

# NORTHERN TERRITORY OF AUSTRALIA

## GOVERNMENT OWNED CORPORATIONS ACT 2001

As in force at 2 June 2014

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 2 June 2014

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## GOVERNMENT OWNED CORPORATIONS ACT 2001

**An act to provide for the establishment and operation of territory owned enterprises as government owned corporations**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Government Owned Corporations Act 2001*.

#### **2                      Objective**

The objective of this Act is to provide a basis:

- (a) for improved performance by Government owned businesses;  
and
- (b) for greater sustainable financial returns to the Territory on its investment in those businesses,

by providing a framework of greater autonomy combined with appropriate accountability of government businesses.

#### **3                      Definitions**

In this Act, unless the contrary intention appears:

***apply***, for Part 5A, see section 53A.

***asset***, for Part 5A, see section 53A.

***chairperson***, in relation to a Government owned corporation, means the person appointed under section 18 to be the chairperson of the corporation and includes a deputy chairperson while acting as the chairperson under section 19.

***chief executive officer***, in relation to a Government owned corporation, means the person appointed under section 16 to be the chief executive officer of the corporation and includes a person acting as the chief executive officer under section 17.

**commenced regulations**, for Part 5A, Division 4, see section 53N.

**constituting Act**, for a Government owned corporation, means the Act by which it is established or continued.

**director**, in relation to a Government owned corporation, means a director of the corporation under section 13 and includes a person acting as a director under section 14.

**error**, for Part 5A, Division 4, see section 53P.

**Government owned corporation** means a statutory corporation that is declared to be a Government owned corporation by its constituting Act.

**liability**, for Part 5A, see section 53A.

**non-executive director**, of a Government owned corporation, means:

- (a) if the chief executive officer of a Government owned corporation is a director – a director other than the chief executive officer; or
- (b) otherwise – a director.

**officer**, in relation to a Government owned corporation, means:

- (a) a director of the Government owned corporation; or
- (b) the chief executive officer of the Government owned corporation; or
- (c) any other person who is concerned, or takes part, in the Government owned corporation's management.

**portfolio Minister**, of a Government owned corporation, see section 10.

**relevant entity**, for Part 5A, see section 53A.

**shareholding Minister**, of a Government owned corporation, see section 7A.

**subsidiary** means a body corporate that is a subsidiary of a Government owned corporation as determined in accordance with the Corporations Act 2001.

**transfer date**, for Part 5A, Division 4, see section 53N.

**transfer regulations**, for Part 5A, see section 53A.

***transferable instrument***, for Part 5A, see section 53A.

## **Part 2                      Establishment of Government owned corporations**

### **4                      Objectives of Government owned corporation**

The objectives of a Government owned corporation are:

- (a) to operate at least as efficiently as any comparable business; and
- (b) to maximise the sustainable return to the Territory on its investment in the corporation.

### **5                      Status of Government owned corporations**

- (1) A Government owned corporation or subsidiary:
  - (a) is not within the shield of the Crown; and
  - (b) does not represent the Territory except by express agreement in writing with the shareholding Minister of the Government owned corporation; and
  - (c) cannot render the Territory liable for the debts, liabilities or obligations of the Government owned corporation or any of its subsidiaries.
- (2) Subsection (1) does not apply if this Act or another Act expressly provides otherwise.

## **Part 3                      Structure and operation of Government owned corporations**

### **Division 1              Structure of Government owned corporations**

#### **6                      Corporations legislation**

- (1) A Government owned corporation is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.
- (2) Despite subsection (1), the Regulations may declare that a matter relating to a Government owned corporation is an applied Corporations legislation matter for the purposes of Part 4 of the *Corporations Reform (Northern Territory) Act 2001* in relation to an

excluded Corporations legislation provision or provisions, with the modifications, additions, exceptions, omissions or substitutions that are specified in the Regulations.

## **7 Share capital, shares and shareholder**

- (1) A Government owned corporation is to have a share capital and shares as provided in its constitution.
- (2) All of the shares in the Government owned corporation must be held by the shareholding Minister of the Government owned corporation.
- (3) The shareholding Minister holds the shares in the Government owned corporation on behalf of the Territory.
- (4) A Government owned corporation is to maintain a register that identifies the Government owned corporation's current shareholding Minister.

### **7A Shareholding Minister**

- (1) The **shareholding Minister** of a Government owned corporation is:
  - (a) the Treasurer; or
  - (b) if another minister is nominated under subsection (2) – the other minister.
- (2) The Chief Minister may, in writing, nominate a minister to be the shareholding Minister of a Government owned corporation.
- (3) The Chief Minister:
  - (a) may nominate a minister by name or by reference to a ministerial office; and
  - (b) may nominate himself or herself; and
  - (c) must not nominate the minister who is the Government owned corporation's portfolio Minister.

## **8 Shareholding Minister may give directions**

- (4) The shareholding Minister of a Government owned corporation may do one or more of the following:
  - (a) issue directions to the board of the Government owned corporation;



- (b) require the board to provide him or her with information relating to the Government owned corporation;
  - (c) direct the board to use or establish policies under which the Government owned corporation is to operate.
- (5) The shareholding Minister may only issue a direction under subsection (4)(a) or (c) if he or she has:
  - (a) consulted the board; and
  - (b) requested the board to advise the shareholding Minister whether, in its opinion, complying with the direction would not be in the best interests of the Government owned corporation or any of its subsidiaries.
- (6) The shareholding Minister must table in the Legislative Assembly a copy of a direction under subsection (4) within 6 sitting days after the direction was given.

## **9 Delegation by shareholding Minister**

- (1) The shareholding Minister of a Government owned corporation may delegate to a minister any of his or her powers and functions under this Act.
- (2) A delegation:
  - (a) is to be in writing; and
  - (b) cannot be made to the Government owned corporation's portfolio Minister.

## **10 Portfolio Minister**

- (1) The **portfolio Minister** of a Government owned corporation is:
  - (a) the minister administering the Government owned corporation's constituting Act; or
  - (b) if another minister is nominated under subsection (2) – that other minister.
- (2) The Chief Minister may, in writing, nominate a minister to be the portfolio Minister of a Government owned corporation.
- (3) The Chief Minister:
  - (a) may nominate a minister by name or by reference to a ministerial office; and

- (b) may nominate himself or herself; and
- (c) cannot nominate the minister who is the Government owned corporation's shareholding Minister.

## **11 Constitution of Government owned corporations**

- (1) A Government owned corporation is to have a constitution approved by the Government owned corporation's shareholding Minister under subsection (3).
- (2) A Government owned corporation, or a unit of administration that is to become a Government owned corporation, may submit a proposed constitution, or a proposed amendment to a constitution, to its shareholding Minister.
- (3) The shareholding Minister may approve a proposed constitution, or an amendment to a constitution, submitted to the shareholding Minister under subsection (2).
- (4) A proposed constitution, or an amendment to a constitution, submitted to the shareholding Minister under subsection (2) comes into effect from the date on which it is approved by the shareholding Minister or a later date specified in the approval.
- (5) The constitution of a Government owned corporation is, subject to this Act, to have, as far as practicable, the same operation and effect in relation to the Government owned corporation as the constitution of a company has in relation to the company.
- (6) The constitution of a Government owned corporation may contain matters that for a company would be found in the Corporations Act 2001.
- (7) The shareholding Minister of a Government owned corporation may issue guidelines in relation to the contents of the Government owned corporation's constitution.
- (8) The constitution may contain provisions other than those referred to in subsection (6) or (7) if the provisions are not inconsistent with a provision of this Act or of another Act.
- (9) The shareholding Minister of a Government owned corporation must table in the Legislative Assembly a copy of the constitution, or an amendment to the constitution, of the Government owned corporation within 6 sitting days after the date on which the constitution or amendment came into effect.

(10) In this section:

**shareholding Minister**, for a unit of administration that is to become a Government owned corporation, means the minister who will be the shareholding Minister when the unit becomes a Government owned corporation.

## **12 Committees**

(1) The board of a Government owned corporation:

- (a) must establish an audit committee; and
- (b) may establish other committees as it thinks fit.

(2) A committee:

- (a) must provide the board of a Government owned corporation with advice on any matter referred to it by the board; and
- (b) must exercise the powers and perform the functions delegated to it by the board.

(3) The chief executive officer of a Government owned corporation may not be a member of the corporation's audit committee.

(4) The chairperson of a Government owned corporation's audit committee must be a non-executive director of the corporation.

## **Division 2 Officers of Government owned corporations**

### **13 Directors of Government owned corporations**

(1) There is to be a board of directors for a Government owned corporation.

(2) The Government owned corporation's constitution must specify:

- (a) the number of directors, which must include at least 2 non-executive directors; and
- (b) whether or not the chief executive officer is a director.

(5) The Administrator may appoint a person to be a non-executive director of the Government owned corporation.

(6) The Administrator may at any time terminate an appointment under subsection (5).

- (7) An appointment or termination of an appointment may only be made under subsection (5) or (6) on the recommendation of the Government owned corporation's shareholding Minister.

*Note for subsection (7)*

*Subsection (7) is not intended to affect the application of section 34(1) of the Interpretation Act, which requires the Administrator to act on the advice of the Executive Council.*

- (8) The directors of the Government owned corporation appointed under subsection (5) are to be appointed to the board having regard to the expertise necessary for the corporation to achieve its objectives.
- (9) The appointment of a director of the Government owned corporation under subsection (5) remains in force for the period, of less than 4 years, determined by the Administrator.

#### **14 Acting directors**

- (1) The shareholding Minister of a Government owned corporation may appoint a person to be an acting director of the Government owned corporation.
- (2) In the absence of a non-executive director of the Government owned corporation, the acting director:
- (a) is, if available, to act in the place of the director; and
  - (b) while acting as director, has all the functions of the director and is taken to be a director of the Government owned corporation.
- (3) The shareholding Minister may at any time terminate an appointment under subsection (1).

#### **15 Accountability of directors of Government owned corporations**

- (1) The board of a Government owned corporation is responsible for the operation of the corporation.
- (2) The board of a Government owned corporation is accountable to the Government owned corporation's shareholding Minister for the financial performance of the corporation.

(3) If the board of a Government owned corporation forms the opinion that matters have arisen:

- (a) that may prevent, or significantly affect, achievement of the objectives of the Government owned corporation and its subsidiaries in the corporation's statement of corporate intent; or
- (b) that may prevent, or significantly affect, achievement of the targets in the corporation's statement of corporate intent,

the board must immediately notify the Government owned corporation's shareholding Minister of its opinion and the reasons for the opinion.

## **16 Chief executive officer**

- (1) There is to be a chief executive officer for a Government owned corporation.
- (2) The Government owned corporation's board must appoint a person to be the chief executive officer.
- (2A) The person appointed cannot be the chairperson or deputy chairperson of the board.
- (3) The board may terminate the appointment at any time.
- (4) An appointment or termination may be made only after consultation with the Government owned corporation's shareholding Minister.
- (4A) The chief executive officer holds office:
  - (a) for the period, of less than 4 years, specified in the appointment; and
  - (b) on the terms and conditions (including as to remuneration and allowances) agreed by the board and the shareholding Minister.
- (5) The chief executive officer of a Government owned corporation is, subject to the directions of the board of the corporation, responsible for the day to day management of the operation of the corporation.
- (6) The chief executive officer of a Government owned corporation may, subject to the directions of the board of the corporation, delegate any of his or her powers and functions under this or any other Act to an employee of the Government owned corporation.

- (7) A person ceases to be the chief executive of a Government owned corporation:
- (a) if the person dies; or
  - (b) if the person completes a term of office and is not reappointed; or
  - (c) if the person resigns by letter to the board; or
  - (d) if the person's appointment is terminated by the board; or
  - (e) if the person 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
  - (f) if the person is:
    - (i) convicted in the Territory of an offence that is punishable by imprisonment for 12 months or more; or
    - (ii) convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence punishable by imprisonment for 12 months or more; or
    - (iii) disqualified under Part 2D.6 of the Corporations Act 2001 from managing a corporation; or
  - (g) in the circumstances set out in the Government owned corporation's constitution.

## **17 Acting chief executive officer**

- (1) The board of a Government owned corporation may appoint a person to act as chief executive officer during a period, or during all periods, when:
- (a) the chief executive officer is, or is expected to be, absent from office or unable to exercise his or her powers or perform his or her functions under this or any other Act; or
  - (b) there is a vacancy in the office of chief executive officer.
- (1A) The person appointed cannot be the chairperson or deputy chairperson of the board.
- (2) The board may terminate the appointment at any time.
- (3) An appointment or termination may be made only after consultation with the Government owned corporation's shareholding Minister.

- (4) An acting chief executive officer has all the powers and functions of the chief executive officer under this or any other Act.

## **18 Chairperson**

- (1) There is to be a chairperson for each Government owned corporation.
- (2) The shareholding Minister of a Government owned corporation may appoint a non-executive director to be chairperson of the board of the Government owned corporation.
- (3) The shareholding Minister may at any time terminate an appointment under subsection (2).
- (4) The chairperson of a Government owned corporation vacates office as chairperson if:
  - (a) the appointment of the person as chairperson is terminated under subsection (3);
  - (b) the person resigns the office of chairperson by letter addressed to the shareholding Minister; or
  - (c) the person vacates the office of director in accordance with section 25.

## **19 Deputy chairperson**

- (1) The shareholding Minister of a Government owned corporation may appoint a non-executive director to be the deputy chairperson of the Government owned corporation.
- (2) The shareholding Minister may at any time terminate an appointment under subsection (1).
- (3) The deputy chairperson is to act as the chairperson of the Government owned corporation during the absence or inability to act of the chairperson.
- (4) The deputy chairperson of a Government owned corporation vacates office as deputy chairperson if:
  - (a) the appointment of the person as deputy chairperson is terminated under subsection (2);
  - (b) the person resigns the office of deputy chairperson by letter addressed to the Government owned corporation's shareholding Minister; or

- (c) the person vacates the office of director in accordance with section 25.

## **19A Interim arrangements for new Government owned corporations**

- (1) This section applies if:
  - (a) a new Government owned corporation is established; and
  - (b) the Government owned corporation's first chief executive officer has not yet been appointed.
- (2) Despite sections 16(2A), 17(1A), 18(2) and 19(1), a person may be:
  - (a) both chairperson of the board and acting chief executive officer under section 17(1)(b); or
  - (b) both deputy chairperson of the board and acting chief executive officer under section 17(1)(b).

## **20 Duties and liabilities of directors and other officers**

The duties and liabilities of directors that are specified in Part 2D.1 of Chapter 2D of the Corporations Act 2001 are, in relation to the directors of a Government owned corporation, an applied Corporations legislation matter for the purposes of Part 4 of the *Corporations Reform (Northern Territory) Act 2001*.

## **21 Government owned corporation not to indemnify officers**

- (1) A Government owned corporation must not:
  - (a) indemnify a person who is or has been an officer of the Government owned corporation against a liability incurred as an officer; or
  - (b) exempt a person who is or has been an officer of the Government owned corporation from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the Government owned corporation to do something that subsection (1) prohibits.
- (3) Subsection (1) does not prevent the Government owned corporation from indemnifying a person against civil liability (other than a liability to the Government owned corporation or a subsidiary of the Government owned corporation) unless the liability arises out of conduct involving a lack of good faith.



- (4) Subsection (1) does not prevent the Government owned corporation 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) In this section:

**indemnify** includes indemnify indirectly through one or more interposed entities.

## **23 Termination of appointments**

- (1) A person who terminates an appointment under this Act is not required to give a reason for the termination.
- (2) A termination of an appointment under this Act takes effect immediately or from a later date specified by the person who terminates the appointment.

## **24 Remuneration**

- (1) The shareholding Minister of a Government owned corporation may determine the remuneration, including travelling and other allowances to be paid to a non-executive director or an acting director of the Government owned corporation or a subsidiary.
- (2) The shareholding Minister may alter or revoke a determination under subsection (1) at any time, including after a person becomes a director or an acting director.
- (3) The *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* does not apply in relation to an appointment under this Act.

## **25 Vacancy in office of director of corporation**

- (1) The office of a non-executive director of a Government owned corporation becomes vacant:
  - (a) if the director dies; or
  - (b) if the director completes a term of office and is not re-appointed; or

- (c) if the director resigns the office by letter addressed to the Government owned corporation's shareholding Minister; or
  - (d) if the appointment of the director is terminated under this Act; or
  - (e) if the director 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; or
  - (f) if the director 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) if the director is:
    - (i) convicted in the Territory of an offence that is punishable by imprisonment for 12 months or more;
    - (ii) convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence punishable by imprisonment for 12 months or more; or
    - (iii) disqualified under Part 2D.6 of the Corporations Act 2001 from managing a corporation; or
  - (h) in the circumstances set out in the constitution of the Government owned corporation.
- (2) Subsection (1)(e) does not apply if the director is absent on leave granted by the board.

## **26 Disclosure of interests by directors**

- (1) If a director of a Government owned corporation has a direct or indirect interest in a matter being considered, or about to be considered, by the board of the corporation, 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.

- (3) A director who has disclosed an interest under subsection (1):
  - (a) must not, while the director has the interest, take part after the disclosure in any deliberation or decision of the board in relation to the matter in which the director has the interest; and
  - (b) is to be disregarded for the purpose of constituting a quorum of the board in relation to the deliberation or decision of the board in relation to the matter in which the director has the interest.
- (4) Subsection (3) does not apply to a director if the board resolves that the subsection does not apply to the director.
- (5) A director who has disclosed an interest under subsection (1) may withdraw from the meeting during a period of deliberation or decision of the board in relation to the matter in which the director has the interest, even if the board has made a resolution under subsection (4) in relation to the matter.
- (6) The board of a Government owned corporation is to maintain a register of the interests of the directors of the Government owned corporation.

## **27 Delegation by board**

- (1) The board of a Government owned corporation may, by resolution, delegate any of its powers and functions to one or more of the following:
  - (a) a director of the board;
  - (b) a committee of the board;
  - (c) the chief executive officer of the Government owned corporation;
  - (d) any other person.
- (2) The board of a Government owned corporation is to advise the Government owned corporation's shareholding Minister of a delegation under subsection (1) of a power or function that is, in its opinion, significant.

## Division 3      Public interest requirements

### 28      Community service obligations

- (1) A **community service obligation** is an activity that:
  - (a) has an identifiable community or social benefit; and
  - (b) would not be undertaken if only commercial considerations applied.
- (2) A Government owned corporation and its shareholding Minister may together agree that the corporation is to undertake a community service obligation.
- (3) A Government owned corporation must not undertake a community service obligation except:
  - (a) with the agreement of the shareholding Minister under subsection (2); or
  - (b) in accordance with a direction under subsection (4).
- (4) The shareholding Minister may direct the Government owned corporation to undertake, or not to undertake, a community service obligation.
- (5) The shareholding Minister is to ensure that appropriate financial arrangements are made to enable the corporation to undertake a community service obligation that it may undertake under this section.
- (5A) The shareholding Minister must consult with the Government owned corporation's portfolio Minister before exercising a function under subsection (2), (4) or (5).
- (6) If the shareholding Minister is not the Treasurer, the shareholding Minister must consult with the Treasurer before entering into an agreement under this section.
- (7) The shareholding Minister must table in the Legislative Assembly a copy of a direction under subsection (4) within 6 sitting days after the direction was given.
- (8) If:
  - (a) money is allocated under the *Financial Management Act 1995* to a statutory corporation for a matter that is specified to be a community service obligation in the budget papers tabled in the Legislative Assembly for a financial year; and

- (b) in that financial year the corporation becomes a Government owned corporation,

the obligation is to be taken to be a community service obligation of the Government owned corporation to which the Government owned corporation's shareholding Minister has agreed under this section.

## **29 Shareholding Minister may notify board of public sector policies**

- (1) The shareholding Minister of a Government owned corporation may, in writing, notify the board of the Government owned corporation of a public sector policy that is to apply to the corporation.
- (2) A notice under subsection (1) may only be given:
  - (a) if the shareholding Minister is satisfied that it is in the public interest to do so; and
  - (b) if the shareholding Minister has consulted the Government owned corporation's portfolio Minister; and
  - (c) if the shareholding Minister has consulted the board; and
  - (d) if the shareholding Minister has requested the board to advise the shareholding Minister whether, in its opinion, complying with the policy specified in the notice would not be in the best interests of the Government owned corporation.
- (3) The board of the Government owned corporation must ensure that a policy specified in a notice under subsection (1) to the board is carried out in relation to the corporation.
- (4) The shareholding Minister must table in the Legislative Assembly a copy of a notice under subsection (1) within 6 sitting days after the notice was given.

## **30 Shareholding Minister may give directions in public interest**

- (1) The shareholding Minister of a Government owned corporation may give the board of the Government owned corporation a direction in writing in relation to the Government owned corporation.
- (2) A direction under subsection (1) may only be given:
  - (a) if the shareholding Minister is satisfied that it is in the public interest to do so; and

- (b) if the shareholding Minister has consulted the Government owned corporation's portfolio Minister; and
  - (c) if the shareholding Minister has consulted the board; and
  - (d) if the shareholding Minister has requested the board to advise the shareholding Minister whether, in its opinion, complying with the direction would not be in the best interests of the Government owned corporation.
- (3) The board of the Government owned corporation must ensure that a direction given to it in a notice under subsection (1) is carried out in relation to the Government owned corporation.
- (4) The shareholding Minister must table in the Legislative Assembly a copy of a notice under subsection (1) within 6 sitting days after the notice was given.

## **Division 4      Financial matters**

### **31      Dividends**

- (1) The board of a Government owned corporation is to declare the amount of a dividend on the shares of the Government owned corporation.
- (2) The Government owned corporation's shareholding Minister may direct the board of the Government owned corporation to declare a special dividend on the shares of the corporation.
- (3) A dividend declared under subsection (1) or (2) is to be paid into the Central Holding Authority.
- (4) The shareholding Minister may, before the annual financial statements are finalised, discuss the dividend to be declared under subsection (1) with the board of the Government owned corporation.
- (5) The board of the Government owned corporation must make a recommendation to the shareholding Minister as to the amount to be paid as a dividend.
- (6) The shareholding Minister may:
  - (a) accept the recommendation of the board made under subsection (5); or
  - (b) issue a direction specifying that a different amount to that recommended by the board is to be declared as a dividend.

- (7) The shareholding Minister must table in the Legislative Assembly a copy of a direction under subsection (2) or (6)(b) within 6 sitting days after the date on which the direction was given.
- (8) Dividends must be paid:
  - (a) within 60 days after the audited annual financial statements are completed in each year; or
  - (b) by 1 December in each year,whichever is earlier.

## **32 Capital structure**

- (1) The shareholding Minister of a Government owned corporation may determine or alter the capital structure of the Government owned corporation.
- (2) Before determining or altering the capital structure of the Government owned corporation, the shareholding Minister must:
  - (a) consult with the board of the corporation; and
  - (b) if the shareholding Minister is not the Treasurer – consult with the Treasurer; and
  - (c) request the board to advise the shareholding Minister whether it is of the opinion that the proposed capital structure would not be in the best interests of the corporation or any of its subsidiaries.
- (3) The board of the Government owned corporation may make a recommendation to the shareholding Minister as to the capital structure, including by converting debt to equity, converting equity to debt, repaying equity, transferring assets and altering the equity base.

## **33 Tax**

- (1) A Government owned corporation, and a wholly owned subsidiary of a Government owned corporation, must pay to the Central Holding Authority for each financial year an amount that is equal to the amount the corporation or subsidiary would have been liable to pay for the financial year as income tax under a law of the Commonwealth if the corporation or subsidiary were not exempt from the requirement to do so.
- (2) A Government owned corporation that is exempt from the requirement to pay an amount to a local government council must

pay to the Central Holding Authority for each financial year an amount that is equal to the amount the corporation would have been liable to pay to the council in the financial year if the corporation were not exempt from the requirement to do so.

- (3) In calculating an amount of tax referred to in subsection (1) or (2), and in paying the amount, the Government owned corporation or subsidiary must comply and act in accordance with the Tax Equivalents Regimes Manual issued by the Treasurer as amended from time to time.
- (4) A Government owned corporation is not, merely because it may come under the shield of the Crown or is representing the Crown in accordance with an agreement under section 5(1)(b), exempt from any rate, tax, duty or other impost imposed by or under any law of the Territory.

#### **34 Government guarantee**

- (1) Except as provided for in this section and despite the provisions of any other Act (including section 20 of *the Northern Territory Treasury Corporation Act 1994*), the obligations of a Government owned corporation or any of its subsidiaries are not guaranteed by the Territory.
- (2) The Treasurer may agree that the Territory is to guarantee a Government owned corporation:
  - (a) if the Government owned corporation is required to undertake an activity outside its normal commercial functions; or
  - (b) to the extent that the board of the corporation and the Treasurer agree in writing.
- (3) The Treasurer must table in the Legislative Assembly a copy of a guarantee to which the Treasurer has agreed under this section within 6 sitting days after the date the guarantee was entered into.

#### **35 Borrowings**

- (1) A Government owned corporation may only borrow money (other than from the Northern Territory Treasury Corporation) with the approval of the Government owned corporation's shareholding Minister under subsection (2).
- (2) The shareholding Minister of a Government owned corporation may approve the borrowing of an amount of money by the Government owned corporation.



- (3) If a Government owned corporation borrows money other than from the Northern Territory Treasury Corporation and the Treasurer is of the opinion that a similar corporation that was not a Government owned corporation would have paid a higher interest rate for the borrowing, the corporation must from time to time pay to the Treasurer for payment into the Central Holding Authority a competitive neutrality fee.
- (4) The competitive neutrality fee:
  - (a) is to be determined by the Treasurer having regard to the difference between the interest rate that the Government owned corporation is liable to pay for the borrowing and the interest rate that, in the opinion of the Treasurer, a similar corporation that was not a Government owned corporation would have paid for the borrowing; and
  - (b) may be expressed as a percentage interest rate on the borrowing.

### **36 Procurement**

- (1) A Government owned corporation must develop a procurement policy.
- (2) The procurement policy must be consistent with the principles of the Territory's procurement policy.
- (3) The procurement policy must be approved by the Government owned corporation's shareholding Minister.
- (4) The shareholding Minister must consult with the Government owned corporation's portfolio Minister before approving, or refusing to approve, a procurement policy.
- (5) The Government owned corporation must comply with the procurement policy approved by the shareholding Minister.
- (6) Until the Government owned corporation's procurement policy is approved under subsection (4), the *Procurement Act 1995* applies to the corporation as if it were an Agency.

### **37 Investments by Government owned corporations**

- (1) A Government owned corporation must not undertake a capital investment above the relevant prescribed threshold unless it is approved by the Government owned corporation's shareholding Minister.

- (2) A Government owned corporation must not acquire a financial investment above the relevant prescribed threshold unless it is approved by the Government owned corporation's shareholding Minister.
- (3) For the purposes of subsections (1) and (2), the relevant prescribed threshold is:
  - (a) the threshold agreed by the board of the Government owned corporation and the Government owned corporation's shareholding Minister; or
  - (b) if a threshold is not agreed under paragraph (a) – the threshold determined by the Government owned corporation's shareholding Minister,for a capital investment or financial matter of the type to which the threshold relates.
- (4) A Government owned corporation must not:
  - (a) form or acquire a subsidiary, a trust, joint venture or other similar arrangement involving a third party; or
  - (b) undertake a capital or financial investment outside the Territory,unless:
  - (c) the formation, acquisition or undertaking is approved by the Government owned corporation's shareholding Minister; or
  - (d) otherwise agreed between the Government owned corporation's shareholding Minister and its board.
- (5) An approval given by the shareholding Minister under subsection (4) may be given on the conditions the shareholding Minister thinks fit.
- (6) If the shareholding Minister is not the Treasurer, the shareholding Minister must consult with the Treasurer before giving an approval under this section.

### **38 Disposal of investments**

- (1) A Government owned corporation must not dispose of a capital or financial investment above the prescribed threshold unless the disposal is approved by the Government owned corporation's shareholding Minister.

- (2) For the purposes of subsection (1), the prescribed threshold is:
  - (a) the threshold agreed by the board of the Government owned corporation and the Government owned corporation's shareholding Minister; or
  - (b) if the threshold is not agreed under paragraph (a) – the threshold determined by the Government owned corporation's shareholding Minister.
- (3) If the shareholding Minister is not the Treasurer, the shareholding Minister must consult with the Treasurer before giving an approval under this section.

## **Part 4            Accountability**

### **Division 1        Statements of corporate intent**

#### **39                Statement of corporate intent – timetable and procedure**

- (1) The board of a Government owned corporation must prepare and submit to the Government owned corporation's shareholding Minister a draft written statement of corporate intent.
- (2) The board must:
  - (a) consult in good faith with the shareholding Minister; and
  - (b) make the changes to the draft statement that are agreed between the shareholding Minister and the board; and
  - (c) deliver the completed written statement to the shareholding Minister (incorporating the changes, if any, made under paragraph (b)) not later than one month before the commencement of the financial year to which the statement relates or by a date agreed between the board and shareholding Minister.
- (3) The statement may be modified at any time by the board with the agreement of the shareholding Minister.
- (4) The shareholding Minister may, from time to time, by written notice to the board, direct the board to include in, or delete from, the statement of corporate intent any matters specified in the direction.
- (5) Before giving a direction under this section, the shareholding Minister is to consult with the board of the Government owned corporation as to the matters to be referred to in the notice.

- (6) The Government owned corporation must comply with a direction given under this section.
- (7) The shareholding Minister must table in the Legislative Assembly a copy of:
  - (a) the completed statement of corporate intent for the Government owned corporation, or a modification of the statement – within 6 sitting days after the commencement of the financial year to which the statement relates or after the date agreed between the board and shareholding Minister under subsection (2)(c); or
  - (b) a direction under this section – within 6 sitting days after the date the shareholding Minister gave the direction.
- (8) Before a copy of a document is tabled in the Legislative Assembly under this section, the shareholding Minister may delete from the document information that is of a commercially sensitive nature.
- (9) A document referred to in this section may not, before it is tabled in the Legislative Assembly, be published or made available to the public without the approval of the board and the shareholding Minister.

#### **40                      Statement of corporate intent – contents**

A statement of corporate intent must specify for the Government owned corporation, 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;
- (b) the nature and scope of the activities to be undertaken by the corporation;
- (c) the material risks faced by the corporation;
- (d) the strategies to minimise the material risks faced by the corporation;
- (e) the strategies to improve the financial performance of the corporation;
- (f) the capital investment plans of the corporation that have been approved by the Government owned corporation's shareholding Minister;

- (g) the financial targets and other measures by which the performance of the corporation may be judged;
- (h) the accounting policies to be applied in the accounts of the corporation;
- (i) any other matters that may be agreed on by the Government owned corporation's shareholding Minister and board.

#### **41                      Statement of corporate intent – reporting**

- (1) A Government owned corporation must, within 3 months after the end of each financial year or another period that is specified by the Government owned corporation's shareholding Minister, give to its shareholding Minister and portfolio Minister a report on the corporation's performance in relation to its statement of corporate intent.
- (2) A report under subsection (1) is to:
  - (a) identify any significant departures from the statement of corporate intent for the financial year to which the report relates; and
  - (b) set out the reasons for each of the departures.
- (3) If a report under this section is not included in the annual report under section 44, the shareholding Minister must table in the Legislative Assembly a copy of the report under this section within 6 sitting days after the date the shareholding Minister receives the report.
- (4) Before a copy of a report is tabled in the Legislative Assembly under this section, the shareholding Minister may delete from the report information that is of a commercially sensitive nature.

### **Division 2                      Audit, reporting and provision of information**

#### **42                      Corporation to provide financial statements to Auditor-General**

- (1) A Government owned corporation must forward to the Auditor-General the financial statements that are to be included in an annual report prepared under section 44(1).
- (2) The Government owned corporation must forward the financial statements to the Auditor-General within 2 months after the end of each financial year or of another period that is specified by the Government owned corporation's shareholding Minister.

**43                      Auditor-General to audit financial statements etc.**

- (1) The Auditor-General must:
  - (a) audit the financial statements forwarded to him or her under section 42(1) within one month after receiving them or within another period determined by the Administrator; and
  - (b) report on the financial statements to the board of the Government owned corporation.
- (2) The Auditor-General may determine the fee payable for an audit under this section after consultation with the Government owned corporation to which the report relates.
- (3) A Government owned corporation must pay in accordance with a direction of the Auditor-General the fee determined under subsection (2).
- (4) A reference in this section to the Auditor-General includes a reference to a person carrying out functions under this section for the Auditor-General.

**44                      Annual reports and accounts**

- (1) A Government owned corporation must prepare an annual report of the operations of the corporation and of its subsidiaries during each financial year.
- (2) The annual report under subsection (1) is to include:
  - (a) financial statements for that financial year that comply with the requirements of the Corporations Act 2001 and, if the corporation has subsidiaries, the requirements of that Act relating to consolidated financial statements; and
  - (b) the Auditor-General's report provided to the corporation under section 43; and
  - (c) all information that is required by the Government owned corporation's shareholding Minister to enable an informed assessment of the operations of the corporation and its subsidiaries.
- (3) A report under subsection (1) must conform to the requirements of similar reports under the Corporations Act 2001.
- (4) The Government owned corporation must forward the annual report under subsection (1) to the Government owned corporation's shareholding Minister as soon as practicable after the

Auditor-General provides his or her report to the Government owned corporation under section 43 and in any case:

- (a) within 3 months after the end of each financial year; or
  - (b) within another period that is specified by the shareholding Minister.
- (5) The shareholding Minister must table in the Legislative Assembly a copy of an annual report of a Government owned corporation within 6 sitting days after the report is delivered to the shareholding Minister.

#### **45 Auditor-General to conduct audits**

- (1) The Auditor-General may conduct under the *Audit Act 1995* an audit of a Government owned corporation.
- (2) Sections 16 and 21 of the *Audit Act 1995* apply in relation to a Government owned corporation as if a reference in those sections to **Accountable Officer** and **Agency** were a reference to **the board of a Government owned corporation** and **Government owned corporation** respectively.

#### **46 Special audits**

- (1) The shareholding Minister of a Government owned corporation may request the Auditor-General to carry out an audit within the time specified in the request or within the further time that is reasonably necessary to enable the audit to be completed.
- (2) A request under subsection (1) is to be in writing and may be given either generally or in relation to a specific matter.
- (3) The Auditor-General is to advise the shareholding Minister in writing, within 14 days after receiving a request under subsection (1), whether or not the Auditor-General agrees to carry out the request.
- (4) If the Auditor-General has advised the shareholding Minister under subsection (3) that the Auditor-General agrees to carry out the requested audit, the Auditor-General is to provide a written report in relation to the audit.
- (5) The shareholding Minister of a Government owned corporation may request an auditor to carry out an audit, either generally or in respect of a specific matter, in relation to the Government owned corporation.

- (6) In this section:

**audit** includes the inspection, investigation, examination or review of accounts, performance or systems.

#### **47 Other information to be provided**

- (1) A Government owned corporation must give relevant corporate information to its shareholding Minister or portfolio Minister when requested by the Minister to do so.
- (3) Information is to be provided under subsection (1) whether or not the information is of a kind referred to in the statement of corporate intent.
- (4) A Government owned corporation must provide to the Territory information in relation to the corporation or its subsidiaries if the information is required by the Territory to enable it to provide the information to a body of the Commonwealth for the purpose of the collection of national data.
- (5) In this section:

**relevant corporate information**, in relation to a Minister, means information about the affairs of the corporation or any of its subsidiaries that the Minister reasonably needs for the performance of the Minister's functions under this Act.

## **Part 5 Legal capacity and powers of Government owned corporations**

### **48 Interpretation**

- (1) In this Part, unless the contrary intention appears:

**officer** includes a person authorised by the board of a Government owned corporation.

**restriction** includes prohibition.

- (2) In this Part, unless the contrary intention appears:

- (a) the doing of an act by a Government owned corporation includes a reference to the making of an agreement by the Government owned corporation and a reference to a transfer of property to or by the Government owned corporation; and
- (b) a reference to power includes a reference to legal capacity.



**49 Objects of Part**

- (1) The objects of this Part include:
  - (a) providing that the doctrine of ultra vires does not apply to Government owned corporations; and
  - (b) ensuring that Government owned corporations give effect to any restrictions on their objects or powers but without affecting the validity of their dealings with outsiders.
- (2) This Part is to be construed and have effect in accordance with the objects specified in subsection (1).

**50 General powers of Government owned corporations**

- (1) A Government owned corporation is a body corporate with perpetual succession.
- (2) A Government owned corporation has, for or in connection with the performance of its functions, all the powers of a natural person including the following powers:
  - (a) to enter into contracts;
  - (b) to acquire, hold, dispose of and deal with property;
  - (c) to sue and be sued;
  - (d) to appoint agents and attorneys;
  - (e) to charge, and fix terms, for goods, services and information supplied by it;
  - (f) to engage consultants;
  - (g) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Without limiting subsection (2), a Government owned corporation has the powers that are conferred on it by or under this or another Act.
- (4) A Government owned corporation may exercise its powers within or outside the Territory.
- (5) Without limiting subsection (4), a Government owned corporation may exercise its powers outside Australia.
- (6) A Government owned corporation is to have a common seal.

**51 Restrictions on Government owned corporations**

- (1) Section 50 has effect in relation to a Government owned corporation subject to any restrictions on the Government owned corporation's powers expressly imposed by or under this or another Act.
- (2) Section 50 also has effect in relation to the Government owned corporation subject to any restrictions expressly imposed by:
  - (a) the Government owned corporation's constitution; or
  - (b) a relevant statement of corporate intent of the Government owned corporation; or
  - (c) a relevant direction, notification or approval given to the Government owned corporation by the Government owned corporation's shareholding Minister or portfolio Minister.
- (3) If:
  - (a) the Government owned corporation exercises a power contrary to a restriction referred to in subsection (1) or (2); or
  - (b) the Government owned corporation's constituting Act sets out the objects or functions of the corporation and the corporation does an act otherwise than in accordance with the objects or functions,the corporation 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 Government owned corporation 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 Government owned corporation or officer of the Government owned corporation 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 Government owned corporation contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of the Government owned corporation contravened or would contravene subsection (5),

may be asserted or relied on only in proceedings between the Government owned corporation's shareholding Minister or the Territory and officers of the Government owned corporation.

#### **51A Business or trading names**

A Government owned corporation may use and operate under any of the following names:

- (a) the name given to the corporation by its constituting Act;
- (b) one or more business or trading names approved by the Government owned corporation's shareholding Minister by notice in writing.

#### **52 Assumptions that may be made in dealings with Government owned corporations or property**

- (1) A person who enters into a transaction with a Government owned corporation is entitled to assume that the corporation:
  - (a) has power to enter into the transaction and is entering into the transaction in the performance of its statutory functions; and
  - (b) has obtained all approvals required under this Act or its constituting Act to enable it to enter into the transaction; and
  - (c) in entering into the transaction, has complied with its constitution, this Act and its constituting Act; and
  - (d) has properly sealed a document if:
    - (i) it bears what appears to be an imprint of the corporation's seal; and
    - (ii) the sealing of the document appears to be authenticated by a director of the corporation or the chief executive officer of the corporation.

- (2) Subsection (1) does not apply if, at the time the transaction is entered into, the person has:
  - (a) actual knowledge to the contrary of a matter the person is entitled to assume under subsection (1); or
  - (b) a connection or relationship with the Government owned corporation of a kind that the person ought to know that the contrary of a matter the person is entitled to assume under subsection (1) is the case.
- (3) If a person is entitled to make an assumption under subsection (1) at the time the person enters into a transaction with a Government owned corporation, the corporation may not assert, after the transaction has been entered into, that the assumption does not apply or that the transaction is not binding on the corporation.

### **53 Fraud does not necessarily invalidate assumptions**

- (1) A person's entitlement under this Part to make an assumption is not affected merely by the fact that a 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 Government owned corporation.
- (2) Despite subsection (1), the person is not entitled to make an assumption under subsection (1) if the person has actual knowledge of that fraudulent action or forgery.

## **Part 5A Restructure of Government owned corporations**

### **Division 1 Preliminary matters**

#### **53A Definitions**

In this Part:

***apply***, for a transferable instrument in relation to a person, see section 53B(7).

**asset** includes:

- (a) a legal or equitable interest of any kind (whether present or future and whether vested or contingent) in property of any kind (whether real or personal and whether tangible or intangible); and
- (b) a chose in action or other right.

**commenced regulations**, for Division 4, see section 53N.

**error**, for Division 4, see section 53P.

**liability** means a liability, duty or obligation of any kind (whether present or future and whether vested or contingent).

**relevant entity** means any of the following:

- (a) a Government owned corporation;
- (b) a subsidiary;
- (c) a statutory corporation;
- (d) a corporation (as defined in the Corporations Act 2001), or other body corporate, that is owned by the Territory;
- (e) the Territory.

**transfer date**, for Division 4, see section 53N.

**transfer regulations** means regulations made under section 53B.

**transferable instrument** means an instrument (other than an Act or subordinate legislation but including any other statutory instrument) that creates, modifies or extinguishes a right or liability of any kind.

## **Division 2      Transfer regulations**

### **53B      Transfer regulations**

- (1) Regulations may be made under this section for the purpose of effecting the transfer of all or part of the business of a Government owned corporation to a relevant entity.
- (2) The regulations may do one or more of the following:
  - (a) transfer all or part of an asset or liability of a Government owned corporation or a subsidiary to a relevant entity;

- (b) in relation to a transferred asset – require the transferee to provide consideration for the transfer to the Government owned corporation or subsidiary from which it was transferred or to the Territory;
- (c) in relation to a transferred asset or liability, do one or both of the following:
  - (i) ascribe a value to the asset or liability or provide a method for how the value is to be determined;
  - (ii) provide for the manner in which the asset or liability is to be dealt with in a relevant entity's accounts;
- (d) in relation to a transferable instrument that would, but for the regulations, apply to a Government owned corporation or a subsidiary (**Corporation A**), provide that the instrument becomes an instrument that:
  - (i) applies to:
    - (A) a relevant entity instead of Corporation A; or
    - (B) a relevant entity as well as Corporation A; or
    - (C) Corporation A as if the regulations had not been made; and
  - (ii) applies to Corporation A or the relevant entity to the extent specified in the regulations; and
  - (iii) has effect as modified as set out in the regulations;
- (e) in relation to proceedings to which, but for the regulations, a Government owned corporation or a subsidiary (**Corporation A**) would be a party:
  - (i) provide that a relevant entity become a party to the proceedings in place of Corporation A; or
  - (ii) provide that relevant entity become a party to the proceedings, as well as Corporation A, to the extent specified in the regulations; or
  - (iii) provide that Corporation A continues as a party to the proceedings as if the regulations had not been made;

- (f) in relation to a right that would, but for the regulations, be available to or against a Government owned corporation or a subsidiary (**Corporation A**) – provide that the right becomes a right that:
    - (i) is available to or against a relevant entity instead of Corporation A; or
    - (ii) is available to or against a relevant entity, as well as Corporation A, to the extent specified in the regulations; or
    - (iii) continues to be available to or against Corporation A as if the regulations had not been made;
  - (g) provide that a relevant entity is the successor in law of a Government owned corporation or a subsidiary to the extent specified in the regulations;
  - (h) make provision in relation to the officers, employees and other staff of a relevant entity that is affected by the regulations;
  - (i) make provision for any other matter in respect of which it is necessary or convenient for provision to be made for giving effect to the purpose mentioned in subsection (1).
- (3) The regulations may identify things individually or as classes of things.
- (4) The regulations may identify something as a thing to which a paragraph of subsection (2) applies by:
- (a) identifying the thing in the regulations; or
  - (b) providing a method for how the things to which the paragraph is to apply are to be identified, including by providing for a Minister to prepare a register of those things.
- (5) If regulations provide for a Minister to identify things for a paragraph of subsection (2) by preparing a register, the regulations may also provide that any matter which that paragraph provides may be specified or set out in the regulations may be specified or set out in the register.
- (6) For subsection (2)(b), regulations may:
- (a) specify the amount of the consideration or provide a method for how the amount of the consideration is to be determined; and

- (b) provide for the terms on which the consideration is to be provided, including by creating a debt owed by the transferee.
- (7) For subsection (2)(d), a transferable instrument ***applies to*** a person if:
  - (a) the person is a party to the instrument; or
  - (b) the instrument was made or given by, to or in favour of the person; or
  - (c) the instrument confers a right or liability on the person; or
  - (d) the instrument refers to the person; or
  - (e) the instrument has any other connection with or application in relation to the person.

**53C Internal instruments may be included as transferable instruments**

- (1) This section applies if:
  - (a) part of the business of a Government owned corporation is to be transferred under this Part; and
  - (b) an instrument (an ***internal instrument***) provides for arrangements between that part of the business and another part of the business of the Government owned corporation.
- (2) Transfer regulations may make provision for an internal instrument (including by its inclusion in a register mentioned in section 53B(4)(b)) as if it were a transferable instrument.
- (3) If the regulations do make such provision, for the purposes of this Part, the instrument is to be taken to be a contract creating rights and liabilities between the 2 parts of the business as if they were separate legal entities.

**53D Transfer regulations effective despite other Acts**

Anything purported to be effected by transfer regulations has effect despite anything in any Act in force at the time the regulations commence.



**53E Effect of transfer regulations – contravention of laws, civil wrongs, etc.**

Anything that occurs by operation of transfer regulations:

- (a) does not constitute a contravention of any law of the Territory; and
- (b) does not constitute a breach of confidence, a breach of a professional code, or other civil wrong.

**53F Effect of transfer regulations – transferable instruments**

(1) Anything that occurs by operation of transfer regulations:

- (a) does not constitute a breach of a transferable instrument; and
- (b) does not fulfil a condition in a transferable instrument that would do any of the following:
  - (i) allow a person to terminate or modify the operation or effect of the instrument;
  - (ii) allow a person to enforce an obligation or exercise a right under the instrument;
  - (iii) release a person from an obligation under the instrument;
  - (iv) require a person to perform an obligation under the instrument;
  - (v) require money to which the instrument relates to be paid before its stated maturity; and
- (c) does not cause a transferable instrument to become void or otherwise unenforceable.

(2) If, but for this section, a precondition would have to be satisfied before something that is done by transfer regulations could occur, the precondition is taken to have been satisfied unconditionally before the regulations have effect.

*Examples for subsection (2)*

- 1 *If notice would otherwise be required to be given before something could be done, the notice is taken to have been given.*
- 2 *If the approval of a person would otherwise be required before something could be done, the approval is taken to have been given unconditionally.*

(3) This section applies despite anything in an instrument.

**53G      Effect of transfer regulations – joint ownership and joint liability**

- (1) This section applies if an asset or liability that is transferred by transfer regulations is:
  - (a) an interest in property in which another person also has an interest; or
  - (b) a liability that is owed jointly with another person.
- (2) The transfer of the asset or liability by the transfer regulations does not sever any joint tenancy or joint liability or in any other way affect the interest or liability of the other person.

**Division 3      General provisions relating to transfers**

**53H      Completion of necessary transactions**

- (1) This section applies if there is any impediment to a provision of transfer regulations having effect (for example, because a matter is governed by a law of another jurisdiction).
- (2) The relevant entities affected by the transfer regulations and their shareholding and portfolio Ministers must take all practicable steps to ensure that the effect sought to be achieved by the provision is achieved.

**53J      Arrangements for custody and use of records**

The relevant entities affected by transfer regulations must make appropriate arrangements for the custody of, and access to, documents and information that relate to anything that is affected by the transfer regulations.

**53K      Notification and registration of transfer**

- (1) If transfer regulations transfer an asset, right or liability:
  - (a) the relevant entity to which it is transferred must give the relevant registrar all documents and information the registrar needs in order to register the effect of the transfer regulations; and
  - (b) if the registrar is authorised by a law of the Territory – the registrar must register the effect of the transfer regulations.

- (2) If transfer regulations affect proceedings as mentioned in section 53B(2)(e)(i) or (ii):
- (a) a relevant entity that becomes or ceases to be a party to the proceedings must give to the relevant court officer all documents and information the officer needs in order to register the effect of the transfer regulations; and
  - (b) if the court is a Territory court – the court officer must register the effect of the transfer regulations.
- (3) The documents and information must be given in a form that is acceptable to the registrar or court officer (which need not be the form in which such documents and information would ordinarily be required to be given).
- (4) In this section:

**court** includes a tribunal or other decision making body or person.

**court officer** for a court, means the registrar, clerk or other officer responsible for recording matters relating to proceedings before the court.

**register the effect of the transfer regulations** means to:

- (a) record the documents and information necessary to show the effect of the transfer regulations; and
- (b) take any other action that is appropriate in consequence of the transfer regulations having had effect.

*Example for definition register the effect of the transfer regulations, paragraph (b)*

*If land is transferred it may be appropriate for the Registrar-General to issue a new certificate as to title.*

**registrar** means a person who is authorised by a law of the Territory or another jurisdiction to register documents and information relating to, or otherwise record, transactions affecting assets, rights or liabilities.

*Examples for definition registrar*

- 1 *The Registrar-General or an equivalent officer in a State.*
- 2 *The Minister administering the Mineral Titles Act.*
- 3 *The Registrar of Personal Property Securities under the Personal Property Securities Act 2009 (Cth).*

### **53L Territory taxes**

- (1) No Territory tax is payable in relation to a tax-free action.
- (2) At the request of a person who would, but for subsection (1), be liable to pay Territory tax in relation to a tax-free action, the Treasurer may certify in writing that a specified thing is a tax-free action.
- (3) For all purposes and in all proceedings, a certificate under subsection (2) is conclusive evidence of the matters certified in it, except so far as the contrary is shown.
- (4) In this section:

***tax-free action*** means anything:

- (a) that occurs by operation of transfer regulations; or
- (b) that is done for the purpose of giving effect to the transfer of business being effected by the regulations.

***Territory tax*** means any tax (including stamp duty under the *Stamp Duty Act 1978*), duty, fee, levy or charge payable under a law of the Territory.

## **Division 4 Correction orders**

### **53M Application of Division**

This Division applies if transfer regulations for the purpose of effecting the transfer of all or part of the business of a Government owned corporation to a relevant entity have commenced.

### **53N Definitions**

In this Division:

***commenced regulations*** means the transfer regulations mentioned in section 53M.

***error***, see section 53P.

***transfer date*** means the date on which the transfer of business effected by the commenced regulations occurred.

**53P      Meaning of *error***

- (1) The commenced regulations contain an ***error*** if they:
  - (a) did not provide for something that ought to have been provided for; or
  - (b) provided for something in a way other than the way in which it ought to have been provided for; or
  - (c) provide for something that ought not to have been provided for.
- (2) In this section, a reference to something that ***ought to*** have been done, is a reference to something that was necessary or convenient to be done in order to properly effect the transfer of business mentioned in section 53M.

**53Q      Minister may make correction order**

- (1) This section applies if the Minister is satisfied that:
  - (a) the commenced regulations contain an error; and
  - (b) the error cannot adequately be rectified by the making of further transfer regulations.
- (2) The Minister may, by *Gazette* notice, make a correction order to rectify the error.
- (3) The Minister cannot make a correction order more than 6 months after the transfer date.

**53R      Correction order**

- (1) A correction order may:
  - (a) do anything that could have been done by the commenced regulations under section 53B(2)(a) to (f); and
  - (b) provide for a matter of a transitional nature that is necessary or convenient because of the making of the order.
- (2) A correction order may have retrospective operation to a day not earlier than the transfer day.
- (3) However, to the extent to which the order has retrospective operation, it does not operate to the disadvantage of a person (other than a relevant entity) by:
  - (a) decreasing the person's rights; or

- (b) imposing liabilities on the person.

### **53S Application of Part to correction order**

This Part, other than section 53B and this Division, apply in relation to a correction order as if it were transfer regulations.

## **Division 5 Miscellaneous matters**

### **53T Ministerial directions**

- (1) The shareholding Minister for a Government owned corporation may, in writing, direct the Government owned corporation to do anything that the Minister considers necessary or convenient to be done for the purpose of:
  - (a) facilitating the making of transfer regulations; or
  - (b) preparing for the transfer of business that is to be effected by the transfer regulations; or
  - (c) giving effect to the transfer of business.
- (2) The direction may require the Government owned corporation to do something that it could not otherwise lawfully do.
- (3) The Government owned corporation must comply with the notice.
- (4) The shareholding Minister must table a copy of the notice in the Legislative Assembly within 6 sitting days after the notice is given to the board.
- (5) The Minister cannot give a direction under this section more than 6 months after the transfer of business occurred.
- (6) This section does not affect the ability of a Minister to give directions under any other provision of this Act.
- (7) A reference in this section to doing something includes a reference to refraining from doing something.

### **53U Protection from liability**

- (1) A protected person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith for the purpose of:
  - (a) facilitating the making of transfer regulations; or
  - (b) preparing for the transfer of business that is to be effected by the transfer regulations; or

(c) giving effect to the transfer of business.

(2) In this section:

**officer**, for a relevant entity, means:

- (a) a director of the entity; or
- (b) the chief executive officer of the entity; or
- (c) any other person who is concerned, or takes part, in the management of the entity.

**protected person** means a relevant entity, other than the Territory, or an officer of a relevant entity.

## **Part 6                      Miscellaneous**

### **53V              Inconsistency with constituting Act**

- (1) If there is an inconsistency between this Act and the constituting Act for a Government owned corporation, this Act prevails to the extent of the inconsistency.
- (2) If there is an inconsistency between a ministerial direction given to a Government owned corporation under this Act and a ministerial direction given to the Government owned corporation under its constituting Act, the direction given under this Act prevails to the extent of the inconsistency.

### **54                      Service of notices**

A notice, summons, writ or other proceeding required to be served on a Government owned corporation may be served by:

- (a) leaving the document at the head office of the corporation, or, if it is a notice, leaving the document at, or posting the notice to, an office of the corporation; or
- (b) delivering a copy of the document personally to the chief executive officer or a director of the corporation who resides in the Territory.

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**55 Transitional matters relating to Crown immunity**

(1) If a contract is entered into by a statutory corporation, or a subsidiary of a statutory corporation, before the corporation becomes a Government owned corporation:

- (a) the Government owned corporation and its subsidiaries are within the shield of the Crown and represent the Territory; and
- (b) the Territory is liable for the debts, liabilities and obligations of the corporation and its subsidiaries,

in relation to:

- (c) the contract or a variation of the contract after the corporation became a Government owned corporation; and
- (d) any act performed, or not performed, under the contract or the variation, or to give effect to the contract or the variation, after the corporation became a Government owned corporation,

to the same extent as would be the case had the Government owned corporation not become a Government owned corporation.

(2) If legal proceedings are at any time instituted by or against:

- (a) a Government owned corporation or a subsidiary of a Government owned corporation; or
- (b) a statutory corporation, or a subsidiary of a statutory corporation, that becomes a Government owned corporation before the conclusion of the proceedings,

in relation to an act performed or not performed by the corporation or subsidiary or any other person before the corporation became a Government owned corporation then:

- (c) the Government owned corporation and the subsidiary are within the shield of the Crown and represent the Territory in relation to the proceedings; and
- (d) the Territory is liable for the debts, liabilities or obligations of the corporation and subsidiary in relation to the proceedings,

to the same extent as would be the case had the Government owned corporation not become a Government owned corporation.



**56 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Part 7 Transitional matters for Power and Water Corporation Legislation Amendment Act 2014****57 Continuation of CEOs appointed by Administrator**

- (1) An existing CEO continues to hold office as if he or she had been appointed by the board of the Government owned corporation.
- (2) Subject to section 16, the CEO holds office:
  - (a) for the remainder of his or her term of appointment; and
  - (b) on the same terms and conditions as applied immediately before commencement.
- (3) In this section:

***commencement*** means commencement of section 10 of the *Power and Water Corporation Legislation Amendment Act 2014*.

***existing CEO*** means a person who was the chief executive officer of a Government owned corporation immediately before commencement.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<b>Gaz</b> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

### 2 LIST OF LEGISLATION

***Government Owned Corporations Act 2001 (Act No. 69, 2001)***

Assent date	21 December 2001
Commenced	21 December 2001

***Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006 (Act No. 7, 2006)***

Assent date	26 April 2006
Commenced	26 April 2006

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

***Penalties Amendment (Justice and Treasury Legislation) (Act No. 38, 2010)***

Assent date	18 November 2010
Commenced	1 February 2011 (Gaz S6, 1 February 2011)

***Power and Water Corporation Legislation Amendment Act 2014 (Act No. 13, 2014)***

Assent date	13 May 2014
Commenced	29 May 2014 (Gaz S29, 29 May 2014, p 2)

***Local Government Amendment Act 2014 (Act No. 19, 2014)***

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 6, 20, 24, 28, 34, 36, 45, and 53L.

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## 4 LIST OF AMENDMENTS

s 3	amd No. 13, 2014, s 4
ss 5 – 6	amd No. 13, 2014, s 23
s 7	amd No. 13, 2014, s 5
s 7A	ins No. 13, 2014, s 6
s 8	amd No. 13, 2014, s 7
s 9	amd No. 13, 2014, s 23
s 10	sub No. 13, 2014, s 8
ss 11 – 12	amd No. 13, 2014, s 23
s 13	amd No. 13, 2014, s 9
ss 14 – 15	amd No. 13, 2014, s 23
s 16	amd No. 13, 2014, s 10
s 17	amd No. 13, 2014, s 11
ss 18 – 19	amd No. 13, 2014, s 23
s 19A	ins No. 13, 2014, s 12
s 20	amd No. 13, 2014, s 23
s 22	rep No. 13, 2014, s 13
s 24	amd No. 7, 2006, s 30; No. 13, 2014, s 23
s 25	amd No. 13, 2014, s 23
s 26	amd No. 38, 2010, s 4
s 27	amd No. 13, 2014, s 23
s 28	amd No. 13, 2014, s 14
s 29	amd No. 13, 2014, s 15
s 30	amd No. 13, 2014, s 16
s 31	amd No. 4, 2007, s 7; No. 13, 2014, s 23
s 32	amd No. 13, 2014, s 23
s 33	amd No. 4, 2007, s 7; No. 19, 2014, s 26
s 35	amd No. 4, 2007, s 7; No. 13, 2014, s 23
s 36	amd No. 13, 2014, s 17
ss 37 – 42	amd No. 13, 2014, s 23
ss 44 – 46	amd No. 13, 2014, s 23
s 47	amd No. 13, 2014, s 18
ss 50 – 51	amd No. 13, 2014, s 23
s 51A	ins No. 13, 2014, s 19
s 52	amd No. 13, 2014, s 23
pt 5A hdg	ins No. 13, 2014, s 20
pt 5A	
div 1 hdg	ins No. 13, 2014, s 20
s 53A	ins No. 13, 2014, s 20
pt 5A	
div 2 hdg	ins No. 13, 2014, s 20
ss 53B – 53G	ins No. 13, 2014, s 20
pt 5A	
div 3 hdg	ins No. 13, 2014, s 20
ss 53H – 53L	ins No. 13, 2014, s 20
pt 5A	
div 4 hdg	ins No. 13, 2014, s 20
ss 53M – 53S	ins No. 13, 2014, s 20
pt 5A	
div 5 hdg	ins No. 13, 2014, s 20
ss 53T – 53U	ins No. 13, 2014, s 20
s 53V	ins No. 13, 2014, s 21
s 54	amd No. 13, 2014, s 23
pt 7 hdg	ins No. 13, 2014, s 22
s 57	ins No. 13, 2014, s 22