

# **State Owned Enterprises (Amendment) Act 1993**

**No. 92 of 1993**

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**Victoria**

**No. 92 of 1993**

## **State Owned Enterprises (Amendment) Act 1993**

[Assented to 16 November 1993]

**The Parliament of Victoria enacts as follows:**

### **1. *Purpose***

The purpose of this Act is to make certain amendments to the **State Owned Enterprises Act 1992**.

### **2. *Commencement***

This Act comes into operation on the day on which it receives the Royal Assent.

### **3. *Principal Act***

**No. 90/1992.**

In this Act, the **State Owned Enterprises Act 1992** is called the **Principal Act**.

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**4. Reorganising body**

In the Principal Act—

- (a) in section 3, in the definition of “statutory corporation” before “but does not” insert “and includes a reorganising body”.
- (b) in section 4 (1), after “State business corporation” (where twice occurring) insert “or a reorganising body”.

**5. Amendment of section 5**

In section 5 of the Principal Act—

- (a) after “provision of this Act” (where first occurring) insert “or of an Order under this Act”; and
- (b) after “provision of this Act” (where last occurring) insert “or of the Order”.

**6. New section 8A inserted**

After section 8 of the Principal Act insert—

**“8A. Functions may be altered or varied**

The Governor in Council, on the recommendation of the Treasurer after consultation with the relevant Minister, may, by Order published in the Government Gazette, alter or vary the functions of a reorganising body.”.

**7. Repayment of capital**

In section 12 (1) of the Principal Act, after “Treasurer” insert “, after consultation with the relevant Minister”.

**8. State bodies**

- (1) In section 14 (2) of the Principal Act—

- (a) in paragraph (e) after "particulars of the" insert "constitution of the"; and
- (b) after paragraph (e) insert—
  - "(ea) may include provision for the appointment of directors by the Governor in Council;"
- (2) In section 16 of the Principal Act, after "State body" insert "(whether or not it has been declared under Part 3 to be a State business corporation)".

**9. *New sections 16A, 16B and 16C inserted***

After section 16 of the Principal Act insert—

**"16A. *Repayment of capital***

- (1) The capital of a State body is repayable to the State at such times, and in such amounts, as the Treasurer directs in writing after consultation with the relevant Minister and the board of the State body.
- (2) In giving a direction under this section, the Treasurer shall have regard to any advice that the board has given to the Treasurer in relation to the State body's affairs.

**16B. *Dividends***

Each State body must pay to the State such dividend, at such times and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister.

**16C. *Directions***

After consultation between the Treasurer and the relevant Minister, the Treasurer or relevant Minister may, from time to time, by written notice to the board, give such

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directions to the board as the Treasurer or relevant Minister thinks fit.”.

**10. *Functions of State business corporations***

(1) In section 19 of the Principal Act—

(a) before “The functions of” insert “(1)”; and

(b) after “conferred on it by” (where twice occurring) insert “or under”.

(2) At the end of section 19 of the Principal Act insert—

“(2) The Governor in Council, on the recommendation of the Treasurer after consultation with the relevant Minister, by Order published in the Government Gazette, may alter or vary the functions of a State business corporation.”.

**11. *Powers of State business corporations***

In section 20 of the Principal Act, after “in connection with,” insert “or incidental to,”.

**12. *Delegation***

In section 22 (a) of the Principal Act, for “a director” substitute “2 or more directors”.

**13. *Amendment of section 35***

In section 35 (4) of the Principal Act, for “goods or services for” substitute “goods or services to”.

**14. *Amendment of section 45***

In section 45 (1) (a) of the Principal Act, for “public Authority” substitute “State business corporation”.

**15. *Amendment of sections 48, 49 and 50***

In the Principal Act—

(a) in section 48 (1), after “Treasurer” insert “, after consultation with the relevant Minister,”;

- (b) in section 49, for "time" substitute "times";
- (c) section 50 is repealed.

**16. *Half yearly reports***

In section 55 (1) of the Principal Act, after "each year" insert "or at such other time as the relevant Minister approves".

**17. *Amendment of section 57***

In section 57 of the Principal Act—

- (a) at the end of sub-section (3) (a) insert "and";
- (b) in sub-section (7) for "determined" substitute "determines".

**18. *Section 66 substituted***

For section 66 of the Principal Act substitute—

***"66. Declaration by Governor in Council***

The Governor in Council, by Order published in the Government Gazette, may declare a company to be a State owned company if the shares in the company are held only by one or more of the State, a nominee of the State, a statutory corporation, a nominee of a statutory corporation, a State owned company or a nominee of a State owned company."

**19. *Amendment of section 67***

In section 67 of the Principal Act—

- (a) after paragraph (c) insert—  
"(ca) nominees of a statutory corporation"; and
- (b) after paragraph (d) insert—  
"(e) nominees of a State owned company—".

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**20. Amendment of section 70**

In section 70 (b) of the Principal Act, after "company" insert "or a subsidiary of a State owned company".

**21. Amendment of section 74**

In section 74 (c) of the Principal Act, after "annual report" insert "in a form specified by the Treasurer".

**22. Amendment of section 76**

In section 76 of the Principal Act, after "statutory corporation" insert "or State business corporation".

**23. New section 87A inserted**

After section 87 of the Principal Act insert—

**"87A. Levy on financial accommodation**

- (1) A State owned enterprise must pay to the State a levy on the amount of its liabilities under financial accommodation obtained by it, being—
  - (a) the amount, as determined by the Treasurer, as at 30 June in each year; or
  - (b) if the average of its liabilities during the year preceding 30 June is a greater amount, the amount, as determined by the Treasurer, of that average.
- (2) The rate of the levy is such percentage, not exceeding 0·5 per centum per annum, of the amount in respect of which the levy is payable, as the Treasurer determines in respect of each State owned enterprise.
- (3) The levy is payable at such times, and in such manner, as the Treasurer determines."

**24. New sections 88 and 88A**

For section 88 of the Principal Act substitute—

***'88. Tax equivalent***

- (1) If the Treasurer directs a State owned enterprise to comply with this section in respect of a financial year or other period, the State owned enterprise must, in respect of that year or period, pay to the Treasurer, in such manner and at such times as the Treasurer determines in accordance with the Treasurer's instructions, for payment into the Consolidated Fund—
  - (a) such amounts as are determined by the Treasurer in accordance with the Treasurer's instructions, not exceeding the amount that would be payable by the State owned enterprise under the law of the Commonwealth if it were liable to pay taxes under that law; and
  - (b) such amounts as are determined by the Treasurer in accordance with the Treasurer's instructions in respect of the benefit to the State owned enterprise of any exemption from sales tax that, but for the exemption, would be payable under the law of the Commonwealth in respect of goods supplied to the State owned enterprise, but not exceeding the amount of that benefit.
- (2) A State owned enterprise is not required to make payments under sub-section (1) to the extent that it is, or becomes, liable to pay the Commonwealth taxes referred to in sub-section (1) (a) or ceases to be entitled to the benefit of the exemption referred to in sub-section (1) (b), as the case requires.



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- (3) All relevant determinations, whether by way of interpretation, extension, penalty, refund or otherwise that the Commonwealth Commissioner of Taxation would be empowered to make if the laws of the Commonwealth applied may be made, in accordance with the Treasurer's instructions, by the Treasurer.
- (4) The Treasurer may, by instrument, delegate to any person or class of persons employed in the administration of this Act any power of the Treasurer under this section, other than this power of delegation.
- (5) A State owned enterprise (within the meaning of section 3) is not exempt from tax under any Act by reason only that it is an instrumentality of the State.
- (6) In this section—

**"State owned enterprise"** includes a statutory corporation in respect of which a declaration under section 88A is in force;

**"Treasurer's instructions"** means written guidelines issued from time to time by the Treasurer for the purposes of this section.

**88A. *Application of tax equivalents to other bodies***

- (1) The Governor in Council, by Order published in the Government Gazette, may declare a statutory corporation that is not a State Owned enterprise to be a statutory corporation to which section 88 applies.

- (2) If an Order is in force under sub-section (1) in respect of a statutory corporation, the requirements under section 88 are in lieu of the requirements (if any) of any other Act under which the statutory corporation makes payments of a similar kind.’
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NOTES

1. *Minister's second reading speech—*

*Legislative Assembly: 7 October 1993*

*Legislative Council: 28 October 1993*

2. The long title for the Bill for this Act was “A Bill to amend the **State Owned Enterprises Act 1992** and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)