

Submission

Government Business Governance Reform Draft Plan November 2024

It is a positive and welcomed decision by the Rockcliffe Liberal government to take action to address governance and performance issues with GBEs and SOCs.

While the broader reform process should continue there also needs to be a focused effort to address the following matters immediately -

1. A lack of effective governance, as well as cultural and performance issues within TT Line and TasPorts.
2. A lack of accountability of the respective Boards and Executive Management of TT line and TasPorts
3. A lack of commercial acumen and any sense of customer service has been identified in numerous customer surveys (which have been buried) which has led to an extraordinary level of dissatisfaction and frustration with TasPorts' customers.
4. The idea of merging TT Line, TasPorts, and Tasrail does not make sense and would be a major distraction, for TT Line, who need to be fully focussed on addressing the successful deployment of the SOT IV and SOT V ferries
5. Merging TasPorts and Tasrail, should be considered; however, any process /discussions of a merger must not be used by the SOC to delay the urgent need for changes in culture and performance
6. Having spent much of my career in senior management and CEO roles in ASX-listed Companies, with a track record in business improvement and business, I can confirm from experience that merging two businesses with different cultures can be extremely challenging; three would be a disaster.

Comments on broader proposed Government undertakings

Where possible I have chosen to make comments alongside the undertaking outlined in the draft document.

The Tasmanian Government will:

- *Ensure that all Government businesses place the interests of Tasmania first and are accountable for doing so. This is critical and must be documented in the SOC Charters*

- *Improve governance for Government businesses to ensure it is effective, contemporary, fit for purpose, transparent, and provides for appropriate oversight. Governance is the fundamental responsibility of the Board, and the Minister(s) must ensure all Directors have the appropriate governance training and experience to fulfill the role.*

It is the expectation that the responsible Minister will prepare and publish a skills matrix as part of the formation of the respective board and publish how the final board composition meets this matrix. While it is aspirational to have a “50% Tasmanian “composition this objective must not compromise the need to have appropriate skills and experience. The continuation of the program of observing directors will assist in developing future candidates.

- *Expand the range of performance monitoring options available to Shareholding Ministers. Agreed*

- *Introduce new tools to rectify poor performance of Government businesses including major capital projects. Need to seriously consider external project management expertise, why was the Geelong Port able to build its terminal on time and budget???*

The proposed reforms will:

Make Government businesses accountable for placing Tasmania first by:

- *Revisiting their principal objectives to ensure they focus on the long-term interests of Tasmania, as well as their commercial interests. Agreed*
- *Introducing a consistent power to direct Government businesses to undertake operations with legislated continuous disclosure obligations on progress toward delivering on them. Agreed*
- *Reviewing key performance indicators for all businesses. Agreed, it may also be necessary to provide external input and training to ensure KPIs are well-defined and measurable.*
- *Ensuring that there are consistent and transparent arrangements if a government business is required to undertake non-commercial activities. Agreed*

Improve governance of all Government businesses by:

- *Mandating board renewal by limiting Directors and Chairs to two terms unless there are exceptional circumstances (to be applied consistently across all Government businesses), targeting more than 50% of Tasmanians on boards. Agree, and support the target of 50% of Tasmanians on the Board, provided they have the necessary governance training and skills to ensure they are positive contributors to the Board.*
- *Ensuring that there are always two separate Shareholding Ministers. This is acceptable provided it is clear that in the event of a disagreement the Premier must adjudicate.*
- *Reforming accountability arrangements for subsidiaries and joint ventures. Agree*
- *Standardising arrangements for reporting to Parliament annually. Agree*

Expand performance monitoring arrangements by:

- *Introducing periodic board performance reviews reporting directly to Shareholding Ministers. Agree, Board Performance Reviews are standard practice in organizations*

that have good governance. May need to seek independent advice on an appropriate mechanism.

- Increase oversight, approval, and disclosure requirements in relation to incentive payment arrangements for executives of Government businesses. This should be a role for the Board.
- Legislating for Shareholding Ministers to request performance reviews by the Auditor-General at the expense of Government businesses. Why the Auditor-General, what specific skills do they have in this area? Why not make it genuinely independent
- Legislating the ability of Shareholding Ministers to require Government businesses to seek external expert assurance reviews in areas such as infrastructure projects, organizational capability, workplace culture, risk management frameworks, or work health and safety. Not sure why this needs to be legislated, simply reflects good governance and management.

Strengthen the ability of the Government to rectify poor performance by:

- Introducing new legislative mechanisms to provide Shareholding Ministers with options to manage and intervene in instances of poor performance, which could include requiring the development of performance improvement plans, mandating the appointment of performance improvement teams, or appointment of administrators. Agree, but should also allow for immediate dismissal under certain circumstances.
- Considering options to allow the shareholder minister to appoint a ministerial representative to the board if performance is unsatisfactory or during significant periods of transition. Must be someone with a proven track record, not just an advisor.

In addition, the Tasmanian Government will review the entire Government business portfolio to:

- define a principles-based approach for the Government's ownership of businesses. Agree
- assess whether public ownership of each business remains appropriate, and Agree
- identify any businesses that should be divested or restructured.

Given the proposed future investment profiles, the transport and energy-related businesses would be the initial priority focusses for such a review. Makes sense in the medium to long term but need to specifically focus on TT-Line and Tas Ports in the short term.

Accountability for Placing Tasmania First All of this makes good sense, but it is hard to believe that these basic principles are not already in place.

- The principal objectives of the Government businesses will be reconsidered to ensure that, in addition to having a commercial focus, there is a better understanding by Government businesses of the need to consider the Tasmanian community (being the ultimate owners) and the need to act in their long-term interests. This focus will be supported by the establishment of a consistent legislative general direction power for

GBEs and SOCs, with a legislated requirement for continuous disclosure in terms of delivery on these directions.

- Statements of Corporate Intent (SCI) (the summary of the Corporate Plan) will be maintained as an annual agreement between Shareholding Ministers and the Board on its strategic direction and key performance indicators, which will be publicly available. The KPI targets will be reviewed for all businesses in 2025-26 to ensure that they are focused on the Government's priorities as set out in the new Ministerial Charters and Statements of Expectations.
- The current legislation will be reviewed and amended to ensure that there are consistent and contemporary legislative arrangements in place for:
 - the annual corporate planning process (including the SCI) for both GBEs and SOCs; and
 - requiring Government businesses to undertake non-commercial activities (community service obligations) with transparent mechanisms for funding (noting that there are currently significant differences across the portfolio of Government businesses)
 - financial and non-financial performance reporting.
- Appropriate clarification will be included in the Portfolio Acts of SOCs to ensure that Shareholding Ministers cannot be considered Directors of SOCs for the Corporations Act.
- The new template for Ministerial Charters and Statements of Expectations includes ne

Improving Governance

- The current legislation and reporting requirements about conflicts of interest for board members will be reviewed and amended if required. This proposal focuses on addressing potential issues with directors being on multiple Government business boards or boards operating in similar sectors. This will include ensuring that Shareholding Ministers are kept informed about conflicts and other board memberships throughout the term of the director or chair, and not just on appointment. **This is a simple governance issue that Boards deal with every day. It should be a standing agenda item, and Directors should declare any conflict of interest about the meeting agenda. If in doubt the Director should recuse themselves from the discussions on the topic.**
- Legislatively require that the two Shareholding Ministers' roles cannot be undertaken by the same person (noting that consideration will be given to the unique status of TasCorp). **Agreed**
- Ensure that there are appropriate governance and reporting frameworks and mechanisms about subsidiaries and joint ventures of Government businesses by **Agree**
 - applying the Treasurer's Instructions to subsidiaries of GBEs (currently Treasurer's Instructions apply to subsidiaries of SOCs but not GBEs).

– establishing a requirement that Shareholding Ministers must provide approval before a SOC enters a joint venture, consistent with the requirements for GBEs; and

– establishing a requirement for Shareholding Ministers to approve changes to the Constitutions of subsidiaries of SOCs, consistent with the requirements for GBEs.

- Standardise the legislative requirement about the tabling of Government business

Agreed

Expanding performance monitoring

- Introduce periodic independent board performance reviews of the boards and CEOs of all Government businesses, reporting directly to Shareholding Ministers. **Agreed, but must be external to the public sector is independent.**

- Ensure that there are consistent and contemporary legislative arrangements about the reporting obligations of Government businesses, including continuous disclosure and quarterly performance monitoring obligations (like disclosure obligations of listed companies). **Agreed**

- Legislate an ability for Shareholding Ministers to request the Auditor-General to undertake a performance review that is paid for by the Government business.

Performance reviews should be totally external to the government.

- Legislate an ability for Shareholding Ministers to require that a government business has an assurance review undertaken by an independent expert, with the report provided to Shareholding Ministers. The purpose underlying this proposal is to facilitate reviews for infrastructure projects, organizational capability, workplace culture, risk management frameworks or work health and safety. **The independent expert must be independent of the public sector i.e. truly independent.**

- Mandate State facilitated Gateway Reviews for projects over \$200m **Make sense**

Levers to manage and/or rectify poor performance.

- The current legislation will be reviewed and amended to establish mechanisms to provide Shareholding Ministers with options to manage and intervene in instances of poor performance. The mechanisms will be on a continuum and may include, for example, powers for the Shareholding Ministers to:

– authorize a review and audit of any aspect of the operations or performance;

Agree

– require the board of a government business to prepare a performance improvement plan, which must be complied with. **Board improvement or business improvement?**

– appoint a ministerial representative to the board if performance is unsatisfactory or during significant periods of transition. The ministerial representative would have a legislatively defined role, a limited term, and be

provided with appropriate personal protections for undertaking the role. Noting that selection of any ministerial representative will need to be carefully considered to avoid conflicts of interest; **Agreed**

– appoint a performance improvement team; or **Agreed**

– dissolve the Board and appoint an administrator. **Agreed**

Further Comments on the TT-Line Ferry Incident involving TT Line and TasPorts (which appears to have triggered this review)

TT-Line

While I have limited experience with TT Line, the delay in deployment of the new ferries is a clear example where two SOCs have clearly not had the capacity to work together in the interests of Tasmania and this issue must be rectified.

In this case, it is my opinion that the key problem here was two “strong-willed” Chairs, effectively acting as Executive Chairs with weak Directors and two subservient CEOs reporting to them.

This situation must be avoided in the future and measures taken immediately to ensure it doesn't. The loss of the Chair and CEO at TT Line provides the perfect environment to develop a new business culture.

TasPorts

I have had extensive experience with TasPorts over 20 years and it has not been a pleasant experience in most instances, as is the case with many port users. however, many prefer to stay quiet for fear of retribution.

TasPorts continues to use its monopoly position to behave with no customer focus, passing on costs to customers with little justification and demonstrating no evidence of any efforts to improve operational efficiency.

It is amazing that when the CEO was recently questioned about the organization's customer service at the GBE Government Scrutiny, he claimed that a “recent survey indicated that for the most part customers were happy with TasPorts performance”. This is absolute nonsense as many of the port users, regularly speak with a very negative view towards TasPorts.

I participated in an independent TasPorts customer survey carried out by Greg Ray of Timmins Ray in 2018/19 and as I understand it there was a very high level of dissatisfaction among customers. I have it on good authority that the report was presented to the Board and the Chair and CEO dismissed the report, questioning whether Greg Ray “knew what he was talking about”.

More recent surveys have been carried out by senior executives of the organization having coffee with selected customers, and it is reported the feedback is that TasPort's performance has improved. Coming from such a low base and an unrepresentative sample it is no surprise this "good news" is touted by TasPorts.

I was also involved in the initial discussions on the proposed new woodchip loader at Bell Bay, as one of three potential users of the facility, around 5-6 years ago. The three companies have been in discussions with TasPorts since then and offered to build and pay for the loader, however, TasPorts was not prepared to accept the offer. This unnecessary delay has created a serious business risk for many users at Bell Bay; one that was not warranted and not consistent with TasPort's claim to be facilitating exports. This delay has also resulted in unnecessary and substantial cost increases which will be passed on to the users.