TASMANIA

GOVERNMENT BUSINESS GOVERNANCE REFORMS BILL 2026

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GOVERNMENT BUSINESS GOVERNANCE REFORMS BILL 2026

(Brought in by the Treasurer, the Honourable Eric Abetz)

A BILL FOR

An Act to amend the *Electricity Companies Act 1997*, the *Government Business Enterprises Act 1995*, the *Irrigation Company Act 2011*, the *Metro Tasmania Act 1997*, the *Motor Accidents (Liabilities and Compensation) Act 1973*, the *Port Arthur Historic Site Management Authority Act 1987*, the *Public Trustee Act 1930*, the *Racing (Tasracing Pty Ltd) Act 2009*, the *Rail Company Act 2009*, the *Tasmanian Ports Corporation Act 2005*, the *Tasmanian Public Finance Corporation Act 1985* and the *TT-Line Arrangements Act 1993*

Be it enacted by Her 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 *Government Business Governance Reforms Act 2026*.

2. Commencement

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

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

PART 2 – ELECTRICITY COMPANIES ACT 1997 AMENDED

4. Principal Act

In this Part, the *Electricity Companies Act 1997** is referred to as the Principal Act.

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

(a) by omitting the definitions of *board of directors* and *company* and substituting the following definitions:

annual report, in relation to a financial year, means the report prepared under section 18AB in respect of the financial year;

Board, in relation to a Company, means the Board of Directors for the Company;

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under

*No. 69 of 1997

section 11B, that specifies that the function, service or concession is a community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 19;

Company means a company formed under section 5;

corporate plan means the corporate plan of a Company approved under section 11G;

director, in relation to a Company, means a director of the Company;

(b) by omitting "company" three times occurring from paragraph (a) of the definition of *dispose of* and substituting "Company";

(c) by omitting "company" from paragraph (b) of the definition of *dispose of* and substituting "Company";

(d) by omitting "company" from the definition of *incorporation day* and substituting "Company";

(e) by omitting "company" from the definition of *member* and substituting "Company";

(f) by omitting "company" from the definition of *principal objectives* and substituting "Company";

(g) by omitting "company" three times occurring from the definition of *wholly-owned subsidiary* and substituting "Company".

6. Section 4 inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

4. Application of Act to subsidiary

If a Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Company; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board of the Company.

7. Part 2, Division 1: Heading amended

Division 1 of Part 2 of the Principal Act is amended by omitting "***Formation and status of companies***" from the heading to that Division and substituting "***Formation and status of Companies***".

8. Section 6 amended (Principal objectives of Company)

Section 6 of the Principal Act is amended by omitting "company" and substituting "Company".

9. Section 7 substituted

Section 7 of the Principal Act is repealed and the following section is substituted:

7. Constitution of Company

(1) The constitution of a Company is to include –

(a) the principal objectives of the Company; and

(b) any other objectives of the Company approved by the Minister; and

(c) provisions to the effect of the provisions set out in Schedule 1.

(2) The provisions of the constitution of a Company are to be consistent with this Act.

(3) The members of a Company are to give the Minister a copy of an amendment to the constitution of the Company as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this subsection, a Company is to amend its constitution to include provisions to the effect of Schedule 1.

(6) On the commencement of this section –

(a) the memorandum and articles of a Company, as in force immediately before the commencement of this section, are taken to be the constitution of the Company; and

(b) a reference to the memorandum and articles of a Company is taken to be a reference to the constitution of the Company.

10. Section 8 amended (Members of Company)

Section 8 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "company" and substituting "Company";

(b) by omitting from subsection (2)(a) "company" and substituting "Company";

(c) by omitting from subsection (2)(c) "company" and substituting "Company";

(d) by omitting from subsection (3) "company" twice occurring and substituting "Company".

11. Section 9 amended (Shares)

Section 9 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "company" twice occurring and substituting "Company";

(b) by omitting from subsection (2) "company" and substituting "Company";

(c) by omitting from subsection (3) "company" first occurring and substituting "Company";

(d) by omitting from subsection (3) "company for his or her" and substituting "Company for the member's";

(e) by omitting from subsection (4) "company" and substituting "Company".

12. Section 11 amended (Status of Company)

Section 11 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "company" twice occurring and substituting "Company";

(b) by omitting from subsection (2) "company" first occurring and substituting "Company";

(c) by omitting from subsection (2) "company" second occurring and substituting "Company";

(d) by omitting from subsection (2)(b) "company" and substituting "Company".

13. Section 11AA inserted

After section 11 of the Principal Act, the following section is inserted in Division 1:

11AA. Directors of Company

(1) Subject to section 19C, the members of a Company are to ensure that the Company has a Board of Directors who have the experience and skills necessary to enable the Company to achieve its objectives.

(2) The members of a Company are to appoint the Board for the Company in accordance with the constitution.

14. Section 11A amended (Members' statement of expectations)

Section 11A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "company" and substituting "Company";

(b) by omitting from subsection (1) "board of directors" and substituting "Board";

(c) by omitting from subsection (2)(a) "company" and substituting "Company";

(d) by omitting from subsection (2)(b) "company" and substituting "Company";

(e) by omitting from subsection (3) "company" and substituting "Company";

(f) by omitting from subsection (3) "board of directors" and substituting "Board";

(g) by omitting from subsection (4) "company" and substituting "Company";

(h) by omitting from subsection (4) "board of directors" and substituting "Board";

(i) by omitting from subsection (6) "company" and substituting "Company".

15. Section 11B amended (Directions by members)

Section 11B of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “company” twice occurring and substituting “Company”;

(b) by omitting from subsection (2) “company” first occurring and substituting “Company”;

(c) by omitting from subsection (2) “company” second occurring and substituting “Company”;

(d) by omitting from subsection (2)(b) “company” and substituting “Company”;

(e) by omitting from subsection (3) “company” first occurring and substituting “Company”;

(f) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Company or subsidiary; or

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(g) by omitting from subsection (3)(a)(ii) “company” and substituting “Company”;

(h) by omitting from subsection (3)(a)(iii) “company” and substituting “Company”;

(i) by omitting from subsection (3)(a)(iv) “company” and substituting “Company”;

(j) by omitting from subsection (3)(a)(vi) “company” and substituting “Company”;

(k) by inserting the following subsection after subsection (3):

(3A) A direction given to a Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(l) by omitting from subsection (4) “company” first occurring and substituting “Company”;

(m) by omitting from subsection (4) “company” second occurring and substituting “Company”;

(n) by omitting paragraph (b) from subsection (4) and substituting the following paragraph:

(b) on the written request of the Board of the Company or the subsidiary board; or

(o) by omitting from subsection (5)(a) "company" and substituting "Company";

(p) by omitting from subsection (5)(b) "board of directors of the company" and substituting "Board of the Company";

(q) by omitting from subsection (7) "company" twice occurring and substituting "Company";

(r) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members of a Company –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

16. Section 11C amended (Company may object to direction by members)

Section 11C of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "board of directors" and substituting "Board";

(b) by omitting from subsection (2)(a) "company" and substituting "Company";

(c) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(d) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

17. Section 11D amended (Publication of directions)

Section 11D of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “board of directors” and substituting “Board”;

(b) by omitting from subsection (3)(a) “company” and substituting “Company”;

(c) by inserting in subsection (3)(c) “including, but not limited to, commercial in confidence” after “confidentiality”;

(d) by omitting from subsection (5) “report prepared by a board of directors” and substituting “annual report prepared by the Board”;

(e) by omitting from subsection (5) “company” first occurring and substituting “Company”;

(f) by omitting from subsection (5)(a)(i) "board of directors" and substituting "Board";

(g) by omitting from subsection (5)(a)(i) "company" and substituting "Company";

(h) by omitting from subsection (5)(a)(ii) "board of directors" and substituting "Board";

(i) by omitting from subsection (5)(b) "board of directors" and substituting "Board".

18. Section 11E amended (Duty to notify members of compliance with directions)

Section 11E of the Principal Act is amended as follows:

(a) by omitting "board of directors" and substituting "Board";

(b) by omitting "company" first occurring and substituting "Company";

(c) by omitting "company" second occurring and substituting "Company";

(d) by omitting "company" third occurring and substituting "Company";

(e) by omitting from paragraph (b) "company" and substituting "Company".

19. Section 11F amended (Statement of corporate intent)

Section 11F of the Principal Act is amended as follows:

(a) by omitting "company" twice occurring from the definition of *relevant financial year* in subsection (1) and substituting "Company";

(b) by omitting from subsection (2) "board of directors" and substituting "Board";

(c) by omitting from subsection (2) "company" and substituting "Company";

(d) by omitting from subsection (3) "company" first occurring and substituting "Company";

(e) by omitting from subsection (3) "board of directors" and substituting "Board";

(f) by omitting from subsection (3)(a)(i) "company" and substituting "Company";

(g) by omitting from subsection (4) "company" first occurring and substituting "Company";

(h) by omitting from subsection (4)(a) "company" and substituting "Company";

(i) by omitting from subsection (4)(b)(i) "company" and substituting "Company";

(j) by inserting the following subparagraph after subparagraph (i) in subsection (4)(b):

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

(k) by omitting from subsection (4)(b)(ii) “company” and substituting “Company”;

(l) by omitting from subsection (4)(b)(iii) “company” and substituting “Company”;

(m) by omitting from subsection (4)(d) “company” and substituting “Company”;

(n) by omitting from subsection (5) “company” and substituting “Company”;

(o) by omitting from subsection (5)(a) “board of directors” and substituting “Board”;

(p) by omitting from subsection (6) “company” first occurring and substituting “Company”;

(q) by omitting from subsection (6)(a) “company” and substituting “Company”;

(r) by omitting from subsection (6)(b) “company” and substituting “Company”;

(s) by omitting from subsection (7) “board of directors of a company” and substituting “Board of a Company”;

(t) by omitting from subsection (7) “company” second occurring and substituting “Company”;

(u) by omitting from subsection (8) “company” first occurring and substituting “Company”;

(v) by omitting from subsection (8)(a) “company” and substituting “Company”.

20. Section 11G inserted

After section 11F of the Principal Act, the following section is inserted in Division 1:

11G. Corporate plan

(1) In each financial year, the Board of a Company must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer’s Instructions; and

(b) be in a form and contain the information specified in the Treasurer’s Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 11A.

(3) The Board of a Company must provide a draft of the corporate plan to the members of the Company –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board of a Company, the members of the Company may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board of a Company, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members of a Company approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of a Company or a subsidiary is taken to be approval, by the members of the Company, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to a Company or a subsidiary is taken to be approval, by the members of the Company, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

21. Sections 11H, 11I and 11J inserted

Before section 12 of the Principal Act, the following sections are inserted in Division 2:

11H. Audit

The Auditor-General is to act as the auditor for each Company and its subsidiaries.

11I. Borrowing

A Company, or a subsidiary of a Company, is not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

11J. Borrowing from Treasurer

(1) The Treasurer may lend to a Company or any of its subsidiaries, out of money provided by Parliament for the purpose, any money that the Treasurer considers appropriate.

(2) A loan is subject to any conditions determined by the Treasurer.

(3) An amount lent under subsection (1), and any interest or other charge payable in respect of the loan, is a debt repayable by the Company or subsidiary into the Public Account.

22. Section 12 amended (Guarantee or indemnity)

Section 12(1) of the Principal Act is amended as follows:

(a) by omitting "company" first occurring and substituting "Company";

(b) by omitting from paragraph (b) "company" twice occurring and substituting "Company".

23. Section 13 amended (Guarantee fees)

Section 13 of the Principal Act is amended as follows:

(a) by omitting "company" first occurring and substituting "Company";

(b) by omitting "company" second occurring and substituting "Company";

(c) by omitting from paragraph (a) "company" and substituting "Company".

24. Section 14 amended (Tax equivalents)

Section 14 of the Principal Act is amended as follows:

(a) by omitting "company" first occurring and substituting "Company";

(b) by omitting "company" second occurring and substituting "Company";

(c) by omitting from paragraph (a) "company" and substituting "Company".

25. Section 17 amended (Effect of *Financial Agreement Act 1994*)

Section 17 of the Principal Act is amended by omitting “company” twice occurring and substituting “Company”.

26. Section 18 amended (Superannuation for employees)

Section 18 of the Principal Act is amended as follows:

(a) by omitting subsection (1);

(b) by omitting from subsection (3) “company” and substituting “Company”;

(c) by omitting from subsection (4) “company” and substituting “Company”.

27. Part 2, Division 3: Heading amended

Division 3 of Part 2 of the Principal Act is amended by omitting “***Reports and other documents of company***” from the heading to that Division and substituting “***Reports and other documents of Company***”.

28. Section 18AA inserted

Before section 18A of the Principal Act, the following section is inserted in Division 3:

18AA. Quarterly reports

(1) The Board of a Company must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members of the Company.

(2) Despite subsection (1), the members of a Company may agree that the Board of the Company –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members of the Company –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

29. Section 18A amended (Company to report on progress)

Section 18A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "board of directors of a company" and substituting "Board of a Company";

(b) by omitting from subsection (1)(a) "company" and substituting "Company";

(c) by omitting from subsection (1)(b) "company" and substituting "Company";

(d) by omitting from subsection (3) "board of directors" and substituting "Board";

(e) by omitting from subsection (3) "company" and substituting "Company";

(f) by omitting from subsection (4) "board of directors of a company" and substituting "Board of a Company";

(g) by omitting from subsection (4) “board” second occurring and substituting “Board”;

(h) by omitting from subsection (4)(a) “company” and substituting “Company”;

(i) by inserting in subsection (4)(c) “including, but not limited to, commercial in confidence” after “confidentiality”;

(j) by omitting from subsection (5) “board of directors” and substituting “Board”;

(k) by omitting from subsection (5) “board” second occurring and substituting “Board”.

30. Section 18AB inserted

After section 18A of the Principal Act, the following section is inserted in Division 3:

18AB. Annual reports

(1) The Board of a Company must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section in relation to a Company and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members of the Company under section 11B during the financial year; and

(b) the information required, under section 11D, to be contained in an annual report of the Company in respect of a direction given under section 11B; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 19(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) As soon as practicable after an annual report is prepared under this section, the Board of a Company must provide a copy of the annual report to the members of the Company, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of a Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

31. Section 18B amended (Duty to notify members of adverse circumstances)

Section 18B of the Principal Act is amended as follows:

(a) by omitting "company" first occurring from the definition of *governing documents* in subsection (1) and substituting "Company";

(b) by omitting "company" from paragraph (a) of the definition of *governing documents* in subsection (1) and substituting "Company";

(c) by omitting "company" from paragraph (b) of the definition of *governing documents* in subsection (1) and substituting "Company";

(d) by omitting "company" from paragraph (c) of the definition of *governing documents* in subsection (1) and substituting "Company";

(e) by inserting the following paragraph after paragraph (c) in the definition of *governing documents* in subsection (1):

(ca) the corporate plan in force in respect of the Company and its subsidiaries; and

(f) by omitting “company” from paragraph (d) of the definition of *governing documents* in subsection (1) and substituting “Company”;

(g) by omitting from subsection (2) “board of directors of a company” and substituting “Board of a Company”;

(h) by omitting from subsection (2) “company” second occurring and substituting “Company”;

(i) by omitting from subsection (2) “board” second occurring and substituting “Board”;

(j) by omitting from subsection (2)(a) “company” twice occurring and substituting “Company”;

(k) by omitting from subsection (2)(b)(i) “company” and substituting “Company”;

(l) by omitting from subsection (2)(b)(ii) “company” and substituting “Company”;

(m) by omitting from subsection (2)(c) “company” twice occurring and substituting “Company”;

(n) by omitting from subsection (2)(d) “company” twice occurring and substituting “Company”;

(o) by omitting from subsection (2)(e) “company” and substituting “Company”;

(p) by omitting from subsection (3) “board of directors” and substituting “Board”.

32. Section 18BA inserted

After section 18B of the Principal Act, the following section is inserted in Division 3:

18BA. Duty to notify members before taking certain actions

(1) The Board of a Company or a subsidiary board must notify the members of the Company, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board of a Company notifies the members of the Company under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members of a Company under subsection (1), the subsidiary board is to give a copy of the notice to the Board of the Company.

33. Section 18C amended (Sponsorship framework)

Section 18C of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “board of directors” and substituting “Board of a Company”;

(b) by omitting from subsection (1) “company” and substituting “Company”;

(c) by omitting from subsection (2)(d) “board of directors” and substituting “Board”;

(d) by omitting from subsection (3) “board of directors” and substituting “Board”;

(e) by omitting from subsection (3) “company” and substituting “Company”;

(f) by omitting from subsection (4) “board of directors” and substituting “Board”;

(g) by omitting from subsection (4)(a) “company” and substituting “Company”.

34. Section 19 substituted

Section 19 of the Principal Act is repealed and the following sections are substituted:

19. Community service obligations

(1) On the request of the Board of a Company, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1) in respect of a Company, or a community service obligation is specified in a direction given under section 11B in respect of a Company, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board of the Company were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1) in respect of the Company, a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

19A. General investigations of Company

(1) The members of a Company may, by notice in writing to the Company or its subsidiaries, do one or more of the

following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board of the Company or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board of the Company, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members of the Company in the written notice;

(c) require the Board of the Company, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of a Company or a subsidiary if the Auditor-General

believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of a Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board of the Company were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

19B. Actions that may be taken if poor performance by Company

(1) The members of a Company may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board of the Company or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of a Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 11A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 11A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 11B in respect of the Company or subsidiary.

(3) If the members of a Company intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members of a Company take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members of a Company take an action under subsection (1)(b) in respect of a Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board of the Company or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of a Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board of the Company, or subsidiary board, in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) A Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members of the Company under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of a Company or subsidiary, the members of the Company are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 19C, in respect of the Company.

19C. Appointment of sole director of Company

(1) The members of a Company may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 19B(8)(b); or

(b) if all of the directors of the Company have vacated the office of director at the same time; or

(c) if the members of the Company agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members of a Company intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board of the Company, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of a Company, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board of the Company as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of a Company –

(a) the members of the Company must give written notice to the

Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of a Company, the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of a Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members of the Company, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of a Company under this section is taken to vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members of the Company; or

(b) is removed from the office by written notice from the members of the Company; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

19D. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 19B or 19C in respect of a Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 19B or 19C.

(3) Unless otherwise approved by the members of a Company, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 19B or 19C is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 19B or 19C in respect of a Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

35. Section 20 amended (Limitations on members of Company)

Section 20 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "company" and substituting "Company";

(b) by omitting from subsection (2) "company" first occurring and substituting "Company";

(c) by omitting from subsection (2) "company" second occurring and substituting "Company";

(d) by omitting from subsection (2) "company" third occurring and substituting "Company";

(e) by omitting from subsection (2)(a) "company" and substituting "Company";

(f) by omitting from subsection (2)(b) "company" and substituting "Company";

(g) by omitting from subsection (2)(c) "company" and substituting "Company";

(h) by omitting from subsection (3) "company" three times occurring and substituting "Company".

36. Section 21 amended (Delegation by Minister and Treasurer)

Section 21 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his or her" and substituting "the Minister's";

(b) by omitting from subsection (2) "his or her" and substituting "the Treasurer's".

37. Section 21A amended (Treasurer's Instructions)

Section 21A of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "company" twice occurring and substituting "Company";

(b) by omitting from subsection (3) "company" twice occurring and substituting "Company";

(c) by omitting from subsection (4) "company" twice occurring and substituting "Company";

(d) by omitting from subsection (5) "company" twice occurring and substituting "Company".

38. Section 22 amended (Application of certain provisions of other Acts)

Section 22 of the Principal Act is amended by omitting "company" three times occurring and substituting "Company".

39. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Part 3:

22A. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

40. Schedule 1 amended (Provisions to be included in memorandum and articles)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting the heading and substituting the following heading:

SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN CONSTITUTION

(b) by omitting the heading from Part 1;

(c) by omitting clause 1 and substituting the following clause:

1AA. Parliamentary approval for amendment of constitution

(1) An amendment to the constitution of the Company does not have any effect unless and until both Houses of the Parliament of Tasmania have approved the amendment.

(2) An amendment to the constitution of the Company is approved by a House of Parliament –

(a) when the House passes a motion approving the amendment; or

(b) at the end of 5 sitting-days after the amendment was laid before the House if no notice of motion to disapprove the amendment is before the House; or

(c) if such a notice 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.

(d) by omitting the heading from Part 2;

(e) by omitting from clause 1 “these articles” and substituting “this constitution”;

(f) by omitting from clause 2 “these articles” first occurring and substituting “this constitution”;

(g) by omitting from clause 2(a) “company” and substituting “Company”;

(h) by omitting from clause 2(a) “board of directors” and substituting “Board”;

(i) by omitting from clause 2(b) “board of directors” and substituting “Board”;

(j) by omitting from clause 2(b) “company” and substituting “Company”;

(k) by omitting from clause 2(b) “these articles” and substituting “this constitution”;

(l) by omitting from clause 2(b) “shareholders” and substituting “members”;

(m) by omitting from clause 2A(1) “board of directors” first occurring and substituting “Board”;

(n) by omitting from clause 2A(1)(a) “board of directors” and substituting “Board”;

(o) by omitting from clause 2A(1)(b) “company” and substituting “Company”;

(p) by omitting paragraph (a) from clause 2A(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(q) by omitting from clause 2B(1) "company" and substituting "Company";

(r) by omitting from clause 2B(2) "company" and substituting "Company";

(s) by omitting from clause 2C(1) "company" three times occurring and substituting "Company";

(t) by omitting from clause 2C(2) "company" first occurring and substituting "Company";

(u) by omitting from clause 2C(2)(a)(iii) "company" and substituting "Company";

(v) by omitting clause 3 and substituting the following clause:

3. Annual performance review

(1) The Board of a Company is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not later than 90 days after the end of

the financial year in respect of which the review is conducted.

(3) The Board of a Company is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

(w) by omitting from clause 4 "special resolution, the company" and substituting "the members of a Company, the Company";

(x) by inserting the following paragraph after paragraph (b) in clause 4:

(ba) approve, or approve the amendment of, the constitution of a subsidiary; or

(y) by omitting from clause 4(c) "any transaction" and substituting "a transaction, or other legal process,";

(z) by omitting clause 5 and substituting the following clause:

5. Approval required for profit sharing

Except where approved by the members of a Company, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

(za) by omitting from clause 6 “shareholder, the company” and substituting “member of a Company, the Company”;

(zb) by omitting from clause 6 “both the shareholder and the Minister for the time being administering the *Electricity Companies Act 1997*” and substituting “the members”;

(zc) by omitting from clause 6(a) “company” and substituting “Company”.

PART 3 – GOVERNMENT BUSINESS ENTERPRISES ACT 1995 AMENDED

41. Principal Act

In this Part, the *Government Business Enterprises Act 1995** is referred to as the Principal Act.

42. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by omitting the definition of *community service obligation* and substituting the following definition:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as the direct result of a direction given under section 9A; or

(b) is declared to be a community service obligation under section 61;

(b) by omitting "corporate plan" from the definition of *main undertaking* and

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substituting "statement of corporate intent";

(c) by omitting "his or her" from paragraph (a) of the definition of *ruling* and substituting "the Treasurer's".

43. Section 3A amended (Associated entities)

Section 3A of the Principal Act is amended as follows:

(a) by omitting from subsection (2)(a) "his or her" and substituting "the director's";

(b) by omitting from subsection (2)(b) "his or her" and substituting "the director's";

(c) by omitting from subsection (3)(a) "his or her relative" and substituting "a relative of the relative";

(d) by omitting from subsection (3)(b) "his or her relative" and substituting "a relative of the relative".

44. Section 3B amended (Material personal interest)

Section 3B(1) of the Principal Act is amended by omitting "his or her" twice occurring from paragraph (g) of the definition of *material personal interest* and substituting "the director's".

45. Section 9A amended (Government Business Enterprises subject to Ministerial direction)

Section 9A of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (3):

(3A) A direction given to a Government Business Enterprise, or a wholly-owned subsidiary, under subsection (1) –

(a) may be given in respect of a dividend recommended under section 83; and

(b) does not affect a contract if –

(i) the Government Business Enterprise, or subsidiary, entered into the contract before the Government Business Enterprise or subsidiary was notified under subsection (2) in respect of the direction; and

(ii) compliance with the direction would result in the Government Business Enterprise or subsidiary breaching the contract.

(b) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the Portfolio Minister and Treasurer –

(a) are satisfied that a function, service or concession, specified in a direction given under this section to a Government Business Enterprise or subsidiary, would not be performed, provided or allowed if the Government Business Enterprise or subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Government Business Enterprise or subsidiary.

46. Section 9B amended (Government Business Enterprise may object to Ministerial direction)

Section 9B of the Principal Act is amended as follows:

(a) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Portfolio Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the Portfolio Minister received the objection; and

(ii) if the Portfolio Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(b) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Portfolio Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Portfolio Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the relevant Government Business Enterprise or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act or the relevant Portfolio Act.

47. Section 9C amended (Publication of Ministerial directions)

Section 9C(3)(c) of the Principal Act is amended by inserting "including, but not limited to, commercial in confidence" after "confidentiality".

48. Section 10 amended (Limitation on powers)

Section 10(3)(c) of the Principal Act is amended by omitting "a contract" and substituting "a transaction, or other legal process,".

49. Section 11 amended (Board)

Section 11(1) of the Principal Act is amended by omitting "A Government Business Enterprise" and substituting "Subject to section 103B, a Government Business Enterprise".

50. Section 13 substituted

Section 13 of the Principal Act is repealed and the following sections are substituted:

13. Duty to notify Treasurer and Portfolio Minister of adverse circumstances

(1) In this section –

governing documents, in relation to a Government Business Enterprise, includes –

(a) the ministerial charter in force in respect of the Government Business Enterprise and its subsidiaries; and

(b) each direction under section 9A in effect in respect of the Government Business Enterprise and its subsidiaries; and

(c) the statement of corporate intent in force in respect of the Government Business Enterprise and its subsidiaries; and

(d) the corporate plan in force in respect of the Government Business Enterprise and its subsidiaries; and

(e) the Treasurer's Instructions in force in respect of the

Government Business Enterprise and its subsidiaries.

(2) The Board of a Government Business Enterprise must notify both the Treasurer and Portfolio Minister of any development which, in the opinion of the Board, may –

(a) prevent or significantly affect the achievement of the objectives, for the Government Business Enterprise or its subsidiaries, as specified in the governing documents of the Government Business Enterprise; or

(b) significantly affect the financial viability or operating ability of –

(i) the Government Business Enterprise and its subsidiaries; or

(ii) any partnership, trust, joint venture, or arrangement for the sharing of profits, in which the Government Business Enterprise participates; or

(c) prevent the Government Business Enterprise or its subsidiaries from complying with a direction given to the Board or a subsidiary board under section 9A; or

(d) significantly affect the ability of the Government Business Enterprise or its subsidiaries to comply with a direction given to the Board or a subsidiary board under section 9A; or

(e) otherwise significantly affect the Government Business Enterprise in any manner.

(3) A notification under subsection (2) in respect of a development is to be given immediately after the Board becomes aware of the development.

13AA. Duty to notify before taking certain actions in respect of subsidiary

(1) The Board of a Government Business Enterprise or a subsidiary board must notify the Portfolio Minister and Treasurer in writing if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of a subsidiary of the Government Business Enterprise; or

(b) appoint an administrator under the Corporations Act in respect of a subsidiary of the Government Business Enterprise.

(2) Notification is to be given to the Portfolio Minister and Treasurer under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If a Board of a Government Business Enterprise notifies the Portfolio Minister and Treasurer under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Government Business Enterprise.

(4) If a subsidiary board notifies the Portfolio Minister and Treasurer under subsection (1) in respect of a subsidiary of the Government Business Enterprise, the subsidiary board is to give a copy of the notice to the Government Business Enterprise of which it is a subsidiary.

51. Section 17 amended (Acting directors)

Section 17 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he or she” and substituting “the director”;

(b) by omitting from subsection (3) “he or she” and substituting “the Portfolio Minister”;

(c) by omitting from subsection (7) “his or her” and substituting “the”.

52. Section 18 amended (Chief executive officer)

Section 18 of the Principal Act is amended as follows:

(a) by omitting from subsection (6) “he or she” and substituting “the Portfolio Minister”;

(b) by omitting from subsection (9) “he or she” and substituting “the chief executive officer”.

53. Section 19 amended (Role of chief executive officer)

Section 19(2)(b) of the Principal Act is amended by omitting “him or her” and substituting “the chief executive officer”.

54. Section 20 amended (Acting chief executive officer)

Section 20 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he or she” and substituting “the chief executive officer”;

(b) by omitting from subsection (1)(c) “him or her” and substituting “the chief executive officer”;

(c) by omitting from subsection (4) “he or she” and substituting “the chairperson”.

55. Section 20A amended (Effect of chief executive officer ceasing to be chief executive officer)

Section 20A(1) of the Principal Act is amended by omitting “his or her” first occurring and substituting “the person’s”.

56. Section 20B amended (Annual performance review)

Section 20B(3) of the Principal Act is amended by inserting “and the Treasurer” after “Minister”.

57. Section 23A amended (Power of former director to access records)

Section 23A of the Principal Act is amended as follows:

(a) by omitting from subsection (2)(c) “him or her” and substituting “the former director”;

(b) by omitting from subsection (3) “his or her” and substituting “the former director’s”.

58. Section 23B amended (Power of director to access records)

Section 23B(2) of the Principal Act is amended by omitting "his or her" and substituting "the director's".

59. Section 24 amended (Duties of officers and employees)

Section 24 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "his or her office" and substituting "an officer";

(b) by omitting from subsection (3) "exercise his or her powers and perform his or her functions" and substituting "exercise the powers and perform the functions, of an officer,";

(c) by omitting from subsection (3) "he or she" and substituting "the officer";

(d) by omitting from subsection (4) "his or her" and substituting "the officer's";

(e) by omitting from subsection (4)(c) "himself or herself" and substituting "themself";

(f) by omitting from subsection (4)(c) "he or she" and substituting "the officer";

(g) by omitting from subsection (6) "his or her" and substituting "the person's";

(h) by omitting from subsection (6)(a) “himself or herself” and substituting “themself”;

(i) by omitting from subsection (7) “his or her” and substituting “the person’s”;

(j) by omitting from subsection (7)(a) “himself or herself” and substituting “themself”.

60. Section 25 amended (Duty to prevent insolvent trading)

Section 25(2) of the Principal Act is amended as follows:

(a) by omitting “he or she” and substituting “the director”;

(b) by omitting from paragraph (a) “himself or herself” and substituting “themself”.

61. Section 28 amended (Director to disclose material personal interest)

Section 28(3)(b) of the Principal Act is amended by omitting “his or her” and substituting “the director’s”.

62. Section 28D amended (Director may be required to divest of material personal interest)

Section 28D of the Principal Act is amended as follows:

(a) by omitting "his or her" and substituting "the person's";

(b) by omitting "himself or herself of".

63. Section 34 amended (Indemnifying officers)

Section 34(5)(a) of the Principal Act is amended by omitting "he or she" and substituting "the person".

64. Section 39 amended (Corporate plan)

Section 39 of the Principal Act is amended as follows:

(a) by omitting from subsection (3) "60 days before the day on which the corporate plan will take effect" and substituting "31 March immediately before the first financial year in respect of which the plan is to be in force";

(b) by omitting subsections (4), (5) and (6) and substituting the following subsections:

(4) After receiving a draft of a corporate plan under subsection (3) from a Board, the Portfolio Minister and Treasurer, jointly, may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by a Board, becomes the corporate plan for the Government Business Enterprise –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(c) by omitting subsection (8);

(d) by omitting paragraph (a) from subsection (9);

(e) by inserting the following subsection after subsection (10):

(11) For the purposes of subsection (10) –

(a) a statement of corporate intent that is in force in respect of a Government Business Enterprise or a subsidiary is taken to be approval by the Portfolio Minister and Treasurer, jointly, for the Government Business Enterprise or subsidiary to act other than in accordance with the corporate plan to the extent required for the Government Business Enterprise or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to a Government Business Enterprise or a subsidiary is taken to be approval, by the Portfolio Minister and Treasurer jointly, for the Government Business Enterprise or subsidiary to act other than in accordance with the corporate plan to the extent required for the Government Business Enterprise or subsidiary to meet the community service obligation.

65. Section 40 repealed

Section 40 of the Principal Act is repealed.

66. Section 47 substituted

Section 47 of the Principal Act is repealed and the following section is substituted:

47. Borrowing from person other than Treasurer

(1) Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, a Government Business Enterprise, or its subsidiary, is not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

(2) Subsection (1) does not apply in respect of an agreement to borrow, or otherwise obtain financial accommodation, if –

(a) the agreement was in force immediately before the commencement of the *Government Business Governance Reforms Act 2026*; and

(b) the agreement complied with this Act as in force immediately before the commencement of the *Government Business Governance Reforms Act 2026*.

67. Section 55 amended (Annual report)

Section 55(2) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) "section 65" and substituting "section 9A in respect of the Government Business Enterprise, during the financial year";

(b) by omitting paragraph (c);

(c) by inserting the following paragraphs after paragraph (ca):

(cb) each community service obligation that applied in respect of the Government Business Enterprise or its subsidiaries in the financial year; and

(cc) if the Board requested that an application be made under section 60, during the financial year, in respect of a function, service or concession –

(i) if the Portfolio Minister refused to make the application, any reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

68. Section 56 amended (Tabling of annual report)

Section 56(2) of the Principal Act is amended by omitting "he or she" and substituting "the Portfolio Minister".

69. Section 57 amended (Quarterly reports)

Section 57 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the first 3 quarters" and substituting "quarter";

(b) by inserting the following subsection after subsection (2):

(2A) Despite subsections (1) and (2), the Portfolio Minister and Treasurer, jointly, may agree that a Board –

(a) may prepare a report on the operations of the Government Business Enterprise and its subsidiaries for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year; and

(c) is to provide each report to the Portfolio Minister and Treasurer within the period agreed between the Board, Portfolio Minister and Treasurer.

(c) by omitting from subsection (3) "quarterly report" and substituting "report prepared under this section";

(d) by omitting from subsection (3) "the report" and substituting "a quarterly report".

70. Section 57A amended (Government Business Enterprise to report on progress)

Section 57A(4)(c) of the Principal Act is amended by inserting "including, but not limited to, commercial in confidence" after "confidentiality".

71. Section 59 repealed

Section 59 of the Principal Act is repealed.

72. Section 60 amended (Application for declaration of community service obligation)

Section 60(3) of the Principal Act is amended by omitting "he or she" and substituting "the Portfolio Minister".

73. Section 61 amended (Declaration of community service obligation)

Section 61 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(5) A direction, in respect of a function, service or concession of a Government Business Enterprise, that was in force under section 65 immediately before the commencement of the *Government Business Governance Reforms Act 2026* is taken, on and after the commencement of that Act, to be a declaration under subsection (2) that the function, service or concession is a community service obligation for that Government Business Enterprise.

74. Section 64 amended (Review of costing basis and funding arrangement)

Section 64 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "annually";

(b) by inserting the following subsection after subsection (1):

(1A) A review under subsection (1) is to occur –

(a) at least once in every 3-year period; or

(b) at such other intervals as agreed by the relevant Government Business Enterprise, the Portfolio Minister and Treasurer.

75. Section 65 repealed

Section 65 of the Principal Act is repealed.

76. Section 71 amended (Payment of income tax equivalent)

Section 71 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(a) “his or her” and substituting “the Treasurer’s”;

(b) by omitting from subsection (2) “he or she” and substituting “the Treasurer”.

77. Section 74 amended (Objections)

Section 74 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "his or her" and substituting "the Treasurer's";

(b) by omitting from subsection (3) "inform himself or herself on" and substituting "consider, and receive information on,";

(c) by omitting from subsection (3) "he or she" and substituting "the Treasurer".

78. Section 92 amended (Initial directors)

Section 92 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) "his or her" and substituting "the person's";

(b) by omitting from subsection (2)(b) "his or her" and substituting "the person's";

(c) by omitting from subsection (5) "his or her" and substituting "the person's".

79. Section 93 amended (Initial acting directors and acting chief executive officer)

Section 93 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his or her" and substituting "the person's";

(b) by omitting from subsection (3) "his or her" and substituting "the person's".

80. Section 102 amended (General investigations of Government Business Enterprise)

Section 102 of the Principal Act is amended as follows:

(a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

(1) The Portfolio Minister and the Treasurer, jointly, may, by notice in writing to the Government Business Enterprise or its subsidiaries, do one or more of the following in respect of the Government Business Enterprise or subsidiary:

(a) authorise a person to undertake and conduct an investigation into one or more of the following:

(i) the performance of the Board of a Government Business Enterprise or a subsidiary board;

(ii) any other matter relating to or affecting the performance of the Government Business

Enterprise or a subsidiary;

(b) require the Board of the Government Business Enterprise, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the Portfolio Minister and Treasurer in the written notice;

(c) require the Board of the Government Business Enterprise, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct the investigation under this section in respect of a Government Business Enterprise or subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function, under any other Act.

(b) by omitting from subsection (4) “he or she” and substituting “the investigator”;

(c) by omitting from subsection (4)(c) “his or her” first occurring and substituting “the director’s, chief executive officer’s or other person’s”;

(d) by omitting from subsection (4)(c) “under his or her”;

(e) by omitting from subsection (6)(a) “or Treasurer who authorised the investigation” and substituting “and Treasurer”;

(f) by omitting paragraph (b) from subsection (6) and substituting the following paragraph:

> (b) at or after the end of each investigation, must provide a written report in respect of the investigation to both the Portfolio Minister and the Treasurer.

(g) by omitting from subsection (9) “or Treasurer who authorised an investigation” and substituting “and Treasurer, jointly,”.

81. Section 103 amended (Obstruction of investigation)

Section 103(d) of the Principal Act is amended by omitting “he or she” and substituting “the director, chief executive officer or other person”.

82. Sections 103A, 103B and 103C inserted

After section 103 of the Principal Act, the following sections are inserted in Part 13:

103A. Actions that may be taken if poor performance by Government Business Enterprise

(1) The Portfolio Minister and Treasurer, jointly, may take one or more of the following actions in respect of a Government Business Enterprise or its wholly-owned subsidiary, if the Portfolio Minister and Treasurer are satisfied that there has been poor performance by the Government Business Enterprise or subsidiary:

(a) the Portfolio Minister and Treasurer, jointly, may require the Government Business Enterprise or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the Portfolio Minister and Treasurer, jointly, may appoint a person to be present at meetings of the Board of the Government Business Enterprise or the subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of a Government Business Enterprise or its subsidiary

includes, but is not limited to, where a review or investigation of the Government Business Enterprise or subsidiary under this Act has resulted in evidence that –

(a) the Government Business Enterprise or subsidiary has failed to comply with –

(i) this Act or its Portfolio Act; or

(ii) its ministerial charter; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Government Business Enterprise or subsidiary; or

(b) the Government Business Enterprise or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Government Business Enterprise or subsidiary has wilfully disregarded –

(i) a provision of this Act, or its Portfolio Act, that applied to the Government Business

Enterprise or subsidiary; or

(ii) its ministerial charter; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Government Business Enterprise or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 9A in respect of the Government Business Enterprise or subsidiary.

(3) If the Portfolio Minister and Treasurer intend to take an action under subsection (1) in respect of a Government Business Enterprise or subsidiary, the Portfolio Minister and Treasurer, jointly, must, before taking the action –

(a) give written notice to the Government Business Enterprise or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the Portfolio Minister and Treasurer intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the Portfolio Minister and Treasurer in respect of the proposed action; and

(b) consider any submissions made to the Portfolio Minister or Treasurer by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the Portfolio Minister and Treasurer take an action under subsection (1)(a) in respect of a Government Business Enterprise or subsidiary –

(a) the Portfolio Minister and Treasurer are to give written notice to the Government Business Enterprise or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the Portfolio Minister and Treasurer, jointly, before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Government Business Enterprise or subsidiary are to make to the Portfolio Minister and Treasurer once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the Portfolio Minister and Treasurer may appoint a person to –

(i) assist the Government Business Enterprise or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Government Business Enterprise or subsidiary under paragraph (a), the Portfolio Minister is to table in each House of Parliament a notice that specifies –

(i) the Government Business Enterprise or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Government Business Enterprise or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the Portfolio Minister and Treasurer take an action under subsection (1)(b) in respect of a Government Business Enterprise or subsidiary –

(a) the Portfolio Minister and Treasurer are to give written notice to the Government Business Enterprise or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board of the Government Business Enterprise or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Government Business Enterprise under paragraph (a), the Portfolio Minister is to table in each House of Parliament a notice that specifies –

(i) the Government Business Enterprise or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of a Government Business Enterprise or subsidiary –

(a) is not entitled to a vote at meetings of the Board of the Government Business Enterprise or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Government Business Enterprise or subsidiary other than in accordance with the person's instrument of appointment.

(7) A Government Business Enterprise or wholly-owned subsidiary must comply with –

(a) an action taken by the Portfolio Minister and Treasurer under this section in respect of the Government Business Enterprise or subsidiary; and

(b) a performance improvement plan produced, in respect of the Government Business Enterprise or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of a Government Business Enterprise or subsidiary, the Portfolio Minister and Treasurer, jointly, are not satisfied that the action has corrected the poor performance of the Government Business

Enterprise or subsidiary, the Portfolio Minister and Treasurer may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) make a recommendation to the Governor under clause 8 of Schedule 5 in respect of one or more of the directors of the Government Business Enterprise; or

(c) appoint an administrator, in accordance with section 103B, in respect of the Government Business Enterprise or subsidiary.

103B. Appointment of administrator of Government Business Enterprise

(1) The Portfolio Minister and Treasurer, jointly, may appoint an administrator to administer the affairs and activities of a Government Business Enterprise –

(a) in accordance with section 103A(8)(c); or

(b) if all of the directors of the Government Business Enterprise –

(i) have vacated the office of director at the same time; or

(ii) have been removed from that office in accordance with clause 8 of Schedule 5; or

(c) if the Portfolio Minister and Treasurer agree that it is in the public interest for an administrator to be appointed in respect of the Government Business Enterprise.

(2) If the Portfolio Minister and Treasurer intend to appoint an administrator under subsection (1)(c) in respect of a Government Business Enterprise –

(a) the Portfolio Minister and Treasurer, jointly, must, before appointing an administrator –

(i) give the Board of the Government Business Enterprise written notice of –

(A) the intention of the Portfolio Minister and Treasurer to appoint an administrator; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the Portfolio Minister and Treasurer in respect of the proposed appointment; and

(ii) consider any submissions made to the Portfolio Minister or Treasurer by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after giving the Board written notice under paragraph (a), the Portfolio Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Government Business Enterprise under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Portfolio Minister and Treasurer consider relevant to the appointment of an administrator in respect of the Government Business Enterprise.

(3) The appointment of an administrator under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If an administrator is appointed under subsection (1) in respect of a Government Business Enterprise –

(a) the Portfolio Minister and Treasurer must give written notice to the Government Business Enterprise of the appointment of the administrator and, on giving the notice to the Government Business Enterprise –

(i) the Board of the Government Business Enterprise may not perform functions or exercise powers, under this Act, in respect of the Government Business Enterprise; and

(ii) the functions of the Government Business Enterprise are to be performed, and the powers of the Government Business Enterprise may be exercised, by the administrator in the name and on behalf of the Government Business Enterprise while the administrator is so appointed; and

(iii) as the Board may no longer perform the functions or exercise the powers in respect of the Government Business Enterprise, the administrator assumes, and is responsible for, the management of the Government Business Enterprise; and

(b) within 7 sitting-days after giving the Government Business Enterprise written notice under paragraph (a), the Portfolio Minister is to table in each House of Parliament a notice that specifies –

(i) the Government Business Enterprise in respect of which the administrator was appointed; and

(ii) the name of the person appointed as administrator; and

(iii) a summary of the grounds on which the administrator was appointed.

(5) Subject to this section, an administrator appointed under subsection (1) in respect of a Government Business Enterprise is to –

(a) as soon as practicable after the administrator is appointed, take into the administrator's custody or control all the property and things in action to which the Government Business Enterprise is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the administrator by the Portfolio Minister and Treasurer, jointly, perform the functions and exercise the powers of the Government Business Enterprise in such manner as the administrator thinks fit.

(6) A person appointed as administrator of a Government Business Enterprise under this section is taken to vacate the office of administrator if the person –

(a) resigns, by notice in writing to the Portfolio Minister and Treasurer, jointly; or

(b) is removed from the office by written notice from the Portfolio Minister and Treasurer, jointly; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

103C. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 103A or 103B in respect of a Government Business Enterprise or subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 103A or 103B.

(3) Unless otherwise approved by the Portfolio Minister and Treasurer, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the relevant Government Business Enterprise or subsidiary.

(4) Despite subsection (2), if a person appointed under section 103A or 103B is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 103A or 103B in respect of a Government Business Enterprise or subsidiary; and

(b) any loss or damage incurred by the Government Business Enterprise or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

83. Section 114 amended (Treasurer's Instructions)

Section 114 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "Enterprises" first occurring and substituting "Enterprises, or subsidiaries,";

(b) by inserting in subsection (1)(c) "or subsidiaries" after "Enterprises";

(c) by inserting in subsection (1)(e) "or subsidiaries" after "Enterprises";

(d) by inserting in subsection (1)(f) "or subsidiaries" after "Enterprises";

(e) by inserting in subsection (2)(b)(i) "and subsidiaries" after "Enterprises";

(f) by inserting in subsection (2)(b)(ii) "or specified subsidiary" after "Enterprise";

(g) by omitting from subsection (2)(b)(iii) "Enterprise" and substituting "Enterprises or specified class of subsidiaries";

(h) by omitting from subsection (2)(b)(iv) "Enterprise; and" and substituting "Enterprises; or";

(i) by inserting the following subparagraph after subparagraph (iv) in subsection (2)(b):

(v) a specified part of a specified subsidiary or class of subsidiaries; and

(j) by omitting paragraph (g) from subsection (2) and substituting the following paragraph:

(g) exempt from a provision of the Australian Accounting Standards, or vary those Standards in their application to –

(i) a specified Government Business Enterprise or a specified class of Government Business Enterprises; or

(ii) a specified subsidiary or a specified class of subsidiaries; and

(k) by inserting in subsection (4) "or subsidiary" after "a Government Business Enterprise";

(l) by inserting in subsection (4) "or subsidiary" after "the Government Business Enterprise".

84. Section 118 amended (Delegation by Portfolio Minister or Treasurer)

Section 118 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “his or her” and substituting “the person’s”;

(b) by omitting from subsection (2)(d) “section 40, 84, 85 or 86” and substituting “section 84, 85 or 86”.

85. Schedule 5 amended (Directors)

Schedule 5 to the Principal Act is amended as follows:

(a) by omitting from clause 2(1A) “he or she is the” and substituting “holding the office of”;

(b) by omitting from clause 2(1B) “his or her” and substituting “the person’s”;

(c) by omitting paragraph (a) from clause 2(5) and substituting the following paragraph:

(a) if the person –

(iii) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(iv) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(d) by omitting from clause 4(1) “his or her” and substituting “the holder’s”;

(e) by omitting from clause 9(1) “he or she” and substituting “the director”;

(f) by omitting from clause 9(1)(d) “him or her” and substituting “the director”.

86. Schedule 6 amended (Meetings of Board)

Clause 2(1) of Schedule 6 to the Principal Act is amended by omitting “he or she” and substituting “the chairperson”.

PART 4 – IRRIGATION COMPANY ACT 2011 AMENDED

87. Principal Act

In this Part, the *Irrigation Company Act 2011** is referred to as the Principal Act.

88. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

(a) by inserting the following definition after the definition of *annual general meeting*:

annual report, in relation to a financial year, means the report prepared under section 26AB in respect of the financial year;

(b) by inserting the following definition after the definition of *Commission*:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 13A, that specifies that the function, service or concession is a

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community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 27;

(c) by inserting the following definition after the definition of *contract*:

corporate plan means the corporate plan approved under section 25;

(d) by omitting "he or she" from the definition of *transferring employee* and substituting "the employee or officer".

89. Section 5 amended (Application of Act to subsidiary)

Section 5 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

90. Section 8 amended (Constitution of Company)

Section 8 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The constitution of the Company is to include –

(a) the principal objectives of the Company; and

(b) provisions to the effect of the provisions specified in Schedule 2.

(b) by omitting subsection (2A) and substituting the following subsection:

(2A) As soon as practicable after the commencement of this subsection, the Company is to amend its constitution to include provisions to the effect of the provisions specified in Schedule 2.

(c) by omitting from subsection (3) "The Board" and substituting "The members";

(d) by omitting from subsection (3)(a) "is to provide" and substituting "are to provide";

(e) by omitting from subsection (3)(b) "is to provide" and substituting "are to provide";

(f) by omitting from subsection (4) "from the Company".

91. Section 10 amended (Shares)

Section 10(2) of the Principal Act is amended by omitting "his or her" and substituting "the member's".

92. Section 11A amended (Limitations on members of Company)

Section 11A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "a Company" and substituting "the Company";

(b) by omitting from subsection (2) "a Company" and substituting "the Company";

(c) by omitting from subsection (2) "of the shareholders".

93. Section 12 amended (Status of Company)

Section 12(1) of the Principal Act is amended by inserting "or a subsidiary of the Company" after "Company".

94. Section 13A amended (Directions by members)

Section 13A of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Company or subsidiary; or

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(b) by inserting the following subsection after subsection (3):

(3A) A direction given to the Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(c) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

95. Section 13B amended (Company may object to direction by members)

Section 13B of the Principal Act is amended as follows:

(a) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(b) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

96. Section 13C amended (Publication of directions)

Section 13C of the Principal Act is amended as follows:

(a) by inserting in subsection (3)(c) “including, but not limited to, commercial in confidence” after “confidentiality”;

(b) by inserting in subsection (5) “annual” after “In the”.

97. Section 13E amended (Statement of corporate intent)

Section 13E(4)(b) of the Principal Act is amended by inserting after subparagraph (i) the following subparagraph:

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

98. Section 14 amended (Audit)

Section 14 of the Principal Act is amended by inserting “and its subsidiaries” after “Company”.

99. Section 15 amended (Borrowing)

Section 15 of the Principal Act is amended by omitting “Company” and substituting “Company, or a subsidiary of the Company,”.

100. Section 15A inserted

After section 15 of the Principal Act, the following section is inserted in Division 2:

15A. Borrowing from Treasurer

(1) The Treasurer may lend to the Company or any of its subsidiaries, out of money provided by Parliament for the purpose, any money that the Treasurer considers appropriate.

(2) A loan is subject to any conditions determined by the Treasurer.

(3) An amount lent under subsection (1), and any interest or other charge payable in respect of the loan, is a debt repayable by the Company or subsidiary into the Public Account.

101. Section 16 amended (Guarantee or indemnity)

Section 16(1) of the Principal Act is amended as follows:

(a) by inserting "or its subsidiary" after "of the Company";

(b) by inserting in paragraph (b) "or subsidiary" after "by the Company";

(c) by inserting in paragraph (b) "or subsidiary" after "which the Company".

102. Section 19 amended (Superannuation contributions)

Section 19 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

(1) The Company must not establish a superannuation scheme after the commencement of the *Government Business Governance Reforms Act 2026*.

103. Section 23 amended (Directors of Company)

Section 23 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) "and section 27C" after "subsection (2)";

(b) by omitting from subsection (1) "of the Company";

(c) by omitting from subsection (2) "of the Company";

(d) by omitting from subsection (3) "of the Company".

104. Sections 25 and 26 substituted

Sections 25 and 26 of the Principal Act are repealed and the following sections are substituted:

25. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 13.

(3) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board, the members may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

26. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

105. Section 26A amended (Company to report on progress)

Section 26A(4)(c) of the Principal Act is amended by inserting “including, but not limited to, commercial in confidence” after “confidentiality”.

106. Section 26AB inserted

After section 26A of the Principal Act, the following section is inserted in Division 3:

26AB. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section in relation to the Company and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members under section 13A during the financial year; and

(b) the information required, under section 13C, to be contained in an annual report of the Company in respect of a direction given under section 13A; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 27(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) The Board must provide a copy of the annual report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

107. Section 26B amended (Duty to notify members of adverse circumstances)

Section 26B(1) of the Principal Act is amended by inserting "and its subsidiaries" after

"Company" in paragraph (d) of the definition of *governing documents*.

108. Section 26BA inserted

After section 26B of the Principal Act, the following section is inserted in Division 3:

26BA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or a subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members under subsection (1), the subsidiary board is to give a copy of the notice to the Board.

109. Part 2, Division 4 substituted

Division 4 of Part 2 of the Principal Act is repealed and the following Division is substituted:

Division 4 – Miscellaneous

27. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1) in respect of the Company, or a community service obligation is specified in a direction given under section 13A, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1), a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

(3) On and after the commencement of this section –

(a) a direction under section 27, as in force before the commencement of this section, is taken to be a direction under section 13A that specifies a community service obligation; and

(b) a non-commercial activity that was the subject of a direction under section 27, as in force before the commencement of this section, is taken to be a community service obligation.

27A. General investigations of Company

(1) The members may, by notice in writing to the Company or its subsidiaries, do one or more of the following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of the Company or a subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

27B. Actions that may be taken if poor performance by Company

(1) The members may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 13; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 13; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 13A in respect of

the Company or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Company or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 27C, in respect of the Company.

27C. Appointment of sole director of Company

(1) The members may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 27B(8)(b); or

(b) if all of the directors of the Company have vacated the office of director at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a

period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Company –

(a) the members must give written notice to the Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Company under this section is taken to vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

27D. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 27B or 27C in respect of the Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 27B or 27C.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 27B or 27C is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the

Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 27B or 27C in respect of the Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

110. Section 31 amended (Transfer of persons subject to a secondment arrangement)

Section 31 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his or her" and substituting "the employee's";

(b) by omitting from subsection (3) "he or she" and substituting "the employee";

(c) by omitting from subsection (3) "his or her" twice occurring and substituting "the employee's";

(d) by omitting from subsection (4) "his or her" and substituting "the employee's".

111. Section 38 amended (Delegation by Minister)

Section 38 of the Principal Act is amended as follows:

(a) by renumbering the text of the section as subsection (1);

(b) by omitting "his or her" and substituting "the Minister's";

(c) by inserting the following subsection after subsection (1):

(2) The Treasurer, in writing, may delegate to any person any of the Treasurer's powers or functions under this Act, other than this power of delegation.

112. Section 38A inserted

After section 38 of the Principal Act, the following section is inserted in Part 5:

38A. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

113. Schedule 1 amended (Savings and transitional provisions)

Part 2 of Schedule 1 to the Principal Act is amended as follows:

(a) by omitting from clause 3(3) “his or her” and substituting “the person’s”;

(b) by omitting from clause 4(2) “his or her” and substituting “the person’s”;

(c) by omitting from clause 5(5) “he or she” first occurring and substituting “the employee”;

(d) by omitting from clause 5(5)(a) “he or she” and substituting “the employee”;

(e) by omitting from clause 5(5)(b) “his or her” and substituting “the employee’s”;

(f) by omitting from clause 5(5)(b) “him or her” and substituting “the employee”;

(g) by omitting “he or she” from the definition of *contract* in clause 6(1) and substituting “the employee”;

(h) by omitting from clause 6(3) “his or her” and substituting “the employee’s”;

(i) by omitting from clause 6(5) “he or she” first occurring and substituting “the employee”;

(j) by omitting from clause 6(5)(a) “he or she” and substituting “the employee”;

(k) by omitting from clause 6(5)(b) “his or her” and substituting “the employee’s”;

(l) by omitting from clause 6(5)(b) “him or her” and substituting “the employee”.

114. Schedule 2 amended (Provisions to be Included in Constitution)

Schedule 2 to the Principal Act is amended as follows:

(a) by omitting paragraph (a) from clause 1(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(b) by inserting the following clauses after clause 3:

4. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not later than 90 days after the end of the financial year in respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

5. Approval required for matters relating to ownership of subsidiaries

Except where approved by the members, 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) approve, or approve the amendment of, the constitution of a subsidiary; or

(d) enter into a transaction, or other legal process, which may result in a subsidiary ceasing to be a subsidiary.

6. Approval required for profit sharing

Except where approved by the members, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

7. Requests for information

On the written request of a member, the Company must provide to the members –

(a) the business or strategic plans of the Company and its subsidiaries; and

(b) the financial information specified in the request; and

(c) a report on the matters specified in the request and any relevant related information.

PART 5 – METRO TASMANIA ACT 1997 AMENDED

115. Principal Act

In this Part, the *Metro Tasmania Act 1997** is referred to as the Principal Act.

116. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of *Board*:

annual report, in relation to a financial year, means the report prepared under section 10GA in respect of the financial year;

(b) by inserting the following definition after the definition of *Board*:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 10B, that specifies that the function, service or concession is a

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community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 18A;

(c) by inserting the following definitions after the definition of *Company*:

corporate plan means the corporate plan of the Company approved under section 10FA;

director means a director of the Company;

(d) by omitting the definition of *member of the Company* and substituting the following definition:

member, in respect of the Company, means a member referred to in section 7;

(e) by inserting the following definition after the definition of *right*:

subsidiary has the same meaning as in the Corporations Act;

117. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Application of Act to subsidiary

If the Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Company; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

118. Section 6 substituted

Section 6 of the Principal Act is repealed and the following section is substituted:

6. Constitution of Company

(1) The constitution of the Company is to include –

(a) the principal objectives of the Company; and

(b) provisions to the effect of the provisions set out in Schedule 1.

(2) The provisions of the constitution of the Company are to be consistent with this Act.

(3) The members are to give the Minister a copy of an amendment to the constitution of the Company as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this subsection, the Company is to amend its constitution to include provisions to the effect of Schedule 1.

(6) On the commencement of this section –

(a) the memorandum and articles of the Company, as in force immediately before the commencement of this section, are taken to be the constitution of the Company; and

(b) a reference to the memorandum and articles of the Company is taken to be a reference to the constitution of the Company.

119. Section 8 amended (Shares)

Section 8 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Company";

(b) by omitting from subsection (2) "of the Company".

120. Section 9 substituted

Section 9 of the Principal Act is repealed and the following section is substituted:

9. Directors of Company

(1) Subject to section 18D, the Company is to have a board of directors who must have the experience and skills necessary to enable the Company to achieve its objectives.

(2) The members are to appoint the Board in accordance with the constitution.

121. Section 10 amended (Status of Company)

Section 10 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) "or a subsidiary of the Company" after "Company";

(b) by inserting in subsection (2) "or a subsidiary of the Company" after "obligation of the Company";

(c) by inserting in subsection (2)(b) "or subsidiary" after "Company".

122. Section 10B amended (Directions by members)

Section 10B of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Company or subsidiary; or

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(b) by inserting the following subsection after subsection (3):

(3A) A direction given to the Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(c) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

123. Section 10C amended (Company may object to direction by members)

Section 10C of the Principal Act is amended as follows:

(a) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(b) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister

is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

124. Section 10D amended (Publication of directions)

Section 10D of the Principal Act is amended as follows:

(a) by inserting in subsection (3)(c) "including, but not limited to, commercial in confidence" after "confidentiality";

(b) by inserting in subsection (5) "annual" after "In the".

125. Section 10F amended (Statement of corporate intent)

Section 10F(4)(b) of the Principal Act is amended by inserting after subparagraph (i) the following subparagraph:

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

126. Sections 10FA and 10FB inserted

After section 10F of the Principal Act, the following sections are inserted in Part 2:

10FA. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 10A.

(3) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board, the members may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

10FB. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

127. Section 10G amended (Company to report on progress)

Section 10G(4)(c) of the Principal Act is amended by inserting "including, but not limited to, commercial in confidence" after "confidentiality".

128. Section 10GA inserted

After section 10G of the Principal Act, the following section is inserted in Part 2:

10GA. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section in relation to the Company and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members under section 10B during the financial year; and

(b) the information required, under section 10D, to be contained in an annual report in respect of a direction given under section 10B; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 18A(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) The Board must provide a copy of the annual report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

129. Section 10H amended (Duty to notify members of adverse circumstances)

Section 10H(1) of the Principal Act is amended by inserting after paragraph (c) in the definition of *governing documents* the following paragraph:

(ca) the corporate plan in force in respect of the Company and its subsidiaries; and

130. Section 10HA inserted

After section 10H of the Principal Act, the following section is inserted in Part 2:

10HA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members under subsection (1), the subsidiary board is to give a copy of the notice to the Board.

131. Section 11 substituted

Section 11 of the Principal Act is repealed and the following sections are substituted:

11. Audit

The Auditor-General is to act as the auditor for the Company and its subsidiaries.

11A. Borrowing

The Company, or a subsidiary of the Company, is not to borrow from any person other than the Tasmanian Public Finance Corporation, except as otherwise approved by the Treasurer in writing.

132. Section 12 amended (Borrowing from Treasurer)

Section 12 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “or any of its subsidiaries” after “Company”;

(b) by omitting from subsection (3) “to the Crown” and substituting “or subsidiary into the Public Account”.

133. Section 13 amended (Guarantee or indemnity)

Section 13(1) of the Principal Act is amended as follows:

(a) by inserting “or its subsidiary” after “of the Company”;

(b) by inserting in paragraph (b) “or subsidiary” after “by the Company”;

(c) by inserting in paragraph (b) “or subsidiary” after “which the Company”.

134. Sections 14 and 15 substituted

Sections 14 and 15 of the Principal Act are repealed and the following sections are substituted:

14. Guarantee fees

Division 1 of Part 11 of the *Government Business Enterprises Act 1995* applies in respect of the Company and a subsidiary of the Company as if –

(a) the Company were a Government Business Enterprise specified in Schedule 3 to that Act; and

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

15. Tax equivalents

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.

135. Section 18 substituted

Section 18 of the Principal Act is repealed and the following section is substituted:

18. Superannuation

(1) The Company must not establish a superannuation scheme after the commencement of the *Government Business Governance Reforms Act 2026*.

(2) The Company must comply with any instruction in relation to superannuation given to it by the Minister administering

the *Public Sector Superannuation Reform Act 2016*.

136. Sections 18A, 18B, 18C, 18D and 18E inserted

Before section 19 of the Principal Act, the following sections are inserted in Part 4:

18A. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1), or a community service obligation is specified in a direction given under section 10B, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1), a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

18B. General investigations of Company

(1) The members may, by notice in writing to the Company or its subsidiaries, do one or more of the following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of the Company or a subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

18C. Actions that may be taken if poor performance by Company

(1) The members may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 10A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 10A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 10B in respect of

the Company or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Company or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 18D, in respect of the Company.

18D. Appointment of sole director of Company

(1) The members may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 18C(8)(b); or

(b) if all of the directors of the Company have vacated the office of director at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Company –

(a) the members must give written notice to the Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table

in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Company under this section is taken to

vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

18E. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 18C or 18D in respect of the Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 18C or 18D.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 18C or 18D is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 18C or 18D in respect of the Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

137. Section 19AB inserted

After section 19A of the Principal Act, the following section is inserted in Part 4:

19AB. Delegation by Minister and Treasurer

(1) The Minister, in writing, may delegate to any person any of the Minister's powers or functions under this Act, other than this power of delegation.

(2) The Treasurer, in writing, may delegate to any person any of the Treasurer's powers or functions under this Act, other than this power of delegation.

138. Section 21 substituted

Section 21 of the Principal Act is repealed and the following section is substituted:

21. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of

Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

139. Section 23 inserted

After section 22 of the Principal Act, the following section is inserted in Part 4:

23. Regulations

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

(2) Without limiting the generality of subsection (1), the Governor may make regulations that –

(a) provide for the payment of fees under the regulations; and

(b) provide that the determination of a dispute in accordance with the process provided in, or provided for by, the regulations is binding on the parties to the dispute.

(3) The regulations may be made so as to apply differently according to matters,

limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

(a) provide that a contravention 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.

(5) The regulations may authorise any matter to be from time to time determined, approved, applied or regulated by the Minister, the Treasurer or such other person as is specified in the regulations.

140. Schedule 1 amended (Provisions to be included in articles)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting the heading and substituting the following heading:

SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN CONSTITUTION

(b) by omitting paragraph (a) from clause 1(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(c) by inserting the following clauses after clause 3:

4. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not

later than 90 days after the end of the financial year in respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

5. Approval required for matters relating to ownership of subsidiaries

Except where approved by the members, 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) approve, or approve the amendment of, the constitution of a subsidiary; or

(d) enter into a transaction, or other legal process, which may result in a subsidiary ceasing to be a subsidiary.

6. Approval required for profit sharing

Except where approved by the members, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

7. Requests for information

On the written request of a member, the Company must provide to the members –

(a) the business or strategic plans of the Company and its subsidiaries; and

(b) the financial information specified in the request; and

(c) a report on the matters specified in the request and any relevant related information.

PART 6 – MOTOR ACCIDENTS (LIABILITIES AND COMPENSATION) ACT 1973 AMENDED

141. Principal Act

In this Part, the *Motor Accidents (Liabilities and Compensation) Act 1973** is referred to as the Principal Act.

142. Section 2 amended (Interpretation)

Section 2 of the Principal Act is amended as follows:

(a) by omitting "him" from the definition of *third party insurance policy* in subsection (1) and substituting "the person";

(b) by omitting from subsection (3)(a) "he" and substituting "the person";

(c) by omitting from subsection (3)(b) "he" and substituting "the person";

(d) by omitting from subsection (3)(c) "he" and substituting "the person".

143. Section 2B amended (Meaning of *resident*)

Section 2B of the Principal Act is amended as follows:

*No. 71 of 1973

(a) by omitting from subsection (1) “his or her” and substituting “the person’s”;

(b) by omitting from subsection (2) “his or her” and substituting “the person’s”.

144. Section 7B amended (Disclosure of information)

Section 7B of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “him” twice occurring and substituting “the person”;

(b) by omitting from subsection (1) “his” and substituting “the person’s”;

(c) by omitting from subsection (3) “himself” and substituting “that person”.

145. Section 14 amended (General liability of Board in respect of motor accidents)

Section 14(1) of the Principal Act is amended as follows:

(a) by omitting “his” and substituting “the owner’s or user’s”;

(b) by omitting “him” and substituting “the person”.

146. Section 16 amended (Special provisions as to unidentified vehicles, &c.)

Section 16(1) of the Principal Act is amended by omitting "he" and substituting "the person".

147. Section 17 amended (Negotiations and settlements affecting liability of Board)

Section 17 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "his" and substituting "the person's";

(b) by omitting from subsection (3) "him" and substituting "the person".

148. Section 18 amended (Recovery by Board from owner or driver in certain cases)

Section 18 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "he" and substituting "the person";

(b) by omitting from subsection (3) "his" and substituting "the person's".

149. Section 21 amended (Duties of registered operator, &c.)

Section 21 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “his or her knowledge, the registered operator or the driver of any motor vehicle involved in the accident” and substituting “the knowledge of the registered operator or the driver of any motor vehicle involved in the accident, the registered operator or driver”;

(b) by omitting from subsection (6) “him” and substituting “the person”.

150. Section 24 amended (Exclusions from scheduled benefits)

Section 24 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(a) “himself or herself” and substituting “that person”;

(b) by omitting from subsection (1)(b) “his or her” and substituting “the person’s”;

(c) by omitting from subsection (2)(a) “his” and substituting “the person’s”;

(d) by omitting from subsection (3) “him” and substituting “the person”.

151. Section 25 amended (Payment of scheduled benefits to infants)

Section 25(2) of the Principal Act is amended by omitting “his” and substituting “the infant’s”.

152. Section 29 amended (Prohibition on use of motor vehicle without premium cover, &c.)

Section 29(3) of the Principal Act is amended by omitting “him” and substituting “the person”.

153. Section 33 amended (Payment of premiums)

Section 33(2)(c) of the Principal Act is amended by omitting “his” and substituting “the person’s”.

154. Schedule 2 amended (Provisions as to Permitted Out-Of-State Vehicles)

Clause 2 of Schedule 2 to the Principal Act is amended as follows:

(a) by omitting from subclause (1) “him” and substituting “the person”;

(b) by omitting from subclause (2) “him” and substituting “the person”.

PART 7 – PORT ARTHUR HISTORIC SITE MANAGEMENT AUTHORITY ACT 1987 AMENDED

155. Principal Act

In this Part, the *Port Arthur Historic Site Management Authority Act 1987** is referred to as the Principal Act.

156. Section 12 amended (Co-ordination of administration with requirements of *Nature Conservation Act 2002*)

Section 12(3) of the Principal Act is amended by omitting "him" and substituting "the Governor".

157. Section 14 amended (Adoption of emblem for use by Authority)

Section 14(2) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) "his" twice occurring and substituting "the person's";

(b) by omitting from paragraph (b) "him" and substituting "the person";

(c) by omitting from paragraph (b) "he" and substituting "the person".

*No. 61 of 1987

158. Section 19 amended (Power to require offenders to disclose identity and leave subject land)

Section 19 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "he" and substituting "the employee";

(b) by omitting from subsection (1)(a) "his" first occurring and substituting "the person's";

(c) by omitting from subsection (1)(a) "the address of his place of abode" and substituting "residential address";

(d) by omitting from subsection (1)(b) "his" and substituting "the person's";

(e) by omitting from subsection (2)(a) "his" first occurring and substituting "the person's";

(f) by omitting from subsection (2)(a) "the address of his place of abode" and substituting "residential address";

(g) by omitting from subsection (2)(a) "his" third occurring and substituting "the person's";

(h) by omitting from subsection (2)(b) "his" and substituting "the person's".

159. Section 20 amended (Powers of seizure)

Section 20 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he” and substituting “the employee”;

(b) by omitting from subsection (2) “him” and substituting “the person”.

PART 8 – PUBLIC TRUSTEE ACT 1930 AMENDED

160. Principal Act

In this Part, the *Public Trustee Act 1930** is referred to as the Principal Act.

161. Section 5 amended (Delegation by chief executive officer)

Section 5 of the Principal Act is amended by omitting "his or her" and substituting "the officer's".

162. Section 8 amended (Confidentiality)

Section 8 of the Principal Act is amended as follows:

(a) by inserting "person who is a" after "A";

(b) by omitting "his or her" and substituting "the person's".

163. Section 14 amended (Administration by Public Trustee of benefit or relief funds)

Section 14(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) "him" and substituting "the Public Trustee";

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(b) by omitting from paragraph (b) “whom he” and substituting “who the Public Trustee”.

164. Section 15 amended (Executors, administrators, or trustees authorized to appoint Public Trustee to act in their places)

Section 15(1) of the Principal Act is amended as follows:

(a) by omitting “he” first occurring and substituting “a person”;

(b) by omitting “he” second occurring and substituting “the person”;

(c) by omitting from paragraph (a) “he” and substituting “the executor”;

(d) by omitting “his” and substituting “the person’s”.

165. Section 17 amended (Public Trustee entitled, on application, to administration of an intestate estate)

Section 17 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he” and substituting “the Public Trustee”;

(b) by omitting from subsection (1)(a) “him” and substituting “the other person”;

(c) by omitting from subsection (2) “his” and substituting “the Public Trustee’s”.

166. Section 18 amended (Power of Public Trustee to apply to administer testate estate if no application for probate or administration within three months after death)

Section 18(5) of the Principal Act is amended as follows:

(a) by omitting “him” and substituting “the Public Trustee”;

(b) by omitting “his” and substituting “the Public Trustee’s”.

167. Section 19 amended (Administration in other cases)

Section 19(1) of the Principal Act is amended as follows:

(a) by omitting “him” and substituting “the Public Trustee”;

(b) by omitting from paragraph (a) “his” and substituting “the person’s”.

168. Section 20 amended (Administration of small estates without grant of probate or administration)

Section 20 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "he" first occurring and substituting "the Public Trustee";

(b) by omitting from subsection (1)(a) "his" and substituting "the person's";

(c) by omitting from subsection (1)(d) "him" and substituting "the Public Trustee";

(d) by omitting from subsection (1)(d) "he" and substituting "the Public Trustee";

(e) by omitting from subsection (2) "him" and substituting "the Public Trustee";

(f) by omitting from subsection (3) "he" twice occurring and substituting "the Public Trustee";

(g) by omitting from subsection (4)(a) "he" and substituting "the Public Trustee";

(h) by omitting from subsection (4)(b) "he" and substituting "the Public Trustee";

(i) by omitting from subsection (5) "he" and substituting "the Public Trustee".

169. Section 20A amended (Administration of small estates)

Section 20A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his" and substituting "the person's";

(b) by omitting from subsection (1)(b) "he" and substituting "the Public Trustee";

(c) by omitting from subsection (1)(c) "him" and substituting "the Public Trustee";

(d) by omitting from subsection (2)(a) "he" and substituting "the Public Trustee";

(e) by omitting from subsection (2)(b) "he" and substituting "the Public Trustee";

(f) by omitting from subsection (2)(b) "his" and substituting "the Public Trustee's";

(g) by omitting from subsection (3) "he" twice occurring and substituting "the Public Trustee";

(h) by omitting from subsection (3) "him" and substituting "the Public Trustee";

(i) by omitting from subsection (4) "him" and substituting "the Public Trustee";

(j) by omitting from subsection (5) "amount he" and substituting "amount, the Public Trustee";

(k) by omitting from subsection (5) "his" and substituting "the Public Trustee's".

170. Section 21 amended (Power of Public Trustee to exercise certain powers pending grant of probate or administration to person entitled thereto)

Section 21 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "he" three times occurring and substituting "the Public Trustee";

(b) by omitting from subsection (1) "his" and substituting "the person's";

(c) by omitting from subsection (2) "his" and substituting "the Public Trustee's";

(d) by omitting from subsection (3) "or by telegram";

(e) by omitting from subsection (3) "he" and substituting "the Public Trustee";

(f) by omitting from subsection (4) "or the despatching of such telegram to him" and substituting "to the person";

(g) by omitting from subsection (4) "or by telegram";

(h) by omitting from subsection (4) "he" twice occurring and substituting "the person";

(i) by omitting from subsection (6) "him" and substituting "the Public Trustee".

171. Section 22 amended (Power of Public Trustee to act with advisory trustee)

Section 22 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) “his place” and substituting “the place of the trustee”;

(b) by omitting from subsection (2) “he” and substituting “the trustee”;

(c) by omitting from subsection (3) “he” twice occurring and substituting “the Public Trustee”.

172. Section 24 amended (Functions and powers of Public Trustee when acting as custodian trustee)

Section 24 of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) “he” and substituting “the Public Trustee”;

(b) by omitting from paragraph (d) “he” and substituting “the custodian trustee”;

(c) by omitting from paragraph (f) “he” twice occurring and substituting “the custodian trustee”.

173. Section 25 amended (Powers of Public Trustee in respect of unclaimed property)

Section 25(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) “his” and substituting “the owner’s”;

(b) by omitting from paragraph (d) “his” and substituting “the owner’s”.

174. Section 27 amended (Public Trustee to advertise notice of vesting)

Section 27 of the Principal Act is amended by omitting “him” and substituting “the Public Trustee,”.

175. Section 31 amended (Power of Public Trustee instead of appointing new trustee to elect to act as such)

Section 31(1) of the Principal Act is amended by omitting “he” and substituting “the Public Trustee”.

176. Section 32 amended (Express powers of Public Trustee)

Section 32 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “his” first occurring and substituting “the Public Trustee’s”;

(b) by omitting from subsection (1)(a) “he” and substituting “the Public Trustee”;

(c) by omitting from subsection (1)(c) “he” and substituting “the Public Trustee”;

(d) by omitting from subsection (1)(d) “he” and substituting “the Public Trustee”;

(e) by omitting from subsection (1)(g)(iii) “he” and substituting “the Public Trustee”;

(f) by omitting from subsection (1)(j) “he” and substituting “the Public Trustee”;

(g) by omitting from subsection (1)(l) “him” and substituting “the Public Trustee”;

(h) by omitting from subsection (1)(m) “his” and substituting “the Public Trustee’s”;

(i) by omitting from subsection (1)(m) “he” twice occurring and substituting “the Public Trustee”;

(j) by omitting from subsection (1)(o) “him” and substituting “the Public Trustee”;

(k) by omitting from subsection (1)(o) “he” and substituting “the Public Trustee”;

(l) by omitting from subsection (1)(p) “he” and substituting “the Public Trustee”;

(m) by omitting from subsection (1)(q) “he” and substituting “the Public Trustee”;

(n) by omitting from subsection (1)(r) “he” first occurring and substituting “the Public Trustee”;

(o) by omitting from subsection (1)(r) “he” second occurring and substituting “the judge”;

(p) by omitting from subsection (1)(s) “he” and substituting “the Public Trustee”;

(q) by omitting from subsection (1)(w) “his” and substituting “the Public Trustee’s”;

(r) by omitting from subsection (1)(x) “he” twice occurring and substituting “the Public Trustee”;

(s) by omitting from subsection (1)(x) “him” and substituting “the Public Trustee”;

(t) by omitting from subsection (1)(y) “his” and substituting “the Public Trustee’s”;

(u) by omitting from subsection (1)(za) “he” and substituting “the Public Trustee”;

(v) by omitting from subsection (1)(zb) “his” and substituting “the Public Trustee’s”;

(w) by omitting from subsection (5) “his” and substituting “the Public Trustee’s”.

177. Section 33 amended (Shares of infants during infancy)

Section 33 of the Principal Act is amended by omitting "he" and substituting "the Public Trustee".

178. Section 34 amended (Power of Public Trustee to apply income and capital for maintenance, &c., of infant)

Section 34 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his" and substituting "the Public Trustee's";

(b) by omitting from subsection (3) "his" and substituting "the Public Trustee's";

(c) by omitting from subsection (4) "his" and substituting "the Public Trustee's";

(d) by omitting from subsection (7) "his" and substituting "the Public Trustee's";

(e) by omitting from subsection (8) "himself" and substituting "personally".

179. Section 36 amended (Public Trustee may be appointed to represent parties in legal proceedings)

Section 36 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “his” and substituting “the Public Trustee’s”;

(b) by omitting from subsection (2) “his” twice occurring and substituting “the Public Trustee’s”.

180. Section 44 amended (Advances for administration purposes or against shares)

Section 44 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “him” and substituting “the Public Trustee”;

(b) by omitting from subsection (2) “he” and substituting “the Public Trustee”.

181. Section 50A amended (Establishment, &c., of group investment funds)

Section 50A(6) of the Principal Act is amended as follows:

(a) by omitting “his” first occurring and substituting “the Public Trustee’s”;

(b) by omitting from paragraph (b) “his” and substituting “the Public Trustee’s”.

182. Section 50C amended (Powers of Public Trustee in respect of group investment funds)

Section 50C(a) of the Principal Act is amended by omitting "he" and substituting "the Public Trustee".

183. Section 51 amended (Public Trustee not required to give bond)

Section 51 of the Principal Act is amended by omitting "his" and substituting "the Public Trustee's".

184. Section 52 amended (Power of Public Trustee to hold and be registered as holder of shares, &c., in companies)

Section 52 of the Principal Act is amended as follows:

(a) by omitting from subsection (3) "him" twice occurring and substituting "the Public Trustee";

(b) by omitting from subsection (3) "he" and substituting "the Public Trustee";

(c) by omitting from subsection (4) "he" and substituting "the Public Trustee";

(d) by omitting from subsection (6) "his" and substituting "the Public Trustee's";

(e) by omitting from subsection (8) "his" and substituting "a".

185. Section 53 amended (Disclosure, &c., of property)

Section 53(c) of the Principal Act is amended by omitting "his" twice occurring and substituting "the person's".

186. Section 54 amended (Inquiries as to property)

Section 54(1) of the Principal Act is amended as follows:

(a) by omitting "his" first occurring and substituting "the person's";

(b) by omitting "under his".

187. Section 55 amended (Right of Public Trustee to costs in legal proceedings)

Section 55 of the Principal Act is amended by omitting "he" twice occurring and substituting "the Public Trustee".

188. Section 56 amended (Allowance by Public Trustee of claims, &c., against estates)

Section 56 of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) "him" and substituting "the Public Trustee";

(b) by omitting from paragraph (a) "his" and substituting "the claimant's";

(c) by omitting from paragraph (a) “he” and substituting “the Public Trustee”;

(d) by omitting from paragraph (b) “him” and substituting “the Public Trustee”;

(e) by omitting from paragraph (c) “he” and substituting “the Public Trustee”.

189. Section 57 amended (Power of Public Trustee to institute inquiry as to validity of claim against estate)

Section 57 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he” and substituting “the Public Trustee”;

(b) by omitting from subsection (2) “he” and substituting “the Public Trustee”;

(c) by omitting from subsection (3) “him” and substituting “the claimant”.

190. Section 58 amended (Where Public Trustee may distribute assets after notice of rejection of claim of creditor)

Section 58(1) of the Principal Act is amended by omitting “he” and substituting “the Public Trustee”.

191. Section 60 amended (Provisions for closing administration of estate after notice)

Section 60 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he” and substituting “the Public Trustee”;

(b) by omitting from subsection (1)(a) “his decease” and substituting “death”;

(c) by omitting from subsection (2) “he” and substituting “the Public Trustee”;

(d) by omitting from subsection (2) “his” and substituting “a”;

(e) by omitting from subsection (4) “he” and substituting “the Public Trustee”.

192. Section 61 amended (Priorities of claims when assets are insufficient)

Section 61(1)(b) of the Principal Act is amended by omitting “his” and substituting “the deceased’s”.

193. Section 62 amended (Power of Public Trustee to make payment of sums not exceeding $500 without order)

Section 62 of the Principal Act is amended by omitting “he” and substituting “the Public Trustee”.

194. Section 63 amended (Payment of small sums without probate or letters of administration)

Section 63(1) of the Principal Act is amended by omitting “him” and substituting “the Public Trustee”.

195. Section 64 amended (Auction sales)

Section 64 of the Principal Act is amended by omitting “him” and substituting “the Public Trustee”.

196. Section 65 amended (Power of Public Trustee to distribute estate when no claims received)

Section 65 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) “identify himself or herself” and substituting “present”;

(b) by omitting from subsection (2) “himself or herself” and substituting “present”;

(c) by omitting from subsection (2) “him” and substituting “the person”;

(d) by omitting from subsection (3) “he” and substituting “the Public Trustee”;

(e) by omitting from subsection (3) “him” twice occurring and substituting “the Public Trustee”;

(f) by omitting from subsection (4)(b) “he” and substituting “the Public Trustee”.

197. Section 67 amended (Reciprocity)

Section 67 of the Principal Act is amended by omitting “his” and substituting “the person’s”.

198. Section 68 amended (Service of orders on Public Trustee)

Section 68 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “he” and substituting “the person”;

(b) by omitting from subsection (2) “his” and substituting “the Registrar’s or Deputy-Registrar’s”.

199. Section 69 amended (Certificate of Public Trustee to be accepted as evidence)

Section 69(1) of the Principal Act is amended by omitting “his” and substituting “the Public Trustee’s”.

200. Section 71 amended (Public Trustee and certain officers not personally liable except in case of fraud or crime)

Section 71 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(a) "his or her" and substituting "the officer's, or employee's,";

(b) by omitting from subsection (1)(b) "his or her" and substituting "the officer's, or employee's,";

(c) by omitting from subsection (3) "he" first occurring and substituting "the Australian legal practitioner";

(d) by omitting from subsection (3) "his" twice occurring and substituting "the practitioner's";

(e) by omitting from subsection (3) "he" second occurring and substituting "the practitioner".

201. Section 72 amended (Remedy against Public Trustee)

Section 72 of the Principal Act is amended by omitting "he" and substituting "the person".

202. Section 73 amended (Mode of application to Court)

Section 73(d) of the Principal Act is amended by omitting "he" and substituting "the Public Trustee or other person".

203. Section 74 amended (Power of Public Trustee to submit certain matters for opinion or direction of judge)

Section 74 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “his” and substituting “the Public Trustee’s”;

(b) by omitting from subsection (2) “he” and substituting “the judge”;

(c) by omitting from subsection (2) “him” and substituting “the Public Trustee”;

(d) by omitting from subsection (3) “his” and substituting “an”;

(e) by omitting from subsection (4) “his” and substituting “an”;

(f) by omitting from subsection (4) “him” and substituting “the interested person”.

PART 9 – RACING (TASRACING PTY LTD) ACT 2009 AMENDED

204. Principal Act

In this Part, the *Racing (Tasracing Pty Ltd) Act 2009** is referred to as the Principal Act.

205. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of *asset*:

annual report, in relation to a financial year, means the report prepared under section 14AB in respect of the financial year;

(b) by inserting the following definition after the definition of *Board*:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 12A, that specifies that the function, service or concession is a

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community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 27A;

(c) by inserting the following definitions after the definition of *Company*:

corporate plan means the corporate plan of the Company approved under section 13;

director means a director of the Company;

(d) by omitting the definition of *member of the Company* and substituting the following definition:

member, in respect of the Company, means a member referred to in section 10;

(e) by inserting the following definition after the definition of *right*:

subsidiary has the same meaning as in the Corporations Act;

206. Section 4 substituted

Section 4 of the Principal Act is repealed and the following section is substituted:

4. Application of Act to subsidiary

If the Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Company; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

207. Section 7 amended (Status of Company)

Section 7 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) "or a subsidiary of the Company" after "Company";

(b) by inserting in subsection (2) "or a subsidiary of the Company" after "obligation of the Company";

(c) by inserting in subsection (2)(b) "or subsidiary" after "Company".

208. Section 9 amended (Shares)

Section 9(2) of the Principal Act is amended by omitting "his or her" and substituting "the member's".

209. Section 11 amended (Constitution of Company)

Section 11 of the Principal Act is amended by omitting subsections (2A), (3) and (4) and substituting the following subsections:

(3) The members are to give the Minister a copy of an amendment to the constitution of the Company as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this subsection, the Company is to amend its constitution to include provisions to the effect of the provisions in Schedule 1.

210. Section 12 amended (Members' statement of expectations)

Section 12 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “of the Company”;

(b) by omitting from subsection (2)(b) “high-level”;

(c) by omitting from subsection (2)(b) “of the Company” first occurring;

(d) by omitting from subsection (3) “of the Company”;

(e) by omitting from subsection (4) “of the Company”.

211. Section 12A amended (Directions by members)

Section 12A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “of the Company” first occurring;

(b) by omitting from subsection (2) “of the Company” first occurring;

(c) by omitting from subsection (2) “of the Company” third occurring;

(d) by omitting from subsection (2)(a) “of the Company”;

(e) by omitting from subsection (2)(b) “of the Company”;

(f) by inserting in subsection (3)(a)(i) “or subsidiary” after “Company”;

(g) by inserting the following subparagraph after subparagraph (i) in subsection (3)(a):

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(h) by inserting the following subsection after subsection (3):

(3A) A direction given to the Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(i) by omitting from subsection (4) "of the Company";

(j) by omitting from subsection (5) "of the Company" first occurring;

(k) by omitting from subsection (5)(a) "of the Company";

(l) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

212. Section 12B amended (Company may object to direction by members)

Section 12B of the Principal Act is amended as follows:

(a) by omitting from subsection (2)(a) “of the Company”;

(b) by omitting from subsection (3) “of the Company”;

(c) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(d) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister

is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

213. Section 12C amended (Publication of directions)

Section 12C of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "of the Company";

(b) by inserting in subsection (3)(c) "including, but not limited to, commercial in confidence" after "confidentiality";

(c) by omitting from subsection (4) "of the Company";

(d) by inserting in subsection (5) "annual" after "In the".

214. Section 12D amended (Duty to notify members of compliance with directions)

Section 12D of the Principal Act is amended by omitting "members of the Company" and substituting "members".

215. Section 12E amended (Statement of corporate intent)

Section 12E of the Principal Act is amended as follows:

(a) by inserting the following subparagraph after subparagraph (i) in subsection (4)(b):

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

(b) by omitting from subsection (4)(d) "of the Company";

(c) by omitting from subsection (5) "of the Company";

(d) by omitting from subsection (6)(a) "of the Company";

(e) by omitting from subsection (8)(a) "of the Company".

216. Section 13 substituted

Section 13 of the Principal Act is repealed and the following section is substituted:

13. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 12.

(3) The Board must consult with each racing club and racing industry association in respect of the Board's corporate plan.

(4) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(5) After receiving a draft of a corporate plan under subsection (4) from the Board, the members may request that the Board make changes to the draft corporate plan.

(6) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(7) Except where the members approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(8) For the purposes of subsection (7) –

(a) a statement of corporate intent that is in force in respect of the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

217. Section 14 amended (Directors of Company)

Section 14 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "The Company" and substituting "Subject to section 27D, the Company";

(b) by inserting the following subsection after subsection (1):

(1A) For the avoidance of doubt, section 25 does not apply if a sole director is appointed in respect of the Company in accordance with section 27D.

218. Section 14AA inserted

After section 14 of the Principal Act, the following section is inserted in Part 2:

14AA. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

219. Section 14A amended (Company to report on progress)

Section 14A of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) "of the Company";

(b) by omitting from subsection (3) "of the Company";

(c) by inserting in subsection (4)(c) "including, but not limited to, commercial in confidence" after "confidentiality".

220. Section 14AB inserted

After section 14A of the Principal Act, the following section is inserted in Part 2:

14AB. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section in relation to the Company and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members under section 12A during the financial year; and

(b) the information required to be contained in an annual report, under section 12C, in respect of a direction given under section 12A; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 27A(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any

reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) The Board must provide a copy of the annual report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

221. Section 14B amended (Duty to notify members of adverse circumstances)

Section 14B of the Principal Act is amended as follows:

(a) by inserting "and its subsidiaries" after "Company" in paragraph (d) of the definition of *governing documents* in subsection (1);

(b) by omitting from subsection (2) "of the Company".

222. Section 14BA inserted

After section 14B of the Principal Act, the following section is inserted in Part 2:

14BA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a

copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members under subsection (1), the subsidiary board is to give a copy of the notice to the Board.

223. Section 15 substituted

Section 15 of the Principal Act is repealed and the following section is substituted:

15. Borrowing

The Company, or a subsidiary of the Company, is not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

224. Section 16 amended (Loan from Treasurer)

Section 16 of the Principal Act is amended as follows:

(a) by inserting in subsection (1) “or any of its subsidiaries” after “Company”;

(b) by omitting from subsection (3) “to the Crown” and substituting “or subsidiary into the Public Account”.

225. Section 17 amended (Guarantee or indemnity)

Section 17(1) of the Principal Act is amended as follows:

(a) by inserting "or its subsidiaries" after "of the Company";

(b) by inserting "or subsidiary" after "to the Company";

(c) by inserting in paragraph (b) "or subsidiary" after "by the Company";

(d) by inserting in paragraph (b) "or subsidiary" after "which the Company".

226. Section 20 amended (Audit)

Section 20 of the Principal Act is amended by omitting "until the members of the Company appoint another person as auditor for the Company" and substituting "and its subsidiaries".

227. Section 25 amended (Composition of Board)

Section 25 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Company" twice occurring;

(b) by omitting from subsection (2) "of the Company" second occurring;

(c) by omitting from subsection (8) "members of the Company" and substituting "members";

(d) by omitting from subsection (10) "members of the Company" and substituting "members";

(e) by inserting the following subsection after subsection (10):

(11) For the avoidance of doubt, this section does not apply to the Company if a sole director is appointed in respect of the Company in accordance with section 27D.

228. Section 26 amended (Vacancies in offices of directors of Company)

Section 26 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Company" second occurring;

(b) by omitting from subsection (2)(a) "of the Company" twice occurring;

(c) by omitting from subsection (4) "of the Company".

229. Sections 27A, 27B, 27C, 27D and 27E inserted

After section 27 of the Principal Act, the following sections are inserted in Part 4:

27A. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1), or a community service obligation is specified in a direction given under section 12A, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1), a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

27B. General investigations of Company

(1) The members may, by notice in writing to the Company or its subsidiaries, do one or more of the following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of the Company or a subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

27C. Actions that may be taken if poor performance by Company

(1) The members may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 12; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 12; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 12A in respect of

the Company or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Company or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 27D, in respect of the Company.

27D. Appointment of sole director of Company

(1) The members may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 27C(8)(b); or

(b) if all of the offices of director of the Company are vacant at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Company –

(a) the members must give written notice to the Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table

in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Company under this section is taken to

vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

27E. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 27C or 27D in respect of the Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 27C or 27D.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 27C or 27D is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 27C or 27D in respect of the Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

230. Section 28 amended (Limitations on members)

Section 28 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Company";

(b) by omitting from subsection (2) "of the Company" first occurring;

(c) by omitting from subsection (3) "of the Company".

231. Section 28AA inserted

After section 28 of the Principal Act, the following section is inserted in Part 4:

28AA. Delegation by Minister and Treasurer

(1) The Minister, in writing, may delegate to any person any of the Minister's powers or functions under this Act, other than this power of delegation.

(2) The Treasurer, in writing, may delegate to any person any of the Treasurer's powers or functions under this Act, other than this power of delegation.

232. Section 30 substituted

Section 30 of the Principal Act is repealed and the following sections are substituted:

30. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

30A. Regulations

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

(2) Without limiting the generality of subsection (1), the Governor may make regulations that –

(a) provide for the payment of fees under the regulations; and

(b) provide that the determination of a dispute in accordance with the process provided in, or provided for by, the regulations is binding on the parties to the dispute.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may –

(a) provide that a contravention 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.

(5) The regulations may authorise any matter to be from time to time determined, approved, applied or regulated by the Minister, the Treasurer or such other person as is specified in the regulations.

233. Schedule 1 amended (Provisions to be included in constitution)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting from clause 2(a) “board of directors” and substituting “Board”;

(b) by omitting from clause 2(b) “board of directors” and substituting “Board”;

(c) by omitting paragraph (a) from clause 2A(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(d) by omitting from clause 2B(1) “of the Company”;

(e) by omitting from clause 2B(2)(b) “of the Company”;

(f) by omitting from clause 2C(1) "of the Company" second occurring;

(g) by inserting the following clause after clause 2C:

2D. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not later than 90 days after the end of the financial year in respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

(h) by omitting clause 3;

(i) by omitting from clause 4 "special resolution" and substituting "the members";

(j) by inserting the following paragraph after paragraph (b) in clause 4:

(ab) approve, or approve the amendment of, the constitution of a subsidiary; or

(k) by omitting from clause 4(c) "any transaction" and substituting "a transaction, or other legal process,";

(l) by omitting clause 6 and substituting the following clause:

6. Approval for profit sharing

Except where approved by the members, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

PART 10 – RAIL COMPANY ACT 2009 AMENDED

234. Principal Act

In this Part, the *Rail Company Act 2009** is referred to as the Principal Act.

235. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

(a) by inserting the following definition before the definition of *asset*:

annual report, in relation to a financial year, means the report prepared under section 22AB in respect of the financial year;

(b) by inserting the following definition after the definition of *Business Sale Agreement*:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 20A, that specifies that the function, service or concession is a

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community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 37A;

(c) by inserting the following definition after the definition of *contract*:

corporate plan means the corporate plan of the Company approved under section 21;

236. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

4A. Application of Act to subsidiary

If the Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Company; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

237. Section 7 amended (Constitution of Company)

Section 7 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) The constitution of the Company is to include –

(a) the principal objectives of the Company; and

(b) provisions to the effect of the provisions set out in Schedule 2.

(b) by omitting subsection (3) and substituting the following subsections:

(3) The members are to give the Minister a copy of an amendment to the constitution of the Company as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this subsection, the Company is to

amend its constitution to include provisions to the effect of Schedule 2.

238. Section 9 amended (Shares)

Section 9(2) of the Principal Act is amended by omitting “his or her” and substituting “the member’s”.

239. Section 11 amended (Status of Company)

Section 11(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (b) “it.” and substituting “it; and”;

(b) by inserting the following paragraph after paragraph (b):

(c) is not subject or entitled to any prerogative right or privilege of the Crown.

240. Section 12 amended (Audit)

Section 12 of the Principal Act is amended by omitting “a subsidiary of the Company” and substituting “its subsidiaries”.

241. Section 13 amended (Borrowing)

Section 13 of the Principal Act is amended by omitting “and a subsidiary of the Company, are” and substituting "or a subsidiary of the Company, is".

242. Section 13A inserted

After section 13 of the Principal Act, the following section is inserted in Division 2:

13A. Borrowing from Treasurer

(1) The Treasurer may lend to the Company or any of its subsidiaries, out of money provided by Parliament for the purpose, any money that the Treasurer considers appropriate.

(2) A loan is subject to any conditions determined by the Treasurer.

(3) An amount lent under subsection (1), and any interest or other charge payable in respect of the loan, is a debt repayable by the Company or subsidiary into the Public Account.

243. Section 14 amended (Guarantee or indemnity)

Section 14(1) of the Principal Act is amended by omitting "a subsidiary of the Company" and substituting "its subsidiary".

244. Section 17 amended (Superannuation contributions)

Section 17 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) The Company, and any subsidiary of the Company, must comply with any instruction in relation to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.

245. Section 19 amended (Directors of Company)

Section 19 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "The members of the Company" and substituting "Subject to section 37D, the members";

(b) by omitting from subsection (2) "of the Company".

246. Section 20A amended (Directions by members)

Section 20A of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Company or subsidiary; or

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(b) by inserting the following subsection after subsection (3):

(3A) A direction given to the Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(c) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

247. Section 20B amended (Company may object to direction by members)

Section 20B of the Principal Act is amended as follows:

(a) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(b) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

248. Section 20C amended (Publication of directions)

Section 20C of the Principal Act is amended as follows:

(a) by inserting in subsection (3)(c) "including, but not limited to, commercial in confidence" after "confidentiality";

(b) by inserting in subsection (5) "annual" after "In the".

249. Section 20E amended (Statement of corporate intent)

Section 20E(4)(b) of the Principal Act is amended by inserting after subparagraph (i) the following subparagraph:

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

250. Sections 21 and 22 substituted

Sections 21 and 22 of the Principal Act are repealed and the following sections are substituted:

21. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 20.

(3) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) on such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board, the members may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

22. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

251. Section 22A amended (Company to report on progress)

Section 22A(4)(c) of the Principal Act is amended by inserting "including, but not limited to, commercial in confidence" after "confidentiality".

252. Section 22AB inserted

After section 22A of the Principal Act, the following section is inserted in Division 3:

22AB. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section in relation to the Company and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members under section 20A during the financial year; and

(b) the information required, under section 20C, to be contained in an annual report of the Company in respect of a direction given under section 20A; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 37A(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any

reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) The Board must provide a copy of the annual report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

253. Section 22B amended (Duty to notify members of adverse circumstances)

Section 22B(1) of the Principal Act is amended by inserting "and its subsidiaries" after "Company" in paragraph (d) of the definition of *governing documents*.

254. Section 22BA inserted

After section 22B of the Principal Act, the following section is inserted in Division 3:

22BA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members under subsection (1), the

subsidiary board is to give a copy of the notice to the Board.

255. Part 2, Division 4 repealed

Division 4 of Part 2 of the Principal Act is repealed.

256. Section 30 amended (Transfer of employees)

Section 30 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "his or her" and substituting "the employee's or officer's";

(b) by omitting from subsection (3) "his or her" and substituting "the employee's or officer's";

(c) by omitting from subsection (5)(a) "he or she" and substituting "the employee";

(d) by omitting from subsection (5)(d) "his or her" and substituting "the employee's";

(e) by omitting from subsection (8) "his or her" and substituting "the person's";

(f) by omitting from subsection (9) "he or she" and substituting "the employee".

257. Section 36 amended (Long service leave for certain employees)

Section 36(3) of the Principal Act is amended by omitting "his or her" and substituting "the employee's".

258. Sections 37A, 37B, 37C, 37D and 37E inserted

Before section 38 of the Principal Act, the following sections are inserted in Part 6:

37A. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1), or a community service obligation is specified in a direction given under section 20A, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1), a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

(3) On and after the commencement of this section –

(a) a direction under section 23, as in force before the commencement of this section, is taken to be a direction under section 20A that specifies a community service obligation; and

(b) a non-commercial activity that was the subject of a direction under section 23, as in force before the commencement of this section, is taken to be a community service obligation.

37B. General investigations of Company

(1) The members may, by notice in writing to the Company or its subsidiaries, do one or more of the following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this

section in respect of the Company or subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

37C. Actions that may be taken if poor performance by Company

(1) The members may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 20; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 20; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 20A in respect of the Company or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Company or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 37D, in respect of the Company.

37D. Appointment of sole director of Company

(1) The members may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 37C(8)(b); or

(b) if all of the directors of the Company have vacated the office of director at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table

in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Company –

(a) the members must give written notice to the Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Company under this section is taken to vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

37E. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 37C or 37D in respect of the Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 37C or 37D.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 37C or 37D is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 37C or 37D in respect of the Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

259. Section 41 amended (Delegation by Minister)

Section 41 of the Principal Act is amended as follows:

(a) by renumbering the text of the section as subsection (1);

(b) by omitting "his or her" and substituting "the Minister's";

(c) by inserting the following subsection after subsection (1):

(2) The Treasurer, in writing, may delegate to any person any of the Treasurer's powers or functions under this Act, other than this power of delegation.

260. Section 41A inserted

After section 41 of the Principal Act, the following section is inserted in Part 6:

41A. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

261. Schedule 2 amended (Provisions to be Included in Constitution)

Schedule 2 to the Principal Act is amended as follows:

(a) by omitting paragraph (a) from clause 1(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(b) by inserting the following clauses after clause 3:

4. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not later than 90 days after the end of the financial year in respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

5. Approval required for matters relating to ownership of subsidiaries

Except where approved by the members, 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) approve, or approve the amendment of, the constitution of a subsidiary; or

(d) enter into a transaction, or other legal process, which may result in a subsidiary ceasing to be a subsidiary.

6. Approval required for profit sharing

Except where approved by the members, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

7. Requests for information

On the written request of a member, the Company must provide to the members –

(a) the business or strategic plans of the Company and its subsidiaries; and

(b) the financial information specified in the request; and

(c) a report on the matters specified in the request and any relevant related information.

PART 11 – TT-LINE ARRANGEMENTS ACT 1993 AMENDED

262. Principal Act

In this Part, the *TT-Line Arrangements Act 1993** is referred to as the Principal Act.

263. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

(a) by omitting the definitions of *articles* and *board of directors* and substituting the following definitions:

annual report, in relation to a financial year, means the report prepared under section 13FA in respect of the financial year;

Board means the board of directors for the Company;

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 13A, that specifies that the function, service

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or concession is a community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 19;

(b) by inserting the following definitions after the definition of *Company*:

corporate plan means the corporate plan of the Company approved under section 13EA;

director means director of the Company;

264. Section 4 inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

4. Application of Act to subsidiary

If the Company arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Company; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

265. Section 7 substituted

Section 7 of the Principal Act is repealed and the following sections are substituted:

7. Principal objective of Company

The principal objective of the Company is to manage and facilitate the operation of a shipping service to and from Tasmania in a manner that is consistent with sound commercial practice.

7A. Constitution of Company

(1) The constitution of the Company is to include –

(a) the principal objectives of the Company; and

(b) any other objectives of the Company as are approved by the Minister; and

(c) provisions to the effect of those set out in Schedule 1.

(2) Other provisions of the constitution of the Company are to be consistent with this Act.

(3) The members are to give the Minister a copy of an amendment to the constitution as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this subsection, the Company is to amend its constitution to include provisions to the effect of Schedule 1.

(6) On the commencement of this section –

(a) the memorandum and articles of the Company, as in force immediately before the commencement of this section, are taken to be the constitution of the Company; and

(b) a reference to the memorandum and articles of the Company is taken to be a reference to the constitution of the Company.

266. Section 8 amended (Members of Company)

Section 8(1) of the Principal Act is amended by omitting paragraphs (b) and (c) and substituting the following paragraph:

(b) the Treasurer.

267. Section 9A amended (Limitations on members of Company)

Section 9A of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "a Company" and substituting "the Company";

(b) by omitting from subsection (2) "a Company" and substituting "the Company";

(c) by omitting from subsection (4) "memorandum and articles" and substituting "constitution".

268. Section 11 amended (Prohibition on members of Company acquiring shares for own benefit)

Section 11(1) of the Principal Act is amended by omitting "his or her" and substituting "the member's".

269. Section 12 substituted

Section 12 of the Principal Act is repealed and the following section is substituted:

12. Directors of Company

(1) Subject to section 20B, the members are to ensure that the Company has a Board

of Directors who have the experience and skills necessary to enable the Company to achieve its objectives.

(2) The members are to appoint the Board for the Company in accordance with the constitution.

270. Section 13 amended (Members' statement of expectations)

Section 13 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Company";

(b) by omitting from subsection (1) "board of directors" and substituting "Board";

(c) by omitting from subsection (2)(a) "of the Company" first occurring;

(d) by omitting from subsection (2)(b) "of the Company" first occurring;

(e) by omitting from subsection (3) "of the Company";

(f) by omitting from subsection (3) "board of directors" and substituting "Board";

(g) by omitting from subsection (4) "of the Company";

(h) by omitting from subsection (4) "board of directors" and substituting "Board".

271. Section 13A amended (Directions by members)

Section 13A of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Company or subsidiary; or

(ia) the corporate plan in force in respect of the Company or subsidiary; or

(b) by inserting the following subsection after subsection (3):

(3A) A direction given to the Company or subsidiary under subsection (1) does not affect a contract if –

(a) the Company, or subsidiary, entered into the contract before the Company or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Company or subsidiary breaching the contract.

(c) by omitting from subsection (4)(b) “board of directors” and substituting “Board”;

(d) by omitting from subsection (5)(a) “of the Company”;

(e) by omitting from subsection (5)(b) “board of directors” and substituting “Board”;

(f) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Company or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Company or subsidiary.

272. Section 13B amended (Company may object to direction by members)

Section 13B of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "board of directors" and substituting "Board";

(b) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(c) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Company or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

273. Section 13C amended (Publication of directions)

Section 13C of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “board of directors” and substituting “Board”;

(b) by inserting in subsection (3)(c) “including, but not limited to, commercial in confidence” after “confidentiality”;

(c) by inserting in subsection (5) “annual” after “In the”;

(d) by omitting from subsection (5) “board of directors” first occurring and substituting “Board”;

(e) by omitting from subsection (5) “board” second occurring and substituting “Board”;

(f) by omitting from subsection (5)(a)(i) “board of directors” and substituting “Board”;

(g) by omitting from subsection (5)(a)(ii) “board of directors” and substituting “Board”;

(h) by omitting from subsection (5)(b) “board of directors” and substituting “Board”.

274. Section 13D amended (Duty to notify members of compliance with directions)

Section 13D of the Principal Act is amended as follows:

(a) by omitting "board of directors" and substituting "Board";

(b) by omitting "a Company" and substituting "the Company".

275. Section 13E amended (Statement of corporate intent)

Section 13E of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "board of directors" and substituting "Board";

(b) by omitting from subsection (3) "board of directors" and substituting "Board";

(c) by inserting the following subparagraph after subparagraph (i) in subsection (4)(b):

(ia) the corporate plan in respect of the Company and its subsidiaries that is in force for the relevant financial year to which the statement relates;

(d) by omitting from subsection (5)(a) "board of directors" and substituting "Board";

(e) by omitting from subsection (7) "board of directors" and substituting "Board".

276. Sections 13EA and 13EB inserted

After section 13E of the Principal Act, the following sections are inserted in Part 2:

13EA. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Company and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer's Instructions; and

(b) be in a form and contain the information specified in the Treasurer's Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Company and its subsidiaries under section 13.

(3) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board, the members may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Company and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members approve otherwise, the Company must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Company or a subsidiary is taken to be approval, by the members, for the Company or subsidiary to act other than in accordance with the corporate plan to the extent required for the Company or subsidiary to meet the community service obligation.

13EB. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Company, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Company, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

277. Section 13F amended (Company to report on progress)

Section 13F of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "board of directors" and substituting "Board";

(b) by omitting from subsection (3) "board of directors" and substituting "Board";

(c) by omitting from subsection (4) "board of directors" twice occurring and substituting "Board";

(d) by inserting in subsection (4)(c) "including, but not limited to, commercial in confidence" after "confidentiality";

(e) by omitting from subsection (5) "board of directors" and substituting "Board";

(f) by omitting from subsection (5) "board" second occurring and substituting "Board".

278. Section 13FA inserted

After section 13F of the Principal Act, the following section is inserted in Part 2:

13FA. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Company and its subsidiaries.

(2) An annual report prepared under this section, for a financial year, must contain –

(a) the details of any direction given by members under section 13A during the financial year; and

(b) the information required to be contained in an annual report, under section 13C, in respect of a direction given under section 13A; and

(c) each community service obligation that applied in respect of the Company or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 19(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Company as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Company; and

(g) each report of the auditor, in respect of the Company, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) The Board must provide a copy of the annual report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Company to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Company referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

279. Section 13G amended (Duty to notify members of adverse circumstances)

Section 13G of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (c) in the definition of *governing documents* in subsection (1):

(ca) the corporate plan in force in respect of the Company and its subsidiaries; and

(b) by omitting from subsection (2) "board of directors" and substituting "Board";

(c) by omitting from subsection (2) "board" second occurring and substituting "Board";

(d) by omitting from subsection (3) "board of directors" and substituting "Board".

280. Section 13GA inserted

After section 13G of the Principal Act, the following section is inserted in Part 2:

13GA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Company or a subsidiary of the Company; or

(b) appoint an administrator under the Corporations Act in respect of the Company or a subsidiary of the Company.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a copy of the notice to each subsidiary of the Company.

(4) If a subsidiary board notifies the members under subsection (1), the subsidiary board is to give a copy of the notice to the Board.

281. Section 13H amended (Sponsorship framework)

Section 13H of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “board of directors” and substituting “Board”;

(b) by omitting from subsection (2)(d) “board of directors” and substituting “Board”;

(c) by omitting from subsection (3) “board of directors” and substituting “Board”;

(d) by omitting from subsection (4) “board of directors” and substituting “Board”.

282. Section 14 repealed

Section 14 of the Principal Act is repealed.

283. Section 15 amended (Status of the Company)

Section 15 of the Principal Act is amended as follows:

(a) by renumbering the text of the section as subsection (1);

(b) by omitting from paragraph (c) “Company.” and substituting “Company; and”;

(c) by inserting the following paragraph after paragraph (c) in subsection (1):

(d) is not subject or entitled to any prerogative right or privilege of the Crown.

(d) by inserting the following subsection after subsection (1):

(2) The Crown is not liable for any liability or obligation of the Company or a subsidiary of the Company unless –

(a) the Treasurer gives a guarantee or indemnity under section 17 in relation to that liability or obligation; or

(b) a guarantee is given under the *Tasmanian Public Finance Corporation Act 1985* in respect of the Company or subsidiary.

284. Sections 15A and 15B inserted

After section 15 of the Principal Act, the following sections are inserted in Part 2:

15A. Audit

The Auditor-General is to act as the auditor for the Company and its subsidiaries.

15B. Borrowing

The Company, or a subsidiary of the Company, is not to borrow from any person other than the Tasmanian Public

Finance Corporation except as otherwise approved by the Treasurer in writing.

285. Section 16 amended (Borrowing from Treasurer)

Section 16(1) of the Principal Act is amended by omitting “and” and substituting “or any of”.

286. Section 17 amended (Guarantee or indemnity)

Section 17(1) of the Principal Act is amended as follows:

(a) by inserting “or its subsidiary,” after “Company,”;

(b) by inserting in paragraph (b) “or subsidiary” after “by the Company”;

(c) by inserting in paragraph (b) “or subsidiary” after “which the Company”.

287. Section 18A inserted

After section 18 of the Principal Act, the following section is inserted in Part 2:

18A. Effect of *Financial Agreement Act 1994*

If, under section 5(1) of the *Financial Agreement Act 1994*, the Treasurer 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 must comply with that requirement.

288. Section 19 substituted

Section 19 of the Principal Act is repealed and the following sections are substituted:

19. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Company is a community service obligation; or

(b) a function, service or concession that the Company proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1) in respect of the Company, or a community service obligation is specified in a direction given under section 13A, in respect of the Company, Part 9 of the *Government Business Enterprises Act 1995* applies to the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1) in respect of the Company, a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

20. General investigations of Company

(1) The members may, by notice in writing to the Company or its subsidiaries, do one or more of the following in respect of the Company or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Company or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of the Company or a subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Company as if –

(a) the Company were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the members.

20A. Actions that may be taken if poor performance by Company

(1) The members may take one or more of the following actions in respect of the Company or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Company or subsidiary:

(a) the members may require the Company or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Company or its subsidiary includes, but is not limited to, where a review or investigation of the Company or subsidiary under this Act has resulted in evidence that –

(a) the Company or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 13; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(b) the Company or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Company or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Company or subsidiary; or

(ii) its members' statement of expectations under section 13; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Company or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 13A in respect of

the Company or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Company or subsidiary, the members must, before taking the action –

(a) give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Company or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Company or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Company or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Company or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Company or subsidiary –

(a) the members are to give written notice to the Company or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Company under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Company or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Company or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Company or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Company or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Company or subsidiary; and

(b) a performance improvement plan produced, in respect of the Company or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Company or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Company or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 20B, in respect of the Company.

20B. Appointment of sole director of Company

(1) The members may appoint a sole director to administer the affairs and activities of the Company –

(a) in accordance with section 20A(8)(b); or

(b) if all of the directors of the Company have vacated the office of director at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Company.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Company –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Company.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Company –

(a) the members must give written notice to the Company, and the Minister, of the appointment of the sole director and, on giving the notice to the Company –

(i) all offices of director of the Company, other than the sole director so appointed, are vacated; and

(ii) the functions of the Company are to be performed, and the powers of the Company may be exercised, by the sole director in the name and on behalf of the Company while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Company; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Company, the Minister is to table

in each House of Parliament a notice that specifies –

(i) the Company in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Company is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Company is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Company in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Company under this section is taken to

vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

20C. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 20A or 20B in respect of the Company or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 20A or 20B.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Company or subsidiary.

(4) Despite subsection (2), if a person appointed under section 20A or 20B is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 20A or 20B in respect of the Company or subsidiary; and

(b) any loss or damage incurred by the Company or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

289. Section 22 amended (Delegation)

Section 22 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "his or her" and substituting "the Minister's";

(b) by omitting from subsection (2) "his or her" and substituting "the Treasurer's".

290. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Part 3:

22A. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

291. Schedule 1 amended (Provisions to be included in memorandum and articles)

Schedule 1 to the Principal Act is amended as follows:

(a) by omitting the heading and substituting the following heading:

SCHEDULE 1 – PROVISIONS TO BE INCLUDED IN CONSTITUTION

(b) by omitting Part 1;

(c) by omitting the heading from Part 2;

(d) by omitting from clause 2 "these articles" and substituting "this constitution";

(e) by omitting from clause 3 "these articles" first occurring and substituting "this constitution";

(f) by omitting from clause 3(a) "board of directors" and substituting "Board";

(g) by omitting from clause 3(b) "board of directors" and substituting "Board";

(h) by omitting from clause 3(b) "these articles" and substituting "this constitution";

(i) by omitting from clause 3A(1) "board of directors" first occurring and substituting "Board";

(j) by omitting from clause 3A(1)(a) "board of directors" and substituting "Board";

(k) by omitting paragraph (a) from clause 3A(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(l) by inserting the following clause after clause 3C:

3D. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Company during that financial year.

(2) The review of the performance of the chief executive officer of the Company is to be completed not later than 90 days after the end of the financial year in respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Company within 14 days after completing the review.

(m) by omitting from clause 4 "a special resolution" and substituting "the members";

(n) by omitting from clause 5 "a special resolution" and substituting "the members";

(o) by omitting from clause 5(a) "shareholders of the Company" and substituting "members";

(p) by omitting from clause 6 "special resolution" and substituting "the members";

(q) by inserting the following paragraph after paragraph (b) in clause 6:

(ba) approve, or approve the amendment of, the constitution of a subsidiary; or

(r) by omitting from clause 6(c) "any transaction" and substituting "a transaction, or other legal process,";

(s) by omitting clause 7;

(t) by omitting from clause 8 "board of directors" and substituting "Board";

(u) by omitting from clause 8 "board" second occurring and substituting "Board";

(v) by omitting from clause 9(1) "shareholders by special resolution" and substituting "members";

(w) by omitting from clause 9(3) "shareholders by special resolution" and substituting "members";

(x) by omitting subclauses (4), (5), (6), (7), (8) and (9) from clause 9 and substituting the following subclauses:

(4) The Company must make available to the public, at all

reasonable times, a record of each direction, or approval, of the members given under subclauses (1) and (3).

(5) On the payment of a fee determined by the Company, the Secretary of the Company may provide a certified copy of a record, kept in accordance with subclause (4) to a person.

(6) In this clause, ***certified copy*** means a copy that has been certified by the Secretary of the Company in a manner that the Secretary considers appropriate.

(y) by omitting clause 10 and substituting the following clause:

10. Approval required for profit sharing

Except where approved by the members, the Company must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

(z) by omitting from clause 11 “shareholder” first occurring and substituting “member”;

(za) by omitting from clause 11 “both the shareholder and the Minister for the time being administering the *TT-Line Arrangements Act 1993*” and substituting “the members”.

PART 12 – TASMANIAN PORTS CORPORATION ACT 2005 AMENDED

292. Principal Act

In this Part, the *Tasmanian Ports Corporation Act 2005** is referred to as the Principal Act.

293. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

(a) by inserting the following definition after the definition of *annual general meeting*:

annual report, in relation to a financial year, means the report prepared under section 14AB in respect of the financial year;

(b) by inserting the following definition after the definition of *Board*:

community service obligation means a function, service or concession that –

(a) is performed, provided or allowed as a direct result of a direction, given under section 13B, that specifies that the function, service or concession is a

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community service obligation; or

(b) is declared to be a community service obligation, under Part 9 of the *Government Business Enterprises Act 1995*, in accordance with section 28A;

(c) by inserting the following definition after the definition of *constitution*:

corporate plan means the corporate plan of the Corporation approved under section 13G;

294. Section 4A inserted

After section 4 of the Principal Act, the following section is inserted in Part 1:

4A. Application of Act to subsidiary

If the Corporation arranges for any of its functions to be performed by a subsidiary, the application of this Act applies to, and in respect of –

(a) the subsidiary as if it were the Corporation; and

(b) the directors of the subsidiary and the subsidiary board as if they were the directors and Board.

295. Section 7 amended (Constitution of Corporation)

Section 7 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (1A) and substituting the following subsection:

(1) The constitution of the Corporation is to include –

(a) the principal objectives of the Corporation; and

(b) provisions to the effect of the provisions set out in Schedule 2.

(b) by inserting the following subsections after subsection (2):

(3) The members are to give to the Minister a copy of an amendment to the constitution of the Corporation as soon as practicable after the amendment is made.

(4) The Minister is to cause a copy of an amendment to a constitution, given to the Minister under subsection (3), to be tabled in each House of Parliament within 7 sitting-days after receiving it.

(5) As soon as practicable after the commencement of this

subsection, the Corporation is to amend its constitution to include provisions to the effect of the provisions in Schedule 2.

296. Section 9 amended (Shares)

Section 9 of the Principal Act is amended by omitting "of the Corporation".

297. Section 10 amended (Consideration for further shares)

Section 10 of the Principal Act is amended by omitting "of the Corporation".

298. Section 11 amended (Limitation on sale of shares)

Section 11 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "of the Corporation";

(b) by omitting from subsection (3) "of the Corporation" first occurring.

299. Section 12 amended (Directors of Corporation)

Section 12 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) "The members of the Corporation" and substituting "Subject to section 28D, the members";

(b) by omitting from subsection (2) "of the Corporation";

(c) by omitting subsections (3), (4), (5), (6), (7), (8) and (9).

300. Section 13 amended (Status of Corporation)

Section 13(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (b) "it." and substituting "it; and";

(b) by inserting the following paragraph after paragraph (b):

(c) is not subject or entitled to any prerogative right or privilege of the Crown.

301. Section 13B amended (Directions by members)

Section 13B of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) from subsection (3)(a) and substituting the following subparagraphs:

(i) the constitution of the Corporation or subsidiary; or (ia) the corporate plan in force in respect of the Corporation or subsidiary; or

(b) by inserting the following subsection after subsection (3):

(3A) A direction given to the Corporation or subsidiary under subsection (1) does not affect a contract if –

(a) the Corporation, or subsidiary, entered into the contract before the Corporation or subsidiary was notified under subsection (2) in respect of the direction; and

(b) compliance with the direction would result in the Corporation or subsidiary breaching the contract.

(c) by inserting the following subsection after subsection (8):

(9) For the avoidance of doubt, if the members –

(a) are satisfied that a function, service or concession, specified in a direction under this section, would not be performed, provided or allowed if the Corporation or its subsidiary were a business in the private sector acting in accordance with sound commercial practice; and

(b) intend for the function, service or concession to be a community service obligation –

the direction is to specify that the function, service or concession is a community service obligation in respect of the Corporation or subsidiary.

302. Section 13C amended (Corporation may object to direction by members)

Section 13C of the Principal Act is amended as follows:

(a) by omitting subparagraphs (i) and (ii) from subsection (3)(c) and substituting the following subparagraphs:

(i) the Minister must cause –

(A) a copy of the objection; or

(B) a summary of the objection, in accordance with subsection (4) –

to be tabled in each House of Parliament within 5 sitting-days after the members received the objection; and

(ii) if the Minister fails to table a copy of the objection or summary under this paragraph, the direction is void.

(b) by inserting the following subsection after subsection (3):

(4) Despite subsection (3)(c), the Minister may table a summary of an objection that has been made under subsection (1), in place of the objection as required under subsection (3)(c), if the Minister is satisfied that tabling the objection may –

(a) disadvantage or cause damage to the Corporation or a subsidiary, whether directly or indirectly; or

(b) enable another person, whether directly or indirectly, to gain an unreasonable advantage; or

(c) constitute a breach of confidentiality including, but not limited to, commercial in confidence; or

(d) prejudice an investigation into –

(i) misconduct or possible misconduct; or

(ii) an offence, or possible offence, against this Act.

303. Section 13D amended (Publication of directions)

Section 13D of the Principal Act is amended as follows:

(a) by inserting in subsection (3)(c) "including, but not limited to, commercial in confidence" after "confidentiality";

(b) by inserting in subsection (5) "annual" after "In the".

304. Section 13F amended (Statement of corporate intent)

Section 13F(4)(b) of the Principal Act is amended by inserting after subparagraph (i) the following subparagraph:

(ia) the corporate plan in respect of the Corporation and its subsidiaries that is in force for the relevant financial year to which the statement relates;

305. Section 13G inserted

After section 13F of the Principal Act, the following section is inserted in Part 2:

13G. Corporate plan

(1) In each financial year, the Board must prepare a corporate plan for the Corporation and its subsidiaries.

(2) A corporate plan under subsection (1) is to –

(a) cover the period specified in the Treasurer’s Instructions; and

(b) be in a form and contain the information specified in the Treasurer’s Instructions; and

(c) be consistent with the statement of expectations in force in respect of the Corporation and its subsidiaries under section 13A.

(3) The Board must provide a draft of the corporate plan to the members –

(a) not later than 31 March immediately before the first financial year in respect of which the plan is to be in force; or

(b) by such later date as is agreed between the Board and the members.

(4) After receiving a draft of a corporate plan under subsection (3) from the Board, the members may request that the Board make changes to the draft corporate plan.

(5) A draft corporate plan, that is approved by the Board, becomes the corporate plan for the Corporation and its subsidiaries –

(a) on the first day of the first financial year in respect of which the plan is to be in force; or

(b) on such later day as is specified in the corporate plan.

(6) Except where the members approve otherwise, the Corporation must act in accordance with its corporate plan and ensure that its subsidiaries act in accordance with the corporate plan.

(7) For the purposes of subsection (6) –

(a) a statement of corporate intent that is in force in respect of the Corporation or a subsidiary is taken to be approval, by the members, for the Corporation or subsidiary to act other than in accordance with the corporate plan to the extent required for the Corporation or subsidiary to comply with the statement of corporate intent; and

(b) a community service obligation that applies to the Corporation or a subsidiary is taken to be approval, by the members, for the Corporation or subsidiary to act other than in accordance with the corporate plan to the extent required for the Corporation or subsidiary to meet the community service obligation.

306. Section 14 substituted

Section 14 of the Principal Act is repealed and the following section is substituted:

14. Quarterly reports

(1) The Board must –

(a) prepare a report on the operations of the Corporation, and its subsidiaries, for each quarter of a financial year; and

(b) give a copy of the report to the members.

(2) Despite subsection (1), the members may agree that the Board –

(a) may prepare a report on the operations of the Corporation, and its subsidiaries, for a specified period that is less than a quarter of a financial year; and

(b) must prepare reports for each of those specified periods during the financial year so that reports are provided for the entire financial year.

(3) A report prepared under this section must be provided to the members –

(a) within the period specified in the Treasurer's Instructions; or

(b) within such other period as is agreed between the Board and the members.

(4) A report prepared under this section must include the information required, by the Treasurer's Instructions, to be given in a quarterly report.

307. Section 14A amended (Corporation to report on progress)

Section 14A(4)(c) of the Principal Act is amended by inserting "including, but not limited to, commercial in confidence" after "confidentiality".

308. Section 14AB inserted

After section 14A of the Principal Act, the following section is inserted in Part 2:

14AB. Annual reports

(1) The Board must prepare, for each financial year, an annual report in relation to the Corporation and its subsidiaries.

(2) An annual report prepared under this section in relation to the Corporation and its subsidiaries, for a financial year, must contain –

(a) the details of any direction given by members under section 13B during the financial year; and

(b) the information required, under section 13D, to be contained in an annual report of the Corporation in respect of a direction given under section 13B; and

(c) each community service obligation that applied in respect of the Corporation or its subsidiaries in the financial year; and

(d) if the Board requested that an application be made under section 28A(1), during the financial year, in respect of a function, service or concession –

(i) if the Minister refused to make the application, any

reasons given to the Board for the refusal; or

(ii) if the Treasurer refused to declare the function, service or concession as a community service obligation, any reasons given to the Board for the refusal; and

(e) each financial report and directors' report prepared in respect of the Corporation as required by the Corporations Act for the financial year; and

(f) if required by the Corporations Act for the financial year, the annual sustainability report for the Corporation; and

(g) each report of the auditor, in respect of the Corporation, for the financial year; and

(h) any other document, statement or information required by the Treasurer's Instructions to be included in an annual report.

(3) An annual report under this section must comply with the Treasurer's Instructions.

(4) As soon as practicable after an annual report is prepared under this section, the Board must provide a copy of the annual

report to the members, the Minister and the Auditor-General.

(5) The Minister must cause a copy of an annual report of the Corporation to be tabled in each House of Parliament within 4 months after the end of the financial year to which the annual report relates.

(6) If the Minister fails to table a copy of an annual report within the period specified in subsection (5), the Committee, within the meaning of the *Public Accounts Committee Act 1970*, may examine and report to both Houses of Parliament on any of the documents of the Corporation referred to in subsection (2) as if they were accounts referred to in section 6(1)(b) of that Act.

309. Section 14B amended (Duty to notify members of adverse circumstances)

Section 14B(1) of the Principal Act is amended by inserting after paragraph (c) in the definition of *governing documents* the following paragraph:

(ca) the corporate plan in force in respect of the Corporation and its subsidiaries; and

310. Section 14BA inserted

After section 14B of the Principal Act, the following section is inserted in Part 2:

14BA. Duty to notify members before taking certain actions

(1) The Board or a subsidiary board must notify the members, in writing, if the Board or subsidiary board intends to –

(a) take one or more actions under section 588GA of the Corporations Act in respect of the Corporation or a subsidiary of the Corporation; or

(b) appoint an administrator under the Corporations Act in respect of the Corporation or a subsidiary of the Corporation.

(2) Notification is to be given to the members under subsection (1), in respect of an action specified in that subsection –

(a) as soon as practicable after the Board or subsidiary board decides to take that action; and

(b) before the Board or subsidiary board takes that action.

(3) If the Board notifies the members under subsection (1), the Board is to give a

copy of the notice to each subsidiary of the Corporation.

(4) If a subsidiary board notifies the members under subsection (1), the subsidiary board is to give a copy of the notice to the Board.

311. Sections 14D and 14E inserted

After section 14C of the Principal Act, the following sections are inserted in Part 2:

14D. Audit

The Auditor-General is to act as the auditor for the Corporation and its subsidiaries.

14E. Borrowing

The Corporation, or a subsidiary of the Corporation, is not to borrow from any person other than the Tasmanian Public Finance Corporation except as otherwise approved by the Treasurer in writing.

312. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Part 2:

19A. Superannuation for employees

(1) The Corporation must not establish a superannuation scheme after the

commencement of the *Government Business Governance Reforms Act 2026*.

(2) The Corporation must comply with any instruction relating to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.

313. Section 24 amended (Arrangements for employees of port company to transfer to Corporation)

Section 24 of the Principal Act is amended as follows:

(a) by omitting from subsection (3) “his or her” and substituting “the employee’s”;

(b) by omitting from subsection (5)(a) “he or she” and substituting “the employee”;

(c) by omitting from subsection (5)(d) “his or her” twice occurring and substituting “the employee’s”;

(d) by omitting from subsection (8) “him or her” and substituting “the chief executive officer of the port company”;

(e) by omitting from subsection (9) “his or her” and substituting “the person’s”;

(f) by omitting from subsection (10) “he or she” and substituting “the employee”.

314. Sections 28A, 28B, 28C, 28D and 28E inserted

Before section 29 of the Principal Act, the following sections are inserted in Part 5:

28A. Community service obligations

(1) On the request of the Board, the Minister may apply to the Treasurer for a declaration that –

(a) a function performed, service provided or concession allowed by the Corporation is a community service obligation; or

(b) a function, service or concession that the Corporation proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.

(2) If an application is made under subsection (1) in respect of the Corporation, or a community service obligation is specified in a direction given under section 13B, Part 9 of the *Government Business Enterprises Act 1995* applies to the Corporation as if –

(a) the Corporation were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister; and

(d) if the Minister makes an application under subsection (1) in respect of the Corporation, a reference to an application under section 60 of the *Government Business Enterprises Act 1995* were a reference to an application under this section.

28B. General investigations of Corporation

(1) The members may, by notice in writing to the Corporation or its subsidiaries, do one or more of the following in respect of the Corporation or subsidiary:

(a) authorise a person to undertake and conduct an investigation into –

(i) the performance of the Board or a subsidiary board; or

(ii) any other matter relating to or affecting the performance of the Corporation or subsidiary;

(b) require the Board, or the subsidiary board, to undertake a review or assessment, or to arrange for an independent review or assessment, as specified by the members in the written notice;

(c) require the Board, or the subsidiary board, to provide the members with a copy of any review or assessment undertaken by, or on behalf of, the relevant board.

(2) Despite subsection (1), the Auditor-General may refuse to undertake and conduct an investigation under this section in respect of the Corporation or subsidiary if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to perform a function under any other Act.

(3) Section 102 of the *Government Business Enterprises Act 1995* applies to an investigation authorised under this section in respect of the Corporation as if –

(a) the Corporation were a Government Business Enterprise; and

(b) the Board were a Board under that Act; and

(c) a reference to the Portfolio Minister were a reference to the Minister.

28C. Actions that may be taken if poor performance by Corporation

(1) The members may take one or more of the following actions in respect of the Corporation or a wholly-owned subsidiary, if the members are satisfied that there has been poor performance by the Corporation or subsidiary:

(a) the members may require the Corporation or subsidiary to produce a performance improvement plan to address the poor performance;

(b) the members may appoint a person to be present at meetings of the Board or subsidiary board.

(2) For the purposes of subsection (1), poor performance in respect of the Corporation or its subsidiary includes, but is not limited to, where a review or investigation of the Corporation or subsidiary under this Act has resulted in evidence that –

(a) the Corporation or subsidiary has failed to comply with –

(i) this Act; or

(ii) its members' statement of expectations under section 13A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Corporation or subsidiary; or

(b) the Corporation or subsidiary has not been performing its functions, or exercising its powers, in a satisfactory manner; or

(c) the Corporation or subsidiary has wilfully disregarded –

(i) a provision of this Act that applied to the Corporation or subsidiary; or

(ii) its members' statement of expectations under section 13A; or

(iii) its corporate plan; or

(iv) the statement of corporate intent in force in respect of the Corporation or subsidiary; or

(v) any relevant Treasurer's Instructions; or

(vi) a direction in force under section 13B in respect of the Corporation or subsidiary.

(3) If the members intend to take an action under subsection (1) in respect of the Corporation or subsidiary, the members must, before taking the action –

(a) give written notice to the Corporation or subsidiary that specifies –

(i) the poor performance to be addressed by the proposed action; and

(ii) whether the members intend to take the proposed action under subsection (1)(a) or (b), or both; and

(iii) the period within which the relevant board may make submissions to the members in respect of the proposed action; and

(b) consider any submissions made to the members by the relevant board within the period specified in the written notice under paragraph (a) for submissions.

(4) If the members take an action under subsection (1)(a) in respect of the Corporation or subsidiary –

(a) the members are to give written notice to the Corporation or subsidiary that specifies –

(i) the poor performance to be addressed by the performance improvement plan; and

(ii) any matter that is to be contained within the performance improvement plan; and

(iii) whether the performance improvement plan is required to be approved by the members before the plan takes effect; and

(iv) if a person is appointed under paragraph (b) in respect of the poor performance, the name of the person so appointed and the purpose for which the person has been appointed; and

(v) the reports that the Corporation or subsidiary are to make to the members once the performance improvement plan is in effect; and

(vi) any other prescribed matter; and

(b) the members may appoint a person to –

(i) assist the Corporation or subsidiary in implementing the performance improvement plan; or

(ii) supervise the implementation of the performance improvement plan; and

(c) within 7 sitting-days after the notice is given to the Corporation or subsidiary under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Corporation or subsidiary in respect of which the action was taken; and

(ii) if a person has been appointed in respect of the Corporation or subsidiary under paragraph (b) –

(A) the name of the person so appointed; and

(B) the functions of the person while so appointed.

(5) If the members take an action under subsection (1)(b) in respect of the Corporation or subsidiary –

(a) the members are to give written notice to the Corporation or subsidiary that specifies –

(i) the person to be appointed to be present at meetings of the Board or subsidiary board; and

(ii) the functions of the person while so appointed; and

(iii) the duration for which the person is so appointed, being a period not exceeding 12 months; and

(iv) any other prescribed matter; and

(b) within 7 sitting-days after the notice is given to the Corporation under paragraph (a), the Minister is to table in each House of Parliament a notice that specifies –

(i) the Corporation or subsidiary in respect of which the action was taken; and

(ii) the name of the person appointed as part of that action; and

(iii) the functions of the person while so appointed.

(6) For the avoidance of doubt, a person appointed under subsection (1)(b) in respect of the Corporation or subsidiary –

(a) is not entitled to a vote at meetings of the Board or subsidiary board in respect of which the person was appointed; and

(b) unless otherwise specified in the person's instrument of appointment, may otherwise participate in such a meeting; and

(c) must not disclose any information obtained in respect of the Corporation or subsidiary other than in accordance with the person's instrument of appointment.

(7) The Corporation or wholly-owned subsidiary must comply with –

(a) an action taken by the members under this section in respect of the Corporation or subsidiary; and

(b) a performance improvement plan produced, in respect of the Corporation or subsidiary, as a result of such an action; and

(c) a person, appointed as a result of such an action, when performing a function in accordance with such an action.

(8) If, after taking an action under subsection (1) in respect of the Corporation or subsidiary, the members are not satisfied that the action has corrected the poor performance of the Corporation or subsidiary, the members may –

(a) take another action under subsection (1) in respect of the continuing poor performance; or

(b) appoint a sole director, in accordance with section 28D, in respect of the Corporation.

28D. Appointment of sole director of Corporation

(1) The members may appoint a sole director to administer the affairs and activities of the Corporation –

(a) in accordance with section 28C(8)(b); or

(b) if all of the directors of the Corporation have vacated the office of director at the same time; or

(c) if the members agree that it is in the public interest for a sole director to be appointed in respect of the Corporation.

(2) If the members intend to appoint a sole director under subsection (1)(c) in respect of the Corporation –

(a) the members must, before appointing the sole director –

(i) give the Board, and the Minister, written notice of –

(A) the intention of the members to appoint a sole director; and

(B) the reasons for the proposed appointment; and

(C) the period within which the Board may make submissions to the members in respect of the proposed appointment; and

(ii) consider any submissions made to the members by the Board within the period specified in the written notice under paragraph (a) for submissions; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Corporation, the Minister is to table in each House of Parliament a statement that includes –

(i) a copy of the notice given to the Minister under paragraph (a); and

(ii) a summary of submissions, if any, given by the Board as a result of the notice; and

(iii) any other details that the Minister and Treasurer consider relevant to the appointment of a sole director in respect of the Corporation.

(3) The appointment of a sole director under subsection (1) remains in force for a period of 6 months unless sooner revoked or terminated.

(4) If a sole director is appointed under subsection (1) in respect of the Corporation –

(a) the members must give written notice to the Corporation, and the Minister, of the appointment of the sole director and, on giving the notice to the Corporation –

(i) all offices of director of the Corporation, other than the sole director so appointed, are vacated; and

(ii) the functions of the Corporation are to be performed, and the powers of the Corporation may be exercised, by the sole director in the name and on behalf of the Corporation while the sole director is so appointed; and

(iii) the sole director assumes, and is responsible for, the management of the Corporation; and

(b) within 7 sitting-days after being given written notice under paragraph (a) in respect of the Corporation, the Minister is to table in each House of Parliament a notice that specifies –

(i) the Corporation in respect of which the sole director was appointed; and

(ii) the name of the person appointed as sole director; and

(iii) a summary of the grounds on which the sole director was appointed.

(5) Subject to this section, a sole director appointed under subsection (1) in respect of the Corporation is to –

(a) as soon as practicable after the sole director is appointed, take into the sole director's custody or control all the property and things in action to which the Corporation is, or appears to be, entitled; and

(b) subject to and in accordance with any direction given to the sole director by the members, perform the functions and exercise the powers of the Corporation in such manner as the sole director thinks fit.

(6) A person appointed as sole director of the Corporation under this section is taken to vacate the office of sole director if the person –

(a) resigns, by notice in writing to the members; or

(b) is removed from the office by written notice from the members; or

(c) dies; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors, or makes an assignment of the person's remuneration or estate for the person's benefit; or

(e) is convicted of an offence which –

(i) if convicted in Tasmania, is punishable by imprisonment for a term of not less than 12 months; or

(ii) if convicted elsewhere than in Tasmania, would be punishable by imprisonment for a term of not less than 12 months if the person were convicted in Tasmania.

28E. Entitlements and liabilities of certain persons appointed under Act

(1) This section applies to a person who is appointed under section 28C or 28D in respect of the Corporation or a subsidiary.

(2) A person to whom this section applies is entitled to such remuneration, allowances and expenses as are specified in the instrument of appointment for the person's appointment under section 28C or 28D.

(3) Unless otherwise approved by the members, any remunerations, allowances and expenses payable to a person to whom this section applies are payable by the Corporation or subsidiary.

(4) Despite subsection (2), if a person appointed under section 28C or 28D is a State Service officer or State Service employee –

(a) that person may be so appointed in conjunction with State Service employment; and

(b) the person is not entitled to remuneration, allowances or expenses under this section except with the approval of the Minister administering the *State Service Act 2000*.

(5) A person to whom this section applies is not liable for –

(a) any action taken by the person, in good faith, as a result of the person's appointment under section 28C or 28D in respect of the Corporation or subsidiary; and

(b) any loss or damage incurred by the Corporation or subsidiary while the person was so appointed, unless the loss or damage was attributed to –

(i) the misconduct or negligence of the person; or

(ii) a failure of the person to comply with the terms and conditions of the person's appointment.

315. Section 30 amended (Delegation by Minister)

Section 30 of the Principal Act is amended as follows:

(a) by renumbering the text of the section as subsection (1);

(b) by omitting “his or her” and substituting “the Minister’s”;

(c) by inserting the following subsection after subsection (1):

(2) The Treasurer, in writing, may delegate to any person any of the Treasurer’s powers or functions under this Act, other than this power of delegation.

316. Section 32 amended (Directors of port companies)

Section 32(2) of the Principal Act is amended by omitting “his or her” and substituting “the person’s”.

317. Section 32A inserted

After section 32 of the Principal Act, the following section is inserted in Part 5:

32A. Tabling of documents

(1) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement for any reason, other than that the House of Parliament is not sitting at the expiration of the period specified for tabling, the Minister must, before the expiration of the period, lay before the

House of Parliament a statement specifying –

(a) the reason for the failure to table the document in the specified period; and

(b) an estimate of the day on which the document will be tabled in that House of Parliament.

(2) If a document is required to be tabled in a House of Parliament and the Minister is unable to comply with the tabling requirement within the period specified for tabling because the House of Parliament is not sitting at the expiration of the period, the Minister must –

(a) immediately after the expiration of the period, forward a copy of the document to the Clerk of that House of Parliament; and

(b) within the next 7 sitting-days of that House, lay a copy of the document before that House.

318. Schedule 2 amended (Provisions to be included in constitution)

Schedule 2 to the Principal Act is amended as follows:

(a) by omitting paragraph (a) from clause 1(3) and substituting the following paragraph:

(a) if the person –

(i) has held the office of director for the amount of time for which the person was appointed to that office, before being required to be reappointed to the office; or

(ii) has resigned, or been removed, from the office of director before being required to be reappointed to the office; and

(b) by inserting the following clauses after clause 3:

4. Annual performance review

(1) The Board is to conduct, in respect of each financial year, a review of the performance of the chief executive officer of the Corporation during that financial year.

(2) The review of the performance of the chief executive officer of the Corporation is to be completed not later than 90 days after the end of the financial year in

respect of which the review is conducted.

(3) The Board is to provide the members with a copy of its findings in the review of the performance of the chief executive officer of the Corporation within 14 days after completing the review.

5. Approval required for matters relating to ownership of subsidiaries

Except where approved by the members, the Corporation 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 a transaction, or other legal process, which may result in a subsidiary ceasing to be a subsidiary; or

(d) approve, or approve the amendment of, the constitution of a subsidiary.

6. Approval required for profit sharing

Except where approved by the members, the Corporation must not participate in any or all of the following arrangements for the purpose of sharing profits:

(a) a joint venture or partnership;

(b) any other arrangement, however described.

7. Requests for information

On the written request of a member, the Corporation must provide the members with –

(a) the business or strategic plans of the Corporation and its subsidiaries; and

(b) the financial information specified in the request; and

(c) a report on the matters specified in the request and any relevant related information.

PART 13 – TASMANIAN PUBLIC FINANCE CORPORATION ACT 1985 AMENDED

319. Principal Act

In this Part, the *Tasmanian Public Finance Corporation Act 1985** is referred to as the Principal Act.

320. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by omitting paragraph (c) from the definition of *participating authority*;

(b) by omitting paragraphs (e) and (f) from the definition of *participating authority* and substituting the following paragraphs:

(e) a Company, and any subsidiaries of that Company, formed under the *Electricity Companies Act 1997*; or

(f) the Company, and any subsidiaries of the Company, as defined in the *Irrigation Company Act 2011*; or

(g) the Company, and any subsidiaries of the Company, as

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defined in the *Metro Tasmania Act 1997*; or

(h) the Company, and any subsidiaries of the Company, as defined in the *Racing (TasRacing Pty Ltd) Act 2009*; or

(i) the Company, and any subsidiaries of the Company, formed under the *Rail Company Act 2009*; or

(j) the Company, and any subsidiaries of the Company, formed under the *TT-Line Arrangements Act 1993*; or

(k) the Corporation, and any subsidiaries of the Corporation, as defined in the *Tasmanian Ports Corporation Act 2005*; or

(l) a prescribed entity;

(c) by omitting "funds." from paragraph (b) of the definition of *State authority* and substituting "funds;";

(d) by inserting the following definition after the definition of *State authority*:

subsidiary has the same meaning as in the Corporations Act.

321. Section 18 amended (Treasurer may re-arrange finances of State authorities)

Section 18(1) of the Principal Act is amended by omitting “he” and substituting “the Treasurer”.

322. Section 23 amended (Certificates of compliance with this Act)

Section 23(1) of the Principal Act is amended by omitting “he” and substituting “the Treasurer”.

323. Schedule 1 amended (Relevant Organisations)

Clause 9 of Schedule 1 to the Principal Act is amended by omitting “subsidiary, within the meaning of the Corporations Act,” and substituting “subsidiary”.