

TASMANIA

TOTE TASMANIA (SALE) BILL 2009

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

TOTE TASMANIA (SALE) BILL 2009

(Brought in by the Treasurer, the Honourable Michael Anthony Aird)

A BILL FOR

An Act to provide for the sale of shares in, or the business of, TOTE Tasmania and its subsidiaries, to consequentially amend the *TOTE Tasmania Act 2000*, to repeal and revoke certain legislation 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

1. Short title

This Act may be cited as the *TOTE Tasmania (Sale) Act 2009*.

2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention appears –

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“asset” includes any real and personal property, operation, right and licence;

“business”, in relation to TOTE Tasmania or a TOTE subsidiary, has the meaning given by section 4;

“contract” includes an agreement and an arrangement;

“legal proceeding” includes arbitration and mediation;

“liability” means an actual, contingent or prospective liability, duty or obligation;

“property” means –

- (a) any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property; and
- (b) money, documents and securities; and
- (c) shares in a TOTE subsidiary; and
- (d) any other rights;

“right” means a right, power, privilege or immunity, whether present or future and whether vested or contingent;

“sale day” means –

- (a) in relation to the sale of shares in TOTE Tasmania or in a TOTE

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subsidiary under section 5(1)(a) or (c), the day on which those shares are acquired by the purchaser; or

- (b) in relation to the sale of the business of TOTE Tasmania or of a TOTE subsidiary under section 5(1)(b) or (d), the day on which the business vests in the purchaser;

“statutory rule” means a statutory rule within the meaning of the *Rules Publication Act 1953*;

“TOTE subsidiary” means a subsidiary, within the meaning of the Corporations Act, of TOTE Tasmania;

“TOTE Tasmania” means the company formed under section 6 of the *TOTE Tasmania Act 2000*.

4. Business defined

- (1) In relation to TOTE Tasmania or a TOTE subsidiary –

“business” includes –

- (a) the business conducted by TOTE Tasmania or the TOTE subsidiary; and
- (b) the goodwill of that business; and

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- (c) the assets of TOTE Tasmania or the TOTE subsidiary; and
 - (d) the liabilities, duties and obligations of TOTE Tasmania or the TOTE subsidiary, whether present or future and whether vested or contingent; and
 - (e) a part of the business of TOTE Tasmania or the TOTE subsidiary.
- (2) However –
 - (a) this Act does not apply in relation to a part of the business of TOTE Tasmania or of a TOTE subsidiary that the Treasurer, under subsection (3), has excluded from the operation of this Act; and
 - (b) a provision of this Act does not apply in relation to a part of the business of TOTE Tasmania or of a TOTE subsidiary that the Treasurer, under subsection (3), has excluded from the operation of that provision.
- (3) The Treasurer, by order, may exclude a part of the business of TOTE Tasmania, or the whole or a part of the business of a TOTE subsidiary, from the operation of this Act or a provision of this Act.
- (4) An order under subsection (3) is a statutory rule.

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Part 2 – Authority of Treasurer to Sell TOTE Tasmania

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**PART 2 – AUTHORITY OF TREASURER TO SELL
TOTE TASMANIA**

5. Authority of Treasurer to sell TOTE Tasmania

- (1) While all the shares in TOTE Tasmania are held by the Treasurer and another Minister in trust for the Crown, the Treasurer may sell and transfer, in accordance with this Act, one or more of the following:
 - (a) those shares in TOTE Tasmania;
 - (b) the business of TOTE Tasmania;
 - (c) the shares in a TOTE subsidiary;
 - (d) the business of a TOTE subsidiary.
- (2) A sale under this section will be on the conditions the Treasurer considers appropriate.
- (3) In exercising a power of sale under this section, the Treasurer is to have regard to the achievement of a fair and reasonable price.

6. Treasurer may do convenient things

For the purposes of a sale under section 5, the Treasurer may –

- (a) enter into contracts; and

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- (b) transfer shares in TOTE Tasmania or in a TOTE subsidiary in accordance with this Act; and
- (c) transfer the business of TOTE Tasmania or of a TOTE subsidiary; and
- (d) do any other thing the Treasurer considers necessary or convenient in connection with the sale.

7. Treasurer may give directions to TOTE Tasmania or TOTE subsidiary

- (1) The Treasurer may direct TOTE Tasmania or a TOTE subsidiary to do one or more of the following to facilitate a sale under section 5:
 - (a) take the action specified in the notice;
 - (b) take all reasonable steps and actions.
- (2) A direction is to be in writing provided to TOTE Tasmania or the TOTE subsidiary.
- (3) TOTE Tasmania and a TOTE subsidiary are to comply with a direction.
- (4) The board of directors and chief executive officer of TOTE Tasmania, and the board of directors and chief executive officer of a TOTE subsidiary, may do all things necessary or convenient to be done to enable compliance with a direction.

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8. Treasurer may amend constitution of TOTE Tasmania or TOTE subsidiary, &c.

(1) In this section –

“amend” means do any one or more of the following:

- (a) omit matter;
 - (b) insert matter;
 - (c) omit matter and substitute other matter.
- (2) Despite anything to the contrary in the constitution of TOTE Tasmania or a TOTE subsidiary, the Treasurer may amend, or revoke and substitute, that constitution for the purposes of facilitating a sale under section 5.

9. Exemption from State tax

(1) In this section –

“State tax” means any tax, duty, charge or application, registration or other fee imposed by an Act or other law of Tasmania.

- (2) The Treasurer may determine that State tax is not payable in respect of any document prepared in relation to, or for the purposes of, a sale under section 5.

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- (3) A determination is to be made by certificate provided to the person who would otherwise be required to pay the State tax.
- (4) State tax is not payable in respect of an order under section 18(2) or any other document prepared in relation to, or for the purposes of, the transfer of the business of TOTE Tasmania or of a TOTE subsidiary under section 18.

**PART 3 – SALE OF SHARES IN TOTE TASMANIA OR
TOTE SUBSIDIARY**

10. Application of Part

This Part applies in relation to –

- (a) a sale under section 5(1)(a) of shares in TOTE Tasmania; and
- (b) a sale under section 5(1)(c) of shares in a TOTE subsidiary.

11. Long service leave if shares sold

- (1) This section applies to an employee of TOTE Tasmania or of a TOTE subsidiary to whom, immediately before the sale day, the *Long Service Leave (State Employees) Act 1994* applies.
- (2) On the sale day, the *Long Service Leave (State Employees) Act 1994* ceases to apply to TOTE Tasmania and its employees or the TOTE subsidiary and its employees.
- (3) In calculating, on or after the sale day, the period of service an employee has completed with TOTE Tasmania, or a TOTE subsidiary, for the purposes of calculating his or her entitlement to long service leave under any Act, award or agreement, the employee is taken to have completed, immediately before the sale day, a period of service with TOTE Tasmania, or the

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TOTE subsidiary, calculated in accordance with the following formula:

$$\text{Calculated service} = \frac{S \times P}{10}$$

where:

“Calculated service” is the period of service the employee is taken to have completed with TOTE Tasmania, or the TOTE subsidiary, immediately before the sale day;

“S” is the total period of service the employee has completed with TOTE Tasmania, or with the TOTE subsidiary and TOTE Tasmania, (including service the employee is taken to have completed with TOTE Tasmania) immediately before the sale day;

“P” is the period of service that would have been required to be completed by the employee to be entitled to long service leave under the relevant Act, award or agreement if the shares in TOTE Tasmania, or the TOTE subsidiary, had always been owned by the person who purchased them in the sale under section 5.

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12. Superannuation if shares sold

If the Treasurer agrees to sell the shares in TOTE Tasmania or a TOTE subsidiary, the Minister administering the *Retirement Benefits Act 1993* is to make a declaration under regulation 3(3) of the *Retirement Benefits Regulations 2005* declaring the agreement for that sale to be a prescribed arrangement for the purposes of those regulations.

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Part 4 – Sale of Business of TOTE Tasmania or TOTE Subsidiary

**PART 4 – SALE OF BUSINESS OF TOTE TASMANIA
OR TOTE SUBSIDIARY**

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13. Application of Part

This Part applies in relation to –

- (a) a sale under section 5(1)(b) of the business of TOTE Tasmania; and
- (b) a sale under section 5(1)(d) of the business of a TOTE subsidiary.

Division 2 – Sale of business of TOTE Tasmania or TOTE subsidiary

14. Transitional provisions if business sold

- (1) In this section –

“transferring business” means the business of TOTE Tasmania, or of a TOTE subsidiary, that the Treasurer agrees to sell.

- (2) If the business of TOTE Tasmania or of a TOTE subsidiary is sold, on and after the sale day the following provisions apply except as otherwise agreed, in writing, by the Treasurer and the purchaser:
- (a) a reference in an existing document to TOTE Tasmania, or the TOTE

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subsidiary, in relation to the transferring business is taken, where appropriate, to be or to include a reference to the purchaser;

- (b) a legal proceeding that could have been instituted by or against TOTE Tasmania, or the TOTE subsidiary, immediately before the sale day and that relates to the transferring business may be instituted by or against the purchaser;
- (c) a legal proceeding instituted by or against TOTE Tasmania, or the TOTE subsidiary, that relates to the transferring business and is pending immediately before the sale day may be continued by or against the purchaser;
- (d) a document served on TOTE Tasmania, or the TOTE subsidiary, in respect of a legal proceeding referred to in paragraph (c) is taken to have been served on the purchaser;
- (e) a judgment or order of a court obtained by or against TOTE Tasmania, or the TOTE subsidiary, in relation to the transferring business may be enforced by or against the purchaser but may not be enforced by or against TOTE Tasmania, or the TOTE subsidiary;
- (f) a contract made by TOTE Tasmania, or the TOTE subsidiary, relating to the transferring business but not performed

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or discharged before the sale day is taken to have been made by the purchaser.

- (3) If the business of TOTE Tasmania or of a TOTE subsidiary is sold, the obligations of TOTE Tasmania or the TOTE subsidiary in relation to a liability that becomes the liability of the purchaser as part of that sale are discharged on the sale day.

15. Arrangements for employees if business sold

- (1) In this section –

“transferred employee” means a person whose employment with TOTE Tasmania, or a TOTE subsidiary, is transferred by reason of an order made under subsection (2)(a) and the operation of subsection (6).

- (2) If the Treasurer sells the business of TOTE Tasmania or of a TOTE subsidiary, the Treasurer may, by order provided to TOTE Tasmania or the TOTE subsidiary –
- (a) transfer to the purchaser the employment of a person who, immediately before the sale day, was employed by TOTE Tasmania or the TOTE subsidiary for the purposes of that business; or
 - (b) terminate on any conditions the Treasurer considers appropriate the employment of a person who, immediately before the

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sale day, was employed by TOTE Tasmania or the TOTE subsidiary for the purposes of that business.

- (3) Before transferring or terminating the employment of a person under subsection (2), the Treasurer is to consult with the person in any manner the Treasurer considers appropriate including, but not limited to, consultation with the representatives of the person or the employee organisation to which the person belongs.
- (4) In terminating the employment of a person under subsection (2), the Treasurer is to do so subject to, and in accordance with, any relevant contract, award or agreement.
- (5) On receipt of an order under subsection (2), TOTE Tasmania or the TOTE subsidiary is to give to each person whose employment is transferred or terminated by the order written notice of that transfer or termination.
- (6) On the sale day, or on the day specified in the order under subsection (2) as the day on which the employment of a person is transferred –
 - (a) if the order transfers the employment to the purchaser, that person becomes an employee of the purchaser and the purchaser becomes the employer of that person; and
 - (b) that person ceases to be an employee of TOTE Tasmania or the TOTE subsidiary.
- (7) A transferred employee –

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- (a) is taken to have been employed by the purchaser for the same remuneration as he or she was receiving immediately before the transfer; and
 - (b) except where an award, agreement or law otherwise provides, retains all accrued entitlements as if employment as an employee of the purchaser were a continuation of employment with TOTE Tasmania or the TOTE subsidiary; and
 - (c) is entitled to claim those entitlements against the purchaser; and
 - (d) is not entitled to any compensation or other payment in respect of the change of employer except as provided by the *Retirement Benefits Act 1993* or the *Public Sector Superannuation Reform Act 1999*.
- (8) An award or agreement that had effect in relation to a person immediately before the person became a transferred employee continues to have effect in relation to the person as a transferred employee, except where another award or agreement or any law provides otherwise.
- (9) The period of service with TOTE Tasmania, or with the TOTE subsidiary and TOTE Tasmania, (including service the transferred employee is taken to have completed with TOTE Tasmania) of a person who becomes a transferred employee is taken to be service with the purchaser.

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Part 4 – Sale of Business of TOTE Tasmania or TOTE Subsidiary

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- (10) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, agreement or law after he or she becomes a transferred employee.
- (11) If an order under subsection (2) terminates the employment of a person employed by TOTE Tasmania or a TOTE subsidiary –
- (a) that employment is terminated immediately before the sale day or on the day specified in the order; and
 - (b) that person is not entitled to any compensation or other payment in respect of the termination of employment except as provided by the *Retirement Benefits Act 1993*, the *Public Sector Superannuation Reform Act 1999*, any other law, an award, an agreement or the conditions determined by the Treasurer under subsection (2).
- (12) An order under subsection (2) is not a statutory rule.

16. Long service leave if business sold

- (1) In this section –

“transferred employee” means a person whose employment with TOTE Tasmania, or a TOTE subsidiary, is transferred by reason of an order made

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under section 15(2)(a) and the operation
of section 15(6).

- (2) The *Long Service Leave (State Employees) Act 1994* does not apply to a transferred employee, or to TOTE Tasmania or the TOTE subsidiary on and after the sale day.
- (3) In calculating the period of service a transferred employee has completed with the purchaser for the purposes of calculating his or her entitlement to long service leave under any Act, award or agreement, the transferred employee is taken to have completed, on the day on which he or she becomes the employee of the purchaser, a period of service with the purchaser calculated in accordance with the following formula:

$$\text{Calculated service} = \frac{S \times P}{10}$$

where:

“**Calculated service**” is the period of service the transferred employee is taken to have completed with the purchaser on the day on which he or she becomes the employee of the purchaser;

“**S**” is the total period of service the transferred employee has completed with TOTE Tasmania, or the TOTE subsidiary and TOTE Tasmania, (including service the transferred employee is taken to have completed with TOTE Tasmania) immediately before the sale day;

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“P” is the period of service that would have been required to be completed by the transferred employee to be entitled to long service leave under the relevant Act, award or agreement if the transferred employee had always been an employee of the purchaser.

17. Superannuation if business sold

If the Treasurer makes an order under section 15(2)(a) on the sale of the business of TOTE Tasmania or a TOTE subsidiary transferring to the purchaser the employment of a person, the Minister administering the *Retirement Benefits Act 1993* is to make a declaration under regulation 3(3) of the *Retirement Benefits Regulations 2005* declaring the agreement for that sale to be a prescribed arrangement for the purposes of those regulations.

***Division 3 – Transfer of remaining business of TOTE
Tasmania or TOTE subsidiary to Crown***

18. Transfer of remaining business to Crown

(1) In this section –

“**transfer day**” means the day specified in an order under subsection (2) as the day on which the transfer of the business of TOTE Tasmania, or of a TOTE

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subsidiary, to which the notice relates takes effect;

“transferring business” means the business of TOTE Tasmania or of a TOTE subsidiary that is the subject of an order under subsection (2).

- (2) If the Treasurer sells only a part of the business of TOTE Tasmania or of a TOTE subsidiary under section 5 and a further part of that business remains unsold, the Treasurer, by order published in the *Gazette*, may –
 - (a) transfer to the Crown the whole or any part of the remaining business of TOTE Tasmania or of the TOTE subsidiary; and
 - (b) specify the day on which that transfer takes effect; and
 - (c) specify conditions relating to that transfer; and
 - (d) provide for any matter that is incidental to that transfer.
- (3) An order under subsection (2) may be made in anticipation of the sale of the business of TOTE Tasmania or of a TOTE subsidiary.
- (4) On the transfer day –
 - (a) any business, other than a liability, of TOTE Tasmania or of the TOTE subsidiary that is specified in, and

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transferred by, the order vests in the Crown; and

- (b) any business of TOTE Tasmania or of the TOTE subsidiary that is a liability and is specified in, and transferred by, the order becomes the liability of the Crown.
- (5) Except as otherwise provided in an order under subsection (2), on and after the transfer day the following provisions apply:
- (a) a reference in an existing document to TOTE Tasmania or the TOTE subsidiary, or the board of directors of TOTE Tasmania or the TOTE subsidiary, in relation to the transferring business is taken, where appropriate, to be or to include a reference to the Crown;
 - (b) a legal proceeding that could have been instituted by or against TOTE Tasmania or the TOTE subsidiary immediately before the transfer day and that relates to the transferring business may be instituted by or against the Crown;
 - (c) a legal proceeding instituted by or against TOTE Tasmania or the TOTE subsidiary that relates to the transferring business and is pending immediately before the transfer day may be continued by or against the Crown;
 - (d) a document served on TOTE Tasmania or the TOTE subsidiary in respect of a

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legal proceeding referred to in paragraph (c) is taken to have been served on the Crown;

(e) a judgment or order of a court obtained by or against TOTE Tasmania or the TOTE subsidiary in relation to the transferring business may be enforced by or against the Crown but may not be enforced by or against TOTE Tasmania or the TOTE subsidiary;

(f) a contract made by TOTE Tasmania or the TOTE subsidiary relating to the transferring business but not performed or discharged before the transfer day is taken to have been made by the Crown.

(6) If any dispute arises –

(a) as to whether any business of TOTE Tasmania or of a TOTE subsidiary is transferring business; or

(b) as to whether any, or any part of any, contract relates to transferring business –

the Treasurer may determine the matter and is to provide TOTE Tasmania or the TOTE subsidiary with written notice of that determination.

(7) The determination of the Treasurer under subsection (6) is final and binding on TOTE Tasmania or the TOTE subsidiary and on the Crown.

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- (8) An order under subsection (2) is not a statutory rule.

19. Arrangements for employees if business transferred

- (1) In this section –

“transfer day” means the day specified in an order under section 18(2) as the day on which the transfer of the business of TOTE Tasmania, or of a TOTE subsidiary, to which the notice relates takes effect.

- (2) If the business of TOTE Tasmania or of a TOTE subsidiary is transferred to the Crown under section 18, the Treasurer, by order provided to TOTE Tasmania or the TOTE subsidiary, may terminate on any conditions the Treasurer considers appropriate the employment of a person who, immediately before the transfer day, was employed by TOTE Tasmania or the TOTE subsidiary for the purpose of that business.
- (3) In terminating the employment of a person under subsection (2), the Treasurer is to do so subject to, and in accordance with, any relevant contract, award or agreement.
- (4) On receipt of an order under subsection (2), TOTE Tasmania or the TOTE subsidiary is to give to each person whose employment is terminated by the order written notice of that termination.

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- (5) If an order under subsection (2) terminates the employment of a person employed by TOTE Tasmania or a TOTE subsidiary –
- (a) that employment is terminated immediately before the transfer day or on the day specified in the order; and
 - (b) that person is not entitled to any compensation or other payment in respect of the termination of employment except as provided by the *Retirement Benefits Act 1993*, the *Public Sector Superannuation Reform Act 1999*, any other law, an award, an agreement or any conditions determined by the Treasurer under subsection (2).
- (6) An order under subsection (2) is not a statutory rule.

Division 4 – Deregistration of TOTE Tasmania or TOTE subsidiary

20. Deregistration of TOTE Tasmania

- (1) In this section –
- “business of TOTE Tasmania”** includes the shares in, and the business of, each TOTE subsidiary.
- (2) After the business of TOTE Tasmania has been sold, the Treasurer may apply, or require TOTE Tasmania to apply, for the deregistration of

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TOTE Tasmania under section 601AA of the Corporations Act.

- (3) After the business of a TOTE subsidiary has been sold, the Treasurer may require TOTE Tasmania or the TOTE subsidiary to apply for the deregistration of the TOTE subsidiary under section 601AA of the Corporations Act.
- (4) A requirement under subsection (2) or (3) is to be in writing.
- (5) TOTE Tasmania or a TOTE subsidiary is to comply with a requirement under subsection (2) or (3).

PART 5 – MISCELLANEOUS

21. Power to disclose information

(1) In this section –

“potential purchaser” means a person determined by the Treasurer to be a potential purchaser of –

- (a) the shares in TOTE Tasmania or in a TOTE subsidiary; or
- (b) the business of TOTE Tasmania or of a TOTE subsidiary.

(2) Each of the following persons may disclose information to one or more of the other following persons, or to one or more of the persons referred to in subsection (3)(a), (b), (c) or (e), as the person considers necessary or convenient for the purposes of facilitating a sale under section 5 of shares in, or the business of, TOTE Tasmania or a TOTE subsidiary:

- (a) TOTE Tasmania;
- (b) a director or employee of TOTE Tasmania;
- (c) a TOTE subsidiary;
- (d) a director or employee of a TOTE subsidiary;
- (e) the Treasurer;

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- (f) a person providing professional advice to the Treasurer on any matter relating to such a sale;
 - (g) the Auditor-General;
 - (h) a person, or a person of a class, authorised by the Treasurer, in writing, to disclose information.
- (3) A person to whom information is disclosed under this section must not disclose that information to a person who is not –
- (a) the potential purchaser; or
 - (b) a director, agent or employee of the potential purchaser; or
 - (c) a person providing professional advice to the potential purchaser on any matter relating to the potential purchase; or
 - (d) a person referred to in subsection (2); or
 - (e) a person, or a person of a class, authorised by the Treasurer, in writing, to receive that information.

Penalty: Fine not exceeding 200 penalty units.

22. No Crown guarantee

The obligations of TOTE Tasmania, and of all TOTE subsidiaries, are not guaranteed by the Crown.

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Part 5 – Miscellaneous

23. Proceeds of sale of shares or business

The proceeds of a sale under section 5 are to be paid into the Consolidated Fund.

24. Auditor-General to review sale

- (1) The Auditor-General is to review all sales under section 5 as he or she considers appropriate and lay a report of his or her findings before each House of Parliament within 120 days after –
 - (a) the sale day if the shares in TOTE Tasmania are sold under section 5(1)(a); or
 - (b) the day fixed by proclamation made under section 32(2)(b) if TOTE Tasmania has been deregistered pursuant to section 20.
- (2) For the purposes of enabling the Auditor-General to conduct the review and make the report in accordance with subsection (1), the Treasurer is to ensure that the Auditor-General –
 - (a) is notified of the sale day, or the day fixed by proclamation made under section 32(2)(b), either before or on that day or as soon as is reasonably practicable after that day; and
 - (b) is given access to all information the Auditor-General considers relevant.

25. Protection for acts done under this Act

Any thing done or omitted in good faith that is done or omitted under, or authorised by, this Act does not, except as otherwise expressly provided by or under this Act or as provided or agreed by the person doing or omitting the thing –

- (a) terminate a contract, other instrument or obligation; or
- (b) give rise to a right to terminate a contract, other instrument or obligation by fulfilling a condition or in any other manner; or
- (c) release a surety or other obligee wholly or in part from an obligation; or
- (d) give rise to any right or remedy by a party to a contract or other instrument; or
- (e) constitute a breach of a contract or other instrument; or
- (f) constitute a civil or criminal wrong; or
- (g) constitute a breach of confidence.

26. Excluded matters under Corporations Act

For the purposes of section 5F of the Corporations Act, the following matters are declared to be excluded matters in relation to the whole of that Act:

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- (a) any matter included in this Act;
- (b) any thing done or omitted to be done for the purposes of a matter included in this Act.

27. Non-application of certain Acts

- (1) Entering into and giving effect to a contract, or a contract of a class, approved under subsection (2) is authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Policy Reform (Tasmania) Act 1996*.
- (2) The Treasurer, by order published in the *Gazette*, may approve for the purposes of this section a contract, or a class of contracts, that relates to a sale under section 5.
- (3) An order under subsection (2) is not a statutory rule.

28. Offence by TOTE Tasmania or TOTE subsidiary

- (1) If TOTE Tasmania or a TOTE subsidiary commits an offence against this Act, each director and other person concerned in the management of TOTE Tasmania or the TOTE subsidiary is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –

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- (a) the act or omission constituting the offence took place without the director or other person's knowledge or consent; or
 - (b) the director or other person used all due diligence to prevent that act or omission by TOTE Tasmania or the TOTE subsidiary.
- (2) A director or other person referred to in subsection (1) may be convicted of an offence against this Act whether or not TOTE Tasmania or the TOTE subsidiary is charged with or convicted of the offence.

29. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for all matters relating to, or necessary or convenient to be provided for in connection with, any one or more of the following matters:
 - (a) a sale under section 5;
 - (b) a transfer of the business of TOTE Tasmania or of a TOTE subsidiary to the Crown under section 18;
 - (c) the arrangements relating to persons employed by TOTE Tasmania or by a TOTE subsidiary who are affected by a sale under section 5 or a transfer of the

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- business of TOTE Tasmania or of the TOTE subsidiary to the Crown under section 18;
- (d) the deregistration under the Corporations Act of TOTE Tasmania or a TOTE subsidiary.
- (3) Despite section 26, the regulations may declare for the purposes of section 5F of the Corporations Act that any matter included in this Act, or any act done or omitted for the purposes of a matter included in this Act, is not declared to be an excluded matter in relation to –
- (a) the whole, or any provision, of that Act; or
- (b) that Act other than to an extent specified in the regulations.
- (4) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (5) 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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- (6) The regulations may authorise any matter to be from time to time approved, determined, applied or regulated by the Treasurer.
 - (7) The regulations may contain provisions of a savings or transitional nature consequent on –
 - (a) the enactment of this Act; or
 - (b) a sale under section 5; or
 - (c) a transfer of the business of TOTE Tasmania or of a TOTE subsidiary to the Crown under section 18.
 - (8) Regulations made under subsection (7) may take effect on the day on which this Act commences 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.

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

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31. Savings and transitional provisions

- (1) Despite the completion of a sale under section 5(1)(a) of the shares in TOTE Tasmania, the Auditor-General is to continue to act as auditor of TOTE Tasmania in respect of a financial year completed before that sale.
- (2) After a sale under section 5(1)(a) of the shares in TOTE Tasmania, TOTE Tasmania must –
 - (a) allow the Auditor-General to access documents and information, and to do all other things, necessary for the purposes of complying with subsection (1); and
 - (b) provide, in respect of a financial year completed before that sale, copies of any financial statement, directors' report and auditor's report and the annual return as required by the Corporations Act to the Treasurer unless that financial statement, directors' report, auditor's report or annual return has previously been provided under section 13 of the *TOTE Tasmania Act 2000* as in force on the day on which this Act commences.

Penalty: Fine not exceeding 200 penalty units.

- (3) The Treasurer is to cause a copy of any financial statement, directors' report, auditor's report or annual return provided under subsection (1) to be laid before each House of Parliament within 7 sitting-days after receiving it.

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32. Repeals

(1) In this section –

“prescribed legislation” means the following Acts and proclamations:

- (a) *TOTE Tasmania Act 2000*;
- (b) *TOTE Tasmania (Transitional and Consequential Provisions) Act 2000*;
- (c) *Proclamation under the TOTE Tasmania Act 2000* (S.R. 2001, No. 9);
- (d) *Proclamation under the TOTE Tasmania (Transitional and Consequential Provisions) Act 2000* (S.R. 2001, No. 10).

(2) The prescribed legislation is repealed and revoked –

- (a) if the shares in TOTE Tasmania are sold under section 5(1)(a), on the sale day; or
- (b) if TOTE Tasmania has been deregistered pursuant to section 20, on the day fixed by proclamation made under subsection (3).

(3) On the recommendation of the Treasurer, the Governor, by proclamation, may repeal and revoke the prescribed legislation.

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- (4) Before making a recommendation for the purpose of subsection (3), the Treasurer is to be satisfied that TOTE Tasmania has been deregistered pursuant to section 20.

33. Consequential Amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 33

TOTE Tasmania Act 2000

1. Section 23 is repealed.