Western Australia

Government Trading Enterprises Act 2023

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Defined terms

Western Australia

Government Trading Enterprises Act 2023

An Act —

- **to provide for the purpose and governance of, strategic planning by, and accountability and control of, certain government trading enterprises; and**
- **to amend certain Acts consequentially; and**
- **for related purposes.**

Part 1 — Preliminary

1. Short title

This is the *Government Trading Enterprises Act 2023*.

2. Commencement

This Act comes into operation as follows —

(a) Part 1 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act —

annual performance statement, for a GTE, means the GTE's annual performance statement for the time being in effect under Part 6 Division 3;

board, in relation to a GTE, means the GTE's board under section 11;

chief executive officer, in relation to a GTE, means the person holding or acting in the office of chief executive officer of the GTE under section 37 or 41;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

director, in relation to a GTE, means a member of the GTE's board;

directors' skills matrix, in relation to a GTE, has the meaning given in section 14;

Establishing Act, in relation to a GTE, means the Act under which the GTE is established;

executive officer, in relation to a GTE, means a member of staff of the GTE designated as an executive officer under section 43;

Government entity has the meaning given in the *Salaries and Allowances Act 1975* section 7BA;

GTE means a body corporate established under 1 of the following —

(a) the *Electricity Corporations Act 2005* section 4;

(aa) the *Keystart Act 2024* section 6;

(b) the *Port Authorities Act 1999* section 4;

(c) the *Water Corporations Act 1995* section 4;

(d) the *Western Australian Land Authority Act 1992* section 5;

GTE Minister means the Minister to whom the administration of this Act is committed;

member of staff, in relation to a GTE —

(a) means a person employed under the GTE's Establishing Act; and

(b) includes a person who is a member of staff of a port authority by operation of the *Port Authorities Act 1999*;

Note for this definition:

A GTE's chief executive officer is appointed under this Act and is not a member of staff as defined.

policy order has the meaning given in section 111(1);

Portfolio Minister, for a GTE or a subsidiary of a GTE, means the Minister to whom the administration of the GTE's Establishing Act is committed;

prescribed means prescribed by regulations made under this Act;

remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

specified, in relation to an instrument or document made under or referred to in this Act, means specified in that instrument or document;

statement of expectations, for a GTE, means the GTE's statement of expectations for the time being in effect under Part 6 Division 2;

statement period has the meaning given in section 69(1);

subsidiary has the meaning given in section 4;

Treasurer means the Treasurer of the State;

unable to act, in relation to an office holder, includes being on leave, whether extended, for illness or otherwise.

(2) A reference in this Act to doing a thing or to a thing done includes a reference to omitting to do a thing or to a thing omitted to be done.

[Section 3 amended: No. 44 of 2024 s. 63.]

4. Term used: subsidiary

(1) In this Act —

subsidiary means an entity that is the subsidiary of another entity under subsection (2) or (3).

(2) The Corporations Act Part 1.2 Division 6 applies for the purpose of determining whether one entity is a subsidiary of another.

(3) An entity (***entity B***) is a subsidiary of another (***entity A***) if —

(a) entity B is a unit trust, joint venture or partnership; and

(b) entity A has an interest in, or other rights in connection with, entity B entitling entity A to —

(i) control the composition of the governing body of entity B; or

(ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of entity B; or

(iii) control the business affairs of entity B.

5. Relationship to GTEs' Establishing Acts

This Act is, in relation to a GTE's Establishing Act, to be read with the Establishing Act as if they were a single Act.

6. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 — Purpose and functions of GTEs

7. GTE's purpose

A GTE's purpose is to advance the public benefit through the performance of its functions.

8. GTE's functions

A GTE's functions are —

(a) the functions conferred on it under its Establishing Act; and

(b) any other functions conferred on it under this Act or another written law.

9. Performance of GTE's functions

(1) A GTE must perform its functions in accordance with its statement of expectations and annual performance statement and, in particular, must —

(a) endeavour to pursue performance objectives and attain key performance indicators contained in its annual performance statement; and

(b) endeavour to achieve financial outcomes that are consistent with forecasts and forward year estimates contained in its annual performance statement.

(2) A GTE in performing its functions must, consistently with its purpose —

(a) endeavour to achieve policy objectives set out in a policy order applying to the GTE; and

(b) act in accordance with prudent commercial principles.

10. GTE may act at its discretion

(1) The fact that a GTE has a function given to it by its Establishing Act or any other written law does not impose a duty on it to do any particular thing.

(2) A GTE has a discretion as to how and when it performs its functions, subject to —

(a) this Act; and

(b) the GTE's Establishing Act; and

(c) any direction given to the GTE under this Act or the GTE's Establishing Act.

Part 3 — Boards of directors

Division 1 — Boards and board membership

11. Board to be GTE's governing body

(1) A GTE must have a board.

(2) A GTE's board is its governing body with authority, in the name of the GTE, to —

(a) perform its functions; and

(b) determine its policies; and

(c) control its affairs.

12. Board membership

(1) A GTE's board consists of between 5 and 9 members.

(2) A board may, with the GTE Minister's approval, have less than 5 or more than 9 members.

(3) A GTE must ensure that the prescribed details of the membership of the GTE's board are publicly available.

13. Appointment of board members

(1) The Portfolio Minister must, after consultation with the board, appoint the members of a GTE's board.

(2) The Portfolio Minister may, with the approval of the GTE Minister, appoint a GTE's chief executive officer to its board.

(3) The Portfolio Minister cannot appoint a member of staff of a GTE to its board.

(4) In appointing the members of a GTE's board, the Portfolio Minister must comply with any requirements contained in the GTE's Establishing Act.

Note for this subsection:

The *Water Corporations Act 1995* section 7 sets out requirements applying to the appointment of a member to the board of a regional water corporation.

(5) Upon making an appointment to a GTE's board, the Portfolio Minister must make the prescribed details of the appointment publicly available.

14. Directors' skills matrix

(1) A GTE's board and the Portfolio Minister must endeavour to agree a skills matrix for the board (the ***directors' skills matrix***).

(2) The board and the Portfolio Minister may, by agreement, amend or replace the directors' skills matrix from time to time.

(3) The directors' skills matrix must indicate the skills, qualifications and experience required of the GTE's directors, individually and collectively.

(4) The Portfolio Minister for a GTE must take into account the directors' skills matrix of the GTE when making an appointment to the GTE's board.

(5) The regulations may provide for any of the following —

(a) the processes by which a directors' skills matrix is to be agreed, reviewed, amended or replaced;

(b) the adoption of a directors' skills matrix in the absence of agreement;

(c) the content of a directors' skills matrix.

15. Recommending candidates for vacancies

(1) If a vacancy occurs, or is soon to occur, in the membership of a GTE's board, the board may recommend a candidate to the Portfolio Minister.

(2) The recommendation must include advice to the Portfolio Minister on the extent to which the board, if the candidate were to be appointed, would satisfy the directors' skills matrix.

(3) The Portfolio Minister is not required to wait for, or follow, a recommendation.

16. Chairperson and deputy chairperson

(1) The Portfolio Minister for a GTE —

(a) must designate a director to be the chairperson of the GTE's board; and

(b) may designate a director to be the deputy chairperson of the GTE's board.

(2) While the position of chairperson is vacant or while the chairperson is unable to act —

(a) the deputy chairperson, if any, must act in the chairperson's place; and

(b) if there is no deputy chairperson or if the deputy chairperson is unable to act, the Portfolio Minister must designate another director to act in the chairperson's place.

(3) The Portfolio Minister cannot, under subsection (1)(a) or (b) or (2)(b), designate a director who is also the GTE's chief executive officer.

(4) While the deputy chairperson or another director is acting in the chairperson's place —

(a) the deputy chairperson or other director is taken to be the chairperson and has the equivalent entitlements of the chairperson; and

(b) the chairperson, if any, is not entitled to remuneration under section 18, unless the Portfolio Minister approves otherwise.

(5) An act or omission of the deputy chairperson or another director acting in place of the chairperson cannot be questioned on the ground that the occasion for acting had not arisen or had ceased.

17. Terms and conditions of appointment

(1) The duties of a director of a GTE need not be performed on a full-time basis.

(2) A director of a GTE holds office on the terms and conditions of appointment determined by the Portfolio Minister.

(3) A director of a GTE, other than a director who is also the GTE's chief executive officer —

(a) holds office for the period, not exceeding 3 years, specified in the instrument of appointment; and

(b) is eligible for reappointment, but cannot hold office for more than 9 consecutive years.

(4) A director of a GTE who is also the GTE's chief executive officer —

(a) holds office for the period specified in the instrument of appointment; and

(b) is eligible for reappointment.

(5) The power to determine a director's remuneration is subject to section 18.

18. Remuneration

(1) Subsection (2) applies in relation to the remuneration of a director of a GTE while —

(a) the GTE is a Government entity; and

(b) the director is a director for the purposes of the *Salaries and Allowances Act 1975* section 7D.

(2) The remuneration of the director must be determined by the Portfolio Minister within the range determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7D.

(3) Subsection (4) applies in relation to the remuneration of a director of a GTE while either —

(a) the GTE is not a Government entity; or

(b) the GTE is a Government entity but the office of the director is prescribed for the purposes of paragraph (b) of the definition of ***director*** in the *Salaries and Allowances Act 1975* section 7D(1).

(4) The remuneration of the director must be determined by the Portfolio Minister.

(5) The Portfolio Minister for a GTE is not required, under subsection (2) or (4), to redetermine the remuneration of a director of the GTE if they held office as a director of the GTE immediately before the day on which the subsection began to apply to them.

(6) Despite subsections (1) to (5), a director is not entitled to remuneration under this Division if 1 or more of the following applies to the director —

(a) the director is also the GTE's chief executive officer;

(b) the director holds a full-time office or position that is remunerated out of funds appropriated by Parliament;

(c) a prescribed circumstance applies to or in relation to the director.

(7) This section, other than subsection (6), has effect subject to section 19.

19. Same remuneration for directors of GTE

(1) This section applies to the remuneration of a GTE's directors, other than of —

(a) its chairperson; and

(b) its deputy chairperson; and

(c) a director whose office is prescribed for the purposes of paragraph (b) of the definition of ***director*** in the *Salaries and Allowances Act 1975* section 7D(1).

(2) A determination by the Portfolio Minister of the remuneration of a director of the GTE under section 18 has effect as the determination of the remuneration of each other director of the GTE to whom this section applies.

20. Expenses

A GTE's director may be reimbursed expenses reasonably incurred in the performance of their functions as a director, as determined by the Portfolio Minister from time to time.

21. Casual vacancies

(1) The office of a director of a GTE becomes vacant if the director —

(a) dies, resigns under this section or is removed from office under this section; or

(b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(c) is convicted of an offence punishable by imprisonment for more than 12 months.

(2) A director of a GTE may at any time resign from office by writing signed and given to the Portfolio Minister.

(3) The resignation takes effect on the later of —

(a) receipt by the Portfolio Minister; and

(b) the day specified in the resignation.

(4) The Portfolio Minister for a GTE may at any time remove a director from the GTE's board and is not required to give reasons.

22. Leave of absence

(1) A GTE's board may grant a director leave of absence for a period not exceeding 1 month, on the terms and conditions that it considers appropriate.

(2) With the prior approval of the Portfolio Minister, a GTE's board may grant a director leave of absence for a period exceeding 1 month, on the terms and conditions that it considers appropriate.

23. Alternate directors

(1) If a GTE's director is unable to act, or it is anticipated that they will be unable to act, the Portfolio Minister may appoint another person as an alternate director to act in the director's place while the director is unable to act.

(2) Subsection (1) does not apply in relation to the chairperson of a GTE's board.

Note for this subsection:

Section 16 makes provision for when a GTE's chairperson is unable to act.

(3) In making an appointment under subsection (1), the Portfolio Minister must, to the extent practicable, take into account the directors' skills matrix of the GTE.

(4) If a GTE's director is acting as the chairperson, the Portfolio Minister may, under subsection (1), appoint another person as an alternate director to act temporarily in the director's place.

(5) A member of staff of a GTE cannot be appointed as an alternate director of the GTE.

(6) While acting in accordance with their appointment, an alternate director is taken to be a director of the GTE and to have the equivalent entitlements of the director in whose place they are acting.

(7) A director is not entitled to remuneration under section 18 while an alternate director is acting in the place of the director, unless the Portfolio Minister approves otherwise.

(8) An act or omission of an alternate director cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

Division 2 — Review of board performance

24. Review of board performance: self-assessment

(1) A GTE's board must, on an annual basis, give the Portfolio Minister a report on its assessment of its performance over the year following the year covered by its previous report to the Minister under this section.

(2) The first report of a GTE's board under this section must cover the period, and be given to the Portfolio Minister within the period, agreed by the Minister and the board.

(3) The report of a GTE's board must include —

(a) an assessment, by reference to the GTE's statement of expectations and annual performance statement, of the board's performance in governing the GTE; and

(b) an assessment of the board's performance, collectively and individually, by reference to self-assessment criteria agreed by the Portfolio Minister and the Board.

(4) If a GTE's board and the Portfolio Minister cannot agree self-assessment criteria within a reasonable time, the Minister may determine the criteria that are to apply.

25. Review of board performance: external review

(1) A GTE's board must arrange for its performance to be externally reviewed, and a report to be given to the Portfolio Minister, in accordance with the regulations.

(2) The matters that the regulations may deal with include —

(a) the periodicity of review; and

(b) the criteria of review, including by providing that some or all of the criteria may be determined by the Portfolio Minister; and

(c) the process for appointing, and the skills, qualifications and experience of, a reviewer.

(3) If a GTE's board does not arrange for external review in accordance with the regulations, the Portfolio Minister may arrange for external review at the expense of the GTE.

(4) Regardless of the other provisions of this section, a Portfolio Minister may, at any time but subject to the approval of the GTE Minister, arrange for the external review of the performance of a GTE's board at the expense of the GTE.

(5) The Portfolio Minister is not bound by regulations made for the purposes of subsection (1) when acting under subsection (3) or (4).

Division 3 — Board committees

26. Committees

(1) A GTE's board may appoint committees to assist it in the performance of its functions, and may alter or discharge any committee.

(2) A committee may determine its own procedures, to the extent that they are not fixed under this Act, subject to the direction of the board.

(3) A meeting of a committee cannot proceed unless the number of members of the committee present who are directors of the GTE exceeds the number of members present who are not.

(4) The regulations may provide for the remuneration of the members of a committee who are not also directors or members of staff of the GTE.

(5) The matters that the regulations may deal with include —

(a) whether a member is entitled to remuneration; and

(b) whether the remuneration may be determined by the GTE's board; and

(c) whether the remuneration must be determined on the recommendation of the Portfolio Minister.

(6) A member of a committee may be reimbursed expenses reasonably incurred in the performance of their functions as a member of the committee, as determined by the Portfolio Minister from time to time.

(7) A GTE must provide a committee with the administrative support and facilities the committee reasonably requires for the performance of the committee's functions.

27. Audit and risk management committees

(1) A GTE's board must appoint a committee to assist the board in performing its audit and risk management functions.

(2) A member of a GTE's audit and risk management committee who is also a director of the GTE is entitled to an allowance determined by the Salaries and Allowances Tribunal.

(3) The allowance is in addition to any other remuneration to which the director is entitled under this Act.

(4) Despite subsections (2) and (3), a director is not entitled to remuneration under this section if 1 or more of the following applies to the director —

(a) the director is also the GTE's chief executive officer;

(b) the director holds a full-time office or position that is remunerated out of funds appropriated by Parliament;

(c) a prescribed circumstance applies to or in relation to the director.

Division 4 — Board procedures

28. Holding meetings

(1) Meetings of a GTE's board must be held at times and places determined by the board.

(2) A GTE's board must meet at least 6 times a year.

(3) A special meeting of a GTE's board —

(a) may be convened by the chairperson at any time; and

(b) must be convened by the chairperson if 2 or more directors request the chairperson to do so.

29. Quorum

The quorum for a meeting of a GTE's board is one-half of the number of directors.

30. Presiding members

(1) The chairperson, if present, must preside at a meeting of a GTE's board.

(2) Otherwise, the directors present at the meeting must elect 1 of their number to preside.

31. Procedure

A GTE's board may determine its own procedures to the extent that they are not fixed under this Act.

32. Presence at meetings may be remote

The presence of a person at a meeting of a GTE's board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

33. Voting

(1) Each director present at a meeting of a GTE's board has a deliberative vote, unless they are prevented from voting under section 59.

(2) A question is resolved by a majority of the votes cast.

(3) In the case of an equality of votes, the person presiding has a casting vote in addition to a deliberative vote.

34. Resolution without meeting

(1) The directors of a GTE may pass a resolution without a directors' meeting being held if all directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

(3) The resolution is passed when the last director signs.

(4) The resolution must be recorded in the minutes of the board's next meeting.

(5) Section 59 has effect as if the resolution were being voted on at a meeting of the GTE's board.

35. Minutes to be kept

A GTE's board must ensure that accurate records of the proceedings of the board are kept.

Part 4 — CEOs

36. GTE's chief executive officer

(1) A GTE must have a chief executive officer.

(2) The chief executive officer is to administer the GTE's day-to-day operations, subject to the control of the GTE's board.

37. Appointment

(1) A GTE's chief executive officer is appointed by, and may be removed by, the GTE's board.

(2) The chief executive officer must be appointed on a full-time basis.

(3) The chief executive officer —

(a) holds office for the period, not exceeding 5 years, specified in the instrument of appointment; and

(b) is eligible for reappointment.

(4) The chief executive officer holds office on the terms and conditions of appointment determined by the GTE's board.

(5) The powers in this section, other than the power to determine remuneration, can only be exercised with the approval of the Portfolio Minister.

(6) The power to determine the chief executive officer's remuneration is subject to section 39.

38. Selection criteria

(1) A GTE's board and the Portfolio Minister must endeavour to agree selection criteria for the office of the GTE's chief executive officer.

(2) The board and the Portfolio Minister may, by agreement, amend or replace the selection criteria from time to time.

(3) A GTE's board must take into account the selection criteria when appointing the GTE's chief executive officer.

(4) The regulations may —

(a) deal with the process by which selection criteria may be agreed, amended, reviewed or replaced; and

(b) provide for the occasions on which selection criteria must be reviewed or amended; and

(c) provide for selection criteria in the absence of agreement, including by providing that some or all of the criteria may be determined by the Portfolio Minister; and

(d) provide for the content of selection criteria.

39. Remuneration

(1) Subsections (2) and (3) apply in relation to the remuneration of a GTE's chief executive officer while —

(a) the GTE is a Government entity; and

(b) the chief executive officer is an executive officer as defined in the *Salaries and Allowances Act 1975* section 7C(1).

(2) The remuneration of the chief executive officer must be determined by the GTE's board within the range determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7C.

(3) Any variation to the remuneration of the chief executive officer while they are treated as if they were not an executive officer because of the *Salaries and Allowances Act 1975* section 7C(4) must be determined by the GTE's board with the approval of the Portfolio Minister.

(4) Subsection (5) applies in relation to the remuneration of a GTE's chief executive officer while either —

(a) the GTE is not a Government entity; or

(b) the GTE is a Government entity but the office of the chief executive officer is prescribed for the purposes of paragraph (b) of the definition of ***executive officer*** in the *Salaries and Allowances Act 1975* section 7C(1).

(5) The remuneration, including any variation to the remuneration, of the chief executive officer must be determined by the GTE's board with the approval of the Portfolio Minister.

(6) A GTE's board is not required, under subsection (2) or (5), to redetermine the remuneration of the GTE's chief executive officer if they held office as the GTE's chief executive officer immediately before the day on which the subsection began to apply to them.

40. Resignation

(1) A GTE's chief executive officer may at any time resign from office by writing signed and given to the chairperson of the GTE's board.

(2) The resignation takes effect on the later of —

(a) receipt by the chairperson; and

(b) the day specified in the resignation.

(3) Despite subsections (1) and (2), if the chief executive officer's terms and conditions of appointment deal with the matter of resignation, the right to resign can only be exercised in accordance with those terms and conditions and the resignation has effect in accordance with those terms and conditions.

(4) As soon as practicable after receiving a resignation, the chairperson must notify the Portfolio Minister of the resignation.

41. Acting chief executive officer

(1) A GTE's board may appoint a person to act in place of the GTE's chief executive officer —

(a) during a vacancy in that office; or

(b) during any period when the chief executive officer is unable to act.

(2) A person cannot act in place of a GTE's chief executive officer for a continuous period of more than 3 months without the Portfolio Minister's approval.

(3) A person cannot act in place of a GTE's chief executive officer for a continuous period of more than 12 months.

(4) An act or omission of a person acting in place of a GTE's chief executive officer cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

42. Review of CEO's performance

A GTE's board must review the chief executive officer's performance at least annually.

Part 5 — Duties of directors, CEOs and staff

Division 1 — Preliminary

43. Executive officers

(1) A GTE's board may designate a member of staff as an executive officer for the purposes of this Part.

(2) The designation does not have effect until the member of staff is notified in writing.

44. Attempts

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

Division 2 — Duties stated

45. Fiduciary relationship with, and duties to, GTE

(1) A GTE's directors and chief executive officer each have —

(a) the same fiduciary relationship with the GTE as a director of a company incorporated under the Corporations Act has with the company; and

(b) the same duties to the GTE to act with loyalty and in good faith, in advancing the purpose of the GTE, as a director of a company incorporated under the Corporations Act has to the company.

(2) The duties of a GTE's directors under subsection (1) are enforceable by the GTE Minister or the Portfolio Minister and not otherwise.

(3) The duties of a GTE's chief executive officer under subsection (1) are enforceable by the GTE's board and not otherwise.

(4) The duties under sections 46 to 51 are in addition to those under subsection (1).

46. Care and diligence

(1) In this section —

business judgment, in relation to a GTE, means any decision to take or not take action in respect of a matter relevant to the business operations of the GTE.

(2) A director, chief executive officer or executive officer of a GTE must perform the functions of their office with the degree of care and diligence that a reasonable person would exercise if they —

(a) were a director or officer of a corporation in the GTE's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the GTE as, the director or officer.

(3) A person commits an offence if they contravene subsection (2).

Penalty for this subsection: a fine of $5 000.

(4) A director or officer of a GTE who makes a business judgment is taken to meet the requirements of subsection (2), and their duties under section 45(1), in respect of the judgment if they —

(a) make the judgment in good faith for a proper purpose; and

(b) do not have a material personal interest in the subject matter of the judgment; and

(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and

(d) rationally believe that the judgment is in the best interests of the GTE.

(5) A director's or officer's belief that a judgment is in the best interests of the GTE is a rational one unless the belief is one that no reasonable person in their position would hold.

47. Good faith and proper purpose

(1) A director or chief executive officer of a GTE must perform the functions of their office —

(a) in good faith in the best interests of the GTE; and

(b) for a proper purpose.

(2) A person commits an offence if they contravene subsection (1).

Penalty for this subsection: a fine of $5 000.

(3) A person commits a crime if they contravene subsection (1) —

(a) with intent to deceive or defraud the GTE, its creditors or creditors of any other person; or

(b) for any other fraudulent purpose.

Penalty for this subsection: imprisonment for 5 years and a fine of $20 000.

Summary conviction penalty for this subsection: imprisonment for 3 years and a fine of $12 000.

48. Honesty

(1) A director, chief executive officer or executive officer of a GTE must at all times act honestly in the performance of the functions of their office.

(2) A person commits an offence if they contravene subsection (1).

Penalty for this subsection: a fine of $5 000.

(3) A person commits a crime if they contravene subsection (1) —

(a) with intent to deceive or defraud the GTE, its creditors or creditors of any other person; or

(b) for any other fraudulent purpose.

Penalty for this subsection: imprisonment for 5 years and a fine of $20 000.

Summary conviction penalty for this subsection: imprisonment for 3 years and a fine of $12 000.

49. False or misleading information

(1) In this section —

false or misleading information means, subject to subsection (2), information provided, whether in documentary or any other form —

(a) that relates to the affairs of a GTE (including information as to the state of knowledge of the person providing it with respect to the affairs of the GTE); and

(b) that —

(i) is false or misleading in a material particular; or

(ii) has omitted from it a matter or thing, the omission of which renders the information misleading in a material respect;

provide, in relation to information, means —

(a) make available or furnish the information; and

(b) authorise or permit the making available or furnishing of the information;

relevant official, in relation to a GTE, means

(a) the Treasurer, the GTE Minister or the GTE's Portfolio Minister; or

(b) a director or auditor of the GTE.

(2) In determining whether information provided to a relevant official is false or misleading information, if it is provided in response to a question asked by that relevant official the question and the information must be considered together.

(3) A director, chief executive officer or executive officer of a GTE who provides information to a relevant official that, to the knowledge of the director, chief executive officer or executive officer, is false or misleading information commits an offence.

Penalty for this subsection: imprisonment for 2 years and a fine of $10 000.

(4) A director, chief executive officer or executive officer of a GTE who provides information to a relevant official that is false or misleading information without having taken reasonable steps to ensure that it is not false or misleading information commits an offence.

Penalty for this subsection: imprisonment for 1 year and a fine of $5 000.

50. Use of position

(1) A director, chief executive officer or member of staff of a GTE must not improperly use their position to —

(a) gain, directly or indirectly, an advantage for themselves or someone else; or

(b) cause detriment to the GTE.

(2) A person commits a crime if they contravene subsection (1).

Penalty for this subsection: imprisonment for 5 years and a fine of $20 000.

Summary conviction penalty for this subsection: imprisonment for 3 years and a fine of $12 000.

(3) It is irrelevant, for the purposes of this section, that —

(a) the person intended to gain, directly or indirectly, an advantage for the GTE; or

(b) the GTE gained, directly or indirectly, an advantage.

51. Use of information

(1) A person who obtains information because they are, or have been, a director, chief executive officer or member of staff of a GTE must not improperly use the information to —

(a) gain, directly or indirectly, an advantage for themselves or someone else; or

(b) cause detriment to the GTE.

(2) A person commits a crime if they contravene subsection (1).

Penalty for this subsection: imprisonment for 5 years and a fine of $20 000.

Summary conviction penalty for this subsection: imprisonment for 3 years and a fine of $12 000.

(3) It is irrelevant, for the purposes of this section, that —

(a) the person intended to gain, directly or indirectly, an advantage for the GTE; or

(b) the GTE gained, directly or indirectly, an advantage.

52. Conflict of duties: public service officers

If a director of a GTE is also a public service officer —

(a) the person's duties as a director prevail if a conflict arises between those duties and the person's other duties as a public service officer; and

(b) the person does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.

Division 3 — Remedies for breach of duties

53. Civil proceedings for breach of duties

(1) This section applies if a person contravenes section 46, 47, 48, 50 or 51, and 1 or both of the following is the case —

(a) the person or any other person made a profit as a result of the contravention;

(b) the GTE suffered loss or damage as a result of the contravention.

(2) The GTE may, whether or not the person has been convicted of an offence in respect of that contravention, seek an order for the recovery of an amount equal to the profit or the loss or damage in a court of competent jurisdiction.

54. Compensation for breach of duties

(1) This section applies if a person is convicted of an offence against section 46, 47, 48, 50 or 51.

(2) If the court by which the person is convicted is satisfied that the GTE has suffered loss or damage as a result of the act or omission that constituted the offence, the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the GTE of the amount specified by the court.

(3) An order under this section may be enforced as if it were a judgment of the court.

Division 4 — Relief from liability

55. Relief from liability

(1) This section applies if, in proceedings under section 45, 53 or 54, it appears to the court that a person is, or may be, liable under that section but the person —

(a) has acted honestly; and

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

(2) The court may relieve the person either wholly or partly from liability on any terms (including as to costs) the court thinks appropriate.

56. Application for relief from liability

(1) If a person has reason to believe that a claim may or will be made against them under section 45, 53 or 54, the person may apply to the Supreme Court for relief.

(2) The court may relieve the person either wholly or partly from liability, on any terms (including as to costs) the court thinks appropriate, if it appears to the court that the person —

(a) has acted honestly; and

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

Division 5 — Disclosure of material personal interests

Subdivision 1 — Directors

57. Term used: committee

In this Subdivision —

committee, in relation to a GTE, means a committee of the GTE's board.

58. Disclosure of material personal interests

(1) A director of a GTE who has a material personal interest in a matter that relates to the GTE's affairs must, as soon as practicable after the relevant facts become known to the

director, disclose the nature and extent of the interest to the other directors.

Penalty for this subsection: a fine of $10 000.

(2) A member of a GTE's committee who has a material personal interest in a matter that relates to the GTE's affairs must, as soon as practicable after the relevant facts become known to the member, disclose the nature and extent of the interest to the other members of the committee.

Penalty for this subsection: a fine of $10 000.

(3) Subsections (1) and (2) both apply to a director of a GTE who is also a member of a committee.

(4) A director or member of a committee may fulfil a duty to disclose the nature and extent of a material personal interest by —

(a) making the disclosure at a meeting of the board or committee; or

(b) if the duty arises because of a resolution that is being dealt with under section 34 — making the disclosure to the chairperson of the GTE's board; or

(c) if the matter is not being dealt with at a meeting or by a resolution dealt with under section 34 — making the disclosure to the chairperson of the GTE's board.

(5) If a director of a GTE or a member of a GTE's committee has, in the opinion of the person presiding at a meeting of the board or committee, a material personal interest in a matter that relates to the GTE's affairs, the person presiding may —

(a) call on the director or member to disclose the nature and extent of the interest under subsection (1) or (2); and

(b) if the director or member does not do so — determine that the director or member has the interest.

(6) A disclosure under subsection (1) or (2) at a meeting or a determination under subsection (5) must be recorded in the minutes of the meeting.

(7) A contravention of this section by a director or member of a committee does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

59. Participation by interested members

(1) A director of a GTE or a member of a GTE's committee (the ***interested person***) who has, or has been determined under section 58(5)(b) to have, a material personal interest in a matter that relates to the GTE's affairs —

(a) must not vote (whether at a meeting or otherwise) on the matter; and

(b) must not be present (whether in person or remotely) while the matter is being considered at a meeting.

(2) The scope of the matter referred to in subsection (1) includes a proposed resolution under subsection (3) in respect of the matter, whether relating to the interested person or another person.

(3) The restrictions in subsection (1) do not apply to the interested person to the extent that the board or committee has at any time passed a resolution that —

(a) specifies the interested person, the interest and the matter; and

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

(4) For the purposes of subsection (1), a director or member —

(a) does not have a material personal interest in a matter if the interest —

(i) arises merely because the director or member has a shareholding in a public company; and

(ii) is shared in common with other shareholders in that company;

and

(b) does not have a material personal interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the director or member against a liability incurred as a director of the board or a member of a committee, unless the GTE is the insurer.

(5) Subsection (4) does not limit what is or is not a material personal interest.

(6) A contravention of this section by a director or member of a committee does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

60. Quorum if section 59 applies

(1) If a director of a GTE is unable because of section 59 to act in relation to a matter, a quorum is present for the purposes of considering and voting on the matter if the number of directors present, who are able to vote in relation to the matter, is —

(a) at least the quorum under section 29, less 1; and

(b) not less than 3.

(2) The Portfolio Minister may deal with a matter to the extent that the board cannot because of subsection (1).

61. Portfolio Minister may declare section 59(1) or 60(1) inapplicable

(1) The Portfolio Minister for a GTE may in writing declare that section 59(1) or 60(1) does not apply in relation to the GTE and a specified matter —

(a) either generally or for the purpose of dealing with particular proposed resolutions; and

(b) either wholly or to a specified extent.

(2) The Portfolio Minister must cause the declaration to be laid before each House of Parliament within 14 sitting days of the House after the declaration is made.

62. Register of material personal interests

(1) A disclosure or determination under section 58 by or in relation to a director of a GTE or a member of a GTE's committee must, as soon as practicable, be recorded in a register kept by the GTE for that purpose.

(2) A record must include particulars of the nature and extent of the interest.

(3) The register must be available to the directors of the GTE.

63. Matters that must be included in departments' annual reports

(1) In this section —

annual report, in relation to a department, means the annual report submitted by the accountable authority of the department under the *Financial Management Act 2006* Part 5.

(2) If the Portfolio Minister for a GTE deals with a matter under section 60(2), the annual report of the department principally

assisting in the administration of the GTE's Establishing Act must include —

(a) a statement that the Minister dealt with the matter under section 60(2); and

(b) a brief description of why and how the Minister dealt with it.

(3) If the Portfolio Minister for a GTE makes a declaration under section 61(1), the annual report of the department principally assisting in the administration of the GTE's Establishing Act must include —

(a) the text of the declaration; and

(b) a brief description of why the Minister made the declaration.

Subdivision 2 — CEOs

64. Disclosure of material personal interests

(1) If a GTE's chief executive officer has a material personal interest in a matter that relates to the GTE's affairs, the chief executive officer must, as soon as practicable after the relevant facts become known to the chief executive officer —

(a) disclose the nature and extent of the interest to the GTE's board; and

(b) not take action or further action in relation to the matter unless authorised to do so by the GTE's board.

Penalty for this subsection: a fine of $10 000.

(2) The board's authorisation may be subject to conditions and restrictions.

(3) If the chief executive officer is unable to act in relation to a matter, the board may appoint a member of staff to act in relation to the matter.

Division 6 — Loans, insurance, indemnities and exemptions

65. Prohibition on loans to directors and related persons

(1) In this section —

relative, in relation to a person, means a parent or remoter lineal ancestor, child or remoter lineal descendant, or sibling of the person.

(2) A GTE or a subsidiary of the GTE must not provide (whether directly or through an interposed entity) financial accommodation to —

(a) a director or chief executive officer of the GTE or of a subsidiary of the GTE; or

(b) a spouse or de facto partner of the director or chief executive officer; or

(c) a relative of the director or chief executive officer, or of a spouse or de facto partner of the director or chief executive officer.

(3) A GTE provides financial accommodation to a person if the GTE —

(a) makes a loan to the person or to a company or entity owned or controlled by the person; or

(b) gives a guarantee or provides security in connection with a loan made (whether or not by the GTE) to the person or to a company or entity owned or controlled by the person.

(4) Financial accommodation provided in contravention of subsection (2) is void.

(5) A director or chief executive officer of a GTE or of a subsidiary of the GTE commits an offence if they are concerned in a contravention of subsection (2) by the GTE or the subsidiary

(whether or not the loan is in relation to the director or chief executive officer).

Penalty for this subsection: a fine of $5 000.

(6) A director or chief executive officer of a GTE or of a subsidiary of the GTE commits a crime if they are concerned in a contravention of subsection (2) by the GTE or the subsidiary (whether or not the loan is in relation to the director or chief executive officer) —

(a) with intent to deceive or defraud —

(i) the GTE; or

(ii) creditors of the GTE or of any other person;

or

(b) for any other fraudulent purpose.

Penalty for this subsection: imprisonment for 5 years and a fine of $20 000.

Summary conviction penalty for this subsection: imprisonment for 3 years and a fine of $12 000.

(7) In proceedings for an offence against subsection (5) or (6) it is a defence to prove that the person charged did not know, and could not by the exercise of reasonable diligence have known, that the person was concerned in a contravention of subsection (2).

66. Directors and others not to be exempted or indemnified from certain liabilities

(1) A GTE must not exempt a person (whether directly or through an interposed entity) from a liability to the GTE incurred as a director, chief executive officer or executive officer of the GTE.

(2) A subsidiary of a GTE must not exempt a person (whether directly or through an interposed entity) from a liability to the subsidiary incurred as a director, chief executive officer or executive officer of the subsidiary.

(3) A GTE or a subsidiary of the GTE must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against a liability incurred as a director, chief executive officer or executive officer of the GTE or subsidiary.

(4) Subsection (3) does not prevent a person from being indemnified against a liability to a person who is neither the GTE nor a subsidiary of the GTE, unless the liability arises out of conduct involving a lack of good faith.

(5) Subsection (3) 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 section 55 or 56.

(6) In determining the outcome of proceedings referred to in subsection (5), the result of any appeal in relation to the proceedings must be taken into account.

67. Insurance for certain liabilities of directors and others not to be provided

(1) A GTE or a subsidiary of a GTE must not pay, or agree to pay, a premium for a contract insuring a person who is or has been a director, chief executive officer or executive officer of the GTE or a subsidiary of a GTE against a liability (other than one for legal costs) arising out of —

(a) conduct involving a wilful breach of duty in relation to the GTE or the subsidiary; or

(b) a contravention of section 50(1) or 51(1).

(2) Subsection (1) applies to a premium whether it is paid directly or through an interposed entity.

(3) A GTE or a subsidiary of a GTE must not itself insure or indemnify a person who is or has been a director, chief executive officer or executive officer of the GTE or a subsidiary of the GTE against a liability referred to in subsection (1).

68. Certain indemnities, exemptions and insurance void

(1) Sections 66 and 67 do not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify or insure a person against a liability or exempt a person from a liability is void to the extent that it contravenes section 66 or 67.

Part 6 — Strategic planning

Division 1 — Preliminary

69. Terms used

(1) In this Part —

community service obligation means a thing —

(a) that the Portfolio Minister specifically wishes a GTE to do so as to advance the public benefit; and

(b) that, in accordance with prudent commercial principles, the GTE would not do, but for the Portfolio Minister's wish; and

(c) that is not something that businesses in the public or private sector are generally required or expected to do;

general election means a general election in relation to the Assembly as defined in the *Electoral Act 1907* section 4(1);

preparation period, in relation to a statement period, means the first 4 months of the statement period;

statement period, in relation to a GTE, means, subject to subsection (2), a period —

(a) beginning on the first day after a general election on which notice of the Governor's approval of the administration of departments, authorities, statutes and votes being placed under the control of specified Ministers is published in the *Gazette*; and

(b) ending immediately before the first day after the next general election on which similar notice is published in the *Gazette*.

(2) When a GTE is first established its first statement period begins on the day of its establishment.

Division 2 — Statement of expectations

70. Statement of expectations

(1) For each statement period, a GTE's board and the Portfolio Minister must endeavour to agree a statement of expectations for the GTE in accordance with this Division.

(2) A GTE's statement of expectations must —

(a) be in a form acceptable to the Portfolio Minister and the Treasurer; and

(b) contain, in respect of the statement period —

(i) an analysis of the operating environment of, and key strategic risks for, the GTE and its subsidiaries; and

(ii) a statement of the expectations of the Government and of the Portfolio Minister that are relevant to the GTE and its subsidiaries; and

(iii) a statement of the strategic direction and objectives of the GTE and its subsidiaries; and

(iv) a statement of major initiatives and business operations to be undertaken during the statement period by the GTE and its subsidiaries;

and

(c) contain or address any other matter that the regulations require it to contain or address.

(3) A GTE's statement of expectations may —

(a) specify the nature and extent of community service obligations that the GTE is expected to perform; and

(b) specify information that the GTE must include in reports given under Part 7 Division 1; and

(c) include any other matter that the GTE and the Portfolio Minister agree to include.

71. Preparing draft statement of expectations

(1) During the preparation period a GTE's board must —

(a) consult the Portfolio Minister and the Treasurer regarding the GTE's statement of expectations for the statement period; and

(b) prepare a draft statement of expectations and submit it to the Portfolio Minister and the Treasurer by a date set by the Portfolio Minister.

(2) After receiving a draft statement of expectations, the Portfolio Minister may require the board —

(a) to consider or further consider any matter; and

(b) to submit a draft revised in light of that consideration to the Portfolio Minister and the Treasurer by a further date set by the Portfolio Minister.

(3) The board must comply with a requirement under subsection (2).

72. Adopting statement of expectations

(1) A GTE's board and the Portfolio Minister must endeavour to agree a draft statement of expectations for the GTE for the statement period.

(2) The Portfolio Minister must not agree a draft statement of expectations without the approval of the Treasurer.

(3) If the board and the Portfolio Minister agree a draft statement of expectations, it becomes the statement of expectations for the GTE for the statement period.

(4) If, at the expiry of the preparation period, the board and the Portfolio Minister have not reached agreement on a draft

statement of expectations, the Portfolio Minister may, with the approval of the Treasurer —

(a) present to the board a draft statement of expectations; and

(b) notify the board that it is to be the GTE's statement of expectations for the statement period.

(5) If the Portfolio Minister gives a notification under subsection (4)(b) in relation to a draft statement of expectations, it becomes the statement of expectations for the GTE for the statement period.

(6) The Portfolio Minister must cause the text of a notification under subsection (4)(b) to be laid before each House of Parliament within 14 sitting days of the House after the notification is given.

(7) Subsection (6) does not require the Portfolio Minister to cause the text of the statement of expectations to be laid before each House of Parliament.

73. Varying statement of expectations

(1) If a GTE's board and the Portfolio Minister, with the approval of the Treasurer, agree a variation to the GTE's statement of expectations, the statement as varied becomes the statement of expectations for the GTE for the remainder of the statement period.

(2) After consulting a GTE's board the Portfolio Minister may, with the approval of the Treasurer —

(a) present to the board a variation to the GTE's statement of expectations; and

(b) notify the board that the statement as varied is to be the GTE's statement of expectations.

(3) If the Portfolio Minister gives a notification under subsection (2)(b), the statement as varied becomes the statement

of expectations for the GTE for the remainder of the statement period.

(4) The Portfolio Minister must cause the text of a notification under subsection (2)(b) to be laid before each House of Parliament within 14 sitting days of the House after the notification is given.

(5) Subsection (4) does not require the Portfolio Minister to cause the text of the variation or of the statement of expectations as varied to be laid before each House of Parliament.

Division 3 — Annual performance statement

74. Terms used

In this Division —

budget day, in relation to a budget year, means the day on which the budget papers for that budget year are tabled in the Legislative Assembly;

budget year has the meaning given in the *Government Financial Responsibility Act 2000* section 4;

relevant budget papers, in relation to a GTE, means —

(a) the part of the budget papers tabled in the Legislative Assembly for a budget year that deals with the GTE under the title "Agency Information in Support of the Estimates"; or

(b) if the regulations prescribe another part of those budget papers, that other part;

submission date, in relation to a GTE, means the date by which the Under Treasurer, under the *Government Financial Responsibility Act 2000* section 5, requests that a GTE provide information required for the purpose of preparing relevant budget papers for a budget year;

Under Treasurer means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Financial Management Act 2006*.

75. Annual performance statement for GTE

(1) Subject to subsection (2), for each budget year a GTE's board must adopt an annual performance statement for the GTE in accordance with this Division.

(2) A GTE is not required to adopt an annual performance statement for the budget year in which it is first established.

(3) A GTE's annual performance statement for a budget year must —

(a) be in a form acceptable to the Portfolio Minister and the Treasurer; and

(b) be consistent with the relevant budget papers for the year; and

(c) contain —

(i) financial statements (including forward year estimates) as required by the Treasurer; and

(ii) performance objectives for the GTE and its subsidiaries for the budget year; and

(iii) key performance indicators in respect of the performance objectives;

and

(d) outline any issues, projects or initiatives that may —

(i) materially affect the financial position of the GTE; or

(ii) lead to the adjustment of the forward year estimates;

and

(e) outline any issues, projects or initiatives that may materially affect the attainment of —

(i) the performance objectives for the GTE and its subsidiaries; or

(ii) the key performance indicators in respect of the performance objectives;

and

(f) if a dividend formula for the budget year has been notified to the GTE's board under section 139(2), set out the formula; and

(g) contain or address any other matter that the regulations require the annual performance statement to contain or address; and

(h) contain or address any other matter that the Portfolio Minister requires the annual performance statement to contain or address.

(4) The performance objectives, performance indicators and outlines of issues, projects and initiatives contained in an annual performance statement must take account of and reflect the GTE's statement of expectations.

(5) A GTE's annual performance statement may —

(a) specify the nature and extent of community service obligations that the GTE is expected to perform; and

(b) specify information that the GTE must include in reports given under Part 7 Division 1; and

(c) include any other matter that the GTE and the Portfolio Minister agree to include.

76. Submitting draft annual performance statement and related information

(1) On or before the submission date for a GTE for a budget year, the GTE's board must submit to the Portfolio Minister and the Treasurer —

(a) any information in the possession or control of the GTE and its subsidiaries that is required by the Treasurer for the purposes of preparing the relevant budget papers for the year; and

(b) a draft annual performance statement for the GTE for the year; and

(c) any further information in the possession or control of the GTE and its subsidiaries that is required by the Portfolio Minister or the Treasurer for the purpose of considering the draft annual performance statement.

(2) After receiving a draft annual performance statement, the Portfolio Minister may require the board —

(a) to consider or further consider any matter; and

(b) to submit to the Portfolio Minister and the Treasurer —

(i) a draft annual performance statement revised in light of that consideration; and

(ii) any information in the possession or control of the GTE and its subsidiaries that is required by the Portfolio Minister or the Treasurer for the purpose of considering the revised draft.

(3) The board must comply with a requirement under subsection (2).

77. Adopting annual performance statement

(1) Before or as soon as practicable after budget day, a GTE's board must —

(a) adopt an annual performance statement for the budget year that has been prepared in accordance with section 76; and

(b) submit it to the Portfolio Minister and the Treasurer.

(2) If the annual performance statement as adopted by the board is inconsistent with the relevant budget papers, it is modified by this subsection to the extent necessary to remove the inconsistency.

(3) Subject to section 78, the annual performance statement as adopted by the board and modified by subsection (2) becomes the GTE's annual performance statement for the budget year.

78. Varying annual performance statement

(1) After consulting the Portfolio Minister and the Treasurer, a GTE's board may vary the GTE's annual performance statement for a budget year.

(2) After consulting a GTE's board the Portfolio Minister may, with the approval of the Treasurer —

(a) present to the board a variation to the GTE's annual performance statement; and

(b) notify the board that the statement as varied is to be the GTE's annual performance statement.

(3) If the GTE's board makes a variation under subsection (1) or the Portfolio Minister gives a notification under subsection (2) the annual performance statement as varied becomes the annual performance statement for the GTE for the budget year or the remainder of it.

(4) The Portfolio Minister must cause the text of a notification under subsection (2) to be laid before each House of Parliament

within 14 sitting days of the House after the notification is given.

(5) Subsection (4) does not require the Portfolio Minister to cause the text of the variation or of the annual performance statement as varied to be laid before each House of Parliament.

79. Continuation of annual performance statement

(1) A GTE's annual performance statement in effect at the end of a budget year continues to have effect as the GTE's annual performance statement after the end of the budget year until the earlier of —

(a) the day on which an annual performance statement for the next budget year is adopted; or

(b) the day on which the relevant budget papers for the next budget year are tabled in the Legislative Assembly.

(2) If a GTE's annual performance statement ceases to have effect under subsection (1)(b), the relevant budget papers have effect, to the extent practicable, as the GTE's annual performance statement until an annual performance statement is adopted for the next budget year.

Part 7 — Accountability and control

Division 1 — Reporting

80. Terms used

In this Division —

annual report means a financial report and a directors' report prepared under section 144 for a financial year;

interim report means a report prepared under section 146 for a prescribed period during a financial year;

separate subsidiary report means an annual report relating to a subsidiary of a GTE that is separate from the annual report relating to the GTE.

81. Annual reports must be given to Portfolio Minister and Treasurer

A GTE must give its annual report, and any separate subsidiary report, to the Portfolio Minister, and must give a copy of each report to the Treasurer, by 30 September after the end of the financial year to which it relates.

82. Interim reports must be given to Portfolio Minister and Treasurer

A GTE must give its interim report to the Portfolio Minister, and a copy of it to the Treasurer —

(a) within 2 months after the end of the period to which it relates; or

(b) if another time is prescribed for the purposes of this section — within the prescribed time.

83. Copies of certain reports must be laid before Parliament

(1) This section applies to an annual report that is not a separate subsidiary report.

(2) The Portfolio Minister must cause a copy of a report to be laid before each House of Parliament within 14 sitting days of the House after the report is given to the Portfolio Minister.

(3) A Portfolio Minister who is unable to cause a copy of a report to be laid before each House of Parliament by 31 October after the end of the financial year to which it relates must —

(a) by that date or as soon after that date as each House is sitting, inform each House of —

(i) the Minister's inability to cause a copy of the report to be laid; and

(ii) the reasons for the inability; and

(iii) the date by which the Minister expects a copy of the report to be laid before the House;

and

(b) as soon as practicable, cause a copy of the report to be laid before each House.

84. Copies of certain reports must be made publicly available

(1) As soon as practicable after causing a copy of an annual report to be laid before both Houses of Parliament, the Portfolio Minister must make the copy publicly available.

(2) As soon as practicable after receiving a separate subsidiary report, the Portfolio Minister must make a copy of the report publicly available.

85. Deletion of commercially sensitive information from copies of reports

(1) A GTE's board may request the Portfolio Minister to delete information that is of a commercially sensitive nature from the copy of a report (and any accompanying documents) relating to the GTE that is to be laid before each House of Parliament under section 83 or made publicly available under section 84.

(2) The Portfolio Minister must not agree to a request under subsection (1) in relation to a report to which section 83 applies unless the Auditor General gives a written opinion as to whether the information concerned is of a commercially sensitive nature.

(3) If the Portfolio Minister agrees to a request under subsection (1) the copy of the report laid before each House of Parliament or made publicly available —

(a) must include a statement that information has been deleted from it under this section; and

(b) if section 83 applies to the report — must be accompanied by a copy of the Auditor General's opinion under subsection (2).

(4) Nothing in this section affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

Division 2 — Consultation and provision of information

86. Terms used

In this Division —

document includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

information means information relating to the functions, operations or affairs of a GTE or of a subsidiary of a GTE;

information request means a request under section 88(2)(a) or (b);

personal information has the meaning given in the *Privacy Act 1988* (Commonwealth) section 6(1);

relevant department means, in relation to a GTE —

(a) the department principally assisting the Portfolio Minister in the administration of the GTE's Establishing Act; and

(b) the department principally assisting the GTE Minister in the administration of this Act; and

(c) the department principally assisting the Treasurer in the administration of the *Financial Management Act 2006*;

relevant Minister, in relation to a GTE, means the GTE's Portfolio Minister, the GTE Minister and the Treasurer;

specified information —

(a) means information specified in an information request; and

(b) includes a document on which information specified in an information request is recorded or stored.

87. Consultation

(1) A GTE and any 1 or more of the relevant Ministers must, at the request of any of them, consult together, personally or through appropriate representatives, in relation to any aspect of the functions, operations or affairs of the GTE or any subsidiary of the GTE.

(2) In support of, or in consequence of, or incidentally to, consultations under subsection (1), a GTE must consult with any 1 or more of the relevant departments.

88. Right to request, obtain and retain information

(1) A relevant Minister is entitled —

(a) to be given, and to retain, information in the possession of a GTE or any subsidiary of the GTE; and

(b) if the information is in or on a document, to be given, and to make and to retain copies of, that document.

(2) For the purposes of subsection (1) the relevant Minister may —

(a) request the GTE in writing to give specified information to the Minister; and

(b) request the GTE to give the Minister access to specified information; and

(c) for the purposes of paragraph (b), make use of the staff and facilities of the GTE or of any subsidiary of the GTE to obtain the specified information and give the Minister access to it.

(3) An information request may ask the GTE to give, or give access to, information —

(a) of a specified description; or

(b) presented in a specified way; or

(c) relating to a specified period; or

(d) having any other specified characteristic.

(4) An information request may specify a time before which the information, or access to it, must be given.

89. Duty to comply with information request

(1) Subject to subsection (2), a GTE must comply with an information request to the extent that the specified information —

(a) is in the possession of the GTE or a subsidiary of the GTE; or

(b) is capable of being assembled or compiled from information in the possession of the GTE or a subsidiary of the GTE.

(2) A GTE must not comply with an information request to the extent that specified information is or includes personal information, unless the request expressly provides that it extends to personal information.

(3) A GTE must make staff and facilities available to the relevant Minister as required for the purposes of section 88(2)(c).

(4) When giving, or giving access to, information a GTE must advise the relevant Minister if, in the opinion of the GTE —

(a) the public disclosure of any of the information would adversely affect the commercial interests of —

(i) the GTE or any subsidiary of the GTE; or

(ii) the State; or

(iii) any other person;

or

(b) any of the information is —

(i) personal information; or

(ii) the subject of legal professional privilege; or

(iii) the subject of an obligation of confidentiality owed to, or a reasonable expectation of confidentiality on the part of, any person.

90. Minister must be kept informed

A GTE must —

(a) keep the Portfolio Minister reasonably informed of the operations, financial performance and financial position of the GTE and its subsidiaries, including the assets and liabilities, profits and losses, and prospects of the GTE and its subsidiaries; and

(b) give the Portfolio Minister reports and information that the Minister requires for the making of informed assessments of matters mentioned in paragraph (a); and

(c) promptly inform the Portfolio Minster if matters arise that in the opinion of the GTE's board may prevent or significantly affect —

(i) the attainment of performance objectives or key performance indicators contained in the GTE's annual performance statement; or

(ii) the meeting of the expectations, or the pursuit of the strategic direction, objectives or major

initiatives, contained in the GTE's statement of expectations.

91. Notice of financial difficulty

(1) A GTE's board must notify the Portfolio Minister and the Treasurer if it forms the opinion that the GTE or a subsidiary of the GTE —

(a) is unable to satisfy a financial obligation that has fallen due from the financial resources available to it; or

(b) will likely be unable to satisfy a financial obligation when it falls due from the financial resources available, or likely to be available, to it.

(2) The notice must —

(a) be in writing; and

(b) give the reasons for the board's opinion; and

(c) give any other information that the board considers relevant.

(3) Within 7 days of receipt of the notice, the Portfolio Minister and the Treasurer must —

(a) confer with one another and with the board for the purpose of determining what action might be taken to ensure that the GTE or subsidiary is or will be able to satisfy the financial obligation; and

(b) initiate any action (including, without limitation, the giving of a direction under Division 4) that is required to ensure that the GTE or subsidiary is or will be able to satisfy the financial obligation.

92. Legal professional privilege preserved

(1) Nothing in this Part requires a person to give, or give access to, any document or information that is the subject of legal professional privilege.

(2) The giving, or giving of access to, any document or information under this Part is not a waiver of legal professional privilege in respect of that document.

Division 3 — Matters requiring approval

Subdivision 1 — Preliminary

93. Term used: relevant entity

In this Division —

relevant entity means a GTE or a subsidiary of a GTE.

94. Approvals and declarations

(1) An approval or declaration by a Portfolio Minister under this Division may only be given by instrument signed by the Portfolio Minister.

(2) The approval of the Treasurer of an approval or declaration by a Portfolio Minister under this Division may only be given by the Treasurer —

(a) countersigning the instrument signed by the Portfolio Minister; or

(b) signing a separate instrument.

Subdivision 2 — Disposal of significant assets

95. Terms used

(1) In this Subdivision —

disposal order means an order under section 98(2);

dispose of, in relation to a significant asset, means enter into an arrangement or arrangements resulting in a group ceasing to have at least 75% of the beneficial interest in the asset;

group —

(a) means a GTE and all subsidiaries the GTE may have; and

(b) in relation to a relevant entity, means the group of which it is a part;

significant asset has the meaning given in subsection (2).

(2) An asset is a ***significant asset*** of a relevant entity if —

(a) it is a beneficial interest of the relevant entity in property (including rights under a contract, shares in a company or an interest in a joint venture); and

(b) the relevant entity's beneficial interest, aggregated with any beneficial interest in the property of any other entity in the relevant entity's group, amounts to at least 75% of the total beneficial interest in the property; and

(c) the total value of the property exceeds the greater of —

(i) a sum equal to 5% of the written down value of consolidated fixed assets and investments of the relevant entity's group stated in the group's most recent audited accounts; or

(ii) $100 000 000.

96. Restriction on disposal of significant asset

A relevant entity must not dispose of a significant asset except under and in accordance with a disposal order that has effect under section 98.

97. Consultation regarding disposal of significant asset

(1) A relevant entity considering disposing of a significant asset must inform the Portfolio Minister and the Treasurer of the contemplated disposal —

(a) as soon as practicable; and

(b) in any event before engaging advisers, consultants or agents in connection with the contemplated disposal.

(2) A relevant entity that has informed the Portfolio Minister and the Treasurer of a contemplated disposal under subsection (1) must consult the Portfolio Minister and the Treasurer during the further development and realisation of the contemplated disposal as the Portfolio Minister and the Treasurer require.

98. Disposal orders

(1) In this section —

disallowance resolution means a resolution that a disposal order be disallowed.

(2) The Portfolio Minister may, with the approval of the Treasurer, publish in the *Gazette* an order authorising a relevant entity to dispose of a significant asset.

(3) A disposal order may set out —

(a) terms and conditions on which the relevant entity must effect the disposal; and

(b) processes that the relevant entity must follow in effecting the disposal.

(4) The Portfolio Minister must cause the text of a disposal order to be laid before each House of Parliament within 6 sitting days of the House after the day on which the disposal order is published in the *Gazette* (the ***tabling period***).

(5) A disposal order has effect if it is laid before each House of Parliament under subsection (4) and either —

(a) no notice of a disallowance resolution is given in either House within 14 sitting days of the House after the day on which the disposal order is laid before it (the ***disallowance period***); or

(b) for each notice of a disallowance resolution that is given in either House, by the expiry of the disallowance period for that House —

(i) the notice has been withdrawn or discharged; or

(ii) the disallowance resolution has been lost or not agreed to.

(6) For the purposes of this section —

(a) a tabling period or a disallowance period continues to run even though a House of Parliament is dissolved, prorogued or expires; and

(b) notice of a disallowance resolution given in a House of Parliament does not lapse even though the House is dissolved, prorogued or expires.

(7) A disposal of a significant asset is not invalidated or in any way affected by a failure of the relevant entity to effect the disposal on terms and conditions, or to follow processes, set out under subsection (3).

(8) A person dealing with a relevant entity is not bound or concerned to enquire whether the GTE has effected a disposal on terms and conditions, or has followed processes, set out under subsection (3).

Subdivision 3 — Significant transactions

99. Terms used

In this Subdivision —

significant transaction has the meaning given in section 100;

transaction means —

(a) a contract or other arrangement; or

(b) the set of all the contracts and arrangements which —

(i) are entered into for the purpose of achieving a particular outcome and would not be entered into but for that purpose; or

(ii) are incidental or ancillary to that purpose.

100. Term used: significant transaction

(1) Subject to subsection (4), a transaction of a relevant entity is a ***significant transaction*** if the amount or value of the consideration for the transaction, or the amount or value to be given or received by the relevant entity under or in connection with the transaction, exceeds the amount prescribed for the purposes of this subsection.

(2) Subject to subsection (4), a transaction of a relevant entity is a ***significant transaction*** if it is likely to have a significant social, economic, technological or industrial impact or a significant impact of another prescribed type.

(3) In considering the impact of a transaction for the purposes of subsection (2), regard must be had to any criteria prescribed for the purposes of this section.

(4) A transaction of a relevant entity is not a ***significant transaction*** if it is —

(a) a disposal to which Subdivision 2 applies; or

(b) a transaction to which Part 8 Division 4 applies; or

(c) a prescribed transaction for the purposes of section 137; or

(d) a transaction that is declared not to be a significant transaction for the relevant entity under section 104(1).

101. Restriction on effecting significant transactions

(1) A relevant entity must not enter into a significant transaction unless the Portfolio Minister has approved the significant transaction under section 103.

(2) A relevant entity must not organise or structure a transaction with the sole or dominant purpose of avoiding the application of subsection (1) to that transaction.

(3) A contravention of this section by a relevant entity in relation to a transaction entered into does not affect the validity of the transaction.

102. Consultation regarding significant transactions

(1) A relevant entity considering entering into a significant transaction must inform the Portfolio Minister and the Treasurer of the contemplated transaction as soon as practicable.

(2) A relevant entity that has informed the Portfolio Minister and the Treasurer of a contemplated significant transaction under subsection (1) must consult the Portfolio Minister and the Treasurer during the further development and realisation of the contemplated transaction as the Portfolio Minister and the Treasurer require.

103. Approval of significant transactions

The Portfolio Minister for a relevant entity may, with the approval of the Treasurer, approve a significant transaction of the relevant entity.

104. Excluded transactions

(1) With the approval of the Treasurer, the Portfolio Minister for a relevant entity may declare —

(a) a specified transaction not to be a significant transaction for the relevant entity; or

(b) transactions of a specified class not to be significant transactions for the relevant entity.

(2) A declaration under subsection (1) may set out conditions to which the declaration is subject.

Subdivision 4 — Significant initiatives

105. Term used: significant initiative

(1) In this Subdivision —

significant initiative means a course of action of a relevant entity that —

(a) is likely to be of significant public interest; or

(b) is likely to have a significant social, economic, technological or industrial impact or a significant impact of another prescribed type.

(2) In considering the impact of a course of action for the purposes of subsection (1)(b), regard must be had to any criteria prescribed for the purposes of this section.

106. Consultation regarding significant initiatives

(1) A relevant entity considering undertaking a significant initiative must inform the Portfolio Minister and the Treasurer of the contemplated initiative as soon as practicable.

(2) A relevant entity that has informed the Portfolio Minister and the Treasurer of a contemplated significant initiative under subsection (1) must consult the Portfolio Minister and the Treasurer during the further development and realisation of the contemplated initiative as the Portfolio Minister and the Treasurer require.

Division 4 — Ministerial directions

107. GTEs not generally subject to direction by Government

Except as provided by this Act or any other written law, a GTE is not required to comply with any direction or administrative request given or made by or on behalf of the Government.

108. Ministerial directions

(1) Subject to subsection (5) and to section 109, the Portfolio Minister for a GTE may give a direction in writing to the GTE with respect to the performance of its functions, either generally or in relation to a particular matter, and the GTE must give effect to the direction.

(2) Without limiting subsection (1) and despite anything in Part 2, the Portfolio Minister may under that subsection direct a GTE —

(a) not to perform a specified function; or

(b) not to perform a specified function to a specified extent, or except to a specified extent; or

(c) not to perform a specified function in or in relation to a specified area, or except in or in relation to a specified area.

(3) A direction has effect despite any inconsistency with —

(a) the GTE's statement of expectations or annual performance statement; or

(b) the GTE's duty under section 9(2)(b) to act in accordance with prudent commercial principles.

(4) If and to the extent that a direction expressly so provides, it has effect despite any inconsistency with a policy order that applies to the GTE.

(5) The Portfolio Minister may not give a direction that has the effect described in subsection (4) without the approval of the GTE Minister.

(6) The Portfolio Minister must cause the text of a direction to be laid before each House of Parliament within 14 sitting days of the House after the direction is given.

109. Limitation on directions under section 108

(1) Section 108 does not authorise the giving of a direction to a GTE if the GTE's Establishing Act expressly provides that a direction of that kind cannot be given under section 108 to the GTE.

Note for this subsection:

The *Electricity Corporations Act 2005* section 111 forbids certain directions to the Electricity Networks Corporation.

(2) Section 108 does not authorise the giving of a direction to a GTE if a provision of the GTE's Establishing Act confers power on the Portfolio Minister to give a direction of that kind to the GTE.

Note for this subsection:

The *Electricity Corporations Act 2005* section 114 confers power on the Portfolio Minister to give certain directions to the Electricity Generation and Retail Corporation.

110. When directions take effect

(1) A direction under section 108(1) becomes effective on the expiry of 7 days after its receipt by the GTE or of such longer period as the Portfolio Minister may, at the request of the GTE's board, determine.

(2) If the board asks the Portfolio Minister to extend the 7-day period under subsection (1), the Portfolio Minister must, before the 7-day period has expired —

(a) consider the request; and

(b) make, and notify the board of, a decision on the request.

Division 5 — Policy orders

111. Policy orders

(1) Subject to subsection (3), the GTE Minister may at any time publish in the *Gazette* an order (a ***policy order***) setting out policy objectives for GTEs.

(2) A policy order must specify the GTEs to which it applies.

(3) The GTE Minister may not publish a policy order without the approval of the Portfolio Minister for each GTE to which it applies.

(4) The GTE Minister must —

(a) give written notice of a policy order to each GTE to which the order applies; and

(b) ensure that a policy order is made publicly available for so long as the order applies.

112. When policy orders cease to apply

(1) A policy order ceases to apply on the earlier of —

(a) the end of the statement period in which it is published; and

(b) the revocation of the order under subsection (2).

(2) The GTE Minister may at any time revoke a policy order by notice published in the *Gazette*.

Division 6 — Subsidiaries

Subdivision 1 — Formation, acquisition and control of subsidiaries

113. Restriction on forming or acquiring subsidiary

(1) A GTE must not form or acquire a subsidiary unless the Portfolio Minister has approved the formation or acquisition.

(2) The Portfolio Minister must not approve the formation or acquisition of the subsidiary without the approval of the Treasurer.

(3) For the purposes of this section a GTE acquires a subsidiary if it enters into a transaction that will result in another entity becoming a subsidiary of the GTE.

114. Consultation regarding formation or acquisition of subsidiary

(1) A GTE considering an arrangement that involves the formation or acquisition of a subsidiary must inform the Portfolio Minister and the Treasurer of the contemplated arrangement —

(a) as soon as practicable; and

(b) in any event before —

(i) engaging advisers, consultants or agents in connection with the contemplated arrangement; or

(ii) issuing any invitation for expressions of interest, request for proposals, invitation to tender or the like, either publicly or to selected parties; or

(iii) entering into any commitment arising out of or in connection with the contemplated arrangement.

(2) A GTE that has informed the Portfolio Minister and the Treasurer of a contemplated arrangement under subsection (1) must consult the Portfolio Minister and the Treasurer during the further development and realisation of the arrangement as the Portfolio Minister and the Treasurer require.

115. Control of subsidiary

(1) In this section —

constitution, in relation to a subsidiary, means the instrument or instruments, however called, which establish or govern the subsidiary.

(2) A GTE must ensure that the constitution of each of its subsidiaries —

(a) contains provisions to the effect of those set out in Schedule 1; and

(b) is consistent with this Act and the GTE's Establishing Act.

(3) A GTE must ensure that each of its subsidiaries —

(a) complies with its constitution, this Act and the GTE's Establishing Act; and

(b) does not, by any act or omission, prevent the GTE from complying with this Act and its Establishing Act.

(4) With the approval of the GTE's board, a member of the board, the GTE's chief executive officer or a member of the GTE's staff —

(a) may become —

(i) a director of a company that is or is to be a subsidiary of the GTE; or

(ii) a member of the governing body of any other entity that is or is to be a subsidiary of the GTE;

and

(b) may represent the GTE's interests on the board of that company or on that governing body.

(5) The GTE's board must not give its approval under subsection (4) unless it has given the Portfolio Minister prior written notice of the matter that is to be approved.

(6) The provisions of this Act and a GTE's Establishing Act prevail to the extent of any inconsistency with the constitution of a subsidiary of the GTE.

116. Provisions affecting the Corporations Act

(1) Nothing in this Act makes a GTE or the Portfolio Minister a director of a subsidiary for the purposes of the Corporations Act.

(2) The following provisions are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to Corporations legislation as defined in the Corporations Act section 9 —

(a) section 115;

(b) subsection (1);

(c) Schedule 1.

Subdivision 2 — Remuneration and expenses of directors and CEOs of wholly owned subsidiaries

117. Terms used

In this Subdivision —

director, in relation to a wholly-owned subsidiary, means a member of the subsidiary's governing body;

wholly-owned subsidiary means a subsidiary of a GTE that is wholly owned by the GTE.

118. Remuneration of directors

(1) Subsection (2) applies in relation to the remuneration of a director of a wholly-owned subsidiary while —

(a) the subsidiary is a Government entity; and

(b) the director is a director for the purposes of the *Salaries and Allowances Act 1975* section 7D.

(2) The remuneration of the director must be determined by the Portfolio Minister within the range determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7D.

(3) Subsection (4) applies in relation to the remuneration of a director of a wholly-owned subsidiary while either —

(a) the subsidiary is not a Government entity; or

(b) the subsidiary is a Government entity but the office of the director is prescribed for the purposes of paragraph (b) of the definition of ***director*** in the *Salaries and Allowances Act 1975* section 7D(1).

(4) The remuneration of the director must be determined by the Portfolio Minister.

(5) The Portfolio Minister for a wholly-owned subsidiary is not required, under subsection (2) or (4), to redetermine the remuneration of a director of the subsidiary if they held office as a director of the subsidiary immediately before the day on which the subsection began to apply to them.

(6) Despite subsections (1) to (5) but subject to subsection (7), a director of a wholly-owned subsidiary is not entitled to remuneration under this section if —

(a) the director is also a director of the GTE; or

(b) the director is also the chief executive officer of the GTE or the subsidiary; or

(c) the director is also a member of staff of the GTE or the subsidiary; or

(d) the director holds a full-time office or position that is remunerated out of funds appropriated by Parliament; or

(e) a prescribed circumstance applies to or in relation to the director.

(7) Subsection (6)(a) does not apply to a director of a wholly-owned subsidiary who is also a director of the GTE if the Portfolio Minister, in writing, determines that it is not to apply.

(8) This section, other than subsection (6), has effect subject to section 119.

119. Same remuneration for directors of subsidiary

(1) This section applies to the remuneration of the directors of a wholly-owned subsidiary, other than of —

(a) its chairperson; and

(b) a director whose office is prescribed for the purposes of paragraph (b) of the definition of ***director*** in the *Salaries and Allowances Act 1975* section 7D(1).

(2) A determination by the Portfolio Minister of the remuneration of a director of the subsidiary under section 118 has effect as the determination of the remuneration of each other director to whom this section applies.

120. Expenses of directors

A director of a wholly-owned subsidiary may be reimbursed expenses reasonably incurred in the performance of their functions as a director, as determined by the Portfolio Minister from time to time.

121. Remuneration of chief executive officers

(1) Subsections (2) and (3) apply in relation to the remuneration of the chief executive officer (however described) of a wholly-owned subsidiary while —

(a) the subsidiary is a Government entity; and

(b) the chief executive officer is an executive officer as defined in the *Salaries and Allowances Act 1975* section 7C(1).

(2) The remuneration of the chief executive officer must be determined by the GTE's board within the range determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7C.

(3) Any variation to the remuneration of the chief executive officer while they are treated as if they were not an executive officer because of the *Salaries and Allowances Act 1975* section 7C(4) must be determined by the GTE's board with the approval of the Portfolio Minister.

(4) Subsection (5) applies in relation to the remuneration of the chief executive officer (however described) of a wholly-owned subsidiary while either —

(a) the subsidiary is not a Government entity; or

(b) the subsidiary is a Government entity but the office of the chief executive officer is prescribed for the purposes of paragraph (b) of the definition of ***executive officer*** in the *Salaries and Allowances Act 1975* section 7C(1).

(5) The remuneration, including any variation to the remuneration, of the chief executive officer must be determined by the GTE's board with the approval of the Portfolio Minister.

(6) A GTE's board is not required, under subsection (2) or (5), to redetermine the remuneration of the subsidiary's chief executive officer if they held office as the subsidiary's chief executive officer immediately before the day on which the subsection began to apply to them.

(7) Despite subsections (1) to (5), the chief executive officer of a wholly-owned subsidiary is not entitled to remuneration under this section if —

(a) the chief executive officer holds a full-time office or position that is remunerated out of funds appropriated by Parliament; or

(b) a prescribed circumstance applies to or in relation to the chief executive officer.

Division 7 — Protection from liability

122. No liability for certain acts and omissions: disclosure of information and documents

(1) If a GTE, a subsidiary of a GTE or a director, chief executive officer, executive officer or other member of staff of a GTE discloses information or documents in good faith for the purposes of Division 1 or 2 —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

(2) Subsection (1) does not extend to the manner in which a thing is done if it is done in a manner contrary to a duty to exercise reasonable care and diligence.

123. No liability for certain acts and omissions: compliance with Ministerial directions

(1) In this section —

Ministerial direction means a direction or purported direction

(a) under Division 4; or

(b) under a provision in a GTE's Establishing Act that confers a power on a Minister to give directions;

officer, in relation to a GTE, means a director, chief executive officer or executive officer of the GTE.

(2) An officer of a GTE is not liable, either to the GTE or in respect of their duties in relation to the GTE, for the fact of doing in good faith anything that is required to be done by a ministerial direction given to the GTE.

(3) Subsection (2) does not extend to the manner in which a thing is done if it is done in a manner contrary to section 46 or 48.

Part 8 — Financial provisions

Division 1 — Preliminary

124. Terms used

In this Part —

accountable authority and ***statutory authority*** have the meanings given in the *Financial Management Act 2006* section 3.

125. Delegation by Treasurer

(1) The Treasurer may delegate to a Minister any power or duty of the Treasurer under another provision of this Part.

(2) The Treasurer may delegate to an officer of the Treasury any power or duty of the Treasurer under another provision of this Part.

(3) A person to whom a power or duty is delegated in accordance with this section cannot delegate that power or duty.

(4) A person exercising or performing a power or duty that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Treasurer to perform a function through an officer or agent.

Division 2 — Bank and other accounts

126. Terms used

In this Division —

agency special purpose account has the meaning given in the *Financial Management Act 2006* section 3;

bank has the meaning given in the *Financial Management Act 2006* section 3;

bank account means an account maintained at a bank;

Public Bank Account has the meaning given in the *Financial Management Act 2006* section 3.

127. Primary account of GTE

(1) A GTE —

(a) must establish and maintain an account for the purposes of its operations; and

(b) must operate that account through a subdivision of the Public Bank Account.

(2) The account maintained under subsection (1) is an agency special purpose account of the GTE.

(3) The *Financial Management Act 2006* Part 2 applies to and in respect of the account maintained under subsection (1) as if —

(a) the GTE were a statutory authority; and

(b) its board were its accountable authority.

128. Other bank accounts of GTE

(1) A GTE may, with the approval of the Treasurer, establish and maintain bank accounts in addition to the subdivision of the Public Bank Account referred to in section 127(1).

(2) The Treasurer's approval under subsection (1) —

(a) may be subject to conditions determined by the Treasurer; and

(b) may be varied by the Treasurer from time to time; and

(c) may be revoked by the Treasurer.

(3) A GTE must operate an account maintained under subsection (1) in accordance with any conditions to which the Treasurer's approval is subject.

(4) If the Treasurer revokes approval for an account maintained under subsection (1), the GTE must wind up and close the account in an orderly fashion as soon as practicable.

129. Operation of accounts

(1) A GTE must credit all money received, and debit all money expended, to an account maintained under section 127(1) or 128(1).

(2) A GTE must not transfer funds between accounts maintained under section 127(1) or 128(1), except as approved by the Treasurer.

Division 3 — Investment

130. Application of *Financial Management Act 2006* Part 3 Division 3

The *Financial Management Act 2006* Part 3 Division 3 applies to and in respect of a GTE as if —

(a) the GTE were a statutory authority; and

(b) its board were its accountable authority.

131. Investment of funds

(1) This section does not apply to a GTE's funds that are invested under the *Financial Management Act 2006* section 37 or 39.

(2) Subject to subsection (3), a GTE's funds that are not immediately required for the performance of its functions may be invested as the GTE's board determines.

(3) The regulations may provide for the manner of investment of a GTE's funds.

Division 4 — Borrowing and guarantees

132. Borrowing powers

(1) A GTE may, subject to section 133 —

(a) borrow money; or

(b) otherwise arrange for financial accommodation to be extended to the GTE.

(2) A GTE may exercise the powers conferred by subsection (1) by borrowing from or otherwise arranging for financial accommodation to be extended by —

(a) the Western Australian Treasury Corporation; or

(b) the Treasurer; or

(c) with the approval of the Treasurer, and on terms and conditions (including conditions as to repayment and payment of interest) approved by the Treasurer, any other person.

(3) A GTE must keep any registers prescribed by the regulations for the purposes of this section.

133. Borrowing limits

(1) The Treasurer may, by written instrument, limit —

(a) the total amount that may be outstanding from time to time as a result of the exercise by a GTE of the powers conferred by section 132; and

(b) the total amount of the liabilities that a GTE may incur during a specified period by the exercise of those powers.

(2) The Treasurer may, by written instrument, vary or withdraw a limit imposed under subsection (1).

(3) A limit imposed under subsection (1) continues to apply until it is varied or withdrawn under subsection (2), or until the end of a specified period for which it has been imposed.

(4) A GTE must comply with a limit that applies to it.

134. Breach of borrowing limits

(1) A liability of a GTE is not unenforceable or in any way affected by a failure of the GTE to comply with section 133.

(2) A person dealing with a GTE is not bound or concerned to enquire whether the GTE has complied or is complying with section 133.

135. Guarantee by Treasurer

(1) The Treasurer may, with the agreement of the Portfolio Minister, guarantee the performance, in the State or elsewhere, of an obligation of a GTE arising under section 132.

(2) A guarantee —

(a) must be given in the name and on behalf of the State; and

(b) must be in a form, and subject to the terms and conditions, determined by the Treasurer.

(3) The due payment of an amount payable by the Treasurer under a guarantee —

(a) is by this subsection guaranteed by the State; and

(b) must be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that account accordingly.

(4) The Treasurer must cause any amounts received or recovered from a GTE or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

136. Charges for guarantee

(1) After consulting the board of a GTE for whose benefit a guarantee is to be given under section 135, the Treasurer may when giving the guarantee fix charges in respect of the guarantee.

(2) The GTE must pay the charges to the Treasurer at the times, and in the instalments, determined by the Treasurer.

(3) The Treasurer must cause any payments received in respect of the charges to be credited to the Consolidated Account.

Division 5 — Risk management

137. Hedging transactions

(1) In this section —

business risk means the risk that a rate or price movement will cause a GTE to incur increased expenditure, reduced revenue or capital losses in —

(a) the performance by the GTE of any of its functions; or

(b) the exercise by the GTE of any power conferred by Division 4;

prescribed transaction means a financial transaction of a kind prescribed for the purposes of this section;

rate or price movement means a change in any interest rate, coupon rate, discount rate, investment yield, foreign exchange rate, asset price, commodity price or the like.

(2) After consulting the Western Australian Treasury Corporation, a GTE may enter into a prescribed transaction for the purpose of managing, limiting or reducing business risk to the GTE.

Division 6 — Dividends

138. Solvency requirement

The amount of a payment to be made by a GTE under this Division meets the solvency requirement if —

(a) immediately before the payment is made, the GTE's assets exceed its liabilities by an amount that is equal to or greater than the amount of the payment; and

(b) immediately after the payment is made, the GTE is solvent (within the meaning given in the Corporations Act section 95A(1)).

139. Dividend formula

(1) For each financial year, the Portfolio Minister for a GTE and the Treasurer may —

(a) determine a formula for calculating the final dividend to be paid under section 140; and

(b) at any time before the final dividend for the year is fixed under section 140(3), vary a formula previously determined under paragraph (a).

(2) The Portfolio Minister must notify the GTE's board of a dividend formula determined or varied under subsection (1).

140. Final dividend

(1) As soon as practicable after the end of each financial year a GTE's board must recommend to the Portfolio Minister —

(a) whether the GTE should pay a dividend for that year; and

(b) if so, the amount of the dividend.

(2) In making a recommendation under subsection (1), the board must recommend an amount that —

(a) the board is satisfied will meet the solvency requirement; and

(b) subject to paragraph (a), has been calculated in accordance with any dividend formula for the financial year that has been notified to the board under section 139(2).

(3) The Portfolio Minister may, with the Treasurer's approval —

(a) accept a recommendation under subsection (1); or

(b) after consultation with the board, notify the GTE that it must pay a dividend of an amount stated in the notification that the Portfolio Minister is satisfied will meet the solvency requirement.

(4) For the purposes of subsection (3)(b), it is sufficient for the Portfolio Minister to be satisfied on the advice of the board.

(5) The Portfolio Minister must cause the text of a notification under subsection (3)(b) to be laid before each House of Parliament within 14 sitting days of the House after the notification is given.

(6) The GTE must pay a final dividend to the Treasurer —

(a) as soon as practicable after the amount is fixed under subsection (3); and

(b) in any event, not later than —

(i) 6 months after the end of the financial year to which the dividend relates; or

(ii) another time agreed between the Treasurer and the board.

141. Interim and special dividends

(1) At any time the Portfolio Minister may, with the approval of the Treasurer, by written notice request a GTE's board to recommend an appropriate amount —

(a) for an interim dividend for the financial year in which the request is made; or

(b) for a special dividend.

(2) As soon as practicable after receiving a request under subsection (1) the board must recommend to the Portfolio Minister an amount for the interim or special dividend, as the case may be, that the board —

(a) is satisfied will meet the solvency requirement; and

(b) otherwise considers to be appropriate.

(3) The Portfolio Minister may, with the Treasurer's approval —

(a) accept a recommendation under subsection (2); or

(b) after consultation with the board, notify the GTE that it must pay an interim or special dividend, as the case may be, of an amount stated in the notification that the Minister is satisfied will meet the solvency requirement.

(4) For the purposes of subsection (3)(b), it is sufficient for the Portfolio Minister to be satisfied on the advice of the board.

(5) The Portfolio Minister must cause the text of a notification under subsection (3)(b) to be laid before each House of Parliament within 14 sitting days after the notification is given.

(6) A GTE must pay an interim dividend to the Treasurer —

(a) as soon as practicable after the amount is fixed under subsection (3); and

(b) in any event, not later than —

(i) the end of the financial year to which the interim dividend relates; or

(ii) another time agreed between the Treasurer and the board.

(7) A GTE must pay a special dividend to the Treasurer —

(a) as soon as practicable after the amount is fixed under subsection (3); and

(b) in any event, not later than a time agreed between the Treasurer and the board.

Division 7 — Financial administration and audit

142. Terms used

In this Division —

accounting standard has the meaning given in the Corporations Act section 9;

FAA regulations means the regulations for the purposes of section 149;

financial records has the meaning given in the Corporations Act section 9;

Treasurer's GTE instructions means instructions issued under section 148(1).

143. Obligation to keep financial records

(1) A GTE and each of its subsidiaries must keep written financial records that —

(a) correctly record and explain its transactions and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited.

(2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

(3) The financial records must be retained for 7 years after the transaction covered by the records is completed.

144. Preparation of annual financial reports and directors' reports

(1) A GTE must prepare a financial report and a directors' report for each financial year in accordance with the FAA regulations.

(2) Except as provided by the Treasurer's GTE instructions, the financial report must comply with the accounting standards.

145. Audit of annual financial report

(1) A GTE must —

(a) have the financial report for a financial year audited by the Auditor General in accordance with the FAA regulations; and

(b) obtain an auditor's report.

(2) The provisions of the *Auditor General Act 2006* listed in the Table apply to and in respect of a GTE as if —

(a) it were a statutory authority; and

(b) its board were its accountable authority.

Table

s. 14	s. 16 to 18
s. 21	s. 24 to 37
s. 45	s. 46

146. Preparation of interim reports

(1) A GTE must prepare a report for each prescribed period within a financial year in accordance with the FAA regulations.

(2) Except as provided by the Treasurer's GTE instructions, the report must comply with the accounting standards.

147. Application of *Financial Management Act 2006* sections 81 and 82

The *Financial Management Act 2006* sections 81 and 82 apply to and in respect of a GTE as if —

(a) it were a statutory authority; and

(b) its board were its accountable authority; and

(c) references to the Minister were references to the GTE's Portfolio Minister.

148. Treasurer's GTE instructions

(1) The Treasurer may by instrument in writing published on a website maintained by or on behalf of the Treasury issue, amend or revoke instructions concerning the principles, practices and procedures to be complied with in preparing reports under this Division.

(2) The Treasurer's GTE instructions must not be inconsistent with this Act or the FAA regulations.

(3) A GTE must comply with the Treasurer's GTE instructions.

(4) The Treasurer must give a GTE written notice of the issue, amendment or revocation of the Treasurer's GTE instructions.

(5) The validity of the Treasurer's GTE instructions is not affected by any failure to comply with subsection (4).

149. Regulations concerning financial administration and audit

(1) The regulations may provide for the financial administration and audit of GTEs.

(2) Without limiting subsection (1), the regulations —

(a) may supplement the provisions applied by sections 147 and 145(2); and

(b) may apply, adopt or incorporate, with or without modification —

(i) a provision of the Corporations Act or of regulations made under the Corporations Act; or

(ii) all or part of an accounting standard as in effect from time to time, or as in effect at a time specified in the regulations.

Division 8 — Local government rates exemption

150. Exemption from local government rates

(1) Subject to subsection (2), land is not rateable land for the purposes of the *Local Government Act 1995* if it is —

(a) vested in, or under the care, control or management of, a GTE; and

(b) used or reserved exclusively for the performance of the GTE's functions.

(2) If a GTE leases or lets land vested in it, or under its care, control or management, the land is by reason of the lease or tenancy rateable land for the purposes of the *Local Government Act 1995* in the hands of the lessee or tenant.

151. Payment in lieu of local government rates

(1) A GTE must pay to the Treasurer in respect of a financial year an amount equal to the sum of all local government rates and charges that it would have been liable to pay in respect of that financial year, but for —

(a) section 150; and

(b) the *Local Government Act 1995* section 6.26(2)(a)(i).

(2) Subsection (1) does not apply in relation to —

(a) land used or reserved for a purpose prescribed for the purposes of this subsection; or

(b) an area of land prescribed for the purposes of this subsection.

(3) An amount payable under subsection (1) —

(a) must be calculated in accordance with such principles as the Treasurer may direct; and

(b) must be paid at such time or times as the Treasurer may direct.

Part 9 — General provisions

Division 1 — Protection of persons dealing with GTEs

152. Person dealing with GTE may make assumptions

(1) A person dealing with a GTE is entitled to make the assumptions mentioned in section 154.

(2) In any proceedings in relation to the dealings, any assertion by the GTE that an assumption that the person is entitled to make is not correct must be disregarded.

153. Third party may make assumptions

(1) A person (the ***third party***) dealing with a person (the ***new owner***) who has acquired, or purports to have acquired, title to property from a GTE (whether directly or indirectly) is entitled to make the assumptions mentioned in section 154.

(2) In any proceedings in relation to the dealings, any assertion by the GTE or the new owner that an assumption that the third party is entitled to make is not correct must be disregarded.

154. Assumptions that may be made

The assumptions that a person is entitled to make are —

(a) that, at all relevant times, this Act and the GTE's Establishing Act have been complied with; and

(b) that a person who is held out by the GTE to be a director, the chief executive officer, an executive officer or another member of staff or an agent of a particular kind —

(i) has been properly appointed; and

(ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive officer or another

member of staff or an agent of that kind (as is relevant);

and

(c) that the chief executive officer, an executive officer or another member of staff or agent of the GTE who has authority to issue a document on behalf of the GTE has authority to warrant that the document is genuine; and

(d) that the chief executive officer, an executive officer or another member of staff or agent of the GTE who has authority to issue a certified copy of a document on behalf of the GTE has authority to warrant that the copy is a true copy; and

(e) that a document has been properly sealed by the GTE if —

(i) it bears what appears to be an imprint of the GTE's common seal; and

(ii) the sealing of the document appears to comply with section 156;

and

(f) that the directors, chief executive officer, members of staff and agents of the GTE have properly performed their duties to the GTE.

155. Exception to sections 152 and 153

(1) Despite sections 152 and 153, a person is not entitled to assume a matter mentioned in section 154 if —

(a) the person has actual knowledge that the assumption is incorrect; or

(b) because of the person's connection or relationship with the GTE, the person ought to know that the assumption is incorrect.

(2) If, because of subsection (1), a person is not entitled to make a particular assumption in relation to dealings with a GTE, section 152(2) does not apply to any assertion by the GTE in relation to the assumption.

(3) If, because of subsection (1), a third party is not entitled to make a particular assumption in relation to an acquisition or purported acquisition from a GTE of title to property, section 153(2) does not apply to any assertion by the GTE or new owner in relation to the assumption.

Division 2 — Formalities

156. Execution of documents

(1) A GTE must have a common seal.

(2) A document is duly executed by a GTE if —

(a) the common seal of the GTE is affixed to it in the presence of —

(i) 2 directors; or

(ii) a director and the chief executive officer;

or

(b) it is signed on behalf of the GTE by a person or persons referred to in subsection (4).

(3) The common seal of a GTE must not be affixed to a document except in accordance with this section.

(4) A GTE may, by writing under its common seal, authorise a director, the chief executive officer, a member of staff or other agent of the GTE to execute documents on its behalf.

(5) An authority under subsection (4) —

(a) may be given —

(i) either generally or in respect of a specified matter or specified matters; and

(ii) so as to authorise 2 or more persons to execute documents jointly;

and

(b) may be presumed by a person dealing with the GTE to continue —

(i) during any period for which it is conferred; or

(ii) if subparagraph (i) does not apply, until notice of termination of the authority is given to the person so dealing.

(6) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.

(7) A document purporting to be executed in accordance with this section is taken to be duly executed until the contrary is shown.

157. Contract formalities

(1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a GTE may make, vary or discharge a contract in the name of or on behalf of the GTE in the same manner as if that contract were made, varied or discharged by a natural person.

(2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the GTE concerned and other parties to the contract.

(3) Subsection (1) does not prevent a GTE from making, varying or discharging a contract under its common seal.

Part 10 — Miscellaneous

158. Making certain things publicly available

A requirement to make a thing publicly available, or that a thing be publicly available, may be satisfied by the thing being published on a website of the person on whom the requirement is imposed or, if the person is a Minister, a website of a department of the Public Service assisting the Minister.

159. Laying documents before Parliament not sitting

(1) If a provision of this Act requires a Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the Minister may give the document to the Clerk of the House.

(2) A document given to the Clerk of a House under subsection (1) is taken to have been laid before the House.

(3) The laying of a document before a House that is taken to have occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

160. Regulations

(1) Subject to subsection (2), the Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Regulations for the purposes of section 149 may only be made on the recommendation of the Treasurer.

Part 11 — Transitional provisions

Division 1 — Preliminary

161. Terms used

In this Part —

commencement day means the day on which section 7 comes into operation;

new provision means a provision of this Act;

old provision means an enactment repealed by this Act or amended by this Act in such a way that it no longer has effect in relation to a matter covered by or under a provision of this Act.

162. New provisions that correspond to old provisions

A new provision corresponds to an old provision in relation to a matter or thing if the new provision deals with the matter or thing in the same, or substantially the same, way as the old provision dealt with the matter or thing.

Division 2 — Application of *Interpretation Act 1984*

163. Application of *Interpretation Act 1984*

(1) This Part does not limit the operation of the *Interpretation Act 1984* except to the extent provided for by this section.

(2) The provisions of Divisions 3 and 4 and of regulations made for the purposes of this Part prevail over the provisions of the *Interpretation Act 1984* to the extent of any inconsistency.

Division 3 — General transitional provisions

164. Completion of things commenced before commencement day

Anything commenced by a person under or for the purposes of an old provision before commencement day may, if there is a

new provision that corresponds to the old provision in relation to that thing, be continued by the person on and after commencement day under the new provision.

165. Continuing effect of things done before commencement day

(1) This section applies to an act, matter or thing done under or for the purposes of an old provision before commencement day by a person, to the extent to which that act, matter or thing has any force or significance on and after commencement day.

(2) If there is a new provision that corresponds to the old provision in relation to the act, matter or thing then, on and after commencement day the act, matter or thing is taken to have been done by the person under or for the purposes of the new provision.

166. Relationship of this Division to other transitional provisions

The provisions of Division 4 and of regulations made for the purposes of this Part prevail over the provisions of this Division to the extent of any inconsistency.

Division 4 — Specific transitional provisions

167. Boards of directors

(1) A person who was a member of a GTE's governing body immediately before commencement day becomes, on commencement day, a member of the GTE's board.

(2) The person holds office, under section 12 —

(a) on the terms and conditions of their existing appointment; and

(b) for the remainder of the term of their existing appointment.

(3) Subsection (2) does not prevent —

(a) the person from resigning from or being removed from office, or their office becoming vacant, under section 21; or

(b) the remuneration of the person being determined in accordance with sections 18 and 19.

168. Chief executive officers

(1) A person who held the office of chief executive officer of a GTE immediately before commencement day becomes, on commencement day, the GTE's chief executive officer, or acting chief executive officer where relevant.

Note for this subsection:

The person may have held office in an acting capacity.

(2) The person holds office, under section 37 —

(a) on the terms and conditions of their existing appointment; and

(b) for the remainder of the term of their existing appointment.

(3) Subsection (2) does not prevent —

(a) the person from resigning from office under section 40 or being removed from office under their terms and conditions of appointment; or

(b) the remuneration of the person being dealt with in accordance with section 39.

169. Designation of executive officers

(1) In this section —

designation means a designation of a person as an executive officer under 1 of the following —

(a) the *Electricity Corporations Act 2005* section 20;

(b) the *Port Authorities Act 1999* section 20(2);

(c) the *Water Corporations Act 1995* section 18;

(d) the *Western Australian Land Authority Act 1992* section 14A(2);

(2) A designation in effect immediately before commencement day becomes, on commencement day, a designation under section 43 of this Act.

170. Indemnities, exemptions and insurance for certain liabilities of directors and others

(1) This section applies to any of the following agreements and contracts, if it was in effect immediately before commencement day and would be partly or wholly void under section 68 but for this section —

(a) an agreement to exempt a person from or indemnify a person against a liability;

(b) an agreement to pay a premium for a contract of insurance against a liability;

(c) a contract of insurance against a liability.

(2) The agreement or contract is not void to the extent that the agreement or contract was not prohibited by the Establishing Act under or in relation to which it was entered into.

Note for this section:

This section has effect in relation to liabilities of directors, chief executive officers and, in some cases, auditors of GTEs.

171. Statement of expectations

(1) For the purposes of Part 6 Division 2, a statement period begins for a GTE on commencement day (the ***first statement period***).

(2) A GTE's strategic development plan in effect under its Establishing Act immediately before commencement day has effect, to the extent practicable, as the GTE's statement of expectations for the first statement period until the day on which

a statement of expectations is adopted for the first statement period under section 72.

172. Annual performance statement

For the purposes of Part 6 Division 3, a GTE's statement of corporate intent in effect under its Establishing Act immediately before commencement day has effect, to the extent practicable, as the GTE's annual performance statement for the budget year in which commencement day falls.

173. Bank and other accounts

(1) In this section —

established account means an account referred to in section 128(1) that a GTE maintains on commencement day;

primary account means the account required by section 127(1).

(2) The Treasurer is taken to have approved an established account under section 128(1) and section 128(2) applies to that approval.

(3) If on commencement day a GTE does not have a primary account —

(a) the GTE may use an established account (the ***interim operating account***) for the purposes of its operations, pending the establishment of a primary account; and

(b) as soon as reasonably practicable after commencement day, the GTE must —

(i) establish a primary account; and

(ii) cause all moneys employed by it for the purposes of its operations and credited to the interim operating account to be credited to the primary account.

(4) Section 129(2) does not apply to a transfer made for the purposes of subsection (3)(b)(ii).

174. Hedging transactions

(1) In this section —

former hedging provisions means —

(a) the *Electricity Corporations Act 2005* section 129; and

(b) the *Port Authorities Act 1999* section 87; and

(c) the *Water Corporations Act 1995* section 82; and

(d) the *Western Australian Land Authority Act 1992* section 35A.

(2) Despite the repeal of the former hedging provisions, a transaction under an agreement or arrangement referred to in any of those provisions that is in effect on commencement day continues to have effect in accordance with its terms.

175. Dividends

(1) In this section —

former dividend provisions means —

(a) the *Electricity Corporations Act 2005* sections 126, 127A and 127B; and

(b) the *Port Authorities Act 1999* section 84; and

(c) the *Water Corporations Act 1995* section 79; and

(d) the *Western Australian Land Authority Act 1992* section 38.

(2) Despite the repeal of the former dividend provisions, a dividend or interim dividend that has become payable under the former dividend provisions and remains unpaid on commencement day continues to be payable as if it had become payable under section 140 or 141.

176. Financial administration and audit

(1) In this section —

former financial administration and audit provisions means —

(a) the *Electricity Corporations Act 2005* section 133 and Schedule 4; and

(b) the *Port Authorities Act 1999* section 91 and Schedule 5; and

(c) the *Water Corporations Act 1995* section 86 and Schedule 3; and

(d) the *Western Australian Land Authority Act 1992* section 40 and Schedule 3A.

(2) Despite the repeal of the former financial administration and audit provisions, they continue to have effect until a date prescribed for the purposes of this section.

177. Local government rates

(1) In this section —

former local government rates provisions means —

(a) the *Electricity Corporations Act 2005* sections 124 and 125; and

(b) the *Port Authorities Act 1999* sections 82 and 83; and

(c) the *Water Corporations Act 1995* sections 76 and 78; and

(d) the *Western Australian Land Authority Act 1992* section 32.

(2) Despite the repeal of the former local government rates provisions, a sum or amount that has become payable under the former local government rates provisions and remains unpaid on commencement day continues to be payable as if it had become payable under section 151.

Division 5 — Transitional regulations

178. Transitional regulations

(1) The regulations may —

(a) deal with all matters of a savings or transitional nature arising as a result of the enactment of this Act; and

(b) clarify or vary the provisions of this Part; and

(c) amend or repeal, consequentially on the enactment of this Act, subsidiary legislation made under an Establishing Act; and

(d) deal with all matters of a savings or transitional nature arising as a result of subsidiary legislation made under or for the purposes of an old provision ceasing to have effect in consequence of the repeal or amendment of the old provision by this Act.

(2) Regulations made for the purposes of this section may —

(a) be expressed to have effect despite another written law; and

(b) provide that a specified provision of a written law does not apply, or applies with specified modifications, to or in relation to a matter.

(3) The power in this section to amend subsidiary legislation made under an Establishing Act does not prevent that legislation from being amended under that Act.

(4) If regulations made for the purposes of this section provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* (but not earlier than commencement day), the regulations have effect according to their terms.

(5) If the regulations contain a provision referred to in subsection (4), the provision does not operate so as to —

(a) affect in a manner prejudicial to any person (other than the State, a public authority or a local government), the rights of that person existing before the day of publication of those regulations; or

(b) impose liabilities on any person (other than the State, a public authority or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

Part 12 — Consequential amendments

Division 1 — *Electricity Corporations Act 2005* amended

179. Act amended

This Division amends the *Electricity Corporations Act 2005*.

180. Section 3 amended

(1) In section 3(1) delete the definitions of:

board

chief executive officer

Corporations Act

director

executive officer

member of staff

non-executive director

subsidiary

Treasurer

(2) In section 3(1) insert in alphabetical order:

> ***GTE Act*** means the *Government Trading Enterprises Act 2023*;

(3) In section 3(1) in the definition of ***function*** delete paragraph (b) and insert:

> (b) section 59;

(4) In section 3(1) in the definition of ***South West interconnected system*** delete "time;" and insert:

time.

(5) Delete section 3(2).

181. Section 3A inserted

At the end of Part 1 insert:

3A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

182. Part 2 Division 2 deleted

Delete Part 2 Division 2.

183. Part 2 Division 3 Subdivision 1 deleted

Delete Part 2 Division 3 Subdivision 1.

184. Part 2 Division 3 Subdivision 2 heading replaced

Delete the heading to Part 2 Division 3 Subdivision 2 and insert:

Subdivision 2 — Power to engage and manage staff

185. Section 20 deleted

Delete section 20.

186. Section 21 amended

Delete section 21(4) and insert:

(4) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.

(4A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation, subsection (3) does not affect the operation of the GTE Act section 37(5).

187. Part 2 Division 3 Subdivision 5 heading replaced

Delete the heading to Part 2 Division 3 Subdivision 5 and insert:

Subdivision 5 — Superannuation

188. Part 2 Division 4 heading replaced

Delete the heading to Part 2 Division 4 and insert:

Division 4 — Staff codes of conduct

189. Sections 27 to 30 deleted

Delete sections 27 to 30.

190. Section 33 amended

In section 33(1) delete "section 107," and insert:

the GTE Act section 81,

191. Section 53 amended

Delete section 53(7) and insert:

(7) Regulations referred to in subsection (6) cannot disapply or modify the application of provisions of this Act so as to limit or affect the performance of community service obligations (as defined in the GTE Act section 69(1)) of a corporation.

192. Section 54 amended

Delete section 54(7).

193. Section 55 deleted

Delete section 55.

194. Section 56 deleted

Delete section 56.

195. Section 58 deleted

Delete section 58.

196. Section 59 amended

(1) In section 59(3)(g) delete "subject to sections 64 and 68,".

(2) After section 59(3) insert:

(3A) Subsections (2) and (3) have effect subject to the GTE Act.

(3) In section 59(4)(b) delete "within the meaning in section 99(1); and" and insert:

(as defined in the GTE Act section 69(1)); and

197. Section 60 amended

In section 60(6) delete "section 107" and insert:

the GTE Act section 144

198. Section 61 replaced

Delete section 61 and insert:

61. Limitation of corporation's duty to act on commercial principles

Despite the GTE Act section 9(2)(b), the Electricity Networks Corporation is only required to ensure, so far as is practicable, that the reasonable cost of performing the function referred to in section 41(c) does not exceed its revenue from doing so.

199. Section 63 amended

Delete section 63(5).

200. Sections 64 to 70 deleted

Delete sections 64 to 70.

201. Section 71 amended

(1) In section 71(2)(d) delete "section 13; or" and insert:

the GTE Act section 26(1); or

(2) After section 71(6) insert:

(7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a corporation can be given under the GTE Act section 156.

202. Part 3 Division 4 deleted

Delete Part 3 Division 4.

203. Part 5 heading replaced

Delete the heading to Part 5 and insert:

Part 5 — Ministerial directions

204. Part 5 Divisions 1 to 3 deleted

Delete Part 5 Divisions 1 to 3.

205. Part 5 Division 4 heading deleted

Delete the heading to Part 5 Division 4.

206. Sections 110 to 113 replaced

Delete sections 110 to 113 and insert:

111. Directions that cannot be given under GTE Act s. 108

No direction can be given under the GTE Act section 108(1) to the Electricity Networks Corporation with respect to the exercise or performance of any power or duty of that corporation under the *Electricity Industry Act 2004* Part 9 or regulations or market rules made under that Part.

207. Part 5 Divisions 5 and 6 deleted

Delete Part 5 Divisions 5 and 6.

208. Part 6 deleted

Delete Part 6.

209. Sections 134 to 136 replaced

Delete sections 134 to 136 and insert:

134. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

210. Section 138 amended

After section 138(2) insert:

(3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.

(4) Regulations in reliance on subsection (3) must not be made except on the recommendation of —

(a) the Minister; and

(b) the Minister to whom the administration of the GTE Act is committed.

(5) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

211. Schedules 1 to 4 deleted

Delete Schedules 1 to 4.

Division 2 — *Gold Corporation Act 1987* amended

212. Act amended

This Division amends the *Gold Corporation Act 1987*.

213. Various references to *Salaries and Allowances Act 1975* s. 7C amended

In the provisions listed in the Table delete "section 7C(1)" (each occurrence) and insert:

section 7BA

Table

s. 8A(2)	s. 8B(2) and (4)
s. 41A(2)	s. 41B(2), (3) and (4)
s. 52A(2)	s. 52B(2), (3) and (4)

Division 3 — *Perth Market (Disposal) Act 2015* amended

214. Act amended

This Division amends the *Perth Market (Disposal) Act 2015*.

215. Section 28 amended

Delete section 28(2)(b)(ii).

Division 4 — *Pilbara Port Assets (Disposal) Act 2016* amended

216. Act amended

This Division amends the *Pilbara Port Assets (Disposal) Act 2016*.

217. Section 27 amended

Delete section 27(1)(b) and insert:

(b) a breach of duty under the *Statutory Corporations (Liability of Directors) Act 1996* section 5; or

Division 5 — *Port Authorities Act 1999* amended

218. Act amended

This Division amends the *Port Authorities Act 1999*.

219. Section 3 amended

(1) In section 3(1) delete the definitions of:

board

CEO

Corporations Act

director

executive officer

member of staff

subsidiary

Treasurer

(2) In section 3(1) insert in alphabetical order:

> ***GTE Act*** means the *Government Trading Enterprises Act 2023*;

(3) Delete section 3(4).

220. Section 3A inserted

At the end of Part 1 insert:

3A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

221. Part 2 Division 2 heading replaced

Delete the heading to Part 2 Division 2 and insert:

Division 2 — Community consultation committees

222. Sections 7 to 13 deleted

Delete sections 7 to 13.

223. Section 14A amended

In section 14A(2) delete "section 13, a port authority must, under that section, establish a committee for the port" and insert:

the GTE Act section 26, the board of a port authority must establish a committee for each port for which it has the control and management

224. Sections 14, 15A, 15B and 15 deleted

Delete sections 14, 15A, 15B and 15.

225. Section 17 amended

Delete section 17(3) and insert:

(3) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.

(3A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation,

subsection (2) does not affect the operation of the GTE Act section 37(5).

226. Section 20 deleted

Delete section 20.

227. Section 23 amended

In section 23(1) delete "section 68," and insert:

the GTE Act section 81,

228. Part 4 Division 1 heading deleted

Delete the heading to Part 4 Division 1.

229. Section 31 replaced

Delete section 31 and insert:

31. Relationship to *Environmental Protection Act 1986*

Nothing in this Act limits or otherwise affects the operation of the *Environmental Protection Act 1986* in relation to a port, a port authority or port operations.

230. Section 32 amended

In section 32 delete "Minister," and insert:

Minister under the GTE Act Part 7 Division 4,

Note: The heading to amended section 32 is to read:

Port authority has control of port

231. Sections 33, 34A and 34 deleted

Delete sections 33, 34A and 34.

232. Section 35 amended

(1) In section 35(2)(k) delete "subject to sections 39 and 40,".

(2) After section 35(3) insert:

(3A) Subsections (1) and (2) have effect subject to the GTE Act.

233. Sections 39 to 43 deleted

Delete sections 39 to 43.

234. Section 44 amended

(1) In section 44(2)(d) delete "section 13; or" and insert:

the GTE Act section 26(1); or

(2) Delete section 44(7) and insert:

(7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a port authority can be given under the GTE Act section 156.

235. Part 4 Division 2 deleted

Delete Part 4 Division 2.

236. Part 5 deleted

Delete Part 5.

237. Part 6 heading deleted

Delete the heading to Part 6.

238. Part 6 Divisions 1 to 5 deleted

Delete Part 6 Divisions 1 to 5.

239. Part 6 Division 6 heading deleted

Delete the heading to Part 6 Division 6.

240. Sections 133 to 135 replaced

Delete sections 133 to 135 and insert:

133. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

241. Section 139 amended

After section 139(2) insert:

(3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.

(4) Regulations in reliance on subsection (3) must not be made except on the recommendation of —

(a) the Minister; and

(b) the Minister to whom the administration of the GTE Act is committed.

(5) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

242. Part 12 deleted

Delete Part 12.

243. Schedules 2 to 5 deleted

Delete Schedules 2 to 5.

Division 6 — *Racing and Wagering Western Australia Act 2003* amended

244. Act amended

This Division amends the *Racing and Wagering Western Australia Act 2003*.

245. Section 21A amended

In section 21A(2) delete "section 7C(1)." and insert:

section 7BA.

246. Section 21B amended

In section 21B(2) delete "section 7C(1)." and insert:

section 7BA.

Division 7 — *Salaries and Allowances Act 1975* amended

247. Act amended

This Division amends the *Salaries and Allowances Act 1975*.

248. Section 4 amended

In section 4(1) insert in alphabetical order:

> ***GTE*** has the meaning given in the *Government Trading Enterprises Act 2023* section 3(1);

249. Section 7C replaced

Delete section 7C and insert:

7BA. Term used: Government entity

In sections 7C and 7D —

Government entity means an entity —

(a) that is described in column 1 of Schedule 2; and

(b) that is not prescribed by the regulations for the purposes of this paragraph.

7C. Determinations as to remuneration of executive officers of Government entities

(1) In this section —

executive officer, of an entity described in column 1 of Schedule 2, means a person whose office —

(a) is described in column 2 of Schedule 2 for the entity, other than as that of director of the entity; and

(b) is not prescribed by the regulations for the purposes of this paragraph;

(2) The Tribunal must, from time to time as provided by this Act, inquire into and determine the minimum and maximum amounts of remuneration to be paid or provided to executive officers of Government entities.

(3) Section 6(2) and (3) apply to a determination under subsection (2).

(4) However, a person who holds an office described in column 2 of Schedule 2 for an entity immediately before the day on which the entity is described in column 1 of Schedule 2 must be treated, for the purposes of subsection (2), as if they were not an executive officer of the entity during the balance of the person's term of office that remained immediately before that day.

7D. Determinations as to remuneration of directors of certain Government entities

(1) In this section —

director, of an entity described in column 1 of Schedule 2, means a person whose office —

(a) is described in column 2 of Schedule 2 for the entity as that of director of the entity; and

(b) is not prescribed by the regulations for the purposes of this paragraph.

(2) The Tribunal must, from time to time as provided by this Act, inquire into and determine the minimum and maximum amounts of remuneration to be paid or provided to directors of Government entities.

(3) Section 6(2) and (3) apply to a determination under subsection (2).

7E. Determinations as to allowance for directors of certain GTEs: audit and risk committee members

(1) For the purposes of the *Government Trading Enterprises Act 2023* section 27(2), the Tribunal must, from time to time as provided by this Act, inquire into and determine the allowance to be paid or provided to members of audit and risk management committees of GTEs who are also directors of the GTE concerned.

(2) The allowance must be the same for all such members for a particular GTE, other than for the chair of the committee.

(3) Section 6(2) and (3) apply to a determination under subsection (1).

250. Section 8 amended

In section 8(1) —

(a) in paragraph (e) delete "another." and insert:

another; and

(b) after paragraph (e) insert:

(f) not more than 4 years elapse between one determination under section 7D(2) and another; and

(g) not more than 4 years elapse between one determination under section 7E(1) and another.

251. Section 10 amended

In section 10(4)(d) —

(a) after "executive officers" insert:

or directors

(b) after "section 7C(2)" insert:

or 7D(2)

(c) delete "section 10F(3)." and insert:

section 10F(3) or the allowance to be paid or provided under section 7E(1).

252. Section 10A amended

In section 10A(2) delete "section 6(1)(a), (ab), (d) or (e) or 7C(2)" and insert:

section 6(1)(a), (ab), (d) or (e), 7C(2), 7D(2) or 7E(1)

253. Schedule 2 amended

In Schedule 2 —

(a) delete the reference after the heading to Schedule 2 and insert:

[s. 7BA, 7C and 7D]

(b) delete the item relating to a corporation as defined in the *Electricity Corporations Act 2005* section 3(1) and insert:

A GTE.	1. A person appointed as a director of the GTE. 2. The person appointed as the chief executive officer of the GTE. 3. A person appointed to act in place of the chief executive officer of the GTE.
A wholly-owned subsidiary (as defined in the *Government Trading Enterprises Act 2023* section 117).	1. A person appointed as a director of the subsidiary. 2. The person appointed as the chief executive officer (however described) of the subsidiary.

(c) delete the items relating to a corporation as defined in the *Water Corporations Act 1995* section 3(1) and the Authority as defined in the *Western Australian Land Authority Act 1992* section 4(1).

Division 8 — *Statutory Corporations (Liability of Directors) Act 1996* amended

254. Act amended

This Division amends the *Statutory Corporations (Liability of Directors) Act 1996*.

255. Section 4 amended

(1) In section 4 insert in alphabetical order:

> ***GTE*** has the meaning given in the *Government Trading Enterprises Act 2023* section 3(1).

(2) In section 4 in the definition of ***corporation*** before "local" insert:

GTE or a

(3) In section 4 in the definition of ***director*** paragraph (c) delete "person." and insert:

person;

256. Schedule 1 amended

In Schedule 1 delete the items for:

Fremantle Port Authority

Kimberley Ports Authority

Mid West Ports Authority

Pilbara Ports Authority

Southern Ports Authority
Western Australian Land Authority

Division 9 — *Water Corporations Act 1995* amended

257. Act amended

This Division amends the *Water Corporations Act 1995*.

258. Section 3 amended

(1) In section 3(1) delete the definitions of:
board
chief executive officer
Corporations Act
director
executive officer
member of staff
subsidiary
Treasurer

(2) In section 3(1) insert in alphabetical order:

> ***GTE Act*** means the *Government Trading Enterprises Act 2023*;

(3) Delete section 3(2).

259. Section 3A inserted

At the end of Part 1 insert:

3A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

260. Section 7A amended

In section 7A(2)(h) delete "Part 4 Division 3" and insert:

the GTE Act Part 7 Division 1

261. Part 2 Division 2 replaced

Delete Part 2 Division 2 and insert:

Division 2 — Regional water corporation board members

7. Appointing board member: special provision for regional water corporations

(1) In this section —

operating area, in relation to a regional water corporation, means an operating area of a licence held by the corporation under the *Water Services Act 2012*;

regional water corporation means the Bunbury Water Corporation and the Busselton Water Corporation.

(2) In appointing the members of a regional water corporation's board, the Minister must, to the extent practicable, ensure that, at the time of the appointment,

the number of directors who are not ordinarily resident in an operating area of the corporation does not exceed the number of those who are.

262. Sections 13, 14A, 14B and 14 deleted

Delete sections 13, 14A, 14B and 14.

263. Section 16 amended

Delete section 16(4) and insert:

(4) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.

(4A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation, subsection (3) does not affect the operation of the GTE Act section 37(5).

264. Section 18 deleted

Delete section 18.

265. Part 2 Division 4 heading replaced

Delete the heading to Part 2 Division 4 and insert:

Division 4 — Staff codes of conduct

266. Sections 20 to 23 deleted

Delete sections 20 to 23.

267. Section 26 amended

In section 26(1) delete "section 60," and insert:

the GTE Act section 81,

268. Sections 28A and 28 deleted

Delete sections 28A and 28.

269. Section 29 amended

(1) In section 29(2)(g) delete "subject to sections 31 and 32,".

(2) After section 29(2) insert:

(2A) Subsections (1) and (2) have effect subject to the GTE Act.

270. Sections 30 to 34 deleted

Delete sections 30 to 34.

271. Section 35 amended

(1) In section 35(2)(c) delete "section 12; or" and insert:

the GTE Act section 26; or

(2) After section 35(6) insert:

(7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a corporation can be given under the GTE Act section 156.

272. Part 3 Division 3 deleted

Delete Part 3 Division 3.

273. Parts 4 and 5 deleted

Delete Parts 4 and 5.

274. Sections 87 to 89 replaced

Delete sections 87 to 89 and insert:

87. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

275. Section 91 amended

After section 91(2) insert:

(3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.

(4) Regulations in reliance on subsection (3) must not be made except on the recommendation of —

(a) the Minister; and

(b) the Minister to whom the administration of the GTE Act is committed.

(5) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

276. Schedules 1 to 4 deleted

Delete Schedules 1 to 4.

Division 10 — *Western Australian Land Authority Act 1992* amended

277. Act amended

This Division amends the *Western Australian Land Authority Act 1992*.

278. Section 4 amended

(1) In section 4(1) delete the definitions of:

alternate director

board

chairperson

chief executive officer

committee

Corporations Act

director

executive officer

member of staff

subsidiary

Treasurer

(2) In section 4(1) insert in alphabetical order:

GTE Act means the *Government Trading Enterprises Act 2023*;

(3) In section 4(1) in the definition of ***public authority*** delete "utility;" and insert:

utility.

(4) Delete section 4(2).

279. Section 4A inserted

At the end of Part 1 insert:

4A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

280. Sections 6 to 8B deleted

Delete sections 6 to 8B.

281. Sections 10, 11A and 11B deleted

Delete sections 10, 11A and 11B.

282. Section 12 amended

Delete section 12(3) and insert:

(3) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the Authority as if the chief executive officer were a member of staff.

(3A) If an instrument issued under subsection (1) applies to the chief executive officer of the Authority, subsection (2) does not affect the operation of the GTE Act section 37(5).

283. Section 14 amended

In section 14 delete "section 10 or 11" and insert:

section 11 or the GTE Act section 37(1)

284. Section 14A deleted

Delete section 14A.

285. Section 14D amended

In section 14D(1) delete "section 25BA," and insert:

the GTE Act section 81,

286. Section 16A deleted

Delete section 16A.

287. Section 16C deleted

Delete section 16C.

288. Section 17 amended

After section 17(3) insert:

(3A) Subsections (1) and (2) have effect subject to the GTE Act.

289. Sections 17A to 17C deleted

Delete sections 17A to 17C.

290. Section 19 deleted

Delete section 19.

291. Section 22 deleted

Delete section 22.

292. Section 23 amended

(1) Delete section 23(2)(d) and insert:

(d) a committee appointed under the GTE Act section 26; or

(2) Delete section 23(7) and insert:

(7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of the Authority can be given under the GTE Act section 156.

293. Sections 23A to 23D deleted

Delete sections 23A to 23D.

294. Parts 3A and 5 deleted

Delete Parts 3A and 5.

295. Sections 45, 45AA and 45A replaced

Delete sections 45, 45AA and 45A and insert:

45. Laying documents before Parliament not sitting

If a provision of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting, the GTE Act section 159 applies as if the reference in that section to a provision of the GTE Act were a reference to the provision of this Act.

296. Section 47 amended

After section 47(1) insert:

(2) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.

(3) Regulations under subsection (2) must not be made except on the recommendation of —

(a) the Minister; and

(b) the Minister to whom the administration of the GTE Act is committed.

(4) If and to the extent that regulations under this Act are so expressed, in the event of a conflict or inconsistency between a provision of those regulations and a provision of regulations made under the GTE Act, the former provision prevails.

297. Schedules 1 and 1A deleted

Delete Schedules 1 and 1A.

298. Schedule 2 amended

Delete the reference after the heading to Schedule 2 and insert:

[s. 16(1)(d)]

299. Schedules 3 and 3A deleted

Delete Schedules 3 and 3A.

Note: The heading to section 11 is to read:

Staff

Division 11 — *Western Australian Treasury Corporation Act 1986* amended

300. Act amended

This Division amends the *Western Australian Treasury Corporation Act 1986*.

301. Section 8AA amended

In section 8AA(2) delete "section 7C(1)." and insert:

section 7BA.

302. Section 8AB amended

In section 8AB(2) delete "section 7C(1)." and insert:

section 7BA.

303. Section 9 amended

Delete section 9(1)(d) and insert:

(d) to advise authorities on financial matters including —

(i) transactions that come within paragraph (g); and

(ii) the matters referred to in the *Government Trading Enterprises Act 2023* section 137;

Schedule 1 — Effect of provisions to be included in constitution or governing instrument of subsidiary of GTE

[s. 115(2)(a)]

1. Disposal of shares or interests

(1) The GTE must not sell or otherwise dispose of shares or interests in the subsidiary except with the written approval of the Portfolio Minister.

(2) The Portfolio Minister has power to execute a transfer of any of the GTE's shares or interests in the subsidiary.

2. Board or governing body

(1) The directors or members of the governing body of the subsidiary must be appointed by the GTE with the written approval of the Portfolio Minister.

(2) All decisions relating to the operation of the subsidiary must be made by or under the authority of its board or governing body in accordance with the GTE's statement of expectations and annual performance statement.

(3) The board or governing body of the subsidiary is accountable to the Portfolio Minister in the manner set out in Part 7.

3. Issue and transfer of shares or interests restricted

Shares or interests in the subsidiary must not be issued or transferred except with the written approval of the Portfolio Minister.

4. Subsidiary must not have subsidiaries

The subsidiary must not —

(a) form a subsidiary of its own; or

(b) participate in the formation of a subsidiary of its own; or

(c) acquire a subsidiary of its own.

5. Subsidiary to furnish information to GTE

(1) At the request of the GTE the subsidiary must give to the GTE information in the possession of the subsidiary that the GTE requires in order to comply with its obligations under Part 7.

(2) The subsidiary must —

(a) take no action, or omit to take any action; or

(b) enter into any contractual or other arrangement

so as to prevent or inhibit the subsidiary from providing to the GTE information in its possession that the GTE requires in order to comply with its obligations under Part 7.

Notes

This is a compilation of the *Government Trading Enterprises Act 2023* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Government Trading Enterprises Act 2023	13 of 2023	22 Jun 2023	Pt. 1: 22 Jun 2023 (see s. 2(a)); Act other than Pt. 1: 1 Jul 2023 (see s. 2(b) and SL 2023/89 cl. 2)
Keystart Act 2024 Pt. 8 Div. 3	44 of 2024	13 Nov 2024	14 Nov 2024 (see s. 2(b)(v))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Privacy and Responsible Information Sharing Act 2024 Pt. 6 Div. 3	51 of 2024	6 Dec 2024	To be proclaimed (see s. 2(c))

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