

# Schedule 1

[Section 9]

## Provisions as to constitution and proceedings of board

### 1. Definition

In clauses 2, 3, 4 and 5(1) “**director**” does not include the chief executive officer in his or her capacity as a director.

### 2. Term of office

- (1) Subject to clause 3, a director holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment, and is eligible for reappointment.
- (2) A director, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which he or she was appointed has expired.
- (3) A director’s duties are not required to be performed on a full-time basis.
- (4) Despite subclause (1) the directors first appointed are to be appointed for periods of between one year and 3 years so that approximately one third of the directors retire each year.

### 3. Resignation and removal

- (1) A director may resign from office by notice in writing delivered to the Minister.
- (2) The Governor may at any time remove a director from office and is not required to give any reason for doing so.

### 4. Chairperson and deputy chairperson

- (1) The Governor is to appoint a director to be chairperson and another to be deputy chairperson, appointments in each case being made on the nomination of the Minister.
- (2) The chief executive officer is not eligible for appointment under subclause (1).
- (3) Where the chairperson is unable to act because of sickness, accident or other cause, the deputy chairperson is to act in his or her place.
- (4) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 5(1) applies as if the deputy chairperson were absent from the meeting.

## **5. Alternate directors**

- (1) Where a director is unable to act because of sickness, absence or other cause, the Minister may in writing appoint another person to act temporarily in his or her place, and while so acting according to the tenor of the appointment that other person is to be taken to be a director and is entitled to remuneration under section 10.
- (2) Except where there is a person acting in his or her place under section 13(5), the chief executive officer may, in writing delivered to the person presiding at a meeting of the board, nominate a senior officer of the corporation approved by the board to represent him or her at that meeting if he or she is unable to attend by reason of sickness, absence or other cause; and while so attending the person so nominated is to be taken to be a director.
- (3) No act or omission of a person acting in place of another under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

## **6. Meetings**

- (1) The first meeting of the board is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of the board may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 4(3), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 7.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of the board —
  - (a) 3 directors constitute a quorum; and
  - (b) in the case of an equality of votes the person presiding has a casting vote in addition to his or her deliberative vote.

## **7. Telephone and video meetings**

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 6(5)(a) by telephone or audio-visual means is a valid meeting of directors, but only if each participating director is capable of communicating with every other participating director instantaneously at all times during the proceedings.

**8. Resolution may be passed without meeting**

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors and is assented to by a majority of the directors who signify a response, and the majority comprises not less than 3 directors, that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.
- (2) For the purposes of subclause (1) —
  - (a) the meeting is to be taken as having been held —
    - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document by signing the document or by notifying the corporation of the director's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

**9. Minutes of meetings etc.**

The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 8.

**10. Leave of absence**

The board may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.

**11. Board to determine own procedures**

Subject to this Act, the board may determine its own procedures.

*[Schedule 1 amended by No. 24 of 2000 s.14(8).]*

## Schedule 2

[Sections 20, 21, 22 and 23]

### Provisions as to duties of directors and related provisions

#### Division 1 — Preliminary

**1. Interpretation**

A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Schedule is guilty of that offence.

#### Division 2 — Certain duties stated

**2. Duty to act honestly**

A director must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

Penalty:

- (a) if the contravention was committed with intent to deceive or defraud the corporation, or creditors of the corporation or creditors of any other person or for any other fraudulent purpose, \$20 000 or imprisonment for 5 years, or both;
- (b) otherwise, \$5 000.

**3. Duty to exercise reasonable care and diligence**

A director must at all times exercise the degree of care and diligence in the performance of his or her functions, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the corporation's circumstances.

Penalty: \$5 000.

**4. Duty not to make improper use of information**

A director or a former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

Penalty: \$20 000 or imprisonment for 5 years, or both.

**5. Duty not to make improper use of position**

A director must not, whether within or outside the State, make improper use of his or her position as to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

Penalty: \$20 000 or imprisonment for 5 years, or both.

**6. Fiduciary duty**

- (1) A director has the same fiduciary relationship with the corporation and has the same duties to the corporation to act with loyalty and in good faith as a director of a company under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the Minister and not otherwise.
- (3) The provisions of this clause are in addition to the other provisions of this Schedule.

**Division 3 — Recovery from director**

**7. Payment of compensation may be ordered**

Where —

- (a) a person is convicted of an offence for a contravention of clause 2, 3, 4 or 5; and
- (b) the court is satisfied that the corporation has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

**8. Civil proceedings for recovery from director**

Where a person contravenes clause 2, 3, 4 or 5, the corporation may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the corporation by action in any court of competent jurisdiction —

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

**Division 4 — Relief of director**

**9. Director etc. may be relieved from liability**

Without limiting section 73, for the purposes of clause 6, 7 or 8 if it appears to the court that a person —

- (a) is, or may be, liable under that clause;
- (b) has acted honestly;

- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

**10. Director etc. may apply for relief**

- (1) Without limiting section 73, where a person has reason to believe that any claim will or might be made against him or her under clause 6, 7 or 8 the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 6, 7 or 8.

**11. Case may be withdrawn from jury**

Where a case to which clause 9 applies is being tried by judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that clause be relieved either wholly or partly from liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**Division 5 — Disclosure etc. of personal interests**

**12. Disclosure of interests in contracts**

- (1) A director who has a material personal interest in a matter involving the corporation must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board.  
Penalty: \$1 000 or imprisonment for 6 months, or both.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

**13. Voting by interested directors**

- (1) A director who has a material personal interest in a matter that is being considered by the board —
  - (a) must not vote whether at a meeting or otherwise —
    - (i) on the matter; or
    - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;

and

- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.
- (2) For the purpose of subclause (1), a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director of the corporation or of a subsidiary. This subclause does not apply if the corporation is the insurer.
- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 6(5) of Schedule 1, if a director is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as the board cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 96.

### **Division 6 — Other prohibited conduct**

#### **14. Prohibition on loans to directors and related person**

- (1) The corporation must not, whether directly or indirectly —
  - (a) make a loan to a director, a spouse of a director or a relative of a director or spouse; or
  - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.



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

Penalty:

- (a) if the contravention was committed with intent to deceive or defraud the corporation or creditors of the corporation or creditors of any other person or for any other fraudulent purpose, \$20 000 or imprisonment for 5 years, or both;
- (b) otherwise, \$5 000.
- (3) In subclause (1) —
- “relative”** means —
- (a) a parent or remoter lineal ancestor; or
- (b) son, daughter or remoter issue; or
- (c) a brother or sister.

## **15. Directors and auditors not to be indemnified for certain matters**

- (1) The corporation or a subsidiary must not —
- (a) indemnify a person who is or has been a director or auditor of the corporation against a liability incurred by the person as a director or auditor; or
- (b) exempt such a person from such a liability.
- (2) Any agreement or arrangement is void so far as it provides for the corporation or a subsidiary to do anything that subclause (1) prohibits.
- (3) Subclause (1) does not prevent a person from being indemnified against a civil liability to a person, other than the corporation or a subsidiary, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person —
- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in obtaining relief under clause 9 or 10.
- (5) The corporation or a subsidiary must not pay, or agree to pay, a premium, in respect of a contract insuring a person who is or has been a director or auditor of the corporation against a liability —
- (a) incurred by the person as such a director or auditor; and
- (b) arising out of conduct involving —
- (i) a wilful breach of duty in relation to the corporation;
- or

- (ii) without limiting subparagraph (i), a contravention of clause 4 or 5.
- (6) In subclause (5) “pay” includes pay indirectly through one or more interposed entities.
- (7) If subclause (5) is contravened, the contract is void so far as it insured the person against such a liability.
- (8) Subclauses (5) and (7) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.

**16. False information etc.**

- (1) A director must not make available or furnish information, or authorize or permit the making available or furnishing of information, to —
  - (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the director —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) A director must not make available or furnish information, or authorize or permit the making available or furnishing of information, to —
  - (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information whether in documentary or any other form, relating to the affairs of the corporation that —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information —

- (e) was not false or misleading in a material particular; and
- (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

Penalty: \$5 000 or imprisonment for one year, or both.

- (3) The references in subclauses (1) and (2) to a director making available or furnishing, or authorizing or permitting the making available or furnishing of, information relating to the affairs of the corporation include references to a director making available or furnishing, or authorizing or permitting the making available or furnishing of, information as to the state of knowledge of that director with respect to the affairs of the corporation.
- (4) Where information is made available or furnished to a person referred to in subclauses (1)(a) or (b) or (2)(a) or (b) in response to a question asked by that person, the question and information are to be considered together in determining whether the information was false or misleading.

*[Schedule 2 amended by No. 10 of 1998 s.32(2); No. 10 of 2001 s.67.]*

# Schedule 3

[Section 88(1)]

## Financial administration and audit

### Division 1 — Preliminary

#### 1. Interpretation

(1) In this Schedule, unless the contrary intention appears —

“**accounting records**” means financial records within the meaning of the Corporations Act;

“**accounts**” means profit and loss accounts and balance sheets and includes statements, reports and notes, other than auditor’s reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets;

“**Board**” means the Australian Accounting Standards Board referred to in section 226 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“**chief entity**” has the meaning given by clause 14(2);

“**Commission**” means the Australian Securities and Investments Commission referred to in section 8 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

“**consolidated accounts**”, in relation to the corporation, means all of the following —

- (a) a consolidated profit and loss account that clause 15 requires to be made out in relation to a financial year of the corporation;
- (b) a consolidated balance sheet that clause 16 requires to be made out in relation to that financial year;
- (c) statements, reports and notes, other than a director’s report or an auditor’s report, attached to, or intended to be read with, that consolidated profit and loss account or consolidated balance sheet;

“**control**”, in relation to an entity, has the meaning given by clause 13;

“**economic entity**” has the meaning given by clause 12;

“**entity**” has the meaning given by clause 12;

“**financial statements**”, in relation to a financial year of the corporation, means the accounts and consolidated accounts (if any) of the corporation required by this Schedule to be made out in relation to that financial year;

“**financial year**” means the 12 month period ending on 30 June but where this Act commences on a day other than the commencement of a financial year the period of the first

financial year shall be that part of the 12 month period commencing on the commencement day of this Act and ending on 30 June;

**“parent entity”** has the meaning given by clause 12;

**“profit and loss”** means —

- (a) in relation to the corporation, the profit and loss resulting from operations of the corporation;
- (b) in relation to an entity, the profit and loss resulting from operations of the entity; and
- (c) in relation to 2 or more entities, or in relation to an economic entity, constituted by 2 or more such entities, the profit or loss resulting from the operations of those entities;

**“regulations”** means regulations made under the Corporations Act;

**“reporting entity”** has the meaning given by clause 12.

- (2) In this Schedule, unless the contrary intention appears expressions (including the expressions **“accounting standard”**, **“company”**, and **“corporation”**) have the respective meanings given to them by Part 1.2 of the Corporations Act.

## **Division 2 — Accounting standards**

### **2. Application of accounting standards — general (cf. s.284 Corporations Act)**

The accounting standards as applied from time to time to listed companies pursuant to the Corporations Act apply to the corporation.

### **3. Application of accounting standards, financial years (cf. s.285 Corporations Law)**

- (1) Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to —
  - (a) the first financial year of the corporation that ends after the commencement of the last-mentioned accounting standard; and
  - (b) later financial years of the corporation.
- (2) Despite anything in an accounting standard, but subject to subclause (4), an accounting standard does not apply to a financial year of the corporation ending before the commencement of the last-mentioned accounting standard.
- (3) The corporation may elect in writing that an accounting standard that, apart from subclause (4), does not apply to a particular financial year of the corporation shall apply to that financial year.
- (4) An election under subclause (3) has effect accordingly.

**4. Interpreting accounting standards**  
(*cf. s.286 Corporations Act*)

- (1) An expression has in an accounting standard the same meaning as it has in this Schedule.
- (2) Part 1.2 of the Corporations Act applies in relation to an accounting standard as if the accounting standard's provisions were provisions of this Schedule.
- (3) This clause has effect except so far as the contrary intention appears in an accounting standard.

**5. Severing invalid provisions**  
(*cf. s.286A Corporations Act*)

- (1) An accounting standard is to be interpreted subject to the Corporations Act.
- (2) It is intended that where, but for this clause, an accounting standard would have been interpreted as being inconsistent with the Corporations Act, the accounting standard is nevertheless to be valid in so far as it is not so inconsistent.

**6. Evidence of text of accounting standard**  
(*cf. s.286B Corporations Law*)

A document that purports —

- (a) to be issued or published by or on behalf of the Board or the Commission; and
- (b) to set out the text of —
  - (i) a specified instrument as in force at a specified time under section 32 of the *Corporations Act 1989* of the Commonwealth; or
  - (ii) a specified provision of such an instrument,

or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that —

- (c) the specified instrument was in force at that time under that section; and
- (d) the text set out in the document is the text referred to in paragraph (b).

### Division 3 — Accounting records

#### 7. Accounting records

(*cf. s.289 Corporations Law*)

- (1) The corporation shall —
  - (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
  - (b) so keep its accounting records that —
    - (i) true and fair accounts of the corporation can be prepared from time to time; and
    - (ii) its accounts can be conveniently and properly audited.
- (2) The corporation shall retain the accounting records kept by it under this clause for 7 years after the completion of the transactions to which they relate.
- (3) The corporation shall keep its accounting records at such place or places as the board thinks fit.
- (4) The Minister may by writing require the corporation to produce —
  - (a) at a specified place within Australia that is reasonable in the circumstances; and
  - (b) within a specified period of at least 14 days,  
specified accounting records of the corporation that are kept outside Australia.
- (5) Where accounting records of the corporation are kept outside Australia, the corporation shall keep at a place within Australia determined by the board such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Schedule to be attached to the accounts, to be prepared.
- (6) The corporation shall lodge written notice with the Treasurer of the place in Australia where statements and records kept under subclause (3) are kept, unless the statements and records are kept at the principal place of business of the corporation.
- (7) The Supreme Court may, on application by a director of the corporation, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the corporation.
- (8) Where a registered company auditor inspects the accounting records pursuant to an order of the Supreme Court under subclause (7), he or she shall not disclose to a person other than the director on whose

application the order was made any information acquired by him or her in the course of his or her inspection.

#### **Division 4 — Financial years of the corporation and the entities it controls**

##### **8. Synchronization**

*(cf. s.290 Corporations Law)*

- (1) Subject to this clause, the board must do whatever is necessary to ensure that the financial year of each entity that the corporation controls coincides with the financial year of the corporation.
- (2) Subclause (1) must be complied with in relation to a particular entity within 12 months after the corporation began to control the entity.
- (3) Subject to any order of the Minister under this clause, where the financial year of the corporation coincides with the financial year of an entity that the corporation controls, the board must do whatever is necessary to prevent either financial year from being changed in such a way that those financial years no longer coincide.
- (4) Where the board is of the opinion that there is good reason why the financial year of an entity that the corporation controls should not coincide with the financial year of the corporation they may apply in writing to the Minister for an order authorizing the entity to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the corporation.
- (5) The application shall be supported by a statement in writing made in accordance with a resolution of the board signed by not less than 2 directors and stating the reasons for seeking the order.
- (6) The Minister may require the directors making the application to supply such information relating to the operations of the corporation, and of any entity that the corporation controls or has controlled during a financial year, as the Minister thinks necessary for the purpose of determining the application.
- (7) The Minister may engage a registered company auditor to investigate and report to him or her on the application.
- (8) The Minister may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he or she thinks fit, and shall serve a copy of the order on the corporation.
- (9) Where an application is made under subclause (4) in relation to an entity —
  - (a) subclause (1) does not apply in relation to the entity until the determination day for the application; and



- (b) subject to subclause (10), the period within which the board is required to comply with subclause (1) in relation to the entity is the period of 12 months beginning on that day.
- (10) Where an order is made under this clause authorizing an entity controlled by the corporation to have, or to adopt, a financial year that does not coincide with that of the corporation, compliance with the order (including any limitations, terms or conditions set out in it) are to be taken to be compliance with subclause (1) in relation to the entity.
  - (11) Where an application is made under subclause (4) in relation to an entity, another application cannot be made under that subclause in relation to the entity within 3 years after the date of the first-mentioned application unless —
    - (a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or
    - (b) the Minister is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

### **Division 5 — Accounts of the corporation**

#### **9. Profit and loss account**

*(cf. s.292 Corporations Law)*

The board shall, before 30 September in each year cause to be made out a profit and loss account for the immediately preceding financial year that gives a true and fair view of the corporation's profit or loss for that financial year.

#### **10. Balance sheet**

*(cf. s.293 Corporations Law)*

The board shall, before 30 September in each year, cause to be made out a balance sheet as at the end of the immediately preceding financial year that gives a true and fair view of the corporation's state of affairs as at the end of that financial year.

#### **11. Steps to be taken before accounts made out**

*(cf. s.294 Corporations Law)*

- (1) This clause shall be complied with before the corporation's accounts are made out under clauses 9 and 10 in relation to a financial year.
- (2) The board shall take reasonable steps —
  - (a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and
  - (b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.

- (3) The board shall take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realize (whether directly or indirectly) in the ordinary course of business their value as shown in the corporation's accounting records and, if so, to cause —
  - (a) the value of those assets to be written down to an amount that they might be expected so to realize; or
  - (b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected to realize.
- (4) The board shall take reasonable steps —
  - (a) to find out whether the value of any non-current asset is shown in the corporation's accounting records at an amount that, having regard to the asset's value to the corporation as a going concern, exceeds the amount that it would have been reasonable for the corporation to spend to acquire the asset as at the end of the financial year; and
  - (b) unless adequate provision for writing down the value of that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

#### **Division 6 — Consolidated accounts of the corporation and the entities it controls**

#### **12. Entities, parent entities, economic entities and reporting entities** *(cf. s.294A Corporations Law)*

- (1) Where regulations define the expression “**entity**”, “**parent entity**”, “**economic entity**”, or “**reporting entity**”, those definitions shall apply for the purposes of this Schedule in relation to the corporation in relation to prescribed financial years.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where an accounting standard —
  - (a) deals with the making out of consolidated accounts by companies;
  - (b) applies to a financial year of a company; and
  - (c) defines the expression “**entity**”, “**parent entity**”, “**economic entity**” or “**reporting entity**”,

the definition in the accounting standard also has effect for the purposes of this Schedule as they apply in relation to the corporation in relation to that financial year.

- (4) Despite subclauses (2) and (3), each of the following is an entity for the purposes of this Schedule —
  - (a) a company;
  - (b) a recognized company;
  - (c) any other corporation;
  - (d) a partnership;
  - (e) an unincorporated body;
  - (f) a person in a capacity as trustee of a trust that has only one trustee.
- (5) Despite subclauses (2) and (3), where a trust has 2 or more trustees, those trustees, in their capacity as such, together constitute an entity.

**13. When one entity controls another**  
*(cf. s.294B Corporations Law)*

- (1) Where regulations make provision for or in relation to determining, as they apply in relation to a company in relation to prescribed financial years, whether or not an entity controls another entity, those regulations shall apply for the purposes of this Schedule.
- (2) Regulations in force because of subclause (1) have effect in relation to this Schedule accordingly.
- (3) Subject to subclause (2), where, because of a provision of an accounting standard that —
  - (a) deals with the making out of consolidated accounts by companies; and
  - (b) applies to a financial year of a company,

an entity is taken for the purposes of that accounting standard to control another entity, the first-mentioned entity is also taken to control the other entity for the purpose of this Schedule as they apply in relation to the corporation in relation to that financial year.

**14. Applications of Division**  
*(cf. s.295 Corporations Law)*

- (1) The later provisions of this Division apply where the corporation —
  - (a) controlled another entity during all or part of a financial year of the corporation; or
  - (b) controls another entity at the end of a financial year of the corporation,

and, for the purposes of this Schedule as it applies in relation to the corporation in relation to that financial year, the corporation is the parent entity in an economic entity that is a reporting entity.

- (2) The corporation is a chief entity in relation to that financial year for the purposes of this Schedule.

**15. Consolidated profit and loss account**  
(*cf. s.295A Corporations Law*)

- (1) The board must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated profit and loss account that gives a true and fair view of the profit or loss, for that financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during that financial year (even if the corporation did not control the same entities throughout that financial year).
- (2) To avoid doubt, if the corporation did not control a particular entity throughout that financial year, the consolidated profit and loss account must relate to the entity's profit or loss for each part of that financial year throughout which the corporation controlled the entity, but not to the entity's profit or loss for any other part.

**16. Consolidated balance sheet**  
(*cf. s.295B Corporations Law*)

The board must cause to be made out, before 30 September in each year immediately following the relevant financial year, a consolidated balance sheet, as at the year's end, that gives a true and fair view of the state of affairs, as at the year's end, of the economic entity constituted by the corporation and the entities that it controls at the year's end.

**Division 7 — Requirements for financial statements**

**17. Audit of financial statements**  
(*cf. s.296 Corporations Law*)

- (1) The board shall take reasonable steps to ensure that the corporation's financial statements for a financial year are audited by the Auditor General as required by this Schedule before 30 September in each year immediately following the relevant financial year.
- (2) The board shall cause to be attached to or endorsed on the corporation's financial statements for a financial year the Auditor General's report on those financial statements.

**18. Financial statement to comply with Corporations Law Regulations**  
(*cf. s.297 Corporations Act*)

- (1) The board shall ensure that the corporation's financial statements for a financial year comply with such of the requirements as are prescribed from time to time for a company under the Corporations Act and as are relevant to the financial statements.
- (2) Where the corporation's financial statements for a financial year, as prepared in accordance with subclause (1), would not otherwise give a true and fair view of the matters with which that subclause requires

them to deal, the board shall add such information and explanations as will give a true and fair view of those matters.

**19. Financial statements to comply with applicable accounting standards**

*(cf. s.298 Corporations Law)*

Subject to clause 18 the board shall ensure that the corporation's financial statements for a financial year are made out in accordance with applicable accounting standards.

**20. Additional information to give a true and fair view**

*(cf. s.299 Corporations Law)*

- (1) If the corporation's financial statement for a financial year, as prepared in accordance with clauses 18 and 19, would not otherwise give a true and fair view of the matters with which this Schedule requires them to deal, the board must add such information and explanations as will give a true and fair view of those matters.
- (2) Nothing in subclause (1), or in clause 18 or 19, limits the generality of a provision of this Division or of Division 5 or 6, other than this clause or clause 18 or 19.

**21. Inclusion of comparative amounts for items required by accounting standards**

*(cf. s.300 Corporations Law)*

- (1) Where —
  - (a) clause 19 requires the corporation's financial statements for a financial year to specify a particular amount (in this subclause called the "**current year amount**"); and
  - (b) that clause required the corporation's financial statements for the previous financial year to specify an amount that, within the meaning of an applicable accounting standard, is a corresponding amount in relation to the current year amount,the board shall ensure that the first-mentioned financial statements —
  - (c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and
  - (d) if the current year amount has been determined on a different basis from the corresponding amount —
    - (i) include a note to that effect; and
    - (ii) set out the corresponding amount in such a way as to draw attention to the note.

- (2) For the purposes of this clause, clause 19 requires the corporation's financial statements for a financial year to specify an amount if, and only if, the board —
  - (a) are required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and
  - (b) would not have been so required if that clause had not applied in relation to the financial year.

### **Division 8 — Directors' statements**

#### **22. Statement to be attached to accounts** *(cf. s.301 Corporations Law)*

- (1) The board shall cause to be attached to the corporation's accounts that are or are included in the corporation's financial statements for a financial year a statement complying with this clause and clause 24(2).
- (2) The statement shall state whether or not, in the board's opinion —
  - (a) the profit and loss account gives a true and fair view of the corporation's profit or loss for the financial year; and
  - (b) the balance sheet gives a true and fair view of the corporation's state of affairs as at the end of the financial year.
- (3) In forming its opinion for the purposes of subclause (2), the board shall have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.
- (4) If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) The statement shall state whether or not, in the board's opinion, there are, when the statement is made, reasonable grounds to believe that the corporation will be able to pay its debts as and when they fall due.
- (6) If the applicable accounting standards in relation to the accounts include accounting standards that apply to the financial year because of an election under clause 3 the statement shall specify those accounting standards and state that they so apply.

**23. Statement to be attached to consolidated accounts**  
(*cf. s.302 Corporations Law*)

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of the corporation, the board must cause to be attached to them a statement that complies with this clause and subclause 24(2).
- (2) The statement must state whether or not, in the board's opinion, the consolidated accounts —
  - (a) have been made out in accordance with Divisions 6 and 7; and
  - (b) in particular, give a true and fair view of the matters with which they deal.
- (3) In forming their opinion for the purposes of subclause (2), the board must have regard to circumstances that have arisen, and information that has become available, since the end of that financial year and that would, if the consolidated accounts had been made out when the statement is made, have affected the determination of an amount or a particular in them.
- (4) If adjustments have not been made in the consolidated accounts to reflect circumstances or information of a kind referred to in subclause (3) that are or is relevant to understanding the consolidated accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the consolidated accounts, or that amount or particular, from being misleading because adjustments have not been so made.
- (5) If the applicable accounting standards include in relation to the consolidated accounts accounting standards that apply to the financial year because of an election made under clause 3, the statement shall specify those accounting standards and state they so apply.

**24. Statements under this Division**  
(*cf. s.303 Corporations Law*)

- (1) The board shall comply with clause 22, or clauses 22 and 23, as the case requires, in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A statement required by clause 22 or 23 in relation to a financial year of the corporation shall —
  - (a) be made in accordance with a resolution of the board;
  - (b) be made out not later than 30 September in each year in respect of the immediately preceding financial year;
  - (c) specify the day on which it was made; and
  - (d) be signed by at least 2 directors.

## Division 9 — Directors' reports

### 25. Report on the corporation where it is not a chief entity (*cf. s.304 Corporations Law*)

- (1) If the corporation is not a chief entity in relation to a particular financial year the board shall cause to be made out a report complying with this Division other than clause 26.
- (2) The report shall state the names of the directors in office on the day the report is made out.
- (3) The report shall state the corporation's principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.
- (4) The report shall state the net amount of the corporation's profit or loss for the financial year after provision for any amounts payable to the Treasurer under section 78 and the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*.
- (5) The report shall state the amount (if any) that the board recommends should be paid by way of dividend under section 79.
- (6) The report shall state the amounts (if any) that have been paid or declared by way of dividend under section 81 since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division.
- (7) The report shall contain a review of the corporation's operations during the financial year and of the results of those operations.
- (8) The report shall give particulars of any significant change in the corporation's state of affairs that occurred during the financial year.
- (9) The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
  - (a) the corporation's operations;
  - (b) the results of those operations; or
  - (c) the corporation's state of affairs,in financial years after the financial year.
- (10) The report shall refer to —
  - (a) likely developments in the corporation's operations; and
  - (b) the expected results of those operations,in financial years after the financial year.



**26. Report on corporation where it is a chief entity**  
(*cf. s.305 Corporations Law*)

- (1) If the corporation is a chief entity in relation to a particular financial year the board shall cause to be made out a report complying with this Division, other than clause 25.
- (2) The report shall state the names of the directors in office on the day the report is made out.
- (3) The report must state —
  - (a) the principal activities, during the financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during the financial year (even if the corporation did not control the same entities throughout the financial year); and
  - (b) any significant change in the nature of those activities that occurred during the financial year.
- (4) The report must state the net amount of the consolidated profit or loss, for the financial year, of the economic entity referred to in subclause (3), after —
  - (a) provision for income tax and any amounts payable to the Treasurer under section 78 and the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*; and
  - (b) deducting any amounts that should properly be attributed to an entity that is neither the corporation nor an entity that the corporation controlled at the relevant time.
- (5) The report shall state the amount (if any) that the board recommends should be paid by way of dividend under section 81.
- (6) The report shall state the amounts (if any) that have been paid or declared by way of dividend under section 81 since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division.
- (7) The report must contain a review of —
  - (a) the operations, during the financial year, of the economic entity constituted by the corporation and the entities it controlled from time to time during the financial year (even if the corporation did not control the same entities throughout the year); and
  - (b) the results of those operations.
- (8) The report must give particulars of any significant change in the state of affairs of the economic entity referred to in subclause (3)(a) that occurred during the financial year.
- (9) To avoid doubt, if the corporation controlled a particular entity throughout some, but not all, of the financial year, the report need not

relate to the entity's activities, operations or state of affairs during a period throughout which the corporation did not control the entity, or to the results of such operations.

- (10) The report must give particulars of any matters or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect —
- (a) the operations, in financial years after the financial year, of the economic entity constituted by the corporation and the entities it controls from time to time; or
  - (b) the results of those operations; or
  - (c) the state of affairs, in financial years after the financial year, of that economic entity.
- (11) The report must refer to —
- (a) likely developments in the operations referred to in subclause (10)(a); and
  - (b) the expected results of those operations.

**27. Report may omit prejudicial information**  
(*cf. s.306 Corporations Law*)

If the board believes on reasonable grounds that to include in the report particular information clause 25(10) or 26(11) requires would be likely to result in unreasonable prejudice to the corporation —

- (a) the first-mentioned information need not be so included; and
- (b) if it is not so included, the report shall state that some or all, as the case requires, of the information required by that subclause has not been so included.

**28. Additional information required in report**  
(*cf. s.307 Corporations Law*)

- (1) The report shall contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out —
- (a) particulars of the directors' qualifications, experience and special responsibilities (if any);
  - (b) particulars of any interest which the director has disclosed —
    - (i) in accordance with clause 12 of Schedule 2; and
    - (ii) since the date of the last report made out in relation to the corporation under this Division.
- (2) The report must also contain, or have attached to it, a statement that sets out —
- (a) how many meetings of the board (including meetings of committees of directors) were held during a financial year, or would have been held if a quorum had been present; and

- (b) in relation to each person who was a director of the corporation throughout the financial year, how many of the meetings referred to in paragraph (a) the person attended; and
- (c) in relation to each person who was such a director during some but not all of the financial year —
  - (i) how many of the meetings referred to in paragraph (a) were held while the person was such a director; and
  - (ii) how many of the meetings referred to in paragraph (a) the person attended while he or she was such a director.

**29. Benefits under contracts with directors**  
*(cf. s.309 Corporations Law)*

- (1) The report must set out whether or not, during or since the financial year, a director has received, or has become entitled to receive, a benefit because of a contract that —
  - (a) the director; or
  - (b) a firm of which the director is a member; or
  - (c) an entity in which the director has a substantial financial interest,has made (during that or any other financial year) with —
  - (d) the corporation; or
  - (e) an entity that the corporation controlled, or a body corporate that was related to the corporation, when the contract was made or when the director received, or became entitled to receive, the benefit (if any).
- (2) If so, the report shall set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.
- (3) Subclauses (1) and (2) do not apply to —
  - (a) a benefit included in the aggregate amount of emoluments received, or due and receivable, by directors shown, in accordance with the regulations in force for the purposes of clause 18, in the corporation's financial statements for the financial year; or
  - (b) the fixed salary of a full-time employee of —
    - (i) the corporation; or
    - (ii) an entity that controlled, or a body corporate that was related to the corporation, at a relevant time.

**30. Indemnifying officer or auditor**  
*(cf. s.309A Corporations Law)*

- (1) If —
- (a) during or since the financial year, the corporation has indemnified against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
  - (b) but for subclause (3) or (4) of clause 15 of Schedule 2, subclause (1) of that clause would have prohibited the corporation from indemnifying the person against that liability,

the report must set out —

- (c) the person's name; and
- (d) the nature of the liability; and
- (e) how much the corporation paid, and what else the corporation did, by way of indemnifying the person against the liability.

- (2) If —
- (a) during or since the financial year, the corporation has made a relevant agreement (as defined in section 9 of the Corporations Act) for indemnifying against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
  - (b) but for subclause (3) or (4) of clause 15 of Schedule 2, subclause (1) of that clause would prohibit the corporation from indemnifying the person against that liability,

the report must set out particulars of the relevant agreement, including —

- (c) the person's name; and
- (d) the nature of the liability; and
- (e) how much the relevant agreement provides for the corporation to pay, and what else it provides for the corporation to do, by way of indemnifying the person against the liability.

- (3) If —
- (a) during or since the financial year, the corporation has paid, or agreed to pay, a premium in respect of a contract insuring against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
  - (b) but for subclause (8) of clause 15 of Schedule 2, subclause (5) of that clause would have prohibited the corporation from paying, or agreeing to pay, the premium,

the report must —

- (c) name the person and state that the corporation has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and
  - (d) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.
- (4) Nothing in this clause limits the generality of clause 29.

**31. Reports generally**  
*(cf. s.310 Corporations Law)*

- (1) The board shall comply with this Division in relation to a financial year before 30 September in each year immediately following the relevant financial year.
- (2) A report that this Division requires in relation to a financial year shall —
  - (a) be made out in accordance with a resolution of the board;
  - (b) be made out not later than 30 September in each year immediately following the relevant financial year;
  - (c) specify the day on which it was made out; and
  - (d) be signed by at least 2 directors.

**Division 10 — Financial statements and directors' reports**

**32. Rounding off amounts**  
*(cf. s.311 Corporations Law)*

Regulations made under section 100 may permit the corporation subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Schedule in substitution for an amount that the corporation would, but for this clause, be required or permitted to set out in the accounts or report an amount that is ascertained in accordance with the regulations and is not more than \$500 greater or less than the first-mentioned amount.

**33. Where corporation is a chief entity, board to obtain all necessary information**  
*(cf. s.312 Corporations Law)*

- (1) Subject to subclause (3), where the corporation is a chief entity in relation to a particular financial year, the board shall not cause to be made out the consolidated accounts referred to in Division 6, the statement referred to in clause 23 or the report referred to in clause 26 unless they have available to them sufficient information, about each entity that the corporation controlled during all or part of, or at the end of the financial year, to enable them to ensure —

- (a) that the consolidated accounts —
    - (i) will be made out in accordance with Divisions 6 and 7; and
    - (ii) in particular, will give a true and fair view of the matters with which they must deal;and
  - (b) that neither the statement nor the report will be false or misleading in a material particular.
- (2) Reporting officers of an entity that the corporation controlled during all or part of, or at the end of, a particular financial year of the corporation must, at the request of the board, supply to the corporation all the information that is required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1).
- (3) Where the directors of the corporation, having taken all such steps as are reasonably available to them, are unable to obtain from the reporting officers of an entity the information required by the board for the preparation of the consolidated accounts, the statement and the report referred to in subclause (1) within the period by which those consolidated accounts, that statement and that report are respectively required, by the provisions referred to in that subclause, to be prepared —
- (a) the board shall cause to be made out those consolidated accounts, that statement and that report without incorporating in, or including with, those consolidated accounts, or incorporating in that statement or report, as the case requires, the information relating to the entity but —
    - (i) they shall include in those consolidated accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those consolidated accounts, that statement and that report such qualifications and explanations as are necessary to prevent those consolidated accounts, that statement and that report from being misleading; and
    - (ii) they may qualify accordingly that part of that statement that is made under clause 23(2);and
  - (b) where the board has caused to be made out those consolidated accounts, that statement and that report in accordance with paragraph (a), they shall, within one month after receiving any of that information from the reporting officers of the entity lodge with the Minister a statement setting out or summarizing the information and containing such qualifications and explanations, by the board, of those consolidated accounts, that statement or that report as are

necessary having regard to the information received from those reporting officers of the entity.

- (4) In this clause “**reporting officers**”, in relation to an entity, means —
- (a) in the case of a corporation, the corporation’s directors; or
  - (b) otherwise, the entity’s officers.

**34. Relief from requirements as to accounts and reports**  
(*cf. s.313 Corporations Law*)

- (1) The board may apply to the Treasurer for an order relieving them or relieving the corporation from compliance with specified requirements of this Schedule relating to accounts or consolidated accounts or to the report required by Division 9.
- (2) On an application under subclause (1), the Treasurer may make an order relieving the board or the corporation from compliance with all or any of the specified requirements either unconditionally or on condition that the board or the corporation complies with such other requirements relating to the accounts or consolidated accounts or to the report as the Treasurer imposes.
- (3) An application under subclause (1) is to be in writing supported by a statement in writing made in accordance with a resolution of the board, signed by not less than 2 directors and stating the reasons for seeking an order.
- (4) If the board makes an application under subclause (1), the Treasurer may require it to supply such information relating to the operations of the corporation and of any entity which the corporation controls or has controlled during a financial year, as the Treasurer thinks necessary for the purpose of determining the application.
- (5) A reference in subclause (2) to requirements of this Schedule relating to accounts or consolidated accounts does not include a reference to the requirements of clause 7.
- (6) (a) Where the Treasurer makes an order under subclause (2) the Treasurer is to cause the text of the order to be laid before each House of Parliament within 14 days after the order is made.
- (b) If at the commencement of the period referred to in paragraph (a) a House of Parliament is not sitting and the Treasurer is of the opinion that that House will not sit during that period, the Treasurer is to transmit a copy of the order to the Clerk of that House and the copy of the order so transmitted is to be —
- (i) taken to have been laid before that House; and
  - [(ii) *deleted*]

- (iii) taken to be a document published by order or under the authority of that House.
  - (c) The laying of a copy of a document deemed to have occurred under paragraph (b) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.
- (7) The Treasurer is not to make an order in relation to the corporation unless in relation to each requirement of this Schedule that is specified in the order, the Treasurer is of the opinion that compliance with the requirement —
  - (a) would render accounts or consolidated accounts, or a report required by Division 9 misleading;
  - (b) would be inappropriate to the circumstances of the corporation; or
  - (c) would impose unreasonable burdens on the corporation or an officer of the corporation.
- (8) The reference in subclause (7) to an order in relation to the corporation is a reference to an order under subclause (2) relieving the board or the corporation from compliance with specified requirements of this Schedule.
- (9) The Treasurer may make an order under subclause (2) that is limited to a specified period and may from time to time either on application by the board, or without any such application, revoke or suspend the operation of the order.
- (10) The revocation or suspension under subclause (8) of an order does not take effect until notice of the revocation or suspension is served on the corporation.

**35. Minister to receive a copy of the annual report**

- (1) The corporation shall as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 62 of this Act.
- (2) In subclause (1) “**the prescribed day**” is the 5th working day after receipt by the corporation under clause 39(2) of the Auditor General’s report.

**36. Minister entitled to financial statements and reports**  
*(cf. s.315 Corporations Law)*

The annual report of the corporation required by section 62 of this Act is to contain the following documents relevant to the financial year to which the report relates —

- (a) a copy of the corporation’s financial statements for that financial year;



- (b) a copy of each statement that Division 8 requires in relation to that financial year;
- (c) a copy of each statement that Division 9 requires in relation to that financial year;
- (d) a copy of the Auditor General's report on the financial statements; and
- (e) a copy of any order of the Treasurer under clause 34.

**37. Contravention**  
(*cf. s.318 Corporations Law*)

- (1) Subject to this clause, if a director fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the provisions of this Schedule other than Divisions 2 and 3, the director contravenes this subclause.
- (2) The penalty applicable to a contravention of subclause (1) is —
  - (a) in a case to which paragraph (b) does not apply, \$5 000; or
  - (b) if the offence was committed with intent to deceive or defraud the Minister or the Treasurer or creditors of the corporation, \$20 000 or imprisonment for 5 years or both.
- (3) In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Schedule relating to the form and content of the accounts or consolidated accounts of the corporation by reason of an omission from the accounts or consolidated accounts, it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Division 5 and 6 to be dealt with in the accounts or consolidated accounts, as the case may be.
- (4) After the end of the period within which Division 5, 6, 7 or 8 requires the board to cause a document to be made out, the Minister may require the board to produce the document on a specified day, at a specified place, to a specified person.
- (5) A request under subclause (4) must be made by writing given to each of the directors.
- (6) In a proceeding for a contravention of Division 5, 6, 8 or 9, proof of contravention of a requirement made under subclause (4) is *prima facie* evidence that the document was not made out within the period referred to in that subclause.

**38. Audit**

- (1) If the Auditor General cannot complete the audit of the corporation by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his or her inability to complete the audit by that date, and the Minister is to cause copies of the report

to be laid before both Houses of Parliament, within 7 sitting days of receiving that report.

- (2) Section 92 of the *Financial Administration and Audit Act 1985* applies to the audit of the corporation.

**39. Auditor General must report**  
*(cf. s.331A Corporations Law)*

- (1) The Auditor General is to send a report to the Minister on —
  - (a) the corporation's financial statements required for the purposes of clause 36; and
  - (b) the corporation's accounting records and other records relating to those financial statements.
- (2) The Auditor General is to give the report to the directors as soon as is practicable after it has been given to the Minister under subclause (1).

**40. Report to state whether financial statements properly drawn up**  
*(cf. s.331B Corporations Law)*

- (1) The report must state whether or not, in the Auditor General's opinion, the financial statements are properly drawn up —
  - (a) so as to give a true and fair view of the matters with which Divisions 5, 6 and 7 require them to deal; and
  - (b) in accordance with this Schedule; and
  - (c) in accordance with applicable accounting standards.
- (2) If, in the Auditor General's opinion, the financial statements are not drawn up in accordance with a particular applicable accounting standard, the report must give particulars of the quantified financial effect on the financial statements of failing to draw them up in accordance with that accounting standard.
- (3) If the Auditor General is not satisfied about a matter referred to in subclause (1) or (2), the report must state why not.

**41. Matters affecting consolidated accounts**  
*(cf. s.331C Corporations Law)*

- (1) If the financial statements include consolidated accounts, the report must specify each entity that the corporation controlled during all or a part of, or at the end of, the financial year, but of which the Auditor General has not acted as auditor.
- (2) If —
  - (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity of the kind referred to in subclause (1); and
  - (b) the Auditor General has not examined those accounts and the auditor's report (if any) on those accounts,

the report on the financial statements must specify that entity.

- (3) If —
- (a) the financial statements include consolidated accounts prepared on the basis of information derived from accounts of an entity that the corporation controlled during all or part of, or at the end of, the financial year; and
  - (b) the Auditor General's report on those accounts was made subject to any qualification, or included any comment made under clause 43 or a corresponding previous law,

the report on the financial statements must —

- (c) specify the entity; and
- (d) give particulars of the qualification or comment.

**42. Defects, irregularities and omissions**  
*(cf. s.331D Corporations Law)*

The report must describe —

- (a) any defect or irregularity in the financial statements; and
- (b) any matter that the financial statements do not set out and to which one must have regard in order to obtain a true and fair view of the matters with which the financial statements deal.

**43. Auditor General's report to cover adequacy of information**  
*(cf. s.331E Corporations Law)*

- (1) It is the Auditor General's duty to form an opinion about each of the matters set out in subclause (2), and the report must set out particulars of any deficiency, failure or shortcoming in respect of any of those matters.
- (2) These are the matters —
  - (a) whether the Auditor General has obtained all the information and explanations he or she needed;
  - (b) whether the corporation has kept proper accounting records, and other records (including registers), as required by this Schedule;
  - (c) whether the returns received from branch offices of the corporation are adequate;
  - (d) if the corporation is a chief entity in relation to the financial year concerned —
    - (i) whether the accounts of entities that were used in preparing the consolidated accounts of the corporation in relation to the financial year are in form and content appropriate and proper for such use;
    - (ii) whether the Auditor General has received satisfactory information and explanations as required by the Auditor General for the purposes of forming an opinion about the matter referred to in subparagraph (i); and

- (iii) whether the procedures and methods used in arriving at the amounts taken into the consolidated accounts were appropriate to the circumstances of preparing the consolidated accounts.

**44. Minister entitled to inspect auditor's report**  
*(cf. s.331F Corporations Law)*

The Minister is entitled to inspect the report at any reasonable time.

**45. Powers and duties of Auditor General as to reports on accounts**  
*(cf. s.332 Corporations Law)*

- (1) Where Division 6 requires consolidated accounts to be made out in relation to a financial year of the corporation —
  - (a) the Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers, of each entity that the corporation controlled during all or part of, or at the end of, that financial year, even if the corporation no longer controls the entity; and
  - (b) the Auditor General is entitled to require from any officer or auditor of such an entity (at the corporation's expense), such information and explanations about the entity's affairs as the Auditor General needs in order to report on the consolidated accounts.
- (2) The Auditor General has a right of access at all reasonable times to the accounting records and other records, including registers of the corporation, and is entitled to require from any officer of the corporation such information and explanations as the Auditor General desires for the purposes of audit.
- (3) If the Auditor General in the course of the performance of duties as auditor of the corporation and its subsidiaries, is satisfied that —
  - (a) there has been a contravention of any provision of this Schedule; and
  - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the corporation,

the Auditor General is to forthwith report the matter to the Minister in writing.
- (4) The provisions of sections 78 to 91 (inclusive) and section 95 of the *Financial Administration and Audit Act 1985* apply to the corporation as if it were a statutory authority named in Schedule 1 of that Act.

**46. Extension of time**

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) Where the Minister grants an extension of time under subclause (1), the provisions of subclause (6) of clause 34 shall, with all necessary changes, apply to the memorandum evidencing the extension as if it were an order for the purposes of that subclause.

*[Schedule 3 amended by No. 55 of 1996 s.10(3); No. 57 of 1997 s.52; No. 26 of 1999 s.76(3); No. 24 of 2000 s.14(9) to (12); No. 10 of 2001 s.68.]*

## Schedule 4

[Section 33]

### Provisions to be included in articles of association of subsidiaries

#### 1. Disposal of shares

- (1) The corporation is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister.
- (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the corporation.

#### 2. Directors

- (1) The directors of the subsidiary are to be appointed by the corporation, but no such director may be appointed except with the prior written approval of the Minister.
- (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the corporation and the subsidiary.
- (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 4 and in the memorandum and articles of association of the subsidiary.

#### 3. Further shares

Shares may not be issued or transferred except with the prior written approval of the Minister.

#### 4. Subsidiaries of subsidiary

- (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister.
- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times comply with this Act.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association and with the requirements of this Act.

## Schedule 5

[Section 90]

### Access to, and pricing for, electricity transmission capacity

#### 1. Definitions

In this Schedule —

**“firm capacity”** means, subject to any provision made by the regulations, the largest portion of electricity transmission capacity which the corporation can make reliably available from or to a particular point, whether or not that capacity is committed to existing users;

**“new capacity”** means any increase in firm capacity or non-firm capacity which would arise from any enhancement to or expansion of the electricity transmission system;

**“non-firm capacity”** means that portion of electricity transmission capacity from or to a particular point which is not firm capacity, whether or not that portion of electricity transmission capacity is committed to existing users;

**“spare capacity”** means any portion of firm capacity or non-firm capacity not committed to existing users;

**“standby power”** means electricity generated by any person under an arrangement relating to the provision of standby, backup or emergency electricity for loads associated with a user, and includes such electricity generated by that user;

**“user”** means a person who has an arrangement with the corporation for access to electricity transmission capacity, and includes the corporation to the extent that it has access to electricity transmission capacity.

#### 2. Obligation to provide access

- (1) The corporation must, to the extent prescribed under section 93, make available access to spare capacity and new capacity on a non-discriminatory basis and on a first come first served basis to any existing or prospective user seeking access to either or both of those capacities.
- (2) Terms and conditions on which access to electricity transmission capacity is made available, including to existing users, are to be specified in the regulations.
- (3) The regulations may make provision for the following —
  - (a) the duration of any arrangement with the corporation for access to electricity transmission capacity;

- (b) the nature of the service to be provided by the corporation to the user, including without limitation the further subclassification of firm capacity and non-firm capacity;
- (c) the nature of circumstances beyond the corporation's control or to be deemed to be beyond its control, and the extent to which those circumstances relieve the corporation of its obligations under this Act, the regulations and any contract (including a deemed contract under section 94(2)) between the corporation and a user;
- (d) the circumstances in which access to spare capacity which is non-firm capacity is to be made available;
- (e) prices, including without limitation —
  - (i) the different prices for subclassifications of electricity transmission capacity;
  - (ii) the different components of prices and the classes of users to which those components apply;
  - (iii) the circumstances in which the corporation may change the prices payable by existing users; and
  - (iv) the circumstances in which the corporation may agree to transport electricity at prices different from the prescribed prices;
- (f) secondary markets in electricity transmission capacity;
- (g) capacity reservation arrangements;
- (h) permissible input and output points;
- (i) quality of supply at input and output points;
- (j) reliability of supply;
- (k) disconnection;
- (l) metering;
- (m) balancing of electricity supply and electricity demand;
- (n) treatment of electricity losses from the electricity transmission system;
- (o) electricity exchange;
- (p) supply of standby power and transmission of standby power;
- (q) safety;
- (r) emergencies and maintenance;
- (s) security for financial obligations, the manner of calculation of financial obligations, and payment arrangements;
- (t) capital investment and other costs payable by users in addition to prices, including without limitation investment in input and output facilities; and
- (u) procedures for review by an independent expert of the anticipated costs of requested new capacity.



- (4) The corporation may enter into written contracts with users for access to electricity transmission capacity, but to the extent that a provision of a contract is inconsistent with those terms and conditions which are specified in the regulations as being essential terms and conditions, the provision is of no effect.

**3. Standby power and preservation of system continuity and integrity**

In order to maintain the continuity and integrity of the electricity transmission system —

- (a) a condition of access to electricity transmission capacity is that the corporation is entitled to details of the user's arrangements, if any, in relation to the supply of standby power and the transmission of standby power;
- (b) the corporation at all times has the right to disconnect loads associated with a user from the electricity transmission system in circumstances where those loads require standby power and the supply or transmission of that standby power is for any reason inadequate at that time; and
- (c) in addition to paragraph (b), the corporation at all times has reasonable rights to disconnect any user in emergency circumstances or for maintenance purposes.

**4. Obligation to provide information**

- (1) The corporation must prepare annually —
    - (a) a report on past and current demand for electricity transmission capacity;
    - (b) a forecast of future demand for electricity transmission capacity;
    - (c) a report on current firm capacity, non-firm capacity and spare capacity;
    - (d) a report on plans for new capacity currently being considered by the corporation;
    - (e) a forecast of —
      - (i) the expected costs of maintaining electricity transmission capacity and providing new capacity; and
      - (ii) any capital investment required for that maintenance or provision;
    - (f) a report on the costs of the electricity transmission system,
- and must provide to any person copies of those reports and forecasts, upon payment to the corporation by that person of the prescribed fee.

- (2) The corporation must provide to any existing or prospective user within a reasonable time of request a report and forecast of firm capacity, non-firm capacity, and spare capacity, as applicable to that user's particular requirements, upon payment to the corporation by that user of the prescribed fee.

**5. Obligation to meet capacity needs**

The corporation must incur costs and make capital investment to —

- (a) maintain electricity transmission capacity; and
- (b) provide new capacity within a reasonable time if requested by any existing or prospective user,

if there is a reasonable commercial prospect that it will recover within a reasonable time from existing or prospective users those costs, that capital investment, and a reasonable rate of return on that capital investment.

**6. Accounts, pricing objectives and transparency**

- (1) The corporation must —

- (a) for the purposes of subclauses (2) and (3) determine, with the approval of the Minister —
  - (i) all income, expenditure, assets and liabilities relating to the electricity transmission system; and
  - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity transmission system;
- (b) ensure that its accounts and records are in such form as to enable —
  - (i) all income, expenditure, assets and liabilities relating to the electricity transmission system to be properly recorded and distinguished from the corporation's other income, expenditure, assets and liabilities; and
  - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity transmission system to be appropriately apportioned to the electricity transmission system;
- (c) prepare annually from those accounts and records an audited —
  - (i) profit and loss statement which gives a true and fair view of its profit and loss relating solely to the electricity transmission system for the relevant year; and
  - (ii) balance sheet which gives a true and fair view of its state of affairs relating solely to the electricity transmission system at the end of the relevant year;

and

- (d) provide to any person copies of that profit and loss statement and balance sheet, upon payment to the corporation by that person of the prescribed fee.
- (2) The corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing electricity transmission capacity;
  - (b) the capital investment in the electricity transmission system; and
  - (c) a reasonable rate of return on that capital investment.
- (3) The corporation must —
- (a) make publicly available a schedule of the terms and conditions of access to electricity transmission capacity;
  - (b) prepare and make publicly available a schedule of indicative prices for that access which provides sufficient detail to allow existing or prospective users to calculate the electricity transmission prices likely to apply in any reasonable circumstance; and
  - (c) make publicly available such details of its pricing methods as are sufficient to indicate to existing or prospective users how prices for that access are established,

and must provide to any person copies of those schedules and details, upon payment to the corporation by that person of the prescribed fee.

## Schedule 6

[Section 91]

### Access to, and pricing for, electricity distribution capacity

#### 1. Definitions

In this Schedule —

“**new capacity**” means any increase in electricity distribution capacity which would arise from any enhancement to or expansion of the electricity distribution system;

“**spare capacity**” means any portion of electricity distribution capacity not committed to existing users;

“**standby power**” means electricity generated by any person under an arrangement relating to the provision of standby, backup or emergency electricity for loads associated with a user, and includes such electricity generated by that user;

“**user**” means a person who has an arrangement with the corporation for access to electricity distribution capacity, and includes the corporation to the extent that it has access to electricity distribution capacity.

#### 2. Obligation to provide access

- (1) The corporation must, to the extent prescribed under section 93, make available access to spare capacity and new capacity on a non-discriminatory basis and on a first come first served basis to any existing or prospective user seeking access to either or both of those capacities.
- (2) Terms and conditions on which access to electricity distribution capacity is made available, including to existing users, are to be specified in the regulations.
- (3) The regulations may make provision for the following —
  - (a) the duration of any arrangement with the corporation for access to electricity distribution capacity;
  - (b) the nature of the service to be provided by the corporation to the user, including without limitation the further subclassification of electricity distribution capacity;
  - (c) the nature of circumstances beyond the corporation’s control or to be deemed to be beyond its control, and the extent to which those circumstances relieve the corporation of its obligations under this Act, the regulations and any contract (including a deemed contract under section 94(2)) between the corporation and a user;

- (d) prices, including without limitation —
    - (i) the different prices for subclassifications of electricity distribution capacity;
    - (ii) the different components of prices and the classes of users to which those components apply;
    - (iii) the circumstances in which the corporation may change the prices payable by existing users; and
    - (iv) the circumstances in which the corporation may agree to transport electricity at prices different from the prescribed prices;
  - (e) secondary markets in electricity distribution capacity;
  - (f) capacity reservation arrangements;
  - (g) permissible input and output points;
  - (h) quality of supply at input and output points;
  - (i) reliability of supply;
  - (j) disconnection;
  - (k) metering;
  - (l) balancing of electricity supply and electricity demand;
  - (m) treatment of electricity losses from the electricity distribution system;
  - (n) electricity exchange;
  - (o) supply of standby power and transmission and distribution of standby power;
  - (p) safety;
  - (q) emergencies and maintenance;
  - (r) security for financial obligations, the manner of calculation of financial obligations, and payment arrangements;
  - (s) capital investment and other costs payable by users in addition to prices, including without limitation investment in input and output facilities; and
  - (t) procedures for review by an independent expert of electricity distribution capacity, and of the anticipated costs of requested new capacity.
- (4) The corporation may enter into written contracts with users for access to electricity distribution capacity, but to the extent that a provision of a contract is inconsistent with those terms and conditions which are specified in the regulations as being essential terms and conditions, the provision is of no effect.

### **3. Preservation of system continuity and integrity**

In order to maintain the continuity and integrity of the electricity distribution system —

- (a) a condition of access to electricity distribution capacity is that the corporation is entitled to details of —
  - (i) the user's arrangements, if any, in relation to the supply of standby power and the transmission and distribution of standby power; and
  - (ii) any generation or distribution of electricity in connection with loads associated with a user within premises not owned by the corporation;
- (b) the corporation at all times has the right to disconnect loads associated with a user from the electricity distribution system in circumstances where the supply, transmission or distribution of any generation associated with that user is for any reason inadequate at that time; and
- (c) in addition to paragraph (b), the corporation at all times has reasonable rights to disconnect any user in emergency circumstances or for maintenance purposes.

### **4. Obligation to provide information**

The corporation must provide to any existing or prospective user, within a reasonable time of request, a report and forecast of electricity distribution capacity, as applicable to that user's particular requirements, upon payment to the corporation by that user of the prescribed fee.

### **5. Obligation to meet capacity needs**

The corporation must incur costs and make capital investment to —

- (a) maintain electricity distribution capacity; and
- (b) provide new capacity within a reasonable time if requested by any existing or prospective user,

if there is a reasonable commercial prospect that it will recover within a reasonable time from existing or prospective users those costs, that capital investment, and a reasonable rate of return on that capital investment.

### **6. Accounts, pricing objectives and transparency**

- (1) The corporation must —
  - (a) for the purposes of subclauses (2) and (3) determine, with the approval of the Minister —
    - (i) all income, expenditure, assets and liabilities relating to the electricity distribution system; and

- (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity distribution system;
  - (b) ensure that its accounts and records are in such form as to enable —
    - (i) all income, expenditure, assets and liabilities relating to the electricity distribution system to be properly recorded and distinguished from the corporation's other income, expenditure, assets and liabilities; and
    - (ii) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the electricity distribution system to be appropriately apportioned to the electricity distribution system;
  - (c) prepare annually from those accounts and records an audited —
    - (i) profit and loss statement which gives a true and fair view of its profit and loss relating solely to the electricity distribution system for the relevant year; and
    - (ii) balance sheet which gives a true and fair view of its state of affairs relating solely to the electricity distribution system at the end of the relevant year;and
  - (d) provide to any person copies of that profit and loss statement and balance sheet, upon payment to the corporation by that person of the prescribed fee.
- (2) The corporation must adopt pricing methods which have as their objective the recovery within a reasonable time from users of —
- (a) the costs of maintaining and providing the capacity of the electricity distribution system to transport electricity;
  - (b) the capital investment in the electricity distribution system; and
  - (c) a reasonable rate of return on that capital investment.
- (3) The corporation must —
- (a) make publicly available a schedule of the terms and conditions of access to electricity distribution capacity;
  - (b) prepare and make publicly available a schedule of indicative prices for that access which provides sufficient detail to allow existing or prospective users to calculate the electricity distribution prices likely to apply in any reasonable circumstance;
- and

(c) make publicly available such details of its pricing methods as are sufficient to indicate to existing or prospective users how prices for that access are established,

and must provide to any person copies of those schedules and details, upon payment to the corporation by that person of the prescribed fee.



# Schedule 7

[Section 92]

## Procurement of new generation

### 1. Definitions

In this Schedule —

**“electricity system”** means the systems or each of them operated by the corporation for generation, transmission and distribution of electricity at any voltages;

**“load characteristics”** means the relationship between load on the electricity system and time;

**“substantial new generation”** means new generation which has a capacity in megawatts equal to or greater than 3% of total installed capacity, and which cannot be made available by increases in the performance of the electricity system in its then current state;

**“total installed capacity”** means the total capacity in megawatts of all electricity supply or generation connected into that portion of the electricity system which is known as the South-West Interconnected System, whether or not that supply or generation is owned or controlled by the corporation.

### 2. Obligation to provide information

- (1) The corporation must prepare annually forecasts covering a minimum forecast period of 10 years and reports, which give sufficient information to allow interested parties to make proposals in relation to, and to participate in any procurement process by the corporation for, new generation.
- (2) The forecasts must deal with, but are not to be limited to, the following matters —
  - (a) electricity demand on the electricity system in terms of capacity (in kilowatts) and energy (in kilowatt-hours);
  - (b) relevant analyses of the load characteristics of the electricity system, including without limitation reasonable load duration curves and reasonable daily load curves;
  - (c) any potential discrepancy between electricity demand and electricity supply on the electricity system; and
  - (d) possible solutions to remedy any such potential discrepancy.
- (3) The reports must deal with, but are not to be limited to, the following matters —
  - (a) the corporation’s commitments to purchase electricity in terms of capacity (in kilowatts) and energy (in kilowatt-hours);

- (b) the corporation's current inventories of, and commitments to purchase, fuel for electricity generation, in terms of quantities of fuel but not in terms of the price paid or to be paid for that fuel; and
  - (c) reasonable details of the corporation's generating plant, including without limitation the extent of utilization of plant and the fuel or fuels used.
- (4) The corporation must provide to any person copies of the forecasts and reports, upon payment to the corporation by that person of the prescribed fee.

**3. Obligation to conduct a competitive procurement process for substantial new generation and to minimize electricity costs**

- (1) The corporation must, whenever it requires any substantial new generation, procure that substantial new generation through a non-discriminatory and open procurement process.
- (2) The corporation must —
- (a) whenever it procures any new generation, at all times seek to minimize the total delivered cost of electricity, subject only to maintaining the reliability and safety of the electricity system;
  - (b) ensure that all proposals for new generation receive fair and equitable consideration;
  - (c) ensure that, if the corporation participates as a prospective supplier or generator in a procurement process required by subclause (1), it is treated equally with all other existing or prospective suppliers or generators and does not receive any special treatment or benefit; and
  - (d) take into consideration the effect that each proposal for new generation will have upon the utilization and operation of the electricity system and upon the corporation's existing contracts for the purchase and sale of electricity.
- (3) The corporation may procure substantial new generation only with the approval of the Minister.

**4. Obligation to disclose electricity procurement process**

The corporation must prepare and make publicly available a description of the process to be adopted in the procurement of any particular substantial new generation, and must provide to any person a copy of that description upon payment to the corporation by that person of the prescribed fee.