

TASMANIA

**TASMANIAN DEVELOPMENT REGULATIONS
2022**

STATUTORY RULES 2022, No. 91

CONTENTS

1. Short title
2. Commencement
3. Interpretation
4. Associated entities
5. Material personal interest
6. Power of former director, &c., to access records
7. Power of director, administrator or authorized officer to access records
8. Duties of directors, authorized officers and administrators
9. Reliance on information or advice
10. Power of court to order compensation
11. Power of Authority to recover unlawful profits &c.
12. Regulations to be in addition to other rules of law

**TASMANIAN DEVELOPMENT REGULATIONS
2022**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Tasmanian Development Act 1983*.

Dated 7 November 2022.

B. BAKER
Governor

By Her Excellency's Command,

GUY BARNETT
Minister for State Development, Construction and Housing

1. Short title

These regulations may be cited as the *Tasmanian Development Regulations 2022*.

2. Commencement

These regulations take effect on
25 December 2022.

3. Interpretation

In these regulations –

Act means the *Tasmanian Development Act 1983*;

administrator means a person appointed as administrator under section 32 of the Act;

associated entity – see regulation 4;

business judgment means any decision to take or not to take action in respect of a matter relevant to the business operations of the Authority;

former director means a person who ceased to be a director within the period of 7 years immediately preceding the relevant time;

former officer means a person who ceased to be an officer within the period of 7 years immediately preceding the relevant time;

material personal interest – see regulation 5;

relative includes a person with whom a person is in a personal relationship, within the meaning of the *Relationships Act 2003*.

4. Associated entities

- (1) In respect of a director, each of the following persons is an associated entity if the director or a relative of the director has control over the person:

- (a) a body corporate;
 - (b) a partnership or other unincorporated association of persons;
 - (c) a majority of trustees of a trust.
- (2) For the purposes of determining whether the director has control over a person referred to in subregulation (1), the following matters may be taken into account:
- (a) whether the director or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;
 - (b) whether the director or his or her relative is a beneficiary in the trust of which that person is a trustee;
 - (c) any other matter or relationship that is relevant.
- (3) For the purposes of determining whether the relative of a director has control over a person referred to in subregulation (1), the following matters may be taken into account:
- (a) whether the relative or his or her relative is a shareholder in, a director or other officer of or a trustee of that person;
 - (b) whether the relative or his or her relative is a beneficiary in the trust of which that person is a trustee;
 - (c) any other matter or relationship that is relevant.

5. Material personal interest

(1) In these regulations –

material personal interest, in respect of a director, includes –

- (a) a direct or indirect interest; and
- (b) a pecuniary or non-pecuniary interest; and
- (c) the interest of a relative of the director; and
- (d) the interest of an associated entity; and
- (e) an interest in a corporation, within the meaning of the Corporations Act; and
- (f) the director's employment by a person with a direct or indirect interest in the Authority; and
- (g) the holding by the director of an office where there arises or may arise a conflict between his or her duties in that office and his or her duties as director; and
- (h) the holding by the director of the office of member in another statutory authority or in the governing authority of another statutory authority; and

- (i) any other interest that gives, or may give, rise to a conflict of interest.
- (2) A director does not have a material personal interest by reason only of the director also being a State Service employee or State Service officer.
- (3) A director does not have a material personal interest by reason only of an interest in a contract with the Authority for a good or service ordinarily supplied by the Authority and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.

6. Power of former director, &c., to access records

- (1) A former director, an administrator or an authorized officer may inspect and make copies of the records of the Authority, including its accounting records, financial statements and interim reports, at any reasonable time for the purpose of a legal proceeding –
 - (a) to which the former director, administrator or authorized officer is a party; or
 - (b) that the former director, administrator or authorized officer proposes in good faith to bring; or

Tasmanian Development Regulations 2022
Statutory Rules 2022, No. 91

r. 7

(c) that the former director, administrator or authorized officer has reason to believe will be brought against him or her.

(2) The Authority must allow a former director, an administrator or an authorized officer to exercise his or her powers under this regulation to inspect and make copies of records.

Penalty: Fine not exceeding 100 penalty units.

(3) This regulation does not limit any right of access to the records of the Authority that a former director, an administrator or an authorized officer has apart from this regulation.

7. Power of director, administrator or authorized officer to access records

(1) A director, administrator or authorized officer may inspect and make copies of the records of the Authority, including its accounting records, financial statements and interim reports, at any reasonable time.

(2) A director or officer of the Authority must not prevent a director, administrator or authorized officer from exercising his or her powers under this regulation to inspect and make copies of records.

Penalty: Fine not exceeding 50 penalty units.

8. Duties of directors, authorized officers and administrators

(1) A director, authorized officer or administrator must perform and exercise the functions and powers of his or her office –

(a) in good faith in the best interests of the Authority; and

(b) for a proper purpose.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) A director, authorized officer or administrator must exercise his or her powers and perform his or her functions with the degree of care and diligence that a reasonable person would exercise if he or she –

(a) were a director, authorized officer or administrator; and

(b) occupied the office held by, and had the same responsibilities within the Authority as, the director, authorized officer or administrator.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both

(3) A director, authorized officer or administrator who makes a business judgment is taken to meet the requirements of subregulation (1), and his or

Tasmanian Development Regulations 2022
Statutory Rules 2022, No. 91

r. 8

her equivalent duties at common law and in equity, in respect of the judgment if he or she –

- (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent that he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the Authority.
- (4) For the purposes of subregulation (3)(d), the belief of a director, authorized officer or administrator that a business judgment is in the best interests of the Authority is rational unless the belief is one that no reasonable person in the position of the director, authorized officer or administrator would hold.
- (5) An officer or former officer of the Authority must not make improper use, in Tasmania or elsewhere, of information acquired because of his or her office or employment in the Authority –
- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

- (b) to cause damage to the Authority or any of its subsidiaries.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (6) An officer must not make improper use, in Tasmania or elsewhere, of his or her position as an officer of the Authority –

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

- (b) to cause damage to the Authority.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

9. Reliance on information or advice

If –

- (a) an officer of the Authority relies on information, or professional or expert advice, given or prepared by –

- (i) another officer of the Authority whom the first-mentioned officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or

Tasmanian Development Regulations 2022
Statutory Rules 2022, No. 91

r. 9

- (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within that person's professional or expert competence; or
 - (iii) another officer in relation to matters within that officer's authority; or
 - (iv) a committee of officers on which the officer did not serve in relation to matters within the committee's authority; and
- (b) the reliance was made –
 - (i) in good faith; and
 - (ii) after making an independent assessment of the information or advice, having regard to the officer's knowledge of the Authority and the complexity of the structure and operations of the Authority; and
- (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a function under the Act or an equivalent general law duty –

the officer's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

10. Power of court to order compensation

Where –

- (a) a person is convicted of an offence against these regulations; and
- (b) the court is satisfied that the Authority has suffered loss or damage as a result of the act or omission that constituted the offence –

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the Authority of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

11. Power of Authority to recover unlawful profits &c.

Where a person contravenes or fails to comply with a provision of these regulations in relation to the Authority, the Authority may, whether or not the person has been convicted of an offence against these regulations in relation to that contravention or failure to comply, recover from the person as a debt due to the Authority by action in any court of competent jurisdiction –

- (a) if that person or any other person made a profit as a result of the contravention or

Tasmanian Development Regulations 2022
Statutory Rules 2022, No. 91

r. 12

failure, an amount equal to that profit;
and

- (b) if the Authority has suffered loss or damage as a result of the contravention or failure, an amount equal to that loss or damage.

12. Regulations to be in addition to other rules of law

These regulations have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of his or her office or employment by the Authority and do not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

Tasmanian Development Regulations 2022
Statutory Rules 2022, No. 91

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 16 November 2022.

These regulations are administered in the Department of State Growth.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) make provision in respect of powers and functions of directors, administrators and authorized officers of the Tasmanian Development Authority; and
- (b) are made consequentially on the repeal of the *Tasmanian Development Regulations 2012* under section 11 of the *Subordinate Legislation Act 1992*.