

Version No. 030
State Owned Enterprises Act 1992

Act No. 90/1992

Version incorporating amendments as at 14 May 1998

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	1
3. Definitions	1
4. Subsidiary	5
5. Act to prevail	6
6. Act to bind Crown	6
PART 2—STATUTORY CORPORATIONS: REORGANISATION AND ESTABLISHMENT OF STATE BODIES	7
Division 1—Reorganising bodies	7
7. Declaration of statutory corporation as reorganising body	7
8. Boards of reorganising body	7
8A. Functions may be altered or varied	8
9. Reorganisation directed by Treasurer	8
10. Determination of initial capital	9
11. Capital	9
12. Repayment of capital	10
13. Dividends	10
13A. Reports	10
Division 2—State Bodies	11
14. Establishment of State body	11
14A. Borrowing and investment powers	12
15. Shares	12
16. Variation of Order in Council	12
16A. Repayment of capital	13
16B. Dividends	13
16C. Directions	13

<i>Section</i>	<i>Page</i>
PART 3—STATE BUSINESS CORPORATIONS	14
17. Declaration of State business corporation	14
18. Objective	14
19. Functions	14
20. Powers	15
21. Functions and powers may be carried on outside Victoria	15
22. Delegation	15
23. Board of directors	15
24. Constitution of board	16
25. Appointment of directors	16
26. Terms and conditions of appointment	16
27. Acting chairman	17
28. Acting deputy chairman	17
29. Acting general director	18
30. Vacancies, resignations, removal from office	18
31. Validity of decisions	19
32. Proceedings of a board	20
33. Resolutions without meetings	20
34. Delegation by board	21
35. Disclosure of interests	21
36. Duties of directors	22
37. Minister may bring proceedings	23
38. State business corporation not to make loans to directors	23
39. Indemnity	24
40. Chief executive officer and deputy	24
41. Corporate plan	25
42. Statement of corporate intent: contents	26
43. State business corporation to act in accordance with corporate plan	27
44. Nothing void merely because of non-compliance	27
45. Non-commercial functions	28
46. Determination of initial capital	28
47. Capital	29
48. Repayment of capital	30
49. Dividends	30
50. <i>Repealed</i>	30
51. Continuing guarantees	30
52. Appropriation for guarantee etc.	31
53. Reports to Treasurer	31
54. Board to notify relevant Minister and Treasurer of significant affecting events etc.	31
55. Half-yearly reports	31
56–58. <i>Repealed</i>	32
PART 4—CONVERSION TO STATE OWNED COMPANY	33

<i>Section</i>	<i>Page</i>
59. Declaration of statutory corporation as converting body	33
60. Reservation of name under Corporations Law	33
61. Memorandum and articles	33
62. Capital structure of converting body	33
63. Issue of shares in converting body	34
64. Application for registration as a company	35
65. Status and continuity	35
PART 5—STATE OWNED COMPANIES	37
Division 1—Declaration	37
66. Declaration by Governor in Council	37
Division 2—Formation of company	37
67. Treasurer may form or participate in formation of company	37
68. Transfer of assets and liabilities	38
Division 3—Operation of State owned companies	38
69. Principal objective	38
70. Status	38
71. Memorandum and articles	39
72. Non-commercial activities	39
73. Audit by Auditor-General	40
74. Further accounts and reports	40
75. Treasurer to present accounts and reports to Parliament	41
PART 6—PRESCRIBED BODIES—SPECIAL INVESTIGATIONS	42
76. Definition	42
77. Appointment of special investigators	42
78. Powers	43
79. Copies of documents	43
80. Immunity	43
81. Publication	43
82. Reports	44
83. Expenses of investigation	44
84. Offences	45
85. Power to refer matters to police etc.	45
PART 7—GENERAL	46
86. Trade Practices Act 1974 of the Commonwealth	46
87. Subsidiaries	46
87A. <i>Repealed</i>	46
88. Tax equivalent	46
88AA. Application of section 88 to certain bodies	49
88A. Application of tax equivalents to other bodies	50

<i>Section</i>	<i>Page</i>
88B. State owned enterprises to make certain payments	50
89. Non-application of State taxation	52
90. Application of certain other Acts	53
91. Supreme Court—limitation of jurisdiction	54
92. Regulations	54
<hr/>	
SCHEDULE 1—Provisions to be included in memorandum and articles of association of state owned companies	55
<hr/> <hr/>	
NOTES	57
1. General Information	57
2. Table of Amendments	58
3. Explanatory Details	60

Version No. 030
State Owned Enterprises Act 1992

Act No. 90/1992

Version incorporating amendments as at 14 May 1998

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to provide for the reorganisation of certain statutory corporations;
- (b) to provide that certain businesses conducted by the State be operated by—
 - (i) State business corporations; or
 - (ii) State owned companies;
- (c) to regulate the constitution and relationship with the Government of State owned enterprises.

2. *Commencement*

- (1) Parts 1 and 6 come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

3. *Definitions*

In this Act—

"ASC" means Australian Securities Commission;

"articles" means articles of association and, in relation to the Gas and Fuel Corporation of Victoria, includes the Articles of Association

contained in the Second Schedule to the **Gas and Fuel Corporation Act 1958**;

"board", in relation to a statutory corporation or company, means the board of directors or governing body, by whatever name called, of the statutory corporation or company;

"company" has the same meaning as in the Corporations Law of Victoria;

"constituting Act"—

- (a) in relation to a statutory corporation, means the Act under which the statutory corporation is incorporated;
- (b) in relation to a State body means the Order in Council under which it was established;

"conversion" means the conversion of a converting body into a company on registration under section 137 of the Corporations Law of Victoria;

"converting body" means a statutory corporation declared by Order in Council under section 59 to be a converting body;

"declared subsidiary" means a subsidiary in respect of which a declaration under section 87 is in force;

"director", in relation to a State business corporation, means chairman, deputy chairman, preference director or general director;

"existing capital", in relation to a converting body, means an amount equal to the excess of assets over liabilities of the converting body or, if there is no such excess, \$5;

"financial accommodation" means a financial benefit or assistance to obtain a financial benefit arising from or as a result of—

- (a) a loan;
- (b) issuing, endorsing or otherwise dealing in promissory notes;
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange;
- (d) issuing, purchasing or otherwise dealing in securities;
- (e) granting or taking a lease of any real or personal property for financing but not for operating purposes;
- (f) any other arrangement that the Governor in Council on the recommendation of the Treasurer approves;

"general director", in relation to a State business corporation, means a director, other than the chairman or deputy chairman or a preference director;

"lease" means—

- (a) any lease, licence, charter or hiring arrangement of any real or personal property; or
- (b) any arrangement under which a right to use, operate, manage or provide services in respect of any real or personal property is granted by the owner to another person;

"memorandum" means memorandum of association;

"preference director" means a director of the Gas and Fuel Corporation of Victoria appointed or elected by or on behalf of preference shareholders of the Corporation under its articles;

"relevant Minister"—

- (a) in relation to a statutory corporation, means the Minister administering the constituting Act of the corporation; and
- (b) in relation to a State owned company, the Minister specified in the company's articles; and
- (c) in relation to a State body, means the Minister designated as the relevant Minister in the Order establishing the State body or, if no Minister is so designated, the Treasurer;

S. 3 def. of "relevant Minister" amended by No. 56/1995 s. 57.

"reorganising body" means a statutory corporation declared by Order in Council under section 7 to be a reorganising body;

"security" includes inscribed stock and debenture, bond, debenture stock, notes or any other document creating, evidencing or acknowledging indebtedness in respect of financial accommodation whether constituting a charge on property or not;

"State body" means a body corporate established under section 14;

"State business corporation" means a statutory corporation declared by Order in Council under section 17 to be a State business corporation;

"State owned company" means a company declared by Order in Council under section 66 to be a State owned company;

S. 3 def. of
"statutory
corporation"
amended by
No. 92/1993
s. 4(a).

"State owned enterprise" means—

- (a) State business corporation;
- (b) State owned company;
- (c) State body;

"statutory corporation" means—

- (a) a body corporate incorporated under an Act; or
- (b) a State body—

and includes a reorganising body but does not include a body corporate incorporated, or taken to be incorporated, under the Corporations Law of Victoria;

"subsidiary" includes a body declared by this Act to be a subsidiary;

"wholly owned subsidiary" in relation to a reorganising body, means a subsidiary that is wholly owned by the body.

4. *Subsidiary*

S. 4(1)
amended by
No. 92/1993
s. 4(b).

- (1) For the purposes of this Act, the question whether a body corporate is a subsidiary (other than a declared subsidiary) of a State business corporation or a reorganising body shall be determined in the same manner as the question would be determined under the Corporations Law of Victoria if the State business corporation or a reorganising body and the body corporate were corporations within the meaning of that Law.
 - (2) The question whether a body corporate is a subsidiary of a State owned company shall be determined in accordance with the Corporations Law of Victoria.
-

State Owned Enterprises Act 1992

Act No. 90/1992

s. 5

5. Act to prevail

If a provision of this Act or of an Order under this Act is inconsistent with a provision of the constituting Act of a statutory corporation or State body, or of any other Act conferring functions or powers on a statutory corporation, the provision of this Act or of the Order prevails.

**S. 5
amended by
No. 92/1993
s. 5(a)(b).**

6. Act to bind Crown

This Act binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

**PART 2—STATUTORY CORPORATIONS:
REORGANISATION AND ESTABLISHMENT OF STATE
BODIES**

Division 1—Reorganising bodies

7. *Declaration of statutory corporation as reorganising body*

- (1) The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation to be a reorganising body.
- (2) A declaration under this section may be made for the purpose of the statutory corporation becoming a State business corporation or a State owned company, or for any other reason.

8. *Boards of reorganising body*

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that the constitution of the board of a reorganising body is changed as specified in the Order.
 - (2) The Governor in Council may in the Order do any one or more of the following:
 - (a) Change the number of members of the board;
 - (b) Determine the qualifications of persons for, or terms and conditions of, appointment to the board;
 - (c) Determine the manner of appointment of the chairman, and deputy chairman;
 - (d) Make such other changes to the constitution of the board as the Governor in Council determines.
 - (3) The Governor in Council may appoint persons as members of the board of a reorganising body,
-

whether or not the board has been reconstituted under this section.

- (4) The Governor in Council may remove members of the board of a reorganising body, whether or not the board has been reconstituted under this section.
- (5) A member of a board of a reorganising body removed from office under this section is not entitled to any remuneration or compensation for loss of office.

8A. *Functions may be altered or varied*

The Governor in Council, on the recommendation of the Treasurer after consultation with the relevant Minister, may, by Order published in the Government Gazette, alter or vary the functions of a reorganising body.

S. 8A
inserted by
No. 92/1993
s. 6.

9. *Reorganisation directed by Treasurer*

- (1) The Treasurer, after consultation with the relevant Minister, may direct a reorganising body to do any one or more of the following:
 - (a) To form or acquire a company that is a wholly owned subsidiary;
 - (b) To transfer to a wholly owned subsidiary or State body specified assets, liabilities or undertakings, in exchange for the issue of shares to the reorganising body, or otherwise;
 - (c) Transfer to a State owned enterprise or to another statutory corporation or to the State certain assets, liabilities or undertakings;
 - (d) To guarantee a particular liability, or the liabilities generally, of a wholly owned subsidiary or a State body;

- (e) To sell assets, including its shares in a wholly owned subsidiary;
 - (f) To reorganise its affairs in anticipation of the reorganising body becoming a State business corporation or State owned company.
- (2) Despite anything to the contrary in its constituting Act or in any other Act conferring functions or powers on it, a reorganising body may, under the authority of this Act, do all things necessary to comply with, and must comply with, a direction under sub-section (1).

10. *Determination of initial capital*

- (1) The Treasurer, after a statutory corporation is declared to be a reorganising body and after consultation with the board, may determine the amount of initial capital of the reorganising body for the purposes of this Act.
- (2) In making the determination, the Treasurer shall have regard to any relevant advice that the board has given to the Treasurer.
- (3) The determination shall be made in writing.
- (4) The value of the capital is the value specified in the determination or, if the Treasurer and the board agree that the value so specified does not correctly represent the value, the value agreed by the Treasurer and the board.

11. *Capital*

- (1) The capital of each reorganising body is equal to the sum of—
 - (a) the amount of the body's initial capital under this Act in accordance with section 10(1);
 - (b) any part of the body's liabilities that is converted into capital at the direction of the Treasurer;
-

- (c) any amounts paid to the body out of money appropriated by the Parliament for the purpose of providing capital; and
- (d) any part of the body's reserves that is converted into capital at the direction of the Treasurer after consultation with the board—

less any amounts of capital repaid under section 12.

- (2) Interest is not payable to the State on a reorganising body's capital.

12. *Repayment of capital*

- (1) The capital of a reorganising body is repayable to the State at such times, and in such amounts, as the Treasurer, after consultation with the relevant Minister directs in writing after consultation with the board.
- (2) In giving a direction under this section, the Treasurer shall have regard to any advice that the board has given to the Treasurer in relation to the reorganising body's affairs.

S. 12(1)
amended by
No. 92/1993
s. 7.

13. *Dividends*

Each reorganising body must pay to the State such dividend, at such time and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister.

13A. *Reports*

The Treasurer may require a reorganising body to prepare and deliver, at a time and in a manner specified by the Treasurer—

- (a) such financial information as the Treasurer requires;
- (b) a business plan in a form specified by the Treasurer;

S. 13A
inserted by
No. 56/1995
s. 58.

- (c) an annual report in a form specified by the Treasurer on the operations of the reorganising body;
- (d) a report on such matters as are specified by the Treasurer.

Division 2—State Bodies

14. *Establishment of State body*

- (1) The Governor in Council, by Order published in the Government Gazette, may establish, for the purposes of this Act, a State body by a name specified in the Order.
- (2) The Order—
 - (a) must state the particular purpose of establishing the State body; and
 - (b) must state the functions and powers of the State body;
 - (c) if the State body is to be a subsidiary of a statutory corporation, must so state and name the particular statutory corporation;
 - (d) if the State body is to have a share capital, must state particulars of the share capital;
 - (e) must contain particulars of the constitution of the board of the State body;
- (ea) may include provision for the appointment of directors by the Governor in Council;
- (eb) may designate a Minister as the relevant Minister for the purposes of this Act in relation to the State body;

S. 14(2)(e)
 amended by
 No. 92/1993
 s. 8(1)(a).

S. 14(2)(ea)
 inserted by
 No. 92/1993
 s. 8(1)(b).

S. 14(2)(eb)
 inserted by
 No. 56/1995
 s. 59.

-
- (f) may include such other particulars relating to the establishing or operation of the State body as the Governor in Council determines.
- (3) A State body established under this section—
- (a) is a body corporate with perpetual succession;
 - (b) shall have an official seal;
 - (c) may sue and be sued;
 - (d) may acquire, hold and dispose of real and personal property;
 - (e) may do and suffer all things that a body corporate may by law do and suffer.
- (4) All courts must take judicial notice of the seal of a State body affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (5) The official seal must be kept in such custody as the State body directs and must not be used except as authorised by the State body.

14A. *Borrowing and investment powers*

A State body has such powers under the **Borrowing and Investment Powers Act 1987** as are conferred on it by Order under section 17B of that Act.

S. 14A
inserted by
No. 45/1997
s. 35.

15. *Shares*

Shares in a State body must not be issued or dealt with except in accordance with an Order of the Governor in Council under this Division.

16. *Variation of Order in Council*

The Governor in Council by Order published in the Government Gazette may alter or vary an Order made under this Part and make changes to

S. 16
amended by
No. 92/1993
s. 8(2).

State Owned Enterprises Act 1992
Act No. 90/1992

the constitution, functions and powers and other matters affecting a State body (whether or not it has been declared under Part 3 to be a State business corporation).

S. 16A
inserted by
No. 92/1993
s. 9.

16A. *Repayment of capital*

- (1) The capital of a State body is repayable to the State at such times, and in such amounts, as the Treasurer directs in writing after consultation with the relevant Minister and the board of the State body.
- (2) In giving a direction under this section, the Treasurer shall have regard to any advice that the board has given to the Treasurer in relation to the State body's affairs.

S. 16B
inserted by
No. 92/1993
s. 9.

16B. *Dividends*

Each State body must pay to the State such dividend, at such times and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister.

S. 16C
inserted by
No. 92/1993
s. 9.

16C. *Directions*

After consultation between the Treasurer and the relevant Minister, the Treasurer or relevant Minister may, from time to time, by written notice to the board, give such directions to the board as the Treasurer or relevant Minister thinks fit.

PART 3—STATE BUSINESS CORPORATIONS

17. *Declaration of State business corporation*

The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation to be a State business corporation.

18. *Objective*

The principal objective of each State business corporation is to perform its functions for the public benefit by—

- (a) operating its business or pursuing its undertaking as efficiently as possible consistent with prudent commercial practice; and
- (b) maximising its contribution to the economy and well being of the State.

19. *Functions*

(1) The functions of a State business corporation are—

- (a) subject to this Act, the functions conferred on it by or under its constituting Act or an Act other than this Act; and
- (b) the functions conferred on it by or under this Act.

S. 19
amended by
No. 92/1993
s. 10(1)(a)(b).

S. 19(1)(a)
amended by
No. 92/1993
s. 10(1)(b).

S. 19(1)(b)
amended by
No. 92/1993
s. 10(1)(b).

(2) The Governor in Council, on the recommendation of the Treasurer after consultation with the relevant Minister, by Order published in the Government Gazette, may alter or vary the functions of a State business corporation.

S. 19(2)
inserted by
No. 92/1993
s. 10(2).

S. 20
amended by
No. 92/1993
s. 11.

20. Powers

A State business corporation has power to do all things necessary or convenient to be done for, or in connection with, or incidental to, the performance of its functions.

21. Functions and powers may be carried on outside Victoria

A State business corporation may carry on its functions and exercise powers within or outside Victoria and outside Australia.

22. Delegation

A State business corporation may, by instrument under its common or official seal, delegate to—

S. 22(a)
amended by
No. 92/1993
s. 12.

- (a) the board or 2 or more directors; or

- (b) an officer of the corporation by name or the holder of an office within the corporation; or
- (c) a committee established by the corporation;
or
- (d) with the consent of the relevant Minister, any other person—
any power of the corporation, other than—
 - (e) this power of delegation; and
 - (f) any power to make by-laws; and
 - (g) any power to set a tariff or make or levy rates; and
 - (h) any other power that is prescribed for the purposes of this section.

23. Board of directors

There shall be a board of directors of each State business corporation consisting of not less than 4, and not more than 9, directors appointed in accordance with this Part.

24. *Constitution of board*

- (1) A board of directors of a State business corporation shall consist of—
 - (a) a chairman;
 - (b) a deputy chairman;
 - (c) subject to section 23, such number of general directors as the relevant Minister and the Treasurer determines.
- (2) If the Gas and Fuel Corporation of Victoria is a State business corporation, the relevant Minister and the Treasurer must determine that there is a number of preference directors that exceeds by one the number of general directors.

25. *Appointment of directors*

- (1) The directors of a State business corporation, (other than preference directors), shall be appointed by the Governor in Council having regard to the expertise necessary for the corporation to achieve its objectives.
- (2) If Gas and Fuel Corporation of Victoria is a State business corporation, the preference directors shall be elected or appointed in accordance with the articles of the Corporation.

26. *Terms and conditions of appointment*

- (1) A director of a State business corporation, other than a preference director, shall be appointed for such term, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
-

-
- (2) A director of a State business corporation, other than a preference director, holds office, subject to this Act, on such terms and conditions as are determined by the relevant Minister and the Treasurer.
- (3) If the Gas and Fuel Corporation of Victoria is a State business corporation, each preference director holds office in accordance with the articles of the Corporation.

S. 26(4)
repealed by
No. 42/1995
s. 224(Sch. 2
item 37).

* * * * *

27. Acting chairman

- (1) When—
- (a) the office of chairman is vacant; or
 - (b) the chairman is absent from Victoria or is, for any reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office—
- the deputy chairman of the State business corporation must act as chairman.
- (2) While the deputy chairman is acting as chairman, the deputy chairman has and may exercise all the powers, and must perform all the duties, of the chairman.

28. Acting deputy chairman

The relevant Minister may appoint a director of a State business corporation to act as deputy chairman—

- (a) during a vacancy in the office of deputy chairman; or

-
- (b) during any period, or during all periods, when the deputy chairman is acting as chairman or is unable, for any reason, to attend meetings of the board.

29. *Acting general director*

The relevant Minister may appoint a person to act as a general director of a State business corporation—

- (a) during a vacancy in the office of a general director; or
- (b) during any period, or during all periods, when a general director is acting as deputy chairman or is unable, for any reason, to attend meetings of the board.

30. *Vacancies, resignations, removal from office*

- (1) The office of a director of a State business corporation becomes vacant if the director—
 - (a) without the board's approval, fails to attend 3 consecutive meetings of the board; or
 - (b) attains the age of 72; or
 - (c) 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
 - (d) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.
 - (2) A director appointed under section 25 may resign by writing delivered to the relevant Minister.
 - (3) The Governor in Council may remove a director, or all directors, from office, other than a preference director.
-

- (4) If the Gas and Fuel Corporation of Victoria is a State business corporation, a preference director may be removed from office in accordance with the Corporation's articles.
- (5) If a director of a State business corporation—
- (a) is convicted of an offence relating to his or her duties as a director; or
 - (b) fails, without reasonable excuse, to comply with section 35—
- the director must be removed from office by—
- (c) in the case of a director, other than a preference director, by the Governor in Council;
 - (d) in the case of a preference director, the preference shareholders of the Gas and Fuel Corporation of Victoria in accordance with the Corporation's articles.

31. *Validity of decisions*

- (1) An act or decision of a board of a State business corporation is not invalid merely because of—
- (a) a defect or irregularity in, or in connection with, the appointment of a director; or
 - (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.
- (2) Anything done by or in relation to a person purporting to act as chairman or as deputy chairman or as a director is not invalid merely because—
- (a) the occasion for the appointment has not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
-

-
- (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

32. *Proceedings of a board*

- (1) Subject to sub-section (2), meetings of a board of a State business corporation shall be held at such times and places as the board determines.
- (2) The chairman may at any time convene a meeting but must do so when requested by a director.
- (3) The chairman, or in his or her absence, the deputy chairman, or in the absence of both the chairman and the deputy chairman, a director appointed by the board, shall preside at a meeting of the board.
- (4) A majority of the directors for the time being constitutes a quorum of a board.
- (5) A question arising at a meeting shall be determined by a majority of votes of directors present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.
- (6) A board must ensure that minutes are kept of each of its meetings.
- (7) Subject to this Act, a board may regulate its own proceedings.

33. *Resolutions without meetings*

- (1) If the directors of a State business corporation for the time being (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that those directors are in favour of a resolution in terms set out in the document, a resolution in those terms shall 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 director to sign signs the document.

- (2) If a resolution is, under sub-section (1), taken to have been passed at a meeting of the board, each director must be advised as soon as practicable and given a copy of the terms of the resolution.
- (3) For the purposes of sub-section (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, shall be taken to constitute one document.

34. *Delegation by board*

The board of a State business corporation may, in writing, delegate to 2 or more directors any of the Board's powers under this Act or the corporation's constituting Act, other than this power of delegation.

35. *Disclosure of interests*

- (1) If—
 - (a) a director of a State business corporation 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 the consideration of the matter—the director, as soon as practicable after the relevant facts come to the director's knowledge, must disclose the nature of the interest at a meeting of the board.
 - (2) A disclosure under sub-section (1) must be recorded in the minutes of the meeting and, unless the relevant Minister or the board otherwise determines, the director—
-

-
- (a) must not be present during any deliberation of the board in relation to the matter; and
 - (b) must not take part in any decision of the board in relation to the matter.
- (3) For the purpose of the making of a determination by the board under sub-section (2) in relation to a director who has made a disclosure under sub-section (1), a director who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—
- (a) must not be present during any deliberation of the board for the purpose of making the determination; and
 - (b) must not take part in the making by the board of the determination.
- (4) Sub-section (1) does not apply in relation to a matter relating to the supply of goods or services to the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

S. 35(4)
amended by
No. 92/1993
s. 13.

36. *Duties of directors*

- (1) A director of a State business corporation must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A director must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions, whether within or outside the State.
- (3) A director, or former director, must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or

for any other person or to cause detriment to the State business corporation.

- (4) A director must not, whether within or outside the State, make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the State business corporation.
- (5) This section has effect in addition to, and not in derogation of, any Act or law relating to the criminal or civil liability of a member of the governing body of a corporation and does not prevent the institution of any criminal or civil proceedings in respect of such a liability.

37. *Minister may bring proceedings*

If a person contravenes section 36 in relation to a State business corporation, the relevant Minister, in the name of the corporation, may recover from the person as a debt due to the corporation by action in a court of competent jurisdiction either or both of the following:

- (a) If that person, or any other person, made a profit as a result of the contravention, an amount equal to that profit;
- (b) If the corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

38. *State business corporation not to make loans to directors*

- (1) The powers of a State business corporation do not include a power, whether directly or indirectly—
 - (a) to make a loan to a director of the State business corporation, a spouse of such a director, or a relative (as defined in the
-

State Owned Enterprises Act 1992

Act No. 90/1992

Corporations Law) of such a director or spouse; or

(b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a director, spouse or relative referred to in paragraph (a).

(2) Nothing in sub-section (1) prohibits a State business corporation entering into an agreement or arrangement with a person referred to in sub-section (1) if similar agreements or arrangements are entered into by the State business corporation with members of the public on the same terms and conditions.

39. *Indemnity*

The powers of a State business corporation do not include a power to exempt, whether directly or indirectly, a director of the corporation from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director of the corporation against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to the corporation.

S. 39
amended by
No. 56/1995
s. 60(a)(b).

40. *Chief executive officer and deputy*

(1) A chief executive officer, or deputy chief executive officer, of a State business corporation holds office, subject to this Act, on a full-time basis and on such other terms and conditions as are approved by the relevant Minister on the recommendation of the board and specified in the instrument of appointment.

(2) The board of a State business corporation may remove the chief executive officer, or deputy chief executive officer, from office.

- (3) A director of a State business corporation is not eligible to be appointed as, or to act as, chief executive officer or deputy chief executive officer of the corporation, except with the approval of the relevant Minister.

41. Corporate plan

- (1) The board of a State business corporation must prepare a corporate plan each year.
- (2) The board must give a copy of the proposed plan to the relevant Minister and the Treasurer on or before 31 May in each year.
- (3) The proposed corporate plan must be in or to the effect of a form approved by the relevant Minister and the Treasurer and must include—
- (a) a statement of corporate intent in accordance with section 42;
 - (b) a business plan containing such information as the Treasurer or the relevant Minister requires;
 - (c) financial statements containing such information as the Treasurer requires.
- (4) The board must consider any comments on the proposed plan that are made to it by the Treasurer or the relevant Minister within 2 months after the plan was submitted to the Treasurer and relevant Minister.
- (5) The board must consult in good faith with the Treasurer and the relevant Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Treasurer, the relevant Minister and the board and must deliver the completed plan to the

S. 41(3)(b)
substituted by
No. 56/1995
s. 61.

S. 41(3)(c)
substituted by
No. 56/1995
s. 61.

Treasurer and relevant Minister within 2 months after the commencement of the financial year.

- (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the board, the Treasurer and the relevant Minister.
- (7) The plan may be modified at any time by the board with the agreement of the Treasurer and the relevant Minister.
- (8) If the board, by written notice to the Treasurer and relevant Minister, proposes a modification of the plan, the board may, within 14 days, make the modification unless the Treasurer or relevant Minister, by written notice to the board, directs the board not to make it.
- (9) The Treasurer or relevant Minister may, from time to time, by written notice to the board, direct the board to include in, or omit from, a statement of corporate intent, a business plan or a prescribed financial statement, any specified matters.
- (10) Before giving the direction under this section, the Treasurer and relevant Minister must consult with the board as to the matters to be referred to in the notice.
- (11) The State business corporation must comply with a direction under this section.
- (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for the State business corporation are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

42. *Statement of corporate intent: contents*

Each statement of corporate intent must specify for a State business corporation and its

subsidiaries, in respect of the financial year to which it relates and each of the 2 following financial years, the following information:

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

43. *State business corporation to act in accordance with corporate plan*

A State business corporation must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the relevant Minister and the Treasurer to do otherwise.

44. *Nothing void merely because of non-compliance*

Nothing done by a State business corporation is void or unenforceable merely because the corporation has failed to comply with this Part.

45. *Non-commercial functions*

- (1) The relevant Minister, with the approval of the Treasurer, may in writing direct the board of a State business corporation—
 - (a) to perform certain functions that the relevant Minister considers to be in the public interest but that may cause the State business corporation to suffer financial detriment; or
 - (b) to cease to perform functions of a kind referred to in paragraph (a); or
 - (c) to cease to perform certain functions that the relevant Minister considers not to be in the public interest.
- (2) The board must comply with a direction given under sub-section (1).
- (3) If a State business corporation satisfies the relevant Minister that it has suffered financial detriment as a result of complying with a direction given by the Minister under sub-section (1), the corporation, if the Minister so directs, may be reimbursed by the State the amount that the Minister determines, with the approval of the Minister administering Part 2 of the **Financial Management Act 1994** and after consultation with the board of the corporation, to be the amount of the financial detriment.
- (4) The reference in this section to suffering financial detriment includes a reference to incurring net costs that are greater than would have been incurred if the direction were not complied with.

S. 45(1)(a)
amended by
No. 92/1993
s. 14.

S. 45(3)
amended by
No. 18/1994
s. 66(Sch. 2
item 23.1).

46. *Determination of initial capital*

- (1) The Treasurer shall, as soon as practicable after a statutory corporation is declared to be a State business corporation and after consultation with the board, determine the amount of initial capital of the corporation for the purposes of this Act.
- (2) In making the determination, the Treasurer shall have regard to any relevant advice that the board has given to the Treasurer.
- (3) The determination shall be made in writing.
- (4) The value of the capital is the value specified in the determination or, if the Treasurer and the board agree that the value so specified does not correctly represent the value, the value agreed by the Treasurer and the board.

47. Capital

- (1) The capital of each State business corporation is equal to the sum of—
 - (a) the amount of the corporation's initial capital under this Act (in accordance with section 46(1));
 - (b) any part of the corporation's liabilities that is converted into capital at the direction of the Treasurer;
 - (c) any amounts paid to the corporation out of money appropriated by the Parliament for the purpose of providing capital; and
 - (d) any part of the corporation's reserves that is converted into capital at the direction of the Treasurer after consultation with the board—less any amounts of capital repaid under section 48.
 - (2) Interest is not payable to the State on a State business corporation's capital.
-

48. *Repayment of capital*

- (1) The capital of a State business corporation is repayable to the State at such times, and in such amounts, as the Treasurer, after consultation with the relevant Minister, directs in writing after consultation with the board.
- (2) In giving such a direction, the Treasurer shall have regard to any advice that the board has given to the Treasurer in relation to the State business corporation's financial affairs.

S. 48(1)
amended by
No. 92/1993
s. 15(a).

49. *Dividends*

Each State business corporation must pay to the State such dividend, at such times and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister.

S. 49
amended by
No. 92/1993
s. 15(b).

* * * * *

S. 50
repealed by
No. 92/1993
s. 15(c).

51. *Continuing guarantees*

- (1) Despite a statutory corporation being declared to be a State business corporation, a guarantee or indemnity given by the Treasurer or the Government of Victoria by or under an Act or otherwise before the date of the declaration in respect of the performance, satisfaction or discharge of obligations or liabilities of the statutory corporation under an instrument issued or entered into by the corporation before the date of that declaration, continues as a like guarantee or indemnity.
- (2) A guarantee that continues by reason of this section may be enforced under Part II of the **Crown Proceedings Act 1958**.

52. *Appropriation for guarantee etc.*

- (1) Any sums required by the Treasurer in fulfilling any liability arising under a guarantee under this Part shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.
- (2) Any sums received or recovered by the Treasurer from a State business corporation or otherwise in respect of sums paid by the Treasurer under a guarantee under this Part shall be paid into the Consolidated Fund.

53. *Reports to Treasurer*

The Treasurer may, in writing, require the Board of directors of a State business corporation to give the Treasurer such information as the Treasurer considers necessary.

54. *Board to notify relevant Minister and Treasurer of significant affecting events etc.*

If the board of a State business corporation forms the opinion that matters have arisen—

- (a) that may prevent, or significantly affect, achievement of the objectives of the corporation and its subsidiaries under the corporate plan; or
- (b) that may prevent, or significantly affect, achievement of the targets under the plan—

the board must immediately notify the relevant Minister and the Treasurer of its opinion and the reasons for the opinion.

55. *Half-yearly reports*

- (1) In January or February in each year or at such other time as the relevant Minister approves, the board of each State business corporation must give to the relevant Minister and the Treasurer a

State Owned Enterprises Act 1992

Act No. 90/1992

report of the operations of the corporation during the period of 6 months ending on the preceding 31 December and prescribed financial statements for that period.

- (2) If the relevant Minister, by notice in writing given to the State business corporation, requires certain information to be included in a report, that information must be included in the report.

* * * * *

S. 56
repealed by
No. 31/1994
s. 4(Sch. 2
item 83).

* * * * *

S. 57
amended by
No. 92/1993
s. 17(a)(b),
repealed by
No. 31/1994
s. 4(Sch. 2
item 83).

* * * * *

S. 58
repealed by
No. 31/1994
s. 4(Sch. 2
item 83).

PART 4—CONVERSION TO STATE OWNED COMPANY

59. *Declaration of statutory corporation as converting body*

The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation to be a converting body.

60. *Reservation of name under Corporations Law*

- (1) A converting body must apply as soon as possible to the ASC for the reservation under section 374 of the Corporations Law of Victoria of the name specified in the Order under section 59 declaring the body.
- (2) Sub-section (1) does not apply if the converting body has already reserved the name.
- (3) If the name is not available to the converting body, the converting body must apply as soon as possible to the ASC for the reservation under section 374 of a name that—
 - (a) is substantially similar to the name that is not available; and
 - (b) is approved by the Treasurer.

61. *Memorandum and articles*

A converting body must adopt a memorandum and articles that—

- (a) include the provisions referred to in section 71; and
- (b) otherwise comply with the provisions of Part 5; and
- (c) are approved by the Treasurer.

62. *Capital structure of converting body*

State Owned Enterprises Act 1992
Act No. 90/1992

- (1) A converting body has a share capital divided into shares of \$1 each.
- (2) The Treasurer—
 - (a) must make a declaration specifying the amount of the nominal share capital of the converting body; and
 - (b) may declare that the nominal share capital is divided into classes of shares.

63. *Issue of shares in converting body*

- (1) The Treasurer must make a declaration in writing that the existing capital of a converting body, as at a date specified in the declaration, is to be dealt with in either or both of the following ways:
 - (a) Applied to paying up in full shares in the converting body;
 - (b) Converted into debt owed to the State by the converting body on such terms as the Treasurer specifies in the declaration.
- (2) As soon as practicable after the Treasurer's declaration under sub-section (1), the converting body must issue the shares paid up in full to—
 - (a) the State;
 - (b) nominees of the State;
 - (c) a statutory corporation;
 - (d) a State owned company—as the Treasurer directs in writing.
- (3) The issue of shares under sub-section (2) discharges, to the extent of the nominal value of those shares, any obligation of the converting body existing before the conversion to repay the existing capital to the State.

S. 63(1)
amended by
No. 55/1997
s. 23.

- (4) The shares issued in accordance with sub-section (2) are taken to have been issued for valuable consideration other than cash, being the discharge effected by sub-section (3).

64. *Application for registration as a company*

- (1) Immediately after issue of the shares in accordance with section 63, a converting body must apply to the ASC under section 133 of the Corporations Law of Victoria to be registered as a company limited by shares under Division 3 of Part 2.2 of the Corporations Law of Victoria.
- (2) The constitution of the converting body for the purposes of Division 3 of Part 2.2 of the Corporations Law of Victoria is its memorandum and articles in accordance with this Act which—
- (a) must include provisions to the effect of the provisions specified in Schedule 1; and
 - (b) must otherwise be as approved by the Treasurer.

65. *Status and continuity*

- (1) Upon registration under section 137 of the Corporations Law of Victoria of a converting body as a company, the converting body continues in existence as a company.
- (2) The constituting Act of a statutory corporation that is declared to be a converting body continues to apply to the carrying out of functions and exercise of powers by the body on and after its registration as a company.
- (3) On and after the registration of a converting body as a company, a reference in any other Act, and in any instrument made under an Act, and in any other document of any kind to the converting body is to be taken to be, or to include, as the case requires, a reference to the company.
-

-
- (4) Sub-sections (2) and (3) do not apply to the extent that they are inconsistent with the memorandum or articles of the company.
-

PART 5—STATE OWNED COMPANIES

Division 1—Declaration

S. 66
substituted by
No. 92/1993
s. 18,
amended by
No. 121/1994
s. 209(1).

66. *Declaration by Governor in Council*

- (1) The Governor in Council, by Order published in the Government Gazette, may declare a company to be a State owned company if the shares in the company are held only by one or more of the State, a nominee of the State, a statutory corporation, a nominee of a statutory corporation, a State owned company or a nominee of a State owned company.
- (2) A company to which an Order under sub-section (1) applies ceases to be a State owned company on the revocation of the Order.

S. 66(2)
inserted by
No. 121/1994
s. 209(2).

Division 2—Formation of company

67. *Treasurer may form or participate in formation of company*

For the purposes of this Act, the Treasurer may form, or participate in the formation or acquisition of, and be a member of, a company limited by shares that are issued only to—

S. 67(ca)
inserted by
No. 92/1993
s. 19(a).

- (a) the State;
- (b) nominees of the State;
- (c) a statutory corporation;
- (ca) nominees of a statutory corporation;
- (d) a State owned company;

(e) nominees of a State owned company—

S. 67(e)
inserted by
No. 92/1993
s. 19(b).

as the Treasurer directs in writing.

68. *Transfer of assets and liabilities*

The Treasurer and a company referred to in section 67 may enter into an agreement for the transfer of assets and liabilities of the State or of a statutory corporation to the company for an agreed consideration, whether by assumption of liabilities or otherwise.

Division 3—Operation of State owned companies

69. *Principal objective*

The principal objective of each State owned company is to perform its functions for the public benefit by—

- (a) operating its business and pursuing its undertaking as efficiently as possible consistent with prudent commercial practice; and
- (b) maximising its contribution to the economy and well being of the State.

70. *Status*

A State owned company or a subsidiary of a State owned company—

- (a) is not, and does not represent, the State;
- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State, merely because it is a State owned company or a subsidiary of a State owned company;

S. 70(b)
amended by
No. 92/1993
s. 20.

- (c) cannot render the State liable for any debts, liabilities or obligations of the company or a subsidiary of a State owned company—

unless this or any other Act expressly so provides.

71. Memorandum and articles

- (1) The memorandum of each State owned company must include—
- (a) provisions to the effect of those set out in Part A of Schedule 1; and
 - (b) the principal objective of the company; and
 - (c) the objects of the company.
- (2) The articles of each State owned company must include provisions to the effect of those set out in Part B of Schedule 1.
- (3) Other provisions of the memorandum and articles of a State owned company or a declared subsidiary of a State owned company—
- (a) must not be inconsistent with the provisions referred to in sub-section (1) or (2); and
 - (b) must not be inconsistent with this Act.

72. Non-commercial activities

- (1) The relevant Minister, with the approval of the Treasurer, and a State owned company may enter into an agreement under which the company, in accordance with its memorandum and articles, agrees to perform, or to cease to perform, activities in circumstances where the board considers that it is not in the commercial interests of the company to do so.
- (2) The terms and conditions of an agreement under sub-section (1) may include provision for reimbursement to the company by the Minister administering Part 2 of the **Financial**

Management Act 1994 for the net cost to the company of complying with the agreement.

73. *Audit by Auditor-General*

- (1) The Auditor-General may, and if the articles of a State owned company so provide, must, act as auditor of a State owned company.
- (2) The Auditor-General, and any person authorised by the Auditor-General, has in respect of an audit of a State owned company all the powers of an auditor under the Corporations Law.
- (3) A State owned company must pay to the Treasurer for payment to the Consolidated Fund, an amount to be determined by the Auditor-General to defray the costs and expenses of an audit under powers conferred on the Auditor-General under this section.

74. *Further accounts and reports*

The Treasurer may require a State owned company to prepare and deliver, at a time and in a manner specified by the Treasurer—

- (a) further financial information in a form specified by the Treasurer;
- (b) a business plan in a form specified by the Treasurer;
- (c) an annual report in a form specified by the Treasurer on the operations of the company;
- (d) a report on such matters as are specified by the Treasurer.

S. 74(c)
amended by
No. 92/1993
s. 21.

75. *Treasurer to present accounts and reports to Parliament*

The Treasurer must cause to be laid before each House of the Parliament as soon as practicable after the Treasurer receives them, copies of—

- (a) the memorandum and articles of each State owned company and any amendments to those memorandum or articles;
 - (b) financial statements, directors' reports and the auditor's report for each State owned company as required by the Corporations Law of Victoria;
 - (c) each report by the Auditor-General in relation to a State owned company.
-

**PART 6—PRESCRIBED BODIES—SPECIAL
INVESTIGATIONS**

76. *Definition*

In this Part, "**prescribed body**" means a statutory corporation or State business corporation that is declared by Order of the Governor in Council published in the Government Gazette to be a prescribed body for the purposes of this Part.

S. 76
amended by
No. 92/1993
s. 22.

77. *Appointment of special investigators*

- (1) The Treasurer may appoint persons as special investigators, on such terms and conditions as are specified in the instrument of appointment or as varied by a later instrument.
- (2) The function of a special investigator is to investigate a prescribed body generally, or in relation to specific matters or affairs of the prescribed body, as directed by the Treasurer from time to time.
- (3) The powers of a special investigator extend not only to the matters or affairs specified in the Treasurer's direction but also to any other matter of which the investigator become aware and which the investigator considers should be brought to the attention of the Treasurer or any other person.
- (4) If 2 or more special investigators have been appointed under this Part to investigate particular matters, each of those investigators may exercise powers or perform duties under this Part independently of the other.
- (5) A special investigator may, with the consent of the Treasurer, delegate any of the powers of a special investigator under this Part, except this

power of delegation, to a person approved by the Treasurer.

78. Powers

A special investigator may, by notice in writing, require a prescribed body or an officer of a prescribed body—

- (a) to produce to the investigator such documents relating to a matter to which the investigation relates as are in the custody or under the control of the officer;
- (b) to give to the investigator all possible and reasonable assistance in connection with the investigation;
- (c) to appear before the investigator for examination and to answer questions.

79. Copies of documents

A special investigator may make copies of, or take extracts from, documents produced under section 78.

80. Immunity

- (1) A special investigator or person acting under the authority of a special investigator incurs no civil or criminal liability for an act or omission in good faith in the exercise or purported exercise of a power under this Part.
- (2) A person incurs no civil or criminal liability for anything done in good faith in compliance or purported compliance with a requirement of a special investigator or person acting under the authority of a special investigator.

81. Publication

A special investigator may, subject to any directions of the Treasurer, make public

statements as to the nature and conduct of an investigation and may invite and receive information or submissions as to any matter relevant to the investigation from such persons as the investigator thinks fit.

82. Reports

- (1) A special investigator may make written or oral reports to the Treasurer in the course of an investigation.
- (2) The final report to the Treasurer may include such recommendations as the special investigator thinks fit.
- (3) A special investigator is not, in the absence of malice, liable to an action for defamation at the suit of any person in respect of any statement made, whether orally or in writing, in the course of carrying out the functions of special investigator.

83. Expenses of investigation

- (1) The expenses of and incidental to an investigation shall be paid by the Treasurer.
 - (2) If the Treasurer is of the opinion that the whole or any part of the expenses of or incidental to an investigation under this Part should be paid by the prescribed body the affairs of which were investigated, the Treasurer may in writing direct the body to pay such amount, within the time and in the manner specified.
 - (3) The expenses referred to in sub-section (2) may include the remuneration of the special investigator and expenses incurred by the Treasurer in bringing proceedings arising out of the investigation.
 - (4) Any sums required by the Treasurer in fulfilling any liability under this section shall be paid out of
-

the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

84. *Offences*

- (1) A person must not—
- (a) fail to comply with a lawful direction of a special investigator;
 - (b) refuse or fail to produce documents or answer questions sought or asked by a special investigator;
 - (c) hinder or obstruct a special investigator;
 - (d) destroy documents or any other thing relevant to an investigation.

Penalty: 5 penalty units.

- (2) A person is not excused from answering a question put by a special investigator on the ground that the answer might incriminate the person but, if the person claims, before answering the question, that the answer might tend to incriminate the person, the answer is not admissible in evidence against the person in criminal proceedings, other than proceedings under this section or other proceedings in respect of the falsity of the answer.

85. *Power to refer matters to police etc.*

A special investigator may with the consent of the Treasurer and the relevant Minister, refer any matter arising in an investigation to the Chief Commissioner of Police.

PART 7—GENERAL

86. Trade Practices Act 1974 of the Commonwealth

The regulations may provide that any act or thing or kind of act or thing of or relating to a particular State owned enterprise or a subsidiary of a State owned enterprise is authorised for a particular period for the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth as amended and in force for the time being.

87. Subsidiaries

- (1) The Treasurer may, by Order published in the Government Gazette declare that a provision of this Act applies to a subsidiary of a State business corporation or of a State owned company with such modifications as the circumstances require.
- (2) A State business corporation and a State owned company must take such action in relation to the constituent documents and management of each of its declared subsidiaries as are necessary to ensure that the businesses, activities and other affairs of the subsidiary are carried out in accordance with the provisions of this Act that apply to it by reason of sub-section (1).

* * * * *

S. 87A
inserted by
No. 92/1993
s. 23,
repealed by
No. 43/1995
s. 10.

88. Tax equivalent

- (1) If the Treasurer directs a State owned enterprise to comply with this section in respect of a financial year or other period, the State owned enterprise must, in respect of that year or period, pay to the Treasurer, in such manner and at such times as the

S. 88
substituted by
No. 92/1993
s. 24.

Treasurer determines in accordance with the Treasurer's instructions, for payment into the Consolidated Fund—

- (a) such amounts as are determined by the Treasurer in accordance with the Treasurer's instructions, not exceeding the amount that would be payable by the State owned enterprise under the law of the Commonwealth if it were liable to pay taxes under that law; and
 - (b) such amounts as are determined by the Treasurer in accordance with the Treasurer's instructions in respect of the benefit to the State owned enterprise of any exemption from sales tax that, but for the exemption, would be payable under the law of the Commonwealth in respect of goods supplied to the State owned enterprise, but not exceeding the amount of that benefit.
- (2) A State owned enterprise is not required to make payments under sub-section (1) to the extent that it is, or becomes, liable to pay the Commonwealth taxes referred to in sub-section 1(a) or ceases to be entitled to the benefit of the exemption referred to in sub-section (1)(b), as the case requires.
- (3) All relevant determinations, whether by way of interpretation, extension, penalty, refund or otherwise that the Commonwealth Commissioner of Taxation would be empowered to make if the laws of the Commonwealth applied may be made, in accordance with the Treasurer's instructions, by the Treasurer.
- (3A) A State owned enterprise may request the Treasurer to review a determination made in respect of it under this section.

State Owned Enterprises Act 1992
Act No. 90/1992

s. 88

-
- (3B) A State owned enterprise that makes a request under sub-section (3A)—
- S. 88(3B)
inserted by
No. 56/1995
s. 62(1).
- (a) must pay to the Treasurer such fee (if any) as is determined by the Treasurer in respect of the review; and
- (b) must pay to the Treasurer an amount equal to the cost of the review, including the cost of obtaining advice from other persons, or such part of those costs as the Treasurer determines.
- (3C) If, as a result of the review of a determination, the Treasurer amends the determination, the Treasurer may refund to the State owned enterprise such part of any fee and amounts paid by it under sub-section (3B).
- S. 88(3C)
inserted by
No. 56/1995
s. 62(1).
- (4) The Treasurer may, by instrument, delegate to any person or class of persons employed in the administration of this Act any power of the Treasurer under this section, other than this power of delegation.
- (5) A State owned enterprise (within the meaning of section 3) is not exempt from tax under any Act by reason only that it is an instrumentality of the State.
- (5A) The Consolidated Fund is hereby appropriated to the extent necessary to enable the Treasurer to make refunds in accordance with this section.
- S. 88(5A)
inserted by
No. 56/1995
s. 62(2).
- (6) In this section—
- "State owned enterprise"** includes a statutory corporation in respect of which a declaration under section 88A is in force;
- "Treasurer's instructions"** means written guidelines issued from time to time by the Treasurer for the purposes of this section.

S. 88AA
inserted by
No. 55/1997
s. 24.

88AA. Application of section 88 to certain bodies

- (1) Despite anything to the contrary in section 88, the Treasurer may give a direction under sub-section (1) of that section to a State body in respect of a financial year beginning on 1 July 1994 or any later period.
- (2) If a direction is given to a State body in respect of a period referred to in sub-section (1), the State body must comply with section 88 in respect of that period.
- (3) In this section—
"State body" means—
 - (a) a State owned enterprise; or
 - (b) a statutory corporation in respect of which a declaration under section 88A is in force—
being a body that, before 1 July 1994—
 - (c) was liable to pay income tax to the Commonwealth but that ceased to be so liable on that date by reason of being an STB within the meaning of Division 1AB in Part III of the Income Tax Assessment Act 1936 of the Commonwealth; or
 - (d) was liable to pay sales tax under the law of the Commonwealth in respect of goods supplied to it but that ceased to be so liable on that date by reason of being an STB within the meaning of item 126A of Schedule 1 of the Sales Tax (Exemptions and Classifications) Act 1992 of the Commonwealth.

88A. Application of tax equivalents to other bodies

- (1) The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation that is not a State owned enterprise to be a statutory corporation to which section 88 applies.
- (2) If an Order is in force under sub-section (1) in respect of a statutory corporation, the requirements under section 88 are in lieu of the requirements (if any) of any other Act under which the statutory corporation makes payments of a similar kind.
- (3) In this section "**statutory corporation**" includes a company within the meaning of the Corporations Law all the shares in which are held by or on behalf of the State or by a statutory corporation or by such a company all the shares in which are held by or on behalf of the State or a statutory corporation.

S. 88A
inserted by
No. 92/1993
s. 24.

S. 88A(3)
inserted by
No. 53/1994
s. 33,
amended by
No. 110/1994
s. 40,
substituted by
No. 56/1995
s. 63,
amended by
No. 91/1997
s. 51.

88B. State owned enterprises to make certain payments

- (1) A declared business enterprise which is the owner of land (not being land that is used exclusively as a public open space or a park) that, by reason of section 154 of the **Local Government Act 1989** or any other Act or law is not rateable land, must pay to the Treasurer, in such manner and at such times as the Treasurer determines, for payment into the Consolidated Fund, an amount determined by the Treasurer as an annual charge in respect of that land.
- (2) The annual charge payable in respect of land by a declared business enterprise under this section must not exceed the amount that would be payable

S. 88B
inserted by
No. 45/1997
s. 36.

by the declared business enterprise under the Local Government Act 1989 if the land were rateable land.

- (3) A declared business enterprise may request the Treasurer to review a determination made in respect of it under this section.
 - (4) A declared business enterprise that makes a request under sub-section (3)—
 - (a) must pay to the Treasurer such fee (if any) as is determined by the Treasurer in respect of the review; and
 - (b) must pay to the Treasurer an amount equal to the cost of the review, including the cost of obtaining advice from other persons, or such part of those costs as the Treasurer determines.
 - (5) If, as a result of the review of a determination, the Treasurer amends the determination, the Treasurer may refund to the declared business enterprise such part of any fee and amounts paid by it under sub-section (4).
 - (6) The Treasurer may, by instrument, delegate to any person or class of persons employed in the administration of this Act any power of the Treasurer under this section, other than this power of delegation.
 - (7) The Consolidated Fund is hereby appropriated to the extent necessary to enable the Treasurer to make refunds in accordance with this section.
 - (8) The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation to be a declared business enterprise for the purposes of this section.
-

-
- (9) In this section, "**declared business enterprise**" means a statutory corporation in respect of which a declaration under sub-section (8) is in force.

89. Non-application of State taxation

- (1) In this section—

"exempt transaction" means—

- (a) the acquisition of shares in a company in anticipation of the creation of a State owned company; or
- (b) the transfer of shares of a State owned company or any of its subsidiaries to the State, a nominee of the State or another State owned company; or
- (c) the transfer of assets or liabilities to a State owned company or any of its subsidiaries under this Act;

"tax" includes stamp duty and any other tax, duty, fee, levy or charge, but does not include amounts under section 88(1), (2) or (3).

- (2) Tax is not payable in relation to—

- (a) an exempt transaction; or
- (b) anything done including, without limitation, a transaction entered into or a document executed, because of, or for a purpose connected with or arising out of, an exempt transaction.

- (3) The Treasurer may by instrument in writing certify that—

- (a) a specified matter is an exempt transaction; or

-
- (b) a specified thing was done because of, or for a purpose connected with or arising out of, an exempt transaction.

90. Application of certain other Acts

- (1) A State owned enterprise—

- (a) that, but for this sub-section, would be a prescribed authority within the meaning of the **Freedom of Information Act 1982**; and
- (b) that is prescribed for the purposes of this sub-section—

is to be taken not to be a prescribed authority within the meaning of that Act.

- (2) A State owned enterprise—

- (a) that, but for this sub-section, would be a Public Statutory Body within the meaning of the **Ombudsman Act 1973**; and
- (b) that is prescribed for the purposes of this sub-section—

is to be taken not to be a Public Statutory Body within the meaning of the **Ombudsman Act 1973**.

- (3) If an Act under which a State owned enterprise is constituted, or under which functions or powers are conferred on a State owned enterprise, is prescribed for the purposes of this sub-section, a statutory rule proposed to be made under a prescribed provision of that Act is to be taken to be a proposed statutory rule to which section 12 of the **Subordinate Legislation Act 1962** does not apply.

S. 90(2)
amended by
No. 56/1995
s. 64.

S. 90(2)(a)
amended by
No. 56/1995
s. 64.

-
- (4) A State owned enterprise that is referred to in the definition of "public authority" in section 4(1) of the **Public Authorities (Dividends) Act 1983** that is prescribed for the purposes of this sub-section is to be taken not to be a public authority within the meaning of that Act on or after the prescribed date.

91. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 80.

92. *Regulations*

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

SCHEDULE 1

**PROVISIONS TO BE INCLUDED IN MEMORANDUM AND
ARTICLES OF ASSOCIATION OF STATE OWNED
COMPANIES**

PART A—MEMORANDUM OF ASSOCIATION

1. *Entrenchment*

The memorandum and articles of association must not be altered or added to in a manner inconsistent with the provisions of the **State Owned Enterprises Act 1992** for so long as it applies to the company.

2. *State Owned Enterprises Act 1992 to prevail*

The **State Owned Enterprises Act 1992** prevails over any inconsistent provisions of this memorandum or the articles of association.

PART B—ARTICLES OF ASSOCIATION

1. *Interpretation*

Words and phrases used in these articles have the same meanings as in the **State Owned Enterprises Act 1992** and, unless inconsistent with that Act, the Corporations Law of Victoria.

2. *Powers and duties of directors*

Subject to the Corporations Law of Victoria and to any other provision of these articles, the business of the company must be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Corporations Law of Victoria or by these articles, required to be exercised by the shareholders.

3. *Shareholder approval for non-pro rata share issue*

The company must not offer shares for subscription, invite persons to subscribe for shares, or allot or issue shares in the company on a basis other than to existing shareholders pro rata to their existing shareholding, unless approved by a special resolution.

4. Shareholder approval for sale or disposal of main undertakings

The company must not sell or dispose of the main undertaking as specified by the shareholders of the company or of any of its subsidiaries unless approved by a special resolution.

5. Shareholder approval for matters relating to ownership of subsidiaries

The company must not form or acquire or participate in the formation or acquisition of a subsidiary or dispose of shares in a subsidiary or enter any transaction which may result in a subsidiary ceasing to be a subsidiary, unless approved by special resolution.

6. Shareholder approval for amendment of memorandum or articles of a subsidiary

The company must not approve or effect an amendment to the memorandum or articles of a subsidiary unless such amendment is approved by a special resolution of the company.

7. Dividends

Subject to the Corporations Law of Victoria, the amount of each dividend (if any) to be paid by the Company to its shareholders is the amount determined by resolution of the shareholders, after consultation with its board.

8. Limit on borrowing powers

- (1) Except to the extent that it does so with the approval of the Treasurer, the company must not exercise its powers to borrow or raise money, to issue debentures, to obtain financial accommodation or to incur a financial obligation.
- (2) "**Financial accommodation**" in sub-clause (1) has the same meaning as in the **Borrowing and Investment Powers Act 1987**.

9. Limit on encumbrance of assets

Except to the extent that it does so with the approval of the Treasurer, the company must not create a charge over, or otherwise encumber, its assets or undertakings.

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 November 1992

Legislative Council: 17 November 1992

The long title for the Bill for this Act was "A Bill to provide for the establishment and operation of State owned enterprises and for other purposes".

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 10 November 1992

Legislative Council: 17 November 1992

Absolute majorities:

Legislative Assembly: 13 November 1992

Legislative Council: 17 November 1992

The **State Owned Enterprises Act 1992** was assented to on 26 November 1992 and came into operation as follows:

Parts 1 (sections 1–6), 6 (sections 76–85) on 26 November 1992:
section 2(1); rest of Act on 2 December 1992: Government Gazette
2 December 1992 page 3574.

State Owned Enterprises Act 1992
Act No. 90/1992

Notes

2. Table of Amendments

This Version incorporates amendments made to the **State Owned Enterprises Act 1992** by Acts and subordinate instruments.

State Owned Enterprises (Amendment) Act 1993, No. 92/1993

Assent Date: 16.11.93
Commencement Date: 16.11.93
Current State: All of Act in operation

Financial Management Act 1994, No. 18/1994

Assent Date: 10.5.94
Commencement Date: Pt 1 (ss 1-8), ss 60, 61 on 10.5.94: s. 2(1); rest of Act on 1.7.94: s. 2(2)
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 83) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Electricity Industry (Amendment) Act 1994, No. 53/1994

Assent Date: 15.6.94
Commencement Date: S. 33 on 3.10.94: Special Gazette (No. 64) 27.9.94 p. 1
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Electricity Industry (Further Amendment) Act 1994, No. 110/1994 (as amended by Nos 29/1995, 56/1995)

Assent Date: 20.12.94
Commencement Date: S. 40 on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Water Industry Act 1994, No. 121/1994

Assent Date: 20.12.94
Commencement Date: Ss 1, 2 on 20.12.94: s. 2(1); rest of Act on 1.1.95: Special Gazette (No. 105) 23.12.94 p. 1
Current State: All of Act in operation

Equal Opportunity Act 1995, No. 42/1995

*State Owned Enterprises Act 1992**Act No. 90/1992*

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 37 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Financial Management and Audit Acts (Amendment) Act 1995, No. 43/1995

Assent Date: 14.6.95
Commencement Date: S. 7(2) on 10.5.94: s. 2(1); s. 19(1) on 31.5.94: s. 2(2); s. 22 on 1.7.94: s. 2(3); s. 23 on 13.12.94: s. 2(4); s. 19(2) on 1.1.95: s. 2(5); rest of Act on 14.6.95: s. 2(6)
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1995, No. 56/1995 (as amended by No. 79/1995)

Assent Date: 20.6.95
Commencement Date: Ss 57-64 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Miscellaneous Acts (Omnibus No. 3) Act 1997, No. 45/1997

Assent Date: 11.6.97
Commencement Date: Ss 35, 36 on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Electricity Industry (Further Miscellaneous Amendment) Act 1997, No. 55/1997

Assent Date: 21.10.97
Commencement Date: Ss 23, 24 on 21.10.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

Gas Industry (Further Amendment) Act 1997, No. 91/1997

Assent Date: 9.12.97
Commencement Date: S. 51 on 11.12.97: Special Gazette (No. 155) 9.12.97 p. 1
Current State: This information relates only to the provision/s amending the **State Owned Enterprises Act 1992**

State Owned Enterprises Act 1992
Act No. 90/1992

Notes

3. Explanatory Details

No entries at date of publication.