

TASMANIA

**MACQUARIE POINT DEVELOPMENT
CORPORATION BILL 2012**

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MACQUARIE POINT DEVELOPMENT CORPORATION BILL 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 November 2012

*(Brought in by the Minister for Economic Development, the
Honourable David James O'Byrne)*

A BILL FOR

An Act to establish a corporation for the purpose of undertaking the remediation of certain land at Macquarie Point, Hobart, in accordance with an Intergovernmental Agreement dated 22 June 2012 entered into by the Commonwealth of Australia and the State of Tasmania, and for the purpose of facilitating, undertaking and managing the redevelopment of that land, and for other purposes

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Macquarie Point Development Corporation Act 2012*.

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2. Commencement

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

3. Interpretation

(1) In this Act, unless the contrary intention appears –

Board means the board of directors of the Corporation established under section 9;

Brooke Street pier means the pier and associated wharf infrastructure located in Sullivans Cove, Hobart, and known as “Brooke Street Pier”;

chief executive officer means the chief executive officer of the Corporation appointed under section 15;

corporate plan means a corporate plan referred to in section 38;

Corporation means the Macquarie Point Development Corporation established by section 5;

director means a person appointed as a director of the Board in accordance with this Act;

employee means a person appointed or employed pursuant to section 19;

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financial statements means the financial statements referred to in section 49;

Intergovernmental Agreement means the agreement, dated 22 June 2012, entered into by the Commonwealth of Australia and the State of Tasmania concerning the remediation of the Macquarie Point land and the redevelopment of the Brooke Street pier;

Macquarie Point land means the land at Macquarie Point, Hobart, comprised in Tasmanian folio of the Register Volume 113521 Folio 1 registered under the *Land Titles Act 1980*;

officer means –

- (a) a director; and
- (b) the chief executive officer; and
- (c) a person who is concerned with, or takes part in, the management of the Corporation;

partner, in relation to a person, means a person with whom the person is in a personal relationship, within the meaning of the *Relationships Act 2003*;

relative, in relation to a person, means –

- (a) the spouse or partner of the person; and

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- (b) a parent or remoter linear ancestor of the person; and
- (c) a child or remoter issue of the person; and
- (d) a brother or sister of the person;

site means –

- (a) the Macquarie Point land; and
- (b) any Crown land, in proximity to the Macquarie Point land, that is transferred by the Minister to the Corporation for the purposes of this Act; and
- (c) any land, in proximity to the Macquarie Point land, purchased by the Corporation for the purposes of this Act with the written approval of the Minister;

site redevelopment plan means a site redevelopment plan referred to in section 37;

subsidiary has the same meaning as in the Corporations Act.

- (2) A body corporate is a subsidiary of the Corporation if, were the Corporation and body corporate corporations under the Corporations Act, the body corporate would be a subsidiary of the Corporation under that Act.

4. Material personal interest

(1) In this Act –

material personal interest in respect of a director of the Corporation 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; and
- (f) the director's employment by a person with a direct or indirect interest in the Corporation; 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 a director of the Corporation; and
- (h) the holding by the director of the office of a member in another statutory authority or in the governing authority of another statutory authority; and

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- (i) any other interest that does, or may, give rise to a conflict of interest.

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

- (4) 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.

- (5) For the purposes of determining whether the director has control over a person referred to in subsection (4), 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

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- officer of, or a trustee of, the other person;
- (b) whether the director or his or her relative is a beneficiary in the trust of which the other person is a trustee;
 - (c) any other matter or relationship that is relevant.
- (6) For the purposes of determining whether the relative of a director has control over a person referred to in subsection (4), 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.

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Part 2 – Macquarie Point Development Corporation

**PART 2 – MACQUARIE POINT DEVELOPMENT
CORPORATION**

*Division 1 – Establishment of Macquarie Point Development
Corporation*

**5. Establishment of Macquarie Point Development
Corporation**

- (1) The Macquarie Point Development Corporation is established.
- (2) The Corporation –
 - (a) is a body corporate with perpetual succession; and
 - (b) has a seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is an instrumentality of the Crown.
- (3) The Corporation's seal is to be kept and used as authorised by the Board.
- (4) All courts and persons acting judicially must take judicial notice of the imprint of the Corporation's seal on a document and presume that it was duly sealed by the Corporation.

6. Principal objectives of Corporation

The principal objectives of the Corporation are –

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-
- (a) to plan, facilitate and manage the remediation of the Macquarie Point land in accordance with the Intergovernmental Agreement; and
 - (b) to plan, facilitate and manage the redevelopment of the site so as to ensure that the site –
 - (i) is redeveloped as a vibrant and active area, with a mix of uses, that connects with and complements adjacent areas within Hobart; and
 - (ii) encourages inner-city living; and
 - (iii) is redeveloped so as to deliver sustainable social and economic benefits to Hobart; and
 - (iv) is redeveloped in accordance with sound planning, urban design and environmental principles; and
 - (c) to the extent practicable, to make a profit from carrying out its functions.

7. Functions of Corporation

The Corporation has the following functions:

- (a) to carry out investigations for the remediation and redevelopment of the site;

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- (b) to plan the activities required to carry out the remediation of the site so that the site can be redeveloped;
- (c) to undertake, manage or arrange for the remediation of the site so that the site can be redeveloped;
- (d) to consult with the Tasmanian community in relation to options for the redevelopment of the site;
- (e) to advise the Minister in relation to the redevelopment of the site;
- (f) to advise the Minister as to any legislation that may be required to undertake or facilitate the redevelopment of the site;
- (g) to undertake, manage or facilitate the redevelopment of the site consistent with the Corporation's objectives and any site redevelopment plan;
- (h) to consider and advise the Minister in relation to options for the redevelopment or replacement of the Brooke Street pier;
- (i) subject to written approval by the Minister –
 - (i) to undertake, manage or facilitate the redevelopment of the Brooke Street pier or its replacement, whether or not in the same location; and

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- (ii) to provide financial assistance to other persons in connection with the redevelopment of the Brooke Street pier or its replacement, whether or not in the same location;
- (j) any other function of the Corporation under this or any other Act.

8. Powers of Corporation

(1) The Corporation has the following powers:

- (a) subject to subsection (3), to acquire, hold, dispose of and otherwise deal with property;
- (b) to enter into contracts;
- (c) to appoint agents and attorneys;
- (d) to engage consultants;
- (e) to do anything necessary or convenient in relation to the performance of its functions.

(2) The Corporation also has the following powers that may only be exercised by the Corporation with the written approval of the Minister:

- (a) to acquire, conduct, participate in, or dispose of, any business undertaking related to the site or the Brooke Street pier;

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- (b) to form, or participate in the formation of, a company;
 - (c) to participate in a trust;
 - (d) to participate in any or all of the following arrangements for the purpose of the sharing of profits:
 - (i) a joint venture;
 - (ii) a partnership;
 - (iii) any other arrangement.
- (3) The Corporation must not, without the written approval of the Minister –
- (a) lease or license land held by the Corporation for any term exceeding 2 years; or
 - (b) purchase, gift or sell any estate or interest in land.
- (4) Subject to subsection (5), the Corporation must not carry out any works on the Macquarie Point land until that land is transferred by the Minister to the Corporation in accordance with section 53.
- (5) Subsection (4) does not prevent the Corporation from undertaking works on any part of the Macquarie Point land that is leased by the Corporation from the Minister administering the *Crown Lands Act 1976* or from a tenant of that Minister.

Division 2 – Board of Corporation

9. Board

- (1) The Corporation has a board of directors consisting of –
 - (a) the chairperson of the Board; and
 - (b) the chief executive officer; and
 - (c) not less than 3, and not more than 6, other persons.
- (2) The chairperson and the other directors, other than the chief executive officer, are appointed by the Governor on the recommendation of the Minister.
- (3) In making a recommendation under subsection (2), the Minister is to have regard to –
 - (a) the need for the chairperson, chief executive officer and other directors together to have the necessary knowledge and skills to achieve the principal objectives of the Corporation; and
 - (b) if the Minister has called for expressions of interest for persons to be appointed to the Board, any expressions of interest received; and
 - (c) the desirability of having as directors both men and women.

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- (4) A person may not hold the office of chief executive officer in the Corporation in conjunction with the office of chairperson.
- (5) Schedule 1 has effect with respect to the directors.
- (6) Schedule 2 has effect with respect to meetings of the Board.

10. Responsibilities

- (1) The Board is responsible to the Minister for –
 - (a) the performance of the functions of the Corporation; and
 - (b) the achievement of the Corporation’s principal objectives; and
 - (c) ensuring that the site is redeveloped in accordance with the site redevelopment plan; and
 - (d) ensuring that the business and affairs of the Corporation are managed and conducted –
 - (i) in accordance with the principal objectives of the Corporation; and
 - (ii) in accordance with sound business practice; and

- (iii) in a manner that is consistent with any directions given by the Minister under section 36; and
 - (iv) in a manner consistent with any corporate plan approved by the Minister under section 38.
- (2) The Board has the power to do anything necessary or convenient in relation to its responsibilities under this Act.

11. Delegation by Board

The Board may delegate any of its powers or responsibilities, other than this power of delegation.

12. Committees

- (1) The Board –
- (a) must establish an audit committee; and
 - (b) may establish such other committees as it considers appropriate.
- (2) A committee –
- (a) must provide the Board with advice on any matter referred to it by the Board; and
 - (b) must perform any functions, and may exercise any powers, delegated to it by the Board.

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- (3) In addition to its functions under subsection (2), the audit committee must provide the Board with advice on –
- (a) the internal audit function of the Corporation; and
 - (b) monitoring the Corporation’s systems of financial reporting and internal control; and
 - (c) the resources necessary for the performance of the internal audit function of the Corporation.
- (4) Schedule 3 has effect with respect to the members and meetings of a committee.

13. Acting directors

- (1) For the purposes of this section, a director is absent if he or she –
- (a) is absent from duty; or
 - (b) is otherwise unable to perform the functions of the office of a director.
- (2) The Governor, on the recommendation of the Minister, may appoint a person to act as a director of the Corporation if the chairperson or a director referred to in section 9(1)(c) is absent.
- (3) The Minister must not make a recommendation under subsection (2) unless he or she has ensured that the person recommended has the experience

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and skills necessary to act as a director of the Corporation.

- (4) The appointment or other employment of a person to act as a director if the chairperson is absent is not an appointment to act in the position of chairperson.
- (5) While a person appointed or otherwise employed to act as a director is acting as a director that person is taken to be a director.
- (6) The appointment or other employment of a person to act as a director terminates when the absent chairperson or director resumes the performance of his or her functions as director.

Division 3 – Assistance and facilities

14. Assistance and facilities

- (1) The Corporation may arrange with one or more of the following persons to provide assistance and facilities to it to enable it to perform and exercise its functions and powers:
 - (a) the Secretary of the Department;
 - (b) another Head of a State Service Agency;
 - (c) any other person if the Minister approves it.
- (2) All expenses associated with the use by the Corporation of the assistance and facilities provided under subsection (1) are to be met by the Corporation unless otherwise agreed with –

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- (a) the Secretary of the Department, in relation to assistance and facilities provided by the Secretary of the Department; or
- (b) another Head of a State Service Agency, in relation to assistance and facilities provided by that Head of Agency; or
- (c) any other person approved by the Minister, in relation to assistance and facilities provided by that person.

PART 3 – STAFF OF CORPORATION

15. Chief executive officer

- (1) Subject to and in accordance with the *State Service Act 2000*, a chief executive officer of the Corporation is to be appointed.
- (2) The person holding the position of General Manager, Macquarie Point Development Project within the Department at the commencement of this Act is taken to have been appointed as the chief executive officer of the Corporation pursuant to subsection (1) for the term and on the conditions, including remuneration, specified in his or her instrument of appointment in respect of the position of General Manager, Macquarie Point Development Project.

16. Responsibilities of chief executive officer

- (1) The chief executive officer is responsible to the Board for the general administration and management of the Corporation.
- (2) The chief executive officer –
 - (a) must carry out any responsibilities, and may exercise any powers, delegated by the Board; and
 - (b) must perform any functions or carry out any responsibilities imposed by, and may exercise any other powers granted by, this or any other Act.

17. Delegation by chief executive officer

The chief executive officer may delegate any of his or her responsibilities, functions or powers, other than this power of delegation.

18. Effect of chief executive officer ceasing to be chief executive officer

- (1) If a person holds the position of chief executive officer and the office of director, 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 the Corporation is revoked; and
 - (c) any membership of that person of any committee created by the Board 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.

19. Employees

Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of the Corporation.

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**PART 4 – POWERS AND DUTIES OF, OFFENCES BY
AND INDEMNIFICATION OF DIRECTORS AND
STAFF**

20. Power of former director to access records

(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 the Corporation may inspect and make copies of the records of the Corporation, 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 Corporation 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.

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

21. Power of director to access records

- (1) A director may inspect and make copies of the records of the Corporation, 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.

22. Duties of officers and employees

- (1) In this section –

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

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.

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(2) An officer of the Corporation must perform and exercise the functions and powers of his or her office in the Corporation –

(a) in good faith in the best interests of the Corporation; 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 the Corporation 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 corporation in the circumstances of the Corporation; and

(b) occupied the office held by, and had the same responsibilities within the Corporation 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 the Corporation who makes a business judgment is taken to meet the requirements of subsection (3), and his or her equivalent duties at common law and in equity, in respect of the judgment if the officer –

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- (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 Corporation.
- (5) For the purposes of subsection (4)(d), the belief of an officer of the Corporation that a business judgment is in the best interests of the Corporation 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 the Corporation must not make improper use, in Tasmania or elsewhere, of information acquired because of his or her office or employment in the Corporation –
- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or
 - (b) to cause damage to the Corporation or any of its subsidiaries.

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

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

23. Duty to prevent insolvent trading

- (1) A director must prevent the Corporation from incurring a debt if –
- (a) the Corporation is insolvent at that time or will become insolvent by incurring at that time the debt or debts which include that debt; and
 - (b) at that time there are reasonable grounds for suspecting that the Corporation is insolvent or would become insolvent by incurring the debt or those debts; and

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- (c) the director is aware of those grounds or a reasonable person in the position of director would be aware of those grounds.
- (2) A director is guilty of an offence and liable, on conviction, to a penalty of a fine not exceeding 2 000 penalty units or a term of imprisonment not exceeding 5 years, or both, if he or she contravenes subsection (1) knowingly, intentionally or recklessly and –
 - (a) dishonestly and intending to gain, directly or indirectly, an advantage for himself or herself or another person; or
 - (b) intending to deceive or defraud any person.
- (3) It is a defence for an offence against subsection (2) or for a contravention of subsection (1) in proceedings under section 27 if it is proved –
 - (a) that, at the time the debt was incurred, the director –
 - (i) had reasonable grounds to believe and did believe that a competent and reliable person was responsible for providing the director with adequate information as to whether the Corporation was solvent; and

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- (ii) had reasonable grounds to believe and did believe that the person referred to in subparagraph (i) was fulfilling the responsibility referred to in that subparagraph; and
 - (iii) expected, on the basis of information provided by the person referred to in subparagraph (i), that the Corporation was solvent at that time and would remain solvent even if it incurred the debt and any other debts that it incurred at that time; or
- (b) that, at the time when the debt was incurred, the director had other reasonable grounds to expect, and did expect, that the Corporation was solvent and would remain solvent even if it incurred the debt and any other debts that it incurred at that time; or
- (c) that the director took all reasonable steps to prevent the Corporation from incurring the debt; or
- (d) that the director did not take part at the time in the Corporation's management because of illness or for some other good cause; or

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- (e) that the director informed the Minister, before the debt was incurred, that the Corporation was insolvent or would become insolvent if the debt or the debt and other debts were incurred; or
- (f) that the debt was incurred as the direct result of a direction given under this Act to the director or the Corporation by the Minister.

24. False or misleading information

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

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

- (2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it

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states that the information given was false or misleading to the person's knowledge.

- (3) An officer must not give to a director, the Minister or the Auditor-General a document containing information that the officer knows is false, misleading or incomplete in a material particular without –
- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
 - (b) giving the correct information to the recipient if the officer has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 25 penalty units or a term of imprisonment not exceeding 1 year, or both.

25. Reliance on information or advice

If –

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

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- 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 Corporation and the complexity of the structure and operations of the Corporation; and
- (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has

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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.

26. Director to disclose material personal interest

- (1) A director who has or may have a material personal interest in a matter that relates to the affairs of the Corporation 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 Corporation; or
 - (ii) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Corporation (but only if the contract does not make the Corporation or a related body the insurer); or
 - (iii) relates to any payment by the Corporation to a related body in respect of an indemnity permitted under section 35; or

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- (iv) is in a contract, or proposed contract, with or for the benefit of, or on behalf of, a related body of the Corporation 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 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 relationship to the affairs of the Corporation to all directors under this subsection;
 - (ii) if after the time when notice of the nature and extent of the interest and its relationship to the affairs of the Corporation under this subsection was given, a person who was not a director of the Corporation at that time is appointed as a director, that

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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 28(3) 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 the Corporation if the body is a subsidiary of the Corporation.

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

(a) include details of –

(i) the nature and extent of the
interest; and

(ii) the relationship of the interest to
the affairs of the Corporation; 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.

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- (4) The details of the notice of a director's material personal interest in a matter that relates to the affairs of the Corporation must be –
 - (a) recorded in the minutes of the meeting at which the notice is given; and
 - (b) provided to the Minister.
- (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.

27. Board may declare material personal interest

- (1) If the Board is of the opinion that a director has a material personal interest in a matter that relates to the affairs of the Corporation, 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 relationship of the interest to the affairs of the Corporation.
- (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 Minister.

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- (4) The making of a declaration under subsection (1) does not preclude the taking of proceedings for an offence against section 26(1) in respect of the failure of the director to give notice of the material personal interest.

28. Standing notice of director's interest

- (1) A director who has an interest, whether direct or indirect, in a matter that relates to the affairs of the Corporation may give the other directors of the Corporation 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 Corporation 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 –

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- (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 Minister.
- (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 Corporation 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.

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29. Restriction on director’s participation in case of material personal interest

- (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 Corporation 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 Corporation, by reason of the director holding that interest, cannot avoid the contract and the director is not liable to account to the

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Corporation for any profits derived from that interest.

(3) If –

(a) a director has a material personal interest in a contract that the Corporation 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 Corporation, by reason of the director holding that interest, may avoid the contract and the director is liable to account to the Corporation 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 relationship to the affairs of the Corporation; 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 –

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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 Minister under section 26(4), section 27(3) or section 28(5).

30. Director may be required to divest of material personal interest

If the Minister considers 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 Minister may require the director to either divest himself or herself of the interest or resign as director.

31. Civil penalty order

- (1) In this section, court means a court of summary jurisdiction.
- (2) If a person contravenes section 22(2), (3), (6) or (7) or section 23(1), the Corporation or a person authorised in writing by the Minister may apply to the court, within 6 years after the contravention, for an order under subsection (3).
- (3) If the court is satisfied of the matters specified in subsection (4), the court may make one or more of the following orders:

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- (7) In proceedings under this section, the court may relieve a person who has contravened section 22(2), (3), (6) or (7) or section 23(1) from the whole or part of a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention if the court is satisfied that –
- (a) the person has acted honestly; and
 - (b) having regard to all the circumstances of the case (including, where appropriate, circumstances connected with the person's appointment as an officer), the person ought fairly to be excused for the contravention.
- (8) An application made under subsection (2) is a civil matter and the rules of evidence and procedure that the court applies in hearing and determining civil matters apply in relation to the hearing and determination of the application.
- (9) Proceedings may be commenced and determined under this section whether or not proceedings for an offence against section 22(2), (3), (6) or (7) or section 23(2) have been commenced or determined.
- (10) The Minister may enforce an order made under subsection (3)(b) as if it were a judgment of the court.

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**34. Compensation and other payments for
contravention of this Part**

- (1) Sections 22, 23, 24, 25 and 26 have effect in addition to any rule of law relating to the function, power or liability of a person because of the person's office or employment in the Corporation and do not affect the right of any person to institute civil proceedings in relation to a contravention of any of those provisions.
- (2) If a person is found guilty of an offence against section 22(2), (3), (6) or (7) or section 23(2) or an order is made under section 31(3) in respect of a contravention of section 22 or 23, the court making that finding or order may, in addition to any other penalty it may impose or order it may make, order the person to pay to the Corporation or subsidiary of the Corporation –
 - (a) any profit made by the person as a result of the contravention of section 22 or 23; and
 - (b) an amount equal to any loss and damage the Corporation or subsidiary of the Corporation suffered as a result of the contravention of section 22 or 23.
- (3) The Corporation or subsidiary of the Corporation may enforce an order made under subsection (2) as if it were a judgment of the court.

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35. Indemnifying officers

- (1) The Corporation must not exempt a person, whether directly or through an interposed person, from a liability to –
 - (a) the Corporation; or
 - (b) a subsidiary of the Corporation –incurred as an officer.
- (2) A subsidiary of the Corporation must not exempt a person, whether directly or through an interposed person, from a liability to –
 - (a) that subsidiary; or
 - (b) the Corporation; or
 - (c) another subsidiary of the Corporation –incurred as a person who is concerned with, or takes part in, the management of that subsidiary, the Corporation or other subsidiary.
- (3) The Corporation or subsidiary of the Corporation 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 Corporation:
 - (a) a liability owed to the Corporation, that subsidiary or another subsidiary of the Corporation;

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- (b) a liability to pay compensation under an order made under section 34;
 - (c) a liability that is owed to someone other than the Corporation, that subsidiary or another subsidiary of the Corporation and that did not arise out of conduct in good faith.
 - (4) Subsection (3) does not apply to a liability for legal costs.
 - (5) The Corporation or subsidiary of the Corporation 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 the Corporation 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) 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 the Corporation to do something that is prohibited by this section.

PART 5 – DIRECTIONS AND PLANS

36. Ministerial directions

- (1) Subject to subsection (2), after consulting with the Board, the Minister, by notice in writing, may give the Board directions in connection with the functions and powers of the Corporation.
- (2) The Minister must not direct the Board to enter into any contract on behalf of the Corporation, or direct the Board to vary, terminate or rescind any contract to which the Corporation is a party.
- (3) The Board must comply with any direction given by the Minister.

37. Site redevelopment plan

- (1) After consulting with the Board, the Minister, by notice in writing to the Board, may direct the Board to prepare a site redevelopment plan in respect of the site.
- (2) The site redevelopment plan is to include the following:
 - (a) a framework for the redevelopment of the site in accordance with the principal objectives of the Corporation;
 - (b) the major strategies the Board intends to use to facilitate the redevelopment of the site in accordance with that framework

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and the principal objectives of the Corporation.

- (3) The Board is to provide a copy of the site redevelopment plan to the Minister for approval.
- (4) The Minister may –
 - (a) approve the site redevelopment plan; or
 - (b) require the Board to amend the site redevelopment plan before approving it.
- (5) The Board may prepare an amendment of the site redevelopment plan at any time.
- (6) An amendment of the site redevelopment plan may take the form of a replacement site redevelopment plan.
- (7) An amendment of the site redevelopment plan takes effect when the Minister approves the amendment.
- (8) Except where the Minister otherwise approves, the Corporation must act in accordance with the site redevelopment plan for the time being in existence.

38. Corporate plan

- (1) The Board, by 31 May in each year, is to prepare a corporate plan in respect of the period of 12 months commencing on 1 July in that year.
- (2) The corporate plan is to include the following:

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- (a) the objectives of the corporate plan;
 - (b) the major strategies to be used to progress those objectives;
 - (c) a statement of the Corporation's financial plans.
- (3) The corporate plan must be consistent with any site redevelopment plan for the time being in existence.
- (4) The Board is to provide a copy of the proposed corporate plan to the Minister for approval.
- (5) The Minister, may –
- (a) approve the corporate plan; or
 - (b) require the Board to amend the corporate plan before approving it.
- (6) The Board may prepare an amendment of its corporate plan at any time.
- (7) An amendment of the corporate plan takes effect when the Minister approves the amendment.
- (8) An amendment of the corporate plan may take the form of a replacement corporate plan.
- (9) Except where the Minister otherwise approves, the Corporation must act in accordance with its corporate plan for the time being in existence.

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39. Notification of matters

The Board is to notify the Minister, as soon as practicable, of any matters that, in the opinion of the Board, may –

- (a) prevent or significantly affect the carrying out of any current site redevelopment plan approved by the Minister; or
- (b) prevent or significantly affect the achievement of the objectives specified in the current corporate plan; or
- (c) significantly affect the financial viability or operating ability of the Corporation; or
- (d) significantly affect any other policy or program specified in the current corporate plan.

PART 6 – FINANCIAL AFFAIRS AND REPORTS

Division 1 – Financial affairs of Corporation

40. Treasurer’s Instructions

- (1) Subject to this section, Treasurer’s Instructions issued under the *Financial Management and Audit Act 1990* apply to the Corporation as if it were an Agency within the meaning of that Act.
- (2) The Treasurer, by notice in writing to the Corporation, may modify the application to the Corporation of the Treasurer’s Instructions referred to in subsection (1).
- (3) If the Treasurer issues a notice under subsection (2) to the Corporation modifying the application to the Corporation of the Treasurer’s Instructions issued under the *Financial Management and Audit Act 1990*, the Treasurer’s Instructions that apply to and in relation to the Corporation under that Act are to be taken to be, for the purposes of this Act and the *Financial Management and Audit Act 1990*, modified in accordance with the notice.

41. Authorised deposit-taking institution accounts

The Corporation may open and operate such authorised deposit-taking institution accounts as it considers necessary.

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42. Funds of Corporation

- (1) The funds of the Corporation consist of –
 - (a) the moneys provided by the Commonwealth to the State pursuant to the Intergovernmental Agreement; and
 - (b) any moneys –
 - (i) provided by the State; and
 - (ii) received by the Corporation in the course of performing its functions and exercising its powers; and
 - (iii) received by the Corporation from any other source.
- (2) The funds of the Corporation are to be applied –
 - (a) in payment of the remuneration of the directors, the chief executive officer and the employees; and
 - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Corporation in the performance and exercise of its functions and powers.

43. Effect of *Financial Agreement Act 1994*

If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires the Corporation to do or refrain from doing anything

for the purpose of implementing the Agreement, within the meaning of that Act, the Corporation must comply with that requirement.

44. Investment

Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Corporation may invest any funds held by it and any interest accumulated in respect of those funds in any manner which is consistent with –

- (a) sound commercial practice; and
- (b) any instructions issued by the Minister.

45. Borrowing from Treasurer

- (1) The Treasurer may lend to the Corporation such money as the Treasurer considers appropriate.
- (2) Before making a loan to the Corporation, the Treasurer must consult with the Minister.
- (3) A loan is subject to the conditions determined by the Treasurer.
- (4) An amount lent under subsection (1) and any interest or other charge payable in respect of the loan is a debt repayable into the Consolidated Fund by the Corporation.

46. Capital contribution by Treasurer

- (1) The Treasurer may pay an amount to the Corporation as a contribution to its reserves.

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- (2) An amount paid under subsection (1) is not a borrowing and is not subject to repayment or the payment of interest.

47. Borrowing from person other than Treasurer

- (1) Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Corporation may borrow, or otherwise obtain financial accommodation, from a person other than the Treasurer for the purposes of performing its functions and achieving its objectives.
- (2) The Corporation must not borrow or otherwise obtain financial accommodation from another person under subsection (1) without the written approval of the Treasurer.
- (3) The Corporation may use all or part of its assets as security for a borrowing or financial accommodation obtained by it under subsection (1) and for any interest or charges payable in respect of that financial accommodation.
- (4) On the request of the Minister, the Treasurer may guarantee the payment or repayment to a person from which the Corporation borrows or obtains financial accommodation under subsection (1) of any one or more of the following:
- (a) the amount borrowed or credit obtained;

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- (b) any interest payable in respect of the amount borrowed or financial accommodation;
 - (c) any charges relating to the borrowing or financial accommodation;
 - (d) any expenses of that person incurred in relation to the borrowing or financial accommodation and which are payable by the Corporation.
- (5) A guarantee is subject to the conditions determined by the Treasurer.
- (6) If the Treasurer makes any payment or repayment under a guarantee, an amount equal to the amount so paid or repaid, and any interest or other charge payable by the Corporation in accordance with the conditions to which the guarantee is subject, is a debt repayable by the Corporation into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.
- (7) A creditor may not enforce a guarantee against the Treasurer until the creditor has exercised all his, her or its rights and remedies under all securities held in respect of the payment or repayment guaranteed.

Division 2 – Accounting records and financial statements

48. Accounting records

The Board is to –

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- (a) keep accounting records that correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
 - (i) allows true and fair accounts of the Corporation to be prepared from time to time; and
 - (ii) allows the accounts of the Corporation to be conveniently and properly audited or reviewed; and
 - (iii) subject to any contrary direction of the Treasurer, complies with the Australian Accounting Standards; and
 - (iv) complies with any written directions of the Minister; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or such other period as the Treasurer determines.

49. Financial statements

- (1) The Board is to prepare and forward to the Auditor-General a copy of its financial statements for each financial year in accordance with the *Audit Act 2008*.

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- (2) Financial statements in respect of a financial year are to consist of the following:
- (a) an operating statement for that financial year;
 - (b) a statement of financial position as at the end of that financial year;
 - (c) a statement of the cash flows for that financial year;
 - (d) any other financial information required to be included by a direction given under subsection (4);
 - (e) any statements, reports and notes, other than a directors' report or an auditor's report, attached to, or intended to be read with, the operating statement and the statement of financial position.
- (3) The financial statements are to –
- (a) comply with any direction given under subsection (4); and
 - (b) subject to that direction, comply with the Australian Accounting Standards.
- (4) The Treasurer may give any written directions to the Board in respect of the form of the financial statements.

Division 3 – Annual report and other information

50. Annual report

- (1) The Board is to prepare in respect of the Corporation an annual report for each financial year.
- (2) The annual report is to include the following:
 - (a) the financial statements of the Corporation for the financial year to which the annual report relates;
 - (b) a copy of the Auditor-General's report, in respect of the financial statements, that is provided under section 19 of the *Audit Act 2008* to the Board;
 - (c) a summary of the corporate plan of the Corporation;
 - (d) a report on the performance of the Corporation;
 - (e) a report on the operations of the Corporation;
 - (f) any information the Minister requires relating to the directors, chief executive officer and employees;
 - (g) the details of any directions given by the Minister under section 36 and any action taken by the Board in respect of those directions;

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- (h) any other information the Minister requires;
 - (i) any other information the Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of the Corporation.
- (3) The Board is to provide the annual report to the Minister by not later than 31 October in each year.
 - (4) Section 36 of the *State Service Act 2000* does not apply in respect of the Board.

51. Tabling of annual report

- (1) The Minister is to lay a copy of the annual report of the Corporation provided under section 50 before each House of Parliament within 4 months after the end of the financial year to which the annual report relates.
- (2) If the Minister is unable to comply with subsection (1) for any reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, the Minister, before the expiration of that period, is to lay before each House of Parliament a statement specifying –
 - (a) the reasons for the failure to comply with that subsection; and

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- (b) an estimate of the day by which a copy of the annual report may be ready to be laid before each House of Parliament.
- (3) If the Minister is unable to lay a copy of the annual report before a House of Parliament within the period specified in subsection (1) or by the day specified in a statement referred to in subsection (2) because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –
 - (a) provide a copy of the annual report to the Clerk of that House of Parliament immediately after the expiration of that period or that day; and
 - (b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

PART 7 – MISCELLANEOUS

52. Minister may transfer employees to Corporation

- (1) For the purposes of this section –

transferring employee means a person who, immediately before the commencement of this Act, was a State Service officer or State Service employee.

- (2) The Minister, by notice published in the *Gazette*, may specify that, on and after the commencement of this Act or a later day specified in the notice, a particular transferring employee who is specified in the notice is to be taken to have been appointed under the *State Service Act 2000* for the purposes of the Corporation.
- (3) The Minister, by notice published in the *Gazette*, may provide for any matters that are incidental to the transfer of employment of transferring employees to the Corporation.
- (4) A person who is specified in a notice under subsection (2) to be taken to have been appointed under the *State Service Act 2000* for the purposes of the Corporation, is to be taken, on and after the commencement of this Act or the later day, as specified in the notice, to have been appointed under the *State Service Act 2000* for those purposes.
- (5) Nothing in subsection (4) is to be taken to prevent the transfer or termination of the

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appointment or employment of a person, to whom that subsection applies, under the *State Service Act 2000*.

53. Transfer of Crown land

- (1) The Minister, by notice published in the *Gazette*, may transfer Crown land, including the Macquarie Point land, specified in the notice to the Corporation if –
 - (a) the Treasurer and the Minister administering the *Crown Lands Act 1976* approve that transfer; and
 - (b) the Corporation has agreed to the transfer.
- (2) A notice under subsection (1) –
 - (a) takes effect on the day it is published in the *Gazette* or a later day specified in the notice; and
 - (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (3) On the day on which a notice under subsection (1) takes effect, the Crown land specified in the notice –
 - (a) ceases to be Crown land; and
 - (b) vests in the Corporation –
 - (i) subject only to those estates in the land specified in the notice; or

- (ii) if the notice does not specify that the land vests subject to an estate, free from all encumbrances.

54. Transfer of property and obligations

- (1) The Minister, by notice published in the *Gazette*, may transfer any property (other than Crown land), rights and obligations, whether actual, prospective or contingent, of the Crown to the Corporation as specified in that notice if the Corporation has agreed to the transfer.
- (2) On the day on which a notice under subsection (1) takes effect –
 - (a) the property and rights specified in the notice vest in the Corporation; and
 - (b) the obligations specified in the notice become obligations of the Corporation.
- (3) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

55. State tax not payable

- (1) In this section –

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

- (a) a fee, including an application fee and registration fee;

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- (b) a tax, including a duty;
 - (c) a charge.
- (2) No State tax is payable in respect of –
- (a) the transfer of Crown land under section 53; or
 - (b) the transfer of any other property, right or obligation under section 54; or
 - (c) anything the Minister certifies as having been done as a consequence of any such transfer.

56. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

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- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Board or the chief executive officer.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

57. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Economic Development; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Economic Development, Tourism and the Arts.

58. Consequential amendments

The legislation specified in Schedule 4 is amended as specified in that Schedule.

SCHEDULE 1 – DIRECTORS

Section 9(5)

1. Interpretation

In this Schedule –

director includes acting director.

2. Term of office

- (1) A director who is not also the chief executive officer holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.
- (2) A director who is, or becomes, the chief executive officer holds the office of director only while he or she is the chief executive officer.
- (3) Nothing in subclause (2) prevents a person from being reappointed as a director after his or her previous appointment is terminated by reason of that subclause.

3. Conditions of appointment

- (1) A director is entitled to be paid the remuneration and allowances determined by the Governor.
- (2) A director holds office on such conditions in relation to matters not provided for by this Act as are specified in the instrument of appointment.

- (3) In subclause (2) –
matters includes superannuation.

4. Devotion of whole time to duties

- (1) Where the holder of an office under an Act is required, by or under any Act, to devote the whole of his or her time to the duties of that office, that requirement does not operate to disqualify the holder from holding that office in conjunction with the office of director.
- (2) A director may hold the office of director in conjunction with State Service employment.

5. State Service Act 2000

The *State Service Act 2000* does not apply in relation to a director in his or her capacity as a director.

6. Leave of absence

The Board may grant leave of absence to a director on such conditions as the Board considers appropriate.

7. Resignation

A director may resign by signed notice given to the Minister.

8. Removal of director

- (1) The Minister must recommend to the Governor that a director be removed from office if –
- (a) the director fails to disclose a material personal interest; or
 - (b) the director has been convicted of an offence under this Act; or
 - (c) the director has been convicted of an indictable offence or an offence which, if committed in Tasmania, would be an indictable offence; or
 - (d) the Minister considers that the director is physically or mentally incapable of continuing as a director; or
 - (e) the Minister considers that the director is unable to perform adequately or competently the functions of the director's office; or
 - (f) the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration or estate for their benefit; or
 - (g) the director is absent from 3 consecutive meetings of the Board without leave of absence; or

- (h) the director fails to comply with a requirement under section 30; or
 - (i) the Minister considers it appropriate or necessary to do so for any other reason.
- (2) The Governor may remove a director from office on the recommendation of the Minister under subclause (1).
- (3) The Governor, on the recommendation of the Minister, may remove all directors from office if the Governor is satisfied that the Corporation has wilfully disregarded a direction under section 36.
- (4) If the Governor removes all the directors of the Corporation from office on a recommendation made under subclause (3), the Minister must lay a copy of the reasons for the recommendation before each House of Parliament within 21 sitting-days after the directors are removed from office.

9. Filling of vacancy

- (1) A director vacates office if he or she –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under clause 8; or
 - (d) has an order made against him or her under section 31(3)(a).

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- (2) The Governor, on the recommendation of the Minister, may appoint a person to a vacant office of director for the remainder of the predecessor's term of office if the Governor is satisfied that the person has the experience and skills relevant to the functions of the Corporation.

10. Validation of proceedings, &c.

- (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of director.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a director or that any other person was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act as, or was capable of being, a director, and as if the Board had been fully constituted.

11. Presumptions

In any proceeding by or against the Corporation or the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or

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(b) the appointment of a director.

SCHEDULE 2 – MEETINGS OF BOARD

Section 9(6)

1. Convening of meetings

- (1) Subject to subclause (2), meetings of the Board are to be held at the times and places determined by the Board.
- (2) The chairperson, after giving each other director reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other directors.
- (3) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by –
 - (a) 2 or more other directors; or
 - (b) a person authorised by the Board to do so.
- (4) For the purposes of subclauses (2) and (3), what constitutes reasonable notice is to be determined by the Board.

2. Presiding at meetings

- (1) The chairperson must preside at all meetings of the Board at which he or she is present.

- (2) If the chairperson is not present at a meeting of the Board, a director chosen by the directors present at the meeting must preside.

3. Quorum and voting at meetings

- (1) At a meeting of the Board, a quorum is constituted by a majority of the total number of directors appointed.
- (2) At a meeting of the Board –
- (a) the director presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the directors present and voting; or
 - (ii) in the negative if there is an equality of votes of the directors present and voting.
- (3) At a meeting of the Board where a director is excluded from being present and taking part in the consideration and decision of the Board in relation to the matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of directors specified as constituting a quorum in subclause (1) less the number of directors so excluded.

4. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit directors to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of electronic communication approved by the Board.
- (3) A director who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

5. Resolutions without meetings

- (1) If all directors appointed sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the directors signs the document.

- (2) If a resolution is taken to have been passed under subclause (1), each director is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

6. Minutes

The Board must keep minutes of its proceedings.

SCHEDULE 3 – COMMITTEES

Section 12(4)

1. Membership of committees

- (1) A committee consists of such number of persons as the Board determines.
- (2) The chief executive officer of the Corporation may not be a member of its audit committee.
- (3) The chairperson of an audit committee must be a director.

2. Conditions of appointment

- (1) A member of a committee is entitled to be paid such remuneration and allowances as are determined by the Minister.
- (2) A member of a committee holds that office for the term, and on the conditions, determined by the Board.

3. Meetings

- (1) Meetings of a committee are to be held in accordance with any directions given by the Board.
- (2) A committee may obtain assistance, information and advice from any person.
- (3) Except as provided by this Schedule, a committee may regulate the calling of, and the conduct of business at, its meetings.

4. Disclosure of interests

(1) If –

- (a) a member of a committee or the relative of a member of a committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

Penalty: Fine not exceeding 10 penalty units or a term of imprisonment not exceeding 3 months, or both.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the committee otherwise determines, the member of the committee must not –

- (a) be present during any deliberation of the committee in relation to the matter; or
- (b) take part in any decision of the committee in relation to the matter.

(3) For the purpose of making a determination under subclause (2), the member of the committee to whom the determination relates must not –

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- (a) be present during any deliberation of the committee for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply in respect of an interest that arises only because the member of a committee is also a State Service officer or State Service employee.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Section 58

State Service Act 2000

- 1.** Schedule 1 is amended by inserting after

Integrity Commission		Chief executive officer
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in Part 2 the following item:

Macquarie Point Development Corporation		Chief executive officer
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