

Tasmanian Government Businesses

Governance Framework Guide

October 2008

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1 Introduction

The purpose of this document is to outline the current governance framework for Tasmanian Government businesses. The term “Government businesses” is a collective term that encompasses the two different types of businesses that are currently in Tasmania, specifically Government Business Enterprises (GBEs) and State-owned Companies (SOCs). The following sections highlight the features and special requirements resulting from Government ownership, providing an overview of:

- why the Government owns businesses;
- what are the Government’s general objectives and expectations of its businesses;
- how Government businesses are different from private sector businesses;
- the role of Parliament, Ministers (as Shareholders) and relevant Government departments;
- the role of Government businesses in governance; and
- the important features of the respective governance frameworks for GBEs and SOCs.

This document is not intended to be a complete reference work on best practice corporate governance. However, it does discuss the need for the board of a Government business to adopt and observe a set of corporate governance principles that are both relevant to the business and take into consideration the requirements of the applicable overarching governance framework (legislative and non-legislative) relating to the business.

It should be noted that whilst this document provides an overview of the respective frameworks that apply to GBEs and SOCs, it does not set out to discuss specific aspects or requirements that need to be adopted by any one Government business nor discuss in-depth those roles and responsibilities of the board and individual directors. These specific requirements are prescribed in legislation and associated documents relating to the particular business, eg ministerial charters, shareholders’ statements of expectations, Treasurer’s Instructions, Guidelines for Tasmanian Government Businesses, as well as manuals developed by boards such as corporate governance charters.

2 Government Ownership

2.1 Government ownership of businesses

The State Government owns a diverse portfolio of businesses, varying greatly in size and operating in many commercial markets including port operations, transport, financial services, forestry and energy industries. Government ownership continues for various reasons including historic ownership, the need to ensure the continued provision of important and/or essential services that may not otherwise be provided by the private sector, and a greater ability to regulate services through public ownership.

Collectively, the Government businesses constitute a significant portion of the Tasmanian economy, providing employment and financial returns to the State. Government businesses directly provide some of the State's most important economic infrastructure. The strategic directions and investments of these businesses also support private sector investment and play a fundamental role in the economic development of the State.

2.2 Government's general objectives and expectations of its businesses

Due to the economic significance of the Government business portfolio, it is important that individual businesses operate in a commercial manner. The financial performance of all Government businesses directly impacts on the financial wealth of Tasmanians. The functions and services provided by Government businesses also deliver non-financial benefits for the Tasmanian community both directly and indirectly.

Government businesses contribute in one or more of the following areas:

- development of key projects that are strategically important to the State's future;
- delivery of key government social and economic objectives;
- delivery of services that would not otherwise be provided by the private sector operating commercially (or existing partly to counter a market failure) including services funded by a community service obligation or activity (CSO or CSA); and
- provision of stable financial returns to Government on an annual basis.

Shareholder Ministers are accountable to Parliament as elected representatives of the owners. This higher level of accountability means that the relationship between the board and the Shareholder Ministers generally requires more frequent interaction than that required between boards and shareholders in public listed companies.

Given that Government businesses are subject to parliamentary and community scrutiny, it should be noted that:

- the Government is a long-term investor and accordingly Government businesses need to take a long-term view of their respective businesses;
- the Government is a risk-averse investor and Government businesses need to take account of the Government's risk parameters in their investment decisions;
- Government businesses must operate with agreed performance criteria and strategies as detailed in their corporate or business plan; and
- each Government business board must ensure that the business complies with all relevant legislative, regulatory and environmental requirements.

Expectations of Government

The Government expects the board of a Government business to:

- be results oriented;

This involves the Government business making the best use of its resources by operating efficiently and effectively;

- be ethical in its operations and dealings and act with the highest standards of probity;

This involves the board approving ethical standards for the Government business and monitoring the implementation of those standards;

- be adaptable to change; and

The board is expected to ensure that the Government business maximises any advantage, or minimises the impact of any change, with a focus on strategic issues.

- keep the Shareholders informed;

The Shareholder Ministers' expectation to be kept informed relates to business operations, achievement of performance targets, operational or policy issues and major customer and environmental issues.

The board of a Government business is also expected to ensure that management acts in the interests of the business, takes into account the shareholders' expectations, complies with the various laws which impact on its operations and complies with relevant Government policies.

3 Tasmanian Government Businesses

3.1 Government businesses frameworks

The term “Government businesses” is a collective term that encompasses the two different types of businesses that are currently used in Tasmania, specifically Government Business Enterprises (GBEs) and State-owned Companies (SOCs).

- GBEs are established under their own Portfolio Act and the framework of the *Government Business Enterprises Act 1995* (GBE Act), and have special requirements beyond those of their counterparts in the private sector.
- SOCs are established under their own Portfolio Act and are incorporated under the *Corporations Act 2001* (Corporations Act). SOCs also have a number of special requirements, due to Government ownership, which do not apply to their private sector counterparts.

While there are similar overarching expectations of GBEs and SOCs, there are a number of differences between their respective governance frameworks. Table 1 illustrates some of the key differences, and sections 6 and 7 of this document discuss in more detail the individual governance frameworks for GBEs and SOCs.

Table 1 Summary of Governance Frameworks

	GBE	SOC
Establishment	<i>Government Business Enterprises Act 1995</i> and Portfolio Act	<i>Corporations Act 2001</i> and Portfolio Act
Objectives	<i>Government Business Enterprises Act 1995</i> , Portfolio Act and ministerial charter	Portfolio Act and constitution
Minister expectations	Ministerial charter and Treasurer’s Instructions	Shareholders’ statement of expectations and Treasurer’s Instructions
Policy	Treasurer’s Instructions and Guidelines for Tasmanian Government Businesses	Treasurer’s Instructions and Guidelines for Tasmanian Government Businesses

3.2 Government business framework versus the private sector framework

In the private sector, the shareholders of an enterprise appoint a board of directors that is responsible for the governance of the enterprise and the achievement of an adequate return on assets invested. Private sector shareholders also face the discipline of the stock market and financial markets.

In the case of a GBE, the Governor, based on the joint recommendation of the Treasurer and Portfolio Minister, appoints the directors of the board. In the case of a SOC, the Treasurer and Portfolio Minister collectively hold all the shares in a SOC, ie they are the shareholder members. As the shareholder members, they appoint the directors of the board.

The absence of market signals and the more fixed nature of the investment leads the Government to have a role in determining the strategic objectives and directions of the businesses it owns.

Boards of both GBEs and SOCs have similar responsibilities to those in the private sector as well as some additional responsibilities arising from their public ownership. These include the special requirements prescribed in the Tasmanian legislation for each Government business and any associated requirements, such as Treasurer's Instructions. The written expectations of the Shareholder Ministers are either in the form of a ministerial charter or shareholders' statement of expectations. Government businesses are also subject to scrutiny by Parliament, through the requirement to table annual reports in Parliament, and formal attendance at Parliamentary Government Businesses Scrutiny Committees.

Key Differences

- Government businesses are subject to their respective Portfolio Acts and the provisions of the GBE Act (only certain sections of the GBE Act apply to SOCs);
- Shareholder Ministers' expectations are specified in Treasurer's Instructions, and either ministerial charters or shareholders' statement of expectations;
- Government businesses are accountable to Shareholder Ministers;
- Shareholder Ministers are accountable to Parliament for the performance and strategic direction of Government businesses;
- whilst acting commercially should be the primary focus, boards (and senior management) need to also be mindful of their responsibilities under the relevant legislation, and the Parliamentary responsibilities of the Shareholder Ministers;
- boards (and senior management) need to be mindful of the Government's current objectives for the respective business, as well as other relevant Government policies, such as the Government's Fiscal Strategy and National Competition Policy;
- if a board has been directed by Government to undertake non-commercial activities in order to ensure the provision of certain services to the community through a CSO or CSA, then the board needs to ensure that it delivers the CSO or CSA in accordance with the terms of any funding agreement and as efficiently and effectively as possible;
- Government businesses are subject to the National Tax Equivalent Regime, which essentially mirrors the Commonwealth's *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997*, and the *Taxation Administration Act 1953* (as amended);
- to neutralise the potential advantage of Government businesses being able to borrow at a more favourable rate than in the private sector, the businesses have limited access to Government guarantees and pay guarantee fees where an implicit or explicit guarantee is provided;
- Government businesses are required to pay dividends to the State in accordance with the Government's dividend policy guidelines, as with private sector investors, dividends represent a return on the money invested;
- in the majority of cases, the board of a Government business can implement an appropriate rewards and sanctions regime, and have its own employing power outside the Tasmanian *State Service Act 2000*; and
- although Government businesses are not credit rated individually, their activities, debt levels and debt servicing costs are all taken into account by Moody's Investors Services and Standards & Poors when determining the State's credit rating.

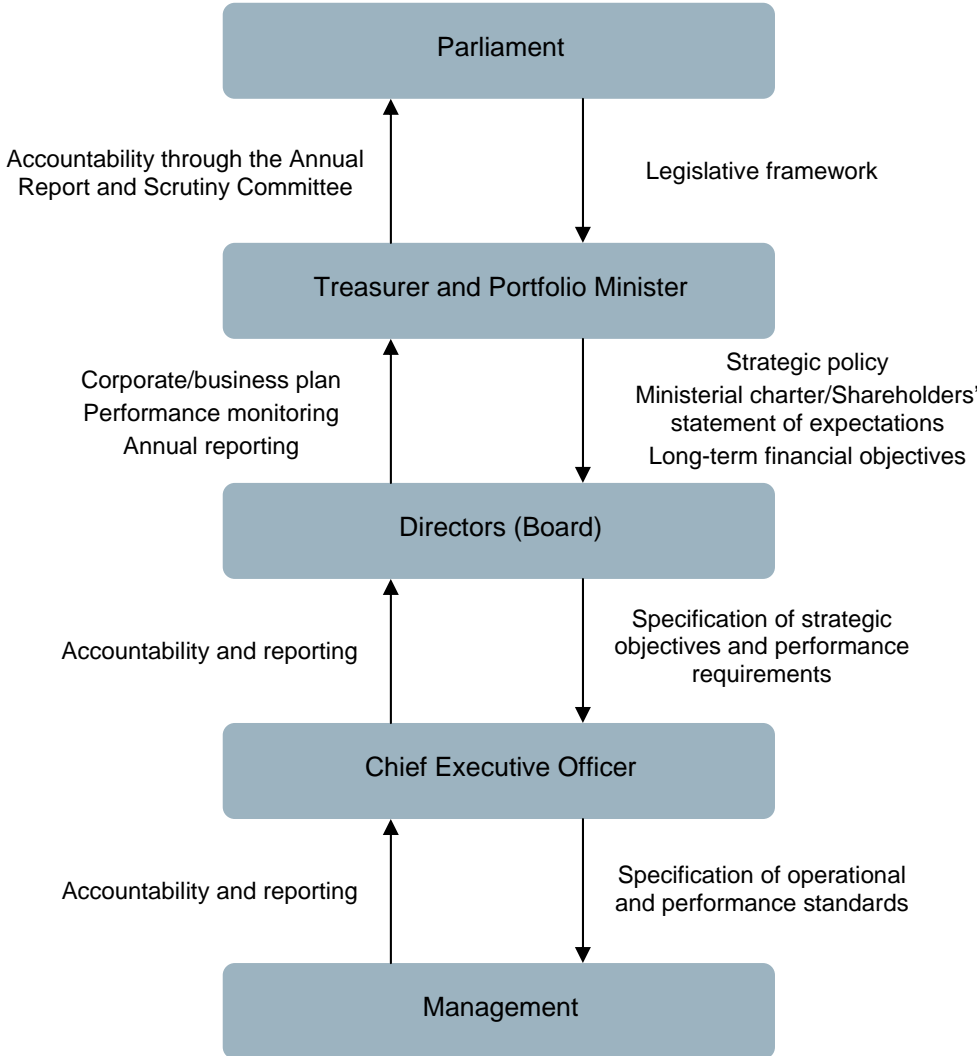
4 Government's Role as Owner

4.1 Accountability Framework

As shown in Figure 1, the board and senior management of a Government business undertake the key roles in the stewardship and management of the business with the board accountable to the Shareholder Ministers for the performance of, and services provided by, the business.

The Shareholder Ministers are responsible for monitoring the broader role of Government businesses, in terms of balancing customer and shareholder interests. However, ultimately the Shareholder Ministers are representatives of the owners (the Tasmanian community) and like the board of Government businesses will be held accountable to Parliament and the community through the channels provided by the Portfolio Act, ministerial charter, corporate/business plan and constitution.

Figure 1 - An Overview of the Accountability Framework of Government Businesses



4.2 The Role of Parliament

In relation to Government businesses, the primary role of Parliament is to consider legislation for the establishment of Government businesses, ensure that Government businesses perform their obligations efficiently and effectively, and consider legislation for the divestment of Government businesses. Parliament therefore needs to be kept informed of the performance of Government businesses because the:

- Government's financial position, and hence the wealth of the Tasmanian community, is affected by the financial performance of Government businesses; and
- Government bears the residual risk of corporate failure of Government businesses through explicit or implicit guarantees.

The accountability framework of the GBE Act, and the Portfolio Acts of SOCs require that Parliament be kept informed about the operations of GBEs and SOCs. The Portfolio Minister is required to provide the following documents to Parliament:

GBEs

- the ministerial charter of the GBE; and
- the annual report (incorporating a statement of corporate intent) of the GBE each financial year.

SOCs

- the constitution of the company and each of its subsidiaries, and any amendments to those constitutions;¹ and
- the annual report of the SOC each financial year.

Parliament is also kept informed by conducting an annual inquiry into the performance of GBEs and SOCs through the Government Businesses Scrutiny Committees.

4.3 The Role of the Treasurer and Portfolio Minister

The Tasmanian community own 100 per cent of the shares in the Government businesses. These shares are held in trust for the Crown and the associated rights attached to those shares are conferred to the Government, elected by the owners. The Treasurer and Portfolio Minister (the Shareholder Ministers), on behalf of the Government, act as the owners' representatives and are accountable to the owners. All Government businesses are under an obligation to report regularly and are accountable to the Shareholder Ministers.

GBEs

In respect of a GBE, two key roles of the Treasurer and Portfolio Minister are to provide the GBE with a ministerial charter and to approve the corporate plan and the various performance targets it contains. It is also the role of the Treasurer and Portfolio Minister to prepare the Bills which seek Parliamentary approval to establish and divest GBEs, amend GBE Portfolio Acts or the GBE Act.

¹This is not the case for all SOCs.

The Treasurer and Portfolio Minister also assess and monitor each GBE's financial performance, and ensure that the objectives of the GBE are consistent with the Government's overall policy framework and objectives.

SOCs

Similarly, as joint shareholders of each SOC, the role of the Treasurer and Portfolio Minister is to provide each SOC with a statement of the shareholders' expectations, review the corporate plan and the various performance targets it contains, carry out the roles and responsibilities of Members specified in the constitution of the company and amend SOC Portfolio Acts.

The Treasurer and Portfolio Minister also undertake the role of assessing and monitoring each SOC's financial performance, and ensure that the objectives of the SOC are consistent with the Government's overall policy framework and objectives.

4.4 The Role of the Department of Treasury and Finance

The Department of Treasury and Finance provides independent advice to the Treasurer on the governance framework for Government businesses and financial issues relating to Government businesses, including financial performance targets and general financial performance. Treasury provides advice on the impacts of the financial health and performance of the Government businesses on the achievement of the Government's policy objectives, in particular the Fiscal Strategy.

Treasury also provides advice on the establishment of new Government businesses or subsidiaries, the corporatisation of GBEs, and also divestment, or part thereof, of Government businesses.

Independent "shareholder" performance monitoring of Government businesses is an integral part of the governance framework. Its analogy in the private sector is the role played by market analysts in the capital markets. Treasury takes the role of the analyst providing investment advice to the Government on its portfolio. This framework reinforces managerial autonomy and obviates the need for the Ministers to become involved in day-to-day organisational or managerial issues.

Treasury officers are likely to have frequent contact with senior management of Government businesses but infrequent contact with boards. The accountability of the latter is to the Ministers.

4.5 The Role of the Portfolio Department

The Portfolio Departments undertake a similar role to Treasury in that they provide independent advice to the Portfolio Ministers on matters such as:

- portfolio issues relating to Government businesses, for example the role of Government businesses in relation to Government's transport, energy and forest policies;
- administration of the portfolio legislation;
- tabling of annual reports and ministerial charters; and
- director appointments.

5 The Role of a Government Business

5.1 The Role of the Board

Good corporate governance encourages businesses to create value and provide systems of accountability and control.

Professor Hilmer, chair of the Independent Working Party into Corporate Governance, identified the dual performance and conformance roles of the board by stressing that:

*“The board’s key role is to ensure that corporate management is continuously and effectively striving for above-average performance, taking account of risk. This is not to deny the board’s additional role with respect to shareholder protection”.*²

In fulfilling its role in respect of performance, a board must ensure it:

- sets relevant performance targets for the business, with a commitment towards achievement of commercial performance levels and, wherever possible, external benchmarks should be identified which are relevant to the industry, sector or market of the business; and
- reviews and approves strategy and policies for the business.

This role must be undertaken in conjunction with its conformance role, ensuring that management is undertaking its role in the best interests of the business and in accordance with relevant laws by:

- reviewing the performance of the business on a regular basis using statutory and other reports, such as internal management reports;
- reviewing the performance of the chief executive officer and senior management; and
- protecting the long-term viability of the business by monitoring and continually refining the system of internal controls, liability management practices and solvency level of the business.

The board of the GBE, through the requirements in the GBE Act, is responsible to the Shareholder Ministers for ensuring that the GBE:

- manages and conducts its business and affairs in a manner that is in accordance with sound commercial practice and consistent with its ministerial charter;
- performs its functions; and
- achieves its objectives as specified in the GBE Act, or any other relevant Act, its ministerial charter and corporate plan.

Similarly, the shareholders’ statement of expectations for a SOC states that it is the responsibility of the board of directors to act in the interests of the company and, in doing so should take into account the shareholders’ interests. The chief executive officer and other managers are responsible to the board, which is responsible to the shareholders. The board of any wholly-owned subsidiary company is required to act in the long-term interests of that subsidiary company, unless its constitution provides that the board can act in the interests of the parent company.

² Hilmer, F.G.(ed), 1993, Strictly Boardroom, Information Australia

To fulfil these responsibilities, the board of a Government business must be actively involved in:

- setting strategic directions;
- securing and continually monitoring organisational performance;
- ensuring compliance with statutory requirements; and
- managing risk.

In undertaking its role, the board must factor into consideration the importance of observing a set of corporate governance principles that are appropriate for the business, and the Government ownership aspect of the business.

5.2 The Role of Chief Executive Officer and Senior Management

The chief executive officer (CEO) and senior management are responsible for the business achieving its goals, in accordance with the strategies, policies, programs and performance requirements approved by the board. Each manager will have a specific area of responsibility, with the CEO being responsible for all aspects of the management and development of the business. The CEO and senior management must actively support and understand the board's governance role.

The CEO and senior management have the same legislative obligations to perform their duties in the interest of the business. These include, but are not limited to, acting in good faith and for a proper purpose, exercising due care and diligence, and preventing insolvent trading.

6 Government Business Enterprises

6.1 Governance framework

Authorisation for the establishment of a GBE is provided under its Portfolio Act. Those entities subject to the GBE Act are listed in Schedule 1 of the GBE Act. A GBE is subject to the GBE Act and any other legislation specified in its respective Portfolio Act, or under common law. The GBE Act provides a framework that enables Tasmania's GBEs to independently manage their operational affairs and to maximise their commercial performance, whilst providing for strategic oversight and accountability to their Shareholder Ministers.

The key elements of the GBE Act are:

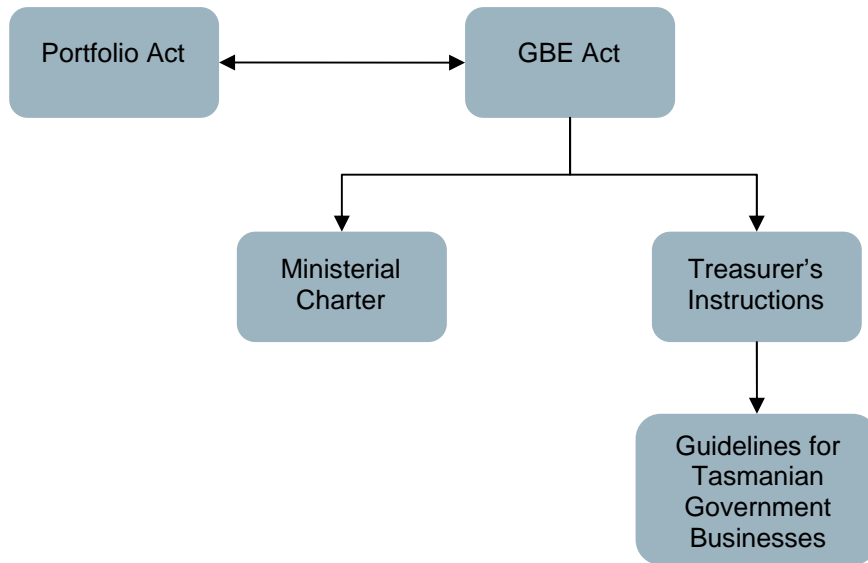
- a focus on the strategic oversight of the business;
- greater operational independence;
- a focus on commercial performance; and
- strict accountability.

As GBEs have been given greater operational independence than a Government agency or statutory authority and are required to operate in a commercial manner, it is essential that the GBE board is accountable to the Government for its performance.

The GBE Act provides for accountability from the chief executive officer to the board, from the board to the Treasurer and Portfolio Minister, (as the Shareholder Ministers), and from the Treasurer and Portfolio Minister to Parliament. The information that the GBE Act requires a GBE to provide to both the Government and Parliament is an important aspect of accountability.

The corporate governance framework for GBEs is closely aligned with the requirements of the Corporations Act and the governance arrangements of private sector companies. However the GBE Act imposes more stringent accountability of individual directors and the board of a GBE to the Ministers. Figure 2 shows the governance framework for GBEs and the inter-relationship between the key governance documents.

Figure 2 - Governance Framework for Government Business Enterprises



6.2 Key governance documents

Ministerial charter

Under provisions in the GBE Act, the Treasurer and Portfolio Minister provide each GBE with a ministerial charter, which must also be laid before each House of Parliament. All ministerial charters describe the broad policy expectations of the Ministers for GBEs and their subsidiaries. However, each ministerial charter of a GBE will also include specific expectations of that GBE. At a broad level, ministerial charters provide the policy expectations of the Ministers for a GBE in relation to:

- objectives and strategic direction;
- core business;
- performance targets;
- financial considerations;
- pricing policy;
- human resource management, superannuation and employee relations policies;
- code of ethics;
- risk management;
- communication; and
- other expectations of the Ministers.

Treasurer's Instructions

The GBE Act allows the Treasurer to issue instructions to all or selected GBEs in respect of guidelines, principles, practices and procedures that must be followed by the GBE in relation to:

- corporate plans;
- annual reports;
- financial management;
- CSOs;
- financial obligations; and
- accounting policies.

Guidelines for Tasmanian Government Businesses

Treasury has prepared the Guidelines for Tasmanian Government Businesses to clarify and provide further details on some of the key legislative requirements and/or shareholder expectations for Government businesses. The guidelines have been prepared as a guide to assist boards and management of Government businesses and expand on some of the key requirements set out in the Treasurer's Instructions.

6.3 Reporting

The GBE Act, ministerial charter and Treasurer's Instructions set out the requirements and Ministers' expectations in relation to GBE reporting and performance monitoring, including:

- annual three-year corporate plans;
- annual report and audited financial statements;
- statement of corporate intent; and
- quarterly performance reporting.

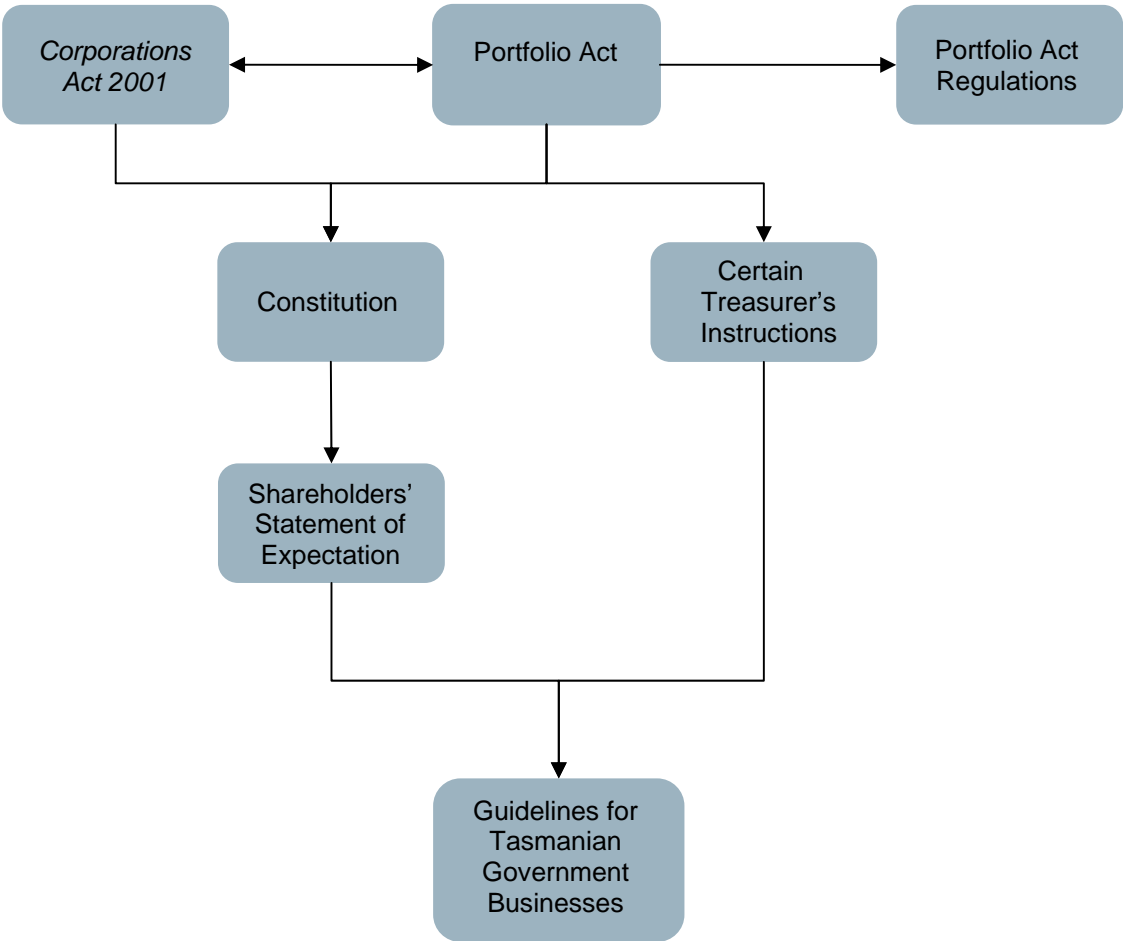
7 State-owned Companies

7.1 Governance framework

Authorisation for the establishment of a State-owned Company (SOC) is provided under its own Portfolio Act and the company is incorporated under the Corporations Act. The shares in a SOC are held by one or more Ministers (as Members/Shareholders) on behalf of the Crown. The Portfolio Act of a SOC will generally specify that the company is subject to certain provisions of the GBE Act, namely in relation to income tax equivalents and guarantee fees. The SOC is also subject to any other legislation specified in its Portfolio Act or under law.

As the governance framework for SOC's incorporates the Corporations Act it is more closely aligned than GBEs to the governance arrangements of private sector companies. However, as discussed in section 3, there are additional responsibilities, expectations and accountability arising from their public ownership. Figure 3 shows the governance framework for SOC's and the inter-relationship between the key governance documents.

Figure 3 Governance Framework for State-owned Companies



7.2 Key governance documents

Constitution

All SOCs have a constitution in accordance with the Corporations Act. The constitution is essentially a contract between:

- the company and each member;
- the company and each director;
- the company and the company secretary; and
- a member and each other member.

Shareholders' statement of expectations

The shareholders' statement of expectations sets out the expectations of the Treasurer and Portfolio Minister, as joint Shareholders and owners (on behalf of the Government), for all SOCs and their subsidiaries. It includes expectations in relation to:

- performance targets;
- financial considerations, including dividend policy;
- reporting requirements;
- selection of auditor;
- director induction; and
- annual general meetings.

This document is not legally binding like the company's constitution and Portfolio Act. Its purpose is to clarify the shareholder views and to provide a context in which the board operates and makes decisions. Many of the expectations expand on the requirements within the constitution.

Treasurer's Instructions

SOCs are required, through their Portfolio Act, to follow certain Treasurer's Instructions. SOC's are generally required to follow those Treasurer's Instructions issued under the GBE Act in relation to the determination, calculation and payment of income tax equivalents and guarantee fees as if they were a GBE.

Guidelines for Tasmanian Government Businesses

Treasury has prepared Guidelines for Tasmanian Government Businesses to clarify and provide further details on some of the key legislative requirements and/or shareholder expectations for Government businesses. The guidelines have been prepared as a guide to assist boards and management of Government businesses and expand on the key expectations in the shareholders' statement of expectations.

7.3 Reporting

The Corporations Act, constitution and shareholders' statement of expectations set out the requirements and expectations of the Shareholder Ministers in relation to SOC reporting and performance monitoring, including:

- annual three-year business plans;
- annual report and audited financial statements;
- half-year reports; and
- performance reporting.

8 Good Governance

Although there is no single model of good corporate governance, the ASX Corporate Governance Council (Council) has recommended eight core principles that underline good corporate governance. However, the Council notes “the recommendations are not mandatory and cannot, in themselves, prevent corporate failure or mistakes in corporate decision-making. They are intended to provide a reference point for companies about their corporate governance structure and practices”.³

The Council's eight principles and recommendations, which were developed with listed companies in mind, form the basis of good corporate governance practices that may be adopted by a board of a Government business. On this basis, Treasury has prepared a guide titled *Corporate Governance Principles* which provides a general discussion of matters, in the context of each of the Council's eight principles, which Government businesses should take into consideration as a result of Government ownership.

While application of the principles is not mandatory for listed companies the Council recommends companies should adopt an ‘if not, why not’ approach in their annual report. For Government businesses a significant portion of the governance framework is mandatory, through legislative requirements, the constitution or Treasurer's Instructions. Shareholder Ministers also expect that these core principles, where relevant, are adopted by Government business boards.

Appendix A details some key features of the governance framework for Government businesses; and compares the governance framework for Government businesses with that of a private sector public listed company, noting how these features relate to the Council's eight principles.

3 *Corporate Governance Principles and Recommendations – 2nd Edition*, ASX Corporate Governance Council, August 2007

9 Useful Guidelines and References

Further Information Sources

The Department of Treasury and Finance

www.treasury.tas.gov.au/governmentbusinesses

Provides access to copies of the current Treasurer's Instructions and Guidelines for Tasmanian Government Businesses.

Legislation

www.thelaw.tas.gov.au

www.comlaw.gov.au

Provides access to relevant legislation such as the GBE Act, Portfolio Acts and the Corporations Act.

Australian Securities Exchange

www.asx.com.au

Provides information from the ASX Corporate Governance Council including the Principles of Good Corporate Governance and Best Practice Recommendations.

Australian Institute of Company Directors

www.companydirectors.com.au

As a leading representative body for company directors and senior officers, the institute provides access to various relevant publications and events.

Australian Securities and Investments Commission

www.asic.gov.au

Provide detailed information for company directors about all aspects of running a company.

Chartered Secretaries Australia

www.csaust.com

Provides a range of technical information and support in best practice governance and corporate administration.

10 Glossary

Community Service Activity (CSA)	A CSA is a non-commercial activity undertaken by a SOC under contract with the Government. To qualify as a CSA, the activity must meet similar identification criteria and net cost conditions as a CSO.
Community Service Obligation (CSO)	<p>A CSO is an activity undertaken by a GBE that would not be undertaken if it was a commercial entity operating in the private sector. The <i>Government Business Enterprises Act 1995</i> requires that a CSO can only be declared where:</p> <ul style="list-style-type: none">• the function performed, services provided, or concession allowed will result in a net cost to the GBE;• it is the direct result of a direction given under, or a specific requirement of an Act of Parliament; and• it would not be performed, provided or allowed if the GBE were a business in the private sector acting in accordance with sound commercial practice.
Dividends	A dividend represents a return on the Government's equity investment in a Government business, paid by the GBE or SOC from profits. The Government expects its businesses to achieve returns that are comparable to alternative investments of similar risk, and for dividends to be of an appropriate level to reflect these returns.
Government Business Enterprise (GBE)	A statutory authority subject to the provision contained in its Portfolio Act and named in, and subject to the provisions of the <i>Government Business Enterprises Act 1995</i> .
Guarantee Fees	A guarantee fee is applied to a Government business to offset a lower borrowing rate that it may receive through Government ownership. Guarantee fees apply to effectively increase the borrowing rate that a Government business receives, to bring it up to the market borrowing rate. In line with National Competition Policy principles, guarantee fees remove any competitive advantage that a Government business may otherwise receive in terms of reduced debt costs through Government ownership.
Ministerial charter (MC)	The ministerial charter describes the broad policy and specific expectations of the Ministers for a GBE and its subsidiaries. A ministerial charter is issued and tabled before each House of Parliament under provisions in the <i>Government Business Enterprises Act 1995</i> by the Treasurer and Portfolio Minister.
National Competition Policy (NCP)	NCP involves a series of policy initiatives, agreed by all Australian governments, that are aimed at promoting free and open competition, where this is in the public benefit, which in turn will increase efficiency and productivity throughout the Australian economy.
Portfolio Act	The enactment by or under which a Government business is established. May also be referred to as enabling legislation.

Shareholders' statement of expectations (SSE)	SSE sets out the expectations of the Treasurer and Portfolio Minister, as joint shareholders and owners (on behalf of the Government), for a SOC and its subsidiaries.
Shareholder Ministers	Treasurer and Portfolio Minister.
State-owned Company (SOC)	A company limited by shares, incorporated under the <i>Corporations Act 2001</i> , with shares issued to Members (Treasurer and Portfolio Minister) being held in trust for the Crown.
Statutory authority	A statutory authority is an incorporated or unincorporated body that is established under specific legislation, which defines the purpose for which the entity is established and the general functions for which it is responsible.
Taxation Equivalents	<p>Taxation equivalents are tax-like payments that are required to be paid to the Tasmanian Government by GBEs and SOCs, in line with National Competition Policy principles, to neutralise the benefit GBEs and SOCs receive from being exempt from Commonwealth income tax. Taxation equivalents are applied to ensure that GBEs and SOCs are not placed at a competitive advantage due to this exemption.</p> <p>The application of Taxation Equivalents is facilitated through the National Taxation Equivalent Regime (NTER). The NTER is an administrative arrangement under which relevant taxation laws are applied notionally to the NTER entities as if they were subject to those laws. The primary objective of the NTER is to promote competitive neutrality, through a uniform application of income tax laws, between the NTER entities and their privately held counterparts.</p>
Treasurer's Instruction (TI)	<p>The <i>Government Business Enterprises Act 1995</i> allows the Treasurer to issue instructions to all or selected GBEs in respect of guidelines, principles, practices and procedures that must be followed in relation to:</p> <ul style="list-style-type: none"> • corporate plans; • annual reports; • financial management; • CSOs; • financial obligations; and • accounting policies.

Appendix A

Government business governance framework

Objectives and Strategic Direction	Government business	Reference	ASX Principle	Private Sector (listed public company)
Principal purpose and objectives	<ul style="list-style-type: none"> • GBE – Portfolio Act and GBE Act prescribe principal purpose and objectives of the business • SOC - Portfolio Act and constitution 	GBE Act Portfolio Act Constitution MC SSE	1	<ul style="list-style-type: none"> • Annual report outlines principal purpose and objectives of the business
Compliance with Government policies	<ul style="list-style-type: none"> • Expectation that the board will comply with certain specified policies of Government. Generally, these expectations are specified in MC/SSEs 	MC SSE	1	<ul style="list-style-type: none"> • The board does not have to consider policies of State or Federal Governments, unless made under law
Strategic direction	<ul style="list-style-type: none"> • The board is responsible for the strategic direction but must be mindful of stated Government expectations in relation to strategic direction and Portfolio Act 	GBE Act Portfolio Act Constitution MC SSE	1	<ul style="list-style-type: none"> • The board is responsible for strategic direction
Government's social and economic policies	<ul style="list-style-type: none"> • The business should be mindful of the Government's social and economic policies/objectives 		1	<ul style="list-style-type: none"> • Generally, no single business is constrained/influenced by the social and economic policies/objectives of the State and Australian Governments
Procurement	<ul style="list-style-type: none"> • The business is expected to conduct its procurement of contracts in accordance with the Government's key procurement principles 		1	<ul style="list-style-type: none"> • Policies of Government normally have no impact on the procurement of contracts
Corporate governance	<ul style="list-style-type: none"> • Government ownership increases focus/importance of adhering to best corporate governance practices 	Corporate Governance Guide	1 - 8	<ul style="list-style-type: none"> • Expectation that business will adopt an "if not, why not" approach with ASX Corporate Governance Principles
Core Business	Government business	Reference	ASX Principle	Private Sector (listed public company)
Principal commercial activities	<ul style="list-style-type: none"> • MC/constitution/SSE generally describe the commercial activities of a GBE/SOC 	Constitution/ MC/SSE	1	<ul style="list-style-type: none"> • Annual report generally describes commercial activities of the business
Scope of non-commercial activities	<ul style="list-style-type: none"> • Business may be directed to undertake non-commercial activities (CSOs/CSAs) for which it receives funding to offset the cost to the business 	GBE Act Portfolio Act Constitution	1	<ul style="list-style-type: none"> • Unlikely that a business would undertake non-commercial activities
Business expansion	<ul style="list-style-type: none"> • GBE – expansion approved through corporate plan • SOC – the board determines and interaction with Shareholder Ministers through the corporate plan 	GBE Act	1	<ul style="list-style-type: none"> • Determined by the board

Disposal of Assets	<ul style="list-style-type: none"> Must not sell whole or substantial part of asset without approval of Parliament 	Portfolio Act	1	<ul style="list-style-type: none"> Determined by the board
Performance Targets	Government business	Reference	ASX Principle	Private Sector (listed public company)
Financial targets	<ul style="list-style-type: none"> Government has certain expectations in respect to financial targets Expectation that business strives to achieve a commercial rate of return – requirement for new investments In particular, Government has established a dividend policy for the businesses 	MC SSE TI	1	<ul style="list-style-type: none"> The board must act in best interest of the company Shareholders expect a reasonable return on their investment
Non-financial targets	<ul style="list-style-type: none"> Expectation by Shareholder Ministers that business will ensure that certain non-financial targets are achieved eg service targets as detailed in business plan and corporate plan 	MC SSE	1	<ul style="list-style-type: none"> The board/management will determine any non-financial targets
Financial Considerations	Government business	Reference	ASX Principle	Private Sector (listed public company)
Capital structure, Capital investment and borrowings	<ul style="list-style-type: none"> The board will determine an appropriate capital structure for the business, however it must be mindful of Government's fiscal policy ie net debt targets, and inform Shareholder Ministers prior to undertaking any significant restructure Keep Shareholder Ministers informed of capital expenditure considerations prior to investment eg intention to borrow, use of existing funds (cash), expected level of returns/risks involved Expectation that borrowings are through Tascorp (except overdraft/lease) May be slightly more risk averse due to Government ownership 	MC Portfolio Act SSE	6	<ul style="list-style-type: none"> The board will determine an appropriate capital structure for the business May choose method of borrowings Determines acceptable level of return Likely to be less risk adverse depending on type of business Seek equity from market Flexibility in buying and selling business units
Distribution policy	<ul style="list-style-type: none"> The board is expected to comply with Government's dividend policy 	GBE Act SSE TI	1	<ul style="list-style-type: none"> The board determines distribution policy

Pricing Policy	Government business	Reference	ASX Principle	Private Sector (listed public company)
Pricing policy	<ul style="list-style-type: none"> Business will need to give consideration to any special Government policy/legislative requirements Strive to generate a commercial return on assets employed 	MC SSE	1	<ul style="list-style-type: none"> Pricing policy will ensure a satisfactory return thereby ensure sustainability of the business (and a reasonable return to the Shareholders) Business will need to take account of Government legislation if prices regulated
Reporting	Government business	Reference	ASX Principle	Private Sector (listed public company)
Annual reports	<ul style="list-style-type: none"> Must be tabled in Parliament 	GBE Act Portfolio Act	4, 5 & 6	<ul style="list-style-type: none"> Subject to the Corporations Act and ASX listing rules if applicable
Quarterly/six monthly reporting	<ul style="list-style-type: none"> Expectation that business will provide required information by required dates 	GBE Act SSE	4, 5 & 6	<ul style="list-style-type: none"> Subject to Corporations Act and ASX listing rules if applicable
Other reporting	<ul style="list-style-type: none"> Respond to request for information from Shareholder Ministers, or representative (Treasury), Budget, loan council etc 		4, 5 & 6	<ul style="list-style-type: none"> May be requirements depending on company and industry Individual shareholders unlikely to have information requests met by board
CEO/Board	Government business	Reference	ASX Principle	Private Sector (listed public company)
Director appointments	<ul style="list-style-type: none"> Shareholder Ministers appoint directors (through Governor for GBEs) having considered the board's recommendation Shareholder Ministers recommend removal of directors with input from the board (to Governor for GBEs) 	GBE Act Constitution	2	<ul style="list-style-type: none"> The board recommends appointment/removal of directors subject to Shareholders approval
Remuneration	<ul style="list-style-type: none"> Based on the Government's remuneration framework for boards and committees, which is market based 	GBE Act Constitution	8	<ul style="list-style-type: none"> Based on market pressure, however subject to Shareholder review
Conflicts of Interest	<ul style="list-style-type: none"> GBE must comply with requirements of Act Keep a register of interests The board may determine a director has an interest SOC – as per Corporations Act and provisions in the Constitution Small state leads to greater chance of conflicts – increases need to disclose interests 	GBE Act Corporations Act Constitution	3	<ul style="list-style-type: none"> Subject to the Corporations Act

Code of Ethics/ Code of Conduct	Government business	Reference	ASX Principle	Private Sector (listed public company)
	<ul style="list-style-type: none"> Greater public focus Particularly strong emphasis on this given Government ownership 	MC SSE	3	<ul style="list-style-type: none"> Public focus will depend on nature of business Code of ethics adopted will vary depending on the nature of the business
Risk Management	Government business	Reference	ASX Principle	Private Sector (listed public company)
	<ul style="list-style-type: none"> Expectation by Shareholder Ministers (public) that business will have a risk management plan, including strategies for managing operational and financial risks 	MC SSE	7	<ul style="list-style-type: none"> Determined by the board. There is increasing emphasis to have a risk management plan but will vary from business to business
Communication	Government business	Reference	ASX Principle	Private Sector (listed public company)
Board disclosure	<ul style="list-style-type: none"> Expectation that the board will maintain written policies on information disclosure and a system to ensure the information is disclosed to the Shareholders Ministers 	MC SSE	6	<ul style="list-style-type: none"> Determined by the board and will vary from business to business
Communication protocol	<ul style="list-style-type: none"> Expectation that the board will have in place a protocol relating to communication with internal and external stakeholders 	MC SSE	6	<ul style="list-style-type: none"> Determined by the board and will vary from business to business
Formal general meetings	<ul style="list-style-type: none"> For SOC, an AGM must be held Shareholder Ministers will expect to meet with business on issues of significance 	Constitution	6	<ul style="list-style-type: none"> Public companies must hold an AGM
Business/corporate plan presentations	<ul style="list-style-type: none"> Business may be required to present business/corporate plan, particularly where there are significant issues emerging in terms of the business's financial performance, or other issues that may affect business operations or create an adverse perception within the community 	GBE Act SSE	6	<ul style="list-style-type: none"> No requirement to formally present business plans to Shareholders. Listed companies are bound by 'continuous disclosure' requirements which would require disclosure of significant issues

Provision of Information	<ul style="list-style-type: none"> The Shareholder Ministers expect to be consulted prior to the release of any public announcement relating to significant operational or policy issues The Shareholder Ministers expect any information requested, or reports provided, to be accurate, and provided in a timely manner 	MC SSE	6	<ul style="list-style-type: none"> Subject to continuous disclosure requirements
Other	Government business	Reference	ASX Principle	Private Sector (listed public company)
Adverse developments	<ul style="list-style-type: none"> Shareholder Ministers expect to be advised at the earliest opportunity 	GBE Act MC Constitution SSE	5	<ul style="list-style-type: none"> Subject to continuous disclosure requirements
Operations and transactions outside the State	<ul style="list-style-type: none"> Shareholder Ministers expect to be advised before a business commits to establishing any new business operations outside of Tasmania 	MC SSE	5	<ul style="list-style-type: none"> Subject to continuous disclosure requirements
Subsidiaries	<ul style="list-style-type: none"> Must seek approval from the Shareholder Ministers before establishing any subsidiaries or joint ventures A SOC must seek approval from the Shareholder Ministers before it commits to establishing any new subsidiaries Shareholder Ministers expect subsidiaries to adopt the Government's dividend policy when determining dividends 	GBE Act Portfolio Act	5	<ul style="list-style-type: none"> Subject to continuous disclosure requirements
Land and asset dealings	<ul style="list-style-type: none"> Shareholder Ministers expect to be advised in advance of any significant disposal or acquisition of land or assets. May require Parliamentary approval 	MC SSE	5	<ul style="list-style-type: none"> Subject to continuous disclosure requirements
Scrutiny committees	<ul style="list-style-type: none"> Business may be required to appear before a Government Business Scrutiny Committee 		6	<ul style="list-style-type: none"> No such requirement in private sector
Taxation	<ul style="list-style-type: none"> Comply with NTER and pay tax equivalents to the State Government 	GBE Act Portfolio Act	1	<ul style="list-style-type: none"> Pay tax to the Australian Government
Guarantee fees	<ul style="list-style-type: none"> Businesses with financial accommodation are required to pay a guarantee fee to the Government based on the amount of financial accommodation, so that they are exposed to the full risk-related cost of the debt they hold Required to fulfil Tasmania's competitive neutrality commitments under the National Competition Policy 	GBE Act Portfolio Act	1	<ul style="list-style-type: none"> No such requirement in private sector because their borrowings already reflect the full cost of debt

Loans/guarantees from Treasurer	<ul style="list-style-type: none"> Legislation provides for businesses to receive loans/guarantees from the Treasurer 	GBE Act Portfolio Act	N/A	<ul style="list-style-type: none"> No such provision in private sector
Committees	<ul style="list-style-type: none"> GBE Act requires establishment of relevant committees 	GBE Act	4	<ul style="list-style-type: none"> ASX listing rule requires entities included in ASX All Ordinaries Index at the beginning of the year to have an audit committee
Auditor	<ul style="list-style-type: none"> GBEs – Auditor-General must be auditor SOCs - Shareholder Ministers appoint Auditor – expectation that it will be the Auditor-General Auditor-General does not provide advisory services so conflicts highly unlikely in fulfilling auditing role The Auditor-General has the power under the FMAA to conduct performance audits 	GBE Act SSE FMAA	1 & 4	<ul style="list-style-type: none"> The board appoints the auditor subject to Shareholder approval Must comply with the Corporations Act requirements of auditor independence

Reference Key

FMMA – *Financial Management and Audit Act 1990*
 GBE Act – *Government Business Enterprises Act 1995*
 MC – Ministerial charter
 SSE – Shareholders' statement of expectations
 TI – Treasurer's Instruction



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