liabilities by publishing a notice in the *Gazette*.

Sub-clauses (3) and (4) specify the effective date of the order and require the transferor to ensure that the transfer occurs as soon as practicable.

Sub-clause (5) provides that the Treasurer may issue multiple orders which may include different transfer dates. This will ensure flexibility to deal with specific issues that may emerge upon transfer.

Sub-clause (6) provides that the Treasurer may amend or revoke a transfer order at any time.

Clause 41 This clause provides a dispute resolution procedure that is to be followed if a dispute arises in respect of a transfer order made under clause 40. the treasurer has the power to determine any dispute that is final and binding on the parties, noting that the Treasurer is an independent party to the transfer.

Clause 42 This clause provides that when assets, rights or liabilities are transferred: the assets vest in the transferee automatically; the rights and liabilities of the transferor become those of the transferee; and the transferee replaces the transferor as a party to any legal or other proceedings, whether on foot, potential or future as well as becoming the relevant party in respect of any judgment, document, act, omission or reference to the transferor.

Other legal consequences of the operation of any transfer, such as any potential claim for breach of control, are also excluded.

Sub-clause (1) comprehensively provides that a transfer order substitutes the transferee for the transferor in respect of all legal title, party to contracts, party to legal proceedings, and many other applicable laws with no further steps needed to effect that substitution.

Sub-clause (2) prevents any party from claiming remedies or compensation based on what might otherwise be taken to be a breach of a contractual or other right that results from the effect of a transfer order.

Sub-clause (3) provides that there is no need for a lease to be separately assigned to a transferee other than by transfer order.

Sub-clause (4) allows the transfer order to specify any other terms and conditions for the order's effect.

Clause 43 This clause provides that a transfer order can transfer a specific interest in land without transferring all the interest in the land. Where no separate interests exist prior to the transfer, the order effectively creates the transferred interest on such terms as specified in the order.

- Clause 44 This clause prevents the transferor from claiming compensation for any loss resulting from a transfer.
- This is subject only to provisions in the transfer order if it specifies that compensation is to be paid. This clause reflects the fact that the transferees will be corporations that will be council owned.
- Clause 45 This clause provides that the Treasurer may specify a price payable by the transferee to the transferor for the transfer and to specify the value at which any assets, rights or liabilities are transferred.
- Clause 46 This clause sets out the procedure to be followed and notifications to be provided when employees are transferred under a transfer order.
- Sub-clause (4) provides that a chief executive officer of a transferor does not have an automatic right to be appointed as chief executive officer of the transferee. That appointment must be made by the board of the transferee.
- Clause 47 This clause preserves the general conditions of employment of a transferred employee and protects the interests of employees subject to transfer. It provides that post-transfer, the remuneration received by employees and terms and conditions of employment are to be maintained for a period not less than 12 months.
- It also ensures that all leave entitlements of employees are transferred and may be claimed from the employing corporation post-transfer.
- Clause 48 This clause sets out how a Corporation is to provide superannuation to transferred employees and provides that Corporations may make arrangements to participate in specified public sector schemes in relation to employees that were in those schemes prior to the transfer, but not create their own scheme.
- Clause 49 This clause provides that a transferred employee that is working for a Corporation is not entitled to payment or other benefit merely because his or her employment with the transferor has ceased. It also provides that an employee cannot “double-dip” by claiming benefits of the same kind for the same period of work under the proposed Act and any other which might be relevant.
- Clause 50 This clause provides that the Treasurer may delegate any powers or functions under the proposed Act to another person.

Clause 51 This clause empowers the Treasurer to exempt any individual or body from the application of any specified part of the proposed Act on specified conditions (if any).

Clause 52 This clause empowers the Governor to make regulations for the purposes of the proposed Act, including in relation to the application of the Trade Practices Act to the structural reform model which the proposed Act implements.

Clause 53 This clause provides for the administration of the proposed Act.

Schedule1 Schedule 1, as referenced in clause 12, makes clear that a Corporation's constitution is subordinate to the proposed Act and ensures that a Corporation cannot form subsidiaries or enter into other structural dealings that would be inconsistent with the proposed Act

Clause 1 This clause prevents modifications to the constitution of a Corporation that would be inconsistent with the proposed Act and requires that the process for adoption, modification or repeal of a constitution under clause 15 is complied with.

Clause 2 This clause provides that in the case of an inconsistency between the provisions of the proposed Act and the constitution of a Corporation, the proposed Act prevails. A Corporation and its officers and members are expressly prohibited from exercising any of its powers in contravention of or inconsistently with the proposed Act.

Clause 3 This clause provides that a Corporation cannot form separate business arrangements without member approval. If a subsidiary is created the establishing Corporation must as far as practicable ensure that the subsidiary complies with the requirements of the proposed Act.

Clause 4 The 'replaceable' rules under the *Corporations Act 2001* which would otherwise substitute for the constitution of a Corporation are specifically excluded, being unnecessary given that the Corporation is to have its own constitution.

Schedule 2

Clause 1 This clause sets out a glossary of terms within the proposed Act that have a defined meaning to aid in ensuing correct interpretation of Clauses.

The definition mirrors the equivalent definition in the Corporations Act.

Clause 2 This clause imposes a duty on a director and other officers of a Corporation and its subsidiaries to act with care and diligence.

This provision mirrors the equivalent provision (**s180**) of the *Corporations Act 2001* but its subject to the modifications in clauses 7 and 8 which are designed to accommodate the specific structural reform model agreed between State and local government.

Sub-clause (2) sets out the “business judgment rule” defence under which a director of a Corporation will have discharged the duty set out in sub-clause (1), and the equivalent duties at common law and equity, when making a business judgment decision. Specifically, if a director or other officer:

- Makes a judgment in good faith and for a proper purpose;
- Has no material personal interest in the subject of the judgment;
- Takes reasonable steps to be informed of the subject matter; and
- Rationally, believes that the judgment is in the best interests of the Corporation,

Then the requirements of sub-clause (1) have been met.

Sub-clause (3) provides what is meant by a business judgment.

Clause 3 This clause imposes a duty on directors and other officers of a Corporation and its subsidiaries to act in good faith and for a proper purpose.

A person who is involved in a contravention of this Clause has also committed an offence.

This provision mirrors the equivalent provision (**s181**) of the *Corporations Act 2001* but is subject to the modifications in clauses 7 and 8.

Clause 4 This clause imposes a duty on directors, secretaries, other officers and employees not to misuse their position to obtain an advantage or cause a detriment to the Corporation or its subsidiaries.

A person involved in a contravention of this Clause also commits an offence.

This provision mirrors the equivalent provision (**s182**) of the *Corporations Act 2001* but is subject to the modifications in clauses 7 and 8.

Clause 5 This clause imposes a duty on directors, secretaries, other officers or employees not to misuse information gained by way of their position so as to obtain an advantage or cause a detriment to the Corporation or its subsidiaries.

A person involved in a contravention of this Clause also commits an offence.

This provision mirrors the equivalent provision (**s183**) of the *Corporations Act 2001* but is subject to the modifications in clauses 7 and 8.

Clause 6 This clause makes it a criminal offence to breach any of the duties imposed in clauses 2 to 5 where the actions are undertaken recklessly or intentionally.

It encompasses actions of previous directors and officers of a Corporation.

This provision mirrors the equivalent provision (**s184**) of the *Corporations Act 2001*.

Clause 7 The provision sets out when a director, secretary or other officer of a Corporation is taken to have fulfilled the obligations of clauses 2 to 5. The intention is to modify the scope of the statutory duties and equivalent duties in common law and equity such as that common directors and the common Chairperson are not liable for civil or criminal penalties simply because of their common directorships or if they act in the interests of another corporation.

Sub-clause (1) provides that a director or other officer is to be considered to be acting in good faith and in the best interests of the relevant Corporation even where they are acting in good faith in the best interests of another Corporation, provided that the other Corporation is not and will not become insolvent at the time of the action.

Sub-clause (2) provides that a director, secretary, other officer or employee will not be taken to breach their duties in clauses 2 to 6, nor their equivalent duties at common law and in equity if that person is also a director, secretary, other officer or employee of another Corporation and performs their duties in the best interest of that other Corporation.

Clause 8 This clause provides that clauses 2 to 6 operate in addition to existing rules of law and do not attempt to modify the existing law (consistent with similar provisions under the Corporations Act).

However, sub-clause (2) provides that the exceptions to the directors duties for the benefit of the various directors is available despite any equivalent duty at common law or in equity.