



Tasmania

**CORPORATE GOVERNANCE HANDBOOK
FOR
GOVERNMENT BUSINESS ENTERPRISES**

Department of Treasury and Finance

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FOREWORD BY THE TREASURER

The *Government Business Enterprises Act 1995* (GBE Act) sets out a framework for Government Business Enterprises (GBEs) to manage their operational affairs with greater independence and to maximise their commercial performance, whilst providing for improved strategic oversight and accountability to the Government.

The *Corporate Governance Handbook for Government Business Enterprises* has been prepared by the Department of Treasury and Finance to assist Boards and Chief Executive Officers of GBEs in meeting the requirements of the GBE Act. In addition, the Handbook provides guidance on meeting the requirements of other legislative requirements affecting GBEs, including:

- State taxes, such as Stamp Duty, Land Tax and Payroll Tax;
- Freedom of Information and the Ombudsman legislation;
- employment requirements;
- Government Prices Oversight; and
- trade practices.

The Handbook draws on the Treasurer's Instructions and other guidelines already issued by the Department of Treasury and Finance and a number of other sources external to the Department. The following topics are covered:

- the role of the Board;
- planning processes;
- performance monitoring;
- reporting; and
- financial returns to Government.

I commend this Handbook to you as a useful reference to meet the requirements of the GBE Act. The information contained in the Handbook is cross-referenced to Treasurer's Instructions and Guidelines already issued. As such, the Handbook is intended to guide you to existing legislation and Treasurer's Instructions and is not intended to change the existing requirements of legislation and Treasurer's Instructions. A list of Treasurer's Instructions and Guidelines and a reading guide are included for those seeking further detailed information.

The Handbook will assist GBE Boards and management to achieve the goals which have been set for their businesses and ensure the Government's objectives as shareholder/owner are met. The Handbook emphasises that each GBE Board should be striving for above-average performance and should not just be concerned with conformance with legislation.

David Crean
Treasurer

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CHAPTER 1 - INTRODUCTION

1.1 OVERVIEW OF CORPORATE GOVERNANCE AND MONITORING

Tasmania's Government Business Enterprises (GBEs) constitute a significant portion of the Tasmanian economy. Because of their economic significance, it is important that GBEs operate in an efficient and effective manner. The financial performance by all GBEs directly impacts on the financial wealth of Tasmanians.

Corporate governance is the system by which enterprises are directed and controlled. In the private sector, the shareholders appoint a Board of Directors which is responsible for the governance of the enterprise and the achievement of an adequate return on assets invested. In the case of GBEs, the Stakeholder and Portfolio Ministers represent the shareholder (i.e. the Government) and appoint Boards to GBEs with similar levels of responsibility.

The relationship between GBEs and the Government is, in essence, that of a controlling shareholder (with the Government acting as trustee for the community), dealing with a commercial Board of Directors.

Similar to the expectations of shareholders of corporations, the Government expects the Board of a GBE to:

- be results oriented.

This involves the GBE making the best use of 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 GBE and monitoring the implementation of those standards.

- be adaptable to change.

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

- keep the Minister and the Government informed.

The Minister's 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 GBE is, therefore, expected to ensure that management runs the GBE in the interests of its owners, complies with the various laws which impact on its operations and complies with relevant Government policies.

1.1.1 Accountability of GBEs

The *Government Business Enterprises Act 1995* (GBE Act) provides a framework that enables Tasmania's GBEs to manage their operational affairs with greater independence and to maximise their commercial performance, whilst providing for improved strategic oversight and accountability. This framework provides for enhanced economic efficiency and effectiveness of GBEs. The key elements of the GBE Act are:

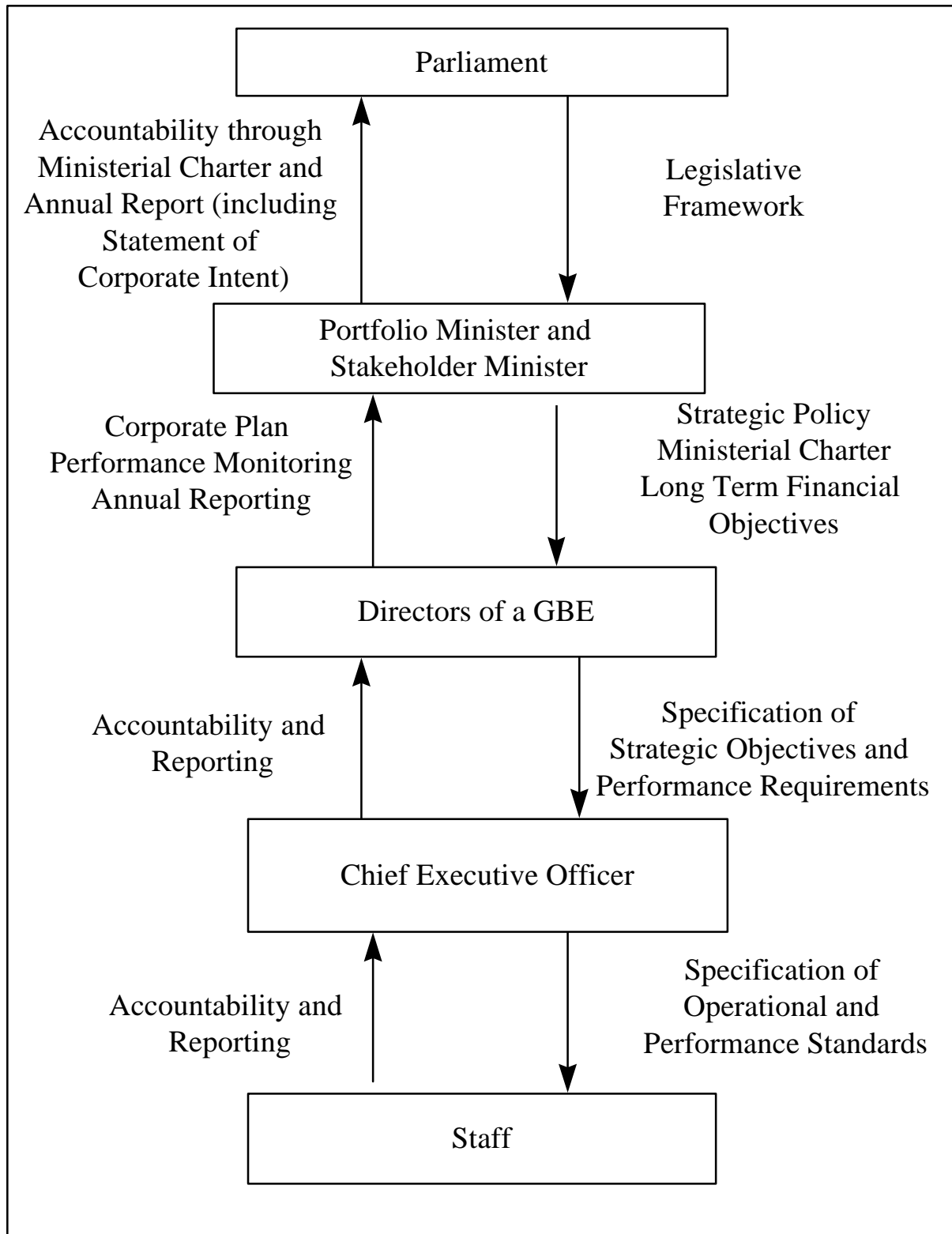
- improved strategic oversight;
- greater operational independence;
- a focus on commercial performance; and
- strict accountability.

As GBEs have been given greater operational independence and are now 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 CEO to the Board, from the Board to the Portfolio Minister and from the Portfolio Minister to Parliament. The information that the GBE Act requires to be provided to both the Government and Parliament is an important aspect of accountability.

An overview of the accountability framework of the GBE Act is shown in Figure 1 - An Overview of Accountability Framework of Government Business Enterprises, on page 3. The role of each party in the accountability framework is discussed below.

Figure 1 - An Overview of Accountability Framework of Government Business Enterprises



1.2 ACCOUNTABILITY OF GOVERNMENT BUSINESS ENTERPRISES

1.2.1 Role of Parliament

The primary role of Parliament is to establish GBEs where necessary, ensure that GBEs perform their obligations efficiently and effectively and approve the divestment of GBEs. Parliament therefore needs to be kept informed of the operations of GBEs. This is necessary because:

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

The accountability framework of the GBE Act requires that the Parliament is kept informed about GBE operations, both past, present and future. The Portfolio Minister is required to provide Parliament with the following documents:

- the Ministerial Charter of the GBE; and
- the Annual Report (incorporating a Statement of Corporate Intent) of the GBE each financial year.

The Parliament is also kept informed by conducting an annual inquiry into the performance of each GBE.

1.2.2 Role of the Portfolio Minister and the Stakeholder Minister

The Government, as the 100 per cent shareholder/owner of all GBEs on behalf of the community, can be compared to the private sector model of a holding company with a diverse range of fully owned subsidiaries.

In common with the reporting requirements of subsidiaries of a holding company, each GBE has a regular reporting obligation to the Government, with the Treasurer and each Portfolio Minister effectively the shareholders on behalf of the Government.

The role of the Portfolio Minister is to provide the GBE with a Ministerial Charter, negotiate and to approve the Corporate Plan and the various performance targets it contains. It is also the role of the Portfolio Minister to prepare Bills which seek to establish and divest the GBEs.

The role of the Stakeholder Minister is to assess and monitor each GBE's financial performance and to ensure that the objectives of the GBE are consistent with the Government's overall policy framework and objectives. This role also includes making certain directions, where necessary, approving the Corporate Plan, and setting expectations in the Ministerial Charter.

1.2.3 Role of Treasury

The Department of Treasury and Finance provides independent advice to the Stakeholder Minister on financial issues relating to GBEs, including financial performance targets and general financial performance. This is necessary to assist the Stakeholder Minister to:

- assess the financial health and performance of the GBEs;
- assess the appropriateness of the dividend projections contained in Corporate Plans and the final dividend recommendations; and
- allow the Government to focus on strategic issues.

Treasury also provides advice on the establishment of new GBEs, the corporatisation of GBEs and also their divestment.

Independent “shareholder” performance monitoring of GBEs is an integral part of the GBE reform framework. Its analogy in the private sector is the role played by market analysts in the capital markets. It allows the Government, as shareholder, to focus on bottom-line financial results. This re-inforces managerial autonomy and obviates the need for the shareholding Ministers to become involved in day-to-day organisational or managerial issues.

1.2.4 Role of the Board

The Board is accountable to the Government for its performance. The GBE Act makes it clear that the Board of the GBE is responsible to the Portfolio Minister for ensuring:

- the business and affairs of the GBE are managed and conducted in a manner that is in accordance with sound commercial practice and consistent with the Ministerial Charter of the GBE;
- the GBE performs its functions;
- the GBE achieves its objectives as specified in the GBE Act, or any other relevant Act, and the Corporate Plan of the GBE; and
- advising the Government of any developments significantly affecting the GBE’s operations.

The role of the Board of a GBE should be similar to that of a Board of a private company in the private sector. A Board of a private company represents the shareholders and thus strives to maximise the value of the Shareholders’ investment in the interests of the entity. That is, the Board of a GBE represents the interests of the Government, as the 100 per cent owner of the enterprise.

1.2.5 Role of the Chief Executive Officer (CEO)

A chief executive officer, as stated in section 19(1) of the GBE Act, is responsible to the Board for the general administration and management of the Government Business Enterprise. The CEO is responsible for:

- conducting the day-to-day operations of the GBE in accordance with the Ministerial Charter of the GBE, policies of the GBE set by the Board and legislative requirements;
- advising the Board, on a regular basis, on the operating and financial performance of the GBE;
- advising the Board immediately of any development which is likely to seriously impact upon the operations of the GBE; and
- advising the Government of any development which is likely to seriously impact upon the operations of the GBE.

In essence, the role of the CEO of a GBE is to implement the broad objectives and guidelines established by the Board.

1.2.6 Role of Portfolio Ministers and Departments

Portfolio Ministers and Departments are responsible for monitoring the broader role of the GBE in terms of balancing customer and shareholder interests and compliance with regulatory obligations.

1.3 PLANNING AND MONITORING REGIME

Under the GBE Act, the planning and monitoring regime comprises:

- corporate plans, which are submitted annually by GBE Boards for Government consideration;
- annual reports, which must be tabled in Parliament by 30 November each financial year; and
- quarterly performance reports from GBEs, which assist in the continuous assessment of their financial performance.

The GBE Financial Year Planner shown in Appendix 1 details the time lines for GBE planning, performance monitoring, reporting and financial returns to the Government.

CHAPTER 2 - GUIDELINES FOR BOARDS

2.1 OVERVIEW OF THE CORPORATE GOVERNANCE FRAMEWORK

The Government entrusts the management of each GBE to a Board which is responsible for the corporate governance of the enterprise. Corporate governance is the system by which enterprises are directed and controlled.

The Australian Institute of Company Directors (AICD) states that the essential functions of corporate governance includes:

- *the process of defining and monitoring the strategic direction of the enterprise;*
- *defining policies and procedures to ensure the enterprise operates within the legal and social requirements of the operating environment;*
- *establishing control and accountability systems within the enterprise's operations to conform to the legal requirements and the expectations of shareholders and other stakeholders;*
- *driving the performance of the enterprise;*
- *reviewing and monitoring the management and the performance of the enterprise; and*
- *developing a learning environment with an emphasis on innovation¹.*

¹ Australian Institute of Company Directors, 1998, *Company Directors Course*

2.2 THE ROLE OF THE BOARD

Under sections 12 and 38 of the GBE Act, the Board of the GBE is responsible to the Portfolio Minister for ensuring:

- the business and affairs of the GBE are managed and conducted in a manner that is in accordance with sound commercial practice and consistent with the Ministerial Charter of the GBE;
- the GBE performs its functions; and
- the GBE achieves its objectives as specified in the GBE Act, or any other relevant Act, and the Corporate Plan of the GBE.

To fulfil these responsibilities, the Board must be actively involved in:

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

2.2.1 Setting Strategic Directions

The Board sets the strategic direction of a GBE by undertaking a process of strategy formulation. This AICD recommends that this process might include:

- *an analysis of the strategic environment facing the enterprise:*
 - *the political, social and technological context;*
 - *the competitive situation in the industry; and*
 - *the customer market position, viewed over the strategic horizon of the particular enterprise and industry;*
- *the consideration of the core competencies, strengths and weaknesses of the enterprise;*
- *a review of existing strategies, questioning the inherent assumptions, provision and additional strategic intelligence;*
- *the generation and evaluation of alternative strategies;*
- *the refinement of those strategic options and strategic decision-making; leading to*
- *the reflection of the strategy in investment and the review of business plans².*

² *ibid*

In setting strategies for a GBE, the Board also needs to take into account:

- current Government policies;
- the Ministerial Charter of the GBE;
- the GBE's current internal environment, to ensure that strategies developed enable the enterprise to adapt to changes in its external environment; and
- the long-term objectives of the GBE, namely wealth maximisation and the efficient use of resources.

2.2.2 Securing and Continually Monitoring Organisational Performance

Professor Hilmer stressed 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*"³. This process includes:

- setting relevant performance targets for the GBE, with a commitment towards achieving/improving commercial performance levels and, wherever possible, external benchmarks should be identified which are relevant to the GBE's industry, sector or market;
- reviewing the performance of the GBE on a regular basis using statutory and other reports, such as internal management reports;
- reviewing the performance of the CEO and senior management; and
- protecting the long-term viability of the GBE by monitoring and continually refining the GBE's system of internal controls, liability management practices and solvency level.

2.2.3 Ensuring Compliance with Statutory Requirements

The Board should ensure compliance with all statutory requirements. These statutory requirements include:

- the Ministerial Charter of the GBE and other ministerial directions;
- the GBE Act;
- the Portfolio Act;
- if applicable, the *Freedom of Information Act 1991* and the *Ombudsman Act 1978*; and
- any other legislation affecting the GBE, such as the *Trade Practices Act 1974* (Trade Practices Act).

³ Hilmer. F.G, 1993

2.2.4 Managing Risk

The Board should ensure that there are systems in place to monitor and flag areas requiring corrective action in respect of major risks to which the GBE is exposed:

- *general risks*, such as the competition risk, risks associated with long term contracts and the risks associated with customers and suppliers;
- *operational risks*, such as the risks associated with the GBE's physical environment;
- *financial risks*, such as those associated with managing the GBE's liquidity and liabilities, including contingent liabilities;
- *technological risks*, such as the risk of system breakdown and system obsolescence; and
- *external risks* associated with the GBE's operating environment and community responsibilities, including the risks associated with the changes in the economy and government policy.

2.3 BEST PRACTICE GUIDELINES FOR BOARDS

2.3.1 The Role of the Chairman

Although the Chairman does not have any more onerous legal responsibilities than the other Directors, it is expected that the Chairman will contribute more time to Board activities than the other Directors. It is also expected that the Chairman will be responsible for the overall functioning of the Board and raise with the Portfolio Minister issues affecting the GBE. The AICD recommends that the Chairman:

- *be the Director primarily responsible for the direction and effectiveness of the Board;*
- *chair Board meetings in a manner which result in a consensus and commitment to Board decisions;*
- *ensure that the Board as a whole performs effectively;*
- *ensure the timely and accurate dissemination of information to Board members;*
- *advise and counsel Board members; and*
- *act as a link between the Board and senior management between meetings*⁴.

2.3.2 Education of Directors

To discharge their legal responsibilities, the AICD recommends that Directors need to look:

- *outwards beyond the enterprise, seeing the enterprise in its competitive, commercial context; and*
- *inwards at the enterprise*⁵.

To do this, it is crucial Directors possess the appropriate level of knowledge and skills in relation to:

- their legal responsibilities;
- the internal organisation of the GBE;
- Government legislation affecting the GBE;
- the current economic environment of the GBE;
- the current policies, strategic directions and financial performance of the GBE;
- any significant issues currently being considered by the Board; and
- future events which may affect the GBE.

⁴ Australian Institute of Company Directors, 1998, *Company Directors Course*

⁵ *ibid*

The type of information that should be provided to new Directors will vary according to the previous experience of that Director, as shown in Figure 2. The type of information that is provided to new Directors will also vary from the information that is provided to existing Directors. This is discussed below.

Figure 2 - Recommended Information to be provided to New Directors

Previous Experience of New Director	Information Provided
None or little previous experience as a Director	<ul style="list-style-type: none"> • Briefing material on Board responsibilities, legislative requirements, general economic environment and GBE specific information. • Training courses in the legal responsibilities of a Director and other areas as required depending upon the Director's area of expertise.
Previous experience on a private sector Board	<ul style="list-style-type: none"> • Information specific to the GBE and the legislative requirements of the GBE.
Previous experience on a GBE Board	<ul style="list-style-type: none"> • Information specific to the GBE and the legislative requirements specific to that GBE.
Previous experience as a senior manager of a GBE	<ul style="list-style-type: none"> • Focus on Board responsibilities and GBE specific information if new Director has come from a different GBE. • Training courses in the legal responsibilities of a Director and other areas as required depending upon the Director's area of expertise.

It is also important for existing Directors to be continually educated so as to adequately discharge their legal responsibilities and be responsive to changes occurring which impact on the GBE. All Directors should be continually informed of issues affecting the GBE. Information provided should include:

- current issues facing the GBE;
- changes in Government policy, such as competition policy and industry specific policy;
- changes in legislation affecting the GBE;
- changes in the external environment, such as market conditions, interest rates and the actions of competitors;
- the legal responsibilities of each Board member; and
- the financial and operational performance of the GBE.

2.3.3 The Relationship between the Board and Senior Management

The Board must remain independent of management, whilst at the same time having access to necessary resources and information to allow the Board to effectively govern the GBE. The majority of the Board should be independent of senior management. Independence of individual Directors may be compromised if the Director:

- has been or is a CEO, senior manager or internal auditor of the GBE;
- has been a business adviser to the GBE; or
- has had any other relationship with the GBE, such as a significant customer or supplier⁶.

The Chief Executive Officer must provide the Chairman with the necessary information for Board meetings allowing a reasonable time before each Board meeting so that the Chairman can disseminate information to the Board. This will enable the Board to make informed decisions on the organisational performance of the GBE and future actions, including corrective measures, which may need to be taken.

2.3.4 The Role of the CEO as a Director

The relationship between the Board and the CEO of a GBE differs from that which exists in the private sector. Section 18 of the GBE Act provides that the CEO is appointed by the Governor, on the recommendation of the Portfolio Minister, after consultation with the Board. In the private sector the Board usually appoints the CEO.

The CEO has an important role to play in the governance of the GBE. The CEO has a special responsibility to inform the Board on issues where the CEO has special and relevant knowledge⁷. Given that the CEO has an extensive knowledge of the GBE's operations, the CEO plays an important role in making recommendations in areas such as setting controls, managing risks and the development of future strategies. Whilst the CEO plays a vital role, it is important that at all times the Board retains effective control over the GBE and is guided but not driven by the actions and advice of the CEO. This can be achieved by the Board:

- adequately questioning the decisions and recommendations of the CEO and senior management;
- seeking independent advice on important matters for consideration at Board meetings; and
- restricting the CEO's influence on the Board. For example, the CEO should not be solely responsible for minuting Board meetings or determining the Agenda for Board meetings.

The GBE Act prohibits the CEO from being a Chairman of the Board or a member of the audit committee. The legislative requirements of the audit committee are discussed in more detail in 2.6 Audit Committees, commencing on page 21 of this handbook.

⁶ Bosch, 1995, p 14

⁷ Hilmer. F.G, 1993

2.3.5 Participation by Directors

Board members should aim to attend all meetings of the Board and of any committees on which the Board member is placed. Board members should ensure that they prepare adequately for meetings by obtaining and reviewing, before each meeting, information on:

- regular agenda items such as financial performance, risk assessments, and compliance with statutory requirements and Ministerial directions; and
- additional agenda items, such as external auditor reviews, external events affecting the GBE and recent changes in Government policy that could materially affect the performance of the GBE.

The CEO of the GBE must provide the Chairman with information relevant to each meeting and alert the Chairman to all important issues affecting the GBE. There may be circumstances in which the Board needs to seek additional, and/or independent, information and advice regarding agenda items. In such cases, the Board should be entitled to be reimbursed for expenses incurred in seeking such information.

The following table summarises the preceding text in relation to best practice for the Board and the CEO.

Figure 3 - Summary of Best Practice Guidelines

Guidelines for the Chairman	<p>The Chairman should:</p> <ul style="list-style-type: none"> • have an extensive knowledge of all aspects of the GBE; • be independent of senior management; • determine Board agendas; • review Board membership and succession planning; and • raise material issues affecting the GBE with the Portfolio Minister.
Guidelines for Directors	<p>Directors should:</p> <ul style="list-style-type: none"> • ensure they have and maintain adequate knowledge of their legal responsibilities, the GBE’s internal organisation and operating performance, Government policy and future issues likely to affect the GBE; • ensure that the majority of the Board is effectively independent of senior management; • not be “captured” by GBE management; • attend all of Board meetings; • prepare adequately for Board meetings; and • obtain independent information and advice when necessary.
Guidelines for the CEO	<p>The CEO should:</p> <ul style="list-style-type: none"> • make recommendations for the setting of controls, managing risks and the

	<p>development of future strategies;</p> <ul style="list-style-type: none">• provide the Board with information relevant to the agenda of each Board meeting; and• alert the Board of important issues affecting the GBE on a timely basis.
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2.3.6 Board and CEO Performance

Professor Hilmer stressed 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"⁸. To adequately fulfil this role, it is necessary for the Board to review the performance of each Board member and the CEO on a regular basis.

A number of methods for reviewing a Board's performance have been proposed. Henry Bosch⁹ suggests that, regardless of processes chosen by a Board, there are four key issues which should be fundamental to a review:

1. Do the members understand and agree on the key functions of the Board?
2. Are those functions being properly performed and is sufficient time being allocated to them?
3. Have the most essential objectives been agreed and are they being achieved?
4. Can the Board's administrative and operative arrangements be improved?

⁸ *ibid*

⁹ Bosch, 1995, *The Director at Risk*, p 143

2.4 LEGAL REQUIREMENTS OF BOARDS AND DIRECTORS

2.4.1 Common Law Fiduciary Duty of Care

Directors, both executive and non-executive, have a common law responsibility to exercise an appropriate level of due care and diligence. Executive directors are those holding management positions in the GBE of which they are a Board member, whereas non-executive directors do not hold management positions in the GBE of which they are a Board member.

The exact nature of this duty of care has been reaffirmed in recent court cases involving duties of Directors, such as *AWA v Daniels (1992)* and *Commonwealth Bank v Friedrich and Ors (1991)*. The judgements in these and related cases reaffirm that Directors have a duty to:

- take a diligent interest in the affairs of the corporation;
- obtain a general understanding of the business of the organisation;
- obtain all information necessary, from both senior management of the organisation and internal and external auditors, to make an informed decision on all matters that come to the Board's attention, including the organisation's financial capacity; and
- in the case of non-executive Directors, have the capacity to make an independent assessment on the organisation's financial capacity.

What this means, in essence, is that it is no longer appropriate to take at face value information provided by management. Poor corporate performance should be the main contemporary concern of the Board's activity¹⁰.

¹⁰ Hilmer. F.G, 1993

2.4.2 Statutory Duties under the GBE Act

Under section 11(1) of the GBE Act, the Board consists of the Chairman and not less than 3, and not more than 8, other persons. The Board is responsible for:

- ensuring that the GBE is managed and conducted in accordance with sound commercial practice - section 12(a);
- the performance of the GBE - section 12(b);
- the achievement of the objectives of the GBE, as specified in the GBE Act, any other Act and the Corporate Plan of the GBE - section 12(c);
- notifying the Stakeholder Minister and the Portfolio Minister of any developments which would prevent or affect the achievement of the objectives in the Corporate Plan of the GBE, or affect the financial viability or operating ability of the GBE - section 13;
- establishing an audit committee, which is responsible for advising the Board on the internal audit function of the GBE, monitoring the GBE's systems of financial reporting and internal controls and resources necessary for the performance of the internal audit functions of the GBE - section 16;
- preventing a GBE from incurring a debt if the GBE is insolvent at the time of incurring that debt, or will become insolvent by incurring that debt - section 25; and
- disclosing all details which may, in the future, give rise to a conflict of interest - section 28.

2.5 TERMS AND CONDITIONS FOR APPOINTMENT OF DIRECTORS

The terms and conditions of appointment as a Director and procedures for resignation and removal of a Director are detailed in Schedule 5 of the GBE Act. Each Director and the CEO are appointed by the Governor on the recommendation of the Portfolio Minister. The Director, once appointed, enters into a contract detailing the conditions of the appointment including remuneration and the term of the appointment which is not allowed to exceed three years. A Director is eligible for reappointment unless he/she attains 72 years of age prior to the completion of the next term of office.

2.5.1 Remuneration of Directors

Director's fees are approved by Cabinet before being submitted to the Governor for final approval¹¹. In determining Directors' fees, Boards are divided into two basic categories: commercial/trading and non-commercial/non-trading. These categories are then further divided according to:

- competitiveness;
- impact; and
- financial size in the case of commercial/trading Boards.

The degree of impact refers to the degree to which the GBE affects the broad policy agenda of the Government¹². The four degrees of impact (class 1 having the highest impact) are:

1. critical to Government;
2. broad (Statewide) impact;
3. narrow focused; and
4. local impact.

2.5.2 Other Benefits

Other costs incurred by Directors, such as travel expenses to attend Board meetings, would normally be booked and paid directly by the GBE.¹³ As such, Directors are not directly remunerated for such outlays.

¹¹ Department of Premier and Cabinet, (1995), *Remuneration and Conditions for Members of Boards, Committees and Statutory Authorities*, p 2

¹² *Ibid*, p 2

¹³ *Ibid*, pp 2-3

2.5.3 Conflict of Interest

The GBE Act (sections 27, 28 and clause 7 of schedule 6) aims to ensure that there is proper disclosure of circumstances which may involve a Director in a conflict of interest. Each Director must make a preliminary general disclosure of financial interests, directorships and other offices. In addition, a Director must ensure that the Board is aware of any interest which a Director may have in a matter which the Board is to consider.

The GBE Act (sections 27, 28 and clause 7 of schedule 6) requires the Board to disclose and maintain registers of actual and potential conflicts of interest which may affect a person's capacity to fulfil his or her responsibilities as a Director, and in particular, their ability to make an independent decision on matters brought before the Board.

To assist Directors in meeting the requirements of the GBE Act in relation to conflict of interest, Treasury, in association with the Crown Solicitor's Office, issued *Conflict of Interest Guidelines for Directors of Government Business Enterprises* in March 1996.

2.5.4 Dismissal of Individual Directors or the Board

Clause 8(1), of Schedule 5 of the GBE Act outlines the statutory circumstances under which a Portfolio Minister must recommend to the Governor that a Director be removed, which include:

- a) the director has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the GBE, other than a contract for a good or service ordinarily supplied by the GBE and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation; or
- b) the director fails to disclose a pecuniary interest as required under clause 7 of Schedule 6; or
- c) the director has been convicted of an offence under the GBE Act; or
- d) the director has been convicted of an indictable offence or an offence which, if committed in Tasmania, would be an indictable offence; or
- e) the Portfolio Minister considers that the director is physically or mentally incapable of continuing as a director; or
- f) the Portfolio Minister considers that the director is unable to perform adequately or competently the functions of the director's office; or
- g) the director becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration or estate for their benefit; or
- h) the director is absent from four consecutive meetings of the Board without leave of absence; or
- i) the director attains the age of 72 years.

Clause 8(3) states that the Governor, on the joint recommendation of the Portfolio Minister and the Stakeholder Minister, may remove a Director from office for any other reason in addition to those outlined in clause 8(3).

Where all the Directors of the GBE have wilfully disregarded its Ministerial Charter, clause 8(4) of Schedule 5 requires the Governor, on the joint recommendation of the Portfolio Minister and the Stakeholder Minister, to remove all the Directors of the Board.

2.6 AUDIT COMMITTEES

2.6.1 Introduction

The GBE Act (section 16) requires the Board of a GBE to establish an audit committee. An effective and efficient audit committee has many benefits, including¹⁴:

- strengthening the position of non-executive Directors by giving Directors a greater insight into their enterprise's financial position;
- strengthening the external audit function by providing a forum to discuss issues related to the accounting practice of the GBE and the GBE's financial affairs;
- strengthening the internal audit function of the GBE by providing a clear communication channel between the internal audit manager and the audit committee;
- improving the quality of accounting and auditing functions by monitoring the financial management, internal audit and external audit functions; and
- co-ordinating the work of external and internal audits thereby ensuring that the work of the internal auditors is used to maximum effect in an external audit.

2.6.2 Composition of the Audit Committee

An audit committee should be composed so as to maximise independence between senior management and the Board. The recommendations by the Cadbury Committee¹⁵ state that:

- *membership should be confined to the non-executive Directors of the organisation;*
- *the finance manager, the external auditor and the head of internal audit should normally attend meetings of the committee, but not as members of the committee;*
- *audit committees should be formally constituted with a written terms of reference; and*
- *audit committees should meet at least three times a year.*

¹⁴ Porter and Gendall (1993), pp 14-15

¹⁵ Cadbury Committee (1992)

Schedule 7, clause 1 of the GBE Act requires that:

- the Board may determine the membership of the audit committee, which allows the Board to appoint persons that are not Directors of the GBE Board to the audit committee;
- the chairman of the audit committee must be a Director of the GBE; and
- the CEO of the GBE must not be a member of the audit committee.

The audit committee should have a written terms of reference and should have unrestricted access to the internal and external auditors¹⁶.

2.6.3 Duties of the Audit Committee

Section 16(3) of the GBE Act requires the audit committee to provide regular advice to the Board on:

- the internal audit function of the GBE;
- the GBE's systems of financial reporting and internal controls; and
- the resources necessary for the performance of the internal audit function of the GBE.

In addition, there are other issues which must be attended to, including¹⁷:

- identifying the major risks to which the GBE is exposed and ensuring that the internal control systems introduced by management are adequate and functioning effectively;
- reviewing the internal audit plan and the scope of the internal audit;
- co-ordinating the work of the internal and external auditors;
- reviewing reports by the external and internal auditors on the weaknesses in internal control and plans by management to rectify the position;
- reviewing significant financial risk areas;
- monitoring compliance with statutory requirements;
- reviewing interim financial information; and
- reviewing the financial statements by both management and the internal auditors prior to their approval by the Board.

¹⁶ Bosch, (1995)

¹⁷ see Porter and Gendall, (1993), page 10 and Bosch (1995)

2.7 OTHER COMMITTEES

Section 18(1)(b) allows the Board of a GBE to establish other committees as it considers appropriate. Examples of other committees which a GBE Board could establish include:

- a remuneration committee; and
- an investment committee.

The AICD¹⁸ states that committees offer many benefits, including:

- *allowing directors to examine issues in a concerted manner, ensuring that the subject will get proper attention;*
- *reducing the workload of the whole Board;*
- *bridging gaps of information or process;*
- *giving the opportunity to source specialist skills from outsiders;*
- *being a method for managing conflicts;*
- *providing support to the CEO; and*
- *spreading the risk of error in process or outcome.*

2.7.1 Remuneration Committee

Remuneration committees review the remuneration of executives and the performance of executive management. Such a committee provides a structure whereby remuneration can be independently determined and the performance of senior management can be reviewed.

2.7.2 Investment Committee

Investment committees review major investments such as financing transactions and capital investment decisions. Such a committee provides a structure whereby major investment decisions can be independently reviewed to ensure that such decisions are consistent with the GBE Act and Government policy.

¹⁸ Australian Institute of Company Directors, 1998, *Company Directors Course*

2.8 REFERENCES

Further detail in relation to the preceding section can be found in the following references:

- Australian Accounting Research Foundation, Australian Institute of Company Directors and Institute of Internal Auditors - Australia, 1997, *Audit Committees: Best Practice Guide*
- Australian Institute of Company Directors, 1995, *Checklist for Directors of Government Boards*
- Australian Institute of Company Directors, 1998, *Company Directors Course*
- Deloitte Touche Tohmatsu, 1996, *Corporate Governance - A Guide for the Governing Board*
- Department of Premier and Cabinet, *Remuneration and Conditions for Members of Boards, Committees and Statutory Authorities*, August 1995
- Department of Treasury and Finance in association with the Crown Solicitor's Office, *Conflict of Interest Guidelines for Directors of Government Business Enterprises*, March 1996
- GBE Act - sections 11 to 20 and 38 and Schedules 5 to 7
- Hilmer, F.G.(ed), 1993, *Strictly Boardroom*, Information Australia

CHAPTER 3 - NATIONAL COMPETITION POLICY

3.1 INTRODUCTION

At the April 1995 Council of Australian Governments (COAG) Meeting, Heads of Government signed three agreements designed to boost the competitiveness and growth prospects of the national economy. The National Competition Policy (NCP) Agreements requires:

- consideration to be given to the introduction of a regime to oversee the prices charged by GBEs that are monopoly, or near monopoly, suppliers of goods and services;
- government businesses to operate in a manner such that they do not enjoy any net competitive advantage simply as a result of their public ownership;
- the conduct of an independent review before either privatising, or introducing competition to, a natural monopoly;
- the review and, where governments consider it appropriate, the reform of all legislation that restricts competition by the year 2000; and
- consideration to be given to introducing a legislated right for third parties to negotiate access to services provided by means of significant infrastructure facilities.

The NCP agreements guide Governments to implement competition reforms where it is in the “public benefit” to do so. In general, an activity or action can be defined as having a public benefit if, on the whole, it can be demonstrated that the benefits of the activity or action outweigh the costs of the activity or action.

NCP issues which are of most relevance to GBEs are the:

- universal application of the Trade Practices Act;
- application of competitive neutrality;
- competitive neutrality complaints mechanism;
- oversight of public monopolies; and
- Legislation Review Program.

3.2 UNIVERSAL APPLICATION OF THE TRADE PRACTICES ACT

The *Competition Policy Reform (Tasmania) Act 1996* extends the restrictive trade practices provisions of the Trade Practices Act to all businesses in Tasmania, whether publicly or privately owned. This Act commenced on 21 July 1996.

The paper *Extension of Part IV of the Trade Practices Act*, issued by Treasury in July 1996, discusses the impact on Tasmanian businesses of the extension of Part IV of the Trade Practices Act.

3.3 APPLICATION OF COMPETITIVE NEUTRALITY

The competitive neutrality principles relate to removing any advantages a Government business might otherwise enjoy as a result of its Government ownership and any disadvantages which may similarly be imposed on the activity.

The *Application of the Competitive Neutrality Principles under National Competition Policy*, (Application Statement) issued by the Government in June 1996 sets out how the competitive neutrality principles are to apply within the Tasmanian State sector.

The corporatisation model is compulsory for all GBEs. The corporatisation model requires that each enterprise be subject to a tax equivalent regime (TER) and pay guarantee fees, State taxes, dividends and local Government rates. GBEs are to be subject to the same planning and regulatory requirements and regimes as other industry operators.

To the extent possible, any input disabilities which place a GBE at a disadvantage from its competitors have been removed. The GBE Act provides for GBEs to be paid for any recognised community service obligations, subject to certain conditions, which it undertakes. The GBE Act also provides for some GBEs to have separate employment powers to make their own arrangements for superannuation, workers' compensation and other employment conditions. This is discussed in more detail in section 8.2 "Employee Issues" on page 57 of this Handbook.

3.4 OVERSIGHT OF PUBLIC MONOPOLIES

The *Government Prices Oversight Act 1995* established the Government Prices Oversight Commission (GPOC) as an independent body charged with the responsibility for conducting investigations into, and reporting on, the pricing policies of both GBEs and Government agencies that are monopoly, or near monopoly suppliers of goods and services in Tasmania.

The Act provides for the prices and pricing policies of the most significant public sector monopolies to be automatically investigated at least once in every three years. In the case of the Hydro-Electric Corporation, prices oversight responsibility has been transferred from the GPOC to an independent Electricity Regulator.

3.5 COMPETITIVE NEUTRALITY COMPLAINTS MECHANISM

Under the NCP Agreements the State Government is required to implement a complaints mechanism in relation to competitive neutrality matters. This was achieved through the introduction of the *Government Prices Oversight Amendment Act 1997*. Under this Act GPOC is responsible for considering complaints relating to the application of the competitive neutrality principles by any Government business in Tasmania. GPOC will:

- only consider complaints by a person adversely affected by the failure of an applicable Government business to comply with the competitive neutrality principles and any associated implementation guidelines; and
- only formally consider complaints after the applicable Government business, against which the complaint is made, has had the opportunity to review its actions.

GPOC will report on its findings jointly to the Treasurer and the Portfolio Minister and make its findings and recommendations public in GPOC's annual report.

3.6 LEGISLATION REVIEW PROGRAM

Under the NCP Agreements, the Tasmanian Government has committed to ensuring that legislation, including both Acts and Regulations, should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

The Tasmanian Government, like other Australian Governments, has to review all legislation that restricts competition by December 2000. Any new legislation must also comply with the NCP legislative review principles. If the existing Portfolio Act of a GBE restricts competition, it will be subject to review under the Government's legislative review program. The timetable for the Government's legislative review program is outlined in the *Legislation Review Program: 1996 to 2000* paper, issued by the Government in June 1996.

3.7 SECTOR SPECIFIC REFORMS

The NCP Agreements require specific reforms to be undertaken in the Electricity, Gas, Water and Transport sectors. These reforms will have implications for some GBEs. The NCP Progress Reports, prepared by the Department of Treasury and Finance, provide further detail on these reforms.

3.8 COMPETITION PAYMENTS

Tasmania will receive substantial Competition Payments from the Commonwealth Government if the National Competition Council (NCC) assesses Tasmania as having made sufficient progress in implementing agreed reforms, and the Commonwealth Treasurer agrees with that assessment. The Competition Payments reflect a share of the expected revenue gains to the Commonwealth Government from the States' implementation of NCP.

In June 1997, the NCC gave Tasmania a positive assessment in its recommendations to the Commonwealth Treasurer on whether the State has successfully qualified for the first tranche of NCP payments, which were payable in 1997-98. The Commonwealth Treasurer confirmed in early July 1997 that Tasmania would receive the first tranche payments, totalling \$13.1 million in 1997-98 (which have subsequently been re-valued at \$12.0 million (in 1998-99 dollars) due to updated CPI and population estimates).

In June 1998, the NCC provided the Commonwealth Treasurer with its interim assessment report on State and Territory performance against NCP and related reform commitments for the second year of the first tranche (1998-99). Tasmania was assessed by the Council as having met its first tranche commitments¹⁹.

¹⁹ The NCC assessed, however, that NSW did not meet its first tranche commitments with respect to domestic rice marketing and has recommended to the Commonwealth Treasurer that \$10 million be deducted from

3.9 ROLE OF TREASURY

Treasury is the agency responsible for ensuring the States complies with the NCP agreements. It is responsible for reporting the progress on ongoing compliance with and implementation of reforms to the NCC through NCP Progress Reports. The Progress Reports, along with the Tasmanian Government's legislation review, competitive neutrality and local government policy statements form the basis upon which the NCC assesses Tasmania's progress in implementing NCP and related reforms.

3.10 REFERENCES

Further detail in relation to the preceding section can be found in the following references:

National Competition Policy

- Department of Treasury and Finance, *Tasmania's Reform Obligations and the New Financial Arrangements*, August 1995
- Department of Treasury and Finance, *Guidelines for Considering the Public Benefit Under the National Competition Policy*, March 1997
- National Competition Council, *Compendium of National Competition Policy Agreements, Second Edition*, June 1998
- National Competition Council, *Assessment of State and Territory Progress with Implementing National Competition Policy and Related Reforms*, 30 June 1997
- National Competition Council, *National Competition Policy and Related Reforms, Supplementary Assessment of First Tranche Progress*, 30 June 1998
- Parliament of Tasmania, *1997-98 Budget Paper No. 1*, August 1997, pp. 189-190
- State of Tasmania, *National Competition Policy Progress Report, April 1995 to 31 July 1997*, August 1997

NSW's first tranche NCP payments (should they fail to change their approach in this regard prior to early 1999).

Trade Practices

- Australian Competition and Consumer Commission, 1995, *Summaries of the Trade Practices Act 1974 and Prices Surveillance Act 1983*, Australian Government Publishing Service, November
- CCH Australia Ltd, *Australian Trade Practices Reporter*, (looseleaf)
- *Competitive Policy Reform (Tasmania) Act 1996*
- Department of Treasury and Finance, *Extension of Part IV of the Trade Practices Act to all Small Businesses in Tasmania*, July 1996
- Steinwall, R., and Layton, L. (1996), *Annotated Trade Practices Act 1994*, Butterworths

Competitive Neutrality and the Complaints Mechanism

- Department of Treasury and Finance, *National Competition Policy Competitive Neutrality Principles Complaints Mechanism - Statement of Processes*, July 1997
- Department of Treasury and Finance, *The Application of Competitive Neutrality Principles to the State Government Sector*, July 1996
- Government of Tasmania, *Application of the Competitive Neutrality Principles under National Competition Policy*, June 1996

Oversight of Public Monopolies

- Department of Treasury and Finance, Monopoly Prices Oversight and the Tasmanian Government Prices Oversight Commission, January 1996
- *Government Prices Oversight Act 1995*
- *Government Prices Oversight Amendment Act 1997*

Legislative Review Program

- Department of Treasury and Finance, *Reviews of Legislation that Restrict Competition*, June 1996
- Government of Tasmania, *Legislation Review Program: 1996 - 2000, Tasmanian Timetable for the Review of Legislation that Restricts Competition*, June 1996

CHAPTER 4 - CHARTERS AND PLANS

4.1 MINISTERIAL CHARTERS

4.1.1 Introduction

The Ministerial Charter describes the broad policy expectations of the Portfolio Minister for the GBE and its subsidiaries.

4.1.2 Responsibility of the Portfolio Minister

The Portfolio Minister provides the GBE with a Ministerial Charter, prepared by the Portfolio Minister, in consultation with the Stakeholder Minister and the GBE. Section 36(7) of the GBE Act requires the Ministerial Charter to be tabled by the Portfolio Minister within 10 sitting days after providing a copy of the Ministerial Charter to the Stakeholder Minister.

4.1.3 Responsibility of the Board

The Board's responsibility under section 38 of the GBE Act is to ensure that the business and affairs of the GBE and its subsidiaries (if any) are conducted in a manner that is consistent with the Ministerial Charter.

4.1.4 Responsibility of the CEO

The responsibility of the CEO is to provide regular advice to the Board on whether the business and affairs of the GBE and its subsidiaries (if any) are conducted in a manner that is consistent with the Ministerial Charter.

4.1.5 Role of Treasury

As adviser to the Stakeholder Minister, Treasury reviews each GBE's draft Ministerial Charter. Where necessary, Treasury facilitates discussions to resolve any differences in relation to the draft Ministerial Charter prior to Stakeholder Minister endorsement and Portfolio Minister approval.

4.1.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 36 to 38
- the Ministerial Charter of each GBE
- Department of Treasury and Finance, *Model Ministerial Charter*

4.2 CORPORATE PLANS

4.2.1 Introduction

Corporate planning is a very important part of corporate governance. The Corporate Plan identifies and forecasts the objectives, business and operating environment and performance goals of a GBE and sets benchmarks against which actual performance can be compared. Corporate planning also aims to identify and manage any risks associated with a GBE's business environment.

GBEs are required to prepare a Corporate Plan in accordance with section 39 of the GBE Act. A Corporate Plan covering a minimum 5 year period must include the Statement of Corporate Intent, the main undertakings of the GBE, financial information and dividend estimates. Comparative data is required relating to the financial year during which the Corporate Plan is prepared, the previous financial year and a minimum of three forecasted years. The Statement of Corporate Intent is the summary of the Corporate Plan, which is required to be published in the Annual Report each year (see the section on 6.3 Annual Reports on page 41 of this handbook).

4.2.2 Timing

Section 39 of the GBE Act requires:

- a draft Corporate Plan, prepared by the Board, to be submitted to the Portfolio Minister by 31 March each year; and
- the Portfolio Minister to approve the final Corporate Plan by 31 May each year.

4.2.3 Responsibility of the Board

The Board's responsibility is to prepare a draft Corporate Plan for submission to the Portfolio Minister by 31 March each year. The Board may delegate this responsibility to the CEO of the GBE in accordance with section 15 of the GBE Act. However, it is the Board that is ultimately accountable for compliance with the corporate planning requirements of the GBE Act.

When preparing the draft Corporate Plan, the Board must consult with:

- the Portfolio Minister in relation to the interests of the State as a whole and the long term objectives of the GBE and its subsidiaries; and
- the Portfolio Minister and the Stakeholder Minister in relation to financial performance objectives.

4.2.4 Responsibility of the CEO

The responsibility of the CEO of the GBE is to assist the Board in preparing the Corporate Plan of the GBE. This responsibility includes the provision of information in all areas covered by the relevant Treasurer's Instructions.

4.2.5 Role of Treasury

Treasury, as advisers to the Stakeholder Minister, reviews each GBE's draft Corporate Plan to ensure compliance with the Treasurer's Instructions. Treasury also independently evaluates the financial projections and performance targets contained in each GBE's draft Corporate Plan. Treasury provides comments on each draft Corporate Plan to the Stakeholder Minister and, where appropriate, makes recommendations for revision to the draft Corporate Plan.

4.2.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 39 and 40
- Treasurer's Instruction GBE 06-39-01, *Corporate Plan*, January 1996
- Treasurer's Instruction GBE 06-41-01, *Statement of Corporate Intent*, September 1995

CHAPTER 5 - FINANCIAL AFFAIRS

5.1 FINANCIAL INVESTMENTS

5.1.1 Introduction

GBEs should have prudent investment policies to minimise any financial risks inherent in the market in which the GBE operates.

5.1.2 Responsibility of the Board

Section 44 of the GBE Act provides that, subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985* (Tascorp Act), a GBE may invest any funds held in any manner which is consistent with sound commercial practice and the Treasurer's Instructions.

It is the responsibility of the Board to establish investment objectives which form the framework and set the overall targets from which investment strategies are developed. In addition, it is the responsibility of the Board to monitor the GBE's compliance with established investment policies and regularly assess the continued appropriateness of the policies.

5.1.3 Responsibility of the CEO

It is the responsibility of the CEO to assist the Board in establishing investment objectives which form the framework and set the overall targets within which investment strategies are developed. In addition, it is the responsibility of the CEO, when making investments, to provide the Board with regular advice on the GBE's compliance with established investment policies and assist the Board in assessing the continued appropriateness of those policies.

5.1.4 Role of Treasury

The role of Treasury is to ensure that each GBE has in place an investment framework and to provide prudential guidelines for investment. Treasury does not have a role in the GBE's day to day investment decisions. However, Treasury's focus is to ensure that investment decisions are taken within a disciplined framework which has been determined by the Board.

Treasury advises the Treasurer on:

- whole of Government risk and investment management issues; and
- whether or not GBE Boards have in place prudent investment management frameworks.

5.1.5 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - section 44
- Tascorp Act - section 16
- Treasurer's Instruction, GBE 07-44-01, *Investments (including attached Prudential Guidelines - Investment by Tasmanian Government Business Enterprises)*, May 1996

5.2 FINANCIAL ARRANGEMENTS

5.2.1 Introduction

Financial arrangements are transactions such as currency swaps, interest rate swaps, forward exchange rate or interest rate agreements, futures contracts or options, currency options, interest rate options or any other transactions associated with hedging risks associated with movements in interest rates, commodity prices or exchange rates.

5.2.2 Responsibility of the Board

Section 48(3) of the GBE Act requires the Board to ensure that, where so approved by the Treasurer, any financial arrangement entered into or dealt in, by the GBE, is in accordance with the Treasurer's Instructions. The Treasurer must give prior approval to a GBE to use a Financial Arrangement. Treasurer's Instructions relating to financial arrangements have been issued to a small number of GBEs which are authorised to use financial arrangements.

The Board must also ensure that the GBE does not enter into any financial arrangement which is prohibited under section 5(1) of the *Financial Agreement Act 1994* (Financial Agreement Act).

5.2.3 Responsibility of the CEO

The responsibility of the CEO is to adequately monitor financial arrangements entered into or dealt in, by the GBE, to ensure they are in accordance with the Treasurer's Instructions and the Financial Agreement Act.

5.2.4 Role of Treasury

The role of Treasury is to ensure that prudent guidelines for financial arrangements are available to GBEs. Treasury does not have a role in the GBE's day to day decisions associated with financial arrangements. However, Treasury's focus is to ensure, as far as practicable, that financial arrangement decisions are taken in accordance with sound commercial practice, the GBE Act and the Treasurer's Instructions. Treasury also monitors that levels of use of financial arrangements are in compliance with the Treasurer's Instructions and provides advice to the Treasurer.

5.2.5 References

Further detail in relation to the preceding section can be found in the following references:

- Financial Agreement Act - section 5(1)
- GBE Act - sections 48 and 49
- Treasurer's Instruction GBE 07-48-01, *Financial Arrangements (HEC, Tascorp, MAIB, HECEC and Forestry Tasmania)*, October 1995

5.3 BORROWINGS

5.3.1 Introduction

Borrowings refers to any borrowing, loan, finance lease, temporary accommodation, advance or other form of raising funds where the principal is repayable. Borrowings of Government Business Enterprises continues to be perceived by financial markets as underwritten by the State Government.

5.3.2 Responsibility of the Board

The Board's responsibility is to ensure that any borrowing is in accordance with the GBE Act. The GBE Act allows:

- a GBE to borrow money from the Treasurer, after consultation with the Stakeholder Minister and the Portfolio Minister - section 45; and
- subject to section 16 of the Tascorp Act, a GBE to borrow money, or otherwise obtain financial accommodation, from a person other than the Treasurer - section 47.

Where a GBE does borrow, it is the responsibility of the Board to ensure that the GBE's affairs are conducted in a manner consistent with any terms and conditions of the borrowings.

5.3.3 Responsibility of the CEO

The responsibility of the CEO is to monitor borrowings to ensure that borrowings are in accordance with the GBE Act. Where a GBE does borrow, the responsibility of the Board to monitor that the GBE's affairs are conducted in a manner consistent with any terms and conditions of the borrowings is usually delegated to the CEO.

5.3.4 Role of Treasury

In cases where specific Government approval is required, Treasury's role is to provide advice to the Stakeholder Minister and/or the Treasurer as to whether it is appropriate for borrowings to be approved. This advice is based upon whether the borrowings are going to be used for the core business of the GBE and the impact of the borrowings on the balance sheet of the GBE. Treasury also provides advice on borrowing allocations for Loan Council.

5.3.5 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 45 and 47
- Tascorp Act - section 16

CHAPTER 6 - FINANCIAL STATEMENTS AND REPORTS

6.1 QUARTERLY PERFORMANCE REPORTING

6.1.1 Introduction

Monitoring of GBE performance by the Government is achieved by each GBE providing performance reports against agreed performance indicators. Performance reporting assists the Government in assessing the efficiency and effectiveness of each GBE's operations and allows for the timely detection of adverse financial performance changes in GBEs.

6.1.2 Timing

Section 57 of the GBE Act requires the Board of each GBE to prepare a quarterly performance report for the first three quarters of each financial year and submit it to the Portfolio Minister and the Stakeholder Minister by:

- 31 October (first quarter);
- 30 January (second quarter); and
- 30 April (third quarter) each financial year.

The GBE Act does not require a quarterly performance report to be submitted to the Portfolio Minister and the Stakeholder Minister in respect of the fourth quarter of each financial year. Instead, each GBE is required to prepare an annual report in respect of the financial and non-financial results of the preceding financial year.

6.1.3 Responsibility of the Board

The Board's responsibility is to prepare a quarterly performance report in accordance with the Treasurer's Instructions and submit the report to the Portfolio Minister and the Stakeholder Minister by the required deadline.

In preparing each quarterly performance report, it is the responsibility of the Board to:

- review trends in the financial performance of the GBE;
- seek information from the CEO where the actual financial performance of the GBE differs materially (at least ten per cent) from budgeted levels, including reasons for the changes in financial performance, any action taken or that will be taken in the future and the long-term effects of any changes in financial performance;
- include in the quarterly performance report any future events which are expected to impact on the future operations of the GBE, such as industry competition, economic trends and legislation review programs affecting the GBE and, if possible, information on the magnitude of the impact and the likelihood of the change occurring; and
- provide advice to the Portfolio Minister and the Stakeholder Minister on the reasons for any changes in financial performance and the long-term effects of such changes, particularly in terms of likely changes in future payments to the Consolidated Fund and levels of return on equity in respect of the Government's investment in the GBE.

6.1.4 Responsibility of the CEO

The Board's responsibility to prepare the quarterly performance reports of the GBE is usually delegated to the CEO. Where this is the case, the CEO has the responsibility for ensuring that the quarterly performance reports are prepared and submitted by the required deadlines and in accordance with the Treasurer's Instructions.

The CEO must provide sufficient detail in each quarterly report and must properly explain significant variations between budgeted and actual financial performance, including future implications of any significant variance between budgeted and actual financial performance on the Government's investment in the GBE, in order for Treasury to assess the efficiency and effectiveness of the GBE's operations and provide advice to the Stakeholder Minister.

6.1.5 Role of Treasury

Treasury monitors each GBE's Quarterly Report to ensure compliance with Treasurer's Instruction 08-57-01 or 08-57-01P. Treasury also analyses each GBE's Quarterly Report to determine trends in the financial performance of the GBE, and provides a summary of the analysis to the Stakeholder Minister.

6.1.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - section 57
- Treasurer's Instruction GBE 08-57-01, *Quarterly Reports*, October 1995
- Treasurer's Instruction GBE 08-57-01P, *Quarterly Reports (HEC, HECEC and Tascorp)*, September 1995

6.2 FINANCIAL STATEMENTS

6.2.1 Introduction

Financial statements are a necessary source of information for monitoring the financial performance of each GBE. Financial statements include an operating statement, a statement of financial position and a statement of cash flows.

6.2.2 Timing

Section 52 of the GBE Act requires that, by 29 August each financial year, the Board must:

- prepare and certify the financial statements of the GBE to be in accordance with the current applicable Treasurer's Instructions; and
- provide the Auditor-General with the GBE's financial statements and consolidated financial statements, where appropriate.

Under section 53 of the GBE Act, a GBE's Board may apply in writing by 15 August to the Stakeholder Minister for an extension of time in which to prepare the GBE's financial statements.

6.2.3 Responsibility of the Board

The Board's responsibility is to ensure that the financial statements are completed by the due date. Under section 52 of the GBE Act, the financial statements should include:

- a profit and loss statement;
- a balance sheet;
- a cash flow statement;
- a statement of income tax equivalence;
- statements, reports and notes, attached to, or intended to be read in conjunction with, the financial statements;
- a statement of compliance; and
- any other information required by the Treasurer's Instructions.

A minimum of two Directors must sign a Statement of Certification, which verifies the information contained in the Financial Statements.

6.2.4 Responsibility of the CEO

The Board's responsibility to prepare financial statements is usually delegated to the CEO. Accordingly, the CEO must ensure the financial statements are prepared by 29 August each year.

The CEO must, as soon as possible, advise the Board if the financial statements cannot be prepared by the due date. In such a case, the CEO should explain to the Board the reasons for the inability to complete financial statements within the due date. The Board must prepare a submission to the Stakeholder Minister by 15 August for an extension of time in which to prepare the financial statements of the GBE.

6.2.5 References

Further detail in relation to the preceding section can be found in the following references:

- Australian Institute of Company Directors, *50 Matters to be Considered by Directors Prior to Signing a Company's Financial Statements*
- GBE Act - Sections 52 and 53
- Treasurer's Instruction, GBE 08-51-02, *Application of Accounting Standards*, June 1996
- Treasurer's Instruction, GBE 08-52-01, *Financial Statements*, May 1997
- Treasurer's Instruction, GBE 08-52-02, *Certification of Financial Statements*, June 1996
- Australian Accounting Standards:
 - AAS 1, *Profit and Loss or other Operating Statements*, October 1995
 - AASB 1034, *Information to be Disclosed in Financial Reports*, December 1996
 - AAS 28, *Statement of Cash Flows*, December 1991

6.3 ANNUAL REPORTS

6.3.1 Introduction

The GBE annual report contains the achievements and financial results of a GBE during the financial year to which the report relates.

6.3.2 Timing

Section 56 of the GBE Act requires the Portfolio Minister to table before Parliament the GBE's annual report within five months after the end of the financial year (30 November for all GBEs except the Totalizator Agency Board, which has until 31 December to table its Annual Report each financial year).

6.3.3 Responsibility of the Board

The Board is to prepare the GBE annual report each financial year and provide it to the Portfolio Minister, Stakeholder Minister and the Auditor-General. The statutory disclosure requirements of the annual report are detailed in section 55(2) of the GBE Act. The annual report must be accompanied by a Statement of Corporate Intent for the following financial year, which must be signed and dated by at least two Directors.

In addition to the statutory disclosure requirements the Board can report additional information in the GBE's annual report. Such additional information could include:

- highlights of the financial year to which the annual report relates, including any developments in financial performance, pricing policies, customer relations and other information;
- an overview of the financial year to which the annual report relates, written by the Chairman of the GBE;
- an overview of the key operational areas of the GBE;
- a five year summary, containing key elements of the balance sheet, profit and loss statement and cash flow statement as well as a statement of key performance indicators (including financial and non-financial performance indicators), both in tabular and graphical form;
- forward projections for key performance objectives beyond the subsequent financial year to which the annual report relates such as Net Profit, Return on Assets, Return on Equity and non-financial performance measures relating to the efficiency and effectiveness of each GBE's operations, for example staff turnover and accident free work days;
- any information relating to activities of the Board of the GBE, such as Corporate Governance Practices followed by GBEs, Board composition, types of Board committees and activities of each Board committee and number of attendances of the GBE Board and each Board committee;
- information relating to the employees of the GBE; and
- any other information which the Board wishes to include in the GBE's annual report.

Notwithstanding that the Board may delegate the preparation of the annual report to the CEO, the Board remains responsible for the preparation of the annual report and the accuracy of the information contained in the annual report. This is emphasised by the Statement of Compliance which must be signed and dated by two Board members.

6.3.4 Responsibility of the CEO

The Board usually delegates the preparation of the Annual Report to the CEO . The CEO has the responsibility of ensuring that the annual report is completed in sufficient time so as to enable the tabling before Parliament of the annual report by 30 November each financial year.

6.3.5 Role of Treasury

Treasury reviews each GBE's Annual Report and monitors each GBE's achievement of Key Performance Objectives such as Net Profit, Return on Assets, Return on Equity and non-financial performance measures relating to the efficiency and effectiveness of each GBE's operations. Treasury provides a report to the Stakeholder Minister summarising the financial and non-financial performance of each GBE against the targets set in the corporate plan and prior year results.

6.3.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 55 and 56;
- Treasurer's Instruction GBE 06-41-01, *Statement of Corporate Intent*, September 1995
- Treasurer's Instruction, GBE 08-55-01, *Statement of Compliance*, June 1996

CHAPTER 7 - FINANCIAL RETURNS TO THE GOVERNMENT

7.1 INTRODUCTION

The GBE Board is accountable to the Government for the GBE's performance. In turn, the Government is accountable to Parliament and ultimately the community. The Government and the community have the right to expect a reasonable return on the GBE's assets in the form of dividends, guarantee fees and taxes received from each GBE. Reasonable returns to the Government from the GBE directly impact on the wealth of the Tasmanian community through the taxation severity and net debt per Tasmanian household that must be borne in order for the Government to achieve its fiscal objectives.

7.2 ORDINARY DIVIDENDS

7.2.1 Introduction

The Community as the owner of each GBE is entitled to a return on its investment in the form of dividends. The provisions of the GBE Act in relation to dividends aim to ensure that an appropriate rate of return is realised on the Government's investment in GBEs on behalf of the community.

7.2.2 Timing

Each financial year, the following deadlines apply:

- the Board must recommend a dividend by 29 August each year in relation to the financial year just ended;
- the Portfolio Minister and Stakeholder Minister must determine the final dividend of a GBE by 28 October each year; and
- the GBE must pay the final dividend determined for the preceding financial year by 15 June in the following calendar year.

7.2.3 Responsibility of the Board

The Board's dividend recommendation is based on the financial results of the preceding financial year. The dividend recommendation must be based on the *Guidelines for Dividend Returns from Government Business Enterprises*, issued in June 1997, which stipulate:

- a primary benchmark of a dividend distribution of at least 50 per cent of after tax profit; and
- a secondary benchmark of a dividend and tax equivalent payment of at least 70 per cent of pre-tax profits.

Where the Board recommends a dividend different from the above benchmarks, based on GBE specific factors, clear justifications must be provided. The departure from the benchmark should be explained in terms of projected cash flow statements.

The Board of the GBE is responsible for monitoring the payment of the final dividend by 15 June each year.

7.2.4 Responsibility of the CEO

The responsibility of the CEO of the GBE is to provide the Board with all the relevant information necessary to formulate a dividend recommendation, including:

- the profit and loss statement of the GBE for the financial year concerned;
- the income tax payable by the GBE for the financial year concerned;
- the cash flow statement of the GBE at the end of the financial year concerned; and
- any other financial commitments such as capital expenditure requirements and any necessity to build up reserves of the GBE.

It is the responsibility of the CEO of the GBE to ensure that the final dividend is paid by 15 June each year.

7.2.5 Dividend Calculation Example

Table 1 shows an example of how to calculate a dividend recommendation in accordance with the Treasurer’s Instructions and Guidelines.

In this example, using the primary benchmark, this GBE should recommend a dividend of \$750 000 (representing 50 per cent of after tax profits). The sum of this dividend amount and the income tax equivalent payable equals 63 per cent of before tax profits. Therefore, an additional dividend payment of \$150 000 is required (making a total dividend payment of \$900 000) in order to meet the secondary benchmark.

Table 1 - Dividend Calculation for a Government Business Enterprise

	\$'000	% of pre-tax profits
Net Profit before Tax	2 000	
Tax Equivalent in respect of that financial year	500	
Net Profit after Tax	1 500	
Dividend Distributions Primary Benchmark	750	38%
Total Tax Equivalent Plus Dividend Payment	1 250	63%
Dividend Distribution Secondary Benchmark	900	
Total Tax Equivalent Plus Dividend Payment	1 400	70%

7.2.6 Role of Treasury

Treasury is responsible for:

- assessing the appropriateness of the dividend recommendations made by the Board of each GBE, based on the requirements of the Treasurer's Instruction 11-78-01 and attached guidelines, and GBE specific factors such as cash flow and capital expenditure requirements;
- providing advice on each dividend recommendation to the Stakeholder Minister and the Treasurer; and
- the collection of ordinary dividend payments and ensuring that the payment of ordinary dividends are made by the required date.

7.2.7 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - Sections 82 to 84 and Sections 87 to 88
- Department of Treasury and Finance, *Guidelines for Dividend Returns from Government Business Enterprises*, June 1997
- Treasurer's Instruction, GBE 11-87-01, *Dividends*, September 1996
- Treasurer's Instruction, GBE 13-114-01, *Dividend Returns*, May 1997

7.3 SPECIAL DIVIDENDS

7.3.1 Introduction

Section 86 of the GBE Act provides for the payment of special dividends to the Government under certain circumstances. The Government, as shareholder-owner, may seek special dividends payable from accumulated profits and/or capital reserves. The special dividend is unrelated to current year profits, and is in the nature of a return on excess reserves, capital or provisions to the Government, as owner.

7.3.2 Responsibility of the Stakeholder Minister and the Portfolio Minister

In order for a special dividend to be paid under the GBE Act, the Portfolio Minister and the Stakeholder Minister must direct the Board to pay a special dividend. Before making such a direction, both Ministers must consult with the GBE and be satisfied that the GBE has sufficient liquid assets to meet its contingent and financial needs after it pays the special dividend.

7.3.3 Responsibility of the Board

It is the responsibility of the Board of the GBE to monitor that the special dividend directed by the Portfolio Minister and the Stakeholder Minister is paid by the required date.

7.3.4 Responsibility of the CEO

It is the responsibility of the CEO to ensure that payment of the special dividend as directed by the Portfolio Minister and the Stakeholder Minister is made by the required date.

7.3.5 Role of Treasury

Treasury is responsible for:

- providing advice to the Stakeholder Minister as to circumstances in which a special dividend should be sought from a GBE and the amount of such a dividend;
- providing advice to the Stakeholder Minister as to whether the GBE has sufficient liquid assets to meet its contingent and financial needs after it pays the special dividend; and
- the collection of special dividend payments and ensuring that the payment of special dividends are made by the required date.

7.3.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - Sections 86 to 88
- Department of Treasury and Finance, *Guidelines for Dividend Returns from Government Business Enterprises*, June 1997
- Treasurer's Instruction, GBE 11-87-01, *Dividends*, September 1996

7.4 GUARANTEE FEES

7.4.1 Introduction

Guarantee fees offset GBEs receiving lower interest rates on borrowings as a result of the reduced risk associated with borrowing under the umbrella of the State. Guarantee fees therefore remove any advantages a GBE might otherwise enjoy as a result of its Government ownership, meeting the competitive neutrality principle of the NCP. Guarantee fee rates are based on the difference between interest rates at which GBEs have borrowed and interest rates which would have been payable had GBEs raised funds in the open market, without any explicit or implicit assistance from Government.

7.4.2 Timing

Guarantee fees are payable by GBEs in two equal instalments during the year to which they relate. Guarantee fees are based upon the amount of financial accommodation as at the end of the preceding financial year. The guarantee fee instalments are payable on:

- 1 December; and
- 1 June each financial year.

7.4.3 Responsibility of the Board

The Board's responsibility is to ensure the lodgement of Guarantee Fee Returns and payment of guarantee fees to the Consolidated Fund each financial year.

7.4.4 Responsibility of the CEO

Section 78 of the GBE Act provides that a GBE listed in Schedule 3 of the GBE Act must pay an annual guarantee fee into the Consolidated Fund. The responsibility for the payment of guarantee fee rests with the CEO. The CEO must ensure that:

- the guarantee fee to be paid to the Consolidated Fund is calculated in accordance with the Treasurer's Instructions; and
- guarantee fee returns and payments are submitted and remitted to the Government on time.

7.4.5 Role of Treasury

Treasury is responsible for:

- providing advice to the Treasurer on the appropriate guarantee fee rate to set each financial year;
- providing advice to each GBE of the approved guarantee fee rates that are applicable each financial year; and
- the collection of guarantee fee payments and ensuring that the payment of guarantee fees are made by the required date.

7.4.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 77 to 81
- Treasurer's Instruction, GBE 11-78-01, *Guarantee Fees*, January 1996

7.5 INCOME TAX EQUIVALENT PAYMENTS

7.5.1 Introduction

The objective of the Tasmanian Income Tax Equivalent (ITE) regime is to mirror the requirements of the Commonwealth Income Tax legislation and thereby place GBEs in an equivalent competitive position to non-Government owned entities. GBEs are required to self assess their liability and remit payments to the Government in accordance with the due dates adopted by the Commonwealth income taxation system.

7.5.2 Timing

Section 68(1) of the GBE Act requires the GBE to provide, to the Treasurer, an estimate of the amount of ITE that is likely to be payable, in respect of that financial year, by 30 days before the end of the financial year (ie by 31 May).

GBEs are required to pay instalments of ITE payments in respect of each financial year on the following dates:

- 1 March;
- 1 June;
- 1 September; and
- 1 December.

However, where the GBE's notional or estimated tax for the relevant financial year is less than \$8 000, the total tax liability can be paid in one instalment on 1 December in the year following the relevant financial year.

7.5.3 Responsibility of the Board

Section 67 of the GBE Act requires a GBE to pay an ITE into the Consolidated Fund each financial year. The Board's responsibility is to ensure the lodgement of ITE Returns and payment of ITE instalments in accordance with the Treasurer's Instructions to the Consolidated Fund each financial year.

7.5.4 Responsibility of the CEO

The responsibility for the payment of ITE payments effectively rests with the CEO of the GBE. The CEO must ensure that:

- the ITE liability is calculated in accordance with the *Income Tax Assessment Act (Commonwealth) 1936* and the Treasurer's Instructions;
- an estimate of ITE liability for each financial year is provided by 31 May; and
- ITE payments are paid to the Consolidated Fund by the required due dates.

7.5.5 Role of Treasury

Treasury is responsible for the administration of Tasmanian Income Tax Equivalent Regime, including:

- administering ITE Audits;
- providing advice to the Stakeholder Minister on expected receipts in the form of ITE payments; and
- the collection of ITE instalments and ensuring that the payment of ITE are made by the required dates.

7.5.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 67 to 69
- *Income Tax Assessment Act (Commonwealth) 1936*
- *Taxation Administration Act (Commonwealth) 1953*
- Treasurer's Instructions, *Tasmanian Tax Equivalent Regime, Part 1 - Income Tax Equivalentents*, September 1995

7.6 WHOLESALE SALES TAX EQUIVALENT PAYMENTS

7.6.1 Introduction

The objective of the Tasmanian Wholesale Sales Tax Equivalent (WSTE) regime is to place GBEs on the same competitive basis as non-Government entities. On this basis, GBEs are required to pay an amount equivalent to the benefit they receive from their tax exempt status as a Government entity. Each GBE has a Memorandum of Understanding (MOU) with the Treasurer, which sets out the administrative arrangements for the application of the WSTE regime to the GBE.

7.6.2 Timing

GBEs are required to submit WSTE returns and payments to the Consolidated Fund in accordance with the GBE's MOU, the Treasurer's Instructions and the GBE Act.

7.6.3 Responsibility of the Board

Section 70 of the GBE Act requires a GBE to pay sales tax equivalents into the Consolidated Fund. The Board's responsibility is to ensure the lodgement of WSTE Returns and the payment of WSTE instalments to the Consolidated Fund are in accordance with the Treasurer's Instructions each financial year.

7.6.4 Responsibility of the CEO

The responsibility for the payment of WSTE payments effectively rests with the CEO. The CEO must ensure that:

- WSTE liability is calculated in accordance with the *Sales Tax Assessment Act 1992 (Commonwealth)*, the Treasurer's Instructions and the GBE's MOU; and
- WSTE payments are paid to the Consolidated Fund by the required dates.

7.6.5 Role of Treasury

Treasury is responsible for the administration of the Tasmanian Tax Equivalent Regime, including:

- providing advice to the Stakeholder Minister on expected receipts in the form of WSTE payments; and
- the collection of WSTE instalments and ensuring that the payment of WSTE are made by the required dates.

7.6.6 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - sections 70 to 73
- *Sales Tax Assessment Act 1992 (Commonwealth)*
- *Sales Tax (Exemptions and Classifications) Act 1992 (Commonwealth)*
- Treasurer's Instructions, *Tasmanian Tax Equivalent Regime, Part 2 - Wholesale Sales Tax Equivalents*, September 1995

CHAPTER 8 - OTHER REQUIREMENTS

8.1 COMMUNITY SERVICE OBLIGATIONS

8.1.1 Introduction

Community Service Obligations (CSOs) are recognised non-commercial activities undertaken by a GBE on behalf of the Government. The CSO contract with a GBE enables the Government to achieve its economic, social and other objectives, without impacting on the commercial performance of the GBE.

The key elements of a CSO are:

1. a specific directive from Government must exist (either in legislative form or a direction underwritten by legislation) to perform the non-commercial activity; and
2. the activity is one which would not be performed if the GBE were free to act commercially (that is, the GBE incurs a net cost in providing the CSO).

A CSO is undertaken in accordance with a CSO contract, which details the activity to be undertaken by the GBE as a CSO, funding arrangements, performance indicators and other information. The Government expects a GBE to provide a CSO in an efficient and effective manner.

8.1.2 Timing

If the Board is of the opinion that the GBE is currently providing a non-commercial activity which may be a potential CSO, the Board can make an application to the Portfolio Minister for declaration of the activity as a CSO. Funding of approved CSOs commences the financial year after the CSO contract has been declared.

8.1.3 Responsibility of the Board

Potential CSOs

The Board has an ongoing responsibility to monitor any non-commercial activities provided by the GBE, in part to enable the Board to identify potential CSOs. If the Board does identify a potential CSO, it may submit a request to the Portfolio Minister for declaration of a CSO in accordance with section 60 of the GBE Act. Otherwise, the Board should direct the GBE to cease providing the activity and direct the GBE to focus on its commercial activities.

Declared CSOs

The Board must ensure that a declared CSO is delivered in an efficient and effective manner. This is achieved by the regular monitoring of performance indicators stipulated in the CSO contract and to generally ensure that the GBE is delivering the CSO efficiently and effectively.

8.1.4 Responsibility of the CEO

Potential CSOs

The CEO has an ongoing responsibility to assist the Board in monitoring the non-commercial activities provided by the GBE. If the CEO identifies a potential CSO, the Board should be notified so that the Board can make a request to the Portfolio Minister for declaration of a CSO. If a non-commercial activity is identified and a request is not made to the Portfolio Minister, or a CSO is declined, then the CEO should ensure that the GBE ceases that activity.

Declared CSOs

The responsibility of the CEO is to ensure that CSOs are delivered in an efficient and effective manner. The CEO should ensure that the GBE meets the performance indicators in the CSO contract and the CSO is undertaken efficiently and effectively.

8.1.5 Role of Treasury

The role of Treasury in relation to CSOs is to:

- evaluate any CSO applications submitted to the Government;
- provide advice to the Stakeholder Minister on applications submitted for CSOs and the performance of CSOs;
- participate in the negotiation of the CSO contract; and
- ensure that the Government's funding for CSOs is spent efficiently and effectively.

8.1.6 References

Further detail in relation to the preceding section can be found in the following references:

- Department of Treasury and Finance, *Community Service Obligation Policy for Government Business Enterprises*, July 1996
- Department of Treasury and Finance, *Guidelines - Community Service Obligations*, July 1996
- GBE Act - sections 59 to 65
- Treasurer's Instruction, GBE 09-60-01, *Community Service Obligations*, July 1996
- Treasurer's Instruction, GBE 13-114-04, *Application for Community Service Obligation*, July 1996

8.2 EMPLOYEE ISSUES

8.2.1 Introduction

Employee entitlements and relations are important responsibilities of the Board and the CEO, notwithstanding the fact that the GBE may utilise persons employed under the *Tasmanian State Service Act 1984* (TSS Act) or have an independent employing power.

8.2.2 Responsibility of the Board

Overall responsibility for the setting of human resources policies rests with the Board. However, GBEs are expected to conform with the employee policies set out in the GBE's Ministerial Charter and legislated industrial relations and employment policies of the Government, such as general working conditions, equal employment opportunity practices and other policies.

Section 22 of the GBE Act allows a GBE that does not employ State Servants under the TSS Act to establish one or more superannuation schemes outside the *Retirement Benefits Fund*. However, the Treasurer must approve the establishment of a separate superannuation scheme.

8.2.3 Responsibility of the CEO

Responsibility for the day to day management of employee issues rests with the CEO. The CEO is expected to monitor compliance with the employee policies set out in the GBE's Ministerial Charter and the legislated industrial relations and employment policies of the Government, such as general working conditions, equal employment opportunity practices and other policies.

The CEO is responsible for ensuring that the day to day employing arrangements of the GBE are conducted in accordance with the TSS Act where applicable or other applicable employing arrangements.

8.2.4 References

Further detail in relation to the preceding section can be found in the following references:

- GBE Act - Sections 21 to 23
- TSS Act

8.3 ADMINISTRATIVE LAW

8.3.1 Introduction

All GBEs, with the exception of the Civil Construction Corporation and Forestry Tasmania, are subject to the provisions of the *Freedom of Information Act 1991* (FOI Act). GBEs which are listed in Schedule 1 of the *Ombudsman Act 1978* (Ombudsman Act) are subject to the provisions of the Ombudsman Act.

8.3.2 Freedom of Information Act

Section 7 of the FOI Act gives a person a legally enforceable right to be provided with information contained in records in the possession of the GBE, unless the information is exempt information. Sections 23 to 36 of the FOI Act set out 15 categories of information which are exempt from release. It should be noted that section 9 of the FOI Act precludes a person from obtaining information under the FOI Act which may be inspected in accordance with another Act or purchased through the normal course of business, for example, publications sold by the Printing Authority of Tasmania.

Responsibility for decisions made in respect of a request made under the FOI Act

Responsibility for making decisions in respect of information provided in response to a FOI request rests with the Board. This responsibility is usually delegated to the CEO of the GBE. Although there is no legislative requirement in the FOI Act to appoint a Freedom of Information Officer, a Freedom of Information Officer may be appointed to deal with freedom of information requests.

8.3.3 Ombudsman Act

The Ombudsman provides an independent review of the administrative actions of those GBEs which are subject to the Ombudsman Act.

The Ombudsman, on receipt of a complaint from members of the public, will assess the complaint and, depending on the type of complaint, may²⁰:

- make preliminary enquiries to decide if the complaint made by members of the public warrants further investigation;
- refer the complainant to alternative review processes;
- conduct a full investigation; and
- recommend changes to GBE practices and policies.

²⁰ The Tasmanian Ombudsman, *The Tasmanian Ombudsman*

8.3.4 References

Further detail in relation to the preceding section can be found in the following references:

- Department of Premier and Cabinet, Freedom of Information Unit, *Freedom of Information Guidelines*, January 1993
- *Freedom of Information Act (Tasmania) 1991*
- *Ombudsman Act (Tasmania) 1978*
- The Tasmanian Ombudsman, *The Tasmanian Ombudsman*

8.4 PAYROLL TAX

8.4.1 Introduction

Section 50 of the GBE Act states that a GBE or subsidiary is not exempt from a State charge merely because it is or may be the Crown. Accordingly, each GBE is subject to Pay-roll Tax.

As from 1 July 1997, any employer, whether in this State or elsewhere, who pays wages to employees in Tasmania, and whose total wages paid in Australia are greater than \$600 000 per annum (or \$50 000 per month) is liable for pay-roll tax in Tasmania. A comprehensive booklet is available upon request, which explains in detail the obligations devolving on employers.

8.4.2 Timing

An employer who is registered under the Act must, within seven (7) days after the close of each month, furnish to the Commissioner of Pay-roll Tax, a return in the prescribed form relating to that month.

An employer can request in writing, permission to lodge returns on a quarterly, half yearly or yearly basis in certain circumstances.

8.4.3 Responsibility of the Board

The Act requires payment of Pay-roll Tax to be made within seven (7) days after the close of each return period. The Taxation Administration Act 1997 provides for additional (penalty) tax to be charged for late lodgements. Penalties also apply for incorrect. The responsibility of the Board is to ensure that adequate systems are in place so that Pay-roll tax can be paid to the Government by the required due dates.

8.4.4 Responsibility of the CEO

Employers registered or required to be registered, must keep proper books or accounts and preserve them for a period of five (5) years to enable tax to be calculated. Any person who fails to register or lodge any return or information required by the Commissioner of Pay-roll Tax, is guilty of an offence the penalty for which is \$10 000. The CEO must ensure that adequate records are kept to enable the proper calculation of Pay-roll Tax liability and that Pay-roll Tax returns and payments are submitted to the Government by the required due dates.

8.4.5 Role of Treasury

Pay-roll Tax is imposed and collected in Tasmania in accordance with the *Pay-roll Tax Act 1971*. The Act is administered by the Revenue and Gaming Division of the Department of Treasury and Finance.

Application for registration as an employer must be submitted on the form available from the Revenue Operations Branch of the Revenue and Gaming Division of the Department of Treasury and Finance.

8.4.6 References

Further detail in relation to the preceding section can be found in the following references:

- *Pay-roll Tax Act 1971*
- *Taxation Administration Act 1997*

8.5 LAND TAX

8.5.1 Introduction

Section 50 of the GBE Act states that a GBE or subsidiary is not exempt from a State charge merely because it is or may be the Crown. Accordingly, each GBE is subject to Land Tax.

Land Tax is calculated on the aggregate of the assessed land values of property owned by a taxpayer as at 1 July each year. The owner of the property on 1 July each year, is liable to pay the tax. An owner is defined as the registered proprietor of the land under the *Lands Titles Act 1980*.

Land is classified into three categories -

- *Principal Residence Land* refers to land on which a dwelling, flat or structure used for domestic purposes is erected and occupied by the owner as the principal place of residence as at 1 July.
- *Rural Land* includes land of ten hectares or more used principally for primary production, and land of less than ten hectares used primarily for primary production and which provides the owners or occupiers with their only or principal source of income.
- *General Land* is every other type of land.

Principal Residence Land and *Rural Land* are now exempt from Land Tax, therefore only *General Land* attracts tax. The onus is on the taxpayer to apply for the appropriate classification.

8.5.2 Timing

Land Tax is assessed on 1 July each year, and the request for payment of the tax is forwarded to taxpayers, usually from November onwards. The tax is payable within 30 days of issue of the notice. From 1 July 1998, the Commissioner of Taxes may accept payment in three instalments for assessments of over \$1 000.

An objection to the account must be made in writing within 60 days from the date of issue of the notice, stating the reasons for the objection. An objection does not defer a taxpayer's liability to pay the Land Tax by the due date. An objection against the land value can only be made to the Valuer-General.

If an account is not paid by the due date, additional tax of 10% of the outstanding balance is automatically imposed. Thereafter there may be escalating penalties, including recovery of the debt through the Courts.

8.5.3 Responsibility of the Board

Legal owners of land are responsible for the payment of Land Tax and for complying with the provisions of the legislation. The responsibility of the Board is to ensure that adequate systems are in place so that Land Tax can be paid to the Government by the required due dates.

8.5.4 Responsibility of the CEO

Legal owners of land are responsible for the payment of Land Tax by the due date and to advise the Commissioner of Taxes, of changes in circumstance that affect the details maintained in relation to the owner.

8.5.5 Role of Treasury

The Department of Treasury and Finance through the Revenue and Gaming Division is responsible for the administration and collection of the Land Tax under the *Land and Income Taxation Act 1910*.

8.5.6 References

Further detail in relation to the preceding section can be found in the following references:

- *Land and Income Taxation Act 1910*
- *Lands Titles Act 1980*

8.6 STAMP DUTIES

8.6.1 Introduction

Section 50 of the GBE Act states that a GBE or subsidiary is not exempt from a State charge merely because it is or may be the Crown. Accordingly, each GBE is subject to Stamp Duty.

Stamp Duty is imposed on a range of legal and commercial documents (and in some cases on a statement prepared by taxpayers where a dutiable document is not brought into existence). Stamp Duty is also payable on certain transactions such as rental business and credit cards.

8.6.2 Timing

- Documents must be stamped within 60 days of the date of execution to avoid the imposition of penalties (6 months and 60 days for an agreement for the sale of a business or an agreement for the sale of realty).
- Returns relating to the self assessment of documents or transaction duties must be lodged within 10 days of the end of the month to which the return relates. The Commissioner may, by agreement with the taxpayer, allow returns to be lodged quarterly, half-yearly or annually.

8.6.3 Responsibility of the Board

The Board is responsible for ensuring that the CEO comply with its obligations under the *Stamp Duties Act 1931*.

8.6.4 Responsibility of the CEO

The CEO is responsible for ensuring compliance with the *Stamp Duties Act 1931*. The CEO is responsible for the lodgement of certain documents (eg on a conveyance of real property) and the payment of assessed duty within the specified time.

8.6.5 Role of Treasury

Treasury, through the Revenue and Gaming Division, is responsible for the administration and collection of Stamp Duties. The Division also conduct routine compliance checks on various individuals and organisations in relation to Stamp Duties.

8.6.6 References

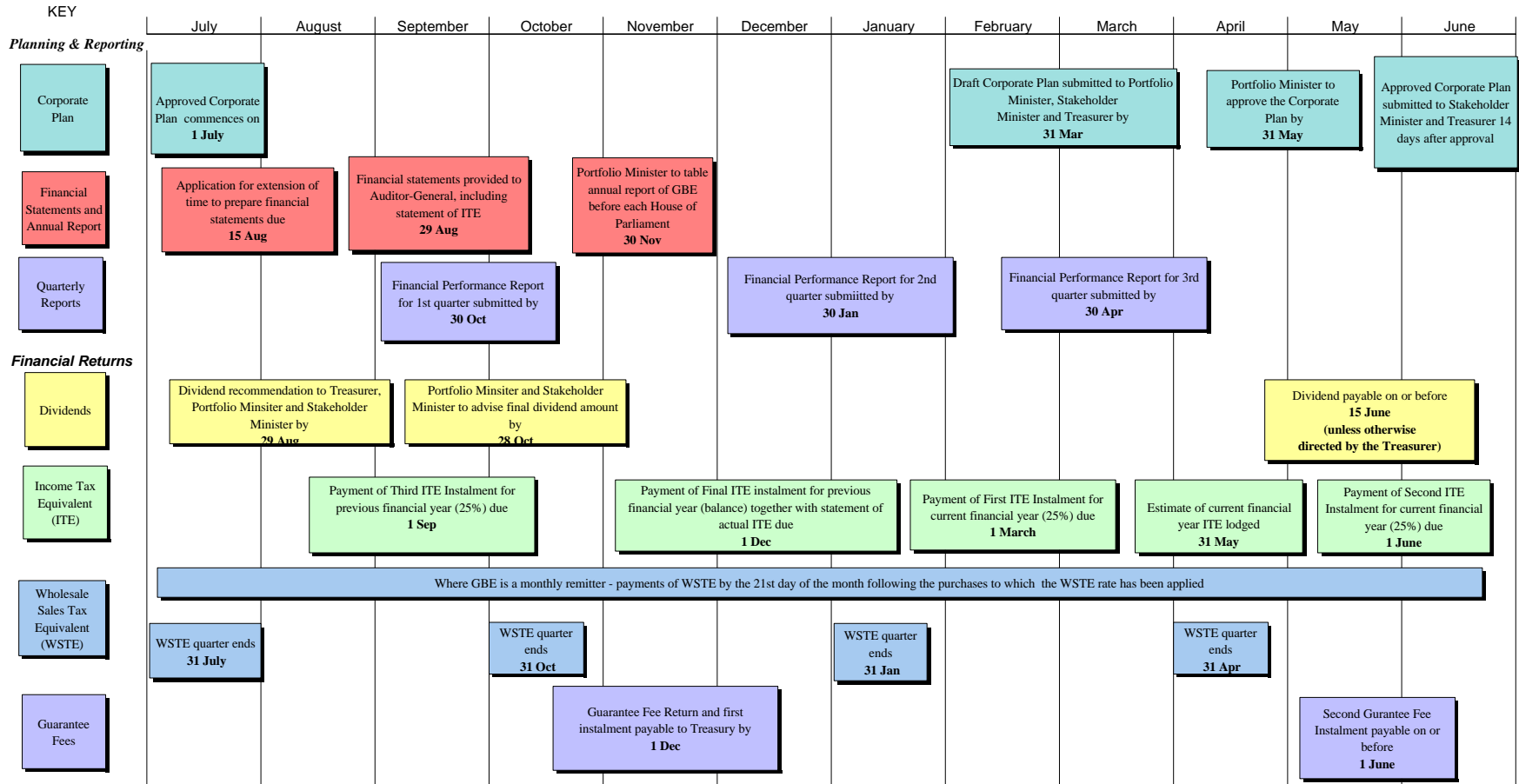
Further detail in relation to the preceding section can be found in the following references:

- *Stamp Duties Act 1931*; and
- *Stamp Duty Regulations 1966*.

LIST OF ABBREVIATIONS

AICD	Australian Institute of Company Directors
CEO	Chief Executive Officer
CSO	Community Service Obligation
FOI	Freedom of Information
GBE	Government Business Enterprise
GBE Act	<i>Government Business Enterprises Act 1995</i>
GPOC	Government Prices Oversight Commission
ITE	Income Tax Equivalent
NCC	National Competition Council
NCP	National Competition Policy
WSTE	Wholesale Sales Tax Equivalent

APPENDIX 1 - GBE PLANNER



Department of Treasury and Finance, December 1998

USEFUL REFERENCES AND FURTHER READING

TREASURER'S INSTRUCTIONS AND GUIDELINES

Accounting Records and Reports

Treasurer's Instruction, GBE 08-51-02, *Application of Accounting Standards*, June 1996

Treasurer's Instruction, GBE 08-52-01, *Financial Statements*, May 1997

Treasurer's Instruction, GBE 08-52-02, *Certification of Financial Statements*, June 1996

Treasurer's Instruction, GBE 08-55-01, *Statement of Compliance*, June 1996

Treasurer's Instruction, GBE 08-57-1, *Quarterly Reports (including Attached Proformas)*, October 1995

Asset Valuation

Department of Treasury and Finance, *Valuation of Non-Current Physical Assets by Government Business Enterprises and Port Authorities Guidelines*, January 1996

Treasurer's Instruction, GBE 13-114-01, *Asset Valuation*, January 1996

Community Service Obligations

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