

13 December 2024

Hon Jeremy Rockliff MP  
Premier  
GPO Box 147  
Hobart TAS 7001

Hon Guy Barnett MP  
Deputy Premier and Treasurer  
GPO Box 147  
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Dear Premier and Deputy Premier

**Submission by TT-Line Company Pty Ltd in response to the Government's  
Governance Reform - Draft Plan November 2024.**

## Introduction

On 3 November 2024, the Government released the *Government Business Governance Reform - Draft Plan* (the **Draft Plan**) for consultation.

TT-Line Company Pty Ltd (**TT-Line**) welcomes the opportunity to make this submission on the critical issue of governance reforms in the Government business sector.

It is supportive of most of the proposals for reform of governance of Government Business Enterprises (**GBEs**) and State-Owned Companies (**SOCs**) (collectively the **Enterprises**) which are relevant to or consistent with principles of contemporary corporate governance applicable to State Owned entities with Ministerial shareholding.

TT-Line agrees there should be clear lines of transparency concerning the operation of the GBE or SOC to satisfy the information needs of the Tasmanian public the ultimate owners of the Enterprises, with the level of transparency or disclosure should be governed by the operation of the GBE or SOC.

For example, if the Enterprise is operating in a commercially competitive market, like the carriage of freight across Bass Strait, then certain aspects of the business should be protected from unfettered scrutiny and this limitation, along with others, creates the need to qualify or limit our support for some proposals in the Draft Plan. For these reasons, our response will cover the proposed reforms in the order in which they appear in the Paper after first making submissions why TT-Line is of the view the merger proposal with TasRail and TasPorts should not be adopted.

## Executive Summary

- TT-Line is of the view that the merger proposal is inconsistent with accepted governance principles that apply to Government Owned Businesses.
- TT-Line is of the view the merger proposal may be in breach of Australia's competition law framework.
- TT-Line is of the view there are alternate governance solutions that may be implemented that overcome the issues that may be associated with the proposed merger proposal.
- TT-Line is otherwise in favour of the proposed reforms to the governance framework as outlined in the Draft Plan subject to a few minor provisos as outlined in the submissions below.

## The Merger Proposal.

Relevantly, TT-Line is a dual revenue stream operation with business to business (**B2B**) operations of the freight market servicing Tasmanian suppliers to mainland and connecting with logistic channels to broader markets overseas and servicing freight arriving to Tasmania; the other stream is business to consumer (**B2C**) whereby exceptional customer service safely allows visitors to Tasmania and Tasmanians to travel interstate. This dual revenue stream may not support integration with two B2B enterprises of TasRail and TasPorts and this needs careful consideration on unintended impacts to the B2C aspect of TT-Line's operations.

The Foreword to the Draft Plan on page 3 briefly refers to '*action*', additional to the reforms proposed, which the Government is taking '*to ensure a coordinated, sustainable and efficient transport sector*'.

The Foreword further reports that:

*... the Government will be exploring the feasibility of merging three of our State-owned Companies – TasRail, TasPorts and TT-Line, the fundamental objective being to ensure an integrated approach to the management, oversight, and development of Tasmania's strategic transport infrastructure.*

From a company perspective, it is difficult to fully understand the reasoning behind and the extent of this merger proposal and how it will enable '*management, oversight and development of the State's strategic transport infrastructure*', given the extremely diverse nature of the entities proposed to being merged and the merger proposal does not appear to sit comfortably with federal constraints.

In local newspapers on Saturday, December 7<sup>th</sup>, the Government ran a two-page advertisement which answered '*your frequently asked questions*' (**FAQ**). In response to the last question in the FAQs which was '*Have TT-Line and TasPorts been held responsible?*' the Government stated:

*We have announced sweeping reforms of Government businesses to ensure they take a Team Tasmania approach. The plan proposes a merger of TT-Line, TasPorts and TasRail, uniting our key transport and logistics under a single operation.*

The reader is then directed to the Draft Plan which contains the reference to the exploration of the feasibility of *'merging the three State Owned Companies.'*

It would appear therefore that the inclusion in the Draft Plan to merge the three State Owned Companies is either the process by which TT-Line and TasPorts are being *'held responsible'* for the delay in completion of the Terminal 3 infrastructure build in the Mersey River in Devonport as alluded to in the advertisement or the exploration of the feasibility of the merger referred to on page 3 of the Draft Plan (see above). One seeks to hold TT-Line and TasPorts *'responsible'* for the delay in completing an infrastructure build and the second seeks to explore the feasibility of the merger. TT-Line submits that the initial response is punitive in nature and should not be a relevant consideration in reviewing the merits of the merger proposal.

On that basis, TT-line is of the view that it is important to consider this merger proposal first because, if implemented, and the advertisement appears to suggest the merger proposal has progressed beyond the mere exploration of the feasibility of the proposal briefly adverted to in the Draft Plan, the proposal should be considered within the other proposed governance reforms discussed in the Draft Plan rather than as a punitive measure.

#### **A. Understanding what is meant by *'being held responsible'*.**

TT-Line contends that the successful business-as-usual operation of the company has not been responsible for or affected by the delays with the infrastructure build at Terminal 3 in the Mersey and provides the following historical summary as background to the situation as it currently stands in simple terms:

- a. Some years ago, TT-Line, a ferry company experienced in the operation of a passenger and freight ferry service linking Tasmania with Victoria, embarked upon a plan to replace the two existing vessels in its fleet with two purpose-built vessels, made to order. Despite a list of well reported frustrations and interruptions<sup>1</sup> the vessels are being built and delivered, as planned.
- b. During the vessel replacement build TT-Line proposed and effected a relocation of its Victorian berthing facility from Station Pier in Melbourne to Corio Quay in Geelong. The construction of the Geelong facility was undertaken by the Geelong Port authority, owner of the facility and successfully opened in October 2023.
- c. As part of the QuayLink redevelopment of the Devonport East port facilities TasPorts proposed, for the berthing of TT-Lines new vessels, the building of new terminal and berthing facilities at Terminal 3. TasPorts and TT-Line negotiated and agreed upon shared responsibilities for the construction of the Terminal 3 facilities in an Agreement for Lease (**AFL**) executed in July 2022. The facilities have not

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<sup>1</sup> See for example Hansard Publications, Parliamentary Standing Committee of Public Accounts; 28 June 2024: Inquiry into the TT-Line Spirits Project

been completed in time to accommodate the arrival of the new vessels, causing delay and cost to the operation of TT-Line's business.

- d. The Government accepts that the delay referred to in (c) has not caused any reduction in tourism<sup>2</sup> and additional sailings of the current vessels will meet demand for seasonal freight capacity.<sup>3</sup>

Operationally, over the relevant period, TT-Line has not been responsible for any reduction in or interruption of its ferry business but rather is, in part, responsible for its inability to deliver a large and complex port infrastructure build on time. In the history of the company, it has not embarked on or engaged in project direction or management of an infrastructure build of any significance.

From a governance reform perspective TT-Line's responsibility for and success in managing and facilitating *'the operation of a shipping service to and from Tasmania in a manner that is consistent with sound commercial practice'*<sup>4</sup> should be so viewed.

## **B. The Consequences of 'being held responsible' or Merger as part of a broader Corporate Governance Reform.**

The proposal to merge TasPorts, TasRail and TT-Line as part of a broad plan to reform governance of certain State-Owned Companies and to unite *'key transport and logistics under a single operation'* should be considered carefully because of the broader implications of such a move and examined in light of other material proposed for review in the Draft Plan.<sup>5</sup>

## **C. Competitive Neutrality and Competition Law**

It is understood that a merger of TasRail and TasPorts was considered about 10 years ago and, for several reasons, abandoned. Those reasons must have relevance today and should be re-examined. The clear differences in purpose and operation of the three companies alone would present problems in effecting a merger. The operation within Tasmania of the three companies would test the principles of competitive neutrality and risk offending Federal competition law. Would the creation of a non-operating holding company avoid that risk? That is unlikely and one can take the operations from Devonport as just one example. Based in Devonport Mr. Chas Kelly's businesses of SeaRoad and Kelly's Transport operate in direct competition with TT-Line and, arguably, TasRail but Mr. Kelly's landlord, TasPorts, is about to merge with his competitors if the proposed merger proceeds.

Relevantly, Mr. Kelly himself raised this issue when appearing before the Public Accounts Committee on 18 November 2024 where he noted he had concerns on competing with a government freight business that also had control over the State's ports stating:

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<sup>2</sup> Spirits Replacement Update, Hobart Mercury and The Examiner and The Mercury, Tasmanian Government, 7 December 2024.

<sup>3</sup> Ibid

<sup>4</sup> Articles of Association of TT-Line Company Pty Ltd cl 4 Principal Objects, p3.

<sup>5</sup> See also the 'OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2024', (the **OECD Guidelines**) referred to on page 23 of Draft Plan.

*I have always been concerned about competing with Government because what are they going to do next? Are they going to buy an ice-cream shop or a tyre shop and compete against those? My view has always been that government should supply the facility for private enterprise to get on with business, unless there's a market failure. The risk there is, if they own the lot, it could be at a great disadvantage to private operators.*<sup>6</sup>

He continued:

*We need to be sure that we're not going to be tightened up by Government or somebody who has that ability. All we've asked of TasPorts, and Pat will back me up, is a level playing field and we're happy to compete. If it's not a level playing field, then you know, we've raised those issues.*<sup>7</sup>

Given Mr. Kelly's comments, it is natural to conclude and is the view of TT-Line that this proposal has a genuine potential to lead to allegations of, *inter alia*, price discrimination or anti-competitive pricing strategies (e.g. predatory pricing<sup>8</sup>) arising as the vertically integrated entity may be accused of leveraging its market power to price out competitors whether those allegations have any substance or not.

The review material which the Draft Plan suggests will inform it, being the OECD Guidelines referred to above, provides reasons why caution should be exercised in considering the proposed merger.

For example, the OECD Guidelines state on page 16 under the heading 'III State Owned Entities in the Marketplace':

***Consistent with the rationale for state ownership, the legal, regulatory and policy framework for SOE's should ensure a level playing field and fair competition in the marketplace when SOE's engage in economic activities.***

*IIIA. There should be a clear separation between the state's ownership function and other state functions that may influence the market conditions for state-owned enterprises, particularly with regard to market regulation and policymaking.*

...

*IIID. As a general rule, state-owned enterprises should not be used to subsidise or grant advantages to other commercial undertakings. If SOE's are used to allocate support measures in line with their public policy objectives, care should be taken to ensure that (i) support measures are consistent with applicable competition and trade rules; (ii) support measures and their funding are clearly defined and publicly disclosed; and (iii) support measures do not cause unfair disadvantages to other commercial undertakings.*

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<sup>6</sup> Hansard Publications, Parliamentary Standing Committee of Public Accounts; 18 November 2024: Inquiry into the TT-Line Spirits Project, p 8.

<sup>7</sup> Ibid.

<sup>8</sup> *Competition and Consumer Act* (Cth) s46.

Australia's competition law framework prohibits acquisitions or mergers which have, or would be likely to have, the effect of substantially reducing competition in any market.<sup>9</sup> This includes matters for consideration like creating high barriers for entry into the market<sup>10</sup> and the nature and extent of vertical integration in the market<sup>11</sup>, allowing a company to control multiple stages of a supply chain thereby giving them a competitive edge in the market<sup>12</sup>.

Controlling a large share of both upstream and downstream markets, could expose the company to allegations of an imbalance in bargaining power raising barriers to entry for new competitors or making it difficult for existing competitors to compete effectively.

The merger could also stifle innovation by reducing competitive pressure on the merged entity, which could harm long-term consumer and community welfare.<sup>13</sup> These are the very issues that would apply should the merger proposal proceed.

In the view of TT-Line, the merger proposal is inconsistent and incompatible with the guiding principles and the law.

#### **D. Alternative Governance Solutions to the Merger Proposal**

Given the inherent issues that may arise with a merger, TT-Line is of the view alternative governance solutions and approaches would be appropriate.

While some options have been incorporated and discussed in the Draft Plan, TT-Line would like to see an emphasis in the Draft Plan on addressing:

1. Strengthening frameworks to ensure greater transparency and accountability of Enterprises including enhancing the Government's role in appointing boards, defining specific policy objectives, and requiring regular reporting on progress.
2. Ensuring the appointment of Enterprise board members, meets the skill sets and experience required by particular Enterprises while also ensuring appointments have a deep understanding of business and commercial operations, the application of public policy to Enterprises, regulatory matters, and community needs.
3. Establishing a stronger coordination between relevant government departments and Enterprises to align operations with State priorities including could involve regular communication, collaboration, and joint planning sessions.
4. Enhancing the level of transparency in reporting by Enterprises, requiring them to disclose not only financial performance but also the broader social and environmental impacts of their operations noting that any new obligations should not be any more onerous on Enterprises than what is expected of government departments.

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<sup>9</sup> Ibid s50.

<sup>10</sup> Ibid s50(3)(b).

<sup>11</sup> Ibid s50(3)(i).

<sup>12</sup> Ibid s50(3)(e).

<sup>13</sup> Ibid s50(3)(g).

5. Encouraging a closer collaboration between Enterprises and other parts of the public sector to address broader State needs, such as infrastructure projects, environmental sustainability, and public health.
6. Government working with Enterprises to develop a long-term vision that integrates both commercial goals and social, environmental, and economic priorities thereby providing greater clarity on the roles of the Enterprises within Tasmania's broader strategy.

Some of these suggestions are discussed in further detail in responding to the Draft Plan below.

## **Backgrounding the Proposals.**

### **A. Development of an ownership policy in addition to reforms to the governance framework.**

This is an important consideration. The 'arm's length' relationship from Government which most SOC's have operated under is clearly under review and the role of shareholder Ministers who become involved in a reformed 'management' relationship requires careful consideration. The performance of SOC's will always be topics for debate in Parliament and Ministers may wish to consider the additional exposure including in the form of political, media or legal exposure which this step, if inviting a level of managerial involvement, will bring. For example, will the involvement be such that Shareholder Ministers could be considered shadow or de facto directors thereby imposing on them the same statutory duties and liabilities under the Act as the appointed directors of the company and, it would follow, exposing them to potentially being held liable for breaches of directors' duties.

### **B. Increasing levels of investment in infrastructure projects by Government businesses.**

The understandable desire for the proposer or legal owner of an infrastructure development to be involved in project direction of that development with attendant risks is a sufficient reason to consider the oversight of all infrastructure developments of SOC's above a certain monetary value or adjudged complexity. Many SOC's do not carry the resources or experience to undertake such tasks. Consideration should therefore be given to the government retaining ownership of significant infrastructure assets in their own right rather than through Enterprises.

### **C. Performance monitoring and the nature of the business.**

It is important for Government to clearly define the imperatives applicable to every business. Some businesses will have a social purpose or community service obligation others a commercial goal. Different criteria should apply.

### **D. The timelines of information flows from business to Government.**

This is important as is the requirement that there are timely flows of information in the other direction, always mindful of the disclosure requirements of access to information legislation particularly where the activity of the business is commercial competition.

## **E. Competitive neutrality**

Increasing potential for competition with the private sector raising competitive neutrality concerns has already been covered in the consideration of the merger proposal.

## **Proposed Reforms**

TT-Line is of the view the principles guiding the proposed reforms beginning on page 15 of the Draft Plan are appropriate:

### **A. Placing Tasmania First**

This is an essential prerequisite for the conduct of any State-Owned business and the processes for measuring the attainment of and focus on that goal are appropriate.

### **B. Improving Governance.**

#### *a. Mandating regular Board renewal with strict adherence to fixed terms.*

This is an important rule in contemporary corporate governance and should be applied, with consideration to optimal company operation and company succession. Too much Board turnover can create an imbalance in power of operating an entity to management and can remove corporate memory. Whereas orderly succession and board renewal of skills-based boards bring fresh perspective and helps prevent concentration of power. Maximum tenures should have been applied in the case of TT-Line. TT-Line also supports GBE and SOC's having CEO's rather than managing directors in the corporate structure.

#### *b. Maintaining a skill-based focus but transitioning Boards over time to be at least 50% Tasmanian.*

TT-line is of the view this proposal should not be so prescriptive as there will always be exceptions when seeking a Board member of a particular skill set that is not available in Tasmania.

Consideration should also be given to the inclusion of appropriately qualified external members to key board committees and a skills register maintained, reviewed by the board, and disclosed, in the company's Annual Report.

Board member location and availability is an important factor in the functioning of the Board.

Similarly, the obtainability of suitably qualified Tasmanian based Board members needs to be properly considered given the State's small population, the limited number of large corporations based in Tasmania and the time availability and capacity for otherwise full-time employees, executives, or business owners to commit to being a Board member among other things.



*c. Conflicts of interest.*

TT-Line supports further development of Conflicts of Interest reporting and education to directors and organisations on best practice. At a minimum TT-Line supports Conflict of Interest Declaration Registers being tabled in every set of Board Meeting Documents, ensuring any potential, perceived or actual conflicts of interest are managed with the Director not participating in discussion and leaving the room, the minutes accurately reflecting the absence and any redaction of papers that have been needed to satisfy management of the COI. *Legislation to require two individual shareholder Ministers*

TT-Line is of the view that this is an appropriate and necessary reform.

*d. Standardised legislative requirements in relation to tabling Annual Reports.*

TT-Line is of the view that this is an appropriate and necessary reform.

*e. No CEO of a GBE or SOC should also hold a Board position.*

TT-Line is of the view that this is an appropriate and necessary reform.

*f. Board numbers should be capped.*

TT-Line is of the view that this is an appropriate and necessary reform.

It is difficult to envisage a situation where an Enterprise should require a Board of more than six directors.

*g. Gender and geographic balances*

TT-Line supports the State's Women on Boards Strategy in increasing diversity and representation of women on Government boards and committees. The representation of women on TT-Line's boards has consistently been around the 50% level for many years now.

Similarly, TT-Line supports the essence of Placing Tasmania First when considering the geographical composition of senior management and boards. TT-line is also of the view that it is important the skills-based focus should prevail to ensure skills and expertise are also prioritised that align with the company's current needs and strategic goals, rather than solely relying on factors like gender, geographical location, and personal connections.

*h. Sponsorships and side benefits*

Sponsorships and side benefits accompanying the sponsorship should be carefully scrutinised and regarded as conflicting the interests of the persons settling the terms of sponsorship if those benefits flow to them, for example, Enterprise sponsorship benefits should rarely be used by board members or management. If they are used for company purposes a full register should be maintained of the purpose and attendees of this ancillary benefit. Alternately, side benefits accompanying sponsorship should be distributed within the community in a transparent manner to benefit the social governance of the entity.

### **C. Expanding Performance Monitoring.**

#### *a. Periodic independent board performance reviews*

TT-Line is supportive of independent board performance reviews and also suggests consideration is given to an independent and external Chair review.

The Boardroom culture for inquisitive healthy tension is essential to the functioning of the organisation. Boards should be encouraged to examine and improve the culture of within the Board room through professional development or facilitated sessions.

#### *b. Continuous disclosure*

TT-Line supports transparency in reporting obligations with caution to operating a commercial entity and not be put at a disadvantage commercially due to disclosure.

#### *c. Gateway Reviews*

TT-Line is of the view that the proposals for reporting and oversight of Enterprises are appropriate. However, the final recommendation to mandate State facilitated Gateway Reviews for projects over \$200M (not including routine maintenance) should be expanded to incorporate other factors other than cost.

For example, a project for \$150M may have a degree of complexity or challenge for which there should be an independent assessment for submission to the Gateway Review.

The requirement that some Enterprises should have their resource/project skill base evaluated to determine appropriate resources to continue with the project unassisted should be an important consideration.

### **D. Levers to manage and/or rectify poor performance.**

There are many processes and tools for managing poor performance and there may be better options available to those currently proposed from the perspective of legislative implementation.

The proposal for the appointment of a ministerial representative to the board if performance is unsatisfactory should be reconsidered. Oversight rather than membership may have less risk of complicated outcomes.

### **E. Reviewing the Government business portfolio.**

While TT-Line is of the view that a review into the Government's business portfolio is long overdue and is a logical step forward with the proposed reforms, it is also the company's view, as explained above, that it will be important from a legal perspective that any restructure gives careful consideration to the issues raised above in these submissions.

Co-ordination risk between Government entities is an area that could benefit from increased clarification through this reform exercise.

Should you have any further questions in relation to these submissions, please do not hesitate to contact me through Steven Maycock, TT-Line's Company Secretary on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read "Damian Bugg". The signature is fluid and cursive, with a distinct loop at the end.

Dr Damian Bugg  
**Interim Chair of the Board of Directors on behalf of TT-Line Company Pty Ltd**