Department of Treasury and Finance

Tasmanian Government

Notes on Clauses

Government Business Governance Reforms Bill 2026

PART 1 – PRELIMINARY

Clause 1	Specifies that this Act may be cited as the *Government Business Governance Reforms Act 2026*.
Clause 2	Provides for commencement of the Act on the day it receives Royal Assent.
Clause 3	Provides for the repeal of this Act on the first anniversary of its commencement.

PART 2 – ELECTRICITY COMPANIES ACT 1997 – AMENDED

Clause 4	Specifies the Principal Act for the purpose of Part 2 is the *Electricity Companies Act 1997.*
Clause 5	Amends section 3 of the Principal Act by omitting all references to ‘company’ and ‘board of directors’ and substituting ‘Company’ and ‘Board’ to be consistent with other State-owned Company Portfolio Acts. The definitions have remained the same.
	Inserts new definitions of ‘annual report’, ‘community service obligation’, ‘corporate plan’ and ‘director’, as these terms are used in proposed new sections of the Principal Act.
Clause 6	Inserts a new section 4 (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts.
	Section 4 creates a requirement for the Principal Act to apply to the subsidiaries of the Company if the Company arranges for any of its functions to be performed by a subsidiary.
Clause 7	Amends the heading in Part 2, Division 1 by omitting ‘companies’ and substituting ‘Companies’.
Clause 8	Amends section 6 of the Principal Act by omitting ‘company’ and substituting ‘Company’.
Clause 9	Repeals section 7 of the Principal Act (Memorandum and articles of company) and substitutes a new section 7 (Constitution of Company) to be consistent with the more contemporary language used in the *Corporations Act 2001* (Cth) and in other State-owned Company Portfolio Acts.
	The new section 7 specifies what is required to be included in the constitution and includes the requirement for the Minister to table in each House of Parliament, within 7 sitting days of receiving, a copy of any amendments to a constitution. The new section 7 also includes transitional provisions to provide that the existing

memorandum and articles will be taken to be the constitution on the commencement of the new section.

Clause 10 Amends section 8 of the Principal Act by omitting references to 'company' and substituting 'Company'.

Clause 11 Amends section 9 of the Principal Act to replace gendered language and references to 'company' with 'Company'.

Clause 12 Amends Section 11 of the Principal Act by omitting references to 'company' and substituting 'Company'.

Clause 13 Inserts a new section:

11AA Directors of a Company

Section 11AA requires the members of a Company to ensure that the Company has a Board of directors with the necessary skills and experience to enable the Company to achieve its objectives, appointed in accordance with the constitution, unless a sole director has been appointed in accordance the proposed new section 19C.

Clause 14 Amends section 11A of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Clause 15 Amends section 11B of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Section 11B is also amended to allow for a direction given by the members of the Company to be inconsistent with the constitution or the corporate plan of a Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 16 Amends section 11C of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Subsection 3 is amended to allow the Minister to table either a Company's objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of a Company's objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 17 Amends section 11D of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Section 11D is also amended to replace the refence to a report prepared by the board of directors with 'annual report' and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 18 Amends section 11E of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Clause 19 Amends section 11F of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Inserts a new subparagraph to require the draft statement of corporate intent to be consistent with the corporate plan of the Company and its subsidiaries for the relevant financial year.

Clause 20 Inserts a new section:

11G Corporate plan

Section 11G requires that the Board of a Company is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 11G specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer's Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

Clause 21 Inserts new sections 11H, 11I and 11J into the Principal Act relating to the auditor and borrowing arrangements, to be consistent with other State-owned Company Portfolio Acts.

11H Audit

Section 11H specifies that the Auditor-General is to be the auditor of each Company and its subsidiaries.

11I Borrowing

Section 11I specifies that a Company or a subsidiary of a Company is to only borrow from the Tasmanian Public Finance Corporation unless otherwise approved by the Treasurer in writing.

11J Borrowing from Treasurer

Section 11J allows the Treasurer to lend to a Company or its subsidiaries from money provided by the Parliament, with any conditions of the loan determined by the Treasurer. If money is lent under this section, the amount plus any interest or other charges is repayable to the Public Account.

Clause 22 Amends section 12 of the Principal Act by omitting references to ‘company’ and substituting ‘Company’.

Clause 23 Amends section 13 of the Principal Act by omitting references to ‘company’ and substituting ‘Company’.

Clause 24 Amends section 14 of the Principal Act by omitting references to ‘company’ and substituting ‘Company’.

Clause 25 Amends section 17 of the Principal Act by omitting references to ‘company’ and substituting ‘Company’.

Clause 26 Amends section 18 of the Principal Act by omitting references to ‘company’ and substituting ‘Company’.

Clause 27 Amends the heading in Part 2, Division 3 by omitting ‘company’ and substituting ‘Company’.

Clause 28 Inserts the new section:

18AA Quarterly reports

Section 18AA requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 18AA specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 29 Amends section 18A of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Section 18A is also amended to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 30 Inserts the new section:

18AB Annual reports

Section 18AB requires that the Board of a Company prepares an annual report for each financial year in relation to the Company and its subsidiaries.

Section 18AB specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 31 Amends section 18B of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Section 18B is also amended to include the corporate plan as a governing document.

Clause 32 Inserts the new section:

18BA Duty to notify members before taking certain actions

Section 18BA requires that the Board of a Company or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 33 Amends section 18C of the Principal Act by omitting references to 'company' and 'board of directors' and substituting 'Company' and 'Board'.

Clause 34 Repeals section 19 of the Principal Act and substitutes new sections 19, 19A, 19B, 19C and 19D.

19 Community service obligations

Section 19 provides for the Board of a Company to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

19A General investigations of Company

Section 19A allows for the members, by notice in writing to the Company or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 19A provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

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

Section 19B provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 19C.

19C Appointment of sole director of Company

Section 19C allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 19B did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

19D Entitlements and liabilities of certain person appointed under Act

Section 19D applies to a person appointed under section 19B or 19C. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 35 Amends section 20 of the Principal Act by omitting references to 'company' and substituting 'Company'.

Clause 36 Replaces gendered language in section 21 of the Principal Act.

Clause 37 Amends section 21A of the Principal Act by omitting references to 'company' and substituting 'Company'.

Clause 38 Amends section 22 of the Principal Act by omitting references to 'company' and substituting 'Company'.

Clause 39 Inserts the new section:

22A Tabling of documents

Section 22A specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 40 Replaces the heading of Schedule 1 of the Principal Act, removes the headings for Part 1 and Part 2 and replaces clause 1 of Part 1 with clause 1AA to realign the numbering.

Amends the Schedule by omitting references to 'company', 'board of directors', 'shareholders' and 'these articles' and substituting 'Company', 'Board', 'members', and 'this constitution'.

The clause also removes references to 'special resolution' as any approval is required by both the members.

Clause 2A is amended to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Clause 3 of Schedule 1 is omitted and replaced with a new clause 3 requiring an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

Clause 4 of Schedule 1 is amended so that without the approval of the members, the Company cannot approve, or approve an amendment of, the constitution of a subsidiary. The Company is also prevented from entering into a transaction, or other legal process, that would result in a subsidiary ceasing to be a subsidiary.

Clause 5 of Schedule 1 of the Principal Act is omitted and replaced with a new clause 5 that requires member approval for the

Company to participate in a joint venture or other profit-sharing arrangement.

PART 3 – GOVERNMENT BUSINESS ENTERPRISES ACT 1995 – AMENDED

Clause 41 Specifies that the Principal Act for the purpose of Part 3 is the *Government Business Enterprises Act 1995.*

Clause 42 Inserts a new definition of ‘community service obligation’ to account for the proposed amendment to allow a community service obligation to be established though a direction under the existing section 9A of the Principal Act.

Omits ‘corporate plan’ from the definition of ‘main undertaking’ and substitutes ‘statement of corporate intent’ to ensure that what is considered a main undertaking is approved by the Portfolio Minster and Treasurer and transparent.

Replaces gendered language in section 3 of the Principal Act.

Clause 43 Replaces gendered language in section 3A of the Principal Act.

Clause 44 Replaces gendered language in section 3B of the Principal Act.

Clause 45 Amends section 9A of the Principal Act by inserting subsection 3A which allows a direction to be made in respect of a dividend recommendation given under section 83 of the Principal Act.

The new subsection 3A specifies that a direction does not affect a contract, if the contract was entered into prior to the GBE or subsidiary being notified by the Portfolio Ministers and Treasurer of the intention to issue a direction, and if complying with the direction would cause the GBE or subsidiary to breach the contract.

These amendments have been included to replace subsections currently included in section 40, as section 40 is proposed to be repealed.

A new subsection 9 is also inserted, which provides that the Portfolio Minister and Treasurer are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the GBE or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

This new subsection replaces section 65 (Ministerial direction to perform a community service obligation) as this section is proposed to be repealed.

Clause 46 Amends section 9B of the Principal Act to allow the Portfolio Minister to table either a GBE’s objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Portfolio Minister may instead table a summary of a GBE's objection if the Portfolio Minister is satisfied that publishing the objection itself would:

- disadvantage the GBE or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 47 Amends section 9C of the Principal Act to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 48 Amends section 10 of the Principal Act to broaden the circumstances when approval is required before a GBE can take action that that will result in a subsidiary ceasing to be a subsidiary.

Clause 49 Amends section 11 of the Principal Act to specify that the requirements in section 11(1) defining the membership of the Board of a GBE are subject to the new section 103B that allows for the appointment of an administrator.

Clause 50 Replaces section 13 of the Principal Act to be more consistent with amendments introduced in the *Government Business Governance Reforms Act 2025* for State-owned Companies and inserts a new section 13AA.

13 Duty to notify Treasurer and Portfolio Minister of adverse circumstances

Section 13 requires that the Board must notify the Portfolio Minister and Treasurer immediately after becoming aware of any development affecting the GBE or its subsidiaries that:

- prevents or significantly affects achievement of its objectives; or
- significantly affects its financial or operating viability; or
- prevents or significantly affects it from complying with a direction; or
- otherwise significantly affects the GBE.

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

Section 13AA requires that the Board of a GBE or subsidiary board notify the Portfolio Minister and Treasurer, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 51	Replaces gendered language in section 17 of the Principal Act.
Clause 52	Replaces gendered language in section 18 of the Principal Act.
Clause 53	Replaces gendered language in section 19 of the Principal Act.
Clause 54	Replaces gendered language in section 20 of the Principal Act.
Clause 55	Replaces gendered language in section 20A of the Principal Act.
Clause 56	Amends section 20B of the Principal Act to require that the annual performance review of the chief executive officer is also provided to the Treasurer.
Clause 57	Replaces gendered language in section 23A of the Principal Act.
Clause 58	Replaces gendered language in section 23B of the Principal Act.
Clause 59	Replaces gendered language in section 24 of the Principal Act.
Clause 60	Replaces gendered language in section 25 of the Principal Act.
Clause 61	Replaces gendered language in section 28 of the Principal Act.
Clause 62	Replaces gendered language in section 28D of the Principal Act.
Clause 63	Replaces gendered language in section 34 of the Principal Act.
Clause 64	Amends section 39 of the Principal Act to change the required date for submission of the draft corporate plan to 31 March.
	Repeals subsections 4, 5, 6, 8 and 9(a) from section 39, which removes the requirement for the Treasurer and Portfolio Minister to approve the corporate plan, or amended corporate plan, and removes the link between approval and commencement of the corporate plan.
	Inserts a new subsection in section 39, which allows for the Treasurer and Portfolio Minister to request that the Board make changes to the corporate plan.
	Inserts a new subsection to specify that the corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.
	If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation
Clause 65	Repeals section 40 of the Principal Act (Consultation with Portfolio Minister and Treasurer), as the requirements and powers have been incorporated into other sections of the Principal Act.

Clause 66	Repeals section 47 of the Principal Act and substitutes a new section 47 to be consistent with the current policy for all Government businesses. **47 Borrowing from person other than Treasurer** Section 47 of the Principal Act specifies that the GBE or its subsidiaries can only borrow from the Tasmanian Public Finance Corporation unless approved otherwise by the Treasurer. This section does not apply to agreements that were in force and complied with the Principal Act before the commencement of this section.
Clause 67	Amends section 55 of the Principal Act to require that the annual report of the GBE contains details of a direction given under section 9A of the Principal Act. Removes the requirement to include information on a direction given under section 40 of the Principal Act that is proposed to be repealed. Inserts new requirements to disclose information in the GBE's annual report on community service obligations and any applications for a community service obligation that were not progressed or approved.
Clause 68	Replaces gendered language in section 56 of the Principal Act.
Clause 69	Amends section 57 of the Principal Act to require that a quarterly report must be prepared for each quarter of the financial year, unless a shorter period is agreed.
Clause 70	Amends section 57A of the Principal Act to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.
Clause 71	Repeals section 59 of the Principal Act (Community service obligation defined) as a new definition of community service obligation has been included in section 3(1).
Clause 72	Replaces gendered language in section 60 of the Principal Act.
Clause 73	Inserts a transitional provision in section 61 of the Principal Act so that existing community service obligations can continue after the amendments.
Clause 74	Amends section 64 of the Principal Act so that a review of the costing basis and funding arrangement for a community service obligation must occur at least once every three years or at another agreed interval. The current requirement is for this to occur every year, however a three-year interval aligns with the standard length of a community service obligation funding agreement.
Clause 75	Repeals section 65 of the Principal Act (Ministerial direction to perform community service obligation) as the power to issue a direction to undertake a community service obligation is now proposed to be included in section 9A.

Clause 76 Replaces gendered language in section 71 of the Principal Act.

Clause 77 Replaces gendered language in section 74 of the Principal Act.

Clause 78 Replaces gendered language in section 92 of the Principal Act.

Clause 79 Replaces gendered language in section 93 of the Principal Act.

Clause 80 Replaces gendered language in section 102 of the Principal Act.

Section 102 is also amended to allow for the Portfolio Minister and Treasurer, by notice in writing to the GBE or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the GBE or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

A new subsubsection is also inserted to provide that the Auditor-General may refuse a request to undertake an investigation 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.

Clause 81 Replaces gendered language in section 103 of the Principal Act.

Clause 82 Inserts new sections 103A, 103B and 103C.

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

Section 103A provides mechanisms for the Portfolio Minister and Treasurer to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a GBE or wholly-owned subsidiary.

If the Ministers intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the GBE or subsidiary and consider any submissions made by the Board.

If the Ministers require a performance improvement plan to be prepared, they must give written notice to the GBE or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Portfolio Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the GBE or subsidiary and, if a person has been appointed, the name and functions of that person.

If the Ministers appoint a person to be present at Board meetings the members must give written notice to the GBE or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Portfolio Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the GBE or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the GBE or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the Portfolio Ministers and Treasurer are not satisfied that the action has corrected the poor performance, the Ministers may take another action under this section or appoint an administrator in accordance with section 103B.

103B Appointment of administrator of Government Business Enterprise

Section 103B allows the Portfolio Minister and Treasurer, jointly, to appoint an administrator to administer the affairs and activities of the GBE, for up to 6 months. This action can be taken, if an option taken under 103A did not correct the poor performance; if all of the directors have been removed or vacated at the same time; or if the Ministers agree that it is in the public interest for an administrator to be appointed.

If the Ministers intend to appoint an administrator in the public interest, the Board must first be notified and the Board provided an opportunity to make submissions. Within 7 sitting days after being given this notice, the Portfolio Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If an administrator is appointed, the Ministers must give notice to the GBE of the appointment. Within 7 sitting days after being given this notice, the Portfolio Minister must table in each House of Parliament a notice that specifies the GBE, the name of the administrator, and a summary of the grounds on which the administrator was appointed.

103C Entitlements and liabilities of certain persons appointed under Act

Section 103C applies to a person appointed under section 103A or 103B. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the Portfolio Minister and Treasurer, any payments to that person are payable by the GBE or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 83 Amends section 114 of the Principal Act so that the Treasurer's Instructions issued under the Principal Act apply to subsidiaries of GBEs.

Clause 84 Replaces gendered language in section 118 of the Principal Act and removes the reference to section 40 that is proposed to be repealed.

Clause 85 Replaces gendered language in Schedule 5 of the Principal Act.

Amends clause 2 to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Clause 86 Replaces gendered language in Schedule 6 of the Principal Act.

PART 4 – IRRIGATION COMPANY ACT 2011 – AMENDED

Clause 87 Specifies the Principal Act for the purpose of Part 4 is the *Irrigation Company Act 2011*.

Clause 88 Inserts new definitions of 'annual report', 'community service obligation' and 'corporate plan', as these terms are used in proposed new sections of the Principal Act.

Replaces gendered language in section 3 of the Principal Act.

Clause 89 Amends section 5 of the Principal Act to the consistent wording used in all State-owned Company Portfolio Acts. Section 5 applies the Act to a subsidiary board as if it was the Board of the Company if the Company arranges for any of its functions to be performed by the subsidiary.

Clause 90 Amends section 8 of the Principal Act to require that the constitution of the Company contains the provisions contained in Schedule 2, as well as the principal objectives already required.

Section 8 is also amended to require the members to provide amendments to the constitution to the Minister for tabling instead of the Board, to be consistent with other State-owned Company Portfolio Acts.

Clause 91 Replaces gendered language in section 10 of the Principal Act.

Clause 92 Amends section 11A of the Principal Act to replace references to 'a Company' with 'the Company' as this Act only establishes one Company.

A reference to 'the shareholders' has also been removed for clarity.

Clause 93 Amends section 12 of the Principal Act so that the section applies to subsidiaries of the Company.

Clause 94 Amends section 13A of the Principal Act to allow for a direction given under this section to be inconsistent with the constitution or the corporate plan of the Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 95 Amends section 13B of the Principal Act to allow the Minister to table either the Company's objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Company's objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 96 Amends section 13C of the Principal Act to reference the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 97 Amends section 13E of the Principal Act to require the draft statement of corporate intent to be consistent with the corporate plan of the Company and its subsidiaries.

Clause 98 Amends section 14 of the Principal Act to apply the section to subsidiaries of the Company.

Clause 99 Amends section 15 of the Principal Act to apply the section to subsidiaries of the Company.

Clause 100 Inserts the new section 15A to be consistent with other State-owned Company Portfolio Acts:

15A Borrowing from Treasurer

Section 15A allows the Treasurer to lend to a Company or its subsidiaries from money provided by the Parliament, with any conditions of the loan determined by the Treasurer. If money is lent under this section, the amount plus any interest or other charges is repayable to the Public Account.

Clause 101 Amends section 16 of the Principal Act to apply the section to subsidiaries of the Company.

Clause 102 Amends section 19 of the Principal Act to prevent the Company from establishing a superannuation scheme, to be consistent with other State-owned Company Portfolio Acts.

Clause 103 Amends section 23 of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition. The clause also inserts a reference to section 27C (Appointment of a sole director of Company) as a Board will not be appointed if there is a sole director appointed.

Clause 104 Repeals sections 25 and 26 of the Principal Act and substitutes new sections 25 and 26.

25 Corporate Plan

Section 25 requires that the Board is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 25 specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer’s Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

26 Quarterly reports

Section 26 requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 26 specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 105 Amends section 26A of the Principal Act to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 106 Inserts the new section:

26AB Annual reports

Section 26AB requires that the Board prepare an annual report for each financial year in relation to the Company and its subsidiaries.

Section 26AB specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 107 Amends section 26B of the Principal Act to apply the section to subsidiaries of the Company.

Clause 108 Inserts the new section:

26BA Duty to notify members before taking certain actions

Section 26BA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 109 Repeals Division 4 and section 27 of the Principal Act (Non-commercial activities) and inserts new Division 4 – Miscellaneous, including new sections 27, 27A, 27B, 27C and 27D.

27 Community service obligations

Section 27 provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

27A General investigations of Company

Section 27A allows for the members, by notice in writing, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 27A provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

27B Actions that may be taken if poor performance by Company

Section 27B provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 27C.

27C Appointment of sole director of Company

Section 27C allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 27B did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

27D Entitlements and liabilities of certain persons appointed under Act

Section 27D applies to a person appointed under section 27B or 27C. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 110 Replaces gendered language in section 31 of the Principal Act.

Clause 111 Replaces gendered language in section 38 of the Principal Act.

Inserts a new subsection allowing the Treasurer to delegate functions under the Principal Act, other than the power of delegation.

Clause 112 Inserts the new section:

38A Tabling of documents

Section 38A specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 113 Replaces gendered language in Schedule 1 of the Principal Act.

Clause 114 Amends clause 1(3) of Schedule 2 of the Principal Act to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Schedule 2 of the Principal Act is also amended to insert new clauses 4, 5, 6 and 7.

4 Annual performance review

Clause 4 requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

5 Approval required for matters relating to ownership of subsidiaries

Clause 5 prevents the Company from forming or acquiring a subsidiary; disposing of shares in a subsidiary; approving, or approving an amendment of, the constitution of a subsidiary; or entering into a transaction or other legal process that would result in a subsidiary ceasing to be a subsidiary, without approval from the members.

6 Approval required for profit sharing

Clause 6 requires member approval for the Company to participate in a joint venture or other profit-sharing arrangement.

7 Requests for information

Clause 7 requires that, on written request from the members, the Company must provide business or strategic plans, financial information specified in the request, or a report on other matters specified in the request.

PART 5 – METRO TASMANIA ACT 1997 – AMENDED

Clause 115 Specifies the Principal Act for the purpose of Part 5 is the *Metro Tasmania Act 1997*.

Clause 116 Inserts new definitions of ‘annual report’, ‘community service obligation’, ‘corporate plan’, ‘director’ and ‘subsidiary’, as these terms are used in proposed new sections of the Principal Act.

Substitutes the current definition of ‘member of the company’ with a definition of ‘member’. The term ‘member’ is used in the amending legislation to refer to members of a company defined in section 7 of the Principal Act.

Clause 117 Inserts a new section 3A (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts.

Section 3A creates a requirement for the Principal Act to apply to the subsidiaries of the Company if the Company arranges for any of its functions to be performed by a subsidiary.

Clause 118 Repeals section 6 of the Principal Act (Memorandum and articles of company) and substitutes a new section 6 (Constitution of company) to be consistent with the more contemporary language used in the *Corporations Act 2001* (Cth) and in other State-owned Company Portfolio Acts.

The new section 6 specifies what is required to be included in the constitution and includes the requirement for the Minister to table in each House of Parliament, within 7 sitting days of receiving, a copy of any amendments to a constitution. The new section 6 also includes transitional provisions to provide that the existing memorandum and articles will be taken to be the constitution on the commencement of the new section.

Clause 119 Amends section 8 of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Clause 120 Repeals section 9 of the Principal Act and substitutes a new section 9.

9 Directors of Company

Section 9 requires the members to ensure that the Company has a Board of directors with the necessary skills and experience to enable the Company to achieve its objectives, appointed in accordance with the constitution, unless a sole director has been appointed in accordance the proposed new section 18D.

Clause 121 Amends section 10 of the Principal Act to apply the section to subsidiaries of the Company.

Clause 122 Amends section 10B of the Principal Act to allow a direction given by the members to be inconsistent with the constitution or the corporate plan of the Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 123 Amends section 10C of the Principal Act to allow the Minister to table either the Company's objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Company's objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 124 Amends section 10D of the Principal Act to include a reference to the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 125 Amends section 10F of the Principal Act to require the draft statement of corporate intent to be consistent with the corporate plan.

Clause 126 Inserts new section 10FA and 10FB.

10FA Corporate plan

Section 10FA requires that the Board is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 10FA specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer's Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

10FB Quarterly reports

Section 10FB requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 10FB specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 127 Amends section 10G of the Principal Act to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 128 Inserts the new section:

10GA Annual reports

Section 10GA requires that the Board prepare an annual report for each financial year in relation to the Company and its subsidiaries.

Section 10GA specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 129 Amends section 10H of the Principal Act to include the corporate plan as a governing document.

Clause 130 Inserts the new section:

10HA Duty to notify members before taking certain actions

Section 10HA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 131 Repeals section 11 of the Principal Act and substitutes new sections 11 and 11A for consistency with other State-owned Company Portfolio Acts.

11 Audit

Section 11 specifies that the Auditor-General is to be the auditor of the Company and its subsidiaries.

11A Borrowing

Section 11A specifies that the Company or a subsidiary is to only borrow from the Tasmanian Public Finance Corporation unless otherwise approved by the Treasurer in writing.

Clause 132 Amends section 12 of the Principal Act to apply the section to subsidiaries of the Company and to specify that any money borrowed from the Treasurer must be repaid into the Public Account.

Clause 133 Amends section 13 of the Principal Act to apply the section to the subsidiaries of the Company.

Clause 134 Repeals sections 14 and 15 of the Principal Act and substitutes new sections 14 and 15 to make the sections consistent with other State-owned Company Portfolio Acts.

14 Guarantee fees

Section 14 applies Division 1 of Part 11 of the *Government Business Enterprises Act 1995* (Guarantee fees) to the Company and its subsidiaries as if the Company were a GBE specified in Schedule 3 of that Act and a subsidiary were a subsidiary under that Act.

15 Tax equivalents

Section 15 applies Part 10 of the *Government Business Enterprises Act 1995* (Tax equivalents payable by Government Business Enterprise and subsidiary) to the Company and its subsidiaries as if the Company were a GBE specified in Schedule 2 of that Act and a subsidiary were a subsidiary under that Act.

Clause 135 Repeals section 18 of the Principal Act and substitutes a new section 18 to be consistent with other State-owned Company Portfolio Acts.

18 Superannuation

Section 18 prevents the Company from establishing a superannuation scheme and requires that a Company comply with an instruction relating to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.

Clause 136 Inserts new sections 18A, 18B, 18C, 18D and 18E.

18A Community service obligations

Section 18A provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

18B General investigations of Company

Section 18B allows for the members, by notice in writing to the Company or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 18B provides that the Auditor-General may refuse a request to undertake an investigation if the Auditor-General believes that undertaking the investigation would interfere with the ability of the Auditor-General to performance a function under any other Act.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

18C Actions that may be taken if poor performance by Company

Section 18C provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 18D.

18D Appointment of sole director of Company

Section 18D allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 18C did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

18E Entitlements and liabilities of certain persons appointed under Act

Section 18E applies to a person appointed under section 18C or 18D. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 137 Inserts the new section:

19AB Delegation by Minister and Treasurer

Section 19AB allows the Minister and Treasurer to delegate their functions under the Principal Act, other than the power of delegation.

Clause 138 Repeals section 21 of the Principal Act and substitutes a new section 21.

21 Tabling of documents

Section 21 specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 139 Inserts the new section:

23 Regulations

Section 23 allows for the Governor to make regulations.

Clause 140 Amends the heading of Schedule 1 of the Principal Act.

Amends clause 1 to Schedule 1 to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Inserts new clauses 4, 5, 6 and 7 into Schedule 1.

4 Annual performance review

Clause 4 requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

5 Approval required for matters relating to ownership of subsidiaries

Clause 5 prevents the Company from forming or acquiring a subsidiary; disposing of shares in a subsidiary; approving, or approving an amendment of, the constitution of a subsidiary; or entering into a transaction or other legal process that would result in a subsidiary ceasing to be a subsidiary, without approval from the members.

6 Approval required for profit sharing

Clause 6 requires member approval for the Company to participate in a joint venture or other profit-sharing arrangement**.**

7 Requests for information

Clause 7 requires that, on written request from the members, the Company must provide business or strategic plans, financial information specified in the request, or a report on other matters specified in the request.

PART 6 – MOTOR ACCIDENTS (LIABILITIES AND COMPENSATION) ACT 1973 – AMENDED

Clause 141	Specifies the Principal Act for the purposes of Part 6 is the *Motor Accidents (Liabilities and Compensation) Act 1973*.
Clause 142	Replaces gendered language in section 2 of the Principal Act.
Clause 143	Replaces gendered language in section 2B of the Principal Act.
Clause 144	Replaces gendered language in section 7B of the Principal Act.
Clause 145	Replaces gendered language in section 14 of the Principal Act.
Clause 146	Replaces gendered language in section 16 of the Principal Act.
Clause 147	Replaces gendered language in section 17 of the Principal Act.
Clause 148	Replaces gendered language in section 18 of the Principal Act.
Clause 149	Replaces gendered language in section 21 of the Principal Act.
Clause 150	Replaces gendered language in section 24 of the Principal Act.
Clause 151	Replaces gendered language in section 25 of the Principal Act.
Clause 152	Replaces gendered language in section 29 of the Principal Act.
Clause 153	Replaces gendered language in section 33 of the Principal Act.
Clause 154	Replaces gendered language in Schedule 2 of the Principal Act.

PART 7 – PORT ARTHUR HISTORIC SITE MANAGEMENT AUTHORITY ACT 1987 – AMENDED

Clause 155	Specifies that the Principal Act for the purpose of Part 7 is the *Port Arthur Historic Site Management Authority Act 1987*.
Clause 156	Replaces gendered language in section 12 of the Principal Act.
Clause 157	Replaces gendered language in section 14 of the Principal Act.
Clause 158	Replaces gendered language in section 19 of the Principal Act and updates the reference to ‘the address of his place of abode’ to ‘residential address’.
Clause 159	Replaces gendered language in section 20 of the Principal Act.

PART 8 – PUBLIC TRUSTEE ACT 1930 – AMENDED

Clause 160	Specifies that the Principal Act for the purpose of Part 8 is the *Public Trustee Act 1930*.
Clause 161	Replaces gendered language in section 5 of the Principal Act.
Clause 162	Replaces gendered language in section 8 of the Principal Act.
Clause 163	Replaces gendered language in section 14 of the Principal Act.
Clause 164	Replaces gendered language in section 15 of the Principal Act.
Clause 165	Replaces gendered language in section 17 of the Principal Act.
Clause 166	Replaces gendered language in section 18 of the Principal Act.
Clause 167	Replaces gendered language in section 19 of the Principal Act.
Clause 168	Replaces gendered language in section 20 of the Principal Act.
Clause 169	Replaces gendered language in section 20A of the Principal Act.
Clause 170	Replaces gendered language and removes references to correspondence by telegram in section 21 of the Principal Act.
Clause 171	Replaces gendered language in section 22 of the Principal Act.
Clause 172	Replaces gendered language in section 24 of the Principal Act.
Clause 173	Replaces gendered language in section 25 of the Principal Act.
Clause 174	Replaces gendered language in section 27 of the Principal Act.
Clause 175	Replaces gendered language in section 31 of the Principal Act.
Clause 176	Replaces gendered language in section 32 of the Principal Act.
Clause 177	Replaces gendered language in section 33 of the Principal Act.
Clause 178	Replaces gendered language in section 34 of the Principal Act.
Clause 179	Replaces gendered language in section 36 of the Principal Act.
Clause 180	Replaces gendered language in section 44 of the Principal Act.
Clause 181	Replaces gendered language in section 50A of the Principal Act.
Clause 182	Replaces gendered language in section 50C of the Principal Act.
Clause 183	Replaces gendered language in section 51 of the Principal Act.
Clause 184	Replaces gendered language in section 52 of the Principal Act.
Clause 185	Replaces gendered language in section 53 of the Principal Act.
Clause 186	Replaces gendered language in section 54 of the Principal Act.
Clause 187	Replaces gendered language in section 55 of the Principal Act.
Clause 188	Replaces gendered language in section 56 of the Principal Act.
Clause 189	Replaces gendered language in section 57 of the Principal Act.
Clause 190	Replaces gendered language in section 58 of the Principal Act.
Clause 191	Replaces gendered language and substitutes ‘his decease’ with ‘death’ in section 60 of the Principal Act.

Clause 192	Replaces gendered language in section 61 of the Principal Act.
Clause 193	Replaces gendered language in section 62 of the Principal Act.
Clause 194	Replaces gendered language in section 63 of the Principal Act.
Clause 195	Replaces gendered language in section 64 of the Principal Act.
Clause 196	Replaces gendered language in section 65 of the Principal Act.
Clause 197	Replaces gendered language in section 67 of the Principal Act.
Clause 198	Replaces gendered language in section 68 of the Principal Act.
Clause 199	Replaces gendered language in section 69 of the Principal Act.
Clause 200	Replaces gendered language in section 71 of the Principal Act.
Clause 201	Replaces gendered language in section 72 of the Principal Act.
Clause 202	Replaces gendered language in section 73 of the Principal Act.
Clause 203	Replaces gendered language in section 74 of the Principal Act.

PART 9 – RACING (TASRACING PTY LTD) ACT 2009 – AMENDED

Clause 204	Specifies that the Principal Act for the purpose of Part 9 is the *Racing (Tasracing Pty Ltd) Act 2009*.
Clause 205	Inserts new definitions of 'annual report', 'community service obligation', 'corporate plan', 'director' and 'subsidiary', as these terms are used in proposed new sections of the Principal Act. Substitutes the current definition of 'member of the company' with a definition of 'member'. The term 'member' is used in the amending legislation to refer to members of a company defined in section 10 of the Principal Act.
Clause 206	Repeals section 4 of the Principal Act and substitutes a new section 4 (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts. Section 4 creates a requirement for the Principal Act to apply to the subsidiaries of the Company if the Company arranges for any of its functions to be performed by a subsidiary.
Clause 207	Amends section 7 of the Principal Act to apply the section to a subsidiary of the Company.
Clause 208	Replaces gendered language in section 9 of the Principal Act.
Clause 209	Amends section 11 of the Principal Act to require the Minister to table any amendment to the constitution in each House of Parliament within 7 sitting days of receiving it.
Clause 210	Amends section 12 of the Principal Act by removing reference to 'high-level' to be consistent with the wording in other State-owned Company Portfolio Acts for what is to be included in the statement of expectations. Section 12 is also amended to omit 'of the Company' after references to the members to be consistent with the new definition.

Clause 211 Amends section 12A of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Inserts a new subparagraph allowing a direction given by the members to be inconsistent with the constitution or the corporate plan of the Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 212 Amends section 12B of the Principal Act by omitting references to ‘of the Company’ after references to the members to be consistent with the new definition.

Subsection 3 is amended to allow the Minister to table either the Company’s objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Company’s objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 213 Amends section 12C of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Section 12C is also amended to include a reference to the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 214 Amends section 12D of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Clause 215 Amends section 12E of the Principal Act to require that the draft statement of corporate intent is consistent with the corporate plan and by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Clause 216 Repeals section 13 of the Principal Act and substitutes a new section 13.

13 Corporate plan

Section 13 requires that the Board is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 13 specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer’s Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

Clause 217 Amends section 14 of the Principal Act to specify that the standard requirements for directors of the Company are subject to section 27D (which allows for the appointment of a sole director).

Clause 218 Inserts the new section:

14AA Quarterly reports

Section 14AA requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 14AA specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer’s Instructions.

Clause 219 Amends section 14A of the Principal Act by omitting ‘of the Company’ after references to the members to be consistent with the new definition.

Section 14A is also amended to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 220 Inserts the new section:

14AB Annual reports

Section 14AB requires that the Board prepares an annual report for each financial year in relation to the Company and its subsidiaries.

Section 14AB specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 221 Section 14B of the Principal Act is amended to update references to members to bring these in line with section 3 of the Principal Act and to clarify that the corporate plan listed as a governing document is in respect of the company and its subsidiaries.

Clause 222 Inserts the new section:

14BA Duty to notify members before taking certain actions

Section 14BA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 223 Repeals section 15 of the Principal Act and substitutes a new section 15 consistent with sections included in other State-owned Company Portfolio Acts.

15 Borrowing

Section 15 specifies that the Company or its subsidiaries can only borrow from the Tasmanian Public Finance Corporation unless approved otherwise by the Treasurer.

Clause 224 Amends section 16 of the Principal Act to apply the section to the subsidiaries of the Company and to require that any money borrowed from the Treasurer must be repaid into the Public Account.

Clause 225 Amends section 17 of the Principal Act to apply the section to the subsidiaries of the Company.

Clause 226	Amends section 20 of the Principal Act to specify that the Auditor-General is the auditor of the Company and its subsidiaries.
Clause 227	Amends section 25 of the Principal Act by omitting 'of the Company' after references to the members to be consistent with the new definition. Inserts subsection 10 to clarify that this section does not apply to the Company if a sole director is appointed in accordance with section 27D.
Clause 228	Amends section 26 of the Principal Act by omitting 'of the Company' after references to the members to be consistent with the new definition.
Clause 229	Inserts new sections 27A, 27B, 27C, 27D and 27E.

27A Community service obligations

Section 27A provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

27B General investigations of Company

Section 27B allows for the members, by notice in writing to the Company or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 27B provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

27C Actions that may be taken if poor performance by Company

Section 27C provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 27D.

27D Appointment of sole director of Company

Section 27D allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 27C did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.

Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

27E Entitlements and liabilities of certain persons appointed under Act

Section 27E applies to a person appointed under section 27C or 27D. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 230 Amends section 28 of the Principal Act by omitting 'of the Company' after references to the members to be consistent with the new definition.

Clause 231 Inserts the new section:

28AA Delegation by Minister and Treasurer

Section 28AA allows the Minister and Treasurer to delegate their functions under the Principal Act, other than the power of delegation.

Clause 232 Repeals section 30 of the Principal Act and substitutes new sections 30 and 30A.

30 Tabling of documents

Section 30 specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

30A Regulations

Section 30A allows for the Governor to make regulations.

Clause 233 Amends Schedule 1 of the Principal Act by omitting 'of the Company' after references to the members to be consistent with the new definition. References to special resolution are also omitted and replaced with ‘the members’.

Clause 2A is also amended to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Inserts a new clause:

2D Annual Performance Review

Clause 2D requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

Amends clause 4 so that without the approval of the members, the Company cannot approve, or approve an amendment of, the constitution of a subsidiary. The Company is also prevented from entering into a transaction, or other legal process, that would result in a subsidiary ceasing to be a subsidiary.

Repeals clause 6 of Schedule 1 of the Principal Act and substitutes a new clause 6.

6 Approval for profit sharing

Clause 6 requires member approval for the Company to participate in a joint venture or other profit-sharing arrangement.

PART 10 – RAIL COMPANY ACT 2009 – AMENDED

Clause 234 Specifies that the Principal Act for the purpose of Part 10 is the *Rail Company Act 2009*.

Clause 235 Inserts new definitions of ‘annual report’, ‘community service obligation’ and ‘corporate plan’ as these terms are used in proposed new section of the Principal Act.

Clause 236 Inserts a new section 4A (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts.

Section 4A creates a requirement for the Principal Act to apply to the subsidiaries of the Company if the Company arranges for any of its functions to be performed by a subsidiary.

Clause 237 Amends section 7 of the Principal Act to require that the constitution of the Company contains the provisions contained in Schedule 2 as well as the principal objectives already required.

Section 7 is also amended to include the requirement for the Minister to table in each House of Parliament, within 7 sitting days of receiving, a copy of any amendments to a constitution.

Clause 238 Replaces gendered language in Section 9 of the Principal Act.

Clause 239 Amends section 11 of the Principal Act to include paragraph (c) to be consistent with other State-owned Company Portfolio Acts.

Clause 240 Amends section 12 of the Principal Act to make the section consistent with other State-owned Company Portfolio Acts.

Clause 241 Amends section 13 of the Principal Act to consistent with other State-owned Company Portfolio Acts.

Clause 242 Inserts the new section:

13A Borrowing from Treasurer

Section 13A allows the Treasurer to lend to a Company or its subsidiaries from money provided by the Parliament, with any conditions of the loan determined by the Treasurer. If money is lent under this section, the amount plus any interest or other charges is repayable to the Public Account.

Clause 243 Amends section 14 of the Principal Act to make the section consistent with other State-owned Company Portfolio Acts.

Clause 244 Amends section 17 of the Principal Act to make the section consistent with other State-owned Company Portfolio Acts. This will require the Company and its subsidiaries to comply with an instruction relating to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.

Clause 245 Amends section 19 of the Principal Act to specify that the standard requirements for directors of the Company are subject to section 37D (which allows for the appointment of a sole director).

Section 19 is also amended by omitting ‘of the Company’ after references to the members to be consistent with the definition in section 4 of the Principal Act.

Clause 246 Amends section 20A of the Principal Act to for allow a direction given by the members to be inconsistent with the constitution or the corporate plan of the Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 247 Amends section 20B of the Principal Act to allow the Minister to table either the Company’s objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Company's objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 248 Amends section 20C of the Principal Act to include a reference to the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed

Clause 249 Amends section 20E of the Principal Act to require the draft statement of corporate intent to be consistent with the corporate plan.

Clause 250 Repeals section 21 and 22 and substitutes new sections 21 and 22.

21 Corporate plan

Section 21 requires that the Board is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 21 specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer's Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

22 Quarterly reports

Section 22 requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 22 specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 251 Amends section 22A of the Principal Act to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 252 Inserts the new section:

22AB Annual reports

Section 22AB requires that the Board prepare an annual report for each financial year in relation to the Company and its subsidiaries.

Section 22AB specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 253 Amends section 22B of the Principal Act to clarify that the corporate plan listed as a governing document is in respect of the company and its subsidiaries.

Clause 254 Inserts the new section:

22BA Duty to notify members before taking certain actions

Section 22BA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 255 Repeals Part 2, Division 4 including section 23 (Non-commercial activities) of the Principal Act.

Clause 256 Replaces gendered language in section 30 of the Principal Act.

Clause 257 Replaces gendered language in section 36 of the Principal Act.

Clause 258 Inserts new sections 37A, 37B, 37C, 37D and 37E.

37A Community service obligations

Section 37A provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

37B General investigations of Company

Section 37B allows for the members, by notice in writing to the Company or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 37B provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

37C Actions that may be taken if poor performance by Company

Section 37C provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 37D.

37D Appointment of sole director of Company

Section 37D allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 37C did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

37E Entitlements and liabilities of certain persons appointed under Act

Section 37E applies to a person appointed under section 37C or 37D. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 259 Amends section 41 of the Principal Act to replace the gendered language and to allow the Treasurer to delegate functions, other than the power of delegation.

Clause 260 Inserts the new section:

41A Tabling of documents

Section 41A specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 261 Amends Schedule 2 of the Principal Act to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Inserts clause 4, 5, 6 and 7 in Schedule 2.

4 Annual performance review

Clause 4 requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

5 Approval required for matters relating to ownership of subsidiaries

Clause 5 prevents the Company from forming or acquiring a subsidiary; disposing of shares in a subsidiary; approving, or approving an amendment of, the constitution of a subsidiary; or entering into a transaction or other legal process that would result in a subsidiary ceasing to be a subsidiary, without approval from the members.

6 Approval required for profit sharing

Clause 6 requires member approval for the Company to participate in a joint venture or other profit-sharing arrangement.

7 Requests for information

Clause 7 requires that, on written request from the members, the Company must provide business or strategic plans, financial information specified in the request, or a report on other matters specified in the request.

PART 11 – TT-LINE ARRANGEMENTS ACT 1993 – AMENDED

Clause 262 Specifies that the Principal Act for the purpose of Part 11 is the *TT-Line Arrangements Act 1993*.

Clause 263 Omits the definition of 'articles' from section 3 of the Principal Act.

Substitutes the definition of 'board of directors' with a definition of 'Board'.

Inserts new definitions of ‘annual report’, ‘community service obligation’, ‘corporate plan’ and ‘director’, as these terms are used in proposed new sections of the Principal Act.

Clause 264 Inserts a new section 4 (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts.

Section 4 creates a requirement for the Principal Act to apply to the subsidiaries of the Company if the Company arranges for any of its functions to be performed by a subsidiary.

Clause 265 Repeals section 7 of the Principal Act (Memorandum and articles) and substitutes new section 7 (Principal objective of Company) and 7A (Constitution of Company) to be consistent with the more contemporary language used in the *Corporations Act 2001* (Cth) and with other State-owned Company Portfolio Acts.

7 Principal objective of Company

Section 7 specifies the principal objective of the Company in a section like other State-owned Company Portfolio Acts. The principal objective for TT-Line is currently included in Schedule 1 of the Principal Act.

7A Constitution of Company

Section 7A specifies what is required to be included in the constitution and includes the requirement for the Minister to table in each House of Parliament, within 7 sitting days of receiving, a copy of any amendments to a constitution. The new section 7 also includes transitional provisions to provide that the existing memorandum and articles will be taken to be the constitution on the commencement of the new section.

Clause 266 Amends section 8 of the Principal Act to remove the option for another member of the Company, limiting the members to be the Minister and the Treasurer, like other State-owned Companies.

Clause 267 Amends section 9A of the Principal Act replace references to the ‘a Company’ to ‘the Company’, as this Act only establishes one Company.

Section 9A is also amended to omitting the reference to the ‘memorandum and articles’ and substituting with ‘constitution’.

Clause 268 Replaces gendered language in section 11 of the Principal Act.

Clause 269 Repeals section 12 of the Principal Act and substitutes a new section 12.

12 Directors of Company

Section 12 requires the members to ensure that the Company has a Board of directors with the necessary skills and experience to enable the Company to achieve its objectives, appointed in accordance with the constitution, unless a sole director has been appointed in accordance the proposed new section 20B.

Clause 270 Amends section 13 of the Principal Act by updating references to 'members' and the 'Board'.

Clause 271 Amends section 13A of the Principal Act to allow for a direction given under this section to be contrary to the constitution or the corporate plan and constitution of the Company or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Company or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Company or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Company or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 272 Amends section 13B of the Principal Act by updating references to the 'Board'.

Subsection 3 is amended to allow the Minister to table either the Company's objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Company's objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Company or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation. an investigation.

Clause 273 Amends section 13C of the Principal Act is amended by updating references to the 'Board'.

Section 13C is also amended to insert a reference to the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 274 Amends section 13D of the Principal Act by updating references to the 'Company' and 'Board'.

Clause 275 Amends section 13E of the Principal Act to require the draft statement of corporate intent to be consistent with the corporate plan of the Company and update references to the 'Board'.

Clause 276 Inserts new sections 13EA and 13EB.

13EA Corporate plan

Section 13EA requires that the Board is to prepare a corporate plan for the Company and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 13EA specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer's Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Company must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, a Company or subsidiary must comply with the statement of corporate intent and/or community service obligation.

13EB Quarterly reports

Section 13EB requires that the Board must prepare a report on the operations of the Company and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 13EA specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 277 Amends section 13F of the Principal Act by updating references to the 'Board'.

Section 13F is also amended to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 278 Inserts the new section:

13FA Annual reports

Section 13FA requires that the Board prepares an annual report for each financial year in relation to the Company and its subsidiaries.

Section 13FA specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 279 Amends section 13G of the Principal Act to include the corporate plan as a governing document and update references to the 'Board'.

Clause 280 Inserts the new section:

13GA Duty to notify members before taking certain actions

Section 13GA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 281 Amends section 13H of the Principal Act to update references to the 'Board'.

Clause 282 Repeals section 14 of the Principal Act (Accounts and report to presented to Parliament) as these requirements have been replaced by the new section 13FA (Annual reports).

Clause 283 Amends section 15 of the Principal Act to include paragraph (1)(d) and subsection (2) to be consistent with other State-owned Company Portfolio Acts.

Clause 284 Inserts section 15A and 15B into the Principal Act to be consistent with other State-owned Company Portfolio Acts.

15A Audit

Section 15A specifies that the Auditor-General is to be the auditor for the Company and its subsidiaries.

15B Borrowing

Section 15B specifies that the Company or a subsidiary of the Company is to only borrow from the Tasmanian Public Finance Corporation unless otherwise approved by the Treasurer in writing.

Clause 285 Amends section 16 of the Principal Act to apply the section to all of the subsidiaries of the Company.

Clause 286 Amends section 17 of the Principal Act to apply the section to subsidiaries of the Company.

Clause 287 Inserts a new section 18A (Effect of *Financial Agreement Act 1994*) to be consistent with other State-owned Company Portfolio Acts.

Section 18A requires the Company to comply with instructions given to it by the Treasurer under section 5(1) of the *Financial Agreement Act 1994*.

Clause 288 Repeals section 19 of the Principal Act and substitutes a new section 19, 20, 20A, 20B and 20C.

19 Community service obligation

Section 19 provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Company, or a function, service or concession that the Company proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Company as if it were a Government Business Enterprise (GBE).

20 General investigations of Company

Section 20 allows for the members, by notice in writing to the Company or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Company or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 20 provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Company were a GBE.

20A Actions that may be taken if poor performance by Company

Section 20A provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Company or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at board meetings, they must first give written notice to the Company or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Company or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Company or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Company or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Company or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 20B.

20B Appointment of sole director of Company

Section 20B allows the members to appoint a sole director to administer the affairs and activities of the Company, for up to 6 months. This action can be taken, if an option taken under 20A did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Company and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Company, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

20C Entitlements and liabilities of certain persons appointed under Act

Section 20C applies to a person appointed under section 20A or 20B. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Company or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person's appointment.

Clause 289 Replaces gendered language in section 22 of the Principal Act.

Clause 290 Inserts the new section:

22A Tabling of documents

Section 22A specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 291 Replaces the heading of Schedule 1 of the Principal Act and removes the headings for Part 1 and Part 2.

Amends the Schedule by omitting references to the 'articles of the Company' and substituting references to the 'constitution'. References to 'special resolution' and 'shareholders' are omitted and refences to the 'Board' are updated.

The Schedule is also amended to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Inserts a new clause:

3D Annual Performance Review

Clause 3D requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

Amends clause 6 of Schedule 1 so that without the approval of the members, the Company cannot approve, or approve the amendment of, the constitution of a subsidiary. The Company is also prevented from entering into a transaction, or other legal process, that would result in a subsidiary ceasing to be a subsidiary.

Amends clause 9 of Schedule 1 to require the Company to keep records of direction or approval from the members under subclauses (1) and (3) available to the public. The clause also allows for a copy of a record, certified by the Company Secretary, to be released to a person following the payment of a fee determined by the Company.

Substitutes clause 10:

10 Approval required for profit sharing

Clause 10 requires member approval for the Company to participate in a joint venture or other profit-sharing arrangement.

PART 12 – TASMANIAN PORTS CORPORATION ACT 2005 – AMENDED

Clause 292 Specifies that the Principal Act for the purpose of Part 12 is the *Tasmanian Ports Corporation Act 2005*.

Clause 293 Inserts new definitions of ‘annual report’, ‘community service obligation’ and ‘corporate plan’, as these terms are used in proposed new sections of the Principal Act.

Clause 294 Inserts a new section 4 (Application of Act to subsidiary) into the Principal Act to be consistent with other State-owned Company Portfolio Acts.

Section 4 creates a requirement for the Principal Act to apply to the subsidiaries of the Corporation if the Corporation arranges for any of its functions to be performed by a subsidiary.

Clause 295 Amends section 7 of the Principal Act to require that the constitution of the Corporation contains the provisions contained in Schedule 2 as well as the principal objectives already required.

Section 7 is also amended to include the requirement for the Minister to table in each House of Parliament, within 7 sitting days of receiving, a copy of any amendments to a constitution.

Clause 296 Amends Section 9 of the Principal Act by omitting ‘of the Corporation’ after the reference to the members.

Clause 297 Amends section 10 of the Principal Act by omitting ‘of the Corporation’ after the reference to the members.

Clause 298 Amends section 11 of the Principal Act by omitting ‘of the Corporation’ after the references to the members.

Clause 299 Amends section 12 of the Principal Act by omitting ‘of the Corporation’ after the reference to the members.

Removes subsections 3-9, related to the requirement to establish a panel to identify suitable candidates for the Board. These specific legislative requirements have been removed to allow for consistency with most other State-owned Company legislation.

Clause 300 Amends section 13 of the Principal Act to include paragraph (c) to be consistent with other State-owned Company Portfolio Acts.

Clause 301 Amends section 13B of the Principal Act to allow for a direction given by the members to be inconsistent with the constitution or the corporate plan of the Corporation or subsidiary.

A new subsection 3A is inserted, which specifies that a direction does not affect a contract, if the contract was entered into prior to the Corporation or subsidiary being notified by the members of the intention to issue a direction, and if complying with the direction would cause the Corporation or subsidiary to breach the contract.

A new subsection 9 is also inserted, which provides that members are to specify that a direction is a community service obligation if they:

- are satisfied that the function, service or concession specified would not be performed, provided or allowed if the Corporation or subsidiary were a business in the private sector; and
- intend for the function, service or concession to be a community service obligation.

Clause 302 Amends section 13C of the Principal Act to allow the Minister to table either the Corporation’s objection to a direction or a summary of that objection within 5 sitting days after receiving it. The current requirement is for a copy of the objection to be tabled.

The new subsection 4 provides that the Minister may instead table a summary of the Corporation’s objection if the Minister is satisfied that publishing the objection itself would:

- disadvantage the Corporation or subsidiary;
- unreasonably advantage another person;
- breach confidentiality; or
- prejudice an investigation.

Clause 303 Amends section 13D of the Principal Act to include a reference to the annual report and to specifically include commercial in confidence as reason for allowing the Board to request a direction to not be disclosed.

Clause 304 Amends section 13F of the Principal Act to require that the draft statement of corporate intent is consistent with the corporate plan of the Corporation and its subsidiaries.

Clause 305 Inserts the new section:

13G Corporate plan

Section 13G requires that the Board of the Corporation is to prepare a corporate plan for the Corporation and its subsidiaries for provision to the members by 31 March each year, unless a later date has been agreed.

Section 13G specifies the period that the corporate plan must cover and that its required content is to be defined in the Treasurer's Instructions.

The corporate plan is to be consistent with the statement of expectations and the members may request that the Board make changes to the corporate plan.

The corporate plan approved by the Board becomes the corporate plan on the first day of the first financial year in which the plan is to be in force or on a later day as specified in the corporate plan.

The Corporation must act in accordance with the corporate plan unless approved otherwise by the members, and ensure its subsidiaries do the same.

If there is an inconsistency between the corporate plan and statement of corporate intent and/or a community service obligation, the Corporation or subsidiary must comply with the statement of corporate intent and/or community service obligation.

Clause 306 Repeals section 14 of the Principal Act and substitutes a new section 14.

14 Quarterly reports

Section 14 requires that the Board must prepare a report on the operations of the Corporation and its subsidiaries for each quarter of a financial year or a shorter period agreed between the Board and members.

Section 14 specifies when the report must be provided to the members and that the report must contain the information required by the Treasurer's Instructions.

Clause 307 Amends section 14A of the Principal Act to specifically include commercial in confidence as a reason to not publish a part of a half-year progress report.

Clause 308 Inserts the new section:

14AB Annual reports

Section 14AB requires that the Board of the Corporation prepares an annual report for each financial year in relation to the Corporation and its subsidiaries.

Section 14AB specifies what the annual report must contain and the tabling requirements. It also provides powers for the Public Accounts Committee to examine and report on all documents required to be included in the annual report if the annual report is not tabled.

Clause 309 Amends section 14B of the Principal Act to include the corporate plan as a governing document.

Clause 310 Inserts the new section:

14BA Duty to notify members before taking certain actions

Section 14BA requires that the Board or subsidiary board notify the members, its parent company and any other subsidiaries if a board intends to appoint an administrator or take an action under the safe harbour provisions of the *Corporations Act 2001* (Cth).

The Board or subsidiary board is to provide notification to the members as soon as practicable after deciding to take an action and before it takes that action.

Clause 311 Inserts section 14D and 14E in the Principal Act relating to the auditor and borrowing arrangements, to be consistent with other State-owned Company Portfolio Acts.

14D Audit

Section 14D specifies that the Auditor-General is to be the auditor of the Corporation and its subsidiaries.

14E Borrowing

Section 14E specifies that the Corporation or a subsidiary of the Corporation is to only borrow from the Tasmanian Public Finance Corporation unless otherwise approved by the Treasurer in writing.

Clause 312 Inserts the new section:

19A Superannuation for employees

Section 19A is inserted to be consistent with other State-owned Company Portfolio Acts. It prevents the Corporation from establishing a superannuation scheme and requires the Corporation to comply with an instruction relating to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.

Clause 313 Replaces gendered language in section 24 of the Principal Act.

Clause 314 Inserts new sections 28A, 28B, 28C, 28D and 28E into the Principal Act.

28A Community service obligations

Section 28A provides for the Board to request that the Minister apply to the Treasurer for a declaration that a function, service or concession allowed by the Corporation, or a function, service or concession that the Corporation proposes to provide or allow, is, or will be, a community service obligation.

If an application is made under this section or a direction is issued to undertake a community service obligation in accordance with the Principal Act, Part 9 of the *Government Business Enterprises Act 1995* (Community service obligations) is to apply to the Corporation as if it were a Government Business Enterprise (GBE).

28B General investigations of Corporation

Section 28B allows for the members, by notice in writing to the Corporation or subsidiary, to authorise a person to undertake and conduct an investigation into the performance or matter relating to or affecting the performance of the Corporation or subsidiary.

It also allows the members to require the Board or subsidiary board to undertake a review or assessment or arrange for an independent review or assessment to be undertaken and be provided a copy.

Section 28B provides that the Auditor-General may refuse a request to undertake an investigation 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.

Section 102 of the *Government Business Enterprises Act 1995* (General investigations of a Government Business Enterprise) is to apply to an investigation authorised under this section as if the Corporation were a GBE.

28C Actions that may be taken if poor performance by Corporation

Section 28C provides mechanisms for members to require a performance improvement plan and/or a person to be present at Board meetings, if satisfied there has been poor performance by a Corporation or wholly-owned subsidiary.

If the members intend to require a performance improvement plan and/or a person to be present at Board meetings, they must first give written notice to the Corporation or subsidiary and consider any submissions made by the Board.

If the members require a performance improvement plan to be prepared, they must give written notice to the Corporation or subsidiary and may appoint a person to assist or supervise the implementation of the performance improvement plan. The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Corporation or subsidiary and, if a person has been appointed, the name and functions of that person.

If the members appoint a person to be present at Board meetings, the members must give written notice to the Corporation or subsidiary specifying the person to be appointed, the functions of the person and the duration of appointment (not exceeding 12 months). The Minister must, within 7 sitting days after this notice is given, table in each House of Parliament a notice that specifies the Corporation or subsidiary, the name of the person appointed, and the functions of the person.

A person appointed to attend Board meetings is not entitled to a vote at the meetings but may participate in the meeting, unless otherwise specified. They must not disclose any information about the Corporation or subsidiary except in accordance with their instrument of appointment.

If, after requiring a performance improvement plan and/or appointing a person to attend Board meetings, the members are not satisfied that the action has corrected the poor performance, the members may take another action under this section or appoint a sole director in accordance with section 28D.

28D Appointment of sole director of Corporation

Section 28D allows the members to appoint a sole director to administer the affairs and activities of the Corporation, for up to 6 months. This action can be taken, if an option taken under 28C did not correct the poor performance; if all of the directors have vacated at the same time; or if the members agree that it is in the public interest for a sole director to be appointed.

If the members intend to appoint a sole director in the public interest, the Board and Minister must first be notified and the Board provided an opportunity to make submissions.
Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a statement that includes a copy of the notice, a summary of the submissions from the Board, and any other relevant details.

If a sole director is appointed, the members must give notice to the Corporation and Minister of the appointment. Within 7 sitting days after being given this notice, the Minister must table in each House of Parliament a notice that specifies the Corporation, the name of the sole director, and a summary of the grounds on which the sole director was appointed.

28E Entitlements and liabilities of certain persons appointed under Act

Section 28E applies to a person appointed under section 28C or 28D. That person is entitled to remuneration, allowances and expenses as specified in their instrument of appointment. Unless otherwise approved by the members, any payments to that person are payable by the Corporation or subsidiary.

If the person is a State Service employee, they may be appointed in conjunction with State Service employment and that person is not entitled to remuneration, allowances or expenses except with the approval of the Minister administering the *State Service Act 2000*.

The person is not liable for action taken in good faith as a result of their appointment or for any loss or damage unless the loss or damage was attributed to misconduct, negligence, or a failure to comply with the terms and conditions of the person’s appointment.

Clause 315 Amends section 30 of the Principal Act by replacing gendered language and allowing the Treasurer to delegate functions, other than the power of delegation.

Clause 316 Replaces gendered language in section 32 of the Principal Act.

Clause 317 Inserts the new section:

32A Tabling of documents

Section 32A specifies the arrangements if the Minister is unable to comply with a requirement to table a document in a House of Parliament.

Clause 318 Amends clause 1(3) of Schedule 2 of the Principal Act to clarify that a person is considered to have served a full term as a director if that person has resigned or been removed from the office. This clause has been included to ensure this approach could not be used to avoid the two-term limit.

Inserts new clauses 4, 5, 6 and 7 in Schedule 2.

4 Annual performance review

Clause 4 requires an annual performance review of the chief executive officer to be conducted and a copy provided to the members.

5 Approval required for matters relating to ownership of subsidiaries

Clause 5 prevents the Corporation from forming or acquiring a subsidiary; disposing of shares in a subsidiary; approving, or approving an amendment of, the constitution of a subsidiary; or entering into a transaction or other legal process that would result in a subsidiary ceasing to be a subsidiary, without approval from the members.

6 Approval required for profit sharing

Clause 6 requires member approval for the Corporation to participate in a joint venture or other profit-sharing arrangement.

7 Requests for information

Clause 7 requires that, on written request from the members, the Corporation must provide business or strategic plans, financial information specified in the request, or a report on other matters specified in the request.

PART 13 – TASMANIAN PUBLIC FINANCE CORPORATION ACT 1985 – AMENDED

Clause 319 Specifies that the Principal Act for the purpose of Part 13 is the *Tasmanian Public Finance Corporation Act 1985*.

Clause 320 Amends section 3 of the Principal Act to specifically include companies established under the *Electricity Companies Act 1997, Irrigation Company Act 2011, Metro Tasmania Act 1997, Racing (Tasracing Pty Ltd) Act 2009, Rail Company Act 2009,*

	TT-Line Arrangements Act 1993 and *Tasmanian Ports Corporation Act 2005* and any subsidiaries in the definition of Participating Authority.
	Inserts the definition of 'subsidiary' as this is used in proposed amendments to the Principal Act.
Clause 321	Replaces gendered language in section 18 of the Principal Act.
Clause 322	Replaces gendered language in section 23 of the Principal Act.
Clause 323	Schedule 1 of the Principal Act is amended by omitting the definition of subsidiary and inserting 'subsidiary' as the definition is proposed to be included in section 3.