17 April 2025

Shareholder Policy and Markets Branch
Department of Treasury and Finance

Submitted via email at governmentbusinesses@treasury.tas.gov.au

Dear Secretary,

RE: Government Business Governance Reforms Bill 2025 – Consultation Draft

Hydro Tasmania welcomes the opportunity to comment on the draft Government Business Governance Reforms Bill 2025.

Hydro Tasmania's submission containing its substantive comments are attached to this letter.

If you wish to discuss this submission, please contact me at [redacted].

Yours sincerely,

Kate McKenzie
Executive General Manager Governance
General Counsel & Corporation Secretary

SUBMISSION FROM HYDRO TASMANIA IN RESPONSE TO THE PROPOSED AMENDMENTS TO GOVERNMENT BUSINESS LEGISLATION

GBE Act		
Section		**Feedback**
s.3(1)	Definition of "Portfolio Minister"	No material concerns.
s.3(1)	Definition of "subsidiary board"	No material concerns.
s.3(1)	Definition of "wholly-owned subsidiary"	No material concerns.
3C	Portfolio Minister	No material concerns.
9A	Ministerial Direction	We suggest that consideration be given to consultation on a draft prior to a direction being issued. This would enable the financial and other implications for the relevant government business to be well understood before making a decision, noting that (depending on the subject matter) it would be difficult to estimate this without information from the business itself. This will be particularly important where a direction may have implications under the competition law, which might not be readily apparent. In addition, we note that proposed 9A overlaps with section 65 (community service obligation direction power). Consideration could be given to repealing s.65 but stating that any direction issued under 9A that is a CSO is subject to Part 9 and any relevant TI.
9B	GBE may object to Ministerial direction	As presently drafted, a GBE will be required to comply with a direction notwithstanding that an objection has been validly made and remains under consideration by the Portfolio Minister and Treasurer. This issue could be addressed by amending section 9B to include a new subclause (d) as follows: "*and, subject to (3)(c)(ii), the direction will not be valid until notice has been provided under section 9B(3)(a)(ii).*"
9C	Publication of Ministerial directions	We suggest that the draft provision allow 5 "Business Days" from receiving notice of a revised direction or a revocation of a direction to object to the notice being tabled before Parliament.
24	Duties of officers and employees	Section 24 outlines the duties of officers of the GBE, including the obligation to act in good faith *in the best interests of the Government Business Enterprise*. Proposed sub-clause (8) provides a defence to any proceeding under clause if the officer *proves* the breach is the result of complying with a direction. Note the onus here is on the officer. Given the breadth of the direction powers proposed, and the clear obligation on Boards to comply with those directions, a provision which places on the onus on an officer/employee to "prove" that a breach was the result of complying with a direction is, in our view, unreasonably harsh. It is suggested that the proposed provision be modified as follows: "(8) *No proceedings may be issued under this clause where the alleged offence is the result of the officer or employee complying with a direction given under section 9A, and the Board has objected to the direction under clause 9B.*"

41	Statement of Corporate Intent	The new provision requires a SOCI to be prepared in respect of the GBE *and each of its subsidiaries*. Each GBE's corporate structure is likely to include a number of subsidiary entities that are not operational. Requiring the SOCI to cover all subsidiaries will create an administrative burden on the GBE without providing any benefit in terms of transparency. Accordingly, we suggest that section 41(2) be amended to refer to "the GBE and any *material subsidiary* as advised by the Treasurer.." with a corresponding definition of "material subsidiary" that is, a large proprietary company under section 45A of the Corporations Act. In addition, recognising that new clause 41 picks up content from Treasurer's Instructions GBE 06-41-03, it is suggested that this TI be reviewed and amended to ensure there is no conflict. In particular, the TI refers to the determination of what information may cause disadvantage if disclosed being the responsibility of the Portfolio Minister, whereas the new provision requires this determination to be made by the Board of the GBE.
55	Annual Report	No material concerns.
57A	Reporting	We note that the half yearly report to be provided to Portfolio Minister and Treasurer before 28 Feb covers both the GBE and "its subsidiaries". We suggest that the proposed new clause be amended to refer in section 57(1)(a) to … "the Government Business Enterprise and any *material* subsidiary as advised by the Treasurer" Refer to our comments on new clause 41 for a suggested definition of "material subsidiary".
57B	Sponsorship Framework	Once enacted, this provision requires the GBE to develop a framework that outlines how the GBE (and its subsidiaries) provide sponsorship. We note that this framework must be consistent with a TI, and include "prescribed provisions, and provisions that relate to prescribed matters". We would appreciate clarification on what the proposed "prescribed provisions" and "prescribed matters" are so that we can further consider the obligations. In addition, the reference to "contemporary standards and best-practices principles that apply in relation to sponsorship" do not provide clear guidance on the particular standards that are to be met. We request that any particular standards a GBE is to have regard to in developing a framework are clearly identified.
107A	Application of the Corporations Act	It is not clear which provisions in the proposed legislation are intended to be declared as a "Corporations legislation displacement provision" and therefore apply in preference to obligations under the Corporations Act. We suggest that the specific provisions, or Parts of the legislation that are intended to be displacement provisions are clearly identified.
114	Treasurer's Instructions	No material concerns.
Schedule 5	Directors	Suggest that the legislation allow for a third term where an existing director is appointed to the role of Chair. Allowing the flexibility to appoint a Chair who has experience on the Board as a director ensures continuity in business knowledge. Further, we request clarification that an extension of a director's term for up to 6 months under the Acts Interpretation Act is excluded from the requirements under section 2A.

s.15	Delegation	**NEW AMENDMENT PROPOSED** The GBE Act does not currently allow the Board to delegate a function or power to a person who is not an employee. However, this is inconsistent with section 198D of the Corporations Act (applicable to State Owned Corporations) which allows delegation to employees, or "any other person". The provisions in the GBE Act have unintended implications. By way of example, Australian Standards contracts often utilised by Hydro Tasmania include the role of "Superintendent", who has accountability for making decisions in connection with a contract within defined limits. The Superintendent role may, on some occasions may be an external contractor with specific skills and experience relevant to the particular contract being administered. The Board is not able to delegate any authority to the Superintendent in these circumstances, which creates an inefficiency in project management – requiring decisions of a Superintendent to first be approved by an authorised delegate. **It is therefore proposed that section 15(d) be amended to read "employee or any other person".** It should be noted that the inclusion of the proposed amendment creates no *requirement* for the Board to delegate to any person who is not an employee. Any delegation granted by the Board is carefully considered to ensure the Board is satisfied that any delegate has the necessary skills and experience, and that the scope of delegated authority is clearly defined.
HEC ACT		
s.7	Limitations on Corporation's Powers	We suggest that prior to any new TI or direction being issued in connection with the disposal of prescribed generating plant or dealings in land, regard be had to existing Ministerial consents which were issued to avoid the unnecessary administrative burden of seeking Ministerial consent to minor operational dealings captured by this clause.

24 April 2025

Shareholder Policy and Markets Branch
Department of Treasury and Finance
Submitted via email at governmentbusinesses@treasury.tas.gov.au

Dear Secretary,

RE: Government Business Governance Reforms Bill 2025 – Consultation Draft

Further to our submission dated 17 April 2025, we wish to provide further detail with respect to our submission concerning the proposed Ministerial Direction powers in Part 3, section 14 of the *Government Business Governance Reforms Bill 2025* , which proposes the introduction of new clauses 9A, 9B and 9C of the *Government Business Enterprises Act 1995* (GBE Act).

Proposed clause 9B of the GBE Act provides a GBE with the right to object to a direction within 21 days of receiving a copy of the direction. This is consistent with existing provisions related to Community Service Obligation directions in section 65(6).

While the ability for a Board to raise an objection to a direction is important, we submit that prior consultation on a proposed direction is preferable to an "appeal" right as it provides the Shareholder with a valuable opportunity to better understand potential implications associated with a direction ahead of the direction being issued. A formal objection to a direction is intrinsically adversarial and may make it challenging for the Shareholding Ministers to change a direction in response to valid feedback. Further, directions are likely to be the subject of Parliamentary scrutiny through questions in the chamber, at scrutiny hearings or through Right to Information requests, and creating an opportunity for early engagement will assist the Shareholding Ministers to be well informed and well-prepared for any scrutiny that may arise in connection with a direction already issued.

We therefore ask that consideration be given to replacing the right of appeal with a requirement for prior consultation.

We would welcome the opportunity to discuss our views on these provisions in further detail if this would be of assistance.

Yours sincerely,

Kate McKenzie
Executive General Manager Governance
General Counsel & Corporation Secretary

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