

First print



New South Wales

State Owned Corporations Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish a new class of State owned corporations, to be known as "statutory State owned corporations" or "statutory SOCs". The existing class of State owned corporations will in future be known as "company State owned corporations" or "company SOCs".

Some changes are also made to the legislation as it applies to company SOCs.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the *State Owned Corporations Act 1989*.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the *Irrigation Corporations Act 1994*.

Clause 5 is a formal provision that gives effect to the Schedule of amendments to other Acts.

Schedule 1 Amendment of State Owned Corporations Act 1989

The Schedule contains amendments to the *State Owned Corporations Act 1989* (the SOC Act) to provide for the establishment of a new class of State owned corporations (SOCs), to be known as statutory SOCs, and to make general amendments that apply to each class of State owned corporations.

At present, the only class of SOCs that can be established comprise companies established under the *Corporations Law*. These will in future be known as company SOCs. The new class of statutory SOCs will be statutory corporations, not companies, but they will share many characteristics of companies. For example, they will have a memorandum and articles of association, a board of directors and shareholders.

Legislation setting up a statutory SOC will "plug into" the Bill, by inserting the name of the body into Schedule 5. The Bill will provide the overall structure. There will be two ways of establishing statutory SOCs. The first way will involve a separate Act that will create a corporation, confer functions on it, and insert its name into Schedule 5. The second way will involve regulations under the Bill, which will designate a government entity (eg a Department or part of a Department) and insert its name into Schedule 5 (this action will result in the creation of a corporation).

Because a new class of SOCs is being created, many of the amendments are machinery in nature, in that they merely re-arrange or amend the Act to allow for the new class of SOCs, and introduce the terminology "company SOCs" for existing kinds of SOCs. These amendments are described below as machinery amendments.

Schedule 1 (1)–(5) amend the definitions in section 3 of the SOC Act to introduce the concepts described above.

Schedule 1 (6) is a basic provision stating that there are two kinds of SOCs.

Schedule 1 (7)–(11) are machinery amendments.

Schedule 1 (12) inserts a new Part 3 into the SOC Act to deal with the new class of statutory SOCs. Many of the provisions parallel existing provisions as they apply or will apply to company SOCs. These are noted below. The new Part contains the following provisions:

- Proposed section 20A provides for the establishment of statutory SOCs by the insertion of the name of a body into Schedule 5. This parallels section 4 of the SOC Act.
- Proposed sections 20B–20F parallel sections 5–9 of the SOC Act.
- Proposed section 20G enables regulations to apply provisions of the *Corporations Law* to statutory SOCs, but otherwise that Law does not apply to statutory SOCs.
- Proposed section 20H requires statutory SOCs to have a share capital and shares. Each statutory SOC is to have only two shareholders, each being Ministers (one of whom is the Treasurer).
- Proposed section 20I provides for the designation of a Minister as the “portfolio Minister” for a particular statutory SOC, who has various responsibilities under the Act for the administration of the SOC.
- Proposed section 20J provides for the appointment of a board of directors of a statutory SOC. One of the directors is to be selected from staff of the SOC.
- Proposed section 20K requires the appointment of a chief executive officer of a statutory SOC.
- Proposed section 20L gives the primary responsibility for the operations of a statutory SOC to its board of directors, while the day to day management is the responsibility of the chief executive officer under the board.
- Proposed section 20M enables staff to be appointed by a statutory SOC.
- Proposed section 20N empowers the portfolio Minister to require a statutory SOC to perform or refrain from performing functions, subject to re-imburement of the SOC. This section parallels section 11 of the SOC Act.

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- Proposed sections 20O and 20P empower the portfolio Minister to require a statutory SOC to comply with public sector policies as notified to it and to comply with directions given to it in the public interest in exceptional circumstances, subject in each case to re-imburement.
- Proposed sections 20Q and 20R require a statutory corporation and any subsidiary to have a memorandum and articles of association. These are to include the provisions contained in new Schedules 6 and 7.
- Proposed section 20S deals with dividends. Subsection (1) provides for a dividend scheme. Subsections (2)–(4) parallel section 14 of the SOC Act. Subsection (5) ensures that statutory SOCs are subject to the dividend provisions of section 59B of the *Public Finance and Audit Act 1983*.
- Proposed sections 20T–20V parallel sections 15–17 of the SOC Act.
- Proposed section 20W makes it clear that a statutory SOC can be involved in the formation of companies, but only with the approval of the shareholders. Subsections (2)–(4) parallel section 18 of the SOC Act.
- Proposed sections 20X and 20Y parallel sections 19 and 20 of the SOC Act.
- Proposed sections 20Z–20ZE provide for statutory corporations to have generally the legal capacity of companies, with the powers of natural persons (the doctrine of ultra vires is disapplied).

Schedule 1 (13) and (14) are machinery amendments.

Schedule 1 (15) inserts a section to ensure that statutory SOCs are subject to public sector requirements regarding auditing and annual reporting.

Schedule 1 (16)–(23) require copies of directions, notifications and the like given to statutory SOCs to be tabled in Parliament.

Schedule 1 (24) gives the portfolio Minister power to require a statutory SOC to supply the Minister with information relating to the affairs of the SOC.

Schedule 1 (25) inserts a new section 33A, which gives effect to a Schedule setting out duties and liabilities of directors and officers of statutory SOCs. Some provisions also apply to company SOCs. The Schedule can be amended by regulation—it is envisaged that amendments can be made to reflect alterations made to corresponding provisions in the *Corporations Law*.

The item also inserts a new section 33B, which provides machinery for dealing with offences against the Act. Offences are found in the new Schedule 10.

Schedule 1 (26) omits section 35, which applied Commonwealth affirmative action law to SOCs to the extent that it did not apply of its own force. A separate amendment is made by the Bill to extend Part 9A of the *Anti-Discrimination Act 1977* to both company SOCs and statutory SOCs.

Schedule 1 (27) and (28) deal with the application of the *Public Finance and Audit Act 1983*. The Act generally does not apply to SOCs. However, Part 4 continues to apply (Public Accounts Committee). Section 59A (dividends) and Part 3 (audit) apply to statutory SOCs.

Schedule 1 (29) and (30) are machinery amendments.

Schedule 1 (31) enables regulations to be made regarding the selection of a director of a SOC from staff.

Schedule 1 (32) is a formal provision giving effect to a Schedule of savings and transitional provisions.

Schedule 1 (33)–(35) are machinery amendments.

Schedule 1 (36) provides for the appointment of a staff director for each company SOC.

Schedule 1 (37) and (38) are machinery amendments.

Schedule 1 (39) amends the Schedule relating to staff rights. This Schedule will apply to statutory SOCs as well as company SOCs. The amendment makes a consequential amendment regarding statutory SOCs.

Schedule 1 (40) inserts the shell of a new Schedule 5, into which the names of new statutory SOCs can be inserted by future legislation.

Schedule 1 (41) and (42) contain the basic provisions that must be contained in the memorandum and articles of association of statutory SOCs and their subsidiaries. The provisions parallel Schedules 2 and 3 to the SOC Act.

Schedule 1 (43) inserts a Schedule of provisions applying to the constitution and procedure of boards of directors of statutory SOCs. There is provision for the appointment of a Chairperson and deputies of directors. The maximum term of office is 5 years, although re-appointment is possible. Other provisions are set out in the Schedule.

Schedule 1 (44) inserts a Schedule of provisions applying to chief executive officers of statutory SOCs. Provision is made for conditions of employment and for requiring performance agreements. The maximum term of office is 5 years, although re-appointment is possible. Other provisions are set out in the Schedule.

Schedule 1 (45) inserts a Schedule setting out duties and liabilities of directors and other officers of (principally) statutory SOCs, as mentioned in relation to proposed section 33A above.

Schedule 1 (46) inserts a Schedule of savings and transitional provisions. Apart from a regulation-making power, the amendments deal with how the requirement for staff directors is to be phased in for the existing two SOCs.

Schedule 2 Amendment of Irrigation Corporations Act 1994

The Schedule contains amendments to the *Irrigation Corporations Act 1994*. The amendments provide that the two bodies that under the existing legislation are to become irrigation corporations will become statutory SOCs instead of company SOCs. They will not be able to be privatised without further legislation.

Schedule 3 Amendment of other Acts

The Schedule contains amendments to other Acts, including the following amendments. The *Anti-Discrimination Act 1977* is amended to apply Part 9A to State owned corporations. The *Environmental Planning and Assessment Act 1979* is amended to provide that a statutory SOC is a public authority for the purposes of that Act. The *Freedom of Information Act 1989* is amended to provide that statutory SOCs are public authorities for the purposes of that Act. The *Public Sector Management Act 1988* is amended to bring the positions of director and chief executive officer of a statutory SOC within the removal provisions of the Act. The *Water Board (Corporatisation) Act 1994* is amended to bring the provisions relating to the appointment of one of the directors of Sydney Water Corporation Limited into line with the new requirement for each SOC to have a staff director.



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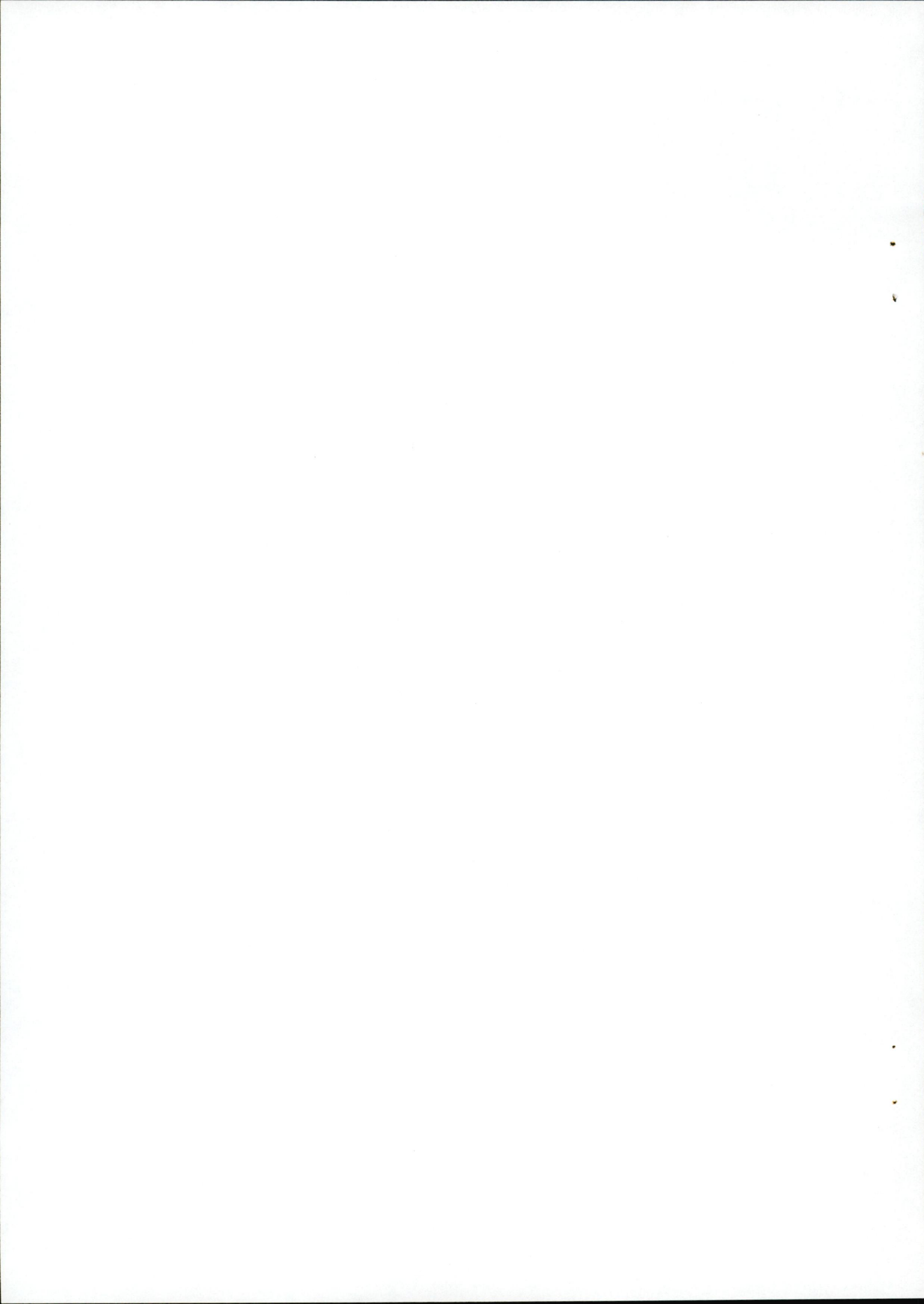
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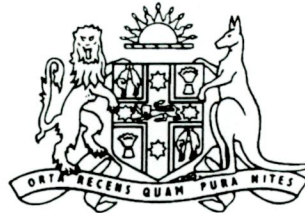
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New South Wales

State Owned Corporations Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *State Owned Corporations Act 1989* to vary the statutory provisions regarding State owned corporations and to provide for the establishment of statutory State owned corporations; to amend the *Irrigation Corporations Act 1994* and certain other Acts in relation to State owned corporations; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Owned Corporations Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of State Owned Corporations Act 1989 No 134

The *State Owned Corporations Act 1989* is amended as set out in Schedule 1.

4 Amendment of Irrigation Corporations Act 1994 No 41 10

The *Irrigation Corporations Act 1994* is amended as set out in Schedule 2.

5 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule. 15

**Schedule 1 Amendment of State Owned
Corporations Act 1989**

(Section 3)

[1] Section 3 Definitions

Section 3 (1)

5

Insert in alphabetical order:

company State owned corporation or *company SOC*
means a company for the time being specified in
Schedule 1.

constitution means:

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- (a) for a State owned corporation—the memorandum
and articles of association of the corporation, or
- (b) for a subsidiary of a State owned corporation—the
memorandum and articles of association of the
subsidiary.

15

foundation charter of a statutory SOC means the Act or
regulations by which the name of the SOC is inserted in
Schedule 5, or some other Act or instrument specified
by an Act as its foundation charter, and includes any
replacement Act, regulations or instrument.

20

government entity means:

- (a) a State department, administrative office,
instrumentality, agency, authority or entity, that is
not a corporation, or
- (b) a division, branch or other part of such a
department, office, instrumentality, agency,
authority or entity.

25

portfolio Minister—see section 20I.

statutory State owned corporation or *statutory SOC*
means a corporation for the time being specified in
Schedule 5.

30

[2] Section 3 (1)

Omit the definition of *eligible Ministers*.

Insert instead:

eligible Ministers means:

- (a) in relation to a company SOC or proposed company SOC or any of its subsidiaries—the Treasurer and 4 or more other Ministers for the time being nominated by the Premier as being eligible to hold shares in the SOC, or 5
- (b) in relation to a statutory SOC or proposed statutory SOC or any of its subsidiaries—the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC. 10

[3] Section 3 (1)

15

Omit the definition of *State owned corporation*.

Insert instead:

State owned corporation or *SOC* means a company for the time being specified in Schedule 1 or a corporation for the time being specified in Schedule 5. 20

[4] Section 3 (1)

Insert “, and (in relation to a statutory SOC) includes a body corporate that would be such a subsidiary if the statutory SOC were a company SOC” after “law” in the definition of *subsidiary*.

[5] Section 3 (1)

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Omit the definition of *voting shareholders*.

Insert instead:

voting shareholders means:

- (a) in relation to a company SOC or any of its subsidiaries—the Treasurer and one of the other eligible Ministers who is for the time being 30

nominated by the Premier as a voting shareholder of the SOC, in their capacities as shareholders in the SOC, or

- (b) in relation to a statutory SOC or any of its subsidiaries—the shareholders of the SOC as referred to in section 20H, in their capacities as shareholders in the SOC. 5

[6] Section 3A

Insert after section 3:

3A Classes of State owned corporations 10

There are two classes of State owned corporations, as follows:

- (a) company State owned corporations (or company SOCs),
- (b) statutory State owned corporations (or statutory SOCs). 15

[7] Part 2, heading

Omit the heading. Insert instead “**Part 2 Company SOCs**”.

[8] Part 2, Division 1, heading

Insert before section 4 the heading: 20
“**Division 1 Establishment of company SOCs**”.

[9] Sections 4–7A

Omit “State owned corporation”, “State owned corporations” and “corporation” (occurrences not previously mentioned in this item) wherever occurring (including section headings, but not in section 7 (4)). 25

Insert instead “company SOC”, “company SOCs” and “SOC” respectively.

[10] Part 3, Division 2, heading

Omit the existing Part 3 heading.

Insert instead "**Division 2 Provisions relating to company SOCs**".

[11] Sections 8-20

Omit "State owned corporation", "State owned corporations", "corporation" (occurrences not previously mentioned in this item) and "corporation's" wherever occurring (including section headings). 5

Insert instead "company SOC", "company SOCs", "SOC" and "SOC's" respectively. 10

[12] Part 3

Insert after section 20:

Part 3 Statutory SOCs

Division 1 Establishment of statutory SOCs

20A Establishment of statutory SOCs 15

- (1) A corporation becomes a statutory SOC by the insertion of its name in Part 1 of Schedule 5 by an Act of Parliament.
- (2) A government entity that is not a corporation becomes a statutory SOC by the insertion of its name (being the name assigned to it by the regulations) in Part 2 of Schedule 5 by the regulations. 20
- (3) On the insertion of its name in Part 2 of Schedule 5, a government entity becomes a corporation by force of this section and ceases to be a government entity. 25
- (4) The regulations may:
 - (a) assign a name to a government entity, and insert its name in Part 2 of Schedule 5, and

- (b) make provision for or with respect to any matter for which it is necessary or convenient to make provision to facilitate the change of the entity to a corporation and a statutory SOC.

- (5) A company cannot become a statutory SOC. 5

20B Change or removal of name of statutory SOC

- (1) The regulations under this Act may amend Part 1 of Schedule 5 to reflect a change of name of a statutory SOC contained in that Part.
- (2) The regulations under this Act may amend Part 2 of Schedule 5 to change the name of a statutory SOC contained in that Part. 10
- (3) The name of a statutory SOC may not be removed from Schedule 5 except by an Act of Parliament.

20C Transfer of assets, rights and liabilities 15

- (1) Assets, rights and liabilities of the State or an authority of the State and forming part of or relating to an undertaking carried on by or under the authority of a Minister or a government entity, or under the executive authority of the State, may be transferred to a statutory SOC or any of its subsidiaries, in exchange for the issue of shares or on any other basis. 20
- (2) The regulations under this Act may make provision for or with respect to the transfer of any such assets, rights and liabilities to a statutory SOC or any of its subsidiaries. 25
- (3) The regulations under this Act may provide that references in any Act, or in any regulation or other statutory rule under any Act, or in any other instrument, or in any contract or agreement, to: 30
 - (a) the State or an authority of the State, in connection with any such assets, rights or liabilities or in connection with any such undertaking, or

- (b) (without limiting the above) a Minister or a government entity or an officer or employee of a government entity,

are to be read as references to a statutory SOC or any of its subsidiaries or to a director, officer or employee of any such SOC or subsidiary. 5

- (4) This section does not apply to assets, rights and liabilities of a statutory corporation unless:

- (a) the assets, rights and liabilities can be transferred to the statutory SOC apart from this section, or 10
- (b) an Act of Parliament provides that this section applies to the assets, rights and liabilities of the statutory corporation.

20D Ministerial direction

For the purposes of or incidental to the transfer from an authority to a statutory SOC, a subsidiary of a statutory SOC or any other person of any assets, rights or liabilities under this Act or under the Act or regulation by which the name of the statutory SOC is inserted in Schedule 5, the authority is, in the exercise of its functions, subject to the control and direction of the Minister. 15
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Division 2 Provisions relating to statutory SOCs

20E Principal objective of statutory SOCs

- (1) The principal objective of every statutory SOC is to be a successful business and, to this end: 25
 - (a) to operate at least as efficiently as any comparable businesses, and
 - (b) to maximise the net worth of the State's investment in the SOC, and 30
 - (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate these when able to do so.

-
- (2) This section has effect subject to the foundation charter of a statutory SOC. This subsection does not affect the generality of section 32.

20F Status of statutory SOCs

- A statutory SOC or any of its subsidiaries: 5
- (a) is not and does not represent the State except by express agreement with the voting shareholders of the SOC, and
 - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a SOC, and 10
 - (c) cannot render the State liable for any debts, liabilities or obligations of the SOC or any of its subsidiaries,
- unless this or any other Act otherwise expressly provides. 15

20G Corporations Law

- (1) The provisions of the *Corporations Law* prescribed by the regulations (with or without prescribed modifications) apply to a statutory SOC as if: 20
 - (a) the SOC were a public company and a company limited by shares, and
 - (b) the shares in the SOC held by the voting shareholders were shares held in the SOC as a public company and a company limited by shares. 25
- (2) The provisions of the *Corporations Law* do not apply to a statutory SOC, except as expressly provided by or under this or any other Act.
- (3) A statutory SOC is an exempt public authority for the purposes of the *Corporations Law*. 30

20H Share capital, shares and shareholders

- (1) A statutory SOC is to have a share capital and shares as provided in its constitution.
- (2) A statutory SOC must have two shareholders, and no more at any time. 5
- (3) Each shareholder must at all times have an equal number of shares in the statutory SOC.
- (4) Each shareholder must at all times be entitled to rights equal to those to which the other shareholder is entitled.
- (5) The shareholders are to be the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC. The Premier can be nominated as a voting shareholder. 10

20I Portfolio Minister

- (1) The Minister who has the duty to administer the foundation charter of a statutory SOC is the portfolio Minister of the SOC. 15
 - (2) However, if:
 - (a) there is not a Minister who is the portfolio Minister under subsection (1), or 20
 - (b) the Premier is of the opinion that another Minister should be the portfolio Minister,
- the portfolio Minister of the SOC is the Minister nominated by the Premier by order published in the Gazette. 25
- (3) Such a nomination is to be made by reference to a ministerial title. The Premier can be nominated as a portfolio Minister.

20J Directors

- (1) There is to be a board of directors of a statutory SOC.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors appointed by the Governor on the recommendation of the voting shareholders. 5
- (3) Of the directors:
 - (a) one is to be a staff director, and
 - (b) the others are to be persons who, in the opinion of the voting shareholders, will assist the SOC to achieve its principal objective. 10
- (4) The staff director is to be selected in accordance with the procedures specified in the SOC's foundation charter or (in the absence of any such procedures) in accordance with the relevant provisions of Schedule 8.
- (5) The chief executive officer may be appointed as a director. 15
- (6) The board is accountable to the voting shareholders in the manner set out in Part 4 and in the constitution of the SOC.
- (7) Schedule 8 has effect with respect to the constitution and procedure of the board. 20

20K Chief executive officer

- (1) Every statutory SOC is to have a chief executive officer.
- (2) The Governor, on the recommendation of the portfolio Minister, may appoint the chief executive officer of a statutory SOC. Such an appointment cannot be effected unless it is recommended by the board. 25
- (3) The chief executive officer of a statutory SOC may delegate any functions of the chief executive officer to an employee of the SOC, but this power is subject to any directions of the board. 30
- (4) Schedule 9 has effect with respect to the chief executive officer of a statutory SOC.

20L Operation and management

- (1) All decisions relating to the operation of a statutory SOC are to be made by or under the authority of the board.
- (2) The chief executive officer of a statutory SOC is, subject to subsection (1), responsible for the day to day management of the operation of the SOC in accordance with the general policies and specific directions of the board. 5

20M Staff

- (1) A statutory SOC may employ such staff as it requires to exercise its functions. 10
- (2) A statutory SOC may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The regulations may make provision for or with respect to the employment of the staff of a statutory SOC, including the conditions of employment and the discipline of any such staff. 15
- (4) Any such regulations relating to the conditions of employment or the discipline of staff: 20
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the SOC is a party, and
 - (b) have effect despite any determination of the SOC under subsection (2). 25
- (5) Except as provided by the regulations under this Act, this section does not apply to the appointment, employment or conditions of employment of the chief executive officer of a statutory SOC. 30
- (6) Except as provided by the regulations under this Act, this section applies to a subsidiary of a statutory SOC (other than a company) and its staff in the same way as it applies to the SOC and its staff.

20N Non-commercial activities

- (1) If the portfolio Minister wishes a statutory SOC to perform activities, or to cease to perform activities, or not to perform activities, in circumstances where the board considers that it is not in the commercial interests of the SOC to do so, that Minister with the approval of the Treasurer may, by written notice to the board, direct the SOC to do so in accordance with any requirements set out or referred to in the notice. 5
- (2) The SOC is required to comply with any such direction. 10
- (3) The SOC is entitled to be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts equal to:
- (a) the net cost of performing any such activities, including the cost of capital, and 15
- (b) the net cost of complying with a direction to cease to perform or not to perform any such activities.
- (4) The amounts and times of payment of those amounts are as agreed between the Treasurer and the SOC or (failing agreement) as determined by a suitably qualified person or persons nominated by the Premier. 20
- (5) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net amount of revenue forgone through ceasing to perform or not performing any such activities, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances. 25

20O Power of portfolio Minister to notify board of public sector policies 30

- (1) The portfolio Minister with the approval of the Treasurer may notify the board of a statutory SOC, in writing, of a public sector policy that is to apply to the SOC and its subsidiaries if the portfolio Minister is satisfied that it is necessary to give the notification in the public interest. 35

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Schedule 1 Amendment of State Owned Corporations Act 1989

- (2) The board must ensure that the policy is carried out in relation to the SOC and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.
- (3) Before giving a notification under this section, the portfolio Minister must: 5
- (a) consult with the board, and
 - (b) request the board to advise the portfolio Minister whether, in its opinion, carrying out the policy would not be in the best interests of the SOC or any of its subsidiaries. 10
- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a notification, or the estimated net amount of revenue forgone through complying with such a notification, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances. 15

20P Power of portfolio Minister to give directions in public interest 20

- (1) The portfolio Minister with the approval of the Treasurer may give the board of a statutory SOC a written direction in relation to the SOC and its subsidiaries if the portfolio Minister is satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest. 25
- (2) The board must ensure that the direction is carried out in relation to the SOC and must, as far as practicable, ensure that the direction is complied with in relation to its subsidiaries. 30
- (3) Before giving a direction under this section, the portfolio Minister must:
- (a) consult with the board, and

-
- (b) request the board to advise the portfolio Minister whether, in its opinion, complying with the direction would not be in the best interests of the SOC or any of its subsidiaries.
- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a direction, or the estimated net amount of revenue forgone through complying with such a direction, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances. 5
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20Q Memorandum and articles of statutory SOCs

- (1) A statutory SOC is to have a memorandum and articles of association (its constitution). 15
- (2) As far as practicable, the constitution of a statutory SOC is to have the same operation and effect in relation to the SOC as the constitution of a company has in relation to the company.
- (3) The constitution of a statutory SOC may contain matters that, for a company, would be found in the *Corporations Law*. 20
- (4) The constitution of a statutory SOC may make provision for or with respect to the provision, form, custody and use of the seal of the SOC. Any such provisions have effect despite section 50 of the *Interpretation Act 1987*. 25
- (5) The constitution of a statutory SOC may contain provisions regarding the manner of alteration or replacement of the constitution.
- (6) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of the SOC at all times contains provisions to the effect of those required by Schedule 6. 30

- (7) The constitution may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (6) or any other provisions of this Act.
- (8) This section does not apply to the extent provided in resolutions of both Houses of Parliament. 5

20R Memorandum and articles of subsidiaries

- (1) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of every subsidiary of the SOC at all times contains provisions to the effect of those required by Schedule 7. 10
- (2) The constitution may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (1) or any other provisions of this Act.
- (3) This section does not apply to the extent provided in resolutions of both Houses of Parliament. 15

20S Dividends

- (1) A statutory SOC is to have a share dividend scheme, as provided in its constitution, in a form approved by the Treasurer. 20
- (2) The board of a statutory SOC and the voting shareholders may agree that payments required to be made by the SOC or any of its subsidiaries in respect of dividends will be applied in the purchase of shares by shareholders in the SOC. 25
- (3) If any such payments are applied in the purchase of shares, the payments may be appropriated for that purpose without being paid into the Consolidated Fund.
- (4) Otherwise, dividends declared for a statutory SOC or any of its subsidiaries and payable to voting shareholders are to be paid to the Treasurer on behalf of the State for payment into the Consolidated Fund. 30

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- (5) Nothing in this section affects the operation of section 59B of the *Public Finance and Audit Act 1983* in relation to statutory SOCs.

20T Tax-equivalents

- (1) A statutory SOC must from time to time pay to the Treasurer for payment into the Consolidated Fund such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the SOC if it were liable to pay taxes under the law of the Commonwealth. 5
10
- (2) The SOC is not required to make payments under this section to the extent that it is or becomes liable to pay any such taxes.
- (3) Payments are to be made under this section on such terms as the Tax Assessor determines to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the SOC were liable to pay corresponding taxes under the law of the Commonwealth. 15
- (4) The SOC and the Treasurer may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (3). 20
- (5) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements. 25
- (6) Any such determination of the Tax Assessor is final, and the Treasurer and the SOC are required to make all the necessary payments and refunds to give effect to the determination. 30
- (7) The Premier may nominate any person or persons to be the Tax Assessor for any one or more statutory SOCs, and may revoke any such nomination.

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- (8) This section applies to the subsidiaries of a statutory SOC in the same way as it applies to the SOC, and (where relevant) applies to the SOC and its subsidiaries as a group.
- (9) Amounts required to be paid under this section are called tax-equivalents. 5
- (10) In this section:
Tax Assessor, in relation to a statutory SOC, means the person nominated for the time being under subsection (7) as the Tax Assessor for the SOC. 10

20U Government guarantee

- (1) The obligations of a statutory SOC or any of its subsidiaries are not guaranteed by the State of New South Wales, except to the extent that the board of the SOC and the voting shareholders agree in writing. 15
- (2) Any liability arising from an agreed guarantee is to be met out of the Consolidated Fund, which is appropriated accordingly.
- (3) The voting shareholders may, after consultation with the board of the SOC, fix charges to be paid by the SOC or any of its subsidiaries to the Treasurer in respect of an agreed guarantee, either generally or in so far as it relates to specified matters. 20
- (4) Payments by the SOC or any of its subsidiaries to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines. 25

20V State taxation

- (1) In this section:
exempt matter means: 30
- (a) the issue or transfer of shares of a statutory SOC or any of its subsidiaries to eligible Ministers, or

- (b) the transfer of assets, rights or liabilities to a statutory SOC or any of its subsidiaries from the State, any authority of the State or any subsidiary of an authority of the State, or
 - (c) giving effect to any of the above. 5
- tax* includes stamp duty and any other tax, duty, fee, levy or charge, but does not include tax-equivalents.
- (2) Tax under a law of the State is not payable in relation to:
 - (a) an exempt matter, or
 - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter. 10
 - (3) The Treasurer or a person authorised by the Treasurer may, by a written instrument, certify that: 15
 - (a) a specified matter or thing is an exempt matter, or
 - (b) a specified thing was done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter. 20
 - (4) For all purposes and in all proceedings, a certificate under this section is conclusive evidence of the matters certified, except so far as the contrary is established. 25

20W Private corporations and subsidiaries

- (1) A statutory SOC may, subject to this section:
 - (a) form or participate in the formation of private corporations, and
 - (b) acquire interests in private corporations, and 30
 - (c) sell or otherwise dispose of interests in private corporations,

whether or not the activities or proposed activities of any such private corporation are related to the functions of the SOC as set out in its foundation charter.

- (2) A statutory SOC or any of its subsidiaries may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders. 5
- (3) A statutory SOC or any of its subsidiaries may not acquire or dispose of shares of a company, or participate in any other transaction, resulting in the company becoming or ceasing to be a subsidiary, without the prior written approval of the voting shareholders. 10
- (4) In seeking the approval of the voting shareholders, the SOC or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act. 15
- (5) In this section:
- private corporation* means a corporation within the meaning of the *Corporations Law* formed in or outside New South Wales. 20

20X Acquisition and disposal of assets, investments and liabilities

- (1) A statutory SOC or any of its subsidiaries may not acquire or dispose of fixed assets or investments, including shares in a company, without the prior written approval of the voting shareholders: 25
- (a) where the total assets and investments being acquired or disposed of (together with any other such acquisitions or dispositions during the last 12 months) represent an amount in excess of the prescribed percentage of the written down value of the SOC's consolidated fixed assets and investments as disclosed in its last audited accounts, or 30 35

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- (b) where it could reasonably be expected that the inclusion or exclusion, respectively, of the total current year's profit or loss of such acquisition or disposition (together with any other such acquisitions or dispositions during that year) would result in an increase in or diminution of the SOC's consolidated pre-tax operating profit or loss for the year of acquisition or disposal in excess of the prescribed percentage compared with that consolidated pre-tax operating profit or loss disclosed in its last audited accounts. 5
- (2) In the case of an acquisition to which this section applies, the amount is the cost price of the asset or investment. 10
- (3) In the case of a disposition to which this section applies, the amount is the book value or the consideration or disposal, whichever is the greater. 15
- (4) A statutory SOC or any of its subsidiaries may not acquire or dispose of any assets or liabilities, in contravention of any requirements of the regulations under this Act. 20
- (5) In seeking the approval of the voting shareholders under this section, the SOC or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act. 25
- (6) The prescribed percentage is 10 per cent or such other percentage as is prescribed by the regulations under this Act.
- (7) All or any specified requirements of subsections (1), (2) and (3) do not apply in such circumstances as are specified in a written notice given to a statutory SOC or a subsidiary of a statutory SOC by the Treasurer. 30
- (8) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the SOC or subsidiary in the circumstances or would apply to it in a clearly inappropriate manner. 35

- (9) The voting shareholders may, by written notice, direct a statutory SOC or its subsidiaries not to dispose of any specified asset.

20Y Sale or disposal of main undertaking

- (1) None of the main undertakings of a statutory SOC, and none of the main undertakings of any of its subsidiaries, may be sold or disposed of except with the prior written approval of the voting shareholders. 5
- (2) The main undertakings are as specified in the most recent statement of corporate intent of the SOC. 10

Division 3 Legal capacity and powers of statutory SOCs

20Z Interpretation

- (1) In this Division:
officer of a statutory SOC means: 15
- (a) a director of the SOC, or
 - (b) the chief executive officer of the SOC, or
 - (c) an employee of the SOC.
- restriction* includes prohibition.
- (2) In this Division: 20
- (a) the doing of an act by a statutory SOC includes a reference to the making of an agreement by the SOC and a reference to a transfer of property to or by the SOC, and
 - (b) a reference to power includes a reference to legal capacity. 25

20ZA Objects of Division

- (1) The objects of this Division include:
- (a) providing that the doctrine of ultra vires does not apply to statutory SOCs, and 30

(b) ensuring that statutory SOCs give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.

(2) This Division is to be construed and have effect accordingly. 5

20ZB General powers of statutory SOCs

(1) A statutory SOC has, for or in connection with the performance of its functions, all the powers of a natural person, including for example, the power: 10

(a) to enter into contracts, and

(b) to acquire, hold, dispose of and deal with property, and

(c) to appoint agents and attorneys, and

(d) to charge, and fix terms, for goods, services and information supplied by it, and 15

(e) to engage consultants, and

(f) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions. 20

(2) Without limiting subsection (1), a statutory SOC has the powers that are conferred on it by or under this or any other Act.

(3) A statutory SOC may exercise its powers within or outside the State. 25

(4) Without limiting subsection (3), a statutory SOC may exercise its powers outside Australia.

(5) The fact that the doing of an act by a statutory SOC would not be, or is not, in its best interests does not affect its legal capacity to do the act. 30

20ZC Restrictions on statutory SOCs

- (1) Section 20ZB has effect in relation to a statutory SOC subject to any restrictions on the SOC's powers expressly imposed by or under this or another Act.
- (2) Section 20ZB also has effect in relation to the SOC subject to any restrictions expressly imposed by:
 - (a) the SOC's constitution, and
 - (b) any relevant statement of corporate intent of the SOC, and
 - (c) any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (3) If:
 - (a) the SOC exercises a power contrary to a restriction mentioned in subsection (1) or (2), or
 - (b) the SOC's foundation charter sets out the SOC's objects or functions and the SOC does an act otherwise than in pursuance of the objects or functions,the SOC contravenes this subsection.
- (4) The exercise of the power mentioned in subsection (3) (a), or the act mentioned in subsection (3) (b), is not invalid merely because of the contravention.
- (5) An officer of the SOC who is involved in the contravention contravenes this subsection.
- (6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).
- (7) The SOC or officer of the SOC is not guilty of an offence merely because of the relevant contravention.
- (8) The fact that:
 - (a) by exercising the powers mentioned in subsection (3) (a), or doing the act as mentioned in subsection (3) (b), the SOC contravened, or would contravene, subsection (3), or

(b) by doing a particular act, an officer of the SOC contravened, or would contravene, subsection (5), may be asserted or relied on only in proceedings between the voting shareholders or the State and officers of the SOC.

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20ZD Persons having dealings with statutory SOC's or property

(1) A person having dealings with a statutory SOC is entitled to make, in relation to those dealings, the assumptions referred to in subsection (3). In any proceedings relating to those dealings, any assertion by the SOC that the matters that the person is so entitled to assume were not correct must be disregarded.

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(2) A person having dealings with another person (the apparent owner) who has acquired or purports to have acquired title to property from a statutory SOC (whether directly or indirectly) is entitled to make, in relation to the acquisition or purported acquisition of title from the SOC, the assumptions referred to in subsection (3). In any proceedings in relation to those dealings, any assertion by the SOC or by the apparent owner that the matters that the person is so entitled to assume were not correct must be disregarded.

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(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are:

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(a) that, at all relevant times, the SOC's foundation charter and this Act have been complied with, and

(b) that, at all relevant times, the SOC's constitution has been complied with, and

(c) that a person who appears from publicly available information to be a director, the chief executive officer or a secretary of the SOC has been duly appointed and has authority to exercise the functions customarily exercised by a director, by the chief executive officer or by a secretary, as the case may be, of a body carrying on a business of the kind carried on by the SOC, and

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- (d) that a person who is held out by the SOC to be an officer or agent of the SOC has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned, and 5
- (e) that an officer or agent of the SOC who has authority to issue a document on behalf of the SOC has authority to warrant that the document is genuine and that an officer or agent of the SOC who has authority to issue a certified copy of a document on behalf of the SOC has authority to warrant that the copy is a true copy, and 10
- (f) that a document has been duly sealed by the SOC if it bears what appears to be an impression of a seal of the SOC and the sealing of the document appears to be attested by a person who, because of paragraph (c), may be assumed to be a director of the SOC or the SOC's chief executive officer, and 15
- (g) that the directors, chief executive officer, employees and agents of the SOC have properly performed their duties to the SOC. 20
- (4) This section does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if: 25
 - (a) the person has actual knowledge that the assumption is not correct, or
 - (b) the person's connection or relationship with the SOC is such that the person ought to know that the assumption is not correct. 30
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption:
 - (a) if the assumption is in relation to dealings with the SOC—subsection (1) does not apply to any assertion by the SOC in relation to the assumption, or 35

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- (b) if the assumption is in relation to an acquisition or purported acquisition from the SOC of title to property—subsection (2) does not apply to any assertion by the SOC or another person in relation to the assumption.

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20ZE Effect of fraud

- (1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that any person:
- (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates, or
- (b) has forged a document that appears to have been sealed on behalf of a statutory SOC.
- (2) However, the person is not entitled to make the assumption if the person has actual knowledge of that fraudulent action or forgery.

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[13] Section 24 Annual reports and accounts: company SOCs

Omit "State owned corporation" wherever occurring.
Insert instead "company SOC".

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[14] Section 24

Omit "the corporation" and "The corporation" wherever occurring.
Insert instead "the SOC" and "The SOC" respectively.

[15] Section 24A

Insert after section 24:

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24A Annual reports and accounts: statutory SOCs

- (1) Part 3 of the *Public Finance and Audit Act 1983* applies to statutory SOCs and their subsidiaries, and they are statutory bodies for the purposes of that Part.

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- (2) The *Annual Reports (Statutory Bodies) Act 1984* applies to statutory SOCs, and they are statutory bodies for the purposes of that Act.
- (3) A reference in Part 3 of the *Public Finance and Audit Act 1983* to a Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs. 5
- (4) A reference in the *Annual Reports (Statutory Bodies) Act 1984* to the appropriate Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs. 10

[16] Section 26 Information to be laid before Parliament

Section 26 (1) (j)

Insert "or 20N" after "11". 15

[17] Section 26 (1) (l)

Insert "or section 20W, 20X or 20Y" after "20".

[18] Section 26 (1) (m)

Insert "or 20X (7)" after "19 (7)".

[19] Section 26 (1) (n)

Insert "or 20V (3)" after "17 (3)". 20

[20] Section 26 (1) (o)-(q)

Insert after section 26 (1) (n):

- (o) a copy of any written notification under section 20O, within 14 sitting days after the notification was given, 25

(p) a copy of any written direction under section 20P, within 14 sitting days after the direction was given,

(q) a copy of any written direction under clause 12 of Schedule 10, within 14 sitting days after the direction was given.

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[21] Section 26 (2)

Insert at the end of the subsection "This subsection does not apply to statutory SOCs."

[22] Section 26 (5) (a)

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Insert "or 20E (1) (c)" after "8 (c)".

[23] Section 26 (6)

Insert "or 20Y" after "20".

[24] Section 29 Other information to be supplied

Insert at the end of the section:

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(2) The board of a statutory SOC must supply to the portfolio Minister such information relating to the affairs of the SOC or any of its subsidiaries as the portfolio Minister may from time to time request (whether or not the information is of a kind referred to in the statement of corporate intent).

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[25] Sections 33A, 33B

Insert after section 33:

33A Duties and liabilities of directors and other officers

(1) Schedule 10 has effect.

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- (2) The regulations may amend or replace Schedule 10.
- (3) Any such regulations may:
 - (a) confer jurisdiction on courts in relation to the duties and liabilities of directors and officers and associated matters, and 5
 - (b) impose penalties not exceeding 500 penalty units or imprisonment not exceeding 5 years, or both.

33B Offences

- (1) Proceedings for an offence under this Act may be instituted at any time before the end of 3 years after the alleged commission of the offence. 10
- (2) Proceedings for an offence under this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate, or
 - (b) the Supreme Court in its summary jurisdiction. 15
- (3) The maximum penalty that may be imposed by a Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

[26] Section 35 Affirmative action

Omit the section. 20

[27] Section 35A

Insert before section 36:

35A Application of Public Finance and Audit Act 1983

- (1) The *Public Finance and Audit Act 1983* does not apply in relation to a State owned corporation or any of its subsidiaries, except as provided by section 24A and by this section. 25

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- (2) Part 4 of the *Public Finance and Audit Act 1983* applies in relation to a State owned corporation and its subsidiaries.
- (3) Section 59B of the *Public Finance and Audit Act 1983* applies to statutory SOCs and their subsidiaries, and they are statutory authorities for the purposes of that section. 5
- [28] Section 36 Application of other Acts**
Omit section 36 (1) (b).
- [29] Section 36 (2)**
Omit “such a corporation or subsidiary” wherever occurring. 10
Insert instead “a company SOC or any of its subsidiaries”.
- [30] Section 37A Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals**
Insert in alphabetical order in section 37A (1):
State owned corporation means a company SOC. 15
- [31] Section 38 Regulations**
Insert at the end of the section:
(2) Without limiting the generality of subsection (1), regulations may be made for or with respect to matters relating to the process for the selection of staff directors of State owned corporations. 20
- [32] Section 39**
Insert after section 38:
39 Savings and transitional provisions
Schedule 11 has effect. 25

[33] Schedule 1, heading

Omit the heading to Schedule 1.
Insert instead "**Schedule 1 Company SOCs**".

[34] Schedule 2, heading

Omit the heading to Schedule 2. 5
Insert instead "**Schedule 2 Provisions to be included in memorandum or articles of company SOCs**".

[35] Schedule 2

Omit "State owned corporation" where firstly occurring in Parts 1 and 2. 10
Insert instead "company SOC".

[36] Schedule 2, Part 2, clause 1A

Insert after clause 1 of Part 2:

1A Staff director

- (1) One of the directors of the corporation is to be a staff director. 15
- (2) The staff director is to be selected by a selection committee from members of the staff of the corporation who are nominated for selection.
- (3) The selection committee is to consist of two persons nominated by the corporation's voting shareholders and two persons nominated by the Labor Council of New South Wales. 20
- (4) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the voting shareholders. 25

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- [37] Schedule 3, heading**
- Omit the heading to Schedule 3.
Insert instead “**Schedule 3 Provisions to be included in memorandum or articles of association of subsidiaries of company SOCs**”.
- 5
- [38] Schedule 3**
- Omit “State owned corporation” where firstly occurring in Parts 1 and 2.
Insert instead “company SOC”.
- [39] Schedule 4 Provisions relating to certain staff**
- 10
- Insert “or the relevant foundation charter” after “Parliament” in the definition of *eligible employee* in clause 1.
- [40] Schedule 5**
- Insert in numerical order:
- Schedule 5 Statutory SOCs**
- 15
- (Sections 3, 20A, 20B)
- Part 1 Statutory SOCs inserted by Act**
- Part 2 Statutory SOCs inserted by regulation**
- [41] Schedule 6**
- 20
- Insert in numerical order:
- Schedule 6 Provisions to be included in memorandum or articles of association of statutory SOCs**
- (Section 20Q)
- Part 1 Memorandum**
- 25
- Provisions to the effect of the following provisions are to be included in the memorandum of association of a statutory SOC.

1 Entrenchment

The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 6 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament. 5

2 Act to prevail

The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the memorandum of association of the corporation. 10

Part 2 Articles

Provisions to the effect of the following provisions are to be included in the articles of association of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*. 15

1 Shareholders

- (1) Only eligible Ministers may hold shares in the corporation's issued share capital.
- (2) The shareholders hold their shares in the corporation for and on behalf of the State. 20
- (3) A person ceases to be eligible to hold shares in the corporation on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier). 25
- (4) A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister.
- (5) The Premier is empowered to execute a transfer of any issued shares, whether or not the person still holds office as an eligible Minister, and the corporation is required to register the transfer. 30

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- (6) The board of the corporation is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the memorandum and articles of association of the corporation.
 - (7) The corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares. 5
 - (8) Only the voting shareholders may cast votes.
 - (9) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes. 10

2 Subsidiaries

- (1) The corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders. 15
- (2) The corporation must ensure that the memorandum and articles of association of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its memorandum and articles of association (if any) and with the requirements of the *State Owned Corporations Act 1989*. 20

3 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the articles of association of the corporation. 25
- (2) The corporation is expressly prohibited from exercising any power of the corporation in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*. 30

[42] Schedule 7

Insert in numerical order:

Schedule 7 Provisions to be included in memorandum or articles of association of subsidiaries of statutory SOCs 5
(Section 20R)

Part 1 Memorandum

Provisions to the effect of the following provisions are to be included in the memorandum of association of each subsidiary of a statutory SOC. 10

1 Entrenchment

The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 7 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament. 15

2 Act to prevail

The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the memorandum of association of the subsidiary. 20

Part 2 Articles

Provisions to the effect of the following provisions are to be included in the articles of association of each subsidiary of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*. 25

1 Shareholders

- (1) Those shareholders in the subsidiary consisting of eligible Ministers (if any) hold their shares in the subsidiary for and on behalf of the State. 30

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- (2) Such a person ceases to be eligible to hold shares in the subsidiary on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (3) Such a shareholder may not sell or otherwise dispose of shares in the subsidiary otherwise than to an eligible Minister or to the State owned corporation or a subsidiary of the State owned corporation. 5
- (4) The Premier is empowered to execute a transfer of any shares that were issued or transferred to an eligible Minister, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister, and the subsidiary is required to register the transfer. 10
- (5) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary. 15
- (6) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the memorandum and articles of association of the subsidiary. 20
- (7) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (8) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the State owned corporation or by the Premier under subclause (4). 25

2 Subsidiaries

- (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the State owned corporation. 30

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- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*. 5
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association (if any) and with the requirements of the *State Owned Corporations Act 1989*. 10

3 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the articles of association of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*. 15

[43] Schedule 8

Insert in numerical order: 20

Schedule 8 Constitution and procedure of boards of statutory SOCs

(Section 20J)

1 Application of this Schedule

- (1) This Schedule applies in relation to the board of each statutory SOC (referred to in this Schedule as the board and the SOC respectively). 25
- (2) This Schedule applies only to the extent that the memorandum and articles of association of the SOC do not make provision for any matter dealt with in this Schedule. However, the memorandum and articles cannot override clause 5 or 7. 30

2 Chairperson

- (1) Of the directors of the SOC, one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the board. 5
- (2) The voting shareholders may remove a director from the office of Chairperson of the SOC at any time for any or no reason and without notice.
- (3) A person who is a director and Chairperson of the SOC vacates office as Chairperson in the circumstances set out in the memorandum or articles of association of the SOC or if the person: 10
 - (a) is removed from that office by the voting shareholders, or 15
 - (b) resigns that office by letter addressed to the voting shareholders, or
 - (c) ceases to be a director of the SOC.

3 Deputies

- (1) The voting shareholders may, from time to time, appoint a person to be the deputy of a director of the SOC, and the voting shareholders may revoke any such appointment. 20
- (2) In the absence of a director of the SOC, the director's deputy: 25
 - (a) is, if available, to act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a director of the SOC.
- (3) The deputy of a director of the SOC who is Chairperson of the board does not have the director's functions as Chairperson, unless the memorandum or articles of association of the SOC provide for this to happen. 30

- (4) A person while acting in the place of a director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine in respect of the person. 5

4 Staff director

- (1) This clause applies to the manner of selecting the staff director of the SOC in the absence of relevant procedures in the SOC's foundation charter. 10
- (2) The staff director is to be selected by a selection committee from members of the staff of the SOC who are nominated for selection. 10
- (3) The selection committee is to consist of two persons nominated by the SOC's voting shareholders and two persons nominated by the Labor Council of New South Wales. 15
- (4) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by regulations under this Act or (subject to any such regulations) by the voting shareholders. 20

5 Term of office of directors

Subject to this Schedule, a director of the SOC holds office for such period (not exceeding 5 years) as may be specified in the director's instrument of appointment. 25

6 Remuneration

A director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine. 30

7 Vacancy in office of director

- (1) The office of a director of a SOC becomes vacant in the circumstances set out in the memorandum or articles of association of the SOC or if the director:
- (a) dies, or 5
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the voting shareholders, or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or 10
 - (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the board or unless, before the end of 4 weeks after the last of those meetings, the director is excused by the board for having been absent from those meetings, or 15
20
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 25
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 30
- (2) The Governor, on the recommendation of the voting shareholders, may remove a director of the SOC from office at any time for any or no reason and without notice. 35

8 Filling of vacancy

If the office of a director of the SOC becomes vacant, a person is, subject to this Act and the memorandum and articles of association of the SOC, to be appointed to fill the vacancy.

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9 Effect of certain other Acts

(1) The *Public Sector Management Act 1988* does not apply to the appointment of a director of the SOC. A director is not, as a director, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

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(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

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the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting any remuneration payable to the person under this Act as such a director.

10 General procedure

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The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act, the regulations and the memorandum and articles of association of the SOC, to be as determined by the board.

25

11 Quorum

The quorum for a meeting of the board is, subject to the memorandum and articles of association of the SOC, a majority of the directors for the time being.

12 Presiding director

- (1) The Chairperson of the board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is (subject to the memorandum and articles of association of the SOC) to preside at a meeting of the board. 5
- (2) The person presiding at any meeting of the board has (subject to the memorandum and articles of association of the SOC) a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 10

13 Voting

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is (subject to the memorandum and articles of association of the SOC) the decision of the board. 15

14 Transaction of business otherwise than at ordinary meetings

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the board for the time being. A resolution approved in writing by a majority of those members is taken to be a decision of the board. 20
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors. 25
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or 30
 - (b) a meeting held in accordance with subclause (2),
- the Chairperson and director have the same voting rights as they have at an ordinary meeting of the board.

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- (4) A resolution approved under subclause (1) is, subject to the regulations and the memorandum and articles of association of the SOC, to be recorded in the minutes of the board.
- (5) Papers may be circulated among directors for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned. 5

15 First meeting

The voting shareholders may call the first meeting of the board in such manner as they think fit. 10

[44] Schedule 9

Insert in numerical order:

Schedule 9 Chief executive officers of statutory SOCs

(Section 20K) 15

1 Term of office

Subject to this Schedule, the chief executive officer of a statutory SOC holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment. 20

2 Conditions of employment

The board of a statutory SOC may, with the approval of the portfolio Minister, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law. 25

3 Remuneration

The chief executive officer of a statutory SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine after considering advice from the board. 30

4 Performance agreements

The board of a statutory SOC may require the chief executive officer to enter into performance agreements.

5 Acting chief executive officer

- (1) The portfolio Minister may, from time to time, appoint a person to act in the office of chief executive officer of a statutory SOC during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer. 5
10
- (2) The portfolio Minister may remove a person from any office, to which the person was appointed under this clause, at any time for any or no reason and without notice.
- (3) A person while acting in the office of a chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine in respect of the person. 15
- (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer. 20

6 Removal from office

The Governor, on the recommendation of the portfolio Minister, may remove the chief executive officer of a statutory SOC from office at any time for any or no reason and without notice. Such a removal cannot be effected unless it is recommended by the board. 25

[45] Schedule 10

Insert in numerical order:

Schedule 10 Duties and liabilities of directors and other officers

(Section 33A) 5

Part 1 Statutory SOCs

1 Disclosure of interests by directors

- (1) If a director of a statutory SOC has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge. 10

Maximum penalty: 100 penalty units.

- (2) The disclosure must be recorded in the board's minutes. 15

2 Voting by interested director

- (1) A director of a statutory SOC who has a material personal interest in a matter that is being considered by the board must not:
- (a) vote on the matter, or 20
- (b) vote on a proposed resolution (a *related resolution*) under subclause (2) in relation to the matter (whether in relation to the director or another director), or
- (c) be present while the matter, or a related resolution, is being considered by the board, or 25
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty: 100 penalty units.

-
- (2) Subclause (1) does not apply to the matter if the board has at any time passed a resolution that:
- (a) specifies the director, the interest and the matter, and
 - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter. 5
- (3) In determining whether a quorum is present at a meeting of the board during a consideration of such a matter by the board, only those directors are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter. 10
- (4) The voting shareholders may, by each signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subclause (3). 15

3 Duty and liability of certain officers of statutory SOC

- (1) In this clause:
- officer* of a statutory SOC means:
- (a) a director of the SOC, or 20
 - (b) the SOC's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the SOC's management.
- (2) An officer of a statutory SOC must act honestly in the exercise of powers, and discharge of functions, as an officer of the SOC. 25
- Maximum penalty:
- (a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or 30
 - (b) in any other case—100 penalty units.

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- (3) In the exercise of powers and the discharge of functions, an officer of a statutory SOC must exercise the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the statutory SOC's circumstances. 5
- Maximum penalty: 100 penalty units.
- (4) An officer of a statutory SOC, or a person who has been an officer of a statutory SOC, must not make improper use of information acquired because of his or her position as an officer of the SOC: 10
- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or
- (b) to cause detriment to the SOC.
- Maximum penalty: 500 penalty units or imprisonment for 5 years. 15
- (5) An officer of a statutory SOC must not make improper use of his or her position as an officer of the SOC: 20
- (a) to gain, directly or indirectly, an advantage for himself or herself or another person, or
- (b) to cause detriment to the SOC.
- Maximum penalty: 500 penalty units or imprisonment for 5 years.
- (6) If a person contravenes this clause in relation to a statutory SOC, the statutory SOC may recover from the person as a debt due to the statutory SOC: 25
- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit, and
- (b) if the statutory SOC suffered loss or damage because of the contravention—an amount equal to the loss or damage. 30
- (7) An amount may be recovered from the person under subclause (6) whether or not the person has been convicted of an offence in relation to the contravention.

-
- (8) Subclause (6) is in addition to, and does not limit, the *Confiscation of Proceeds of Crime Act 1989*.
- (9) In determining for the purposes of subclause (3) the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the circumstances of the statutory SOC concerned, regard must be had to:
- (a) the fact that the person is an officer of a statutory SOC, and
- (b) the application of this Act to the SOC, and
- (c) relevant matters required or permitted to be done under this Act in relation to the SOC, including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (10) Subclause (9) does not limit the matters to which regard may be had for the purposes of subclause (3).
- (11) This clause:
- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation, and
- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.
- 4 Prohibition on loans to directors**
- (1) A statutory SOC must not, whether directly or indirectly:
- (a) make a loan to a director, a spouse of a director or a relative of a director or spouse, or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.
- (2) Subclause (1) does not apply to the entering into by the SOC of an instrument with a person mentioned in subclause (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the SOC with members of the public.

- (3) A director of a statutory SOC who is knowingly concerned in a contravention of subclause (1) by the SOC (whether or not in relation to the director) commits an offence.
- Maximum penalty: 100 penalty units. 5
- (4) In this clause:
- relative* means:
- (a) a parent or remoter lineal ancestor, or
 - (b) a son, daughter or remoter issue, or
 - (c) a brother or sister. 10

5 Statutory SOC not to indemnify officers

- (1) A statutory SOC must not:
- (a) indemnify a person who is or has been an officer of the SOC against a liability incurred as an officer, or 15
 - (b) exempt a person who is or has been an officer of the SOC from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the statutory SOC to do something that subclause (1) prohibits. 20
- (3) Subclause (1) does not prevent the statutory SOC from indemnifying a person against civil liability (other than a liability to the SOC or a subsidiary of the SOC) unless the liability arises out of conduct involving a lack of good faith. 25
- (4) Subclause (1) does not prevent the statutory SOC from indemnifying a person against a liability for costs and expenses incurred by the person:
- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or 30

-
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) The statutory SOC may give an indemnity mentioned in subclause (3) or (4) only with the prior approval of the voting shareholders. 5
- (6) In this clause:
indemnify includes indemnify indirectly through one or more interposed entities.
officer of a statutory SOC means: 10
- (a) a director of the SOC, or
- (b) the SOC's chief executive officer, or
- (c) another person who is concerned, or takes part, in the SOC's management.
- 6 Statutory SOC not to pay premiums for certain liabilities of officers** 15
- (1) A statutory SOC must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the SOC against a liability:
- (a) incurred by the person as an officer, and 20
- (b) arising out of conduct involving:
- (i) a wilful breach of duty in relation to the SOC, or
- (ii) without limiting subparagraph (i), a contravention of clause 3 (4) or (5). 25
- (2) Subclause (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.
- (3) An instrument is void so far as it insures a person against a liability in contravention of subclause (1). 30

- (4) In this clause:
- officer* of a statutory SOC means:
- (a) a director of the SOC, or
 - (b) the SOC's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the SOC's management. 5

pay includes pay indirectly through one or more interposed entities.

7 Director's duty to prevent insolvent trading

- (1) If: 10
- (a) immediately before a statutory SOC incurs a debt:
 - (i) there are reasonable grounds to suspect that the SOC will not be able to pay all its debts as and when they become due, or
 - (ii) there are reasonable grounds to suspect that, if the SOC incurs the debt, it will not be able to pay all its debts as and when they become due, and 15
 - (b) the SOC is, or later becomes, unable to pay all its debts as and when they become due, 20

a person who is a director of the SOC, or takes part in the SOC's management, at the time when the debt is incurred commits an offence.

Maximum penalty: 100 penalty units or imprisonment for 1 year. 25

- (2) In a proceeding against a person for an offence against this clause, it is a defence if it is proved:
- (a) that the debt was incurred without the person's express or implied authority or consent, or
 - (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect: 30

-
- (i) that the SOC would not be able to pay all its debts as and when they became due, or
 - (ii) that, if the SOC incurred that debt, it would not be able to pay all its debts as and when they became due, or 5
 - (c) that the person took all reasonable steps to prevent the SOC from incurring the debt, or
 - (d) in the case of a director—that the person did not take part at the time in the SOC's management because of illness or for some other good cause. 10

8 Court may order compensation

- (1) If a person is found guilty of an offence against clause 7 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a statutory SOC, the Supreme Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the SOC of the amount required to satisfy the part of the SOC's debts that the court considers proper. 15
- (2) This clause does not affect any rights of a person to indemnity, subrogation or contribution. 20
- (3) This clause:
 - (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation, and 25
 - (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

9 Examination of persons concerned with statutory SOCs

- (1) If it appears to the Attorney General that: 30
 - (a) a person who has been concerned, or taken part, in a statutory SOC's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the SOC, or 35

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- (b) a person may be capable of giving information in relation to a statutory SOC's management, administration or affairs,
- the Attorney General may apply to the Supreme Court or the District Court for an order under this clause in relation to the person. 5
- (2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the SOC's management, administration or affairs. 10
- (3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.
- (4) The court may give directions about: 15
- (a) the matters to be inquired into at the examination, and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present). 20
- (5) The person must not fail, without reasonable excuse:
- (a) to attend as required by the order, or
- (b) to continue to attend as required by the court until the completion of the examination.
- Maximum penalty: 200 penalty units or imprisonment for 2 years. 25
- (6) The person must not fail to take an oath or make an affirmation at the examination.
- Maximum penalty: 200 penalty units or imprisonment for 2 years. 30
- (7) The person must not fail to answer a question that the person is directed by the court to answer.
- Maximum penalty: 200 penalty units or imprisonment for 2 years.

-
- (8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined. 5
- (9) The person must not, without reasonable excuse, contravene a direction under subclause (8).
Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien. 10
- (11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular. 15
Maximum penalty: 500 penalty units or imprisonment for 5 years.
- (12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty. 20
- (13) If:
(a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty, and 25
(b) the answer might in fact tend to incriminate the person or make the person liable to a penalty,
the answer is not admissible in evidence against the person in: 30
(c) a criminal proceeding, or
(d) a proceeding for the imposition of a penalty,
other than a proceeding for an offence against this clause or another proceeding in relation to the falsity of the answer. 35

- (14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.
- (15) Subject to subclause (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person. 5
- (16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person. 10
- (17) The court may adjourn the examination from time to time. 15
- (18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State. 20

10 Power to grant relief

- (1) This clause applies to a director, the chief executive officer or an employee of a statutory SOC.
- (2) If, in a proceeding against a person to whom this clause applies for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, it appears to the court that: 25
- (a) the person is or may be liable for the negligence, default or breach, but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach, 30

the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.

(3) If a person to whom this clause applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, the person may apply to the Supreme Court or the District Court for relief. 5

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach. 10

(5) If:
(a) a proceeding mentioned in subclause (2) is being tried by a Judge with a jury, and
(b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subclause be relieved (in whole or part) from the liability sought to be enforced against the person, 15

the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate. 20

11 False or misleading information or documents

(1) In this clause:
officer of a statutory SOC means: 25

- (a) a director of the SOC, or
- (b) the SOC's chief executive officer, or
- (c) an employee of the SOC.

(2) An officer of a statutory SOC must not:
(a) make a statement concerning the affairs of the SOC to another officer or the voting shareholders that the first officer knows is false or misleading in a material particular, or 30

- (b) omit from a statement concerning the SOC's affairs made to another officer or the voting shareholders anything without which the statement is, to the first officer's knowledge, misleading in a material particular. 5
 - (3) An information or complaint against a person for an offence against subclause (2) (a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.
 - (4) An officer of a statutory SOC must not give to another officer or the voting shareholders a document containing information that the first officer knows is false, misleading or incomplete in a material particular without:
 - (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete, and 15
 - (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information. 20
- Maximum penalty:
- (a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or 25
 - (b) in any other case—100 penalty units.

12 Notice of suspected insolvency otherwise than because of direction or notification 30

- (1) If:
 - (a) a statutory SOC's board suspects that the SOC or a subsidiary of the SOC is, may be, will or may become insolvent, and

-
- (b) in the board's opinion, compliance with a direction or notification given by the voting shareholders is not or would not be the cause or a substantial cause of the suspected insolvency,
- the board must immediately give written notice to the voting shareholders of: 5
- (c) the suspicion, and
- (d) its reasons for the opinion.
- (2) The notice must state that it is given under this clause.
- (3) If the voting shareholders are satisfied that the board's suspicion is well-founded, the voting shareholders must immediately give the board the written directions that the voting shareholders consider necessary or desirable, including any directions necessary or desirable to ensure: 10
- (a) that the statutory SOC or subsidiary does not incur further debts, or 15
- (b) that the statutory SOC or subsidiary will be able to pay all its debts as and when they become due.
- (4) Without limiting subclause (3), a direction under this clause may require the statutory SOC or any of its subsidiaries to cease or limit particular activities. 20
- (5) The board must ensure that a direction under this clause is complied with in relation to the SOC and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries. 25
- (6) This clause is in addition to, and does not limit, another provision of this Act or another law.

Part 2 Company SOCs

13 Application of Corporations Law to officers of company SOC 30

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a company SOC would exercise in the circumstances of the company SOC concerned, regard must be had to: 35

- (a) the application of this Act to the SOC, and
- (b) relevant matters required or permitted to be done under this Act in relation to the SOC,

including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister. 5

- (2) This section has effect despite the *Corporations Law*.

Part 3 SOCs generally

14 Application of Corporations Law to officers of SOC subsidiaries 10

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a subsidiary of a SOC would exercise in the circumstances of the subsidiary concerned, regard must be had to: 15

- (a) the application of this Act to the SOC and subsidiary, and
- (b) relevant matters required or permitted to be done under this Act in relation to the SOC and subsidiary, 20

including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.

- (2) This section has effect despite the *Corporations Law*.

[46] Schedule 11 25

Insert in numerical order:

Schedule 11 Savings and transitional provisions

(Section 39)

Part 1 General

1 Regulations 30

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:

- *State Owned Corporations Amendment Act 1995*.

-
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of State Owned Corporations Amendment Act 1995

2 Staff director (Hunter Water Corporation Limited)

- (1) This Act does not require the articles of association of Hunter Water Corporation Limited to be altered during the first 2 months after the commencement of the amendment to Schedule 2 made by the *State Owned Corporations Amendment Act 1995*.
- (2) The requirement for the appointment of a staff director for Hunter Water Corporation Limited need not be complied with within 6 months after the commencement of that amendment.

3 Staff director (Sydney Water Corporation Limited)

- (1) Clause 1A of Part 2 of Schedule 2 as inserted by the *State Owned Corporations Amendment Act 1995* does not apply to Sydney Water Corporation Limited.

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- (2) This Act does not require the articles of association of Sydney Water Corporation Limited to be altered during the first 6 months after the commencement of the amendment made to Schedule 3 to the *Water Board (Corporatisation) Act 1994* by the *State Owned Corporations Amendment Act 1995*. 5
- (3) Those articles may provide that the requirement for a staff director does not take effect until there is a suitable vacancy on the board. However, the requirement for the appointment of a staff director must be complied with within two years after the commencement of that amendment. 10

Schedule 2 Amendment of Irrigation Corporations Act 1994

(Section 4)

[1] Section 4 Definitions

Omit the definition of *class 1 irrigation corporation* in section 4 (1). 5
Insert instead:

class 1 irrigation corporation means:

- (a) a company named in both Schedule 1 to this Act and Schedule 1 to the SOC Act, or
- (b) a corporation named in both Schedule 1 to this Act and Part 1 of Schedule 5 to the SOC Act. 10

[2] Section 4 (1)

Omit "or a co-operative" from the definition of *corporation*.
Insert instead " , a co-operative or a corporation constituted by this Act". 15

[3] Section 6 Establishment of corporations as SOCs

Omit section 6 (1). Insert instead:

- (1) The SOC Act is amended by inserting in Part 1 of Schedule 5 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 (1) to this Act (Coleambally Irrigation Corporation). 20

[4] Section 6 (5)

Omit the subsection. Insert instead:

- (5) The SOC Act is amended by inserting in Part 1 of Schedule 5 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 (5) to this Act (Murrumbidgee Irrigation Corporation). 25

[5] Section 12 Delegated functions

Insert "or section 20C (3)" after "section 7 (3)" in section 12 (4).

[6] Section 13 Application and interpretation of Division

Insert at the end of section 13 (1) (b):

, and

5

(c) the corporation is named in Schedule 1 to the
SOC Act.

[7] Section 19 Amendment of SOC Act

Omit section 19 (1) and (5).

[8] Section 21 Dividends

10

Insert "or 20S" after "14".

[9] Section 22 Tax-equivalents

Insert "or 20T" after "15" in section 22 (1).

[10] Part 2, Division 4

Insert at the end of Part 2:

15

Division 4 Constitution of corporations

26A Constitution of Coleambally Irrigation Corporation

On a day to be appointed by proclamation, there is
constituted by this Act a corporation with the corporate
name of the Coleambally Irrigation Corporation.

20

26B Constitution of Murrumbidgee Irrigation Corporation

On a day to be appointed by proclamation, there is
constituted by this Act a corporation with the corporate
name of the Murrumbidgee Irrigation Corporation.

[11] Section 27 Designation of corporation as a class 2 irrigation corporation

Omit section 27 (4). Insert instead:

- (4) A corporation cannot be designated by a proclamation as a class 2 irrigation corporation unless the corporation is named in Schedule 1 to the SOC Act immediately before the proclamation takes effect and an Act (other than this Act) authorises the proclamation to be made. This subsection has effect despite any other provision of this Act.

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10

[12] Schedule 1 List of Class 1 Irrigation Corporations

Omit "Limited" wherever occurring in Schedule 1 (1) and (5).
Insert instead "Corporation".

Schedule 3 Amendment of other Acts

(Section 5)

3.1 Anti-Discrimination Act 1977 No 48

Section 122B Application of Part 9A—authorities

Insert after section 122B (1) (b):

5

(b1) each State owned corporation,

3.2 Environmental Planning and Assessment Act 1979 No 203

Section 4 Definitions

Insert “, and also includes a statutory State owned corporation within the meaning of the *State Owned Corporations Act 1989*” after “body” where lastly occurring in the definition of *public authority* in section 4 (1).

10

3.3 Freedom of Information Act 1989 No 5

[1] Section 6 Definitions

15

Insert at the end of paragraph (h) of the definition of *responsible Minister* in section 6 (1):

, or

- (i) in relation to a statutory State owned corporation referred to in section 7 (1) (f)—the portfolio Minister (within the meaning of the *State Owned Corporations Act 1989*) for the authority.

20

[2] Section 7 Public authorities

Insert at the end of section 7 (1) (e):

, or

- (f) a statutory State owned corporation as defined in the *State Owned Corporations Act 1989*.

5

3.4 Public Sector Management Act 1988 No 33

Section 89 Definitions

Insert at the end of section 89:

- (5) The positions of director or chief executive officer of a statutory State owned corporation as defined in the *State Owned Corporations Act 1989* are statutory offices for the purposes of this Part.

10

3.5 Water Board (Corporatisation) Act 1994 No 88

[1] Schedule 3 Board of Corporation

Omit subclause (6A) (c).

15

Insert instead:

- (c) a staff director, selected under subclause (6B).

[2] Schedule 3

Omit subclauses (6B)–(6D).

Insert instead:

20

- (6B) The staff director is to be selected by a selection committee from members of the staff of the corporation who are nominated for selection.

State Owned Corporations Amendment Bill 1995

Schedule 3 Amendment of other Acts

- (6C) The selection committee is to consist of two persons nominated by the corporation's voting shareholders and two persons nominated by the Labor Council of New South Wales.
- (6D) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the voting shareholders.

5

C-050
Govt

LEGISLATIVE COUNCIL

State Owned Corporations Amendment Bill 1995

First Print as amended in Committee

Amendments to be moved in Committee on recommitment

No. 1 Page 6, Schedule 1 as amended in Committee. Omit the following matter inserted after line 10:

[13] Section 11 Non-commercial activities

Insert after section 11 (5):

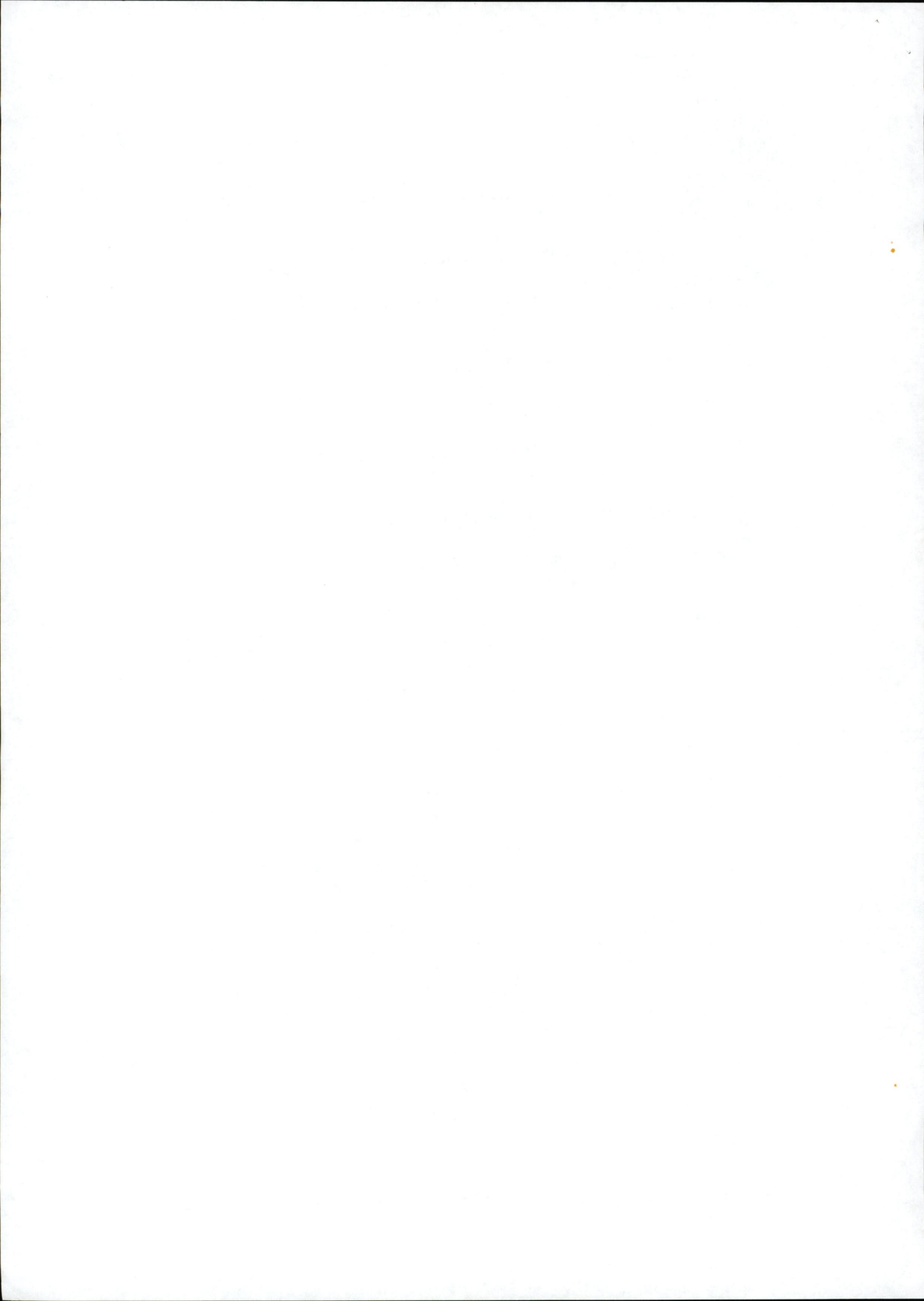
- (6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

No. 2 Page 13, Schedule 1 (12) (proposed section 20N) as amended in Committee. Omit the following matter inserted after line 28:

- (6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

No. 3 Page 14, Schedule 1 (12) (proposed section 20O) as amended in Committee. Omit the following matter inserted after line 19:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a notification given under this section in the same way as they apply to a statutory rule within the meaning of that Act.



No. 4 Page 15, Schedule 1 (12) (proposed section 20P) as amended in Committee.
Omit the following matter inserted after line 12:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.
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C-050
Govt

LEGISLATIVE COUNCIL

State Owned Corporations Amendment Bill 1995

First Print as amended in Committee

Amendments to be moved in Committee on recommitment

No. 1 Page 6, Schedule 1 as amended in Committee. Omit the following matter inserted after line 10:

[13] Section 11 Non-commercial activities

Insert after section 11 (5):

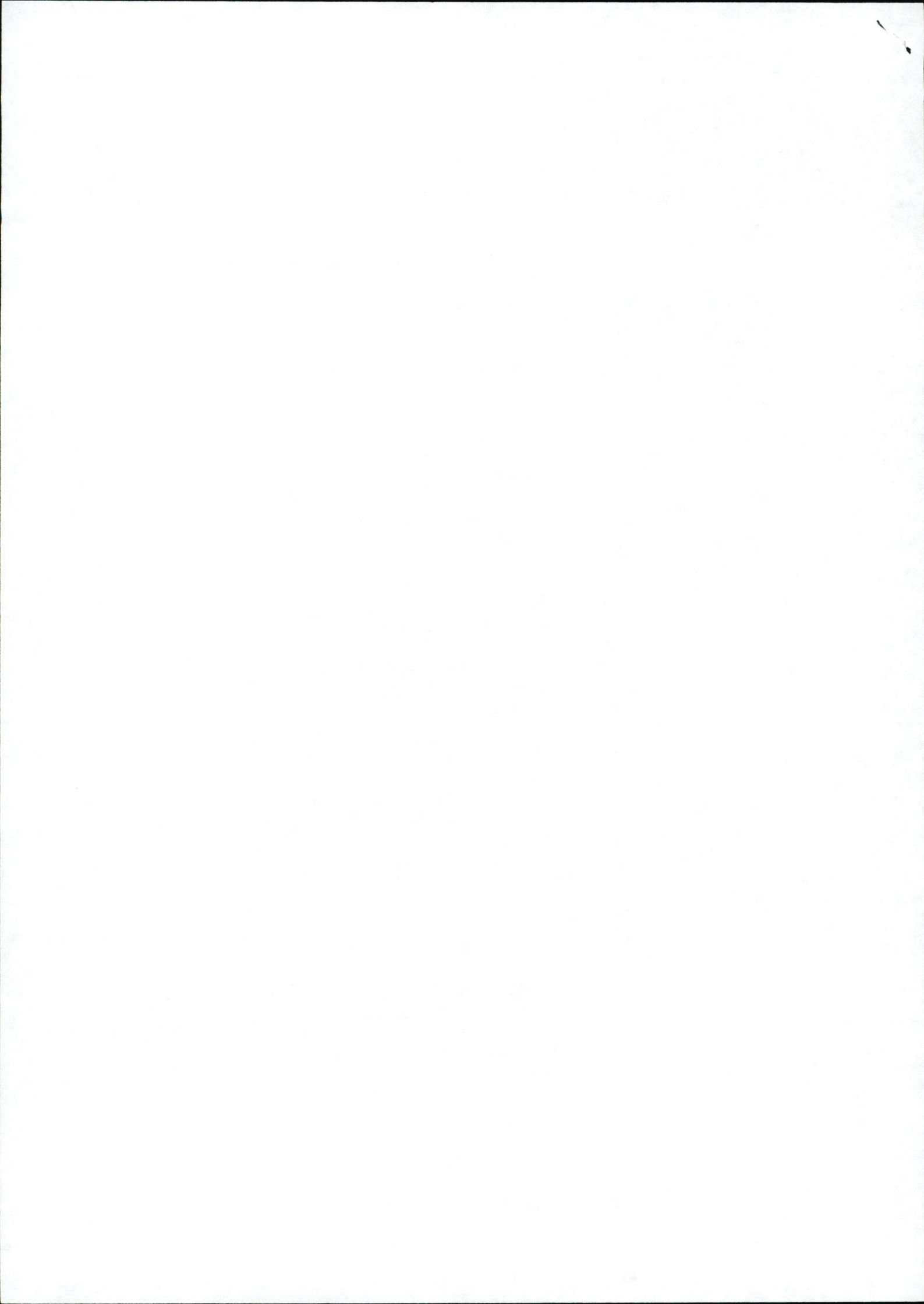
- (6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

No. 2 Page 13, Schedule 1 (12) (proposed section 20N) as amended in Committee. Omit the following matter inserted after line 28:

- (6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

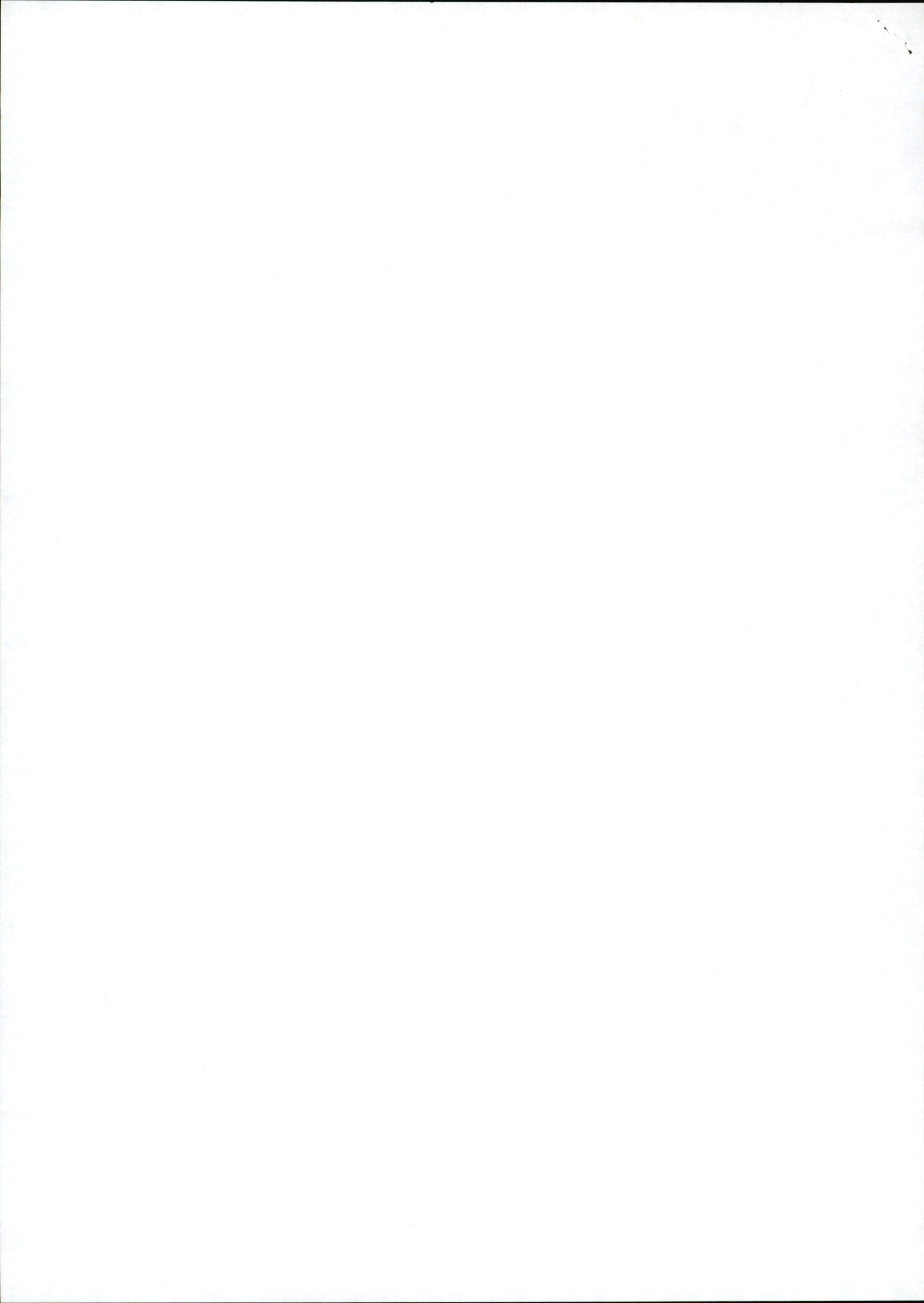
No. 3 Page 14, Schedule 1 (12) (proposed section 20O) as amended in Committee. Omit the following matter inserted after line 19:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a notification given under this section in the same way as they apply to a statutory rule within the meaning of that Act.



No. 4 Page 15, Schedule 1 (12) (proposed section 20P) as amended in Committee.
Omit the following matter inserted after line 12:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.
-



C-032
Ind [PM]

LEGISLATIVE ASSEMBLY

State Owned Corporations Amendment Bill 1995

First Print

Amendments to be moved in Committee

No. 1 Page 3, Schedule 1 (1), lines 16-20. Omit all words on those lines. Insert instead:

foundation charter of a statutory SOC means the Act by which the name of the SOC is inserted in Schedule 5, or some other Act specified by an Act as its foundation charter, and includes any replacement Act.

No. 2 Page 6, Schedule 1. Insert after line 10:

[12] Section 8

Section 8 (1)

Omit section 8. Insert instead:

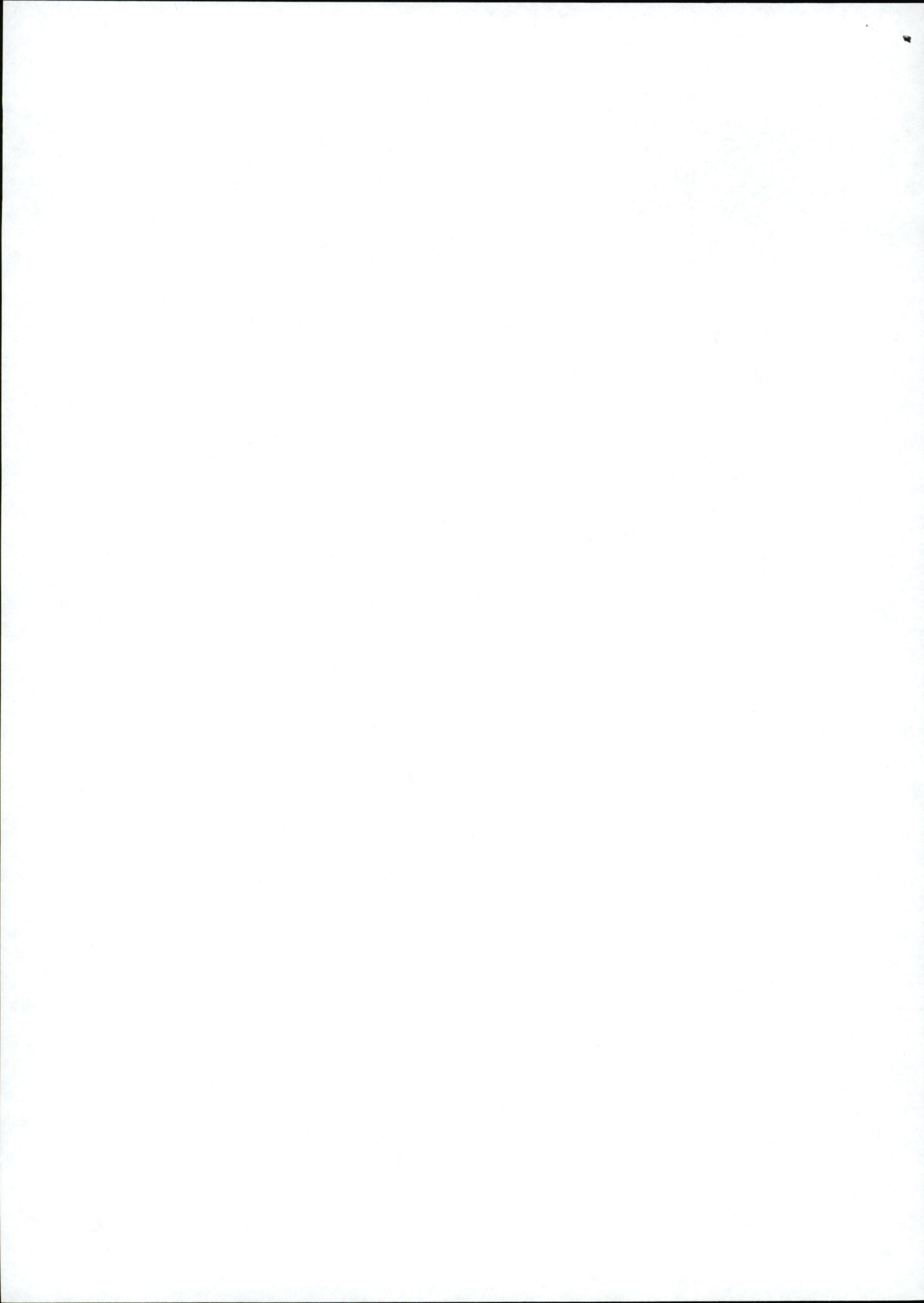
8 Principal objectives of company SOC's

(1) The principal objectives of every company SOC are:

(a) to be a successful business and, to this end:

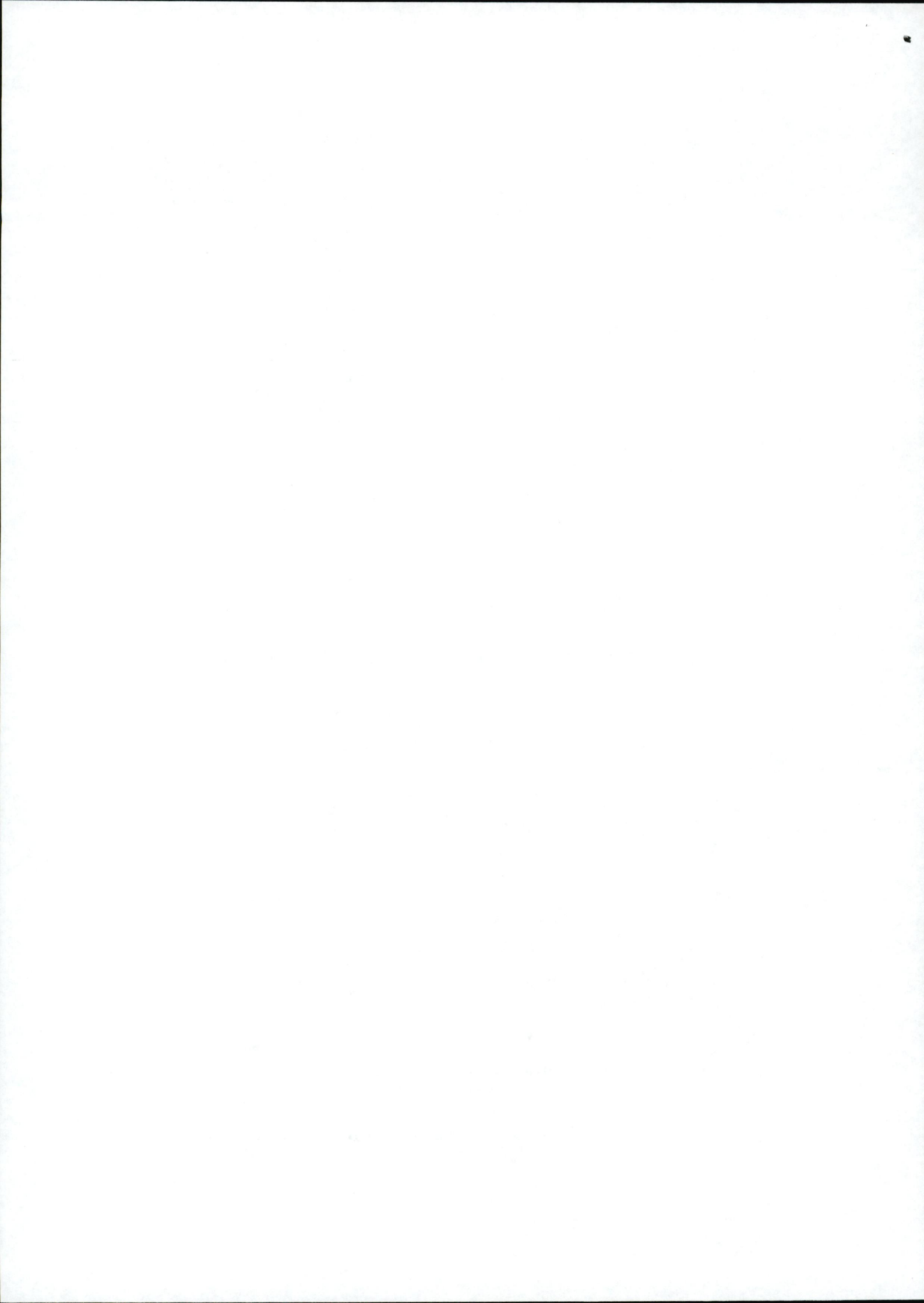
- (i) to operate at least as efficiently as any comparable businesses, and
- (ii) to maximise the net worth of the State's investment in the SOC, and

(b) to exhibit a sense of social responsibility by having regard to the



- (c) interests of the community in which it operates, and where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

- No. 3 Page 6, Schedule 1. Insert after line 10:
[13] Section 8 (2)
Insert at the end of section 8:
(2) Each of the principal objectives of a company SOC is of equal importance.
- No. 4 Page 6, Schedule 1 (12) (proposed section 20A), line 17. Omit "Part 1 of".
- No. 5 Pages 6 and 7, Schedule 1 (12) (proposed section 20A), line 19 on page 6 to line 4 on page 7. Omit all words on those lines.
- No. 6 Page 7, Schedule 1 (12) (proposed section 20B), line 7. Omit "Part 1 of".
- No. 7 Page 7, Schedule 1 (12) (proposed section 20B), line 9. Omit "Part". Insert instead "Schedule".
- No. 8 Page 7, Schedule 1 (12) (proposed section 20B), lines 10-12. Omit all words on those lines.
- No. 9 Page 8, Schedule 1 (12) (proposed section 20D), line 18. Omit "or regulation".
- No. 10 Page 8, Schedule 1 (12) (proposed section 20E), lines 24-34. Omit all words on those lines. Insert instead:
20E Principal objectives of statutory SOC's
(1) The principal objectives of every statutory SOC are:



- (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the SOC, and
- (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

No. 11 Page 8, Schedule 1 (12) (proposed section 20E). Insert after line 34:

- (2) Each of the principal objectives of a statutory SOC is of equal importance.

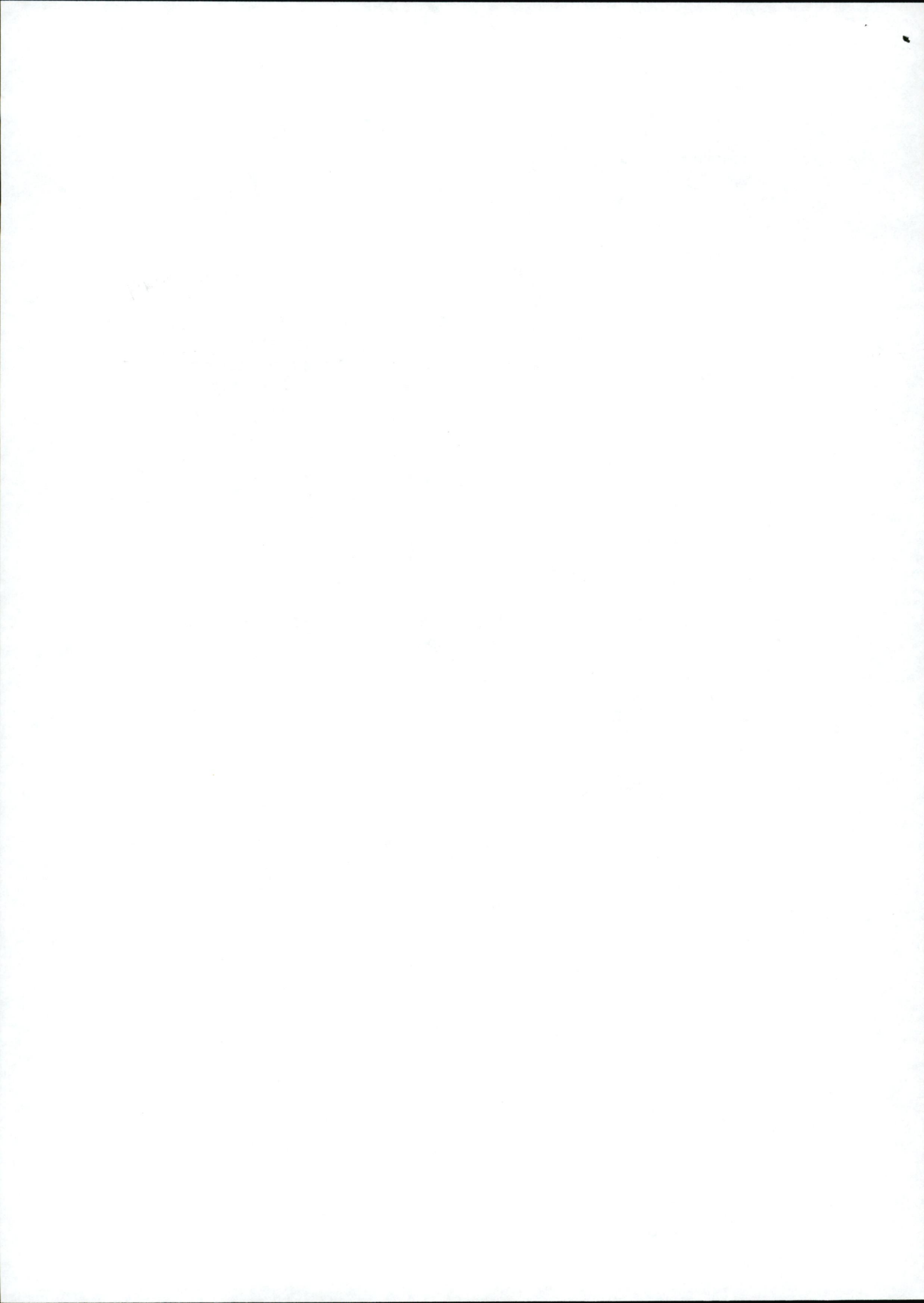
No. 12 Page 9, Schedule 1 (12) (proposed section 20E), lines 1-3. Omit all words on those lines.

No. 13 Page 14, Schedule 1 (12) (proposed section 20O). Insert after line 19:

- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a notification was given under this section and why it is in the public interest that the notification be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the notification is given.

No. 14 Page 15, Schedule 1 (12) (proposed section 20P). Insert after line 12:

- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.



- (6) A notice referred to in subsection (5) is to be published within 1 month after the direction is given.

No. 15 Page 17, Schedule 1 (12) (proposed section 20S), line 3. Insert at the end of the line:

However, if the Treasurer requires a statutory SOC to pay an amount by way of dividend under that section, the Treasurer must, within one month after notifying the SOC of that requirement, publish a notice in the Gazette setting out:

- (a) the amount of the dividend to be paid, and
- (b) the reasons for requiring the payment to be made under that section rather than pursuant to the share dividend scheme under this section.

No. 16 Page 27, Schedule 1. Insert after line 23:

[15] Section 24 (3A)

Insert after section 24 (3):

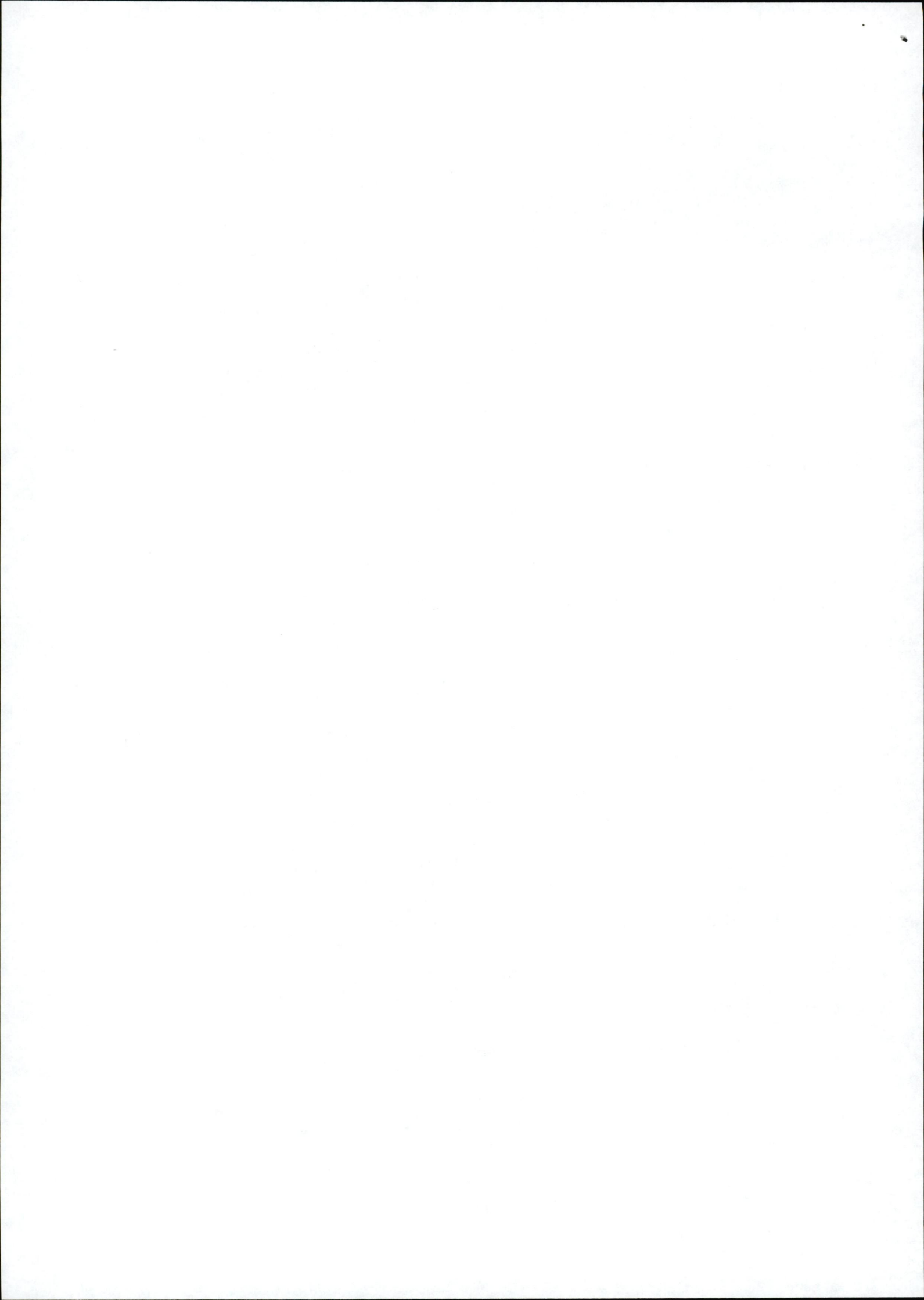
- (3A) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.

No. 17 Page 28, Schedule 1 (15) (proposed section 24A). Insert after line 3:

- (3) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.

No. 18 Page 28, Schedule 1 (20). Insert after line 26:

- (p) a copy of any notice published under section 200 (5), within 14 sitting days after the date of its publication in the Gazette,



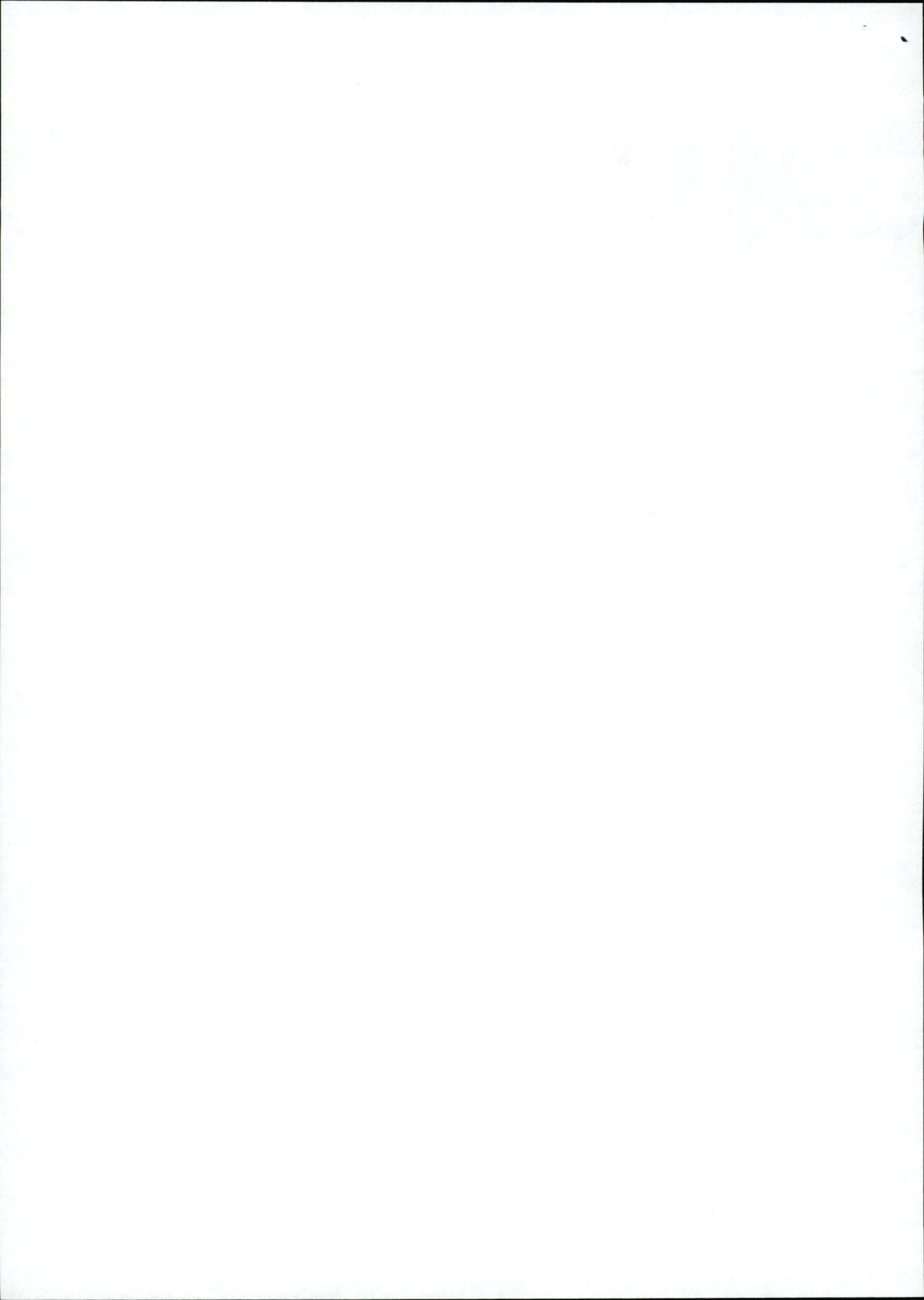
No. 19 Page 29, Schedule 1 (20). Insert after line 3:

(r) a copy of any notice published under section 20P (5), within 14 sitting days after the date of its publication in the Gazette,

No. 20 Page 29, Schedule 1 (20). Insert before line 4:

(s) a copy of any notice published under section 20S (5) requiring the payment of an amount by way of dividend under section 59B of the *Public Finance and Audit Act 1983*, within 14 sitting days after the date the notice was published,

No. 21 Page 33, Schedule 1 (40), lines 17 and 18. Omit all words on those lines.



LEGISLATIVE COUNCIL

STATE OWNED CORPORATIONS AMDT BILL 1995
Amendments to be moved in Committee

①
Jones

No. 1

Page 3, Schedule 1 (1), lines 16-20. Omit all words on those lines. Insert instead:

foundation charter of a statutory SOC means the Act by which the name of the SOC is inserted in Schedule 5, or some other Act specified by an Act as its foundation charter, and includes any replacement Act.

②
Opposition

No. 1

Page 6, Schedule 1. Insert after line 10:

[12] Section 8 Principal objective of company SOCs

Insert at the end of section 8 (c):

- (d) , and
to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.

3

No. 2

Jones

Page 6, Schedule 1. Insert after line 10:

[12] Section 8

Section 8 (1)

Omit section 8. Insert instead:

8 Principal objectives of company SOC's

(1) The principal objectives of every company SOC are:

(a) to be a successful business and, to this end:

(i) to operate at least as efficiently as any comparable businesses, and

(ii) to maximise the net worth of the State's investment in the SOC, and

(b) to exhibit a sense of social responsibility by having regard to the

interests of the community in which it operates, and

(c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

4

No. 3

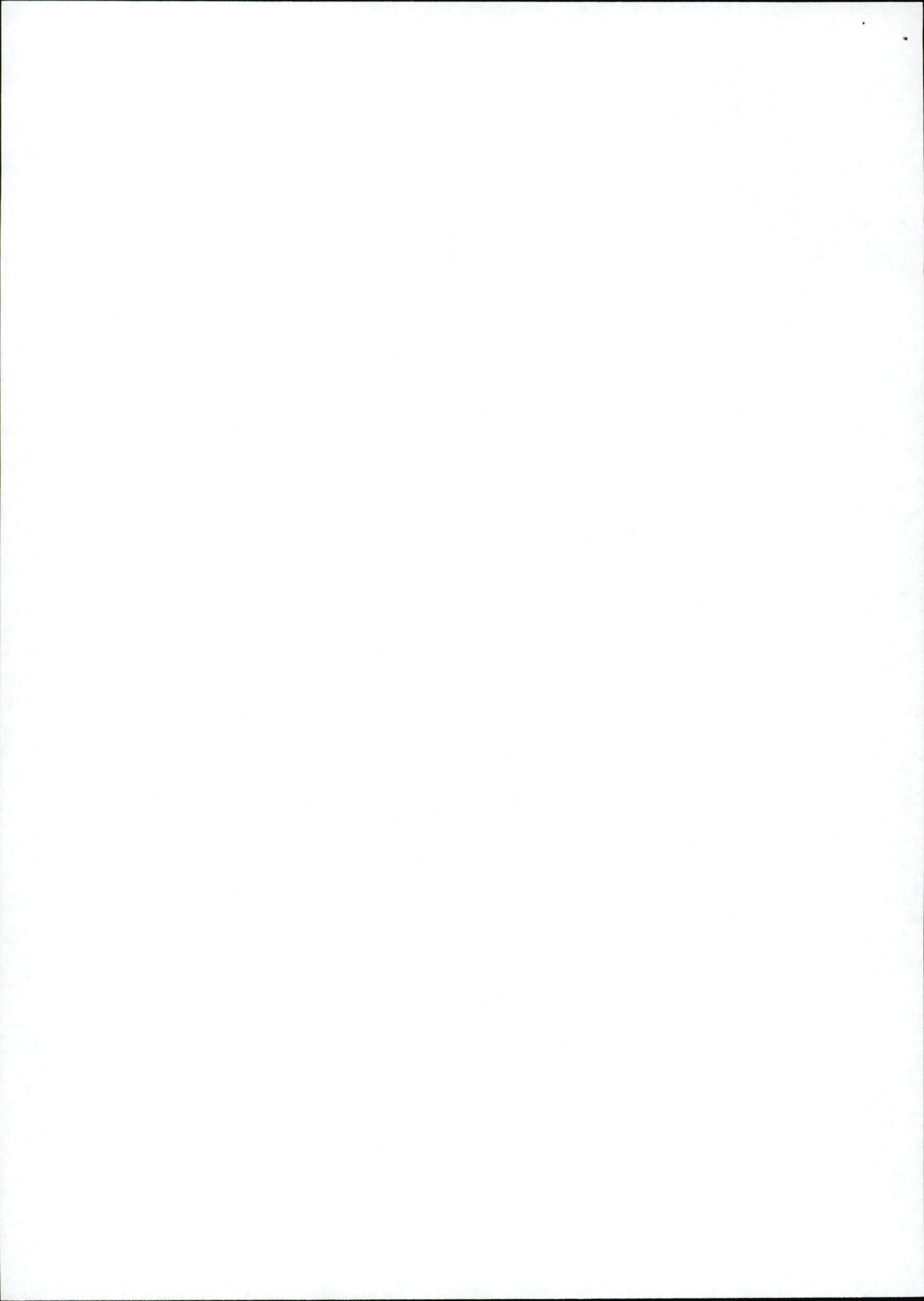
Jones

Page 6, Schedule 1. Insert after line 10:

[13] Section 8 (2)

Insert at the end of section 8:

(2) Each of the principal objectives of a company SOC is of equal importance.



(5)

No. 2

Page 6, Schedule 1. Insert after line 10:

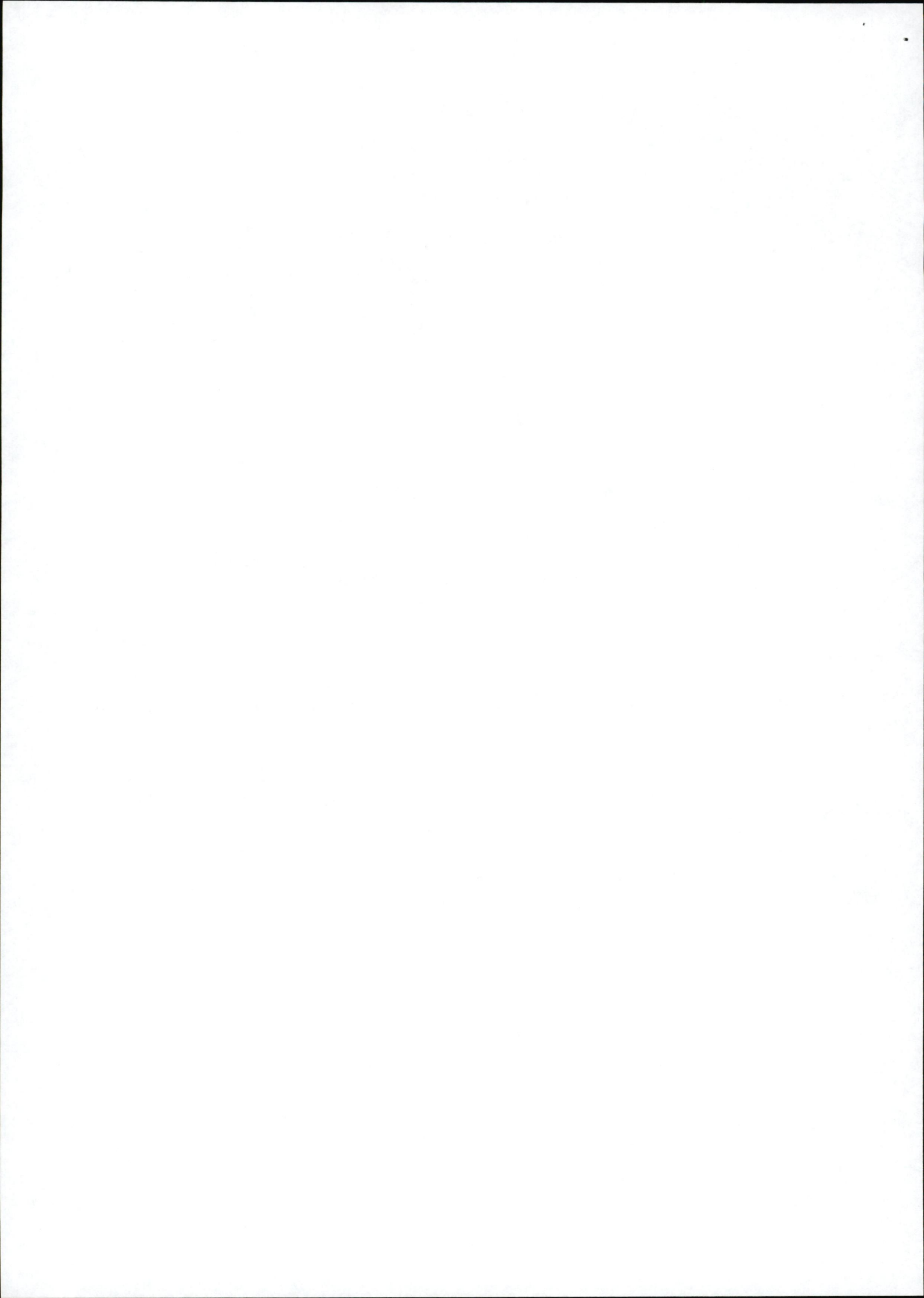
OPPN

[13] Section 11 Non-commercial activities

Insert after section 11 (5):

(6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

- Jones (6) No. 4 Page 6, Schedule 1 (12) (proposed section 20A), line 17. Omit "Part 1 of".
- Jones (7) No. 5 Pages 6 and 7, Schedule 1 (12) (proposed section 20A), line 19 on page 6 to line 4 on page 7. Omit all words on those lines.
- Jones (8) No. 6 Page 7, Schedule 1 (12) (proposed section 20B), line 7. Omit "Part 1 of".
- Jones (9) No. 7 Page 7, Schedule 1 (12) (proposed section 20B), line 9. Omit "Part". Insert instead "Schedule".
- Jones (10) No. 8 Page 7, Schedule 1 (12) (proposed section 20B), lines 10-12. Omit all words on those lines.
- Jones (11) No. 9 Page 8, Schedule 1 (12) (proposed section 20D), line 18. Omit "or regulation".



12

No. 10

Page 8, Schedule 1 (12) (proposed section 20E), lines 24-34. Omit all words on those lines. Insert instead:

Jones

20E Principal objectives of statutory SOCs

(1) The principal objectives of every statutory SOC are:

- (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the SOC, and
- (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
- (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

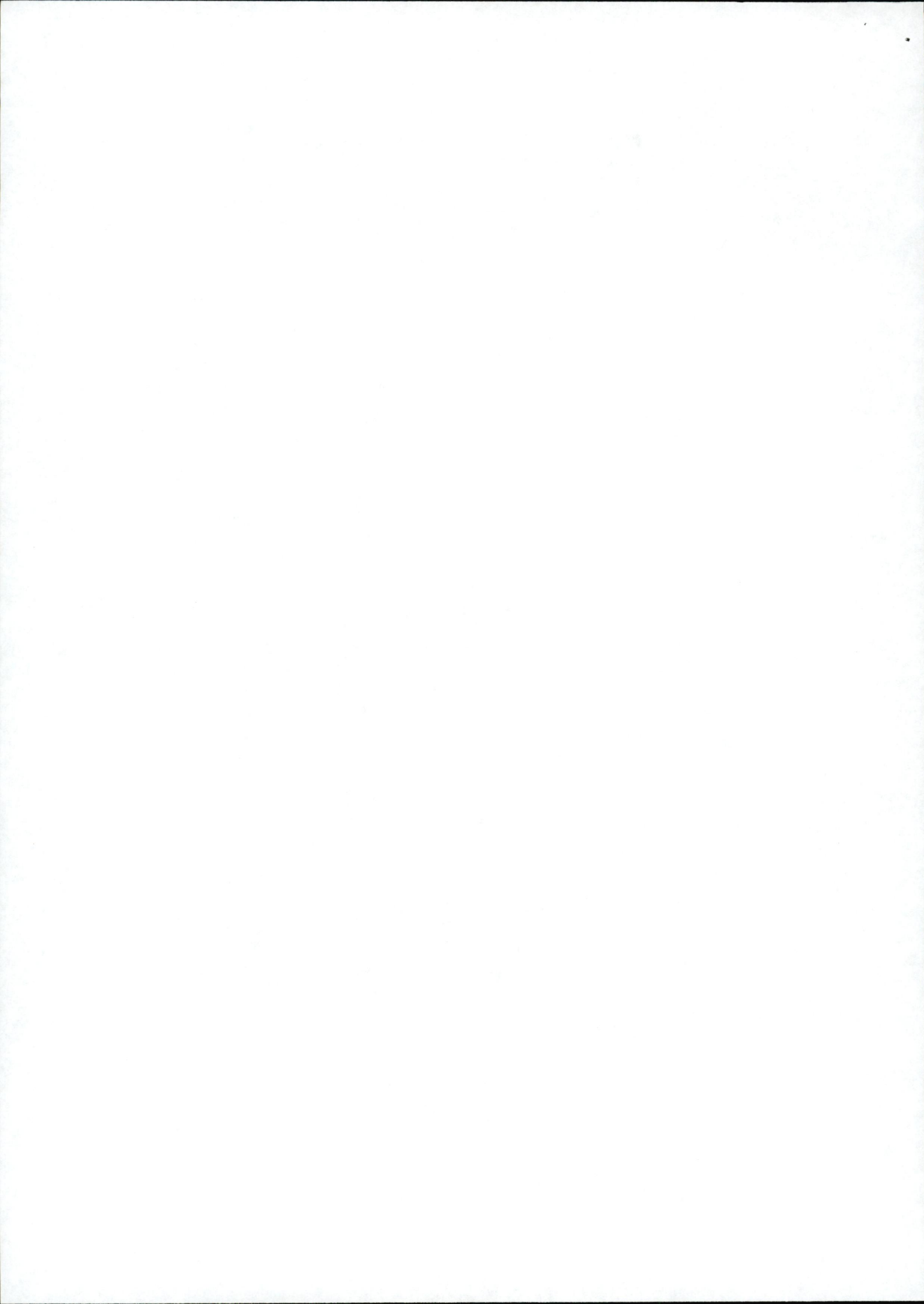
13

No. 3

Page 8, Schedule 1 (12) (proposed section 20E), line 34. Insert at the end of the line:

OPPN

- , and
- (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.



14 No. 11
Jones

Page 8, Schedule 1 (12) (proposed section 20E). Insert after line 34:

- (2) Each of the principal objectives of a statutory SOC is of equal importance.

15 No. 12
Jones

Page 9, Schedule 1 (12) (proposed section 20E), lines 1-3. Omit all words on those lines.

16 No. 4
OPPN

Page 13, Schedule 1 (12) (proposed section 20N). Insert after line 28:

- (6) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

17 No. 5
OPPN

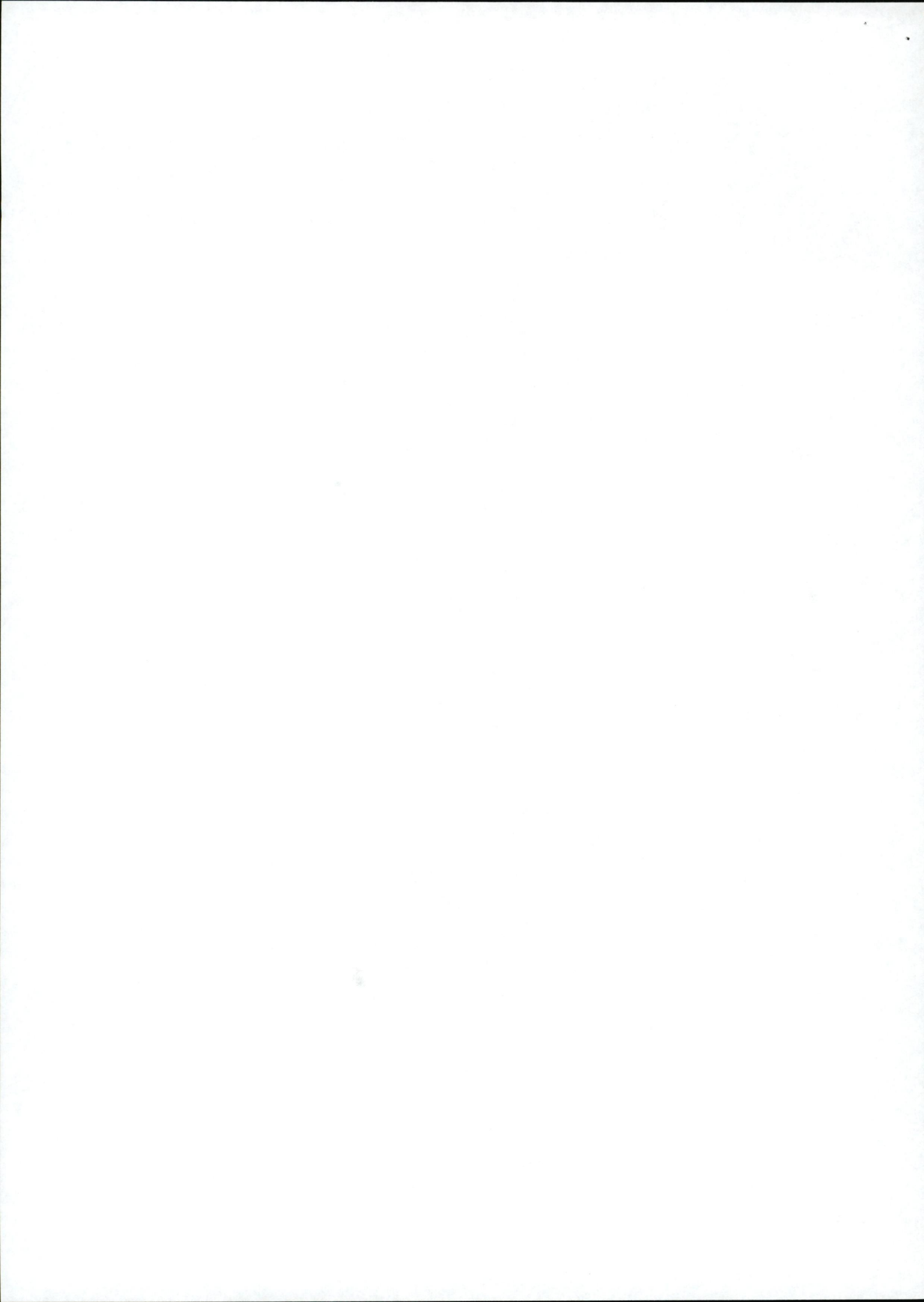
Page 14, Schedule 1 (12) (proposed section 20O). Insert after line 19:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a notification given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

18 No. 13
Jones

Page 14, Schedule 1 (12) (proposed section 20O). Insert after line 19:

- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a notification was given under this section and why it is in the public interest that the notification be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the notification is given.



19

No. 6

OPPN

Page 15, Schedule 1 (12) (proposed section 20P). Insert after line 12:

- (5) Sections 39 (the making of statutory rules), 40 (notice of statutory rules to be tabled) and 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to a direction given under this section in the same way as they apply to a statutory rule within the meaning of that Act.

20

No. 14

Jones

Page 15, Schedule 1 (12) (proposed section 20P). Insert after line 12:

- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the direction is given.

21

No. 15

Jones

Page 17, Schedule 1 (12) (proposed section 20S), line 3. Insert at the end of the line:

However, if the Treasurer requires a statutory SOC to pay an amount by way of dividend under that section, the Treasurer must, within one month after notifying the SOC of that requirement, publish a notice in the Gazette setting out:

- (a) the amount of the dividend to be paid, and
- (b) the reasons for requiring the payment to be made under that section rather than pursuant to the share dividend scheme under this section.

22

No. 16

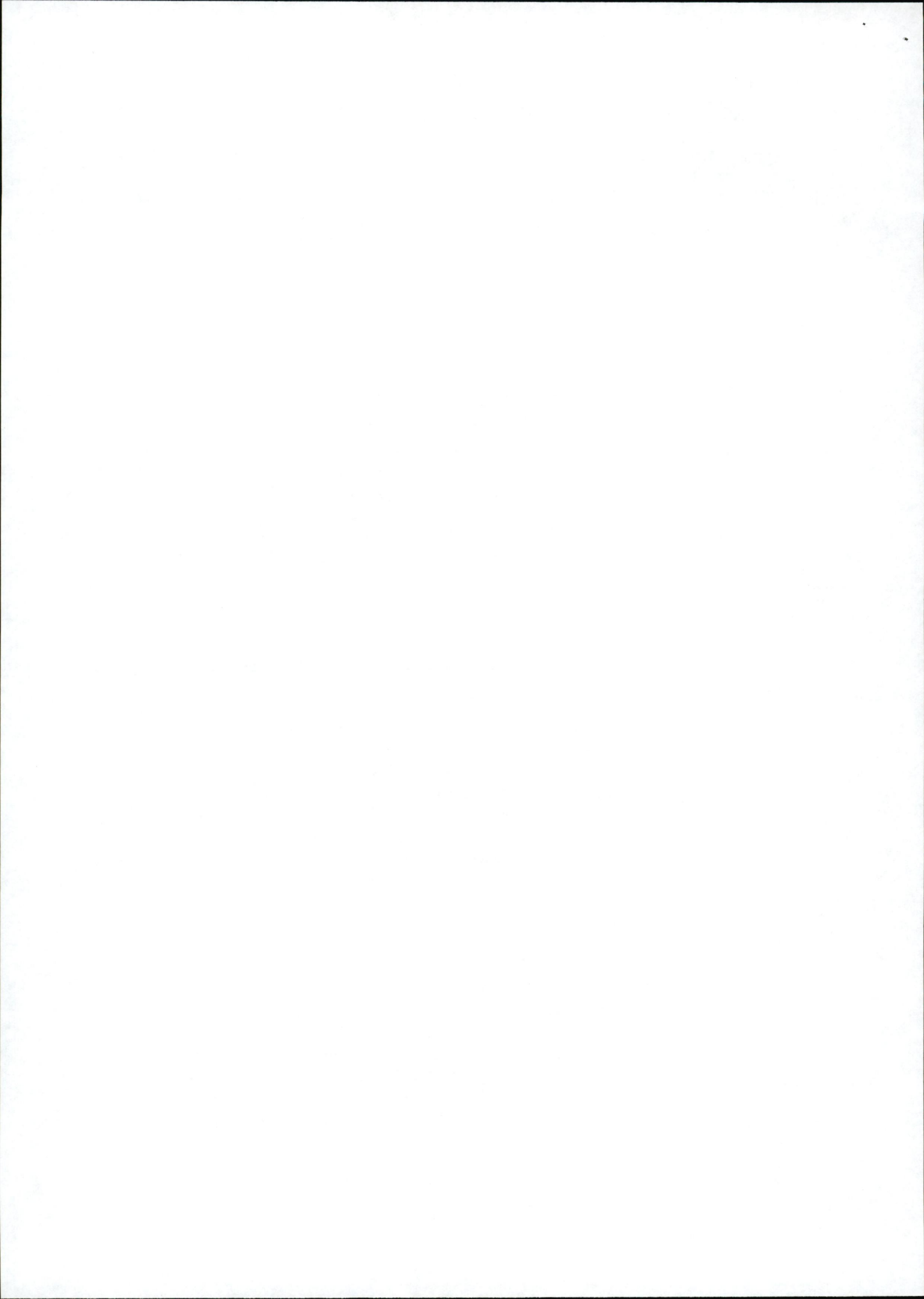
Jones

Page 27, Schedule 1. Insert after line 23:

[15] Section 24 (3A)

Insert after section 24 (3):

- (3A) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.



(23)

No. 17

Jones

Page 28, Schedule 1 (15) (proposed section 24A). Insert after line 3:

- (3) Each annual report is to include a section that:
- (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.

(24)

No. 1

OPPN

Page 28, Schedule 1 (15) (proposed section 24A). Insert after line 12:

- (5) The annual report of a statutory SOC is to include a certificate as to:
- (a) the actual cost of complying with a notification under section 200 or a direction under section 20P during the period to which the report relates, and
 - (b) the impact of any such notification or direction on the SOC and on its services during the period to which the report relates, and
 - (c) the actual impact of any such notification or direction on the cost of its services to consumers during the period to which the report relates.
- (6) Subsection (5) applies in relation to a notification or direction given to the statutory SOC during the period to which the report relates or at any earlier time.

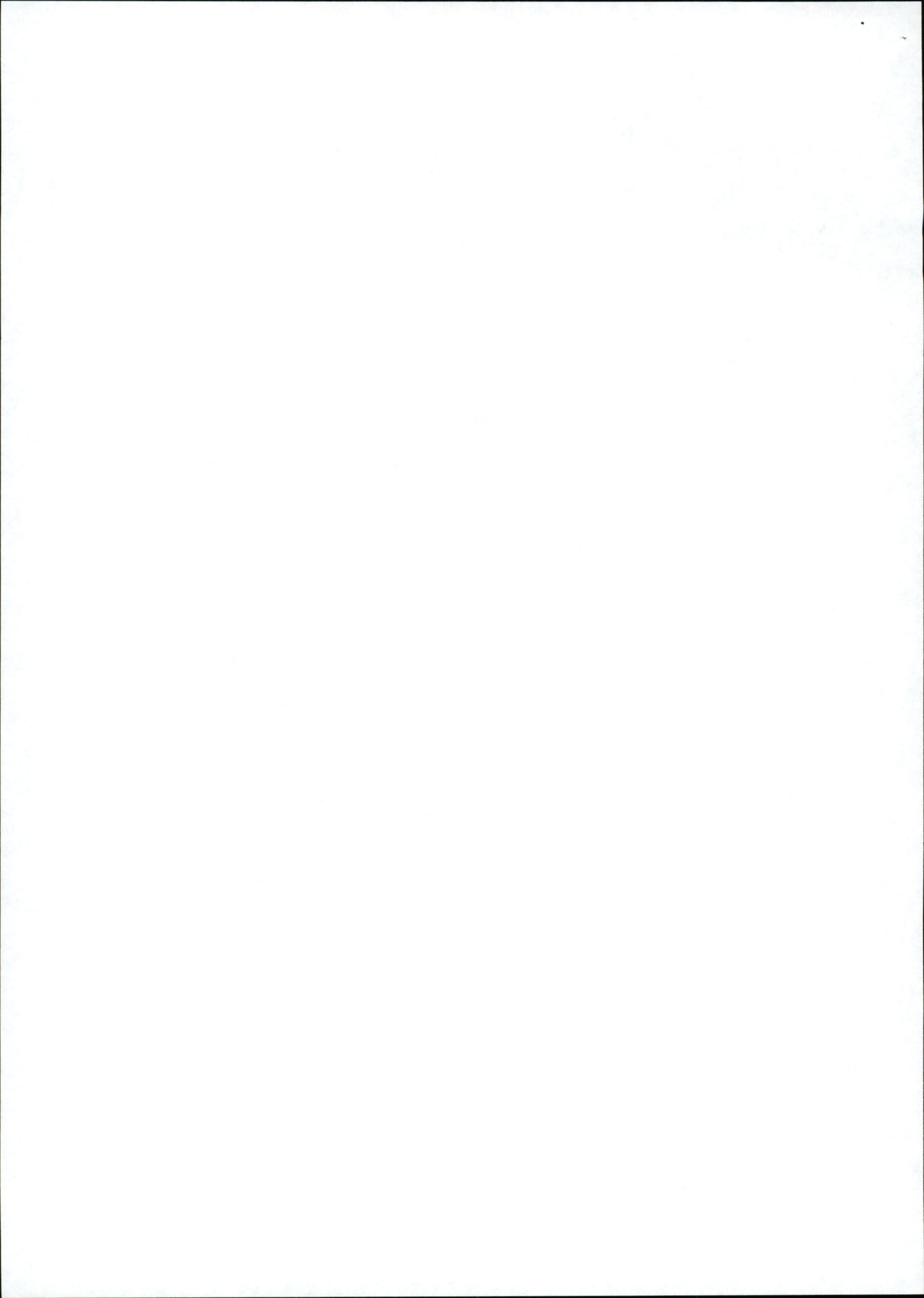
(25)

No. 18

Jones

Page 28, Schedule 1 (20). Insert after line 26:

- (p) a copy of any notice published under section 200 (5), within 14 sitting days after the date of its publication in the Gazette,



26

No. 19
Jones

Page 29, Schedule 1 (20). Insert after line 3:

(r) a copy of any notice published under section 20P (5), within 14 sitting days after the date of its publication in the Gazette,

27

No. 20
Jones

Page 29, Schedule 1 (20). Insert before line 4:

(s) a copy of any notice published under section 20S (5) requiring the payment of an amount by way of dividend under section 59B of the *Public Finance and Audit Act 1983*, within 14 sitting days after the date the notice was published,

28

No. 2
OPPN

Page 29, Schedule 1. Insert after line 13:

[24] Section 26 (7)

Insert after section 26 (6):

(7) The material referred to in subsection (1) (o) or (p) must be accompanied by a report from the Secretary of the Treasury certifying (where applicable):
(a) the estimated net cost of compliance, or
(b) the estimated net amount of revenue forgone,
as referred to in section 20O (4) or 20P (4).

29

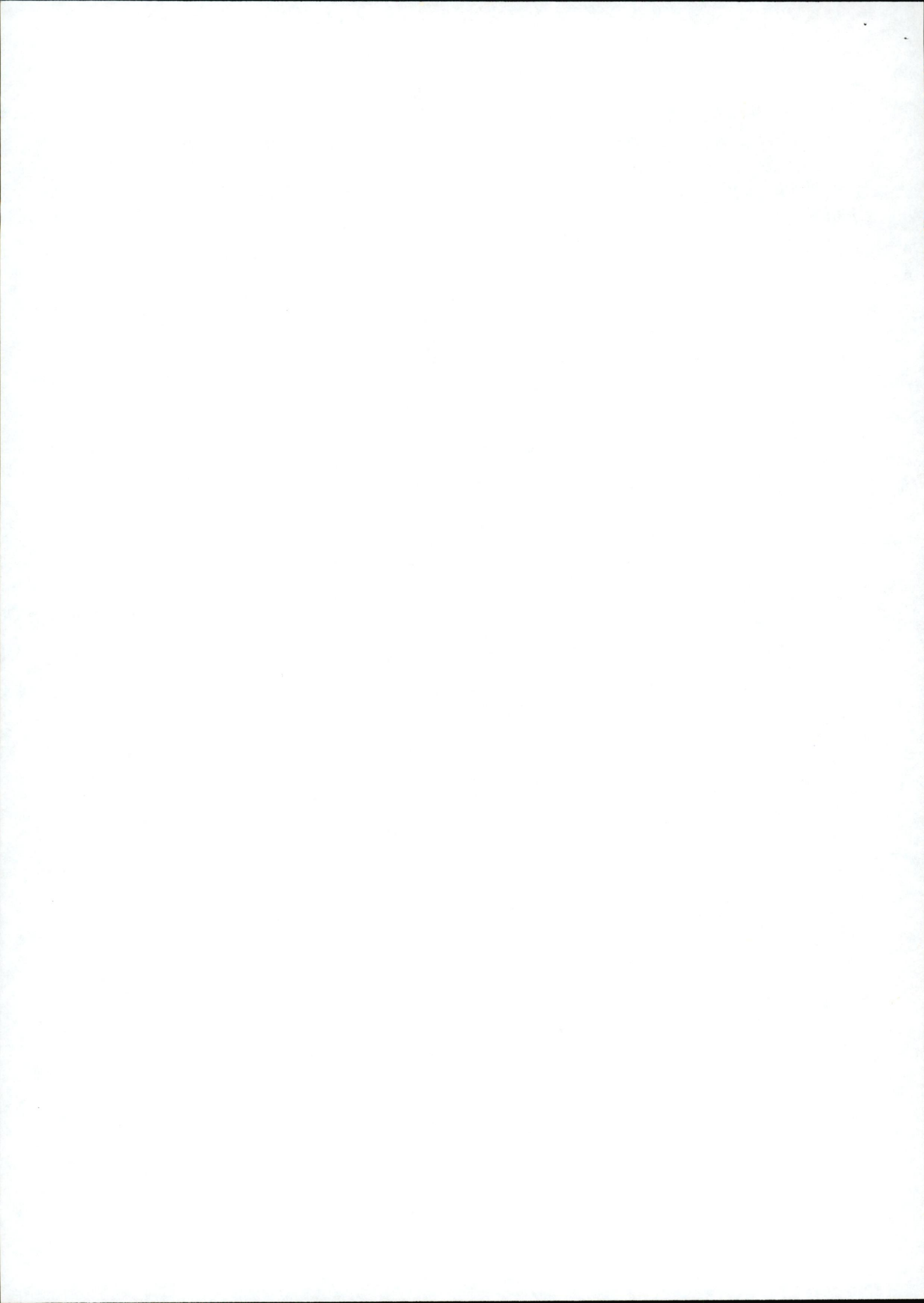
No. 21
Jones

Page 33, Schedule 1 (40), lines 17 and 18. Omit all words on those lines.

30

No. 7
OPPN

Ps. 63 Schedule 2, omit the Schedule.





New South Wales

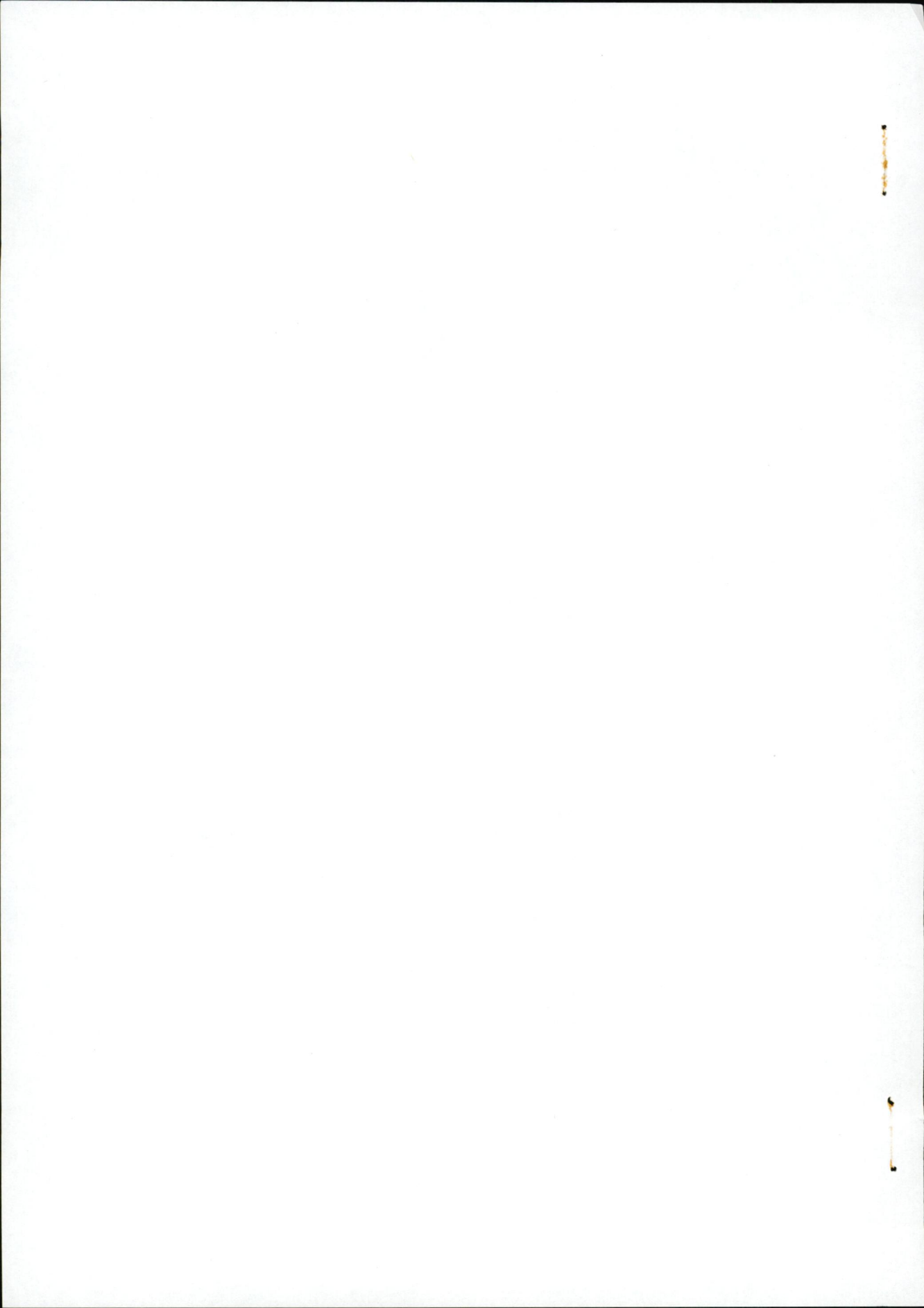
State Owned Corporations Amendment Act 1995 No 32

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4 Amendment of Irrigation Corporations Act 1994 No 41	2
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New South Wales

State Owned Corporations Amendment Act 1995 No 32

Act No 32, 1995

An Act to amend the *State Owned Corporations Act 1989* to vary the statutory provisions regarding State owned corporations and to provide for the establishment of statutory State owned corporations; to amend the *Irrigation Corporations Act 1994* and certain other Acts in relation to State owned corporations; and for other purposes. [Assented to 23 June 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Owned Corporations Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of State Owned Corporations Act 1989 No 134

The *State Owned Corporations Act 1989* is amended as set out in Schedule 1.

4 Amendment of Irrigation Corporations Act 1994 No 41

The *Irrigation Corporations Act 1994* is amended as set out in Schedule 2.

5 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of State Owned Corporations Act 1989

(Section 3)

[1] Section 3 Definitions

Section 3 (1)

Insert in alphabetical order:

company State owned corporation or *company SOC* means a company for the time being specified in Schedule 1.

constitution means:

- (a) for a State owned corporation—the memorandum and articles of association of the corporation, or
- (b) for a subsidiary of a State owned corporation—the memorandum and articles of association of the subsidiary.

foundation charter of a statutory SOC means the Act by which the name of the SOC is inserted in Schedule 5, or some other Act specified by an Act as its foundation charter, and includes any replacement Act.

government entity means:

- (a) a State department, administrative office, instrumentality, agency, authority or entity, that is not a corporation, or
- (b) a division, branch or other part of such a department, office, instrumentality, agency, authority or entity.

portfolio Minister—see section 201.

statutory State owned corporation or *statutory SOC* means a corporation for the time being specified in Schedule 5.

[2] Section 3 (1)

Omit the definition of *eligible Ministers*.

Insert instead:

eligible Ministers means:

- (a) in relation to a company SOC or proposed company SOC or any of its subsidiaries—the Treasurer and 4 or more other Ministers for the time being nominated by the Premier as being eligible to hold shares in the SOC, or
- (b) in relation to a statutory SOC or proposed statutory SOC or any of its subsidiaries—the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC.

[3] Section 3 (1)

Omit the definition of *State owned corporation*.

Insert instead:

State owned corporation or *SOC* means a company for the time being specified in Schedule 1 or a corporation for the time being specified in Schedule 5.

[4] Section 3 (1)

Insert “, and (in relation to a statutory SOC) includes a body corporate that would be such a subsidiary if the statutory SOC were a company SOC” after “law” in the definition of *subsidiary*.

[5] Section 3 (1)

Omit the definition of *voting shareholders*.

Insert instead:

voting shareholders means:

- (a) in relation to a company SOC or any of its subsidiaries—the Treasurer and one of the other eligible Ministers who is for the time being nominated by the Premier as a voting shareholder of the SOC, in their capacities as shareholders in the SOC, or
- (b) in relation to a statutory SOC or any of its subsidiaries—the shareholders of the SOC as referred to in section 20H, in their capacities as shareholders in the SOC.

[6] Section 3A

Insert after section 3:

3A Classes of State owned corporations

There are two classes of State owned corporations, as follows:

- (a) company State owned corporations (or company SOC's),
- (b) statutory State owned corporations (or statutory SOC's).

[7] Part 2, heading

Omit the heading. Insert instead "**Part 2 Company SOC's**".

[8] Part 2, Division 1, heading

Insert before section 4 the heading:
"**Division 1 Establishment of company SOC's**".

[9] Sections 4–7A

Omit "State owned corporation", "State owned corporations" and "corporation" (occurrences not previously mentioned in this item) wherever occurring (including section headings, but not in section 7 (4)).

Insert instead "company SOC", "company SOC's" and "SOC" respectively.

[10] Part 3, Division 2, heading

Omit the existing Part 3 heading.

Insert instead "**Division 2 Provisions relating to company SOCs**".

[11] Sections 8–20

Omit "State owned corporation", "State owned corporations", "corporation" (occurrences not previously mentioned in this item) and "corporation's" wherever occurring (including section headings).

Insert instead "company SOC", "company SOCs", "SOC" and "SOC's" respectively.

[12] Section 8

Omit section 8. Insert instead:

8 Principal objectives of company SOCs

- (1) The principal objectives of every company SOC are:
 - (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the SOC, and
 - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of a company SOC is of equal importance.

[13] Part 3

Insert after section 20:

Part 3 Statutory SOCs

Division 1 Establishment of statutory SOCs

20A Establishment of statutory SOCs

- (1) A corporation becomes a statutory SOC by the insertion of its name in Schedule 5 by an Act of Parliament.
- (2) A company cannot become a statutory SOC.

20B Change or removal of name of statutory SOC

- (1) The regulations under this Act may amend Schedule 5 to reflect a change of name of a statutory SOC contained in that Schedule.
- (2) The name of a statutory SOC may not be removed from Schedule 5 except by an Act of Parliament.

20C Transfer of assets, rights and liabilities

- (1) Assets, rights and liabilities of the State or an authority of the State and forming part of or relating to an undertaking carried on by or under the authority of a Minister or a government entity, or under the executive authority of the State, may be transferred to a statutory SOC or any of its subsidiaries, in exchange for the issue of shares or on any other basis.
- (2) The regulations under this Act may make provision for or with respect to the transfer of any such assets, rights and liabilities to a statutory SOC or any of its subsidiaries.
- (3) The regulations under this Act may provide that references in any Act, or in any regulation or other statutory rule under any Act, or in any other instrument, or in any contract or agreement, to:

- (a) the State or an authority of the State, in connection with any such assets, rights or liabilities or in connection with any such undertaking, or
- (b) (without limiting the above) a Minister or a government entity or an officer or employee of a government entity,

are to be read as references to a statutory SOC or any of its subsidiaries or to a director, officer or employee of any such SOC or subsidiary.

- (4) This section does not apply to assets, rights and liabilities of a statutory corporation unless:
 - (a) the assets, rights and liabilities can be transferred to the statutory SOC apart from this section, or
 - (b) an Act of Parliament provides that this section applies to the assets, rights and liabilities of the statutory corporation.

20D Ministerial direction

For the purposes of or incidental to the transfer from an authority to a statutory SOC, a subsidiary of a statutory SOC or any other person of any assets, rights or liabilities under this Act or under the Act by which the name of the statutory SOC is inserted in Schedule 5, the authority is, in the exercise of its functions, subject to the control and direction of the Minister.

Division 2 Provisions relating to statutory SOCs

20E Principal objectives of statutory SOCs

- (1) The principal objectives of every statutory SOC are:
 - (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses, and
 - (ii) to maximise the net worth of the State's investment in the SOC, and

- (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and
 - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
 - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (2) Each of the principal objectives of a statutory SOC is of equal importance.

20F Status of statutory SOCs

A statutory SOC or any of its subsidiaries:

- (a) is not and does not represent the State except by express agreement with the voting shareholders of the SOC, and
- (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State merely because it is a SOC, and
- (c) cannot render the State liable for any debts, liabilities or obligations of the SOC or any of its subsidiaries,

unless this or any other Act otherwise expressly provides.

20G Corporations Law

- (1) The provisions of the *Corporations Law* prescribed by the regulations (with or without prescribed modifications) apply to a statutory SOC as if:
 - (a) the SOC were a public company and a company limited by shares, and

- (b) the shares in the SOC held by the voting shareholders were shares held in the SOC as a public company and a company limited by shares.
- (2) The provisions of the *Corporations Law* do not apply to a statutory SOC, except as expressly provided by or under this or any other Act.
- (3) A statutory SOC is an exempt public authority for the purposes of the *Corporations Law*.

20H Share capital, shares and shareholders

- (1) A statutory SOC is to have a share capital and shares as provided in its constitution.
- (2) A statutory SOC must have two shareholders, and no more at any time.
- (3) Each shareholder must at all times have an equal number of shares in the statutory SOC.
- (4) Each shareholder must at all times be entitled to rights equal to those to which the other shareholder is entitled.
- (5) The shareholders are to be the Treasurer and another Minister for the time being nominated by the Premier as a voting shareholder of the SOC. The Premier can be nominated as a voting shareholder.

20I Portfolio Minister

- (1) The Minister who has the duty to administer the foundation charter of a statutory SOC is the portfolio Minister of the SOC.
- (2) However, if:
 - (a) there is not a Minister who is the portfolio Minister under subsection (1), or
 - (b) the Premier is of the opinion that another Minister should be the portfolio Minister,the portfolio Minister of the SOC is the Minister nominated by the Premier by order published in the Gazette.

- (3) Such a nomination is to be made by reference to a ministerial title. The Premier can be nominated as a portfolio Minister.

20J Directors

- (1) There is to be a board of directors of a statutory SOC.
- (2) The board is to consist of not fewer than 3 and not more than 7 directors appointed by the Governor on the recommendation of the voting shareholders.
- (3) Of the directors:
 - (a) one is to be a staff director, and
 - (b) the others are to be persons who, in the opinion of the voting shareholders, will assist the SOC to achieve its principal objective.
- (4) The staff director is to be selected in accordance with the procedures specified in the SOC's foundation charter or (in the absence of any such procedures) in accordance with the relevant provisions of Schedule 8.
- (5) The chief executive officer may be appointed as a director.
- (6) The board is accountable to the voting shareholders in the manner set out in Part 4 and in the constitution of the SOC.
- (7) Schedule 8 has effect with respect to the constitution and procedure of the board.

20K Chief executive officer

- (1) Every statutory SOC is to have a chief executive officer.
- (2) The Governor, on the recommendation of the portfolio Minister, may appoint the chief executive officer of a statutory SOC. Such an appointment cannot be effected unless it is recommended by the board.

- (3) The chief executive officer of a statutory SOC may delegate any functions of the chief executive officer to an employee of the SOC, but this power is subject to any directions of the board.
- (4) Schedule 9 has effect with respect to the chief executive officer of a statutory SOC.

20L Operation and management

- (1) All decisions relating to the operation of a statutory SOC are to be made by or under the authority of the board.
- (2) The chief executive officer of a statutory SOC is, subject to subsection (1), responsible for the day to day management of the operation of the SOC in accordance with the general policies and specific directions of the board.

20M Staff

- (1) A statutory SOC may employ such staff as it requires to exercise its functions.
- (2) A statutory SOC may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any other Act or law.
- (3) The regulations may make provision for or with respect to the employment of the staff of a statutory SOC, including the conditions of employment and the discipline of any such staff.
- (4) Any such regulations relating to the conditions of employment or the discipline of staff:
 - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement or enterprise agreement to which the SOC is a party, and
 - (b) have effect despite any determination of the SOC under subsection (2).

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- (5) Except as provided by the regulations under this Act, this section does not apply to the appointment, employment or conditions of employment of the chief executive officer of a statutory SOC.
 - (6) Except as provided by the regulations under this Act, this section applies to a subsidiary of a statutory SOC (other than a company) and its staff in the same way as it applies to the SOC and its staff.

20N Non-commercial activities

- (1) If the portfolio Minister wishes a statutory SOC to perform activities, or to cease to perform activities, or not to perform activities, in circumstances where the board considers that it is not in the commercial interests of the SOC to do so, that Minister with the approval of the Treasurer may, by written notice to the board, direct the SOC to do so in accordance with any requirements set out or referred to in the notice.
- (2) The SOC is required to comply with any such direction.
- (3) The SOC is entitled to be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts equal to:
 - (a) the net cost of performing any such activities, including the cost of capital, and
 - (b) the net cost of complying with a direction to cease to perform or not to perform any such activities.
- (4) The amounts and times of payment of those amounts are as agreed between the Treasurer and the SOC or (failing agreement) as determined by a suitably qualified person or persons nominated by the Premier.
- (5) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net amount of revenue forgone through ceasing to perform or not performing any such activities, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.

200 Power of portfolio Minister to notify board of public sector policies

- (1) The portfolio Minister with the approval of the Treasurer may notify the board of a statutory SOC, in writing, of a public sector policy that is to apply to the SOC and its subsidiaries if the portfolio Minister is satisfied that it is necessary to give the notification in the public interest.
- (2) The board must ensure that the policy is carried out in relation to the SOC and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.
- (3) Before giving a notification under this section, the portfolio Minister must:
 - (a) consult with the board, and
 - (b) request the board to advise the portfolio Minister whether, in its opinion, carrying out the policy would not be in the best interests of the SOC or any of its subsidiaries.
- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a notification, or the estimated net amount of revenue forgone through complying with such a notification, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.
- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a notification was given under this section and why it is in the public interest that the notification be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the notification is given.

20P Power of portfolio Minister to give directions in public interest

- (1) The portfolio Minister with the approval of the Treasurer may give the board of a statutory SOC a written direction in relation to the SOC and its subsidiaries if the

portfolio Minister is satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.

- (2) The board must ensure that the direction is carried out in relation to the SOC and must, as far as practicable, ensure that the direction is complied with in relation to its subsidiaries.
- (3) Before giving a direction under this section, the portfolio Minister must:
 - (a) consult with the board, and
 - (b) request the board to advise the portfolio Minister whether, in its opinion, complying with the direction would not be in the best interests of the SOC or any of its subsidiaries.
- (4) The SOC may be reimbursed, from money advanced by the Treasurer or appropriated by Parliament for the purpose, amounts not exceeding the estimated net cost of complying with such a direction, or the estimated net amount of revenue forgone through complying with such a direction, as determined by the Treasurer having regard to such factors as the Treasurer considers relevant in the circumstances.
- (5) The portfolio Minister is required to cause a notice to be published in the Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.
- (6) A notice referred to in subsection (5) is to be published within 1 month after the direction is given.

20Q Memorandum and articles of statutory SOCs

- (1) A statutory SOC is to have a memorandum and articles of association (its constitution).
- (2) As far as practicable, the constitution of a statutory SOC is to have the same operation and effect in relation to the SOC as the constitution of a company has in relation to the company.

- (3) The constitution of a statutory SOC may contain matters that, for a company, would be found in the *Corporations Law*.
- (4) The constitution of a statutory SOC may make provision for or with respect to the provision, form, custody and use of the seal of the SOC. Any such provisions have effect despite section 50 of the *Interpretation Act 1987*.
- (5) The constitution of a statutory SOC may contain provisions regarding the manner of alteration or replacement of the constitution.
- (6) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of the SOC at all times contains provisions to the effect of those required by Schedule 6.
- (7) The constitution may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (6) or any other provisions of this Act.
- (8) This section does not apply to the extent provided in resolutions of both Houses of Parliament.

20R Memorandum and articles of subsidiaries

- (1) The Ministers who are the voting shareholders of a statutory SOC are responsible for ensuring that the constitution of every subsidiary of the SOC at all times contains provisions to the effect of those required by Schedule 7.
- (2) The constitution may contain other provisions, so long as they are not inconsistent with the provisions referred to in subsection (1) or any other provisions of this Act.
- (3) This section does not apply to the extent provided in resolutions of both Houses of Parliament.

20S Dividends

- (1) A statutory SOC is to have a share dividend scheme, as provided in its constitution, in a form approved by the Treasurer.

- (2) The board of a statutory SOC and the voting shareholders may agree that payments required to be made by the SOC or any of its subsidiaries in respect of dividends will be applied in the purchase of shares by shareholders in the SOC.
- (3) If any such payments are applied in the purchase of shares, the payments may be appropriated for that purpose without being paid into the Consolidated Fund.
- (4) Otherwise, dividends declared for a statutory SOC or any of its subsidiaries and payable to voting shareholders are to be paid to the Treasurer on behalf of the State for payment into the Consolidated Fund.
- (5) Nothing in this section affects the operation of section 59B of the *Public Finance and Audit Act 1983* in relation to statutory SOCs. However, if the Treasurer requires a statutory SOC to pay an amount by way of dividend under that section, the Treasurer must, within one month after notifying the SOC of that requirement, publish a notice in the Gazette setting out:
 - (a) the amount of the dividend to be paid, and
 - (b) the reasons for requiring the payment to be made under that section rather than pursuant to the share dividend scheme under this section.

20T Tax-equivalents

- (1) A statutory SOC must from time to time pay to the Treasurer for payment into the Consolidated Fund such amounts as the Tax Assessor determines to be equivalent to the amounts that would be payable by the SOC if it were liable to pay taxes under the law of the Commonwealth.
- (2) The SOC is not required to make payments under this section to the extent that it is or becomes liable to pay any such taxes.
- (3) Payments are to be made under this section on such terms as the Tax Assessor determines to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment)

if the SOC were liable to pay corresponding taxes under the law of the Commonwealth.

- (4) The SOC and the Treasurer may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (3).
- (5) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements.
- (6) Any such determination of the Tax Assessor is final, and the Treasurer and the SOC are required to make all the necessary payments and refunds to give effect to the determination.
- (7) The Premier may nominate any person or persons to be the Tax Assessor for any one or more statutory SOCs, and may revoke any such nomination.
- (8) This section applies to the subsidiaries of a statutory SOC in the same way as it applies to the SOC, and (where relevant) applies to the SOC and its subsidiaries as a group.
- (9) Amounts required to be paid under this section are called tax-equivalents.
- (10) In this section:
Tax Assessor, in relation to a statutory SOC, means the person nominated for the time being under subsection (7) as the Tax Assessor for the SOC.

20U Government guarantee

- (1) The obligations of a statutory SOC or any of its subsidiaries are not guaranteed by the State of New South Wales, except to the extent that the board of the SOC and the voting shareholders agree in writing.
- (2) Any liability arising from an agreed guarantee is to be met out of the Consolidated Fund, which is appropriated accordingly.

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- (3) The voting shareholders may, after consultation with the board of the SOC, fix charges to be paid by the SOC or any of its subsidiaries to the Treasurer in respect of an agreed guarantee, either generally or in so far as it relates to specified matters.
 - (4) Payments by the SOC or any of its subsidiaries to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

20V State taxation

- (1) In this section:

exempt matter means:

- (a) the issue or transfer of shares of a statutory SOC or any of its subsidiaries to eligible Ministers, or
- (b) the transfer of assets, rights or liabilities to a statutory SOC or any of its subsidiaries from the State, any authority of the State or any subsidiary of an authority of the State, or
- (c) giving effect to any of the above.

tax includes stamp duty and any other tax, duty, fee, levy or charge, but does not include tax-equivalents.

- (2) Tax under a law of the State is not payable in relation to:
 - (a) an exempt matter, or
 - (b) anything done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.
- (3) The Treasurer or a person authorised by the Treasurer may, by a written instrument, certify that:
 - (a) a specified matter or thing is an exempt matter, or
 - (b) a specified thing was done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.

- (4) For all purposes and in all proceedings, a certificate under this section is conclusive evidence of the matters certified, except so far as the contrary is established.

20W Private corporations and subsidiaries

- (1) A statutory SOC may, subject to this section:
- (a) form or participate in the formation of private corporations, and
 - (b) acquire interests in private corporations, and
 - (c) sell or otherwise dispose of interests in private corporations,

whether or not the activities or proposed activities of any such private corporation are related to the functions of the SOC as set out in its foundation charter.

- (2) A statutory SOC or any of its subsidiaries may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.
- (3) A statutory SOC or any of its subsidiaries may not acquire or dispose of shares of a company, or participate in any other transaction, resulting in the company becoming or ceasing to be a subsidiary, without the prior written approval of the voting shareholders.
- (4) In seeking the approval of the voting shareholders, the SOC or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act.
- (5) In this section:

private corporation means a corporation within the meaning of the *Corporations Law* formed in or outside New South Wales.

20X Acquisition and disposal of assets, investments and liabilities

- (1) A statutory SOC or any of its subsidiaries may not acquire or dispose of fixed assets or investments, including shares in a company, without the prior written approval of the voting shareholders:
 - (a) where the total assets and investments being acquired or disposed of (together with any other such acquisitions or dispositions during the last 12 months) represent an amount in excess of the prescribed percentage of the written down value of the SOC's consolidated fixed assets and investments as disclosed in its last audited accounts, or
 - (b) where it could reasonably be expected that the inclusion or exclusion, respectively, of the total current year's profit or loss of such acquisition or disposition (together with any other such acquisitions or dispositions during that year) would result in an increase in or diminution of the SOC's consolidated pre-tax operating profit or loss for the year of acquisition or disposal in excess of the prescribed percentage compared with that consolidated pre-tax operating profit or loss disclosed in its last audited accounts.
- (2) In the case of an acquisition to which this section applies, the amount is the cost price of the asset or investment.
- (3) In the case of a disposition to which this section applies, the amount is the book value or the consideration or disposal, whichever is the greater.
- (4) A statutory SOC or any of its subsidiaries may not acquire or dispose of any assets or liabilities, in contravention of any requirements of the regulations under this Act.

- (5) In seeking the approval of the voting shareholders under this section, the SOC or subsidiary is required to provide the voting shareholders with such information as they require, including such kinds of information (if any) as are prescribed by the regulations under this Act.
- (6) The prescribed percentage is 10 per cent or such other percentage as is prescribed by the regulations under this Act.
- (7) All or any specified requirements of subsections (1), (2) and (3) do not apply in such circumstances as are specified in a written notice given to a statutory SOC or a subsidiary of a statutory SOC by the Treasurer.
- (8) The Treasurer may not give such a notice unless satisfied that the requirements are incapable of application to the SOC or subsidiary in the circumstances or would apply to it in a clearly inappropriate manner.
- (9) The voting shareholders may, by written notice, direct a statutory SOC or its subsidiaries not to dispose of any specified asset.

20Y Sale or disposal of main undertaking

- (1) None of the main undertakings of a statutory SOC, and none of the main undertakings of any of its subsidiaries, may be sold or disposed of except with the prior written approval of the voting shareholders.
- (2) The main undertakings are as specified in the most recent statement of corporate intent of the SOC.

Division 3 Legal capacity and powers of statutory SOCs

20Z Interpretation

- (1) In this Division:
officer of a statutory SOC means:
 - (a) a director of the SOC, or

- (b) the chief executive officer of the SOC, or
- (c) an employee of the SOC.

restriction includes prohibition.

(2) In this Division:

- (a) the doing of an act by a statutory SOC includes a reference to the making of an agreement by the SOC and a reference to a transfer of property to or by the SOC, and
- (b) a reference to power includes a reference to legal capacity.

20ZA Objects of Division

- (1) The objects of this Division include:
 - (a) providing that the doctrine of ultra vires does not apply to statutory SOCs, and
 - (b) ensuring that statutory SOCs give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.
- (2) This Division is to be construed and have effect accordingly.

20ZB General powers of statutory SOCs

- (1) A statutory SOC has, for or in connection with the performance of its functions, all the powers of a natural person, including for example, the power:
 - (a) to enter into contracts, and
 - (b) to acquire, hold, dispose of and deal with property, and
 - (c) to appoint agents and attorneys, and
 - (d) to charge, and fix terms, for goods, services and information supplied by it, and

- (e) to engage consultants, and
 - (f) to do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting subsection (1), a statutory SOC has the powers that are conferred on it by or under this or any other Act.
 - (3) A statutory SOC may exercise its powers within or outside the State.
 - (4) Without limiting subsection (3), a statutory SOC may exercise its powers outside Australia.
 - (5) The fact that the doing of an act by a statutory SOC would not be, or is not, in its best interests does not affect its legal capacity to do the act.

20ZC Restrictions on statutory SOCs

- (1) Section 20ZB has effect in relation to a statutory SOC subject to any restrictions on the SOC's powers expressly imposed by or under this or another Act.
- (2) Section 20ZB also has effect in relation to the SOC subject to any restrictions expressly imposed by:
 - (a) the SOC's constitution, and
 - (b) any relevant statement of corporate intent of the SOC, and
 - (c) any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (3) If:
 - (a) the SOC exercises a power contrary to a restriction mentioned in subsection (1) or (2), or
 - (b) the SOC's foundation charter sets out the SOC's objects or functions and the SOC does an act otherwise than in pursuance of the objects or functions,the SOC contravenes this subsection.

- (4) The exercise of the power mentioned in subsection (3) (a), or the act mentioned in subsection (3) (b), is not invalid merely because of the contravention.
- (5) An officer of the SOC who is involved in the contravention contravenes this subsection.
- (6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).
- (7) The SOC or officer of the SOC is not guilty of an offence merely because of the relevant contravention.
- (8) The fact that:
 - (a) by exercising the powers mentioned in subsection (3) (a), or doing the act as mentioned in subsection (3) (b), the SOC contravened, or would contravene, subsection (3), or
 - (b) by doing a particular act, an officer of the SOC contravened, or would contravene, subsection (5),may be asserted or relied on only in proceedings between the voting shareholders or the State and officers of the SOC.

20ZD Persons having dealings with statutory SOCs or property

- (1) A person having dealings with a statutory SOC is entitled to make, in relation to those dealings, the assumptions referred to in subsection (3). In any proceedings relating to those dealings, any assertion by the SOC that the matters that the person is so entitled to assume were not correct must be disregarded.
- (2) A person having dealings with another person (the apparent owner) who has acquired or purports to have acquired title to property from a statutory SOC (whether directly or indirectly) is entitled to make, in relation to the acquisition or purported acquisition of title from the SOC, the assumptions referred to in subsection (3). In any proceedings in relation to those dealings, any assertion by the SOC or by the apparent owner that the matters that the person is so entitled to assume were not correct must be disregarded.

- (3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are:
- (a) that, at all relevant times, the SOC's foundation charter and this Act have been complied with, and
 - (b) that, at all relevant times, the SOC's constitution has been complied with, and
 - (c) that a person who appears from publicly available information to be a director, the chief executive officer or a secretary of the SOC has been duly appointed and has authority to exercise the functions customarily exercised by a director, by the chief executive officer or by a secretary, as the case may be, of a body carrying on a business of the kind carried on by the SOC, and
 - (d) that a person who is held out by the SOC to be an officer or agent of the SOC has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned, and
 - (e) that an officer or agent of the SOC who has authority to issue a document on behalf of the SOC has authority to warrant that the document is genuine and that an officer or agent of the SOC who has authority to issue a certified copy of a document on behalf of the SOC has authority to warrant that the copy is a true copy, and
 - (f) that a document has been duly sealed by the SOC if it bears what appears to be an impression of a seal of the SOC and the sealing of the document appears to be attested by a person who, because of paragraph (c), may be assumed to be a director of the SOC or the SOC's chief executive officer, and
 - (g) that the directors, chief executive officer, employees and agents of the SOC have properly performed their duties to the SOC.

- (4) This section does not entitle a person to make an assumption, and does not prevent an assertion being made in relation to an assumption, if:
 - (a) the person has actual knowledge that the assumption is not correct, or
 - (b) the person's connection or relationship with the SOC is such that the person ought to know that the assumption is not correct.
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption:
 - (a) if the assumption is in relation to dealings with the SOC—subsection (1) does not apply to any assertion by the SOC in relation to the assumption, or
 - (b) if the assumption is in relation to an acquisition or purported acquisition from the SOC of title to property—subsection (2) does not apply to any assertion by the SOC or another person in relation to the assumption.

20ZE Effect of fraud

- (1) A person's entitlement under this Division to make an assumption is not affected merely by the fact that any person:
 - (a) has acted or is acting fraudulently in relation to the dealing or acquisition or purported acquisition of title to property to which the assumption relates, or
 - (b) has forged a document that appears to have been sealed on behalf of a statutory SOC.
- (2) However, the person is not entitled to make the assumption if the person has actual knowledge of that fraudulent action or forgery.

[14] Section 24 Annual reports and accounts: company SOCs

Omit "State owned corporation" wherever occurring.
Insert instead "company SOC".

[15] Section 24

Omit "the corporation" and "The corporation" wherever occurring.
Insert instead "the SOC" and "The SOC" respectively.

[16] Section 24 (3A)

Insert after section 24 (3):

- (3A) Each annual report is to include a section that:
- (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.

[17] Section 24A

Insert after section 24:

24A Annual reports and accounts: statutory SOCs

- (1) Part 3 of the *Public Finance and Audit Act 1983* applies to statutory SOCs and their subsidiaries, and they are statutory bodies for the purposes of that Part.
- (2) The *Annual Reports (Statutory Bodies) Act 1984* applies to statutory SOCs, and they are statutory bodies for the purposes of that Act.
- (3) Each annual report is to include a section that:
 - (a) identifies any actual departures from the performance targets (including financial targets) set out in the statement of corporate intent for the SOC for the period to which the report relates, and
 - (b) sets out the reasons for each of the departures from the performance targets.

- (4) A reference in Part 3 of the *Public Finance and Audit Act 1983* to a Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs.
- (5) A reference in the *Annual Reports (Statutory Bodies) Act 1984* to the appropriate Minister is, in relation to a statutory SOC, taken to be a reference to the voting shareholders of the SOC, unless the Treasurer otherwise directs.

[18] Section 26 Information to be laid before Parliament

Section 26 (1) (j)

Insert "or 20N" after "11".

[19] Section 26 (1) (l)

Insert "or section 20W, 20X or 20Y" after "20".

[20] Section 26 (1) (m)

Insert "or 20X (7)" after "19 (7)".

[21] Section 26 (1) (n)

Insert "or 20V (3)" after "17 (3)".

[22] Section 26 (1) (o)-(q)

Insert after section 26 (1) (n):

- (o) a copy of any written notification under section 20O, within 14 sitting days after the notification was given.

- (p) a copy of any notice published under section 20O (5), within 14 sitting days after the date of its publication in the Gazette,
- (q) a copy of any written direction under section 20P, within 14 sitting days after the direction was given,
- (r) a copy of any notice published under section 20P (5), within 14 sitting days after the date of its publication in the Gazette,
- (s) a copy of any notice published under section 20S (5) requiring the payment of an amount by way of dividend under section 59B of the *Public Finance and Audit Act 1983*, within 14 sitting days after the date the notice was published,
- (t) a copy of any written direction under clause 12 of Schedule 10, within 14 sitting days after the direction was given.

[23] Section 26 (2)

Insert at the end of the subsection "This subsection does not apply to statutory SOCs."

[24] Section 26 (5) (a)

Insert "or 20E (1) (c)" after "8 (c)".

[25] Section 26 (6)

Insert "or 20Y" after "20".

[26] Section 29 Other information to be supplied

Insert at the end of the section:

- (2) The board of a statutory SOC must supply to the portfolio Minister such information relating to the affairs of the SOC or any of its subsidiaries as the portfolio Minister may from time to time request (whether or not the information is of a kind referred to in the statement of corporate intent).

[27] Sections 33A, 33B

Insert after section 33:

33A Duties and liabilities of directors and other officers

- (1) Schedule 10 has effect.
- (2) The regulations may amend or replace Schedule 10.
- (3) Any such regulations may:
 - (a) confer jurisdiction on courts in relation to the duties and liabilities of directors and officers and associated matters, and
 - (b) impose penalties not exceeding 500 penalty units or imprisonment not exceeding 5 years, or both.

33B Offences

- (1) Proceedings for an offence under this Act may be instituted at any time before the end of 3 years after the alleged commission of the offence.
- (2) Proceedings for an offence under this Act are to be disposed of summarily before:
 - (a) a Local Court constituted by a Magistrate, or
 - (b) the Supreme Court in its summary jurisdiction.
- (3) The maximum penalty that may be imposed by a Local Court for an offence under this Act is 50 penalty units or imprisonment for 12 months, or both.

[28] Section 35 Affirmative action

Omit the section.

[29] Section 35A

Insert before section 36:

35A Application of Public Finance and Audit Act 1983

- (1) The *Public Finance and Audit Act 1983* does not apply in relation to a State owned corporation or any of its subsidiaries, except as provided by section 24A and by this section.

- (2) Part 4 of the *Public Finance and Audit Act 1983* applies in relation to a State owned corporation and its subsidiaries.
- (3) Section 59B of the *Public Finance and Audit Act 1983* applies to statutory SOCs and their subsidiaries, and they are statutory authorities for the purposes of that section.

[30] Section 36 Application of other Acts

Omit section 36 (1) (b).

[31] Section 36 (2)

Omit "such a corporation or subsidiary" wherever occurring.
Insert instead "a company SOC or any of its subsidiaries".

[32] Section 37A Modification of Environmental Planning and Assessment Act 1979 in its application to certain proposals

Insert in alphabetical order in section 37A (1):

State owned corporation means a company SOC.

[33] Section 38 Regulations

Insert at the end of the section:

- (2) Without limiting the generality of subsection (1), regulations may be made for or with respect to matters relating to the process for the selection of staff directors of State owned corporations.

[34] Section 39

Insert after section 38:

39 Savings and transitional provisions

Schedule 11 has effect.

[35] Schedule 1, heading

Omit the heading to Schedule 1.
Insert instead "Schedule 1 Company SOCs".

[36] Schedule 2, heading

Omit the heading to Schedule 2.

Insert instead "**Schedule 2 Provisions to be included in memorandum or articles of company SOCs**".

[37] Schedule 2

Omit "State owned corporation" where firstly occurring in Parts 1 and 2.

Insert instead "company SOC".

[38] Schedule 2, Part 2, clause 1A

Insert after clause 1 of Part 2:

1A Staff director

- (1) One of the directors of the corporation is to be a staff director.
- (2) The staff director is to be selected by a selection committee from members of the staff of the corporation who are nominated for selection.
- (3) The selection committee is to consist of two persons nominated by the corporation's voting shareholders and two persons nominated by the Labor Council of New South Wales.
- (4) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the voting shareholders.

[39] Schedule 3, heading

Omit the heading to Schedule 3.

Insert instead "**Schedule 3 Provisions to be included in memorandum or articles of association of subsidiaries of company SOCs**".

[40] Schedule 3

Omit "State owned corporation" where firstly occurring in Parts 1 and 2.

Insert instead "company SOC".

[41] Schedule 4 Provisions relating to certain staff

Insert "or the relevant foundation charter" after "Parliament" in the definition of *eligible employee* in clause 1.

[42] Schedule 5

Insert in numerical order:

Schedule 5 Statutory SOCs

(Sections 3, 20A, 20B)

[43] Schedule 6

Insert in numerical order:

Schedule 6 Provisions to be included in memorandum or articles of association of statutory SOCs

(Section 20Q)

Part 1 Memorandum

Provisions to the effect of the following provisions are to be included in the memorandum of association of a statutory SOC.

1 Entrenchment

The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 6 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the memorandum of association of the corporation.

Part 2 Articles

Provisions to the effect of the following provisions are to be included in the articles of association of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Shareholders

- (1) Only eligible Ministers may hold shares in the corporation's issued share capital.
- (2) The shareholders hold their shares in the corporation for and on behalf of the State.
- (3) A person ceases to be eligible to hold shares in the corporation on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (4) A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister.
- (5) The Premier is empowered to execute a transfer of any issued shares, whether or not the person still holds office as an eligible Minister, and the corporation is required to register the transfer.
- (6) The board of the corporation is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the memorandum and articles of association of the corporation.
- (7) The corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares.

- (8) Only the voting shareholders may cast votes.
- (9) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes.

2 Subsidiaries

- (1) The corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.
- (2) The corporation must ensure that the memorandum and articles of association of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its memorandum and articles of association (if any) and with the requirements of the *State Owned Corporations Act 1989*.

3 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the articles of association of the corporation.
- (2) The corporation is expressly prohibited from exercising any power of the corporation in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*.

[44] Schedule 7

Insert in numerical order:

Schedule 7 Provisions to be included in memorandum or articles of association of subsidiaries of statutory SOCs

(Section 20R)

Part 1 Memorandum

Provisions to the effect of the following provisions are to be included in the memorandum of association of each subsidiary of a statutory SOC.

1 Entrenchment

The memorandum and articles of association may not be altered or added to in a way that is inconsistent with the provisions in Schedule 7 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the memorandum of association of the subsidiary.

Part 2 Articles

Provisions to the effect of the following provisions are to be included in the articles of association of each subsidiary of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Shareholders

- (1) Those shareholders in the subsidiary consisting of eligible Ministers (if any) hold their shares in the subsidiary for and on behalf of the State.

- (2) Such a person ceases to be eligible to hold shares in the subsidiary on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (3) Such a shareholder may not sell or otherwise dispose of shares in the subsidiary otherwise than to an eligible Minister or to the State owned corporation or a subsidiary of the State owned corporation.
- (4) The Premier is empowered to execute a transfer of any shares that were issued or transferred to an eligible Minister, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister, and the subsidiary is required to register the transfer.
- (5) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary.
- (6) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the memorandum and articles of association of the subsidiary.
- (7) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (8) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the State owned corporation or by the Premier under subclause (4).

2 Subsidiaries

- (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the State owned corporation.

- (2) The subsidiary must ensure that the memorandum and articles of association of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its memorandum and articles of association (if any) and with the requirements of the *State Owned Corporations Act 1989*.

3 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the articles of association of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*.

[45] Schedule 8

Insert in numerical order:

Schedule 8 Constitution and procedure of boards of statutory SOCs

(Section 20J)

1 Application of this Schedule

- (1) This Schedule applies in relation to the board of each statutory SOC (referred to in this Schedule as the board and the SOC respectively).
- (2) This Schedule applies only to the extent that the memorandum and articles of association of the SOC do not make provision for any matter dealt with in this Schedule. However, the memorandum and articles cannot override clause 5 or 7.

2 Chairperson

- (1) Of the directors of the SOC, one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the voting shareholders) to be appointed as Chairperson of the board.
- (2) The voting shareholders may remove a director from the office of Chairperson of the SOC at any time for any or no reason and without notice.
- (3) A person who is a director and Chairperson of the SOC vacates office as Chairperson in the circumstances set out in the memorandum or articles of association of the SOC or if the person:
 - (a) is removed from that office by the voting shareholders, or
 - (b) resigns that office by letter addressed to the voting shareholders, or
 - (c) ceases to be a director of the SOC.

3 Deputies

- (1) The voting shareholders may, from time to time, appoint a person to be the deputy of a director of the SOC, and the voting shareholders may revoke any such appointment.
- (2) In the absence of a director of the SOC, the director's deputy:
 - (a) is, if available, to act in the place of the director, and
 - (b) while so acting, has all the functions of the director and is taken to be a director of the SOC.
- (3) The deputy of a director of the SOC who is Chairperson of the board does not have the director's functions as Chairperson, unless the memorandum or articles of association of the SOC provide for this to happen.

- (4) A person while acting in the place of a director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine in respect of the person.

4 Staff director

- (1) This clause applies to the manner of selecting the staff director of the SOC in the absence of relevant procedures in the SOC's foundation charter.
- (2) The staff director is to be selected by a selection committee from members of the staff of the SOC who are nominated for selection.
- (3) The selection committee is to consist of two persons nominated by the SOC's voting shareholders and two persons nominated by the Labor Council of New South Wales.
- (4) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by regulations under this Act or (subject to any such regulations) by the voting shareholders.

5 Term of office of directors

Subject to this Schedule, a director of the SOC holds office for such period (not exceeding 5 years) as may be specified in the director's instrument of appointment.

6 Remuneration

A director of the SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the voting shareholders may from time to time determine.

7 Vacancy in office of director

- (1) The office of a director of a SOC becomes vacant in the circumstances set out in the memorandum or articles of association of the SOC or if the director:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the voting shareholders, or
 - (d) is removed from office by the Governor under this clause or under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the board or unless, before the end of 4 weeks after the last of those meetings, the director is excused by the board for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor, on the recommendation of the voting shareholders, may remove a director of the SOC from office at any time for any or no reason and without notice.

8 Filling of vacancy

If the office of a director of the SOC becomes vacant, a person is, subject to this Act and the memorandum and articles of association of the SOC, to be appointed to fill the vacancy.

9 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of a director of the SOC. A director is not, as a director, subject to that Act (except Part 8).
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting any remuneration payable to the person under this Act as such a director.

10 General procedure

The procedure for the calling of meetings of the board and for the conduct of business at those meetings is, subject to this Act, the regulations and the memorandum and articles of association of the SOC, to be as determined by the board.

11 Quorum

The quorum for a meeting of the board is, subject to the memorandum and articles of association of the SOC, a majority of the directors for the time being.

12 Presiding director

- (1) The Chairperson of the board or, in the absence of the Chairperson, another director elected to chair the meeting by the directors present is (subject to the memorandum and articles of association of the SOC) to preside at a meeting of the board.
- (2) The person presiding at any meeting of the board has (subject to the memorandum and articles of association of the SOC) a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is (subject to the memorandum and articles of association of the SOC) the decision of the board.

14 Transaction of business otherwise than at ordinary meetings

- (1) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the board for the time being. A resolution approved in writing by a majority of those members is taken to be a decision of the board.
- (2) The board may, if it thinks fit, transact any of its business at a meeting at which directors (or some directors) participate by telephone, closed circuit television or other means, but only if any director who speaks on a matter before the meeting can be heard by the other directors.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1),
or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and director have the same voting rights as they have at an ordinary meeting of the board.

- (4) A resolution approved under subclause (1) is, subject to the regulations and the memorandum and articles of association of the SOC, to be recorded in the minutes of the board.
- (5) Papers may be circulated among directors for the purposes of subclause (1) by fax or other transmission of the information in the papers concerned.

15 First meeting

The voting shareholders may call the first meeting of the board in such manner as they think fit.

[46] Schedule 9

Insert in numerical order:

Schedule 9 Chief executive officers of statutory SOCs

(Section 20K)

1 Term of office

Subject to this Schedule, the chief executive officer of a statutory SOC holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer's instrument of appointment.

2 Conditions of employment

The board of a statutory SOC may, with the approval of the portfolio Minister, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.

3 Remuneration

The chief executive officer of a statutory SOC is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine after considering advice from the board.

4 Performance agreements

The board of a statutory SOC may require the chief executive officer to enter into performance agreements.

5 Acting chief executive officer

- (1) The portfolio Minister may, from time to time, appoint a person to act in the office of chief executive officer of a statutory SOC during the illness or absence of the chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (2) The portfolio Minister may remove a person from any office, to which the person was appointed under this clause, at any time for any or no reason and without notice.
- (3) A person while acting in the office of a chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the portfolio Minister may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a chief executive officer is regarded as an absence from office of the chief executive officer.

6 Removal from office

The Governor, on the recommendation of the portfolio Minister, may remove the chief executive officer of a statutory SOC from office at any time for any or no reason and without notice. Such a removal cannot be effected unless it is recommended by the board.

[47] Schedule 10

Insert in numerical order:

Schedule 10 Duties and liabilities of directors and other officers

(Section 33A)

Part 1 Statutory SOCs

1 Disclosure of interests by directors

- (1) If a director of a statutory SOC has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty: 100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

2 Voting by interested director

- (1) A director of a statutory SOC who has a material personal interest in a matter that is being considered by the board must not:
 - (a) vote on the matter, or
 - (b) vote on a proposed resolution (a *related resolution*) under subclause (2) in relation to the matter (whether in relation to the director or another director), or
 - (c) be present while the matter, or a related resolution, is being considered by the board, or
 - (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty: 100 penalty units.

- (2) Subclause (1) does not apply to the matter if the board has at any time passed a resolution that:
 - (a) specifies the director, the interest and the matter, and
 - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (3) In determining whether a quorum is present at a meeting of the board during a consideration of such a matter by the board, only those directors are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter.
- (4) The voting shareholders may, by each signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subclause (3).

3 Duty and liability of certain officers of statutory SOC

- (1) In this clause:

officer of a statutory SOC means:

 - (a) a director of the SOC, or
 - (b) the SOC's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the SOC's management.
- (2) An officer of a statutory SOC must act honestly in the exercise of powers, and discharge of functions, as an officer of the SOC.

Maximum penalty:

 - (a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
 - (b) in any other case—100 penalty units.

-
- (3) In the exercise of powers and the discharge of functions, an officer of a statutory SOC must exercise the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the statutory SOC's circumstances.

Maximum penalty: 100 penalty units.

- (4) An officer of a statutory SOC, or a person who has been an officer of a statutory SOC, must not make improper use of information acquired because of his or her position as an officer of the SOC:

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person, or
- (b) to cause detriment to the SOC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (5) An officer of a statutory SOC must not make improper use of his or her position as an officer of the SOC:

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person, or
- (b) to cause detriment to the SOC.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

- (6) If a person contravenes this clause in relation to a statutory SOC, the statutory SOC may recover from the person as a debt due to the statutory SOC:

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit, and
- (b) if the statutory SOC suffered loss or damage because of the contravention—an amount equal to the loss or damage.

- (7) An amount may be recovered from the person under subclause (6) whether or not the person has been convicted of an offence in relation to the contravention.

- (8) Subclause (6) is in addition to, and does not limit, the *Confiscation of Proceeds of Crime Act 1989*.
- (9) In determining for the purposes of subclause (3) the degree of care and diligence that a reasonable person in a like position in a statutory SOC would exercise in the circumstances of the statutory SOC concerned, regard must be had to:
 - (a) the fact that the person is an officer of a statutory SOC, and
 - (b) the application of this Act to the SOC, and
 - (c) relevant matters required or permitted to be done under this Act in relation to the SOC,including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (10) Subclause (9) does not limit the matters to which regard may be had for the purposes of subclause (3).
- (11) This clause:
 - (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation, and
 - (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

4 Prohibition on loans to directors

- (1) A statutory SOC must not, whether directly or indirectly:
 - (a) make a loan to a director, a spouse of a director or a relative of a director or spouse, or
 - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.
- (2) Subclause (1) does not apply to the entering into by the SOC of an instrument with a person mentioned in subclause (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the SOC with members of the public.

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- (3) A director of a statutory SOC who is knowingly concerned in a contravention of subclause (1) by the SOC (whether or not in relation to the director) commits an offence.

Maximum penalty: 100 penalty units.

- (4) In this clause:

relative means:

- (a) a parent or remoter lineal ancestor, or
- (b) a son, daughter or remoter issue, or
- (c) a brother or sister.

5 Statutory SOC not to indemnify officers

- (1) A statutory SOC must not:
- (a) indemnify a person who is or has been an officer of the SOC against a liability incurred as an officer, or
 - (b) exempt a person who is or has been an officer of the SOC from a liability incurred as an officer.
- (2) An instrument is void so far as it provides for the statutory SOC to do something that subclause (1) prohibits.
- (3) Subclause (1) does not prevent the statutory SOC from indemnifying a person against civil liability (other than a liability to the SOC or a subsidiary of the SOC) unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent the statutory SOC from indemnifying a person against a liability for costs and expenses incurred by the person:
- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or

- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) The statutory SOC may give an indemnity mentioned in subclause (3) or (4) only with the prior approval of the voting shareholders.
- (6) In this clause:
indemnify includes indemnify indirectly through one or more interposed entities.
officer of a statutory SOC means:
 - (a) a director of the SOC, or
 - (b) the SOC's chief executive officer, or
 - (c) another person who is concerned, or takes part, in the SOC's management.

6 Statutory SOC not to pay premiums for certain liabilities of officers

- (1) A statutory SOC must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the SOC against a liability:
 - (a) incurred by the person as an officer, and
 - (b) arising out of conduct involving:
 - (i) a wilful breach of duty in relation to the SOC, or
 - (ii) without limiting subparagraph (i), a contravention of clause 3 (4) or (5).
- (2) Subclause (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.
- (3) An instrument is void so far as it insures a person against a liability in contravention of subclause (1).

(4) In this clause:

officer of a statutory SOC means:

- (a) a director of the SOC, or
- (b) the SOC's chief executive officer, or
- (c) another person who is concerned, or takes part, in the SOC's management.

pay includes pay indirectly through one or more interposed entities.

7 Director's duty to prevent insolvent trading

(1) If:

- (a) immediately before a statutory SOC incurs a debt:
 - (i) there are reasonable grounds to suspect that the SOC will not be able to pay all its debts as and when they become due, or
 - (ii) there are reasonable grounds to suspect that, if the SOC incurs the debt, it will not be able to pay all its debts as and when they become due, and
- (b) the SOC is, or later becomes, unable to pay all its debts as and when they become due,

a person who is a director of the SOC, or takes part in the SOC's management, at the time when the debt is incurred commits an offence.

Maximum penalty: 100 penalty units or imprisonment for 1 year.

(2) In a proceeding against a person for an offence against this clause, it is a defence if it is proved:

- (a) that the debt was incurred without the person's express or implied authority or consent, or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect:

- (i) that the SOC would not be able to pay all its debts as and when they became due, or
- (ii) that, if the SOC incurred that debt, it would not be able to pay all its debts as and when they became due, or
- (c) that the person took all reasonable steps to prevent the SOC from incurring the debt, or
- (d) in the case of a director—that the person did not take part at the time in the SOC's management because of illness or for some other good cause.

8 Court may order compensation

- (1) If a person is found guilty of an offence against clause 7 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a statutory SOC, the Supreme Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the SOC of the amount required to satisfy the part of the SOC's debts that the court considers proper.
- (2) This clause does not affect any rights of a person to indemnity, subrogation or contribution.
- (3) This clause:
 - (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation, and
 - (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

9 Examination of persons concerned with statutory SOCs

- (1) If it appears to the Attorney General that:
 - (a) a person who has been concerned, or taken part, in a statutory SOC's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the SOC, or

-
- (b) a person may be capable of giving information in relation to a statutory SOC's management, administration or affairs,

the Attorney General may apply to the Supreme Court or the District Court for an order under this clause in relation to the person.

- (2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the SOC's management, administration or affairs.
- (3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.
- (4) The court may give directions about:
- (a) the matters to be inquired into at the examination, and
 - (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).
- (5) The person must not fail, without reasonable excuse:
- (a) to attend as required by the order, or
 - (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (6) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subclause (8).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty: 500 penalty units or imprisonment for 5 years.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If:

(a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty, and

(b) the answer might in fact tend to incriminate the person or make the person liable to a penalty,

the answer is not admissible in evidence against the person in:

(c) a criminal proceeding, or

(d) a proceeding for the imposition of a penalty,

other than a proceeding for an offence against this clause or another proceeding in relation to the falsity of the answer.

- (14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.
- (15) Subject to subclause (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.
- (16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.
- (17) The court may adjourn the examination from time to time.
- (18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

10 Power to grant relief

- (1) This clause applies to a director, the chief executive officer or an employee of a statutory SOC.
- (2) If, in a proceeding against a person to whom this clause applies for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, it appears to the court that:
 - (a) the person is or may be liable for the negligence, default or breach, but
 - (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach,

the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.

- (3) If a person to whom this clause applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this clause applies, the person may apply to the Supreme Court or the District Court for relief.
- (4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.
- (5) If:
 - (a) a proceeding mentioned in subclause (2) is being tried by a Judge with a jury, and
 - (b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subclause be relieved (in whole or part) from the liability sought to be enforced against the person,

the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate.

11 False or misleading information or documents

- (1) In this clause:

officer of a statutory SOC means:

 - (a) a director of the SOC, or
 - (b) the SOC's chief executive officer, or
 - (c) an employee of the SOC.
- (2) An officer of a statutory SOC must not:
 - (a) make a statement concerning the affairs of the SOC to another officer or the voting shareholders that the first officer knows is false or misleading in a material particular, or

- (b) omit from a statement concerning the SOC's affairs made to another officer or the voting shareholders anything without which the statement is, to the first officer's knowledge, misleading in a material particular.
- (3) An information or complaint against a person for an offence against subclause (2) (a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.
- (4) An officer of a statutory SOC must not give to another officer or the voting shareholders a document containing information that the first officer knows is false, misleading or incomplete in a material particular without:
 - (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete, and
 - (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty:

- (a) if the contravention is committed with intent to deceive or defraud the SOC, creditors of the SOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years, or
- (b) in any other case—100 penalty units.

12 Notice of suspected insolvency otherwise than because of direction or notification

- (1) If:
 - (a) a statutory SOC's board suspects that the SOC or a subsidiary of the SOC is, may be, will or may become insolvent, and

- (b) in the board's opinion, compliance with a direction or notification given by the voting shareholders is not or would not be the cause or a substantial cause of the suspected insolvency,

the board must immediately give written notice to the voting shareholders of:

- (c) the suspicion, and
 - (d) its reasons for the opinion.
- (2) The notice must state that it is given under this clause.
 - (3) If the voting shareholders are satisfied that the board's suspicion is well-founded, the voting shareholders must immediately give the board the written directions that the voting shareholders consider necessary or desirable, including any directions necessary or desirable to ensure:
 - (a) that the statutory SOC or subsidiary does not incur further debts, or
 - (b) that the statutory SOC or subsidiary will be able to pay all its debts as and when they become due.
 - (4) Without limiting subclause (3), a direction under this clause may require the statutory SOC or any of its subsidiaries to cease or limit particular activities.
 - (5) The board must ensure that a direction under this clause is complied with in relation to the SOC and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
 - (6) This clause is in addition to, and does not limit, another provision of this Act or another law.

Part 2 Company SOC's

13 Application of Corporations Law to officers of company SOC

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a company SOC would exercise in the circumstances of the company SOC concerned, regard must be had to:

- (a) the application of this Act to the SOC, and
 - (b) relevant matters required or permitted to be done under this Act in relation to the SOC,
- including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (2) This section has effect despite the *Corporations Law*.

Part 3 SOCs generally

14 Application of Corporations Law to officers of SOC subsidiaries

- (1) In determining for the purposes of the *Corporations Law* the degree of care and diligence that a reasonable person in a like position in a subsidiary of a SOC would exercise in the circumstances of the subsidiary concerned, regard must be had to:
 - (a) the application of this Act to the SOC and subsidiary, and
 - (b) relevant matters required or permitted to be done under this Act in relation to the SOC and subsidiary,including, for example, any relevant directions, notifications or approvals given to the SOC by the SOC's voting shareholders or portfolio Minister.
- (2) This section has effect despite the *Corporations Law*.

[48] Schedule 11

Insert in numerical order:

Schedule 11 Savings and transitional provisions

(Section 39)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:
 - *State Owned Corporations Amendment Act 1995*.

- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of State Owned Corporations Amendment Act 1995

2 Staff director (Hunter Water Corporation Limited)

- (1) This Act does not require the articles of association of Hunter Water Corporation Limited to be altered during the first 2 months after the commencement of the amendment to Schedule 2 made by the *State Owned Corporations Amendment Act 1995*.
- (2) The requirement for the appointment of a staff director for Hunter Water Corporation Limited need not be complied with within 6 months after the commencement of that amendment.

3 Staff director (Sydney Water Corporation Limited)

- (1) Clause 1A of Part 2 of Schedule 2 as inserted by the *State Owned Corporations Amendment Act 1995* does not apply to Sydney Water Corporation Limited.

- (2) This Act does not require the articles of association of Sydney Water Corporation Limited to be altered during the first 6 months after the commencement of the amendment made to Schedule 3 to the *Water Board (Corporatisation) Act 1994* by the *State Owned Corporations Amendment Act 1995*.
- (3) Those articles may provide that the requirement for a staff director does not take effect until there is a suitable vacancy on the board. However, the requirement for the appointment of a staff director must be complied with within two years after the commencement of that amendment.

Schedule 2 Amendment of Irrigation Corporations Act 1994

(Section 4)

[1] Section 4 Definitions

Omit the definition of *class 1 irrigation corporation* in section 4 (1).
Insert instead:

class 1 irrigation corporation means:

- (a) a company named in both Schedule 1 to this Act and Schedule 1 to the SOC Act, or
- (b) a corporation named in both Schedule 1 to this Act and Part 1 of Schedule 5 to the SOC Act.

[2] Section 4 (1)

Omit "or a co-operative" from the definition of *corporation*.
Insert instead " , a co-operative or a corporation constituted by this Act".

[3] Section 6 Establishment of corporations as SOCs

Omit section 6 (1). Insert instead:

- (1) The SOC Act is amended by inserting in Part 1 of Schedule 5 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 (1) to this Act (Coleambally Irrigation Corporation).

[4] Section 6 (5)

Omit the subsection. Insert instead:

- (5) The SOC Act is amended by inserting in Part 1 of Schedule 5 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 (5) to this Act (Murrumbidgee Irrigation Corporation).

[5] Section 12 Delegated functions

Insert "or section 20C (3)" after "section 7 (3)" in section 12 (4).

[6] Section 13 Application and interpretation of Division

Insert at the end of section 13 (1) (b):

, and

- (c) the corporation is named in Schedule 1 to the SOC Act.

[7] Section 19 Amendment of SOC Act

Omit section 19 (1) and (5).

[8] Section 21 Dividends

Insert "or 20S" after "14".

[9] Section 22 Tax-equivalents

Insert "or 20T" after "15" in section 22 (1).

[10] Part 2, Division 4

Insert at the end of Part 2:

Division 4 Constitution of corporations

26A Constitution of Coleambally Irrigation Corporation

On a day to be appointed by proclamation, there is constituted by this Act a corporation with the corporate name of the Coleambally Irrigation Corporation.

26B Constitution of Murrumbidgee Irrigation Corporation

On a day to be appointed by proclamation, there is constituted by this Act a corporation with the corporate name of the Murrumbidgee Irrigation Corporation.

[11] Section 27 Designation of corporation as a class 2 irrigation corporation

Omit section 27 (4). Insert instead:

- (4) A corporation cannot be designated by a proclamation as a class 2 irrigation corporation unless the corporation is named in Schedule 1 to the SOC Act immediately before the proclamation takes effect and an Act (other than this Act) authorises the proclamation to be made. This subsection has effect despite any other provision of this Act.

[12] Schedule 1 List of Class 1 Irrigation Corporations

Omit "Limited" wherever occurring in Schedule 1 (1) and (5).
Insert instead "Corporation".

Schedule 3 Amendment of other Acts

(Section 5)

3.1 Anti-Discrimination Act 1977 No 48

Section 122B Application of Part 9A—authorities

Insert after section 122B (1) (b):

(b1) each State owned corporation,

3.2 Environmental Planning and Assessment Act 1979 No 203

Section 4 Definitions

Insert “, and also includes a statutory State owned corporation within the meaning of the *State Owned Corporations Act 1989*” after “body” where lastly occurring in the definition of *public authority* in section 4 (1).

3.3 Freedom of Information Act 1989 No 5

[1] Section 6 Definitions

Insert at the end of paragraph (h) of the definition of *responsible Minister* in section 6 (1):

, or

- (i) in relation to a statutory State owned corporation referred to in section 7 (1) (f)—the portfolio Minister (within the meaning of the *State Owned Corporations Act 1989*) for the authority.

[2] Section 7 Public authorities

Insert at the end of section 7 (1) (e):

, or

- (f) a statutory State owned corporation as defined in the *State Owned Corporations Act 1989*.

3.4 Public Sector Management Act 1988 No 33

Section 89 Definitions

Insert at the end of section 89:

- (5) The positions of director or chief executive officer of a statutory State owned corporation as defined in the *State Owned Corporations Act 1989* are statutory offices for the purposes of this Part.

3.5 Water Board (Corporatisation) Act 1994 No 88

[1] Schedule 3 Board of Corporation

Omit subclause (6A) (c).

Insert instead:

- (c) a staff director, selected under subclause (6B).

[2] Schedule 3

Omit subclauses (6B)–(6D).

Insert instead:

- (6B) The staff director is to be selected by a selection committee from members of the staff of the corporation who are nominated for selection.

- (6C) The selection committee is to consist of two persons nominated by the corporation's voting shareholders and two persons nominated by the Labor Council of New South Wales.
- (6D) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the voting shareholders.

[Minister's second reading speech made in—
Legislative Assembly on 23 May 1995
Legislative Council on 7 June 1995]

BY AUTHORITY

