

STATE OWNED CORPORATIONS BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide for the establishment and operation of Government enterprises as State owned corporations ("SOCs").

SOCs will be companies limited by shares and the Bill provides for:

- (a) their formation and functions and the conduct of their business and affairs; and
- (b) their direction and control; and
- (c) the vesting in them of assets and liabilities of the State.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 defines expressions used in the proposed Act. In particular, "eligible Ministers" is defined to mean the Treasurer and four or more other Ministers nominated by the Premier. The term "voting shareholders" is defined to mean the Treasurer and one of the other eligible Ministers nominated by the Premier.

PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATIONS

Clause 4 provides that a company limited by shares becomes a SOC by having its name inserted in Schedule 1 to the proposed Act by an Act of Parliament.

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Clause 5 provides that a name appearing in Schedule 1 to the proposed Act may be altered by regulation to reflect a change of name of the company and can only be removed from that Schedule by an Act of Parliament.

Clause 6 authorises an eligible Minister to participate in the formation of a company, or the acquisition of shares in a company, in anticipation of it becoming a SOC.

Clause 7 empowers the transfer of assets and liabilities of the State to a SOC or to a subsidiary of a SOC. Assets and liabilities of a statutory corporation cannot be transferred unless they could be so transferred apart from the proposed section or if an Act of Parliament provides that the proposed SOC Act applies to the assets and liabilities concerned.

PART 3 - STATE OWNED CORPORATIONS

Clause 8 provides that the principal objective of every SOC is to be a successful business. They must operate at least as efficiently as any comparable businesses, must maximise the net worth of the State's investment and must exhibit a sense of social responsibility.

Clause 9 provides that a SOC does not represent the State (except by agreement with voting shareholders), is not exempt from rates, taxes, duties and other imposts (except where this is specifically provided for by legislation) and cannot render the State liable for its debts.

Clause 10 makes general provisions as to the role of directors of a SOC. The board is accountable to the voting shareholders.

Clause 11 empowers a Minister, with the approval of the Treasurer, to require a SOC to provide goods or services in non-commercial circumstances. The SOC is entitled to payment by the State of the net cost of doing so (including the cost of capital).

Clause 12 makes the voting shareholders of a SOC responsible for ensuring that its memorandum and articles of association contain the provisions set out in Schedule 2 to the proposed Act (except to the extent resolved by both Houses of Parliament).

Clause 13 makes the voting shareholders of a SOC responsible for ensuring that the memorandum and articles of association of a subsidiary of a SOC contain the provisions set out in Schedule 3 to the proposed Act (except to the extent resolved by both Houses of Parliament).

Clause 14 provides for the application of a dividend to the purchase of shares in a SOC. Otherwise, dividends to eligible Ministers are payable into the Consolidated Fund.

Clause 15 requires a SOC (and its subsidiaries) to pay "tax-equivalents" to the Treasurer, being the amounts that a SOC would be liable to pay as taxes under Commonwealth law.

Clause 16 provides that the obligations of a SOC and its subsidiaries are not guaranteed by the State except to the extent that the SOC and voting shareholders agree.

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Clause 17 provides that stamp duty and other State taxes and charges are not payable in connection with the formation of a SOC (or any of its subsidiaries), the issue and transfer of shares in a SOC or subsidiary or the transfer of assets or liabilities to a SOC or subsidiary.

Clause 18 requires the approval of the voting shareholders before a SOC can form, acquire or dispose of subsidiaries.

Clause 19 restricts the power of a SOC and its subsidiaries to acquire or dispose of fixed assets and investments. The total assets and investments acquired or disposed of during any period of 12 months must not exceed 10 per cent of the written down value of the SOC's consolidated fixed assets and investments. The total acquisitions and dispositions in the current year must not be such as could reasonably be expected to produce a 10 per cent increase or decrease in consolidated pre-tax operating profit or loss. In both cases, the figure of 10 per cent can be varied by regulation and the regulations can impose other requirements as to the acquisition and disposal of assets or liabilities.

Clause 20 prohibits the sale or disposal of the main undertakings of a SOC or its subsidiaries except where the prior written approval of the voting shareholders has been obtained.

PART 4 - ACCOUNTABILITY

Clause 21 deals with the procedure for the preparation of a statement of corporate intent for a SOC and with the modification of that statement.

Clause 22 lists the matters to be included in a statement of corporate intent (including corporate objectives, main undertakings, nature and scope of activities, accounting policies and performance targets).

Clause 23 requires the preparation of half-yearly reports by SOCs.

Clause 24 requires the board of a SOC to submit to its voting shareholders an annual report on operations, financial statements and the Auditor-General's report on those financial statements, for each SOC and each subsidiary.

Clause 25 permits the Auditor-General to make special reports arising from his or her audit for presentation to the Legislative Assembly.

Clause 26 requires certain information about SOCs and their subsidiaries to be laid before each House of Parliament, including copies of the following:

- . memorandum and articles of association and any change to them;
- . statements of corporate intent and any modifications to them;
- . half-yearly reports and annual reports together with audited financial statements;
- . approvals concerning the formation of subsidiaries and the acquisition and disposal of assets.

Clause 27 provides for the submission of matters to the Clerk of the House when a House of Parliament is not sitting.

Clause 28 makes it a function of the Public Accounts Committee to examine the accounts of SOCs.

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Clause 29 requires the board of a SOC to supply to the voting shareholders such information as they may request from time to time.

Clause 30 makes it clear that the requirements of the Part extend to a SOC that does not have subsidiaries.

PART 5 - MISCELLANEOUS

Clause 31 provides that the Crown is bound by the proposed Act.

Clause 32 contemplates that other legislation may modify the effect of the proposed Act in relation to any particular SOC or its subsidiaries.

Clause 33 makes it clear that the proposed Act does not limit any other powers or rights of the Crown or a Minister. It also makes it clear that any requirements of the proposed Act relating to the contents of a memorandum or articles of association of a company do not have effect to the extent of any inconsistency with Commonwealth law.

Clause 34 gives effect to the Schedule of provisions that preserve the rights of certain staff of a SOC (proposed Schedule 4).

Clause 35 adopts and applies the provisions of the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 of the Commonwealth to SOCs and their subsidiaries.

Clause 36 disapplies provisions of certain Acts to SOCs and their subsidiaries, including the Ombudsman Act 1974 and the Public Finance and Audit Act 1983. The Independent Commission Against Corruption Act 1988 will apply except section 23 (power to enter public premises).

Clause 37 excludes SOCs from the operation of the Freedom of Information Act 1989.

Clause 38 is a general regulation making power.

SCHEDULES

Schedule 1 is the Schedule in which SOCs will be included by Act of Parliament.

Schedule 2 specifies the provisions to be included in the memorandum and articles of association of a SOC.

Schedule 3 specifies the provisions to be included in the memorandum and articles of association of a subsidiary of a SOC.

Schedule 4 preserves the superannuation and leave entitlements of an employee of a SOC who was a public sector employee. Former public servants are also given a right to apply for a position in the Public Service.
