

TASMANIA

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**BELL BAY POWER STATION BILL 2004**

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**CONTENTS**

**PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART 2 – PURCHASE OF COMPANY**

4. Power to sell Company
5. Power to purchase Company
6. Consideration for purchase of shares
7. Shares
8. Contracts
9. Taxes
10. Constitution of Company
11. Board of Company
12. Status of Company

**PART 3 – FINANCIAL PROVISIONS**

13. Accounts and report of Company
14. Loan from Treasurer
15. Guarantee or indemnity

16. Fees in respect of guarantee
17. Tax equivalents
18. Audit
19. Treasurer's Instructions
20. Effect of *Financial Agreement Act 1994*
21. Superannuation

**PART 4 – MISCELLANEOUS AND SUPPLEMENTAL**

22. Limitation on sale, &c., of assets
23. Limitations on Treasurer and Minister
24. *Land Acquisition Act 1993* does not apply
25. Arrangements with Minister
26. Regulations
27. Administration of Act

**SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN  
CONSTITUTION**

# **BELL BAY POWER STATION BILL 2004**

*(Brought in by the Treasurer, the Honourable Paul  
Anthony Lennon)*

## **A BILL FOR**

**An Act to provide for the transfer of Bell Bay Power  
Pty. Ltd. from the Hydro-Electric Corporation to the  
Crown and for related 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**

### **Short title**

**1.** This Act may be cited as the *Bell Bay Power Station Act 2004*.

### **Commencement**

**2. (1)** Part 1 and sections 11, 26 and 27 commence on the day on which this Act receives the Royal Assent.

**(2)** The remaining provisions of this Act commence on a day to be proclaimed.

**Interpretation**

**3.** In this Act, unless the contrary intention appears –

**“Board”** means the board of directors of the Company;

**“Company”** means Bell Bay Power Pty. Ltd. (ACN 097 079 331);

**“existing shares”** means the shares in the Company that were issued to Hydro Tasmania before their sale to the Crown under Part 2;

**“Hydro Tasmania”** means the Hydro-Electric Corporation continued under the *Hydro-Electric Corporation Act 1995*;

**“Minister”** means the Minister administering the *Energy Co-ordination and Planning Act 1995*;

**“subsidiary”** has the same meaning as in the Corporations Act.

## **PART 2 – PURCHASE OF COMPANY**

### **Power to sell Company**

**4.** Despite the *Government Business Enterprises Act 1995* and the *Hydro-Electric Corporation Act 1995*, Hydro Tasmania may sell the existing shares in the Company to the Crown.

### **Power to purchase Company**

**5.** On behalf of the Crown, the Treasurer and the Minister may each purchase from Hydro Tasmania one half of all the existing shares in the Company.

### **Consideration for purchase of shares**

**6.** Consideration for the purchase of the existing shares may be cash, the assumption of liabilities by the Crown or otherwise as determined by the Treasurer in consultation with Hydro Tasmania.

### **Shares**

**7. (1)** The existing shares purchased by the Treasurer and the Minister are held in trust for the Crown.

**(2)** The Treasurer and the Minister must not acquire shares in the Company for his or her own benefit.

**(3)** Any shares acquired in the Company in contravention of subsection (2) are taken to be held in trust for the Crown but the Crown is not liable to meet the cost of that acquisition.

**Contracts**

**8.** A person who is a party to a contract with the Company is not entitled to –

- (a) terminate the contract; or
- (b) claim that there has been a breach or default of the contract; or
- (c) exercise any rights; or
- (d) claim any remedy or benefit –

by reason only of the purchase of the existing shares by the Crown.

**Taxes**

**9.** Any tax, duty, fee or charge under any law of Tasmania is not payable in respect of –

- (a) the purchase of the existing shares by the Crown; or
- (b) anything the Treasurer certifies, in writing, as having been done as a consequence of or in connection with the purchase of the existing shares by the Crown.

**Constitution of Company**

**10. (1)** Hydro Tasmania is to ensure that, as soon as practicable after this section commences, the constitution of the Company –

- (a) includes provisions to the effect of the provisions set out in Schedule 1; and

- (b) is consistent with this Act.

**(2)** While the Crown has beneficial ownership of all the shares in the Company, the Treasurer and the Minister are to ensure that the constitution of the Company –

- (a) includes provisions to the effect of the provisions set out in Schedule 1; and
- (b) is consistent with this Act.

### **Board of Company**

**11. (1)** While Hydro Tasmania owns all the shares in the Company, it is to ensure that the Company has a Board that –

- (a) has the experience and skills necessary to enable the Company to conduct its affairs; and
- (b) includes at least 2 directors who are neither –
  - (i) members of the board of directors of Hydro Tasmania; or
  - (ii) employees of Hydro Tasmania.

**(2)** While the Crown has beneficial ownership of all the shares in the Company, the Treasurer and the Minister are to ensure that the Company has a Board that has the experience and skills necessary to enable the Company to conduct its affairs.

### **Status of Company**

**12. (1)** Unless this or any other Act expressly provides otherwise, the Company, or a subsidiary of the Company,

while the Crown has beneficial ownership of all the shares in the Company –

- (a) is not, and does not represent, the Crown; and
- (b) is not exempt from any rate, tax, duty or other impost imposed under any law merely because the Crown has beneficial ownership of shares in it; and
- (c) is not subject to any prerogative right or privilege of the Crown.

**(2)** The Crown is not liable for any liability or obligation of the Company unless the Treasurer gives a guarantee or indemnity under section 15.



### **PART 3 – FINANCIAL PROVISIONS**

#### **Accounts and report of Company**

**13. (1)** While the Crown has beneficial ownership of all the shares in the Company, the Board is to provide the Treasurer and the Minister with copies of –

- (a) the constitution of the Company as soon as practicable after –
  - (i) the purchase of the Company by the Crown; or
  - (ii) any adoption by the Company of a new constitution; and
- (b) any amendment to the constitution of the Company as soon as practicable after that amendment is made; and
- (c) any financial statement, directors' report or auditor's report and the annual return for the Company as required by the Corporations Act as soon as practicable after the making of that statement, report or return.

**(2)** The Minister is to cause the copies referred to in subsection (1) to be laid before each House of Parliament within 7 sitting days after receiving them.

#### **Loan from Treasurer**

**14. (1)** While the Crown has beneficial ownership of all the shares in the Company, the Treasurer may lend to the Company or its subsidiary, out of money provided by Parliament for the purpose, any money the Treasurer considers appropriate.

**(2)** A loan is subject to any conditions the Treasurer determines.

**(3)** An amount lent under subsection (1), together with any interest or other charge payable in respect of that amount, is a debt repayable to the Crown.

### **Guarantee or indemnity**

**15. (1)** While the Crown has beneficial ownership of all the shares in the Company, the Treasurer, on the written request of the Company or its subsidiary, may give a guarantee or an indemnity relating to –

- (a) the repayment of any money lent or agreed to be lent to the Company or subsidiary; or
- (b) the performance of an obligation undertaken by the Company or subsidiary, or which the Company or subsidiary has agreed to undertake, whether that obligation is monetary or otherwise.

**(2)** A guarantee or an indemnity –

- (a) is to be in writing; and
- (b) may include a guarantee of, or an indemnity relating to, any interest and other charges payable in respect of money lent or agreed to be lent or in respect of or arising from an obligation undertaken or agreed to be undertaken; and
- (c) is subject to any conditions that the Treasurer determines and specifies in the guarantee or indemnity.

(3) The Treasurer is to make any payment required under or arising from a guarantee or indemnity out of money provided by Parliament for the purpose.

(4) This section has effect regardless of where the loan or obligation was undertaken or agreed to be undertaken or where it is required to be repaid or performed.

### **Fees in respect of guarantee**

**16.** While the Crown has beneficial ownership of all the shares in the Company, Division 1 of Part 11 of the *Government Business Enterprises Act 1995* applies in respect of the Company or a subsidiary of the Company as if –

- (a) the Company or subsidiary were a Government Business Enterprise specified in Schedule 3 to that Act; and
- (b) a reference to financial accommodation in that Division were a reference to a financial benefit arising from a guarantee given under section 15 of this Act.

### **Tax equivalents**

**17.** While the Crown has beneficial ownership of all the shares in the Company, the provisions of Part 10 of the *Government Business Enterprises Act 1995* apply in respect of the Company and a subsidiary of the Company as if –

- (a) the Company were a Government Business Enterprise specified in Schedule 2 to that Act; and

- (b) the subsidiary were a subsidiary within the meaning of that Act.

### **Audit**

**18.** After the purchase of the existing shares by the Crown, the Auditor-General is to act as the auditor for the Company unless the Company appoints another person as auditor for the Company.

### **Treasurer's Instructions**

**19.** While the Crown has beneficial ownership of all the shares in the Company, any Treasurer's Instructions issued under the *Government Business Enterprises Act 1995* providing for guidelines relating to the determination, calculation and payment of income tax equivalents, guarantee fees and other related matters, including superannuation, apply to the Company or its subsidiary as if the Company or subsidiary were a Government Business Enterprise specified in Schedule 2 to that Act.

### **Effect of *Financial Agreement Act 1994***

**20.** If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994* and while the Crown has beneficial ownership of all the shares in the Company, requires the Company to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Company is to comply with that requirement.

**Superannuation**

**21. (1)** Subject to subsection (2), while the Crown has beneficial ownership of all the shares in the Company, the Company may make contributions to one or more superannuation schemes that comply with the law of the Commonwealth relating to superannuation and may participate in the superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.

**(2)** Subsection (1) only authorises the Company to participate in a superannuation scheme referred to in that subsection in respect of an employee of the Company if, were the Company a Government department, that employee would be eligible to participate in that superannuation scheme.

**(3)** If the Company participates in either of the superannuation schemes referred to in subsection (1), those of its employees who are subject to the superannuation scheme are taken to be employed by the State for the purposes of the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.

**(4)** A contribution made by the Company to a superannuation scheme referred to in subsection (1) in respect of any of its employees is not to be in excess of the rate specified in section 6(7) of the *Public Sector Superannuation Reform Act 1999*.

**(5)** The Company may not establish a superannuation scheme.

**(6)** If the Company participates in a superannuation scheme provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*, the Company is to comply with any instruction relating to superannuation given to it by the Minister administering those Acts.

**PART 4 – MISCELLANEOUS AND SUPPLEMENTAL****Limitation on sale, &c., of assets**

**22. (1)** While the Crown has beneficial ownership of all the shares in the Company, the Company may not sell or otherwise dispose of the whole or a substantial part of its undertaking or assets unless the sale or disposal is approved by each House of Parliament.

**(2)** For the purposes of subsection (1), a sale or disposal is approved by a House of Parliament –

- (a) when the House passes a motion approving the sale or disposal; or
- (b) if no notice of a motion to disapprove the sale or disposal is before the House at the end of 5 sitting-days after notice of the sale or disposal was laid before the House, when that period ends; or
- (c) if notice of any such motion to disapprove is before the House at the end of that period, when the first of the following occurs:
  - (i) the notice is withdrawn;
  - (ii) the motion is negatived;
  - (iii) a further period of 5 sitting-days ends.

**Limitations on Treasurer and Minister**

**23. (1)** The Treasurer and Minister must not sell or otherwise dispose of the shares held by them unless the sale or disposal is approved by each House of Parliament.

**(2)** For the purposes of subsection (1), a sale or disposal is approved by a House of Parliament –

- (a) when the House passes a motion approving the sale or disposal; or
- (b) if no notice of a motion to disapprove the sale or disposal is before the House at the end of 5 sitting-days after notice of the sale or disposal was laid before the House, when that period ends; or
- (c) if notice of any such motion to disapprove is before the House at the end of that period, when the first of the following occurs:
  - (i) the notice is withdrawn;
  - (ii) the motion is negated;
  - (iii) a further period of 5 sitting-days ends.

**(3)** The Treasurer and Minister must not vote at a meeting of the shareholders of the Company to allow the Company to –

- (a) offer shares in the Company for subscription; or
- (b) grant options over unissued shares in the Company; or
- (c) invite persons to subscribe for shares in the Company; or
- (d) allot or issue shares in the Company on a basis other than to existing shareholders pro rata to their existing shareholding.

**(4)** In subsection (3), a reference to shares includes a reference to shares of a kind specified in section 254A(1) of the Corporations Act.

(5) The Treasurer and Minister must not vote at a meeting of the shareholders of the Company to allow the Company to sell or otherwise dispose of the whole or a substantial part of its undertaking or assets unless the sale or disposal is approved by each House of Parliament in accordance with section 22(2).

***Land Acquisition Act 1993 does not apply***

**24.** The Company is not a public authority for the purposes of the *Land Acquisition Act 1993*.

**Arrangements with Minister**

**25. (1)** While the Crown has beneficial ownership of all the shares in the Company, the Minister may enter into an agreement with the Company under which it agrees to perform, or to cease to perform, functions.

(2) The terms of the agreement may provide for reimbursement to the Company out of money provided by Parliament for the purpose.

**Regulations**

**26. (1)** The Governor may make regulations for the purposes of this Act.

(2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.

(3) The regulations may authorise any matter to be from time to time determined, applied or regulated by a person specified in the regulations.



(4) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of a provision of this Act or on the sale of the existing shares to the Crown under Part 2.

(5) Regulations made under subsection (4) may take effect on the day on which the event consequent on which they are made occurs or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

### **Administration of Act**

**27.** 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 Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

**SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN  
CONSTITUTION**

## Section 10

**Interpretation**

**1.** Words, phrases and expressions used in this constitution have the same meanings as in –

- (a) the Corporations Act; and
- (b) except where inconsistent with that Act, the *Bell Bay Power Station Act 2004*.

**Powers and duties of Board**

**2.** Subject to the Corporations Act and this constitution –

- (a) the business of the Company must be managed by the board of directors; and
- (b) the board of directors may exercise all powers of the Company as are not, by the Corporations Act or by this constitution, required to be exercised by the members.

**Approval for borrowings**

**3.** Except where approved by special resolution, the Company must not borrow from any person other than the Tasmanian Public Finance Corporation or the Treasurer.

**Approval for matters relating to ownership of subsidiaries**

**4.** Except where approved by special resolution, the Company must not –

- (a) form or acquire, or participate in the formation or acquisition of, a subsidiary; or
- (b) dispose of shares in a subsidiary; or
- (c) enter into any transaction which may result in a subsidiary ceasing to be a subsidiary.

**Approval for constitution of subsidiary in relation to borrowings**

**5.** Except where approved by special resolution, the Company must not –

- (a) approve the constitution of a subsidiary unless the constitution contains provisions that are substantially the same as clauses 3 and 4 of Schedule 1 to the *Bell Bay Power Station Act 2004*; or
- (b) approve or effect an amendment to one or more of those provisions.

**Member request for information**

**6.** On the written request of a member, the Company must provide to the member –

- (a) the business or strategic plans of the Company and any subsidiary as specified in the request; and

**sch. 1**

No.

*Bell Bay Power Station*

2004

- (b) any financial information relating to the Company specified in the request; and
- (c) a report on the matters relating to the Company specified in the request; and
- (d) any other information relevant to any such plan, financial information or report.