

State Owned Corporations Act 1989 No 134

[1989-134]



New South Wales

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Contents

Long title	6
Part 1 Preliminary	6
1 Name of Act	6
2 Commencement	6
3 Definitions	6
3A Classes of State owned corporations	8
Part 2 Company SOCs	8
Division 1 Establishment of company SOCs	8
4 Establishment of company SOCs	8
5 Change or removal of name of company	8
6 Authorisation to participate in formation of companies	8
7 Transfer of assets and liabilities etc	8
7A Ministerial direction	9
7B Inter-relationship with Corporations legislation	9
Division 2 Provisions relating to company SOCs	10
8 Principal objectives of company SOCs	10
9 Status of company SOCs	10
10 Directors	11
10A Authority for Minister to act for and on behalf of a voting shareholder	11
11 Non-commercial activities	13
12 Constitutions of company SOCs	13

13 Constitutions of subsidiaries.....	13
14 Dividends.....	14
15 Tax-equivalents.....	14
16 Government guarantee	15
17 State taxation.....	15
18 Subsidiaries	16
19 Acquisition and disposal of assets etc	16
20 Sale or disposal of main undertaking	17
Part 3 Statutory SOCs.....	18
Division 1 Establishment of statutory SOCs.....	18
20A Establishment of statutory SOCs.....	18
20B Change or removal of name of statutory SOC.....	18
20C Transfer of assets, rights and liabilities	18
20D Ministerial direction.....	19
Division 2 Provisions relating to statutory SOCs	19
20E Principal objectives of statutory SOCs	19
20F Status of statutory SOCs.....	20
20G Application of Commonwealth Corporations Act 2001	20
20H Share capital, shares and shareholders	22
20HA Authority for Minister to act for and on behalf of a voting shareholder.....	22
20I Portfolio Minister.....	24
20J Directors.....	25
20K Chief executive officer	25
20L Operation and management.....	25
20M Staff	25
20N Non-commercial activities.....	26
20O Power of portfolio Minister to notify board of public sector policies	27
20P Power of portfolio Minister to give directions in public interest	27
20Q Constitution of statutory SOCs.....	28
20R Constitution of subsidiaries	28
20S Dividends.....	29
20T Tax-equivalents.....	29

20U Government guarantee	30
20V State taxation.....	31
20W Private corporations and subsidiaries.....	31
20X Acquisition and disposal of assets, investments and liabilities.....	32
20Y Sale or disposal of main undertaking	33
Division 3 Legal capacity and powers of statutory SOCs	33
20Z Interpretation	33
20ZA Objects of Division	34
20ZB General powers of statutory SOCs	34
20ZC Restrictions on statutory SOCs.....	34
20ZD Persons having dealings with statutory SOCs or property	35
20ZE Effect of fraud.....	37
Part 4 Accountability.....	37
21 Statement of corporate intent: timetable and procedure	37
22 Statement of corporate intent: contents	38
23 Half-yearly reports.....	38
24 Annual reports and financial reports: company SOCs.....	39
24A Annual reports and financial reports: statutory SOCs.....	40
25 Special reports of Auditor-General.....	40
26 Information to be laid before Parliament	41
27 Procedure if Parliament not in session.....	43
28 Public Accounts Committee	43
29 Other information to be supplied.....	44
30 Application of this Part to corporations with no subsidiaries	44
Part 5 Miscellaneous	44
31 Crown bound	44
32 Application of Act in particular cases.....	44
33 Operation of Act	44
33A Duties and liabilities of directors and other officers	45
33AA Liability of directors and other officers in respect of particular obligations.....	45
33B Offences	46
34 Provisions relating to certain staff	46

35 (Repealed)	46
35A Application of Public Finance and Audit Act 1983	46
36 Application of other Acts	46
37 (Repealed)	47
37A Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals	47
37B Establishment of Ministerial Holding Corporation	47
38 Regulations	48
39 Savings and transitional provisions	48
Schedule 1 Company SOCs	48
Schedule 2 Provisions to be included in constitution of company SOCs ..	48
Schedule 3 Provisions to be included in constitutions of subsidiaries of company SOCs	50
Schedule 4 Provisions relating to certain staff	52
Schedule 5 Statutory SOCs	53
Schedule 6 Provisions to be included in constitution of statutory SOCs	54
Schedule 7 Provisions to be included in constitutions of subsidiaries of statutory SOCs	55
Schedule 8 Constitution and procedure of boards of statutory SOCs	57
Schedule 9 Chief executive officers of statutory SOCs	60
Schedule 10 Duties and liabilities of directors and other officers	61
Schedule 11 Savings and transitional provisions	73

State Owned Corporations Act 1989 No 134



New South Wales

An Act to provide for the establishment and operation of Government enterprises as State owned corporations.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(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.

company State owned corporation or **company SOC** means a company for the time being specified in Schedule 1.

constitution for a SOC or subsidiary means:

- (a) in relation to a company SOC—the constitution of that company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) in relation to a statutory SOC—the constitution of the SOC referred to in section 20Q, or
- (c) in relation to a subsidiary that is a company within the meaning of the *Corporations Act 2001* of the Commonwealth—the constitution of the company within the meaning of that Act, or

(d) in relation to a subsidiary that is not a company—the subsidiary’s charter or memorandum and articles of association.

eligible Ministers means:

- (a) in relation to a company SOC or proposed company SOC or any of its subsidiaries—the Treasurer and 4 or more other Ministers for the time being nominated by the Premier as being eligible to hold shares in the SOC, or
- (b) in relation to a statutory SOC or proposed statutory SOC or any of its subsidiaries—the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC.

foundation charter of a statutory SOC means the Act by which the name of the SOC is inserted in Schedule 5, or some other Act specified by an Act as its foundation charter, and includes any replacement Act.

government entity means:

- (a) a State department, administrative office, instrumentality, agency, authority or entity, that is not a corporation, or
- (b) a division, branch or other part of such a department, office, instrumentality, agency, authority or entity.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

portfolio Minister—see section 20I.

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

State owned corporation or **SOC** means a company for the time being specified in Schedule 1 or a corporation for the time being specified in Schedule 5.

statutory State owned corporation or **statutory SOC** means a corporation for the time being specified in Schedule 5.

subsidiary means a body corporate that is a subsidiary of a State owned corporation as determined in accordance with the [Corporations Act 2001](#) of the Commonwealth, and (in relation to a statutory SOC) includes a body corporate that would be such a subsidiary if the statutory SOC were a company SOC.

the State includes the Crown in right of New South Wales and the Government of New South Wales.

voting shareholders means:

- (a) in relation to a company SOC or any of its subsidiaries—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 SOC, in their capacities as shareholders in the SOC, or
- (b) in relation to a statutory SOC or any of its subsidiaries—the shareholders of the SOC as referred to in section 20H, in their capacities as shareholders in the SOC.

(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.

(3) Notes included in this Act do not form part of this Act.

3A Classes of State owned corporations

There are two classes of State owned corporations, as follows:

- (a) company State owned corporations (or company SOCs),
- (b) statutory State owned corporations (or statutory SOCs).

Part 2 Company SOCs

Division 1 Establishment of company SOCs

4 Establishment of company SOCs

A company limited by shares becomes a company SOC by the insertion of its name in Schedule 1 by an Act of Parliament.

5 Change or removal of name of company

- (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.

6 Authorisation to participate in formation of companies

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 company SOC.

7 Transfer of assets and liabilities etc

- (1) Assets, rights 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 transferred to a company SOC 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, rights and liabilities to a company SOC 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, rights 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 company SOC or any of its subsidiaries or to a director, officer or employee of any such SOC or subsidiary.
- (4) This section does not apply to assets, rights and liabilities of a statutory corporation unless:
 - (a) the assets, rights 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, rights and liabilities of the statutory corporation.

7A Ministerial direction

For the purposes of or incidental to the transfer from an authority to a company SOC, a subsidiary of a company SOC or any other person of any assets, rights or liabilities under this Act or under the Act by which the name of the company SOC is inserted in Schedule 1, the authority is, in the exercise of its functions, subject to the control and direction of the Minister.

7B Inter-relationship with Corporations legislation

- (1) The regulations may declare any matter relating to a company SOC that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation, or
 - (b) a specified provision of the Corporations legislation, or
 - (c) the Corporations legislation other than a specified provision, or

(d) the Corporations legislation other than to a specified extent.

Note—

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

matter includes act, omission, body, person or thing.

Division 2 Provisions relating to company SOC

8 Principal objectives of company SOC

(1) The principal objectives of every company SOC are:

(a) to be a successful business and, to this end:

(i) to operate at least as efficiently as any comparable businesses, and

(ii) to maximise the net worth of the State's investment in the SOC, and

(b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and

(c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and

(d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

(2) Each of the principal objectives of a company SOC is of equal importance.

9 Status of company SOC

A company SOC or any of its subsidiaries:

(a) is not and does not represent the State except by express agreement with the voting shareholders of the SOC, 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 company SOC, and

(c) cannot render the State liable for any debts, liabilities or obligations of the SOC or any of its subsidiaries,

unless this or any other Act otherwise expressly provides.

10 Directors

- (1) The directors of a company SOC are to be persons who, in the opinion of those appointing them, will assist the SOC to achieve its principal objectives.
- (2) The board is accountable to the voting shareholders in the manner set out in Part 4 and in the constitution of the SOC.

10A Authority for Minister to act for and on behalf of a voting shareholder

- (1) A voting shareholder of a company SOC may authorise any Minister to act for and on behalf of the voting shareholder in his or her capacity as a voting shareholder while he or she is unavailable (by reason of his or her absence or disability or for any other reason).
- (2) If a Minister is authorised under this section to act for and on behalf of a voting shareholder, any function of a voting shareholder may, while the authority remains in force, be exercised from time to time by the Minister instead of by that voting shareholder. However, the Minister authorised under this section may not exercise the function of authorising another Minister under this section.
- (3) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is to be as valid and have the same consequences as if the act, matter or thing had been done or omitted to be done by that voting shareholder.
- (4) A Minister who purports to act for or on behalf of a voting shareholder is presumed, until the contrary is proved, to be authorised under this section.
- (5) An authority under this section may be revoked by the voting shareholder who granted it, or by the Premier.
- (6) An authority under this section operates until:
 - (a) the end of the term specified in the authority, or
 - (b) the authority is revoked, or
 - (c) the voting shareholder who granted the authority ceases to be a voting shareholder, or
 - (d) by virtue of this or any other Act, the Minister authorised under the authority becomes a person who cannot be a voting shareholder of the company SOC,whichever occurs first.
- (7) In the constitution of the company SOC of which the Minister is a voting shareholder, and in any Act or instrument, a reference to a voting shareholder under this Act includes a reference to any Minister who is acting for or on behalf of a voting

shareholder pursuant to an authority under this section.

- (8) A Minister may be authorised under this section by reference to his or her name or by reference to the title of the office that he or she holds as Minister.
- (9) An authority under this section must be in writing, signed by the voting shareholder who granted it.
- (10) The revocation of an authority under this section must be in writing, signed by the voting shareholder who granted the authority or by the Premier.
- (11) Notice of an authority under this section, or of the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so published, judicial notice is to be taken of the notice and of the authority or revocation, as the case may be.
- (12) Every authority under this section must be recorded by the Minister administering this Act.
- (13) The following Ministers may not be authorised under this section:
 - (a) the Treasurer, or
 - (b) a Minister who is also a voting shareholder of the same company SOC, or
 - (c) a Minister who, by virtue of this or any other Act, cannot be a voting shareholder of the company SOC.
- (14) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to the matters specified. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to that Act or Part, then the provisions of that Act or Part will not apply in relation to that matter in the State concerned.

- (15) This section does not affect the operation of section 36 or 37 of the *Constitution Act 1902*.
- (16) In this section, a reference to a **function of a voting shareholder** includes a reference to any function of a voting shareholder whether conferred or imposed:
 - (a) by the constitution of the company SOC, or
 - (b) by the terms, express or implied, of this or any other Act or of any instrument under this or any other Act, or

(c) by or under any other law,

and to any other function that is incidental to any such function.

11 Non-commercial activities

- (1) If a Minister wishes a company SOC 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 SOC to do so, that Minister with the approval of the Treasurer may, by written notice to the board, direct the SOC to do so in accordance with any requirements set out or referred to in the notice.
- (2) The SOC is required to comply with any such direction.
- (3) The SOC 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 SOC or (failing agreement) as determined by a suitably qualified person or persons nominated by the Premier.
- (5) The SOC 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.

12 Constitutions of company SOCs

- (1) The Ministers who are the voting shareholders of a company SOC are responsible for ensuring that the constitution of the SOC at all times contain provisions to the effect of those required by Schedule 2.
- (2) The constitution 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.

13 Constitutions of subsidiaries

- (1) The Ministers who are the voting shareholders of a company SOC are responsible for ensuring that the constitution of every subsidiary of the SOC at all times contain provisions to the effect of those required by Schedule 3.

(2) The constitution 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.

14 Dividends

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

(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 company SOC 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.

15 Tax-equivalents

(1) A company SOC 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 SOC if it were liable to pay taxes under the law of the Commonwealth.

(2) The SOC 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 SOC were liable to pay corresponding taxes under the law of the Commonwealth.

(4) The SOC 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 SOC are required to make all the necessary payments and refunds to give effect to the determination.

(6A) If a refund is required, the Treasurer, or an authorised person, may direct payment out of the Consolidated Fund of the amount required to be refunded. The Consolidated Fund is appropriated to the necessary extent to enable payment of such refunds.

- (7) The Premier may nominate any person or persons to be the Tax Assessor for any one or more company SOC, and may revoke any such nomination.
- (8) This section applies to the subsidiaries of a company SOC in the same way as it applies to the SOC, and (where relevant) applies to the SOC and its subsidiaries as a group.
- (9) Amounts required to be paid under this section are called tax-equivalents.
- (10) In this section:

authorised person means the Chief Commissioner of State Revenue, or an officer of Treasury authorised by the Chief Commissioner of State Revenue to exercise the functions of an authorised person under this section.

Tax Assessor, in relation to a company SOC, means the person nominated for the time being under subsection (7) as the Tax Assessor for the SOC.

16 Government guarantee

- (1) The obligations of a company SOC or any of its subsidiaries are not guaranteed by the State of New South Wales, except to the extent that the board of the SOC 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 the consultation with the board of the SOC, fix charges to be paid by the SOC 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 SOC 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.

17 State taxation

- (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 company SOC, or
- (b) the registration of such a company, or
- (c) the issue or transfer of shares of a company SOC or any of its subsidiaries to eligible Ministers, or

(d) the transfer of assets, rights or liabilities to a company SOC 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.

18 Subsidiaries

(1) A company SOC 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 company SOC 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 SOC 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.

19 Acquisition and disposal of assets etc

(1) A company SOC 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 SOC's consolidated fixed assets and investments as disclosed in its last audited financial report, 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 SOC'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 financial report.
- (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 company SOC 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 SOC 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 company SOC or a subsidiary of a company SOC by the Treasurer.
 - (8) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the SOC 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 company SOC or its subsidiaries not to dispose of any specified asset.

20 Sale or disposal of main undertaking

- (1) None of the main undertakings of a company SOC, 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 SOC.

Part 3 Statutory SOCs

Division 1 Establishment of statutory SOCs

20A Establishment of statutory SOCs

- (1) A corporation becomes a statutory SOC by the insertion of its name in Schedule 5 by an Act of Parliament.
- (2) A company cannot become a statutory SOC.

20B Change or removal of name of statutory SOC

- (1) The regulations under this Act may amend Schedule 5 to reflect a change of name of a statutory SOC contained in that Schedule.
 - (1A) On the day on which a regulation under section 12 of the *Energy Services Corporations Act 1995* takes effect, this Act is amended by omitting from Schedule 5 the name of the energy services corporation whose name is being varied and by inserting instead the corporation's name as varied.
 - (1B) On the day on which a regulation under clause 2 of Schedule 5 to the *Ports Assets (Authorised Transactions) Act 2012* takes effect, this Act is amended by omitting from Schedule 5 the name of the Port Corporation whose name is being changed and by inserting instead the corporation's name as changed.
- (2) The name of a statutory SOC may not be removed from Schedule 5 except by an Act of Parliament.

20C Transfer of assets, rights and liabilities

- (1) Assets, rights 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 or a government entity, or under the executive authority of the State, may be transferred to a statutory SOC 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, rights and liabilities to a statutory SOC 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, rights or

liabilities or in connection with any such undertaking, or

- (b) (without limiting the above) a Minister or a government entity or an officer or employee of a government entity,

are to be read as references to a statutory SOC or any of its subsidiaries or to a director, officer or employee of any such SOC or subsidiary.

- (4) This section does not apply to assets, rights and liabilities of a statutory corporation unless:
- (a) the assets, rights and liabilities can be transferred to the statutory SOC apart from this section, or
- (b) an Act of Parliament provides that this section applies to the assets, rights and liabilities of the statutory corporation.

20D Ministerial direction

For the purposes of or incidental to the transfer from an authority to a statutory SOC, a subsidiary of a statutory SOC or any other person of any assets, rights or liabilities under this Act or under the Act by which the name of the statutory SOC is inserted in Schedule 5, the authority is, in the exercise of its functions, subject to the control and direction of the Minister.

Division 2 Provisions relating to statutory SOCs

20E Principal objectives of statutory SOCs

- (1) The principal objectives of every statutory SOC are:
- (a) to be a successful business and, to this end:
- (i) to operate at least as efficiently as any comparable businesses, and
- (ii) to maximise the net worth of the State's investment in the SOC, and
- (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
- (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of a statutory SOC is of equal importance.

20F Status of statutory SOCs

A statutory SOC or any of its subsidiaries:

- (a) is not and does not represent the State except by express agreement with the voting shareholders of the SOC, 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 SOC, and
- (c) cannot render the State liable for any debts, liabilities or obligations of the SOC or any of its subsidiaries,

unless this or any other Act otherwise expressly provides.

20G Application of Commonwealth Corporations Act 2001

- (1) A statutory SOC is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation other than:
 - (a) section 1101I (Gaming and wagering laws do not affect validity of contracts relating to financial products) of that Act to the extent that it applies to any contract that is a financial product entered into by an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, or
 - (b) to the extent specified by the regulations for the purposes of this subsection.

Note—

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a statutory SOC to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to:
 - (a) the whole of the Corporations legislation, or
 - (b) an Act, regulations or other instrument forming part of the Corporations legislation, or
 - (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the

Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) A provision of the Corporations legislation that is the subject of any such declaration in the regulations has effect subject to the following modifications:
 - (a) the provision applies as if a SOC were a public company and a company limited by shares,
 - (b) the provision applies as if shares in the SOC held by voting shareholders were shares held in the SOC as a public company and a company limited by shares,
 - (c) such other modifications as may be prescribed by the regulations.
- (4) Without limiting subsections (2) and (3) (c), any such regulations may:
 - (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
 - (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
 - (d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
 - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (5) Subsection (2) does not apply to any provision of the Corporations legislation that applies to a statutory SOC as a law of the Commonwealth.

- (6) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

20H Share capital, shares and shareholders

- (1) A statutory SOC is to have a share capital and shares as provided in its constitution.
- (2) A statutory SOC must have two shareholders, and no more at any time.
- (3) Each shareholder must at all times have an equal number of shares in the statutory SOC.
- (4) Each shareholder must at all times be entitled to rights equal to those to which the other shareholder is entitled.
- (5) The shareholders are to be the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC. The Premier can be nominated as a voting shareholder.
- (6) If the person holding office as Treasurer ceases to hold that office:
 - (a) each share in each statutory SOC held by the person is taken to be transferred to the person next appointed to that office, and
 - (b) each statutory SOC is required to register the transfer.
- (7) A single instrument of transfer may transfer the shares in any one or more statutory SOCs held by the voting shareholder other than the Treasurer:
 - (a) if another Minister is for the time being nominated as that voting shareholder in respect of any one or more of the statutory SOCs concerned, or if different Ministers are so nominated in respect of different statutory SOCs—to that other Minister or those other Ministers, or
 - (b) to the person next appointed to the office of the Minister for the time being nominated as that voting shareholder in respect of the statutory SOC or SOCs concerned.

Note—

The Premier is empowered to execute a transfer of any issued shares in a statutory SOC—see section 20Q and clause 3 (5) of Schedule 6.

20HA Authority for Minister to act for and on behalf of a voting shareholder

- (1) A voting shareholder of a statutory SOC may authorise any Minister to act for and on behalf of the voting shareholder in his or her capacity as a voting shareholder while he or she is unavailable (by reason of his or her absence or disability or for any other reason).

- (2) If a Minister is authorised under this section to act for and on behalf of a voting shareholder, any function of a voting shareholder may, while the authority remains in force, be exercised from time to time by the Minister instead of by that voting shareholder. However, the Minister authorised under this section may not exercise the function of authorising another Minister under this section.
- (3) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is to be as valid and have the same consequences as if the act, matter or thing had been done or omitted to be done by that voting shareholder.
- (4) A Minister who purports to act for or on behalf of a voting shareholder is presumed, until the contrary is proved, to be authorised under this section.
- (5) An authority under this section may be revoked by the voting shareholder who granted it, or by the Premier.
- (6) An authority under this section operates until:
 - (a) the end of the term specified in the authority, or
 - (b) the authority is revoked, or
 - (c) the voting shareholder who granted the authority ceases to be a voting shareholder, or
 - (d) by virtue of this or any other Act, the Minister authorised under the authority becomes a person who cannot be a voting shareholder of the statutory SOC,whichever occurs first.
- (7) In the constitution of the statutory SOC of which the Minister is a voting shareholder, and in any Act or instrument, a reference to a voting shareholder under this Act includes a reference to any Minister who is acting for or on behalf of a voting shareholder.
- (8) A Minister may be authorised under this section by reference to his or her name or by reference to the title of the office that he or she holds as Minister pursuant to an authority under this section.
- (9) An authority under this section must be in writing, signed by the voting shareholder who granted it.
- (10) The revocation of an authority under this section must be in writing, signed by the voting shareholder who granted the authority or by the Premier.
- (11) Notice of an authority under this section, or of the revocation of such an authority, may be published in the Gazette at any time, and, where such a notice is so

published, judicial notice is to be taken of the notice and of the authority or revocation, as the case may be.

- (12) Every authority under this section must be recorded by the Minister administering this Act.
- (13) The following Ministers may not be authorised under this section:
- (a) the Treasurer, or
 - (b) a Minister who is also a voting shareholder of the same statutory SOC, or
 - (c) a Minister who, by virtue of this or any other Act, cannot be a voting shareholder of the statutory SOC.
- (14) This section applies despite any provision of the Corporations legislation that is the subject of a declaration made for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* by regulations made under section 20G.
- (15) This section does not affect the operation of section 36 or 37 of the *Constitution Act 1902*.
- (16) In this section, a reference to a **function of a voting shareholder** includes a reference to any function of a voting shareholder whether conferred or imposed:
- (a) by the constitution of the statutory SOC, or
 - (b) by the terms, express or implied, of this or any other Act or of any instrument under this or any other Act, or
 - (c) by or under any other law,
- and to any other function that is incidental to any such function.

20I Portfolio Minister

- (1) The Minister who has the duty to administer the foundation charter of a statutory SOC is the portfolio Minister of the SOC.
- (2) However, if:
- (a) there is not a Minister who is the portfolio Minister under subsection (1), or
 - (b) the Premier is of the opinion that another Minister should be the portfolio Minister,
- the portfolio Minister of the SOC is the Minister nominated by the Premier by order published in the Gazette.
- (3) Such a nomination is to be made by reference to a ministerial title. The Premier can be nominated as a portfolio Minister.

20J Directors

- (1) There is to be a board of directors of a statutory SOC.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors appointed by the Governor on the recommendation of the voting shareholders.
- (3) The directors are to be persons who, in the opinion of the voting shareholders, will assist the SOC to achieve its principal objectives.
- (4) (Repealed)
- (5) The chief executive officer may be appointed as a director.
- (6) The board is accountable to the voting shareholders in the manner set out in Part 4 and in the constitution of the SOC.
- (7) Schedule 8 has effect with respect to the constitution and procedure of the board.

20K Chief executive officer

- (1) Every statutory SOC is to have a chief executive officer.
- (2) The Governor, on the recommendation of the portfolio Minister, may appoint the chief executive officer of a statutory SOC. Such an appointment cannot be effected unless it is recommended by the board.
- (3) The chief executive officer of a statutory SOC may delegate any functions of the chief executive officer to an employee of the SOC, but this power is subject to any directions of the board.
- (4) Schedule 9 has effect with respect to the chief executive officer of a statutory SOC.

20L Operation and management

- (1) All decisions relating to the operation of a statutory SOC are to be made by or under the authority of the board.
- (2) The chief executive officer of a statutory SOC is, subject to subsection (1), responsible for the day to day management of the operation of the SOC in accordance with the general policies and specific directions of the board.

20M Staff

- (1) A statutory SOC may employ such staff as it requires to exercise its functions.
- (2) A statutory SOC may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The regulations may make provision for or with respect to the employment of the staff

of a statutory SOC, including the conditions of employment and the discipline of any such staff.

- (4) Any such regulations relating to the conditions of employment or the discipline of staff:
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the SOC is a party, and
 - (b) have effect despite any determination of the SOC under subsection (2).
- (5) Except as provided by the regulations under this Act, this section does not apply to the appointment, employment or conditions of employment of the chief executive officer of a statutory SOC.
- (6) Except as provided by the regulations under this Act, this section applies to a subsidiary of a statutory SOC (other than a company) and its staff in the same way as it applies to the SOC and its staff.

20N Non-commercial activities

- (1) If the portfolio Minister wishes a statutory SOC 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 SOC to do so, that Minister with the approval of the Treasurer may, by written notice to the board, direct the SOC to do so in accordance with any requirements set out or referred to in the notice.
- (2) The SOC is required to comply with any such direction.
- (3) The SOC 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 SOC or (failing agreement) as determined by a suitably qualified person or persons nominated by the Premier.
- (5) The SOC 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.

200 Power of portfolio Minister to notify board of public sector policies

- (1) The portfolio Minister with the approval of the Treasurer may notify the board of a statutory SOC, in writing, of a public sector policy that is to apply to the SOC and its subsidiaries if the portfolio Minister is satisfied that it is necessary to give the notification in the public interest.
- (2) The board must ensure that the policy is carried out in relation to the SOC and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.
- (3) Before giving a notification under this section, the portfolio Minister must:
 - (a) consult with the board, and
 - (b) request the board to advise the portfolio Minister whether, in its opinion, carrying out the policy would not be in the best interests of the SOC or any of its subsidiaries.
- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a notification, or the estimated net amount of revenue forgone through complying with such a notification, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.
- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a notification was given under this section and why it is in the public interest that the notification be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the notification is given.

20P Power of portfolio Minister to give directions in public interest

- (1) The portfolio Minister with the approval of the Treasurer may give the board of a statutory SOC a written direction in relation to the SOC and its subsidiaries if the portfolio Minister is satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.
- (2) The board must ensure that the direction is carried out in relation to the SOC and must, as far as practicable, ensure that the direction is complied with in relation to its subsidiaries.
- (3) Before giving a direction under this section, the portfolio Minister must:
 - (a) consult with the board, and
 - (b) request the board to advise the portfolio Minister whether, in its opinion, complying with the direction would not be in the best interests of the SOC or any

of its subsidiaries.

- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a direction, or the estimated net amount of revenue forgone through complying with such a direction, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.
- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the direction is given.

20Q Constitution of statutory SOCs

- (1) A statutory SOC is to have a constitution.
- (2) As far as practicable, the constitution of a statutory SOC is to have the same operation and effect in relation to the SOC as the constitution of a company has in relation to the company.
- (3) The constitution of a statutory SOC may contain matters that, for a company, would be found in the [Corporations Act 2001](#) of the Commonwealth.
- (4) The constitution of a statutory SOC may make provision for or with respect to the provision, form, custody and use of the seal of the SOC. Any such provisions have effect despite section 50 of the [Interpretation Act 1987](#).
- (5) The constitution of a statutory SOC may contain provisions regarding the manner of alteration or replacement of the constitution.
- (6) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of the SOC at all times contains provisions to the effect of those required by Schedule 6.
- (7) The constitution may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (6) or any other provisions of this Act.
- (8) This section does not apply to the extent provided in resolutions of both Houses of Parliament.

20R Constitution of subsidiaries

- (1) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of every subsidiary of the SOC at all times contains provisions to the effect of those required by Schedule 7.

(2) The constitution 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.

20S Dividends

(1) A statutory SOC is to have a share dividend scheme, as provided in its constitution, in a form approved by the Treasurer.

(2) The board of a statutory SOC and the voting shareholders may agree that payments required to be made by the SOC or any of its subsidiaries in respect of dividends will be applied in the purchase of shares by shareholders in the SOC.

(3) 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.

(4) Otherwise, dividends declared for a statutory SOC or any of its subsidiaries and payable to voting shareholders are to be paid to the Treasurer on behalf of the State for payment into the Consolidated Fund.

(5) Nothing in this section affects the operation of section 59B of the *Public Finance and Audit Act 1983* in relation to statutory SOC's. However, if the Treasurer requires a statutory SOC to pay an amount by way of dividend under that section, the Treasurer must, within one month after notifying the SOC of that requirement, publish a notice in the Gazette setting out:

(a) the amount of the dividend to be paid, and

(b) the reasons for requiring the payment to be made under that section rather than pursuant to the share dividend scheme under this section.

20T Tax-equivalents

(1) A statutory SOC 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 SOC if it were liable to pay taxes under the law of the Commonwealth.

(2) The SOC 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 SOC were liable to pay corresponding taxes under the law of the Commonwealth.

- (4) The SOC 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 SOC are required to make all the necessary payments and refunds to give effect to the determination.
- (6A) If a refund is required, the Treasurer, or an authorised person, may direct payment out of the Consolidated Fund of the amount required to be refunded. The Consolidated Fund is appropriated to the necessary extent to enable payment of such refunds.
- (7) The Premier may nominate any person or persons to be the Tax Assessor for any one or more statutory SOC's, and may revoke any such nomination.
- (8) This section applies to the subsidiaries of a statutory SOC in the same way as it applies to the SOC, and (where relevant) applies to the SOC and its subsidiaries as a group.
- (9) Amounts required to be paid under this section are called tax-equivalents.
- (10) In this section:

authorised person means the Chief Commissioner of State Revenue, or an officer of the Department of Finance and Services authorised by the Chief Commissioner of State Revenue to exercise the functions of an authorised person under this section.

Tax Assessor, in relation to a statutory SOC, means the person nominated for the time being under subsection (7) as the Tax Assessor for the SOC.

20U Government guarantee

- (1) The obligations of a statutory SOC or any of its subsidiaries are not guaranteed by the State of New South Wales, except to the extent that the board of the SOC and the 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 SOC, fix charges to be paid by the SOC 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 SOC 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.

20V State taxation

(1) In this section:

exempt matter means:

- (a) the issue or transfer of shares of a statutory SOC or any of its subsidiaries to eligible Ministers, or
- (b) the transfer of assets, rights or liabilities to a statutory SOC or any of its subsidiaries from the State, any authority of the State or any subsidiary of an authority of the State, or
- (c) 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 a 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.

20W Private corporations and subsidiaries

(1) A statutory SOC may, subject to this section:

- (a) form or participate in the formation of private corporations, and
 - (b) acquire interests in private corporations, and
 - (c) sell or otherwise dispose of interests in private corporations,
- whether or not the activities or proposed activities of any such private corporation are

related to the functions of the SOC as set out in its foundation charter.

- (2) A statutory SOC 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.
- (3) A statutory SOC 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.
- (4) In seeking the approval of the voting shareholders, the SOC 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.
- (5) In this section:

private corporation means a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth formed in or outside New South Wales.

20X Acquisition and disposal of assets, investments and liabilities

- (1) A statutory SOC 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 SOC's consolidated fixed assets and investments as disclosed in its last audited financial report, 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 SOC'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 financial report.
- (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 of the consideration or disposal, whichever is the greater.
- (4) A statutory SOC 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 SOC 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 statutory SOC or a subsidiary of a statutory SOC by the Treasurer.
- (8) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the SOC 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 statutory SOC or its subsidiaries not to dispose of any specified asset.

20Y Sale or disposal of main undertaking

- (1) None of the main undertakings of a statutory SOC, 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 SOC.

Division 3 Legal capacity and powers of statutory SOCs

20Z Interpretation

- (1) In this Division:

officer of a statutory SOC means:

- (a) a director of the SOC, or
- (b) the chief executive officer of the SOC, or
- (c) an employee of the SOC.

restriction includes prohibition.

- (2) In this Division:

- (a) the doing of an act by a statutory SOC includes a reference to the making of an agreement by the SOC and a reference to a transfer of property to or by the SOC, and

(b) a reference to power includes a reference to legal capacity.

20ZA Objects of Division

(1) The objects of this Division include:

- (a) providing that the doctrine of ultra vires does not apply to statutory SOCs, and
- (b) ensuring that statutory SOCs give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.

(2) This Division is to be construed and have effect accordingly.

20ZB General powers of statutory SOCs

(1) A statutory SOC has, for or in connection with the performance of its functions, all the powers of a natural person, including for example, the power:

- (a) to enter into contracts, and
- (b) to acquire, hold, dispose of and deal with property, and
- (c) to appoint agents and attorneys, and
- (d) to charge, and fix terms, for goods, services and information supplied by it, and
- (e) to engage consultants, and
- (f) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), a statutory SOC has the powers that are conferred on it by or under this or any other Act.

(3) A statutory SOC may exercise its powers within or outside the State.

(4) Without limiting subsection (3), a statutory SOC may exercise its powers outside Australia.

(5) The fact that the doing of an act by a statutory SOC would not be, or is not, in its best interests does not affect its legal capacity to do the act.

20ZC Restrictions on statutory SOCs

(1) Section 20ZB has effect in relation to a statutory SOC subject to any restrictions on the SOC's powers expressly imposed by or under this or another Act.

(2) Section 20ZB also has effect in relation to the SOC subject to any restrictions expressly imposed by:

- (a) the SOC's constitution, and

(b) any relevant statement of corporate intent of the SOC, and

(c) any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.

(3) If:

(a) the SOC exercises a power contrary to a restriction mentioned in subsection (1) or (2), or

(b) the SOC's foundation charter sets out the SOC's objects or functions and the SOC does an act otherwise than in pursuance of the objects or functions,

the SOC contravenes this subsection.

(4) The exercise of the power mentioned in subsection (3) (a), or the act mentioned in subsection (3) (b), is not invalid merely because of the contravention.

(5) An officer of the SOC who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) The SOC or officer of the SOC is not guilty of an offence merely because of the relevant contravention.

(8) The fact that:

(a) by exercising the powers mentioned in subsection (3) (a), or doing the act as mentioned in subsection (3) (b), the SOC contravened, or would contravene, subsection (3), or

(b) by doing a particular act, an officer of the SOC contravened, or would contravene, subsection (5),

may be asserted or relied on only in proceedings between the voting shareholders or the State and officers of the SOC.

20ZD Persons having dealings with statutory SOCs or property

(1) A person having dealings with a statutory SOC is entitled to make, in relation to those dealings, the assumptions referred to in subsection (3). In any proceedings relating to those dealings, any assertion by the SOC that the matters that the person is so entitled to assume were not correct must be disregarded.

(2) A person having dealings with another person (the apparent owner) who has acquired or purports to have acquired title to property from a statutory SOC (whether directly or indirectly) is entitled to make, in relation to the acquisition or purported acquisition of

title from the SOC, the assumptions referred to in subsection (3). In any proceedings in relation to those dealings, any assertion by the SOC or by the apparent owner that the matters that the person is so entitled to assume were not correct must be disregarded.

- (3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are:
- (a) that, at all relevant times, the SOC's foundation charter and this Act have been complied with, and
 - (b) that, at all relevant times, the SOC's constitution has been complied with, and
 - (c) that a person who appears from publicly available information to be a director, the chief executive officer or a secretary of the SOC has been duly appointed and has authority to exercise the functions customarily exercised by a director, by the chief executive officer or by a secretary, as the case may be, of a body carrying on a business of the kind carried on by the SOC, and
 - (d) that a person who is held out by the SOC to be an officer or agent of the SOC has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned, and
 - (e) that an officer or agent of the SOC who has authority to issue a document on behalf of the SOC has authority to warrant that the document is genuine and that an officer or agent of the SOC who has authority to issue a certified copy of a document on behalf of the SOC has authority to warrant that the copy is a true copy, and
 - (f) that a document has been duly sealed by the SOC if it bears what appears to be an impression of a seal of the SOC and the sealing of the document appears to be attested by a person who, because of paragraph (c), may be assumed to be a director of the SOC or the SOC's chief executive officer, and
 - (g) that the directors, chief executive officer, employees and agents of the SOC have properly performed their duties to the SOC.
- (4) This section does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:
- (a) the person has actual knowledge that the assumption is not correct, or
 - (b) the person's connection or relationship with the SOC is such that the person ought to know that the assumption is not correct.
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption:

- (a) if the assumption is in relation to dealings with the SOC—subsection (1) does not apply to any assertion by the SOC in relation to the assumption, or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the SOC of title to property—subsection (2) does not apply to any assertion by the SOC or another person in relation to the assumption.

20ZE Effect of fraud

- (1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that any person:
 - (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates, or
 - (b) has forged a document that appears to have been sealed on behalf of a statutory SOC.
- (2) However, the person is not entitled to make the assumption if the person has actual knowledge of that fraudulent action or forgery.

Part 4 Accountability

21 Statement of corporate intent: timetable and procedure

- (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.
- (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.

22 Statement of corporate intent: contents

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 financial reports of the corporation and of its subsidiaries,
- (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.

23 Half-yearly reports

- (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.

24 Annual reports and financial reports: company SOCs

- (1) Within 4 months after the end of each financial year of a company SOC (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 SOC and of its subsidiaries during that financial year, and
 - (b) the SOC's financial report for that financial year, audited by the Auditor-General, being a financial report that conforms to the requirements of the *Corporations Act 2001* of the Commonwealth or any other law applying to the report, and
 - (c) the Auditor-General's report on the SOC's financial report.
- (2) Every annual 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 company SOC and its subsidiaries, including a comparison of the performance of the SOC and subsidiaries with the relevant statement of corporate intent, and
 - (b) state the dividend payable to the State by the SOC for the financial year to which the report relates.
- (3) Every Auditor-General's report under subsection (1) (c) must conform to the requirements of similar reports under the *Corporations Act 2001* of the Commonwealth or any other applicable law.
- (3A) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.
- (4) The requirements of this section are additional to the requirements of the *Corporations Act 2001* of the Commonwealth or any other applicable law, but anything done for the purposes of that Act 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 a registered company auditor under the *Corporations Act 2001* of the Commonwealth.

- (6) The SOC 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 SOC 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 company SOC in the same way as it applies to the SOC.
- (9) This section does not require the board of a subsidiary of a company SOC to deliver an annual report of its operations or a financial report conforming to the requirements of the *Corporations Act 2001* of the Commonwealth if:
 - (a) the SOC has complied with all requirements of that Act concerning consolidated financial reports in respect of the subsidiary, and
 - (b) that Act relieves or otherwise exempts the board from compliance with the requirement to prepare the financial report.

24A Annual reports and financial reports: statutory SOCs

- (1) Part 3 of the *Public Finance and Audit Act 1983* applies to statutory SOCs and their subsidiaries, and they are statutory bodies for the purposes of that Part.
- (2) The *Annual Reports (Statutory Bodies) Act 1984* applies to statutory SOCs, and they are statutory bodies for the purposes of that Act.
- (3) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.
- (4) A reference in Part 3 of the *Public Finance and Audit Act 1983* to a Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs.
- (5) A reference in the *Annual Reports (Statutory Bodies) Act 1984* to the appropriate Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs.

25 Special reports of Auditor-General

- (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.

26 Information to be laid before Parliament

- (1) A Minister is required to lay, or cause to be laid, the following before each House of Parliament:
- (a) a copy of the constitution of each State owned corporation, within 14 sitting days after the date of the constitution or the date on which the corporation became a State owned corporation (whichever is the later),
 - (b) a copy of the constitution of each subsidiary of each State owned corporation, within 14 sitting days after the date of the constitution 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 constitution 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 report, and the Auditor-General's report on that financial report, 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 or 20N 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 constitution 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,
 - (l) a copy of any written approval given by voting shareholders under section 18, 19 or 20 or section 20W, 20X or 20Y, 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) or 20X (7), within 14 sitting days after the date the notice was given,
 - (n) a copy of any written instrument under section 17 (3) or 20V (3), within 14 sitting days after the date the instrument was signed,
 - (o) a copy of any written notification under section 20O, within 14 sitting days after the notification was given,
 - (p) a copy of any notice published under section 20O (5), within 14 sitting days after the date of its publication in the Gazette,
 - (q) a copy of any written direction under section 20P, within 14 sitting days after the direction was given,
 - (r) a copy of any notice published under section 20P (5), within 14 sitting days after the date of its publication in the Gazette,
 - (s) a copy of any notice published under section 20S (5) requiring the payment of an amount by way of dividend under section 59B of the [Public Finance and Audit Act 1983](#), within 14 sitting days after the date the notice was published,
 - (t) a copy of any written direction under clause 12 of Schedule 10, within 14 sitting days after the direction was given.
- (2) The material referred to in subsection (1) relating to a constitution must be accompanied by a statement as to whether or not the constitution contains 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. This subsection does not apply to statutory SOCs.
- (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) or 20E (1) (c) the accommodation of which was thought to be incompatible with its principal objectives, and
 - (b) an assessment of the costs 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 or 20Y 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.

27 Procedure if Parliament not in session

- (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:
 - (a) on presentation and for all purposes, is taken to have been laid before the House of Parliament, and
 - (b) is required to be printed by authority of the Clerk if it is a half-yearly or annual report of a State owned corporation, and
 - (c) may be printed by authority of the Clerk if it is material other than such a report, and
 - (d) if printed by authority of the Clerk, is for all purposes taken to be a document published by order or under the authority of the House, and
 - (e) is 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.

28 Public Accounts Committee

- (1) The functions of the Public Accounts Committee include the examination of the financial reports 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 reports and Auditor-General's reports in the same way as it applies to financial reports and Auditor-General's reports in relation to authorities of the State.

29 Other information to be supplied

- (1) 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).
- (2) The board of a statutory SOC must supply to the portfolio Minister such information relating to the affairs of the SOC or any of its subsidiaries as the portfolio Minister may from time to time request (whether or not the information is of a kind referred to in the statement of corporate intent).

30 Application of this Part to corporations with no subsidiaries

If any provision of this Part is expressed to apply to a State owned corporation and its subsidiaries (or a group comprising a State owned corporation and its subsidiaries), the provision also applies to a State owned corporation that has no subsidiaries.

Part 5 Miscellaneous

31 Crown bound

This Act binds the Crown.

32 Application of Act in particular cases

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.

33 Operation of Act

- (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 constitution of a company does not have effect to the extent that the requirement or the provisions are inconsistent with a law of the Commonwealth.
- (3) A requirement of this Act that provisions be inserted in the constitution of a company does not have effect to the extent that the requirement or the provisions are inconsistent with a law of a place (other than New South Wales), where the company is a subsidiary of a State owned corporation and the company is or is to be incorporated under the law of that place.

33A Duties and liabilities of directors and other officers

- (1) Schedule 10 has effect.
- (2) The regulations may amend or replace Schedule 10.
- (3) Any such regulations may:
 - (a) confer jurisdiction on courts in relation to the duties and liabilities of directors and officers and associated matters, and
 - (b) impose penalties not exceeding 500 penalty units or imprisonment not exceeding 5 years, or both.

33AA Liability of directors and other officers in respect of particular obligations

- (1) This section applies to the following obligations of the board of a State owned corporation:
 - (a) the obligation to ensure that a public sector policy notified to the board under section 200 is carried out,
 - (b) the obligation to ensure that a direction given to the board under section 20P is carried out,
 - (c) the obligation to supply information requested of the board under section 29.
- (2) A director of the board of a State owned corporation does not, despite any other law, incur any personal liability for the compliance, or purported compliance, in good faith by the board with an obligation to which this section applies.
- (3) An officer of a State owned corporation does not, despite any other law, incur any personal liability for his or her compliance, or purported compliance, in good faith with a direction or decision given or made by or on behalf of the board of the corporation for the purpose of complying with an obligation to which this section applies.
- (4) This section does not affect any other protection that a director or other officer would have for compliance, or purported compliance, with such an obligation.
- (5) In this section:

carry out a direction includes comply with the direction.

officer of a State owned corporation means:

- (a) a director of the corporation, or
- (b) the corporation's chief executive officer (however described), or
- (c) another person who is concerned, or takes part, in the corporation's management.

33B Offences

- (1) Proceedings for an offence under this Act may be instituted at any time before the end of 3 years after the alleged commission of the offence.
- (2) Proceedings for an offence under this Act are to be disposed of summarily before:
 - (a) the Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum penalty that may be imposed by the Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

34 Provisions relating to certain staff

Schedule 4 has effect.

35 (Repealed)

35A Application of [Public Finance and Audit Act 1983](#)

- (1) The [Public Finance and Audit Act 1983](#) does not apply in relation to a State owned corporation or any of its subsidiaries, except as provided by section 24A and by this section.
- (2) Part 4 of the [Public Finance and Audit Act 1983](#) applies in relation to a State owned corporation and its subsidiaries.
- (3) Section 59B of the [Public Finance and Audit Act 1983](#) applies to statutory SOC's and their subsidiaries, and they are statutory authorities for the purposes of that section.

36 Application of other Acts

- (1) The following do not apply in relation to a State owned corporation or any of its subsidiaries:
 - (a) Part 7 of Chapter 2 of the [Industrial Relations Act 1996](#).
 - (b) (Repealed)

- (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 a company SOC or any of its subsidiaries or to persons who are public officials by virtue of their connection with a company SOC or any of its subsidiaries.

37 (Repealed)

37A Modification of [Environmental Planning and Assessment Act 1979](#) in its application to certain proposals

(1) In this section:

development means development within the meaning of Part 4 of the Planning Act.

State owned corporation means a company SOC.

the Planning Act means the [Environmental Planning and Assessment Act 1979](#).

- (2) The Planning Act applies to development by a State owned corporation, except as provided by this section.
- (3) Part 5 of the Planning Act applies to development proposed to be carried out by a State owned corporation that is development, or of a class or description of development, that the Minister administering the Planning Act certifies in writing is of State or regional significance. That Part so applies to the development as if it were an activity within the meaning of that Part whether or not development consent under Part 4 of the Planning Act would otherwise be required or has been obtained in relation to the development. Part 4 of the Planning Act accordingly does not apply.
- (4) The Minister administering the Planning Act may direct, by notice in writing to a State owned corporation, that the corporation is required to obtain an environmental impact statement under Part 5 of that Act in respect of development to which subsection (3) applies. Accordingly, the State owned corporation is taken to be the determining authority under Part 5 of that Act and must obtain the approval of that Minister under Division 4 of Part 5 of that Act before carrying out the development.
- (5) If an environmental impact statement is not required to be obtained in respect of development to which subsection (3) applies, the State owned corporation is not to carry out the activity unless it has obtained the approval of the Minister administering the Planning Act. Before giving that approval, that Minister is required to comply with section 111 of that Act as if that Minister were the determining authority.
- (6) Development to which subsection (3) applies must not include any act, matter or thing that is prohibited by an environmental planning instrument made under the Planning Act.

37B Establishment of Ministerial Holding Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Ministerial Holding Corporation.
- (2) The affairs of the Corporation are to be managed by the Minister who may authorise another Minister to exercise functions in relation to particular assets, rights and

liabilities.

- (3) Any act, matter or thing done in the name of, or on behalf of, the Corporation by the Minister or a Minister authorised by the Minister, or with the authority of any such Minister, is taken to have been done by the Corporation.
- (4) The Corporation has the functions conferred or imposed on it by or under this or any other Act.
- (5) The functions of the Corporation are:
 - (a) to hold on behalf of the Crown, retain, transfer and dispose of assets, rights and liabilities transferred to it by or under this or any other Act, and
 - (b) to acquire, exchange, lease, dispose of and otherwise deal with property, and
 - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it, and
 - (d) to carry on any activities or business that relate to any of the above or are incidental or ancillary to any of the above, including demanding, collecting and receiving charges, levies, rates and fees.
- (6) Without limiting the generality of subsection (5), the Corporation may transfer and dispose of any such assets, rights and liabilities to the Crown or to any person on behalf of the Crown.

38 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) (Repealed)

39 Savings and transitional provisions

Schedule 11 has effect.

Schedule 1 Company SOCs

(Sections 3, 4, 5)

Schedule 2 Provisions to be included in constitution of company SOCs

(Section 12)

Provisions to the effect of the following provisions are to be included in the constitution of a company SOC. Words and expressions used in these provisions have the same meanings as in the [State Owned Corporations Act 1989](#).

1 Entrenchment

The constitution 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.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution 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*.

3 Shareholders

- (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.
- (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, and the corporation is required to register the transfer.
- (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 constitution 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.

4 (Repealed)

5 Dividends

- (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.
- (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.

6 Subsidiaries

- (1) The corporation may not form, participate in the formation or acquire subsidiaries without the prior written approval of the voting shareholders.
- (2) The corporation must ensure that the constitutions 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 constitution and with the requirements of the *State Owned Corporations Act 1989*.

Schedule 3 Provisions to be included in constitutions of subsidiaries of company SOCs

(Section 13)

Provisions to the effect of the following provisions are to be included in the constitution of each subsidiary of a company SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution 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.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the subsidiary.
- (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*.

3 Shareholders

- (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 or to the State owned corporation or a subsidiary of the State owned corporation.
- (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, and the subsidiary is required to register the transfer.
- (5) The directors of the subsidiary are appointed by the shareholders of the subsidiary, but no such director may be appointed except with 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 constitution 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).

4 Subsidiaries

- (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 constitutions 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 constitution and with the requirements of the *State Owned Corporations Act 1989*.

Schedule 4 Provisions relating to certain staff

(Section 34)

1 Definitions

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 or the relevant foundation charter 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.

2 Superannuation

- (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.

- (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.

3 Leave

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

4 No dual benefits

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.

5 Former public servants may apply for positions in the Public Service

- (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](#) and the [Industrial Relations Act 1996](#), to be taken to be a public servant in relation to the application, appointment or employment.
- (3) There is no right of appeal under Part 7 of Chapter 2 of the [Industrial Relations Act 1996](#):
 - (a) for a person against the filling of a position in the Public Service by an eligible employee, or
 - (b) for an eligible employee against the filling of a position in the Public Service by another person.

Schedule 5 Statutory SOCs

(Sections 3, 20A, 20B)

Essential Energy
Delta Electricity
Ausgrid
Eraring Energy
Hunter Water Corporation
Endeavour Energy

Landcom
Macquarie Generation
Newcastle Port Corporation
Port Kembla Port Corporation
Water NSW
Superannuation Administration Corporation
Sydney Ports Corporation
Sydney Water Corporation
TransGrid
Forestry Corporation

Schedule 6 Provisions to be included in constitution of statutory SOCs

(Section 20Q)

Provisions to the effect of the following provisions are to be included in the constitution of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the [State Owned Corporations Act 1989](#).

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 6 to the [State Owned Corporations Act 1989](#), unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the [State Owned Corporations Act 1989](#) prevail over any inconsistent provisions of the constitution 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 20X or 20Y of the [State Owned Corporations Act 1989](#).

3 Shareholders

- (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.
- (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 still holds office as an eligible Minister, and the corporation is required to

register the transfer.

- (6) 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 constitution of the corporation.
- (7) The corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares.
- (8) Only the voting shareholders may cast votes.
- (9) 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.

4 Subsidiaries

- (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 constitutions of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its constitution (if any) and with the requirements of the *State Owned Corporations Act 1989*.

Schedule 7 Provisions to be included in constitutions of subsidiaries of statutory SOCs

(Section 20R)

Provisions to the effect of the following provisions are to be included in the constitution of each subsidiary of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 7 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in

contravention of any requirement of or under section 20X or 20Y of the *State Owned Corporations Act 1989*.

3 Shareholders

- (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 or to the State owned corporation or a subsidiary of the State owned corporation.
- (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, and the subsidiary is required to register the transfer.
- (5) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary.
- (6) 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 constitution of the subsidiary.
- (7) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (8) 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).

4 Subsidiaries

- (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 constitutions of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 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 constitution (if any) and with the requirements of the *State Owned Corporations Act 1989*.

Schedule 8 Constitution and procedure of boards of statutory SOCs

(Section 20J)

1 Application of this Schedule

- (1) This Schedule applies in relation to the board of each statutory SOC (referred to in this Schedule as the board and the SOC respectively).
- (2) This Schedule applies only to the extent that the constitution of the SOC do not make provision for any matter dealt with in this Schedule. However, the constitution cannot override clause 5 or 7.

2 Chairperson

- (1) Of the directors of the SOC, one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the board.
- (2) The voting shareholders may remove a director from the office of Chairperson of the SOC at any time for any or no reason and without notice.
- (3) A person who is a director and Chairperson of the SOC vacates office as Chairperson in the circumstances set out in the constitution of the SOC or if the person:
 - (a) is removed from that office by the voting shareholders, or
 - (b) resigns that office by letter addressed to the voting shareholders, or
 - (c) ceases to be a director of the SOC.

3 Deputies

- (1) The voting shareholders may, from time to time, appoint a person to be the deputy of a director of the SOC, and the voting shareholders may revoke any such appointment.
- (2) In the absence of a director of the SOC, the director's deputy:
 - (a) is, if available, to act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a director of the SOC.
- (3) The deputy of a director of the SOC who is Chairperson of the board does not have the director's functions as Chairperson, unless the constitution of the SOC provide for this to happen.
- (4) A person while acting in the place of a director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine in respect of the person.

4 (Repealed)

5 Term of office of directors

Subject to this Schedule, a director of the SOC holds office for such period (not exceeding 5 years) as may be specified in the director's instrument of appointment.

6 Remuneration

A director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine.

7 Vacancy in office of director

- (1) The office of a director of a SOC becomes vacant in the circumstances set out in the constitution of the SOC or if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the voting shareholders, or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the board or unless, before the end of 4 weeks after the last of those meetings, the director is excused by the board for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor, on the recommendation of the voting shareholders, may remove a director of the SOC from office at any time for any or no reason and without notice.

8 Filling of vacancy

If the office of a director of the SOC becomes vacant, a person is, subject to this Act and the constitution of the SOC, to be appointed to fill the vacancy.

9 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a director of the SOC. A director is not, as a director, subject to that Act (except Part 8).
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting any remuneration payable to the person under this Act as such a director.

10 General procedure

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act, the regulations and the constitution of the SOC, to be as determined by the board.

11 Quorum

The quorum for a meeting of the board is, subject to the constitution of the SOC, a majority of the directors for the time being.

12 Presiding director

- (1) The Chairperson of the board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is (subject to the constitution of the SOC) to preside at a meeting of the board.
- (2) The person presiding at any meeting of the board has (subject to the constitution of the SOC) a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is (subject to the constitution of the SOC) the decision of the board.

14 Transaction of business otherwise than at ordinary meetings

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the board for the time being. A resolution approved in writing by a majority of those members is taken to be a decision of the board.
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which

directors (or some directors) participate by telephone, closed circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and director have the same voting rights as they have at an ordinary meeting of the board.

(4) A resolution approved under subclause (1) is, subject to the regulations and the constitution of the SOC, to be recorded in the minutes of the board.

(5) Papers may be circulated among directors for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

15 First meeting

The voting shareholders may call the first meeting of the board in such manner as they think fit.

Schedule 9 Chief executive officers of statutory SOCs

(Section 20K)

1 Term of office

Subject to this Schedule, the chief executive officer of a statutory SOC holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment.

2 Conditions of employment

The board of a statutory SOC may, with the approval of the portfolio Minister, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.

3 Remuneration

The chief executive officer of a statutory SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine after considering advice from the board.

4 Performance agreements

The board of a statutory SOC may require the chief executive officer to enter into performance agreements.

5 Acting chief executive officer

- (1) The portfolio Minister may, from time to time, appoint a person to act in the office of chief executive officer of a statutory SOC during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (2) The portfolio Minister may remove a person from any office, to which the person was appointed under this clause, at any time for any or no reason and without notice.
- (3) A person while acting in the office of a chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer.

6 Removal from office

The Governor, on the recommendation of the portfolio Minister, may remove the chief executive officer of a statutory SOC from office at any time for any or no reason and without notice. Such a removal cannot be effected unless it is recommended by the board.

Schedule 10 Duties and liabilities of directors and other officers

(Section 33A)

Part 1 Statutory SOCs

1 Disclosure of interests by directors

- (1) If a director of a statutory SOC has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty: 100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

2 Voting by interested director

- (1) A director of a statutory SOC who has a material personal interest in a matter that is being considered by the board must not:
 - (a) vote on the matter, or
 - (b) vote on a proposed resolution (a **related resolution**) under subclause (2) in relation to the matter (whether in relation to the director or another director), or

(c) be present while the matter, or a related resolution, is being considered by the board, or

(d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty: 100 penalty units.

(2) Subclause (1) does not apply to the matter if the board has at any time passed a resolution that:

(a) specifies the director, the interest and the matter, and

(b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(3) In determining whether a quorum is present at a meeting of the board during a consideration of such a matter by the board, only those directors are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The voting shareholders may, by each signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subclause (3).

3 Duty and liability of certain officers of statutory SOC

(1) In this clause:

officer of a statutory SOC means:

(a) a director of the SOC, or

(b) the SOC's chief executive officer, or

(c) another person who is concerned, or takes part, in the SOC's management.

(2) An officer of a statutory SOC must act honestly in the exercise of powers, and discharge of functions, as an officer of the SOC.

Maximum penalty:

(a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or

(b) in any other case—100 penalty units.

(3) In the exercise of powers and the discharge of functions, an officer of a statutory SOC must exercise the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the statutory SOC's circumstances.

Maximum penalty: 100 penalty units.

- (4) An officer of a statutory SOC, or a person who has been an officer of a statutory SOC, must not make improper use of information acquired because of his or her position as an officer of the SOC:
- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or
 - (b) to cause detriment to the SOC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (5) An officer of a statutory SOC must not make improper use of his or her position as an officer of the SOC:
- (a) to gain, directly or indirectly, an advantage for himself or herself or another person, or
 - (b) to cause detriment to the SOC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (6) If a person contravenes this clause in relation to a statutory SOC, the statutory SOC may recover from the person as a debt due to the statutory SOC:
- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit, and
 - (b) if the statutory SOC suffered loss or damage because of the contravention—an amount equal to the loss or damage.
- (7) An amount may be recovered from the person under subclause (6) whether or not the person has been convicted of an offence in relation to the contravention.
- (8) Subclause (6) is in addition to, and does not limit, the *Confiscation of Proceeds of Crime Act 1989*.
- (9) In determining for the purposes of subclause (3) the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the circumstances of the statutory SOC concerned, regard must be had to:
- (a) the fact that the person is an officer of a statutory SOC, and
 - (b) the application of this Act to the SOC, and
 - (c) relevant matters required or permitted to be done under this Act in relation to the SOC,

including, for example, any relevant directions, notifications or approvals given to the

SOC by the SOC's voting shareholders or portfolio Minister.

(10) Subclause (9) does not limit the matters to which regard may be had for the purposes of subclause (3).

(11) This clause:

- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation, and
- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

4 Prohibition on loans to directors

(1) A statutory SOC must not, whether directly or indirectly:

- (a) make a loan to a director, a spouse or de facto partner, of a director or a relative of a director, spouse or de facto partner, or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse or de facto partner, of a director or a relative of a director, spouse or de facto partner.

Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

(2) Subclause (1) does not apply to the entering into by the SOC of an instrument with a person mentioned in subclause (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the SOC with members of the public.

(3) A director of a statutory SOC who is knowingly concerned in a contravention of subclause (1) by the SOC (whether or not in relation to the director) commits an offence.

Maximum penalty: 100 penalty units.

(4) In this clause:

relative means:

- (a) a parent or remoter lineal ancestor, or
- (b) a son, daughter or remoter issue, or
- (c) a brother or sister.

5 Statutory SOC not to indemnify officers

- (1) A statutory SOC must not:
 - (a) indemnify a person who is or has been an officer of the SOC against a liability incurred as an officer, or
 - (b) exempt a person who is or has been an officer of the SOC from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the statutory SOC to do something that subclause (1) prohibits.
- (3) Subclause (1) does not prevent the statutory SOC from indemnifying a person against civil liability (other than a liability to the SOC or a subsidiary of the SOC) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent the statutory SOC from indemnifying a person against a liability for costs and expenses incurred by the person:
 - (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or
 - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) The statutory SOC may give an indemnity mentioned in subclause (3) or (4) only with the prior approval of the voting shareholders.

- (6) In this clause:

indemnify includes indemnify indirectly through one or more interposed entities.

officer of a statutory SOC means:

- (a) a director of the SOC, or
- (b) the SOC's chief executive officer, or
- (c) another person who is concerned, or takes part, in the SOC's management.

6 Statutory SOC not to pay premiums for certain liabilities of officers

- (1) A statutory SOC must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the SOC against a liability:
 - (a) incurred by the person as an officer, and
 - (b) arising out of conduct involving:
 - (i) a wilful breach of duty in relation to the SOC, or

(ii) without limiting subparagraph (i), a contravention of clause 3 (4) or (5).

- (2) Subclause (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.
- (3) An instrument is void so far as it insures a person against a liability in contravention of subclause (1).

(4) In this clause:

officer of a statutory SOC means:

- (a) a director of the SOC, or
- (b) the SOC's chief executive officer, or
- (c) another person who is concerned, or takes part, in the SOC's management.

pay includes pay indirectly through one or more interposed entities.

7 Director's duty to prevent insolvent trading

(1) If:

(a) immediately before a statutory SOC incurs a debt:

- (i) there are reasonable grounds to suspect that the SOC will not be able to pay all its debts as and when they become due, or
- (ii) there are reasonable grounds to suspect that, if the SOC incurs the debt, it will not be able to pay all its debts as and when they become due, and

(b) the SOC is, or later becomes, unable to pay all its debts as and when they become due,

a person who is a director of the SOC, or takes part in the SOC's management, at the time when the debt is incurred commits an offence.

Maximum penalty: 100 penalty units or imprisonment for 1 year.

(2) In a proceeding against a person for an offence against this clause, it is a defence if it is proved:

- (a) that the debt was incurred without the person's express or implied authority or consent, or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect:
- (i) that the SOC would not be able to pay all its debts as and when they became due, or

- (ii) that, if the SOC incurred that debt, it would not be able to pay all its debts as and when they became due, or
- (c) that the person took all reasonable steps to prevent the SOC from incurring the debt, or
- (d) in the case of a director—that the person did not take part at the time in the SOC's management because of illness or for some other good cause.

8 Court may order compensation

- (1) If a person is found guilty of an offence against clause 7 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a statutory SOC, the Supreme Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the SOC of the amount required to satisfy the part of the SOC's debts that the court considers proper.
- (2) This clause does not affect any rights of a person to indemnity, subrogation or contribution.
- (3) This clause:
 - (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation, and
 - (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

9 Examination of persons concerned with statutory SOCs

- (1) If it appears to the Attorney General that:
 - (a) a person who has been concerned, or taken part, in a statutory SOC's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the SOC, or
 - (b) a person may be capable of giving information in relation to a statutory SOC's management, administration or affairs,the Attorney General may apply to the Supreme Court or the District Court for an order under this clause in relation to the person.
- (2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the SOC's management, administration or affairs.
- (3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the

examination in private.

(4) The court may give directions about:

- (a) the matters to be inquired into at the examination, and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).

(5) The person must not fail, without reasonable excuse:

- (a) to attend as required by the order, or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(6) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subclause (8).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If:

- (a) before answering a question put to the person at the examination, the person

claims that the answer might tend to incriminate the person or make the person liable to a penalty, and

(b) the answer might in fact tend to incriminate the person or make the person liable to a penalty,

the answer is not admissible in evidence against the person in:

(c) a criminal proceeding, or

(d) a proceeding for the imposition of a penalty,

other than a proceeding for an offence against this clause or another proceeding in relation to the falsity of the answer.

- (14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.
- (15) Subject to subclause (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.
- (16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.
- (17) The court may adjourn the examination from time to time.
- (18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

10 Power to grant relief

- (1) This clause applies to a director, the chief executive officer or an employee of a statutory SOC.
- (2) If, in a proceeding against a person to whom this clause applies for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, it appears to the court that:
- (a) the person is or may be liable for the negligence, default or breach, but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach,

the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.

- (3) If a person to whom this clause applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, the person may apply to the Supreme Court or the District Court for relief.
- (4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.
- (5) If:
 - (a) a proceeding mentioned in subclause (2) is being tried by a Judge with a jury, and
 - (b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subclause be relieved (in whole or part) from the liability sought to be enforced against the person,

the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate.

11 False or misleading information or documents

- (1) In this clause:

officer of a statutory SOC means:

 - (a) a director of the SOC, or
 - (b) the SOC's chief executive officer, or
 - (c) an employee of the SOC.
- (2) An officer of a statutory SOC must not:
 - (a) make a statement concerning the affairs of the SOC to another officer or the voting shareholders that the first officer knows is false or misleading in a material particular, or
 - (b) omit from a statement concerning the SOC's affairs made to another officer or the voting shareholders anything without which the statement is, to the first officer's knowledge, misleading in a material particular.
- (3) An information or complaint against a person for an offence against subclause (2) (a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

- (4) An officer of a statutory SOC must not give to another officer or the voting shareholders a document containing information that the first officer knows is false, misleading or incomplete in a material particular without:
- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete, and
 - (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty:

- (a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
- (b) in any other case—100 penalty units.

12 Notice of suspected insolvency otherwise than because of direction or notification

(1) If:

- (a) a statutory SOC's board suspects that the SOC or a subsidiary of the SOC is, may be, will or may become insolvent, and
- (b) in the board's opinion, compliance with a direction or notification given by the voting shareholders is not or would not be the cause or a substantial cause of the suspected insolvency,

the board must immediately give written notice to the voting shareholders of:

- (c) the suspicion, and
 - (d) its reasons for the opinion.
- (2) The notice must state that it is given under this clause.
- (3) If the voting shareholders are satisfied that the board's suspicion is well-founded, the voting shareholders must immediately give the board the written directions that the voting shareholders consider necessary or desirable, including any directions necessary or desirable to ensure:
- (a) that the statutory SOC or subsidiary does not incur further debts, or
 - (b) that the statutory SOC or subsidiary will be able to pay all its debts as and when they become due.
- (4) Without limiting subclause (3), a direction under this clause may require the statutory SOC or any of its subsidiaries to cease or limit particular activities.

- (5) The board must ensure that a direction under this clause is complied with in relation to the SOC and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
- (6) This clause is in addition to, and does not limit, another provision of this Act or another law.

Part 2 Company SOCs

13 Application of *Corporations Law* to officers of company SOC

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a company SOC would exercise in the circumstances of the company SOC concerned, regard must be had to:
 - (a) the application of this Act to the SOC, and
 - (b) relevant matters required or permitted to be done under this Act in relation to the SOC,

including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (2) This section has effect despite the *Corporations Law*.

Part 3 SOCs generally

14 Application of *Corporations Law* to officers of SOC subsidiaries

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a subsidiary of a SOC would exercise in the circumstances of the subsidiary concerned, regard must be had to:
 - (a) the application of this Act to the SOC and subsidiary, and
 - (b) relevant matters required or permitted to be done under this Act in relation to the SOC and subsidiary,

including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (2) This section has effect despite the *Corporations Law*.

Schedule 11 Savings and transitional provisions

(Section 39)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:
 - *State Owned Corporations Amendment Act 1995*.
 - *State Revenue Legislation Amendment Act 2005*
 - *State Owned Corporations Legislation Amendment (Staff Directors) Act 2013*
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2

2, 3 (Repealed)

Part 3 Provisions consequent on enactment of **Corporations (Consequential Amendments) Act 2001**

4 Memorandum and articles of association of SOC or its subsidiaries

- (1) Any memorandum and articles of association of a SOC or subsidiary of a SOC that were in force immediately before the commencement are taken together to make up its constitution for the purposes of this Act after that commencement.
- (2) The repeal and re-enactment of Schedules 2, 3, 6 and 7 to this Act by the *Corporations (Consequential Amendments) Act 2001* does not affect any obligation that a SOC or a subsidiary of a SOC may have had immediately before the commencement to include (or to ensure that another body include) certain provisions

in a memorandum and articles of association.

- (3) In this clause, **commencement** means the commencement of the amendments made to this Act by the *Corporations (Consequential Amendments) Act 2001*.

Part 4 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2005

5 Validation for tax-equivalent payments

Anything done or omitted to be done that would have been validly done or omitted if the amendments to sections 15 and 20T made by the *State Revenue Legislation Amendment Act 2005* had been in force at the time that it was done or omitted is validated.

Part 5 Provision consequent on enactment of State Owned Corporations Legislation Amendment (Staff Directors) Act 2013

6 Existing staff directors

- (1) In this clause:

amending Act means the *State Owned Corporations Legislation Amendment (Staff Directors) Act 2013*.

existing staff director means a staff director of the board of directors of a statutory SOC referred to in section 20J (as in force immediately before the commencement of the amending Act), and includes any of the following directors:

- (a) a director of the board of directors of an energy services corporation referred to in clause 1 (2) (b) of Schedule 2 to the *Energy Services Corporations Act 1995* (as so in force),
 - (b) a director of the board of the Hunter Water Corporation referred to in section 4B (1) (c) of the *Hunter Water Act 1991* (as so in force),
 - (c) a staff director of the board of directors of a Port Corporation referred to in section 18 of the *Ports and Maritime Administration Act 1995* (as so in force),
 - (d) a director of the board of directors of the State Water Corporation referred to in section 7 (3) of the *State Water Corporation Act 2004* (as so in force),
 - (e) a director of the board of directors of the Superannuation Administration Corporation referred to in clause 1 (1) (b) of Schedule 3 to the *Superannuation Administration Authority Corporatisation Act 1999* (as so in force).
- (2) The amendments made by the amending Act do not affect any existing staff director of a SOC holding office on the commencement of the amending Act. Any such person ceases to hold office as a director (subject to this or any other Act under which the

person was appointed as director) on a date after the commencement of the amending Act that is determined in relation to that SOC:

- (a) by the Governor if the Governor appoints directors of the board of that SOC, or
 - (b) by the voting shareholders of that SOC if those voting shareholders appoint directors of the board of that SOC.
- (3) Notice of a proposed determination under subclause (2) is not required to be given to the existing staff director or any other person.
- (4) Any existing staff director who ceases to be such a director by the operation of subclause (2) before the end of the term of office of the existing staff director is not entitled to any compensation for loss of office.