

A BILL

entitled

PUBLIC BODIES REFORM ACT 2014

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SCHEDULE PUBLIC BODIES TO WHICH THIS ACT APPLIES

WHEREAS it is expedient to establish the Efficiency and Reform Authority, to establish the Mutual Support Fund, to confer powers on Ministers in relation to public bodies and functions and offices therein and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PUBLIC BODIES REFORM ACT 2014

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Public Bodies Reform Act 2014.

Interpretation

2 In this Act, unless the context otherwise requires—

“Authority” means the Efficiency and Reform Authority established under section 3;

“body” means a Government department or public body that is set out in the Schedule to this Act;

“Chairman” means the Chairman of the Board of the Authority appointed under section 4;

“charity” has the meaning given in section 1(1) of the Charities Act 1978;

“Chief Executive Officer” means the Chief Executive of the Board appointed under section 5;

“company” has the meaning given in section 2(1) of the Companies Act 1981;

“constitutional arrangements” is to be construed in accordance with section 20(2) and (3);

“eligible person” has the meaning given in section 18(3);

“enactment” means any primary or subordinate legislation;

“financial year” means a period of 12 months ending on 31st March in each year;

“Minister” includes the Premier;

“modify”—

(a) in relation to functions, is to be construed in accordance with section 22(2);

(b) in relation to funding arrangements, is to be construed in accordance with section 23(3);

“Mutual Support Fund” means the Fund referred to in section 16;

“office” includes—

(a) a public office;

(b) a consultant or an agent of a body;

“Public Bodies Reform Order” means an order made by a Minister under Part 3;

“public service mutual” means an entity or organisation (whether corporate or unincorporate) that is established by persons for the purpose of delivering

public services wherein employee ownership or control plays a significant role in its operation;

“Regulations” means regulations made under section 35;

“Union” means a trade union registered under the Trade Union Act 1965.

PART 2

EFFICIENCY AND REFORM AUTHORITY

Establishment of Efficiency and Reform Authority

Establishment of Authority

3 (1) There is hereby established a body corporate under the name “Efficiency and Reform Authority”.

(2) The Authority has perpetual succession and a common seal with power, subject to the provisions of the Act to—

- (a) acquire and dispose of property, both moveable and immovable;
- (b) sue and be sued in its corporate name; and
- (c) perform such other acts as bodies corporate may by law perform.

(3) Subject to subsection (4), the Authority shall exist as a body corporate under this Act and conduct the functions under this Act for a period not exceeding five years starting from the date when this section comes into operation.

(4) The Premier may by order, subject to the affirmative resolution procedure, extend the period of existence and operation of the Authority.

(5) The Premier shall by order, subject to the affirmative resolution procedure, dissolve the Authority after the laying before the Houses of the Legislature of the Authority’s final report and recommendations and its audited financial statements as provided under section 15(5).

Board of the Authority

4 (1) The Authority shall be governed by a Board which shall consist of the following members appointed by the Premier—

- (a) six members as follows—
 - (i) one member appointed from persons with experience of the financial services industry;
 - (ii) one member appointed from persons with experience in human resources;
 - (iii) one person appointed from persons with experience in business management; and

- (iv) one person who is a barrister or attorney with not less than 5 years post qualification legal experience; and
 - (v) two members each one representing a Union; and
who shall hold office for such period and on such terms as the Premier may determine; and
 - (b) the Head of the Civil Service, the Financial Secretary and the Chief Executive Officer who shall be members ex officio.
- (2) The Premier shall appoint a Chairman from among the members of the Board.
- (3) The Chairman and members of the Board (other than those holding public office) shall be paid such fees and allowances as the Premier may determine.

Chief Executive Officer

- 5
- (1) The Chief Executive Officer of the Authority shall be appointed by the Board after consultation with the Premier, and his services shall not be terminated by the Board except after the like consultation.
- (2) The Chief Executive Officer shall —
- (a) be a person with suitable qualifications and experience in management, finance, human resources or other similar qualifications and experience;
 - (b) work to further the objectives of the Authority; and
 - (c) report to the Board and be present during such parts of each Board meeting that the Chairman deems to be appropriate.
- (3) The term and period of service of the Chief Executive Officer shall be fixed by the Board.
- (4) The Chief Executive Officer shall be responsible for the day-to-day management of the Authority and, subject to the directions of the Board pursuant to section 13, shall be responsible for carrying out such of the functions of the Authority as the Board may require.

Objectives and powers

Objectives of Authority

- 6
- (1) The objectives of the Authority shall be to review, evaluate and analyse the operations of public authorities to determine the best structure for streamlining public authorities to achieve the most efficient and cost-effective organisational structure and governing processes for the delivery of public services.
- (2) The Authority shall administer and manage the Mutual Support Fund.

Powers of Authority

- 7
- (1) Subject to the other provisions of this Act, the Authority shall have power to do anything for the purpose of discharging its objectives under this Act or any other enactment or which is incidental or conducive to the discharge of those objectives.

(2) Without prejudice to the generality of subsection (1), but subject to this Act, the powers of the Authority shall include power—

- (a) to enter into any contract or agreement for carrying out the purposes of this Act;
- (b) generally to do all such matters and things as may be incidental to or consequential upon the exercise of the Authority's powers or the discharge of its functions and duties under this Act.

Functions, operations and procedures

Functions of Authority

8 (1) The Authority shall perform such functions as are conferred on the Authority by this Act and the Regulations and any other law in order to achieve its objectives.

(2) The Authority shall review and assess the structure and operations of public authorities and pursuant to its review and assessment in accordance with its objectives, the Authority shall submit such recommendations to the Premier and the Minister of Finance as the Authority considers appropriate which may include a recommendation—

- (a) for enhanced use of information technology and changes in service delivery mechanisms;
- (b) that identifies targets and other means for measuring efficiencies;
- (c) proposing streamlining or merging bodies;
- (d) that specifies assets to be sold, transferred or leased;
- (e) that identifies services or functions that might be suitable for delivery by a public service mutual;
- (f) that identifies public services that are appropriate for outsourcing or privatisation,

and the Authority may do or consider all such things that the Authority may deem necessary to achieve the objectives of this Act.

(3) The Authority may undertake such other functions as the Premier may, by written instrument, authorise or request the Authority to carry out.

Procedure at meetings

9 (1) The Board shall meet as often as necessary or expedient for the due performance of the Authority's functions.

(2) The Chairman may summon a meeting at any time on giving such notice as, in his judgment, may be adequate.

(3) At a meeting of the Board, the proceedings shall be regulated as follows—

- (a) five members of the Board constitute a quorum;

- (b) the Chairman shall preside at meetings of the Board;
- (c) if the Chairman is absent from a meeting of the Board, the members present may elect another person from their number to act as Chairman and to preside at the meeting;
- (d) if a member of the Board has an interest (whether legal, beneficial, fiduciary, family or otherwise) in any matter with the Authority—
 - (i) he shall disclose his interest to the Board at the time of the matter being discussed; and
 - (ii) he shall have no vote in relation to the matter;
- (e) a member of the Board shall have no vote in relation to any question arising which touches or concerns him;
- (f) the decisions of the Board shall be by a majority of votes;
- (g) in the event of an equality of votes, the Chairman shall have a casting vote; and
- (h) the Board shall determine its own procedure.

Operations of Authority

10 (1) For the purposes of its functions, the Authority shall engage and solicit the input of a broad and diverse range of persons, associations and organisations, which may include—

- (a) representatives (including a Union) of public authority employees;
- (b) companies, boards and public authorities;
- (c) professional bodies;
- (d) individuals; and
- (e) such other persons as the Authority may deem necessary.

(3) Every Government Department and public body shall facilitate the work of the Authority, provide access to records and cooperate with the Authority.

(4) The Authority may employ such number of persons as employees, consultants or agents as it may determine to be necessary.

Authority to be provided with information

11 (1) For the purposes of carrying out its functions the Authority may, subject to this section, require any public officer or any other person who is in its opinion able to provide information or produce documents regarding operational or administrative matters in relation to a public body, to give such information or produce such documents.

(2) The Secretary to the Cabinet where the information is required from a public officer shall ensure that requirements made by the Authority of such officer or employee, as the case may be, under subsection (1) are attended to expeditiously.

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(3) The Authority shall not require any person to furnish any information or answer any question—

- (a) relating to proceedings or deliberations of the Cabinet or any committee of the Cabinet;
- (b) that might prejudice the security, defence or international relations of Bermuda;
- (c) that relates to information or an item that is subject to legal privilege; or
- (d) that might prejudice the investigation or detection of offences.

(4) For the purposes of subsection (3)(a), a written statement by the Secretary to the Cabinet, with the approval of the Premier, confirming that any information, question, document or part of a document so relates shall be conclusive.

Reports of Authority

12 (1) The Authority shall, within six months after the end of each calendar year, prepare an annual report about the operation of the Authority during the preceding year, and deliver it to the Premier.

(2) The Authority shall submit such further reports to the Premier on particular issues or matters as the Minister may from time to time request.

(3) The Premier shall cause a copy of the annual report of the Authority to be laid before both Houses of the Legislature.

Appointment of committees and delegation of powers

13 (1) The Board may, in its discretion, appoint from among its own members or from among other persons, such number of committees as it thinks fit for purposes which, in the opinion of the Board, would be more expediently carried out or managed by such committees.

(2) The Board may, subject to such conditions or restrictions as it thinks fit, delegate to—

- (a) the Chairman; or
- (b) any of its members,

any of the functions or powers of the Authority under this Act, except the power of delegation conferred by this section.

(3) Any power, function or duty delegated as provided in subsection (2) shall be exercised or performed by the person to whom delegated in the name and on behalf of the Authority.

(4) The Board may continue to exercise a power conferred upon it, or perform a function or duty under this Act, notwithstanding the delegation of such power, function or duty under this section.

Financial provisions and Mutual Support Fund

Funds of Authority

14 The funds of the Authority shall consist of all such sums as may be appropriated by the Legislature for the purposes of the Authority.

Accounts of Authority

15 (1) The Authority shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as required by applicable accounting standards.

(2) The accounts of the Authority shall be audited by the Auditor General or an auditor appointed by the Auditor General.

(3) Without prejudice to subsection (2), the Premier may at any time require the Auditor General to examine and report on the accounts of the Authority as a whole or any aspect of the Authority's operations and the Authority shall provide the Auditor General with all necessary and proper facilities for such an examination.

(4) The statement of accounts must be submitted to the Premier within six months of the financial year end and present fairly and accurately—

- (a) the financial transactions of the Authority during the relevant financial year; and
- (b) the financial position of the Authority at the end of the financial year.

(5) As soon as the accounts of the Authority and the financial statements have been audited in accordance with the provisions of this Act, a copy of the audited financial statements signed by the Chairman, together with a copy of any report made by the auditor, shall be submitted to the Premier and the Minister of Finance.

(6) The Premier shall as soon as practicable after receipt of annual audited financial statements of the Authority cause a copy of to be laid before both Houses of the Legislature.

Mutual Support Fund

16 (1) The Authority shall from the funds referred to in section 14 establish a fund to be known as the Mutual Support Fund.

(2) The purpose of the Mutual Support Fund shall be to enable the provision of professional expertise and advice to employees of the Government or of a public body who are interested in setting up or have established a public service mutual.

(3) The Authority shall receive, process and determine applications for funding and perform such other functions relating to the Mutual Support Fund in accordance with this Act and the Regulations.

(4) The Authority may authorise payments to be made out of the Mutual Support Fund for purposes related to the establishment and support of public service mutuals—

- (a) to cover costs associated with the provision of professional advice regarding the establishment or operation of a public service mutual; and
- (b) to cover costs associated with public education concerning public service mutuals and training of persons who wish to set up a public service mutual.

(5) The Mutual Support Fund shall not be used for the purpose of providing grants or loan financing, covering staff costs or salaries or to cover cash flow shortages for or in relation to public service mutuals.

(6) For the purposes of this section, “professional services” includes advice relating to human resources, legal advice, financial advice, tax advice or advice relating to business planning.

PART 3

MINISTERS' GENERAL ORDER-MAKING POWERS WITH RESPECT TO PUBLIC BODIES

Powers of Ministers

Consultation by Ministers

17 A Minister shall, before he makes a Public Bodies Reform Order, consult with the Premier, the Minister of Finance and the Authority.

Power to abolish

- 18
- (1) A Minister may by Public Bodies Reform Order abolish a body or an office.
 - (2) An order under subsection (1) may include provision transferring functions from the body or office being abolished to an eligible person.
 - (3) In this Act, “eligible person” means—
 - (a) any person exercising public functions;
 - (b) a company;
 - (c) a public service mutual;
 - (d) a charity or other incorporated organisation; or
 - (e) a body of trustees or other unincorporated body of persons.

Power to merge

- 19
- (1) A Minister may by Public Bodies Reform Order merge any group of bodies or offices.
 - (2) In this section, to “merge” a group means—

- (a) to abolish all the bodies or offices in the group, create a new body corporate or office and transfer some or all of the functions of the abolished bodies or offices to the new one; or
- (b) to abolish all but one of the bodies or offices in the group and to transfer some or all of the functions of the abolished bodies or offices to the remaining one.

(3) An order under subsection (1) may include provision to transfer a function from a body or office being abolished to an eligible person not included in the group.

Power to modify constitutional arrangements

20 (1) A Minister may by Public Bodies Reform Order modify the constitutional arrangements of a body or an office.

(2) In this Act, references to the constitutional arrangements of a body include matters relating to—

- (a) the name of the body;
- (b) the chairman of the body (including qualifications and procedures for appointment and functions);
- (c) members of the body (including the number of members, qualifications and procedures for appointment and functions);
- (d) employees of the body exercising functions on its behalf (including qualifications and procedures for appointment and functions);
- (e) the body's powers to employ staff;
- (f) governing procedures and arrangements (including the role and membership of committees and sub-committees);
- (g) reports and accounts;
- (h) the extent to which the body is accountable to Ministers;
- (i) the extent to which the body exercises functions on behalf of the Crown.

(3) In this Act, references to the constitutional arrangements of an office include matters relating to—

- (a) the name of the office;
- (b) appointment of the office-holder (including qualifications and procedures for appointment);
- (c) the office-holder's powers to employ staff;
- (d) reports and accounts;
- (e) the extent to which the office-holder is accountable to Ministers;

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- (f) the extent to which the office-holder exercises functions on behalf of the Crown.

Power to modify funding arrangements

21 (1) A Minister may by Public Bodies Reform Order modify the funding arrangements of a body or an office.

(2) The consent of the Premier and the Minister of Finance is required to make an order under this section.

(3) In this Act, references to modifying the funding arrangements of a body or office include—

- (a) modifying the extent to which it is funded by the Government or other fees or revenues;
- (b) conferring power on the body, or the office-holder, to charge fees for the exercise of a function (and to determine their amount).

Power to modify or transfer functions

22 (1) A Minister may by Public Bodies Reform Order—

- (a) modify the functions of, or the holder of an office in, a body; or
- (b) transfer a function of such a person to an eligible person.

(2) In this Act, references to modifying the functions of a person include—

- (a) conferring a function on the person;
- (b) abolishing a function of the person;
- (c) changing the purpose or objective for which the person exercises a function;
- (d) changing the conditions under which the person exercises a function.

Consequential provision etc

23 (1) A Public Bodies Reform Order may make consequential, supplementary or incidental changes to an enactment, or transitional provision or savings.

(2) Where a Public Bodies Reform Order under section 18, 19 or 22(1)(b) transfers functions, the power in subsection (1) includes power to make consequential or supplementary provision—

- (a) to modify functions of the transferor or transferee;
- (b) to modify the constitutional or funding arrangements of the transferor or transferee.

(3) Where a Public Bodies Reform Order under section 22(1)(a) modifies functions of a body or office-holder, the power in subsection (1) includes power to make consequential

or supplementary provision to modify the constitutional or funding arrangements of the body or office.

(4) The consent of the Premier and the Minister of Finance is required to make provision by virtue of subsection (2)(b) or (3) modifying funding arrangements.

Restriction on powers of Ministers

Purpose and conditions

24 A Minister may make a Public Bodies Reform Order only if the Premier and the Minister of Finance consider that the Order serves the purpose of improving the exercise of public functions, having regard to—

- (a) efficiency;
- (b) effectiveness; and
- (c) economy.

Consultation by Minister

25 (1) A Minister proposing to make a Public Bodies Reform Order shall ensure that appropriate consultation is carried out with—

- (a) the body or the holder of any office to which the proposal relates;
- (b) such other persons as appear to that Minister to be representative of interests substantially affected by the proposal;
- (c) any affected employee; and
- (d) such other persons as that Minister considers appropriate.

(2) The Minister shall also be satisfied that all appropriate consultation has been carried out with any Union representing employees to whom the Public Bodies Reform Order relates.

(3) Subsection (1)(a) does not apply to a body with no members or an office which is vacant; and, where a body is consulted under that provision, any vacancy in its membership is immaterial.

Procedure for Public Bodies Reform Orders

26 (1) If after consultation under section 25 a Minister considers it appropriate to proceed with the making of a Public Bodies Reform Order, that Minister may lay before the Legislature—

- (a) a Public Bodies Reform Order; and
 - (b) an explanatory document.
- (2) The explanatory document must—
- (a) introduce and give reasons for the Public Bodies Reform Order;

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- (b) explain why that Minister considers that the Public Bodies Reform Order serves the purpose in section 24; and
 - (c) contain a summary of representations received in the consultation.
- (3) A Public Bodies Reform Order made by this provision shall be subject to the affirmative resolution procedure.

Powers of Ministers: supplementary

27 (1) The modification or transfer of a function by a Public Bodies Reform Order must not prevent it (to the extent that it continues to be exercisable) from being exercised independently of Ministers in any of the following cases.

(2) Those cases are—

- (a) where the function is a judicial function (whether or not exercised by a court or a tribunal);
- (b) where the function's exercise involves enforcement activities in relation to obligations imposed on a Minister;
- (c) where the function's exercise otherwise constitutes the exercise of oversight or scrutiny of the actions of a Minister.

(3) Provision made by a Public Bodies Reform Order must be proportionate to the reasons for the Public Bodies Reform Order.

(4) In this section "enforcement activities" means—

- (a) the bringing of legal proceedings or the provision of assistance with the bringing of legal proceedings;
- (b) the carrying out of an investigation with a view to bringing legal proceedings or to providing such assistance; or
- (c) the taking of steps preparatory to any of those things.

Restriction on creation of functions

28 (1) A Public Bodies Reform Order under the preceding provisions of this Act may not create—

- (a) a power of forcible entry, search or seizure; or
- (b) a power to compel the giving of evidence.

(2) Subsection (1) does not prevent a Public Bodies Reform Order from repealing and re-enacting a power.

Restriction on transfer and delegation of functions

29 (1) A Public Bodies Reform Order under the preceding provisions of this Act may not transfer or delegate any function to—

- (a) a charity that is not registered; or

(b) a person not otherwise exercising public functions who is not a charity, unless the charity or person has consented.

(2) A Public Bodies Reform Order under the preceding provisions of this Act may not transfer or delegate an excluded function to a person not otherwise exercising public functions.

(3) In subsection (2) “excluded function” means—

- (a) a function of a tribunal exercising judicial power;
- (b) a power to make subordinate legislation;
- (c) a power of forcible entry, search or seizure; or
- (d) a power to compel the giving of evidence.

Restriction on creation of criminal offences

30 A Public Bodies Reform Order under the preceding provisions of this Act may not, in relation to any transfer or modification of functions, create a criminal offence that is punishable—

- (a) on indictment, with imprisonment for a term exceeding two years; or
- (b) on summary conviction, with—
 - (i) imprisonment for a term exceeding six months; or
 - (ii) a fine not exceeding \$5,000.

Transfer of property, rights and liabilities

Transfer scheme

31 (1) A scheme for the transfer of property, rights and liabilities (a “transfer scheme”) may be made by a Minister, in connection with a Public Bodies Reform Order.

(2) In the case of a transfer scheme under subsection (1), property, rights and liabilities may be transferred to—

- (a) a Minister, where the scheme is made in connection with a Public Bodies Reform Order under section 20 or 21 (modification of constitutional or funding arrangements); or
- (b) an eligible person or a body corporate, in any other case.

(3) A transfer scheme may not transfer anything to a charity unless it has consented.

(4) The things that may be transferred under a transfer scheme include—

- (a) property, rights and liabilities that could not otherwise be transferred;
- (b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) fees and revenues.

(5) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

- (a) create rights, or impose liabilities, in relation to property or rights transferred;
- (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
- (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
- (e) make provision for the shared ownership or use of property;
- (f) make provision under section 35 (regulations) with respect to protection of employment and any other employment benefits.

(6) A transfer scheme may provide—

- (a) for modification by agreement;
- (b) for modifications to have effect from the date when the original scheme came into effect.

(7) References to rights and liabilities include rights and liabilities relating to a contract of employment; references to the transfer of property include the grant of a lease.

Transfer scheme: procedure

32 A transfer scheme made by a Minister under section 31(1) may be included in a Public Bodies Reform Order; but if it is not so included shall be made by order subject to the affirmative resolution procedure.

Transfer schemes: taxation and fees

33 (1) A Minister, after consultation with the Premier and the Minister of Finance, may by Public Bodies Reform Order make provision varying the way in which a relevant tax or relevant fee has effect in relation to—

- (a) anything transferred under a scheme under section 31; or
- (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.

(2) The provision which may be made under subsection (1)(a) includes in particular provision for—

- (a) a tax provision or a provision relating to fees not to apply, or to apply with modifications, in relation to anything transferred;
 - (b) anything transferred to be treated in a specified way for the purposes of such provision;
 - (c) the person making the scheme to be required or permitted, with the consent of the Premier and the Minister of Finance, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any such provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
- (a) a tax provision or a provision relating to fees not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
 - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
 - (c) the person making the scheme to be required or permitted, with the consent of the Premier and the Minister of Finance, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any such provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) A Public Bodies Reform Order under this section is subject to the affirmative resolution procedure.
- (5) In this section—
- “provision relating to fees” means any fee that may be charged under the provisions of the Government Fees Act 1965 or any other enactment;
- “relevant tax” means payroll tax, corporation tax, stamp duty, land tax or any tax, duty or fee charged by the Government or a public authority as the case may be;
- “tax provision” means a provision of an enactment about a relevant tax.

PART 4

FINAL

Parliamentary scrutiny of Public Bodies Reform Orders

34 (1) A Public Bodies Reform Order under this Act shall be made by statutory instrument.

(2) The provision which may be made by a Public Bodies Reform Order under this Act may be made by repealing, revoking or amending an enactment.

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(3) The powers conferred by this Act are without prejudice to any other power conferred on a Minister.

(4) A Public Bodies Reform Order made under this Act shall be subject to the affirmative resolution procedure.

Regulations

35 (1) The Premier may make such Regulations as appear to him to be necessary or expedient for the proper carrying out of the intent and provisions of this Act, and prescribing anything which may be prescribed under this Act and generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Premier may by regulations—

- (a) make further provisions in relation to the Mutual Support Fund;
- (b) make further provisions relating to public service mutuels, outsourcing, privatisation and other entities;
- (c) in consultation with the Minister responsible for workforce development and the Authority, make provisions with a view to protection of employment and employment benefits; and
- (d) generally relating to all matters as may be incidental to or necessary for the performance of functions under this Act and the Regulations.

(3) Regulations made under this section shall be subject to the negative resolution procedure.

Guidance

36 (1) The Premier may issue in writing guidance to be observed by the Authority in the performance of its functions under this Act and the Regulations.

(2) The Authority shall comply with any such guidance and in relation to the performance of functions assigned to the Authority under this Act or the Regulations.

Confidentiality

37 (1) The Authority and every person employed or appointed under section 5(1) and section 10(4) of this Act and every person who performs functions related to this Act shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of the functions of the Authority.

(2) The Authority shall not communicate any such matter to any person except for the purpose of carrying out functions under this Act for the purpose of—

- (a) the reports to the Premier under section 12;
- (b) the reports and recommendations to another Minister under section 15(5).

Immunity from suit

38 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, employee or agent of the Authority, or any member of the Authority, any Minister or any employee of a public body, in respect of any act done in good faith in pursuance or execution or intended execution of their functions under this Act and Regulations made thereunder.

(2) Where any member of the Authority is exempt from liability by reason only of subsection (1), the Authority shall be liable to the extent that it would be if that member were an employee or agent of the Authority.

Offences

39 (1) A person who without reasonable excuse—

- (a) makes a false statement to, misleads or attempts to mislead the Authority or another person in the exercise of any function under this Act, or otherwise obstructs the work of the Authority; or
 - (b) discloses information or documents in contravention of section 37;
 - (c) fails to provide or produce information or documents or explanations to the Authority or another person carrying out functions under this Act or the Regulations,
- commits an offence.

(2) Any person who commits an offence contrary to subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.

Commencement

40 (1) This Act shall come into operation on such day as the Premier may appoint by notice published in the Gazette.

(2) The Premier may appoint different days for different provisions.

SCHEDULE

(Section 2)

PUBLIC BODIES TO WHICH THIS ACT APPLIES

Public bodies to which this Act applies

1 This Act applies with respect to the following public bodies—

- (a) Government departments;
- (b) Public authorities.

Premier may amend Schedule

2 The Premier may by order subject to the affirmative resolution procedure add to or delete a public body from the Schedule or otherwise modify this Schedule for the purposes of this Act.

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PUBLIC BODIES REFORM BILL 2014

EXPLANATORY MEMORANDUM

This Bill establishes a statutory body under the name “Efficiency and Reform Authority” (the “Authority”), makes provision for a Mutual Support Fund and empowers Ministers to make various Public Bodies Reform Orders.

Clause 1 provides a short title for the Bill.

Clause 2 provides for the definition of terms used in the Bill.

Clause 3 establishes the Authority as a body corporate.

Clause 4 provides for the composition of the Board of the Authority. The Board will comprise of nine members who shall be appointed by the Premier and who shall be persons with suitable qualifications and experience for the purposes of the Authority as set out in this clause.

Clause 5 provides for the appointment of a Chief Executive Officer.

Clause 6 sets out the principal objectives of the Authority.

Clause 7 provides for the Authority’s powers.

Clause 8 provides for the functions of the Authority. The primary function of the Authority is to evaluate and analyse operations of public authorities in line with best practice so as to determine the most efficient structure for delivery of public services. After carrying out its due diligence, the Authority will make such reform recommendations to the Premier as the Authority considers appropriate.

The Government’s principal methodologies for reform of the delivery of public services will include:

- Public Service Mutuals
- Outsourcing
- Privatisation and
- Merging of bodies and offices.

Clause 9 provides for the procedure to be followed at the meetings of the Authority.

Clause 10 provides for the operations of the Authority for purposes of its functions. The Authority is required to engage and solicit the input of a broad and diverse range of persons, associations and organisations.

Clause 11 empowers the Authority to require any officer or employee of the Government or member or employee of a public authority or any other person who is in its opinion able to provide information or produce documents (regarding operational or administrative matters) relevant to the functions of the Authority, to provide information or produce such documents. The Authority shall, however, not require information to be provided relating

to matters of the Cabinet, subject to legal privilege, or relating to security or criminal investigations.

Clause 12 provides for the reports to be submitted to the Premier by the Authority.

Clause 13 provides for the appointment of committees and delegation of powers of the Authority to any member of the Board of the Authority. The power of the Authority to delegate its powers is not to include the delegation of the power to delegate.

Clause 14 provides for the funds of the Authority. The funds of the Authority are to consist of sums appropriated by the Legislature for the purposes of the Authority.

Clause 15 provides for the accounts of the Authority and requires that the Authority maintain proper statements of its financial affairs. The Authority should prepare a statement of its accounts in such form as required by applicable accounting standards.

Clause 16 provides for the Authority to establish a Mutual Support Fund. This fund will be provided through the Authority's operating funds. The Mutual Fund will be used to make arrangements for the provision of administrative, professional and technical services to those who wish to set up a public service mutual.

Clause 17 establishes a mandatory requirement for consultation on the part of all Ministers with the Authority and the Premier. Consultation with the Minister of Finance will be required where there are financial implications.

Clause 18 confers power on a Minister to make provision by a Public Bodies Reform Order to abolish any body or office to which this Act applies. As subsection (2) describes, a Public Bodies Reform Order can include provision transferring any or all of the functions of an abolished body or office to an "eligible person" (as defined in subsection (3)). On this basis, a Public Bodies Reform Order might, for example, abolish a body and all its functions, or might abolish a body and transfer some or all of its functions to a Minister, to another person exercising public functions, a company, a charitable incorporated organisation, or any other eligible person permitted by subsection (3).

Clause 19 confers power on a Minister to make provision by a Public Bodies Reform Order to merge any bodies or offices, or group of bodies or offices, (or both) to which this Act applies. Such provision might involve the establishment of a new body corporate or office (including provision for constitutional arrangements) to replace the bodies being merged, or the abolition of all but one body or office in a group (in which case the remaining body or office would assume some or all of the functions previously held by other members of the group). A Public Bodies Reform Order under this section may also include a transfer of functions to an eligible person (as defined in section 18(3)) which is not included in the group of bodies or offices involved in the merger.

Clause 20 confers power on a Minister to make provision by a Public Bodies Reform Order to modify the constitutional arrangements of any body or office to which this Act applies. The term "constitutional arrangements" refers to a wide range of arrangements relating to the structure, governance and functions of a body or an office. Examples of provisions that could be made are stated in subsections (2) and (3).

Clause 21 confers power on a Minister to make provision by Public Bodies Reform Order to modify the funding arrangements of a body or an office to which this Act applies.

Subsection (2) requires the consent of the Minister of Finance for a Public Bodies Reform Order to be made under section 21. Subsection (3) specifies that the power includes alterations to the funding a body or an office receives from a Minister, or giving a body or an office-holder the power to charge a fee for a function that body or office carries out. For example, a Public Bodies Reform Order made under this section might give a body which issues licences for a particular purpose the power to charge a fee for the issue of such a licence.

Clause 22 confers power on a Minister to make provision by a Public Bodies Reform Order to modify the functions of a body or an office-holder, or to transfer a function of such body or office-holder to an eligible person. Subsection (2) describes the modification of functions as including the conferral of new functions, the abolition of functions, or changes to the purpose for which, or conditions under which, functions are exercised. For example, a Public Bodies Reform Order under this section 22 might give new functions to a body, while transferring some of its existing functions to an eligible person.

Clause 23 provides that a Public Bodies Reform Order may include consequential, supplementary, incidental or transitional provisions or savings. This includes a power to allow a Public Bodies Reform Order under section 18, 19 or 22 transferring functions to make consequential provisions to modify the functions or constitutional or funding arrangements of the transferor or transferee. For example, this power could be used to amend the qualification requirements for members of a body if a new function is conferred on it under section 22.

Clause 24 provides that a Minister may only make a Public Bodies Reform Order if the Minister considers that the Public Bodies Reform Order will serve the purpose of improving the exercise of public functions, having regard to the matters described in paragraphs (a) to (c). As the Bermuda Constitution contains protection with respect to fundamental rights and freedoms, no such provision has been expressly included in this Act.

Clause 25 requires a Minister who proposes to make a Public Bodies Reform Order to ensure, and be satisfied, that appropriate consultation is carried out with the persons described therein. Subsection (1)(a) does not apply where a body has no members or an office is vacant.

Clause 26 sets out the procedure applicable to Public Bodies Reform Orders. Public Bodies Reform Orders shall be subject to the affirmative resolution procedure.

Clause 27 imposes restrictions on the use of the Order-making powers conferred on Ministers. Subsection (1) stipulates that a Public Bodies Reform Order must not prevent an excepted function from being exercised independently of Ministers in any of the cases set out in subsection (2). Subsection (3) requires that provision made by a Public Bodies Reform Order must be proportionate to the reasons for the Public Bodies Reform Order. The reasons for the Public Bodies Reform Order must be set out in the explanatory document which must accompany a Public Bodies Reform Order, as required by section 26(2).

Clause 28 provides that a Public Bodies Reform Order made under the preceding provisions of the Act may not create powers of forcible entry, search or seizure or a power to compel the giving of evidence. This does not prevent the repeal and re-enactment of a power (see subsection (2)).

PUBLIC BODIES REFORM BILL 2014

Clause 29 restricts the Public Bodies Reform Order-making powers in the Act in respect of the transfer of functions. Firstly, a transfer may only be made to a charity or to a person not otherwise exercising public functions who is not a charity if that charity or person has consented (subsection (1)). Secondly, a Public Bodies Reform Order may not transfer a function specified in subsection (3) to a person not otherwise exercising public functions.

Clause 30 restricts the Public Bodies Reform Order-making powers in the preceding provisions of the Act in respect of the creation of criminal offences. A Public Bodies Reform Order may not create an offence where the offence is punishable by a term of imprisonment, or a fine, which exceeds certain limits.

Clause 31 confers a power on Ministers to make a scheme to transfer property, rights and liabilities on Ministers in connection with a Public Bodies Reform Order. In the case of a scheme under subsection (2)(a) (schemes made by a Minister), the transfer of property, rights and liabilities must be to an eligible person or any body corporate unless constitutional or funding arrangements are being modified under section 20 or 21, in which case the transfer may be to a Minister. Subsection (6) lists supplementary, incidental and transitional provision that may be made by a transfer scheme.

Clause 32 provides that transfer schemes may be included within the Public Bodies Reform Order to which they relate. If they are not included within the Public Bodies Reform Order, they must be laid before the Legislature. Public Bodies Reform Orders under this section will be subject to the affirmative resolution procedure.

Clause 33 confers power on the Premier, after consultation with the Minister of Finance, to make provision by a Public Bodies Reform Order varying the way in which tax provisions or provisions relating to fees will be applied either for anything transferred under a scheme made under section 31, or anything done for the purposes of, or in relation to a transfer under such a scheme. Any such Order will be subject to the affirmative resolution procedure.

Clause 34 provides for Parliamentary scrutiny of Public Bodies Reform Orders. The affirmative resolution procedure shall apply, unless otherwise provided.

Clause 35 provides for the making of Regulations by the Premier for the purposes of the Bill. In the making of such Regulations, the Premier may prescribe anything that is necessary or expedient for, or incidental to, the carrying out of the provisions of this Act. The Premier is empowered to make provision with respect to matters relating to protection of employment and employment benefits.

Clause 36 makes provision for the Premier to issue guidance to the Authority.

Clause 37 requires the Authority and every person employed or appointed under section 5(1) and section 10(4) to maintain secrecy in respect of matters.

Clause 38 provides for immunity from suit for any officer, employee or agent of the Authority, members of the Authority and any Minister, with respect to any act done bona fide in pursuance or execution or intended execution of their functions under this Bill or Regulations made thereunder.

Clause 39 provides for offences.

PUBLIC BODIES REFORM BILL 2014

Clause 40 provides for the commencement of the Act. Different commencement days may be appointed for different provisions.

The Schedule specifies the public bodies to which the Act applies. This clause also confers power on the Premier to amend the Schedule by order subject to the affirmative resolution procedure.

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