



TASMANIA

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**ARCHITECTURAL AND CONSULTING SERVICES  
CORPORATION ACT 1994**

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**No. 94 of 1994**

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**ARCHITECTURAL AND CONSULTING SERVICES  
CORPORATION ACT 1994**

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**No. 94 of 1994**

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**AN ACT to establish the Architectural Consulting Services  
Corporation and for related purposes**

**[Royal Assent 16 December 1994]**

**B**E it enacted by His Excellency the Governor of Tasmania,  
by and with the advice and consent of the Legislative  
Council and House of Assembly, in Parliament assembled, as  
follows:—

**PART 1**

**PRELIMINARY**

**Short title**

**1**—This Act may be cited as the *Architectural and Consulting  
Services Corporation Act 1994*.

**Commencement**

2—(1) This Act, other than this section and sections 1 and 42, commences on a day to be proclaimed.

(2) This section and sections 1 and 42 commence on the day on which this Act receives the Royal Assent.

**Interpretation**

3—In this Act, unless the contrary intention appears—

“**audit committee**” means the audit committee established under section 12 (1) (a);

“**Australian Accounting Standards**” means Statements of Accounting Standards issued jointly by the National Councils of the Australian Society of Certified Practising Accountants and The Institute of Chartered Accountants in Australia or their successors;

“**Board**” means the Board of Directors of the Corporation;

“**chairperson**” means the chairperson of the Board appointed under section 8;

“**chief executive officer**” means the chief executive officer of the Corporation appointed under section 16;

“**committee**” means the audit committee or a committee established under section 12 (1) (b);

“**contract**” includes an agreement or arrangement;

“**Corporation**” means the Architectural and Consulting Services Corporation established under section 4;

“**director**” means the chairperson, a person appointed as a director under section 8 or the chief executive officer;

“**employee**” means a person employed by the Corporation under section 21;

“**functions**” includes duties;

“**spouse**” includes a person who is generally recognized as the husband or wife of another person although not legally married to that other person.

**PART 2****ARCHITECTURAL AND CONSULTING SERVICES CORPORATION****The Architectural and Consulting Services Corporation**

4—(1) The Architectural and Consulting Services Corporation is established.

(2) The Corporation—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**Objective of Corporation**

5—(1) The objective of the Corporation is to be a successful business by—

- (a) operating in accordance with sound commercial practice and as efficiently as possible; and
- (b) maximizing the net worth of its business; and
- (c) performing, at the direction of the Minister, any community service obligations in an efficient and effective manner.

(2) In subsection (1), “community service obligations” has the same meaning as in the *State Authorities Financial Management Act 1990*.

**Functions of Corporation**

6—The functions of the Corporation are as follows:—

- (a) to carry on an architectural and consulting services business;
- (b) to perform such other functions as are imposed on the Corporation by this or any other Act.

**Powers of Corporation**

7—(1) The Corporation has power to do all things necessary or convenient to be done in connection with the performance of its functions.

(2) Without limiting subsection (1), the Corporation has power to—

- (a) acquire, hold, dispose of and otherwise deal with property; and
- (b) form, and participate in the formation of, companies; and
- (c) participate in partnerships, trusts, joint ventures and other arrangements for the sharing of profits; and
- (d) enter into contracts including a contract with another person for the performance of any of its functions or powers jointly with that other person; and
- (e) set charges, terms and conditions relating to work done, or services, goods or information supplied, by it; and
- (f) carry on any business which may conveniently be carried on in conjunction with the performance of its functions; and
- (g) do all other things that it is authorized to do by this or any other Act; and
- (h) do all other things necessary or convenient to be done in connection with the exercise of its powers.

(3) The Corporation must not exercise its power to form, or participate in the formation of, a company or to participate in a partnership, trust, joint venture or other arrangement for the sharing of profits unless the Minister has approved, in writing, the exercise of that power.

(4) The Corporation may use and operate under one or more trading names approved by the Minister.



**PART 3****BOARD OF DIRECTORS***Division 1—Board***Board**

**8—**(1) The Corporation has a Board of Directors consisting of—

- (a) the chairperson; and
- (b) the chief executive officer; and
- (c) not less than 2 and not more than 5 other persons.

(2) The chairperson and the directors referred to in subsection (1) (c) are appointed by the Minister.

(3) The person holding the office of chief executive officer is not entitled to hold the office of chairperson.

(4) In appointing the chairperson and other directors referred to in subsection (1) (c), the Minister must ensure that the chairperson and directors, collectively, have the experience and skills necessary to enable the Corporation to achieve its objective.

(5) Schedule 1 has effect with respect to the directors.

(6) Schedule 2 has effect with respect to the meetings of the Board.

**Role of Board**

**9—**The role of the Board is—

- (a) to manage and conduct the affairs of the Corporation in a manner that is in accordance with sound commercial practice; and
- (b) to determine the strategies and policies of the Corporation; and
- (c) to perform such other functions as are prescribed.

**Powers of Board**

**10**—The Board has power to do all things necessary or convenient to be done in connection with the performance of its functions under this or any other Act.

**Delegation**

**11**—The Board may, in writing, delegate any of its functions or powers other than this power of delegation.

**Committees**

**12**—(1) The Board—

- (a) must establish an audit committee; and
- (b) may establish such other committees as it considers appropriate.

(2) A committee—

- (a) must provide the Board with advice on any matter referred to it by the Board; and
- (b) must perform any functions, and may exercise any powers, delegated to it by the Board.

(3) In addition to its functions under subsection (2), the audit committee must provide the Board with advice on—

- (a) the internal audit charter of the Corporation; and
- (b) monitoring the Corporation's systems of financial reporting and internal control; and
- (c) the resources necessary for the performance of the internal audit function of the Corporation.

(4) Schedule 3 has effect with respect to—

- (a) the members of a committee; and
- (b) the meetings of a committee.

*Division 2—Directors generally***Duties of directors**

13—(1) A director must act honestly in the performance and the exercise of the functions and powers of a director.

Penalty: Fine not exceeding 50 penalty units.

(2) In the performance and exercise of the functions and powers of a director, a director must exercise the same degree of care and diligence that a person in a like position in a corporation within the meaning of the Corporations Law is required to exercise.

Penalty: Fine not exceeding 50 penalty units.

(3) A director or former director must not use improperly, whether within Tasmania or elsewhere, information acquired as a director—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Corporation.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

(4) A director or former director must not use improperly, whether within Tasmania or elsewhere, his or her position as a director—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Corporation.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

**Repayment by director of improper profit, &c.**

**14**—If a director or former director is found guilty of an offence under section 13, the Corporation may recover in a court of competent jurisdiction as a debt due to it—

- (a) any profit made by the director or another person as a result of the committing of the offence; and
- (b) an amount equal to any loss and damage the Corporation suffered as a result of the committing of the offence.

**Acting director**

**15**—(1) In this section, “**absent**” means—

- (a) absent from duty; or
- (b) absent from Australia; or
- (c) otherwise unable to perform the functions of the office of director.

(2) The Minister may appoint a person to act as a director if the chairperson or a director referred to in section 8 (1) (c) is absent.

(3) The appointment of a person to act as a director if the chairperson is absent is not an appointment to the position of chairperson.

(4) While a person appointed under subsection (2) is acting as a director—

- (a) that person is taken to be a director; and
- (b) this Act applies to that person as if he or she were a director.

(5) The appointment of a person to act as a director terminates when the absent chairperson or director resumes the performance of his or her functions as a director.

**PART 4****STAFF*****Division 1—Chief executive officer*****Chief executive officer**

16—(1) The Board must appoint a person, other than the chairperson, as chief executive officer of the Corporation.

(2) The chief executive officer is entitled to be paid the remuneration and allowances determined by the Board.

(3) The chief executive officer holds that office—

(a) subject to subsection (6), for a term of not more than 5 years as determined by the Board; and

(b) on the conditions determined by the Board.

(4) The chief executive officer must not engage in paid employment outside the duties of the office unless the Board has approved that employment.

(5) The appointment of a person as chief executive officer is not invalid merely because of a defect or irregularity in relation to the appointment.

(6) The Board may remove the chief executive officer from office at any time.

**Role of chief executive officer**

17—(1) The chief executive officer is responsible to the Board for the general administration and management of the Corporation.

(2) The chief executive officer—

(a) must perform any functions, and may exercise any powers, delegated to the chief executive officer by the Board; and

(b) must perform any other functions imposed on, and may exercise any other powers granted to the chief executive officer by this or any other Act.

**Disclosure of interests**

**18**—The chief executive officer must inform the Board, in writing, of any direct or indirect pecuniary interest that he or she, or his or her spouse, has in any business or body corporate that carries on a business as soon as practicable after he or she acquires or becomes aware of that interest.

**Duties of chief executive officer**

**19**—(1) The chief executive officer must act honestly in the performance and the exercise of the functions and powers of the chief executive officer under this or any other Act.

Penalty: Fine not exceeding 50 penalty units.

(2) In the performance and exercise of the functions and powers of the chief executive officer, the chief executive officer must exercise the same degree of care and diligence that a person in a like position in a corporation within the meaning of the Corporations Law is required to exercise.

Penalty: Fine not exceeding 50 penalty units.

(3) The chief executive officer or a former chief executive officer must not use improperly, whether within Tasmania or elsewhere, information acquired as chief executive officer—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Corporation.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

(4) The chief executive officer or a former chief executive officer must not use improperly, whether within Tasmania or elsewhere, his or her position as chief executive officer—

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Corporation.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

**Acting chief executive officer**

20—(1) In this section, “absent” means—

- (a) absent from duty; or
- (b) absent from Australia; or
- (c) otherwise unable to perform the functions of the office of chief executive officer.

(2) The Board may appoint a person, other than the chairperson, to act as chief executive officer during any or every period during which the chief executive officer is absent.

(3) While a person appointed under subsection (2) is acting as chief executive officer—

- (a) that person is taken to be the chief executive officer; and
- (b) this Act applies to that person as if he or she were the chief executive officer.

***Division 2—Other staff*****Staff**

21—(1) The Corporation may employ such persons as it considers necessary for the performance of its functions.

(2) Subject to any relevant award or industrial agreement, the terms and conditions of employees are as determined by the Corporation.

(3) The *Tasmanian State Service Act 1984* does not apply to employees.

***Division 3—Miscellaneous matters relating to staff*****Superannuation**

22—(1) The Corporation may, if the Treasurer approves in writing—

- (a) establish a superannuation scheme; and
- (b) amend a superannuation scheme established by it; and

- (c) wind up a superannuation scheme established by it; and
- (d) participate in a superannuation scheme; and
- (e) discontinue its participation in a superannuation scheme.

(2) The Corporation must comply with any law of the Commonwealth relating to superannuation when establishing, amending, winding up, participating in or discontinuing its participation in a superannuation scheme.

(3) Without limiting the power of the Corporation to establish or participate in any other superannuation scheme, the Corporation may participate in the superannuation schemes provided by and under the *Retirement Benefits Act 1993* and, if it does so participate in those schemes in relation to the chief executive officer or an employee, it is a State authority for the purposes of that Act in respect of that chief executive officer or employee.

(4) Except as otherwise provided by subsection (3), the *Retirement Benefits Act 1993* does not apply in relation to the Corporation, the chief executive officer or an employee.

***Long Service Leave (State Employees) Act 1994 does not apply***

**23—**The *Long Service Leave (State Employees) Act 1994* does not apply in relation to the chief executive officer or an employee.

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## PART 5

### FINANCIAL AFFAIRS

#### Funds of Corporation

**24—**(1) The funds of the Corporation consist of—

- (a) all money received by it in the course of performing its functions and exercising its powers; and



- (b) all money received by it from the sale, leasing, letting on hire or other disposal of its property; and
  - (c) all money received by it as interest in respect of loans or investments that it has made; and
  - (d) all money received by it as profit arising out of investments that it has made; and
  - (e) all money borrowed or raised by it under this Act; and
  - (f) any money appropriated by Parliament for the purposes of the Corporation; and
  - (g) all other money received by it from any other source.
- (2) The funds of the Corporation are to be applied—
- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Corporation in the performance of its functions and the exercise of its powers; and
  - (b) in payment of the remuneration of the directors; and
  - (c) in any other manner authorized or required under this or any other Act.

### **Bank accounts**

**25—(1)** The Corporation may open and maintain such bank accounts as it considers necessary.

(2) Any money received by the Corporation is to be paid into a bank account established under subsection (1).

### **Reserves**

**26—**The Corporation may establish and maintain reserves.

**Operating profit or loss**

27—(1) In this section—

“**loss**” means the loss or deficit shown on the operating statement of the Corporation in respect of a financial year after—

- (a) any abnormal or extraordinary items have been taken into account; and
- (b) provision has been made for any taxation-equivalent payable under Part 5 of the *State Authorities Financial Management Act 1990*;

“**operating statement**” means the profit and loss account prepared in accordance with the Australian Accounting Standards;

“**profit**” means the profit or surplus shown on the operating statement of the Corporation in respect of a financial year after—

- (a) any abnormal or extraordinary items have been taken into account; and
- (b) provision has been made for any taxation-equivalent payable under Part 5 of the *State Authorities Financial Management Act 1990*.

(2) After any dividend payable under Part 6 of the *State Authorities Financial Management Act 1990* in respect of any financial year has been provided for, any remaining profit may be retained—

- (a) in a reserve established under section 26 of this Act;  
or
- (b) in an unappropriated profit account; or
- (c) partly in such a reserve and partly in such an account.

(3) Where the Corporation incurs a loss, it must advise the Treasurer, in writing, of—

- (a) the amount of the loss; and
- (b) the reasons for the loss; and
- (c) the consequences of the loss; and
- (d) whether the Corporation is requesting financial assistance from the Treasurer.

(4) In determining the consequences of a loss for the purposes of subsection (3) (c), the Corporation must consider—

- (a) the impact of the loss on the liquidity position of the Corporation; and
- (b) the availability of reserves to meet the loss; and
- (c) the impact of the loss on the viability of the Corporation.

(5) On the request of the Corporation, the Treasurer may pay to the Corporation, out of money provided by Parliament for the purpose, an amount which is not more than that part of any loss which is not to be met by the Corporation from its reserves or in any other manner.

(6) In determining whether to make a payment under subsection (5), the Treasurer must consider—

- (a) the advice referred to in subsection (3); and
- (b) any other matter the Treasurer considers relevant.

(7) An amount paid to the Corporation under subsection (5) is a debt repayable by it into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.

## **Investment**

**28**—The Corporation may invest any funds held by it and any interest accumulated in respect of those funds in any manner which is consistent with sound commercial practice.

## **Borrowing from Treasurer**

**29**—(1) The Treasurer may lend to the Corporation, out of money provided by Parliament for the purpose, such money as the Treasurer considers appropriate.

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

(3) An amount lent under subsection (1) and any interest or other charge payable in respect of the loan is a debt repayable by the Corporation into the Consolidated Fund.

**Borrowing from person other than Treasurer**

**30—(1)** The Corporation may borrow money from a person or body other than the Treasurer for the purposes of performing its functions and achieving its objective.

(2) The total of all amounts of money borrowed under this section during a financial year must not exceed the maximum amount determined by the Treasurer, in writing, in respect of that financial year.

(3) The Corporation may use all or part of its assets as security for money borrowed by it under subsection (1) and any interest or charges payable in respect of that borrowing.

(4) If requested to do so by the Corporation, the Treasurer may guarantee the payment or repayment to a person or body from which the Corporation borrows money under subsection (1) of any or all of the following:—

(a) the amount borrowed;

(b) any interest payable in respect of the amount borrowed;

(c) any charges relating to the borrowing;

(d) any expenses of that person or body incurred in relation to the borrowing and which are payable by the Corporation.

(5) A guarantee is subject to the conditions determined by the Treasurer.

(6) A payment or repayment which is required under a guarantee is payable out of the Consolidated Fund without further appropriation than this section.

(7) If the Treasurer makes any payment or repayment under a guarantee, an amount equal to the amount so paid or repaid, and any interest payable by the Corporation in accordance with the conditions to which the guarantee is subject, is a debt repayable by the Corporation into the Consolidated Fund on the conditions and in the manner determined by the Treasurer.

**Financial arrangements**

- 31—(1)** In this section, “**financial arrangement**” means—
- (a) a currency swap; or
  - (b) an interest rate swap; or
  - (c) a forward exchange rate agreement; or
  - (d) a forward interest rate agreement; or
  - (e) a futures contract, or futures option, within the meaning of the Corporations Law; or
  - (f) a currency option; or
  - (g) an interest rate option; or
  - (h) any other transaction or arrangement that has been approved by the Treasurer in writing.

(2) The Corporation may enter into and perform a financial arrangement in accordance with any guidelines issued under subsection (3).

(3) The Treasurer may issue guidelines which relate to financial arrangements or the exercise of the power by the Corporation to enter into and perform financial arrangements.

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**PART 6****MISCELLANEOUS*****Land Acquisition Act 1993 does not apply***

**32—**The Corporation is not a public authority for the purposes of the *Land Acquisition Act 1993*.

***Archives Act 1983 does not apply***

**33—**The *Archives Act 1983* does not apply in relation to the Corporation or a record made or kept by the Corporation.

**Protection of directors, chief executive officer and staff**

**34—(1)** The chief executive officer does not incur any personal liability in respect of any act done, or omitted, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power under this or any other Act.

(2) An employee does not incur any personal liability in respect of any act done, or omitted, in good faith in the course of his or her employment.

(3) A liability that would, but for this section or the *Statutory Authorities (Protection from Liability of Members) Act 1993*, attach to a director, the chief executive officer or an employee attaches to the Corporation.

**Seal of Corporation**

**35—(1)** The seal of the Corporation is to be kept and used as authorized by the Board.

(2) All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Corporation.

**Judicial notice of certain signatures**

**36—**All courts and persons acting judicially must take judicial notice of—

- (a) the official signature of a person who is or has been the chairperson, a director or the chief executive officer; and
- (b) the fact that the person holds or has held the office concerned.

**Presumptions**

**37—**In any proceedings by or against the Corporation, unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or

- (c) the appointment of any director; or
- (d) the presence of a quorum at any meeting of the Board; or
- (e) the appointment of the chief executive officer, a member of a committee or an employee.

### **Service of documents**

**38**—A document may be served on the Corporation by—

- (a) leaving it at, or sending it by post to, the address of the Corporation; or
- (b) sending it by way of facsimile transmission to the Corporation's facsimile number.

### **Regulations**

**39**—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(3) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units and, in the case of a continuing offence, a further fine not exceeding 0.5 penalty units for each day during which the offence continues.

(4) The regulations may authorize any matter to be from time to time determined, applied or regulated by the Board or chief executive officer.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

**Consequential amendments**

**40**—(1) Section 32A of the *Freedom of Information Act 1991* is amended as follows:—

(a) by omitting “1994.” from paragraph (c) and substituting “1994;”;

(b) by inserting the following paragraph after paragraph (c):—

(d) Architectural and Consulting Services Corporation established under section 4 of the *Architectural and Consulting Services Corporation Act 1994*.

(2) The *State Authorities Financial Management Act 1990* is amended by inserting “Architectural and Consulting Services Corporation”, in correct alphabetical order, in Schedules 1, 2, 3 and 4.

**Transitional provisions**

**41**—The transitional provisions set out in Schedule 4 have effect.

**Administration of Act**

**42**—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

(a) the administration of this Act is assigned to the Minister for Transport and Works; and

(b) the Department responsible to the Minister for Transport and Works in relation to the administration of this Act—

(i) before the day on which this Act commences, is the Department of Transport and Works; and

(ii) on and after that day, is the Corporation.

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**SCHEDULE 1**

Section 8 (5)

**DIRECTORS****Application of Schedule 1 to chief executive officer**

1—In this Schedule, except where the contrary intention appears, a reference to a director does not include a reference to the chief executive officer.

**Term of office**

2—(1) A director holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment.

(2) A person is not eligible to be appointed as a director if—

(a) the person has served 3 consecutive terms of office as a director; or

(b) the person has attained the age of 72 years.

(3) For the purpose of subclause (2), an appointment to a vacant office under clause 9 (2) is not a term of office as a director.

**Conditions of appointment**

3—(1) A director is entitled to be paid the remuneration and allowances determined by the Minister from time to time.

(2) A director holds office on such conditions in relation to matters not provided for by this Act as are specified in the instrument of appointment.

(3) In subclause (2), “**matters**” includes superannuation.

**Devotion of whole time to duties**

4—(1) Where the holder of an office under an Act is required, by or under any Act, to devote the whole of his or her time to the duties of that office, that requirement does not operate to disqualify the holder from holding that office in conjunction with the office of a director.

SCHEDULE 1—*continued*

(2) A director may hold the office of director in conjunction with a position or office held under the *Tasmanian State Service Act 1984*.

***Tasmanian State Service Act 1984 inapplicable***

5—The *Tasmanian State Service Act 1984* does not apply in relation to a director, including a director who is the chief executive officer.

**Leave of absence**

6—The Board may grant leave of absence to a director, including a director who is the chief executive officer, on such conditions as the Board considers appropriate.

**Resignation**

7—A director may resign by signed notice given to the Minister.

**Removal of director**

- 8—The Minister may remove a director from office if—
- (a) the director has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Corporation, other than a contract for a service ordinarily supplied by the Corporation and on the same terms as that service is ordinarily supplied to other persons in the same situation; or
  - (b) the director fails to disclose a pecuniary interest as required under clause 7 of Schedule 2; or
  - (c) the director has been convicted of an offence under this Act; or
  - (d) the director has been convicted, in Tasmania or elsewhere, of an offence punishable by imprisonment for 12 months or longer; or

SCHEDULE 1—*continued*

- (e) the Minister is of the opinion that the director is physically or mentally incapable of continuing as a director; or
- (f) the Minister is of the opinion that the director is unable to perform adequately or competently the functions of the director's office and has notified the director in writing of the reasons for holding that opinion; or
- (g) the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his or her remuneration or estate for their benefit; or
- (h) the director is absent from 4 consecutive meetings of the Board without leave of absence; or
- (i) the director attains the age of 72 years.

**Filling of vacancy**

9—(1) A director vacates office if he or she—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under clause 8.

(2) The Minister may appoint a person to a vacant office of director for the residue of the predecessor's term of office.

**Defect does not invalidate appointment**

10—An appointment of a person as a director is not invalid merely because of a defect or irregularity in relation to the appointment.

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**SCHEDULE 2**

Section 8 (6)

**MEETINGS OF THE BOARD****Convening of meetings**

1—(1) Subject to subclause (2), meetings of the Board are to be held at the times and places determined by the Board.

(2) The chairperson—

(a) may convene a meeting at any time; and

(b) must convene a meeting when requested to do so by 2 other directors.

(3) If the chairperson convenes a meeting under subclause (2) (a), that meeting must not be held less than 72 hours after he or she has given notice of the meeting to all other directors unless all the directors consent in writing to the meeting being held earlier.

**Presiding at meetings**

2—(1) The chairperson must preside at all meetings of the Board at which he or she is present.

(2) If the chairperson is not present at a meeting, a director chosen by the directors present at the meeting must preside.

(3) For the purposes of subclause (2), a chairperson is absent from a meeting if—

(a) he or she has given notice to the Board that he or she will be absent from that meeting and has not revoked that notice in writing before the end of the period of 10 minutes commencing at the time the meeting is scheduled to start; or

(b) such notice has not been given or has been revoked and he or she is not present at that meeting at the end of that 10 minute period.

**Quorum and voting at meetings**

3—(1) At a meeting of the Board—

(a) a quorum is comprised of that number of directors that constitute a majority of all directors; and

SCHEDULE 2—*continued*

- (b) a question is decided by a majority of votes of the directors present and voting; and
- (c) the director presiding has a deliberative vote and also has a casting vote if there is an equality of votes.

(2) At a meeting of the Board where a director has an interest in a matter being considered and is excluded from being present and taking part in the consideration and decision of the Board in relation to the matter, a majority of directors who are not so excluded may constitute a quorum for the purposes of considering and making a decision in relation to that matter.

**Conduct of meetings**

4—(1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) Except where otherwise determined by the Board, directors may participate in a meeting by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(3) A director who participates in a meeting under subclause (2) is taken to be present at the meeting.

(4) The Board may allow a person to attend a meeting in person or by a means specified in subclause (2) for the purpose of advising or informing it on any matter.

**Resolutions without meetings**

5—(1) If at least that number of directors required to form a quorum sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is to be taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the directors signs the document.

SCHEDULE 2—*continued*

(2) If a resolution is taken to have been passed under subclause (1), each director is to be—

- (a) advised immediately of the matter; and
- (b) given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

**Minutes**

6—The Board is to keep minutes of its proceedings.

**Disclosure of interests**

7—(1) If—

- (a) a director or the spouse of a director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the director's duties in relation to consideration of the matter—

the director is, as soon as practicable after the relevant facts come to the director's knowledge, to disclose the nature of the interest to a meeting of the Board.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the Board otherwise determines, the director is not to—

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

SCHEDULE 2—*continued*

(3) For the purpose of making a determination under subclause (2) in relation to a director who has made a disclosure under subclause (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not to—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

**Exclusion of chief executive officer from certain deliberations**

8—(1) The chief executive officer is not to be present during any deliberation of the Board, or at the time the Board makes a decision, in relation to—

- (a) the appointment of a person as chief executive officer; or
- (b) the determination or application of any terms or conditions on which the chief executive officer holds office; or
- (c) its approval of the chief executive officer engaging in paid employment outside the duties of the office of chief executive officer; or
- (d) the termination of the appointment of the chief executive officer.

(2) A person appointed to act as chief executive officer is not to be present during any deliberation of the Board, or at the time the Board makes a decision, in relation to—

- (a) the appointment of a person to act as chief executive officer; or
- (b) the determination or application of any terms or conditions on which a person appointed to act as chief executive officer holds office; or
- (c) its approval of a person appointed to act as chief executive officer engaging in paid employment outside the duties of the office of chief executive officer; or
- (d) the termination of the appointment of the person.

SCHEDULE 2—*continued*

**Validity of proceedings, &c.**

9—(1) An act or proceeding of the Board or of any person acting pursuant to any direction of the Board is not invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Board.

(2) All acts and proceedings of the Board or of any person acting pursuant to any direction of the Board are, notwithstanding the subsequent discovery of any defect in the appointment of a director or that any person was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act as, or capable of being, a director and as if the Board had been fully constituted.

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**SCHEDULE 3**

## Section 12 (4)

**COMMITTEES****Membership of committees**

1—(1) A committee consists of such number of persons as the Board determines.

(2) The chief executive officer is not entitled to be a member of the audit committee.

(3) The chairperson of the audit committee is to be a director.

**Conditions of appointment**

2—(1) A member of a committee, other than a person employed under the *Tasmanian State Service Act 1984*, is entitled to be paid such remuneration and allowances as are determined by the Board.

(2) A member of a committee holds that office for the term, and on the conditions, determined by the Board.

**Meetings**

3—(1) Meetings of a committee are to be held in accordance with any directions given by the Board.

(2) A committee may obtain assistance, information and advice from any person.

(3) Except as provided by this Schedule, a committee may regulate the calling of, and the conduct of business at, its meetings.

**Minutes**

4—A committee is to keep minutes of its proceedings.

SCHEDULE 3—*continued***Disclosure of interests****5—(1) If—**

- (a) a member of a committee or the spouse of a member of a committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter—

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the committee otherwise determines, the member of the committee is not to—

- (a) be present during any deliberation of the committee in relation to the matter; or
- (b) take part in any decision of the committee in relation to the matter.

(3) For the purpose of making a determination under subclause (2) in relation to a member of a committee who has made a disclosure under subclause (1), a member of a committee who has a direct or indirect pecuniary interest in the matter to which the disclosure relates is not to—

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
  - (b) take part in making the determination.
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## SCHEDULE 4

Section 41

## TRANSITIONAL PROVISIONS

## PART 1

## PRELIMINARY

**Interpretation**

1—In this Schedule—

“**commencement day**” means the day on which this Act commences;

“**State service employee**” means an employee within the meaning of the *Tasmanian State Service Act 1984*;

“**transferred employee**” means a person who becomes an employee of the Corporation by the operation of clause 3 (1).

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**PART 2****STAFF****Notification of transferring staff**

2—Before the commencement day, the Minister must specify, by notice published in the *Gazette*, all State service employees employed for the purposes of that part of the Department of Transport and Works known as the “Professional Services Group of Works Tasmania” who have nominated, in writing provided to the Minister, to become employees of the Corporation on the commencement day.

**Transfer of employees and rights**

3—(1) On the commencement day—

- (a) the Corporation becomes the employer of each State service employee specified in a notice referred to in clause 2; and

SCHEDULE 4—*continued*

- (b) that employee is taken to have been employed under section 21; and
  - (c) that employee ceases to be a State service employee and the *Tasmanian State Service Act 1984* ceases to apply in relation to that employee.
- (2) A transferred employee—
- (a) is taken to have been employed by the Corporation for the same remuneration as he or she was receiving immediately before the commencement day; and
  - (b) except where an award otherwise provides, retains all existing and accruing rights relating to leave as if service as an employee of the Corporation were a continuation of his or her service under the *Tasmanian State Service Act 1984*; and
  - (c) may claim those rights against the Corporation.

**Initial chief executive officer**

4—(1) In this section, “**initial chief executive officer**” means the person who becomes chief executive officer by reason of subclause (2) (a).

- (2) On the commencement day—
- (a) the person holding the office of Chief Executive of the part of the Department of Transport and Works known as the “Professional Services Group of Works Tasmania” becomes the chief executive officer of the Corporation; and
  - (b) that person’s contract of employment made under section 38 (1) (b) of the *Tasmanian State Service Act 1984* and which was in force immediately before the commencement day is terminated.

(3) For the purposes of subclause (2), on or before the commencement day the Board must, except as otherwise agreed by the initial chief executive officer, appoint the initial chief executive officer under section 16 on terms and conditions that are not less favourable to him or her than the terms of the contract of employment referred to in subclause (2) (b).

SCHEDULE 4—*continued*

(4) Notwithstanding the terms of the contract of employment referred to in subclause (2) (b), the initial chief executive officer is not entitled to receive any termination benefit under that contract in respect of its termination by reason of that subclause.

**Application of Long Service Leave (State Employees) Act 1994**

5—(1) In this clause, “award” means an award made, industrial agreement registered or enterprise agreement registered under the *Industrial Relations Act 1984*.

(2) Notwithstanding section 23, the *Long Service Leave (State Employees) Act 1994* applies in relation to a transferred employee except where an award otherwise provides.

**Application of Retirement Benefits Act 1993**

6—Notwithstanding section 22 (4)—

- (a) the Corporation is a State authority for the purposes of the *Retirement Benefits Act 1993* in relation to a transferred employee; and
- (b) the Corporation is taken to have elected under section 22 (3) in respect of a transferred employee to participate in the superannuation schemes provided by and under that Act.

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**PART 3****MISCELLANEOUS****Property**

7—(1) With the written approval of the Treasurer and the Corporation, the Minister may, by order—

- (a) transfer any property (other than Crown land), rights and liabilities of the Crown to the Corporation (whether or not that transfer is for a consideration); and
- (b) provide for any matter that is incidental to that transfer.

SCHEDULE 4—*continued*

(2) On the relevant day specified in an order made under subclause (1)—

- (a) the property (other than Crown land) and rights specified in, and transferred by, that order vest in the Corporation; and
- (b) the liabilities specified in, and transferred by, that order become the liabilities of the Corporation.

(3) On the recommendation of the Minister and the Corporation, the Governor may, by proclamation, declare that the Crown land specified in the proclamation vests in the Corporation.

(4) The Minister must not make a recommendation under subclause (3) unless the Minister has consulted with the Minister for the time being administering the *Crown Lands Act 1976*.

(5) On the notification in the *Gazette* of the making of a proclamation referred to in subclause (3), the Crown land specified in the proclamation vests in the Corporation.

(6) If, immediately before Crown land vests in the Corporation under subclause (5), a person had an estate or interest in the land, the Corporation must pay compensation to that person in the same manner as a disputed claim for compensation under the *Land Acquisition Act 1993*.

**Works in progress**

8—(1) If an architectural or consulting project was being undertaken by that part of the Department of Transport and Works known as the “Professional Services Group of Works Tasmania” immediately before the commencement day, the Crown is taken to have contracted the Corporation to complete the construction project on terms to be agreed between the Minister and the Corporation.

SCHEDULE 4—*continued*

(2) If the Minister and Corporation have not reached an agreement under subsection (1) within 60 days after the commencement day, the terms of the contract are to be determined by arbitration under the *Commercial Arbitration Act 1986*.

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[*Second reading presentation speech made in:—  
House of Assembly on 8 November 1994  
Legislative Council on 23 November 1994*]

