

STATE OWNED CORPORATIONS ACT 1989 No. 134

NEW SOUTH WALES



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STATE OWNED CORPORATIONS ACT 1989 No. 134

NEW SOUTH WALES



Act No. 134, 1989

An Act to provide for the establishment and operation of Government enterprises as State owned corporations. [Assented to 15 September 1989]

State Owned Corporations 1989

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the State Owned Corporations Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**assets**" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

"**board**" means the board of directors of a State owned corporation or of any of its subsidiaries;

"**eligible Ministers**", in relation to a State owned corporation or proposed State owned corporation or any of its subsidiaries, means the Treasurer and 4 or more other Ministers for the time being nominated by the Premier as being eligible to hold shares in the corporation;

"**liabilities**" means liabilities, debts and obligations (whether present or future and whether vested or contingent);

"**State owned corporation**" means a company whose name is for the time being specified in Schedule 1;

"**subsidiary**" means a body corporate that is a subsidiary of a State owned corporation as determined in accordance with the Companies (New South Wales) Code or any other applicable law;

"**the State**" includes the Crown in right of New South Wales and the Government of New South Wales;

"**voting shareholders**", in relation to a State owned corporation or any of its subsidiaries, means the Treasurer and one of the other eligible Ministers who is for the time being nominated by the Premier as a voting shareholder of the corporation, in their capacities as shareholders in the corporation.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATIONS

Establishment of State owned corporations

4. A company limited by shares becomes a State owned corporation by the insertion of its name in Schedule 1 by an Act of Parliament.

Change or removal of name of company

5. (1) The regulations under this Act may amend Schedule 1 to reflect a change of name of a company.

(2) The name of a company may not be removed from Schedule 1 except by an Act of Parliament.

Authorisation to participate in formation of companies

6. Any eligible Minister may, for the purposes of this Act, participate in the formation of, or acquire shares in, a company limited by shares, in anticipation of the establishment of a State owned corporation.

Transfer of assets and liabilities etc.

7. (1) Assets and liabilities of the State or an authority of the State and forming part of or relating to an undertaking carried on by or under the authority of a Minister, Department or Administrative Office, or under the executive authority of the State, may be

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transferred to a State owned corporation or any of its subsidiaries, in exchange for the issue of shares or on any other basis.

(2) The regulations under this Act may make provision for or with respect to the transfer of any such assets and liabilities to a State owned corporation or any of its subsidiaries.

(3) The regulations under this Act may provide that references in any Act, or in any regulation or other statutory rule under any Act, or in any other instrument, or in any contract or agreement, to:

- (a) the State or an authority of the State, in connection with any such assets or liabilities or in connection with any such undertaking; or
- (b) (without limiting the above) a Minister, a Department, an Administrative Office or an officer or employee of a Department or Administrative Office,

are to be read as references to a State owned corporation or any of its subsidiaries or to a director, officer or employee of any such corporation or subsidiary.

(4) This section does not apply to assets and liabilities of a statutory corporation unless:

- (a) the assets and liabilities can be transferred to the State owned corporation apart from this section; or
- (b) an Act of Parliament provides that this section applies to the assets and liabilities of the statutory corporation.

PART 3 - STATE OWNED CORPORATIONS

Principal objective of State owned corporations

8. The principal objective of every State owned corporation is to be a successful business and, to this end:

- (a) to operate at least as efficiently as any comparable businesses; and
- (b) to maximise the net worth of the State's investment in the corporation; and
- (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate these when able to do so.

Status of State owned corporations

9. A State owned corporation or any of its subsidiaries:

- (a) is not and does not represent the State except by express agreement with the voting shareholders of the corporation; and
- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a State owned corporation; and
- (c) cannot render the State liable for any debts, liabilities or obligations of the corporation or any of its subsidiaries,

unless this or any other Act otherwise expressly provides.

Directors

10. (1) The directors of a State owned corporation are to be persons who, in the opinion of those appointing them, will assist the corporation to achieve its principal objective.

(2) The board is accountable to the voting shareholders in the manner set out in Part 4 and in the memorandum and articles of association of the corporation.

Non-commercial activities

11. (1) If a Minister wishes a State owned corporation to perform activities, or to cease to perform activities, or not to perform activities, in circumstances where the board considers that it is not in the commercial interests of the corporation to do so, that Minister with the approval of the Treasurer may, by written notice to the board, direct the corporation to do so in accordance with any requirements set out or referred to in the notice.

(2) The corporation is required to comply with any such direction.

(3) The corporation is entitled to be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts equal to:

- (a) the net cost of performing any such activities, including the cost of capital; and
- (b) the net cost of complying with a direction to cease to perform or not to perform any such activities.

(4) The amounts and times of payment of those amounts are as agreed between the Treasurer and the corporation or (failing

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agreement) as determined by a suitably qualified person or persons nominated by the Premier.

(5) The corporation may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net amount of revenue forgone through ceasing to perform or not performing any such activities, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.

Memorandum and articles of State owned corporations

12. (1) The Ministers who are the voting shareholders of a State owned corporation are responsible for ensuring that the memorandum and articles of association of the corporation at all times contain provisions to the effect of those required by Schedule 2.

(2) The memorandum and articles may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (1) or any other provisions of this Act.

(3) This section does not apply to the extent provided in resolutions of both Houses of Parliament.

Memorandum and articles of subsidiaries

13. (1) The Ministers who are the voting shareholders of a State owned corporation are responsible for ensuring that the memorandum and articles of association of every subsidiary of the corporation at all times contain provisions to the effect of those required by Schedule 3.

(2) The memorandum and articles may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (1) or any other provisions of this Act.

(3) This section does not apply to the extent provided in resolutions of both Houses of Parliament.

Dividends

14. (1) The board of a State owned corporation and the voting shareholders may agree that payments required to be made by the corporation or any of its subsidiaries in respect of dividends will be applied in the purchase of shares by shareholders in the corporation.

(2) If any such payments are applied in the purchase of shares, the payments may be appropriated for that purpose without being paid into the Consolidated Fund.

(3) Otherwise, dividends declared for a State owned corporation or any of its subsidiaries and payable to eligible Ministers are to be paid to the Treasurer on behalf of the State for payment into the Consolidated Fund.

Tax-equivalents

15. (1) A State owned corporation must from time to time pay to the Treasurer for payment into the Consolidated Fund such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the corporation if it were liable to pay taxes under the law of the Commonwealth.

(2) The corporation is not required to make payments under this section to the extent that it is or becomes liable to pay any such taxes.

(3) Payments are to be made under this section on such terms as the Tax Assessor determines to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the corporation were liable to pay corresponding taxes under the law of the Commonwealth.

(4) The corporation and the Treasurer may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (3).

(5) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements.

(6) Any such determination of the Tax Assessor is final, and the Treasurer and the corporation are required to make all the necessary payments and refunds to give effect to the determination.

(7) The Premier may nominate any person or persons to be the Tax Assessor for any one or more State owned corporations, and may revoke any such nomination.

(8) This section applies to the subsidiaries of a State owned corporation in the same way as it applies to the corporation, and (where relevant) applies to the corporation and its subsidiaries as a group.

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(9) Amounts required to be paid under this section are called tax-equivalents.

(10) In this section:

"**Tax Assessor**", in relation to a State owned corporation, means the person nominated for the time being under subsection (7) as the Tax Assessor for the corporation.

Government guarantee

16. (1) The obligations of a State owned corporation or any of its subsidiaries are not guaranteed by the State of New South Wales, except to the extent that the board of the corporation and voting shareholders agree in writing.

(2) Any liability arising from an agreed guarantee is to be met out of the Consolidated Fund, which is appropriated accordingly.

(3) The voting shareholders may, after consultation with the board of the corporation, fix charges to be paid by the corporation or any of its subsidiaries to the Treasurer in respect of an agreed guarantee, either generally or in so far as it relates to specified matters.

(4) Payments by the corporation or any of its subsidiaries to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

State taxation

17. (1) In this section:

"**exempt matter**" means:

- (a) the formation of, or the acquisition of shares in, a company in anticipation of the establishment of a State owned corporation; or
- (b) the registration of such a company; or
- (c) the issue or transfer of shares of a State owned corporation or any of its subsidiaries to eligible Ministers; or
- (d) the transfer of assets or liabilities to a State owned corporation or any of its subsidiaries from the State, any authority of the State or any subsidiary of an authority of the State; or

(e) giving effect to any of the above;

"tax" includes stamp duty and any other tax, duty, fee, levy or charge, but does not include tax-equivalents.

(2) Tax under a law of the State is not payable in relation to:

(a) an exempt matter; or

(b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

(3) The Treasurer or a person authorised by the Treasurer may, by written instrument, certify that:

(a) a specified matter or thing is an exempt matter; or

(b) a specified thing was done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

(4) For all purposes and in all proceedings, a certificate under this section is conclusive evidence of the matters certified, except so far as the contrary is established.

Subsidiaries

18. (1) A State owned corporation or any of its subsidiaries may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.

(2) A State owned corporation or any of its subsidiaries may not acquire or dispose of shares of a company, or participate in any other transaction, resulting in the company becoming or ceasing to be a subsidiary, without the prior written approval of the voting shareholders.

(3) In seeking the approval of the voting shareholders, the corporation or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act.

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Acquisition and disposal of assets etc.

19. (1) A State owned corporation or any of its subsidiaries may not acquire or dispose of fixed assets or investments, including shares in a company, without the prior written approval of the voting shareholders:

- (a) where the total assets and investments being acquired or disposed of (together with any other such acquisitions or dispositions during the last 12 months) represent an amount in excess of the prescribed percentage of the written down value of the corporation's consolidated fixed assets and investments as disclosed in its last audited accounts; or
- (b) where it could reasonably be expected that the inclusion or exclusion, respectively, of the total current year's profit or loss of such acquisition or disposition (together with any other such acquisitions or dispositions during that year) would result in an increase in or diminution of the corporation's consolidated pre-tax operating profit or loss for the year of acquisition or disposal in excess of the prescribed percentage compared with that consolidated pre-tax operating profit or loss disclosed in its last audited accounts.

(2) In the case of an acquisition to which this section applies, the amount is the cost price of the asset or investment.

(3) In the case of a disposition to which this section applies, the amount is the book value or the consideration on disposal, whichever is the greater.

(4) A State owned corporation or any of its subsidiaries may not acquire or dispose of any assets or liabilities, in contravention of any requirements of the regulations under this Act.

(5) In seeking the approval of the voting shareholders under this section, the corporation or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act.

(6) The prescribed percentage is 10 per cent or such other percentage as is prescribed by the regulations under this Act.

(7) All or any specified requirements of subsections (1), (2) and (3) do not apply in such circumstances as are specified in a written notice

given to a State owned corporation or a subsidiary of a State owned corporation by the Treasurer.

(8) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the corporation or subsidiary in the circumstances or would apply to it in a clearly inappropriate manner.

(9) The voting shareholders may, by written notice, direct a State owned corporation or its subsidiaries not to dispose of any specified asset.

Sale or disposal of main undertaking

20. (1) None of the main undertakings of a State owned corporation, and none of the main undertakings of any of its subsidiaries, may be sold or disposed of except with the prior written approval of the voting shareholders.

(2) The main undertakings are as specified in the most recent statement of corporate intent of the corporation.

PART 4 - ACCOUNTABILITY

Statement of corporate intent: timetable and procedure

21. (1) The board of a State owned corporation must prepare and submit to the voting shareholders a draft written statement of corporate intent not later than one month after the commencement of each financial year of the corporation.

(2) The board must consider any comments on the draft statement of corporate intent that are made to it by the voting shareholders within 2 months after the commencement of the financial year of the corporation.

(3) The board must consult in good faith with the voting shareholders following communication to it of the comments, make such changes to the statement as are agreed between the voting shareholders and the board and deliver the completed written statement to the voting shareholders within 3 months after the commencement of the financial year.

(4) The statement may not, before it is laid before both Houses of Parliament, be published or made available to the public without the prior approval of the board and the voting shareholders.

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(5) The statement may be modified at any time by the board with the agreement of the voting shareholders.

(6) If the board, by written notice to the voting shareholders, proposes a modification of the statement, the board may, within 14 days, make the modification unless the voting shareholders, by written notice to the board, direct the board not to make it.

(7) The voting shareholders may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent any specified matters.

(8) Before giving a direction under this section, the voting shareholders are to consult with the board as to the matters to be referred to in the notice.

(9) The corporation is required to comply with any such direction.

(10) At any particular time, the statement of corporate intent for the corporation is the completed statement, with any modifications or deletions made in accordance with this Part.

Statement of corporate intent: contents

22. Each statement of corporate intent is required to specify for the group comprising a State owned corporation and its subsidiaries, in respect of the financial year to which it relates and each of the 2 following financial years, the following information:

- (a) the objectives of the corporation and of its subsidiaries;
- (b) the main undertakings of the corporation and of its subsidiaries;
- (c) the nature and scope of the activities to be undertaken;
- (d) the accounting policies to be applied in the accounts;
- (e) the performance targets and other measures by which the performance of the corporation and of its subsidiaries may be judged in relation to their stated objectives;
- (f) the kind of information to be provided to the voting shareholders by the corporation during the course of those financial years, including the information to be included in each half-yearly report;
- (g) such other matters as may be agreed on by the voting shareholders and the board from time to time.

Half-yearly reports

23. (1) Within one month after the end of the first 6 months of each financial year of a State owned corporation (or such other period after the end of that half-year as may be agreed on by the board and the voting shareholders), the board is required to deliver to the voting shareholders a report of the operations of the corporation and of its subsidiaries during that half-year.

(2) Each report required by this section must include the information required by the statement of corporate intent to be included in it.

Annual reports and accounts

24. (1) Within 4 months after the end of each financial year of a State owned corporation (or such other time as may be prescribed by regulations under this Act), the board is required to deliver to the voting shareholders:

- (a) an annual report of the operations of the corporation and of its subsidiaries during that financial year; and
- (b) financial statements for that financial year, audited by the Auditor-General, being financial statements that conform to the requirements of the Companies (New South Wales) Code or any other law applying to the financial statements of the corporation; and
- (c) the Auditor-General's report on those financial statements.

(2) Every report under subsection (1) (a) must:

- (a) contain such information as is required by the voting shareholders to enable an informed assessment of the operations of the State owned corporation and its subsidiaries, including a comparison of the performance of the corporation and subsidiaries with the relevant statement of corporate intent; and
- (b) state the dividend payable to the State by the corporation for the financial year to which the report relates.

(3) Every report under subsection (1) (c) must conform to the requirements of similar reports under the Companies (New South Wales) Code or any other applicable law.

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(4) The requirements of this section are additional to the requirements of the Companies (New South Wales) Code or any other applicable law, but anything done for the purposes of the Code or other law that would comply with the requirements of this section may be taken to have also been done for the purposes of this section.

(5) The Auditor-General has, for the purposes of exercising the Auditor-General's functions under this section, all the powers of an auditor under the Companies (New South Wales) Code, and the Code applies accordingly.

(6) The corporation is required to pay to the Auditor-General such charges for the exercise by the Auditor-General of functions under this section as are agreed on by the corporation and the Auditor-General or (failing agreement) as are determined by the Treasurer.

(7) References in this section to the Auditor-General extend to any person carrying out functions under this section for the Auditor-General.

(8) This section applies to the subsidiaries of a State owned corporation in the same way as it applies to the corporation.

Special reports of Auditor-General

25. (1) The Auditor-General may make a special report regarding any matter arising from audit which in the opinion of the Auditor-General should be brought to the attention of Parliament.

(2) The Auditor-General is required to present any such special report to the Legislative Assembly.

Information to be laid before Parliament

26. (1) A Minister is required to lay, or cause to be laid, the following before each House of Parliament:

- (a) a copy of the memorandum and articles of association of each State owned corporation, within 14 sitting days after the date of the memorandum and articles or the date on which the corporation became a State owned corporation (whichever is the later);
- (b) a copy of the memorandum and articles of association of each subsidiary of each State owned corporation, within 14 sitting days after the date of the memorandum and articles or the date

on which the subsidiary became a subsidiary of the corporation (whichever is the later);

- (c) a copy of any change to the memorandum or articles of association of a State owned corporation or any of its subsidiaries, within 14 sitting days after the date of the change;
- (d) a copy of the completed statement of corporate intent for a State owned corporation, within 14 sitting days after the date the voting shareholders received it;
- (e) a copy of any modification to a completed statement of corporate intent for a State owned corporation made after a copy of the statement was laid before the House, within 14 sitting days after the date the modification was made;
- (f) a copy of any notice given under section 21 (6) directing the board of a State owned corporation not to make a modification of a statement of corporate intent, within 14 sitting days after the date the notice was given;
- (g) a copy of any notice given under section 21 (7) directing the inclusion of matters in or the omission of matters from a statement of corporate intent, within 14 sitting days after the date the notice was given;
- (h) a copy of each half-yearly report of a State owned corporation, within 14 sitting days after the date the voting shareholders received it;
- (i) a copy of the annual report, audited financial statements, and the Auditor-General's report on those statements, of a State owned corporation, delivered to the voting shareholders under section 24, within 14 sitting days after the date of the annual general meeting of the corporation;
- (j) a copy of any notice given by a Minister under section 11 to the board of a State owned corporation directing the corporation to perform activities, or to cease to perform activities, or not to perform activities, within 14 sitting days after the date the notice was given;
- (k) a copy of any notice given by voting shareholders under the memorandum or articles of association of a State owned corporation to the board as to the amount of a dividend, within 14 sitting days after the date the notice was given;

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- (l) a copy of any written approval given by voting shareholders under section 18, 19 or 20, within 14 sitting days after the date the approval was given;
- (m) a copy of any notice given by the Treasurer under section 19 (7), within 14 sitting days after the date the notice was given;
- (n) a copy of any written instrument under section 17 (3), within 14 sitting days after the date the instrument was signed.

(2) The material referred to in subsection (1) relating to a memorandum and articles of association must be accompanied by a statement as to whether or not the memorandum and articles contain provisions to the effect of the provisions set out in Schedule 2 or 3 (whichever is relevant), and indicating the nature and extent of any departures.

(3) The material referred to in subsection (1) relating to a statement of corporate intent must be accompanied by a statement as to whether or not the statement of corporate intent embodies any changes made to the description of the main undertakings of the State owned corporation or its subsidiaries.

(4) Before copies of material referred to in subsection (1) (d), (e), (f) or (g) relating to a statement of corporate intent are laid before the Houses of Parliament, the voting shareholders may delete any information of a commercially sensitive nature.

(5) The material referred to in subsection (1) (i) must be accompanied by a statement describing how the State owned corporation has, during the financial year concerned, exhibited a sense of social responsibility, including:

- (a) a summary of any community interests considered under section 8 (c) the accommodation of which was thought to be incompatible with its principal objective; and
- (b) an assessment of the cost that would have been incurred in accommodating any such interests.

(6) The material referred to in subsection (1) (l) relating to an approval given under section 20 need not be laid before the Houses of Parliament so far as the approval relates to a transaction between any members of a group comprising a State owned corporation and its subsidiaries.

Procedure if Parliament not in session

27. (1) If a House of Parliament is not sitting when a Minister seeks to comply with any of the requirements of section 26, a Minister is required to present a copy of the material to the Clerk of the House.

(2) If the Legislative Assembly is not sitting when the Auditor-General seeks to comply with any of the requirements of section 25, the Auditor-General is required to present a copy of the special report to the Clerk of the Legislative Assembly.

(3) Material presented to the Clerk under this section is:

- (a) on presentation and for all purposes, to be taken to have been laid before the House of Parliament; and
- (b) required to be printed by authority of the Clerk; and
- (c) for all purposes to be taken to be a document published by order or under the authority of the House; and
- (d) to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the material by the Clerk.

Public Accounts Committee

28. (1) The functions of the Public Accounts Committee include the examination of the financial statements of State owned corporations, and reports of the Auditor-General, laid before the Legislative Assembly under this Act.

(2) Part 4 of the Public Finance and Audit Act 1983 applies in relation to any such financial statements and reports in the same way as it applies to accounts and reports of authorities of the State.

Other information to be supplied to voting shareholders

29. The board of a State owned corporation must supply to the voting shareholders such information relating to the affairs of the corporation or any of its subsidiaries as they from time to time request (whether or not the information is of a kind referred to in the statement of corporate intent).

Application of this Part to corporations with no subsidiaries

30. If any provision of this Part is expressed to apply to a State owned corporation and its subsidiaries (or a group comprising a State

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owned corporation and its subsidiaries), the provision also applies to a State owned corporation that has no subsidiaries.

PART 5 - MISCELLANEOUS

Crown bound

31. This Act binds the Crown.

Application of Act in particular cases

32. It is the intention of Parliament that this Act may have effect, in relation to any particular State owned corporation or any of its subsidiaries, with such modifications (if any) as are specified or referred to in other legislation applying to the corporation.

Operation of Act

33. (1) Nothing in this Act limits any powers or rights that the Crown or a Minister has apart from this Act.

(2) A requirement of this Act that provisions be included in the memorandum or articles of association of a company does not have effect to the extent that the requirement or the provisions are inconsistent with a law of the Commonwealth.

Provisions relating to certain staff

34. Schedule 4 has effect.

Affirmative action

35. (1) This section applies to a State owned corporation or a subsidiary of a State owned corporation while the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 of the Commonwealth does not apply to it.

(2) The provisions of the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 of the Commonwealth (as amended and in force from time to time) are adopted by this section and apply to a State owned corporation or subsidiary of a State owned corporation, as if:

(a) the corporation or subsidiary were not an authority within the meaning of that Act; and

- (b) Parts V and VI were omitted; and
- (c) references to the Director of Affirmative Action were references to the Director of Equal Opportunity in Public Employment appointed under the Anti-Discrimination Act 1977.

(3) The provisions referred to in subsection (2) apply with such amendments, omissions, insertions and substitutions as may be prescribed by the regulations under this Act.

Application of other Acts

36. (1) The following do not apply in relation to a State owned corporation or any of its subsidiaries:

- (a) the Government and Related Employees Appeal Tribunal Act 1980;
- (b) the Public Finance and Audit Act 1983 (other than Part 4).

(2) For the purposes of the Independent Commission Against Corruption Act 1988:

- (a) State owned corporations and their subsidiaries are public authorities; and
- (b) directors, officers and employees of State owned corporations or of their subsidiaries, are public officials,

but section 23 of that Act does not apply in relation to such a corporation or subsidiary or to persons who are public officials by virtue of their connection with such a corporation or subsidiary.

Amendment of Freedom of Information Act 1989 No. 5

37. The Freedom of Information Act 1989 is amended:

- (a) by inserting after the word "specified" wherever occurring the words "or described";
- (b) by inserting at the end of Schedule 2 the following words:

State owned corporations within the meaning of the State Owned Corporations Act 1989 and any subsidiaries of any such corporations - all functions.

Regulations

38. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or

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permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1 - STATE OWNED CORPORATIONS

(Secs. 3, 4, 5)

**SCHEDULE 2 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF STATE OWNED CORPORATIONS**

(Sec. 12)

Part 1 - Memorandum

Provisions to the effect of the following provisions are to be included in the memorandum of association of a State owned corporation.

Entrenchment

1. The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 2 to the State Owned Corporations Act 1989, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

Act to prevail

2. The provisions of the State Owned Corporations Act 1989 prevail over any inconsistent provisions of the memorandum of association of the corporation.

Part 2 - Articles

Provisions to the effect of the following provisions are to be included in the articles of association of a State owned corporation. Words and expressions used in these provisions have the same meanings as in the State Owned Corporations Act 1989.

Shareholders

1. (1) Only eligible Ministers may hold shares in the corporation's issued share capital.

(2) The shareholders hold their shares in the corporation for and on behalf of the State.

SCHEDULE 2 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF STATE OWNED CORPORATIONS - *continued*

(3) A person ceases to be eligible to hold shares in the corporation on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).

(4) A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister.

(5) The Premier is empowered to execute a transfer of any issued shares, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister.

(6) The directors of the corporation are appointed by the voting shareholders.

(7) All decisions relating to the operation of the corporation are to be made by or under the authority of the board of the corporation in accordance with its statement of corporate intent.

(8) The board of the corporation is accountable to the voting shareholders in the manner set out in Part 4 of the State Owned Corporations Act 1989 and in the memorandum and articles of association of the corporation.

(9) The corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares.

(10) Only the voting shareholders may cast votes.

(11) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes.

Dividends

2. (1) Every dividend is to be of such amount, and paid at such times and in such instalments, as may be agreed between the voting shareholders and the board, or (failing agreement) as determined under subclause (2).

(2) In the event of a failure to agree, the voting shareholders may, by written notice to the board, determine the matter, and the board must act in conformity with the determination.

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**SCHEDULE 2 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF STATE OWNED CORPORATIONS - *continued***

(3) Before giving such a notice, the voting shareholders are required to consult the board as to the matters to be referred to in the notice.

Subsidiaries

3. (1) The corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.

(2) The corporation must ensure that the memorandum and articles of association of its subsidiaries at all times contain provisions to the effect of those required by Schedule 3 to the State Owned Corporations Act 1989.

(3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its memorandum and articles of association and with the requirements of the State Owned Corporations Act 1989.

Act to prevail

4. (1) The provisions of the State Owned Corporations Act 1989 prevail over any inconsistent provisions of the articles of association of the corporation.

(2) The corporation is expressly prohibited from exercising any power of the corporation in contravention of any requirement of or under section 19 or 20 of the State Owned Corporations Act 1989.

**SCHEDULE 3 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF SUBSIDIARIES**

(Sec. 13)

Part 1 - Memorandum

Provisions to the effect of the following provisions are to be included in the memorandum of association of each subsidiary of a State owned corporation.

SCHEDULE 3 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF SUBSIDIARIES - *continued*

Entrenchment

1. The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 3 to the State Owned Corporations Act 1989, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

Act to prevail

2. The provisions of the State Owned Corporations Act 1989 prevail over any inconsistent provisions of the memorandum of association of the subsidiary.

Part 2 - Articles

Provisions to the effect of the following provisions are to be included in the articles of association of each subsidiary of a State owned corporation. Words and expressions used in these provisions have the same meanings as in the State Owned Corporations Act 1989.

Shareholders

1. (1) Those shareholders in the subsidiary consisting of eligible Ministers (if any) hold their shares in the subsidiary for and on behalf of the State.

(2) Such a person ceases to be eligible to hold shares in the subsidiary on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).

(3) Such a shareholder may not sell or otherwise dispose of shares in the subsidiary otherwise than to an eligible Minister.

(4) The Premier is empowered to execute a transfer of any shares that were issued or transferred to an eligible Minister, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister.

(5) The directors of the subsidiary are appointed by the shareholders of the subsidiary, but no such director may be appointed except with

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SCHEDULE 3 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF SUBSIDIARIES - *continued*

the prior approval of the voting shareholders of the State owned corporation.

(6) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the State owned corporation.

(7) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the State Owned Corporations Act 1989 and in the memorandum and articles of association of the subsidiary.

(8) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.

(9) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the State owned corporation or by the Premier under subclause (4).

Subsidiaries

2. (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the State owned corporation.

(2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 3 to the State Owned Corporations Act 1989.

(3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of the State Owned Corporations Act 1989.

Act to prevail

3. (1) The provisions of the State Owned Corporations Act 1989 prevail over any inconsistent provisions of the articles of association of the subsidiary.

SCHEDULE 3 - PROVISIONS TO BE INCLUDED IN
MEMORANDUM OR ARTICLES OF ASSOCIATION
OF SUBSIDIARIES - *continued*

(2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of any requirement of or under section 19 or 20 of the State Owned Corporations Act 1989.

SCHEDULE 4 - PROVISIONS RELATING TO CERTAIN STAFF
(Sec. 34)

Definitions

1. In this Schedule:

"**Department**" includes an Administrative Office;

"**eligible employee**" means an employee of a State owned corporation who, immediately before becoming such an employee, was a public servant or an officer or employee of a public authority declared by an Act of Parliament to be an authority to which this Schedule applies;

"**State owned corporation**" includes a subsidiary of a State owned corporation;

"**superannuation scheme**" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

Superannuation

2. (1) An eligible employee:

(a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible employee; and

(b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,

as if he or she had continued to be such a contributor during service with the State owned corporation.

(2) Service by the eligible employee with the corporation is to be taken to be service as an officer in his or her previous employment for the purposes of any law under which the officer continues to contribute to the scheme or by which an entitlement under the scheme is conferred.

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SCHEDULE 4 - PROVISIONS RELATING TO CERTAIN
STAFF - *continued*

(3) The eligible employee is to be regarded as an officer or employee, and the corporation is to be regarded as the employer, for the purposes of the scheme.

(4) This clause ceases to apply to the eligible employee if he or she becomes a contributor to another superannuation scheme, but the eligible employee is not prevented from receiving a resignation benefit from the first superannuation scheme.

Leave

3. An eligible employee retains any rights to annual leave, extended service leave and sick leave accrued or accruing in his or her previous employment.

No dual benefits

4. An eligible employee is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind for the same period of service.

Former public servants may apply for positions in the Public Service

5. (1) An eligible employee who, immediately before becoming an employee of the State owned corporation, was a public servant may, within the following period of 3 years, apply for a position in the Public Service as if the officer were still a public servant.

(2) An eligible employee who applies for such a position, or who is appointed to or employed in such a position, is, for the purposes of the Public Sector Management Act 1988, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Arbitration Act 1940, to be taken to be a public servant in relation to the application, appointment or employment.

(3) There is no right of appeal under the Government and Related Employees Appeal Tribunal Act 1980:

- (a) for a person against the filling of a position in the Public Service by an eligible employee; or

SCHEDULE 4 - PROVISIONS RELATING TO CERTAIN
STAFF - *continued*

- (b) for an eligible employee against the filling of a position in the Public Service by another person.
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[*Minister's second reading speech made in -
Legislative Assembly on 2 August 1989
Legislative Council on 9 August 1989*]