

GOVERNMENT BUSINESS ENTERPRISES AND STATE-OWNED COMPANIES LEGISLATION AMENDMENT BILL 2009

NOTES ON CLAUSES

- Clause 1 Short title.
- Clause 2 The Government Business Enterprises and State-owned Companies Legislation Amendment Act 2009 commences on Royal Assent.
- Clause 3 This clause provides for the legislation listed in Schedule 1 to be amended as specified in the Schedule.
- Clause 4 This clause provides for the legislation listed in Schedule 2 to be rescinded.
- Schedule 1 Schedule 1 provides for consequential amendments to the following Acts:
- *Forestry Act 1920*;
 - *Government Business Enterprises Act 1995*;
 - *Electricity Companies Act 1997*;
 - *Metro Tasmania Act 1997*;
 - *Tasmanian Ports Corporation Act 2005*;
 - *TOTE Tasmania Act 2000*; and
 - *TT-Line Arrangements Act 1993*.

Amendments to the Forestry Act 1920

Sub-clause 1 amends the following definitions:

- *Board* - clarifies that the Board of Directors is appointed under the relevant provisions of the Government Business Enterprises Act 1995.
- *Chairperson* – the definition is deleted as it is no longer required as the Chairperson is appointed under the Government Business Enterprises Act 1995;
- *Stakeholder Minister* – the definition is deleted as the definition of Stakeholder Minister in the Government Business Enterprises Act 1995 has previously been removed.

Sub-clause 2 removes the reference to Stakeholder Minister and replaces it with Treasurer in section 12C(2). Under the Government

Business Enterprises Act 1995, the Portfolio Minister and Treasurer can only jointly direct a Government Business Enterprise.

Sub-clause 3 repeals Division 2 of Part II of the Act which deals with the composition and appointment of the Board of Directors. The provisions of the Government Business Enterprises Act 1995 will now apply.

Sub-clause 4 repeals Schedule 2 which deals with the appointment and conditions of appointment for Directors. The provisions of the Government Business Enterprises Act 1995 will now apply.

Amendments to the Government Business Enterprises Act 1995

Sub-clause 1 amends the definition of “financial accommodation”. The current definition implies that financial accommodation must lead to a financial benefit. However this may not necessarily be the case and as a result a business could argue that guarantee fees should not apply where a financial benefit is not derived. The intention of the guarantee fee framework is that a guarantee fee is payable on any financing regardless of whether there is a benefit or not to the Government business. Therefore the restriction that a business must receive a financial benefit is removed.

Sub-clause 2 replaces the current provisions which impose guarantee fees on Government Business Enterprises. The current provisions stipulate the method by which guarantee fees are calculated. Given the changing credit market environment, a more flexible mechanism is required. The new provisions provide that the method of calculation of guarantee fees is to be specified in the Treasurer’s Instructions and also allows one or more guarantee fee rates for each business. This will allow for a guarantee fee rate to be set each year for all new borrowings or refinanced borrowings in that year, rather than the current method where the guarantee fee rate set for a year applies to the entire debt portfolio of the business.

Sub-clause 3 inserts transitional provisions in relation to the amendments made to the Forestry Act 1920 by the Government Business Enterprises and State-owned Companies Legislation Amendment Act 2009. The transitional provisions ensure that a person holding the office of director, chairperson or chief executive officer of Forestry Tasmania immediately before the Act commenced is taken to have been appointed under the provisions of the Government Business Enterprises Act 1995 on the same terms

and conditions as the person was appointed under the Forestry Act. This ensures that the terms of office and conditions of existing Board members of Forestry Tasmania are preserved.

Sub-clause 4 amends Schedule 1 of the Government Business Enterprises Act by moving Forestry Tasmania from Part 2 to Part 1. This ensures that the Board of Forestry Tasmania is appointed in the same manner as the Board of any Government Business Enterprise.

Amendments to the Electricity Companies Act 1997

Section 13 is repealed and replaced with a new section 13. The new section clarifies that companies established under the Electricity Companies Act 1997 (namely, Aurora Energy and Transend Networks) and any subsidiaries of such companies are to be treated as a Government Business Enterprise for the purposes of paying guarantee fees.

Amendments to the Metro Tasmania Act 1997

Sub-clause 1 repeals section 14 and replaces it with a new section 14. The new section clarifies that Metro Tasmania is to be treated as a Government Business Enterprise for the purposes of paying guarantee fees.

Sub-clause 2 amends section 16 to clarify that any Treasurer's Instructions issued under the Government Business Enterprises Act 1995 for the determination, calculation and payment of income tax equivalents, guarantee fees and other related matters apply to the Company as if it were a Government Business Enterprise under that Act.

Amendments to the Tasmanian Ports Corporation Act 2005

Section 17 is repealed and replaced with a new section 17. The new section clarifies that Tasmanian Ports Corporation is to be treated as a Government Business Enterprise for the purposes of paying guarantee fees and that the Treasurer's Instructions relating to guarantee fees apply.

Amendments to the TOTE Tasmania Act 2000

Sub-clause 1 repeals sections 16 and 17 and replaces them with new sections 16 and 17. The new sections clarify that TOTE Tasmania and any of its subsidiaries are to be treated as a

Government Business Enterprise for the purposes of paying guarantee fees and income tax equivalents.

Sub-clause 2 repeals section 19 and replaces it with a new section 19. The new section clarifies that any Treasurer's Instructions issued under the Government Business Enterprises Act 1995 for the determination, calculation and payment of income tax equivalents, guarantee fees and superannuation apply to TOTE Tasmania and any of its subsidiaries.

Amendments to the TT-Line Arrangements Act 1993

Sub-clause 1 inserts a new section which ensures that TT-Line and any subsidiary is to be treated as a Government Business Enterprise for the purposes of paying guarantee fees.

Sub-clause 2 inserts a new section which ensures that any Treasurer's Instructions issued under the Government Business Enterprises Act 1995 for the determination, calculation and payment of income tax equivalents and guarantee fees apply to TT-Line and any of its subsidiaries.

Schedule 2 Schedule 2 rescinds the Government Business Enterprises Regulations 2005. The regulations set a prescribed percentage which the guarantee fee rate must not exceed under the current section 78(4) of the Government Business Enterprises Act 1995. As this provision is being replaced and there will be no maximum guarantee fee rate, the Regulations are no longer required.