



Queensland

*Local Government Act 2009*

# **Local Government (Beneficial Enterprises and Business Activities) Regulation 2010**

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Reprint No. 1A

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**NOTE—This is the last reprint before repeal.  
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This regulation is reprinted as at 16 September 2011. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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Queensland

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# Local Government (Beneficial Enterprises and Business Activities) Regulation 2010

[as amended by all amendments that commenced on or before 16 September 2011]

## Chapter 1 Introduction

### 1 Short title

This regulation may be cited as the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010*.

### 2 Commencement

This regulation commences on 1 July 2010.

### 3 Simplified outline of main provisions of regulation

- (1) Chapter 2 provides for matters about beneficial enterprises, including providing for additional approval processes for investing in a beneficial enterprise.
- (2) Chapters 3 to 6 provide for the application of the National Competition Policy Agreements to local governments.
- (3) In particular—
  - (a) chapter 3 is about reforming type 1 significant businesses and type 2 significant businesses in accordance with the competitive neutrality principle; and
  - (b) chapter 4 is about reforming other business activities in accordance with the competitive neutrality principle; and

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- (c) chapter 5 is about the requirements for water and sewerage services; and
- (d) chapter 6 is about competitive neutrality complaints and references to QCA.

#### 4 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

## Chapter 2 Beneficial enterprises

#### 5 Planning for a beneficial enterprise with the private sector

- (1) This section is about beneficial enterprises under section 42 of the Act.
- (2) The amount that must be invested under section 42(2) of the Act includes the value of any property, other than money, committed to the beneficial enterprise.
- (3) The maximum number of years for section 42(5) of the Act is 3 years.
- (4) An amount that is equal to or more than 10% of a local government's own source revenue is the amount prescribed for section 42(6)(b) of the Act.
- (5) A local government's *own source revenue* is revenue it receives from the following sources—
  - (a) charges for services or facilities under section 262(3)(c) of the Act;
  - (b) cost-recovery fees;
  - (c) ex gratia payments made to the local government;
  - (d) fines paid to the local government;

- (e) general rates;
- (f) interest earned on the local government's funds.

## **6 Approval for a local government to invest in a beneficial enterprise**

- (1) This section applies if a local government wants to apply for the approval of the department's chief executive under section 42(6) of the Act to invest in a beneficial enterprise.
- (2) The application must be in the approved form.
- (3) The chief executive may require the local government to provide further information that will help the chief executive to consider the application.
- (4) The chief executive may refuse to consider the application until the local government gives the chief executive the further information.
- (5) After considering the application, the chief executive must decide whether or not to grant the approval.
- (6) The chief executive must give the local government notice of—
  - (a) the decision; and
  - (b) if the approval is granted—any conditions that the chief executive is imposing on the approval.
- (7) The local government must comply with the conditions.
- (8) As well as granting an approval to an individual local government, the chief executive may grant an approval to all local governments that satisfy the criteria, and comply with the conditions, stated in a gazette notice.

### *Examples of criteria—*

- 1 The chief executive may grant an approval to all local governments with a particular credit rating that is specified in a gazette notice.
- 2 The chief executive may grant an approval to all local governments to invest in beneficial enterprises relating to a particular industry that is specified in a gazette notice.

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- 3 The chief executive may grant an approval to several local governments that are conducting a joint government activity.
- (9) The local government must keep a copy of the chief executive's notice, or gazette notice, in the register of beneficial enterprises established under section 41 of the Act.

## Chapter 3 Business reform

### Part 1 Introduction

#### 7 What ch 3 is about

This chapter is about reforming a local government's significant business activity (a *significant business*) in accordance with the competitive neutrality principle.

*Note—*

See sections 43 and 44 of the Act.

#### 8 Reforming a significant business

- (1) The local government must identify and assess each new significant business for possible reform.
- (2) If the local government decides to reform the significant business, the reform must involve—
  - (a) applying full cost pricing to the significant business, that is, pricing the goods and services that are provided by the business entity on a commercial basis; or
  - (b) if the significant business is to be reformed by being commercialised—creating a commercial business unit within the local government to conduct the business; or
  - (c) if the significant business is to be reformed by being corporatised—creating a new corporate entity

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independent of the local government to conduct the business.

## Part 2 Identifying significant businesses for reform

### Division 1 Identifying significant business for reform

#### 9 Thresholds for significant businesses—Act, s 43(4)(b)

- (1) This section prescribes for section 43(4)(b) of the Act the threshold that a business activity must meet to be a significant business.
- (2) A business activity that has expenditure of at least the following for the financial year starting on 1 July 2009 is a ***type 1 significant business*** for the financial year—
  - (a) for a business activity that is the providing of combined water and sewerage services—\$39.4m;
  - (b) for another business activity—\$23.6m.

*Note—*

See, however, the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

- (3) A business activity, other than a type 1 significant business, that has expenditure of at least the following for the financial year starting on 1 July 2009 is a ***type 2 significant business*** for the financial year—
  - (a) for a business activity that is the providing of combined water and sewerage services—\$11.8m;
  - (b) for another business activity—\$7.9m.

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- (4) The Minister must consider each threshold each financial year and amend the threshold to reflect changes to the actual or estimated cost of living and applicable accounting systems.
- (5) The threshold, as amended, for the significant business must be the projected expenditure for the activities to the end of the financial year.
- (6) Before amending the threshold, the Minister must consult with LGAQ Ltd.
- (7) The Minister must publish the threshold in the gazette in the financial year in which the threshold is decided.

## **10 Identifying significant business for reform—Act, s 45**

- (1) This section is about identifying new significant businesses for section 45 of the Act.
- (2) A local government must use the financial information for the previous financial year that was presented to the local government's budget meeting to identify each new significant business for the financial year.
- (3) The Minister may, by notice to a local government, state additional matters the local government must, or must not, consider when deciding whether a business activity is a significant business.

## **Division 2 Assessing significant business for reform**

### **11 What div 2 is about**

- (1) This division expands on section 46 of the Act to explain how a local government conducts a public benefit assessment of a significant business.
- (2) This division also explains how a local government conducts a 2-part charge assessment under section 128(1)(a).



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- (3) A **2-part charge assessment** is an assessment of the cost effectiveness of the application of a 2-part charge for a business activity that is the providing of water services.
  - (4) A **2-part charge** is a utility charge that is made up of the following parts—
    - (a) a fixed charge for using the infrastructure that supplies water to a consumer;
    - (b) a variable charge for using the water, based on the amount of water the consumer uses.
  - (5) A public benefit assessment, or a 2-part charge assessment, of a significant business is an **assessment** of a significant business.

## 12 Deciding how to conduct an assessment

- (1) A local government must decide, by resolution, how to conduct an assessment of a significant business.

*Example—*

The local government may decide the assessment must be conducted—

- (a) by the local government or an external consultant; and
  - (b) in conjunction with—
    - (i) another local government that is conducting an assessment of a similar significant business; or
    - (ii) an assessment of another significant business of the local government.
- (2) The local government's resolution must state—
    - (a) the way in which the local government must conduct the assessment; and
    - (b) what will be included in the report on the assessment, including the matters mentioned in—
      - (i) for a public benefit assessment—section 15(2)(a);  
or

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- (ii) for a 2-part charge assessment—section 15(2)(b);  
and
- (c) when the report must be considered by the local government.

### **13 Consultation process for assessment**

A local government must ensure an assessment of a significant business includes a consultation process.

*Example of a consultation process—*

A consultation process may involve—

- (a) giving notice of the assessment and inviting submissions about the assessment; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the assessment; and
- (e) publishing a draft assessment report for public comment before the report is finalised.

### **14 Public benefit assessment for type 1 and type 2 significant businesses**

- (1) A public benefit assessment for a type 1 significant business must consider how the significant business should be conducted by reviewing the appropriateness of each of the following reforms for the activity—
  - (a) full cost pricing for the activity;
  - (b) commercialisation of the activity;
  - (c) corporatisation of the activity.
- (2) A public benefit assessment for a type 2 significant business must consider how the significant business should be carried on by reviewing the appropriateness of each of the following reforms for the activity—
  - (a) full cost pricing for the activity;

- (b) commercialisation of the activity;
  - (c) if the local government decides, by resolution, it is appropriate for consideration—corporatisation of the activity.
- (3) A public benefit assessment for a type 1 or 2 significant business must also conclude whether or not and, if so, to what extent, the benefits that would be realised from implementation of the reforms mentioned in subsection (1) or (2) would outweigh the costs.

## 15 Reporting on an assessment

- (1) This section is about a report that a local government must prepare about the assessment of a significant business (an *assessment report*).
- (2) An assessment report must contain—
- (a) for a public benefit assessment—
    - (i) a recommendation on whether or not the benefit to the public outweighs the cost of applying the competitive neutrality principle to the significant business; and
    - (ii) details of the benefit and cost; and
    - (iii) if the local government recommends the significant business be reformed—details of how the significant business should be reformed; or
  - (b) for a 2-part charge assessment—a statement of whether or not it is cost-effective to apply a 2-part charge to the extent stated in the assessment report and, if it is cost-effective—
    - (i) a recommendation for the application of a 2-part charge to the extent stated in the report; and
    - (ii) the procedure to be followed to apply a 2-part charge.
- (3) For example, the local government may recommend that—

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- (a) different parts of the significant business be reformed in different ways; or
- (b) the significant business be reformed using a series of reforms.

*Examples—*

- 1 The local government's report may recommend that only part of a significant business be reformed, and that a series of reforms take place in the following order—
    - introduce full cost pricing for the significant business by 30 June 2011
    - the significant business be commercialised by 30 June 2012
    - the significant business be corporatised by 30 June 2013.
  - 2 The local government's report may recommend that it would be cost-effective for only particular consumers in part of the local government area to be charged a 2-part charge for the supply of water.
- (4) The local government must prepare the report before—
- (a) the end of the financial year in which the local government identifies the new significant business; or
  - (b) if the Minister has, within the financial year, agreed to a later day that is no later than 30 September in the next financial year—the later day.

## 16 Complying with guidelines

- (1) A public benefit assessment and the assessment report for the public benefit assessment must, to the extent it is reasonably practicable, comply with the assessment guidelines.
- (2) A 2-part charge assessment and the assessment report for the 2-part charge assessment must, to the extent it is reasonably practicable, comply with the evaluation guidelines.
- (3) In this section—

*assessment guidelines* means the document called 'Local Government Competitive Neutrality Public Benefit Assessment Guidelines', held by the department.

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*evaluation guidelines* means the document called ‘Guidelines for Evaluation of Introducing and Improving 2-Part Charges’, held by the department.

*Editor’s note—*

A copy of the assessment guidelines and the evaluation guidelines is available on the department’s website.

## 17 Public notice of assessment report

- (1) The local government must give notice of the assessment report to the public as soon as practicable after the local government considers the report under section 46(6) of the Act.
- (2) The local government must give notice by—
  - (a) publishing the notice—
    - (i) in a newspaper that is circulating generally in the local government area; and
    - (ii) on the local government’s website; and
  - (b) displaying the notice in a conspicuous place in the local government’s public office, until the local government decides whether or not to reform the significant business.
- (3) The notice must state—
  - (a) the name of the local government; and
  - (b) the day when the report was considered by the local government at a local government meeting; and
  - (c) a summary of the recommendations in the report; and
  - (d) the day, within 3 months after the report was considered by the local government, when the local government must decide whether or not to reform the significant business (the *decision day*); and
  - (e) that, until the decision day, members of the public may—

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- (i) inspect the report at the local government's public office; or
  - (ii) purchase the report at the local government's public office, for the price stated in the notice.
- (4) Until the decision day, the local government must ensure members of the public may inspect or purchase the report in the way explained in the notice.

## 18 Timetable for change

- (1) This section applies if a local government, after conducting a public benefit assessment, decides to reform a significant business or apply a 2-part charge (each a *change*).
- (2) The local government's resolution under section 46(6)(b) of the Act must contain a timetable for the change.
- (3) The timetable must provide for the change, or the first of a series of changes, to be completed by the end of the financial year that follows the financial year in which the activity was identified as a new significant business (the *relevant period*).
- (4) If the change, or the first of the changes, is not completed in the relevant period, the local government must, by resolution, amend the timetable to extend the period by no more than 1 year.
- (5) The local government must state the reasons for the delay in completing the change, or the first of the changes, in the resolution.

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## Part 3 Full cost pricing

### 19 What pt 3 is about

- (1) This part explains how a local government applies full cost pricing to a significant business as part of the reform of the significant business.

*Note—*

A guide to help local governments apply full cost pricing, called ‘Full Cost Pricing in Queensland Local Government—A Practical Guide’, is available on the department’s website.

- (2) This part applies whether the reform is done by—
  - (a) commercialisation; or
  - (b) corporatisation.
- (3) This part expands on section 44 of the Act.

### 20 Full cost pricing

- (1) A local government applies full cost pricing to a significant business by charging for goods or services at the full cost of providing the goods or services, subject to the following—
  - (a) the pricing provisions;
  - (b) the removal of any competitive advantage or disadvantage, whenever possible and appropriate;
  - (c) if a competitive advantage or disadvantage can not be removed—the taking of the competitive advantage or disadvantage into account when pricing the goods or services.
- (2) A *competitive advantage* is an advantage a business entity conducting a significant business has over a private sector business because the local government owns the business.
- (3) For example, a competitive advantage includes—
  - (a) a financial advantage; and

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- (b) a procedural advantage; and
- (c) a regulatory advantage.

*Examples of a financial advantage—*

A business entity conducting a significant business has a financial advantage if the following apply for the business entity—

- it is exempt from paying a local government tax a private sector business must pay
- it is charged a different government tax from the government tax a private sector business is charged
- it is charged a lower rate of interest on a bank loan because the State guarantees the loan.

*Examples of a procedural advantage—*

A business entity conducting a significant business has a procedural advantage if the following apply for the business entity—

- it does not have to supply the same amount of information under a government approval process as a private sector business
- it can access more information for a government approval process than a private sector business can access.

*Example of a regulatory advantage—*

A business entity conducting a significant business has a regulatory advantage if the business entity is exempt (completely or partly) from a government approval process a private sector business must follow.

- (4) A ***competitive disadvantage*** is a disadvantage a business entity conducting a significant business suffers over a private sector business because the local government owns the significant business.
- (5) For example, a competitive disadvantage includes a community service obligation.

## 21 Cost of community service obligations

- (1) This section applies when a local government is deciding what to charge for goods or services provided in conducting a significant business.



- (2) The cost of carrying out community service obligations, less any revenue received from performing the obligations, must be treated as revenue for the significant business.

## 22 Community service obligations

A *community service obligation* is an obligation the local government imposes on a business entity to do something that is not in the commercial interests of the business entity to do.

*Example of a community service obligation—*

giving a price concession to a particular group of customers, including pensioners, seniors and students

## 23 Taking account of government taxes

- (1) A commercialised business unit or corporate entity that is applying full cost pricing to a significant business must comply with the tax equivalents manual.
- (2) The *tax equivalents manual* is a manual, issued by the Treasurer, about how a local government must account for tax equivalents.
- (3) A *tax equivalent* is an amount that is the equivalent to the advantage gained by a local government by not paying a tax the local government would be liable to pay if it were a private sector business.
- (4) A *tax* includes any charge, duty, fee, levy or rate payable under an Act of the Commonwealth or the State, including the Act.
- (5) The tax equivalents manual may, for example, provide for—
- (a) lodging tax returns; and
  - (b) assessing tax returns; and
  - (c) rulings, including the application of rulings about taxes imposed under a Commonwealth Act; and

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- (d) objections and appeals against assessments and rulings;  
and
  - (e) the appointment of tax assessors.
- (6) The Treasurer must table a copy of each amendment of the tax equivalents manual in the Legislative Assembly within 14 sitting days after the amendment is made.

## **Part 4                      Commercialisation**

### **Division 1                      Introduction**

#### **24            What pt 4 is about**

- (1) This part is about the commercialisation of a significant business by a local government.
- (2) This involves the local government—
  - (a) ensuring the significant business is conducted by a commercial business unit within the local government, as required under division 2; and
  - (b) keeping particular extra information, as required under division 3.

### **Division 2                      Converting and creating commercial business units**

#### **25            Commercial business unit**

- (1) As part of the commercialisation of a significant business, a local government must—

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- (a) if the significant business is being conducted by a business unit—convert the business unit to a commercial business unit; or
  - (b) if the significant business is not being conducted by a business unit—create a commercial business unit and transfer the significant business to the commercial business unit.
- (2) A **commercial business unit** is a business unit that conducts business in accordance with the key principles of commercialisation.

## 26 What are the *key principles of commercialisation*

The *key principles of commercialisation*, for a commercial business unit, are—

- (a) clarity of objectives, namely that the local government—
  - (i) gives the unit clear and non-conflicting objectives; and
  - (ii) sets specific financial and non-financial performance targets for the significant business; and
  - (iii) keeps activities relating to local government policy formulation, or that are of a regulatory nature, separate from the unit, wherever possible; and
  - (iv) clearly identifies the nature and extent of the community service obligations the unit must perform; and
  - (v) sets performance targets for the unit’s community service obligations; and
  - (vi) separately costs the unit’s community service obligations; and

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- (vii) appropriately compensates the unit for performing the community service obligations, and discloses details of the compensation to the public; and
- (b) management autonomy and authority, namely that—
  - (i) the unit remains at arms-length to the local government, in day-to-day operations; and
  - (ii) the local government gives the unit autonomy in day-to-day operations, subject to overarching monitoring; and
  - (iii) any directions the local government gives the unit to achieve non-commercial objectives are given in an open way; and
  - (iv) the unit uses its best endeavours to ensure the unit meets its performance targets; and
- (c) accountability for performance, namely that—
  - (i) the local government monitors the unit's performance against the performance targets; and
  - (ii) the unit must generally be subject to the management framework of the local government; and
  - (iii) the unit complies with all laws the local government must comply with; and
- (d) competitive neutrality, namely that the unit complies with the competitive neutrality principle by—
  - (i) removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
  - (ii) promoting efficiency of the use of resources to ensure markets are not unnecessarily distorted.

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**27 Converting a business unit to a commercial business unit**

- (1) A local government must make the decision to convert a business unit to a commercial business unit by resolution.
- (2) A local government converts a business unit to a commercial business unit by changing the way in which the business unit is conducted to agree with the key principles of commercialisation.

**28 Creating a commercial business unit**

- (1) A local government must make the decision to create a commercial business unit by resolution.
- (2) The decision may be made in the same resolution the local government makes to commercialise a significant business.
- (3) A commercial business unit may be created to conduct more than 1 significant business.

**Division 3 Corporate plan, operational plan and annual report**

**29 What div 3 is about**

This division is about the information a local government must include in its corporate plan, operational plan or annual report if the local government commercialises a significant business.

*Note—*

The *Local Government (Finance, Plans and Reporting) Regulation 2010* states additional information that must be included in a corporate plan, operational plan or annual report of a local government.

**30 Corporate plan**

A local government's corporate plan must include the following information for each commercial business unit—

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- (a) an outline of the objectives of the commercial business unit;
- (b) an outline of the nature and extent of the significant business the commercial business unit will conduct.

### 31 Operational plan

- (1) A local government's operational plan for a financial year must include an annual performance plan for each commercial business unit.
- (2) An ***annual performance plan*** for a commercial business unit is a document stating the following for the financial year—
  - (a) the unit's objectives;
  - (b) the nature and extent of the significant business the commercial business unit is to conduct;
  - (c) the unit's financial and non-financial performance targets;
  - (d) the nature and extent of the community service obligations the unit must perform;
  - (e) the cost of, and funding for, the community service obligations;
  - (f) the unit's notional capital structure, and treatment of surpluses;
  - (g) the unit's proposed major investments;
  - (h) the unit's outstanding, and proposed, borrowings;
  - (i) the unit's policy on the level and quality of service consumers can expect;
  - (j) the delegations necessary to allow the unit to exercise autonomy in its commercial activities;
  - (k) the type of information that the unit's reports to the local government must contain.

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- (3) A local government may omit information from the copies of the annual performance plan made available to the public if—
- (a) the information is of a commercially sensitive nature to the commercial business unit; and
  - (b) the information is given to each of the local government's councillors.

*Note—*

See also section 171 (Use of information by councillors) of the Act.

- (4) The local government may change an annual performance plan at any time before the end of the financial year.

## **32 Annual report**

- (1) A local government's annual report for a financial year must include an annual operations report for each commercial business unit.
- (2) An *annual operations report*, for a commercial business unit, is a document that contains the following information for the previous financial year—
- (a) information that allows an informed assessment of the unit's operations, including a comparison with the unit's annual performance plan;
  - (b) particulars of any changes made to the unit's annual performance plan;
  - (c) particulars of the impact the changes had on the unit's—
    - (i) financial position; and
    - (ii) operating surplus or deficit; and
    - (iii) prospects;
  - (d) particulars of directions the local government gave the unit.

## **Part 5**                      **Corporatising a significant business**

### **Division 1**                **Introduction**

#### **33**      **What pt 5 is about**

- (1) This part applies if a local government decides, by a resolution under section 46(6)(b) of the Act, to corporatise a significant business of the local government.
- (2) As part of the process of corporatising a significant business, a local government must transfer the significant business to an interim entity before it is transferred to a corporate entity.
- (3) A corporate entity is not part of the local government, but is a separate legal entity the local government owns—
  - (a) directly; or
  - (b) indirectly, through another corporate entity.
- (4) A corporate entity may be created to acquire and conduct—
  - (a) 2 or more businesses of a local government; or
  - (b) the businesses of 2 or more local governments.
- (5) A reference to a local government in this part relating to a corporate entity or a subsidiary of a corporate entity is a reference to the establishing local government for the entity.
- (6) This part explains what a local government must do to create a new corporate entity.



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## Division 2                      Corporatisation process

### Subdivision 1                Constitution and corporatisation plan

#### 34            What sdiv 1 is about

- (1) This subdivision is about planning and preparing for corporatisation and, in particular, about the preparation and approval of—
  - (a) a constitution; and
  - (b) a corporatisation plan.
- (2) A **constitution** is a document setting out the strategic direction of the corporate entity, including—
  - (a) the scope of the entity’s business activities, including any business activities outside the local government area; and
  - (b) the entity’s capital structure; and
  - (c) accounting, commercial management and performance systems to be adopted by the entity; and
  - (d) how the key principles of corporatisation are to be applied to the entity.

*Note—*

See section 51 for an explanation of the key principles of corporatisation.

- (3) A **corporatisation plan** is a document setting out the steps by which, and the basis on which, a significant business is to be corporatised, including—
  - (a) the procedure, and a timetable, for doing the following, in readiness for when the corporate entity comes into existence—
    - (i) preparing the constitution of the corporate entity;

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- (ii) appointing a board for the corporate entity;
  - (iii) deciding the amount of the corporate entity's share capital, and issuing shares to its shareholder;
  - (iv) valuing the assets and liabilities of the business entity conducting the significant business that the local government will transfer to the corporate entity; and
- (b) any other matter the local government states in the resolution for corporatising the significant business.

### **35 Committee to oversee corporatisation**

- (1) The local government must create a committee of the local government (a *corporatisation committee*) that is to—
  - (a) prepare the constitution and corporatisation plan for approval by the local government; and
  - (b) ensure the approved constitution and approved corporatisation plan are implemented in a timely, efficient and effective way; and
  - (c) report to the local government on whether the approved constitution and approved corporatisation plan are being implemented in a timely, efficient and effective way.
- (2) When the local government appoints persons as the members of the corporatisation committee, the local government must ensure the persons have the range of skills necessary to corporatise the significant business.
- (3) A councillor, or employee of a local government, may be appointed under subsection (2).
- (4) However, the total number of councillors and employees must not, at any time, be more than half of the members of the corporatisation committee.
- (5) The corporatisation committee is automatically disbanded when the corporate entity comes into existence.

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### **36 Preparing constitution and corporatisation plan**

- (1) The corporatisation committee must prepare a constitution and corporatisation plan for approval by the local government.
- (2) The local government may give directions to the corporatisation committee about the preparation of the constitution and corporatisation plan.
- (3) For example, the local government may require the corporatisation plan to contain a timetable for doing the following—
  - (a) identifying any existing business activities of a policy formulation or regulatory nature;
  - (b) identifying options for how those activities could remain within the local government;
  - (c) identifying any community service obligations of the corporate entity;
  - (d) costing any community service obligations of the corporate entity.

### **37 Approving constitution and corporatisation plan**

- (1) The corporatisation committee must give the constitution and corporatisation plan to the local government for approval.
- (2) The local government may request the committee to amend the constitution and corporatisation plan before the local government approves the constitution or corporatisation plan.
- (3) The corporatisation committee must comply with the local government's request.
- (4) The local government's decision to approve the constitution or corporatisation plan must be made by a resolution.

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### **38 Amending constitution and corporatisation plan**

- (1) The local government may, by resolution, amend a constitution or corporatisation plan the local government has approved.
- (2) The amendment may be made before or after the corporate entity is corporatised.

### **39 Public access to constitution and corporatisation plan**

- (1) The local government must ensure the public may inspect or purchase a copy of an approved constitution or approved corporatisation plan at the local government's public office.
- (2) The local government may decide, by resolution, to omit information from the copies of the constitution and corporatisation plan to be made public if—
  - (a) the information is of a commercially sensitive nature to the corporate entity; and
  - (b) the information is given to each councillor.

*Note—*

See also section 171 (Use of information by councillors) of the Act.

### **40 Expiry of corporatisation plan**

- (1) The corporatisation plan expires when the shareholder approves the first statement of corporate intent of the corporate entity.
- (2) However, the expiry of the corporatisation plan does not affect the previous operation of—
  - (a) the corporatisation plan; or
  - (b) anything started or done under the corporatisation plan.

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## **Subdivision 2      Interim entity**

### **41      What sdiv 2 is about**

This subdivision is about planning and preparing for corporatisation and, in particular, about the establishment of an interim entity.

### **42      Establishment of interim entity**

- (1) As part of the process of corporatisation, a local government may, by resolution, bring an interim entity into existence.
- (2) The resolution must state—
  - (a) the name of the interim entity to be created to conduct the significant business; and
  - (b) whether the interim entity is to be owned by—
    - (i) the local government; or
    - (ii) another corporate entity the local government owns; and
  - (c) the responsibilities of the interim entity.
- (3) The interim entity comes into existence when the resolution takes effect.

*Note—*

See section 116 for when a resolution takes effect.

### **43      Resolution for interim entity**

- (1) A local government may, by resolution (an *interim entity resolution*), provide for anything that is necessary or convenient for an interim entity.
- (2) For example, the interim entity resolution may provide for—
  - (a) particular assets or liabilities of the local government to be transferred to the interim entity; and

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- (b) the interim entity's payment for the assets, including, for example—
    - (i) a debt the interim entity owes to the local government; and
    - (ii) how to decide the amount of the payment; and
    - (iii) changing the amount of a payment, whether before or after the interim entity comes into existence; and
  - (c) the rights of any local government employees who are to become employees of the interim entity, including, for example, the positions the employees are to hold in the interim entity; and
  - (d) the legal documents the interim entity becomes a party to, in place of a named person, including, for example—
    - (i) legal documents under which an amount is payable; or
    - (ii) legal documents under which property is being transferred; and
  - (e) the proceedings the interim entity becomes a party to, in place of a named person.
- (3) A resolution under subsection (2)(c) has effect despite section 46.
  - (4) The interim entity resolution must state when it comes into effect.

#### **44 Interim board of directors for interim entity**

- (1) A local government may, by resolution, decide—
  - (a) that its interim entity is to have an interim board; and
  - (b) the role of the interim board.
- (2) The local government must appoint the directors of the interim board.

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- (3) However, no more than half of the directors of the interim board may be councillors or employees of the local government.
  - (4) On the interim entity becoming a corporate entity—
    - (a) the interim board ceases to exist; and
    - (b) the directors on the interim board go out of office.

#### **45 Application of particular provisions about directors and executives to interim entities**

Sections 55 to 64 apply to an interim entity, with necessary changes, as if—

- (a) the interim entity were a corporate entity; and
- (b) its interim board of directors were the corporate entity's board; and
- (c) a director of the interim entity were a director of a corporate entity; and
- (d) the chief executive officer of the interim entity were the chief executive officer of a corporate entity.

#### **46 Assistance to interim entities**

- (1) An interim entity may enter into, and give effect to, a work performance arrangement with the chief executive officer of the local government.
- (2) A *work performance arrangement* is an arrangement under which an employee of the local government performs work for the interim entity.

#### **47 Share capital and issue of shares**

- (1) The local government may, by resolution, provide that, on a stated day before an interim entity becomes a corporate entity, the entity is taken to have a share capital of a stated amount.

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- (2) Before becoming a corporate entity, the interim entity must—
  - (a) apply the part of its capital the local government directs in paying up, in full, shares in itself; and
  - (b) as soon as practicable, issue the shares paid up under paragraph (a).
- (3) If the interim entity does not have an interim board of directors, the local government may apply the part of the capital and issue the shares on the entity's behalf.
- (4) The local government may, by resolution, vary the share capital of an interim entity.
- (5) Sections 76 to 78 apply to an interim entity, with any necessary changes, as if—
  - (a) the interim entity were a corporate entity; and
  - (b) the share capital of the interim entity were the share capital of a corporate entity.
- (6) The local government may, by notice to the interim entity, give directions about the issue, holding and transfer of shares paid up under subsection (2).
- (7) The interim entity must ensure the directions are complied with.

### **Subdivision 3      Resolution for corporatisation**

#### **48      What sdiv 3 is about**

This subdivision is about how a local government brings a corporate entity into existence.

#### **49      Resolution to bring a corporate entity to life**

- (1) A local government must make the decision to bring a corporate entity into existence by resolution.



- (2) However, the local government may make the resolution only if satisfied that, when the resolution takes effect—
  - (a) the corporate entity will be immediately ready to conduct the significant business; and
  - (b) the corporate entity will immediately have—
    - (i) a board; and
    - (ii) share capital and issued shares.
- (3) The resolution must state—
  - (a) the name of the corporate entity to be created to conduct the significant business; and
  - (b) whether the corporate entity's shareholder is—
    - (i) for an entity other than a subsidiary corporate entity—the local government, with or without other local governments; or
    - (ii) for a subsidiary corporate entity—another corporate entity of which the local government is the establishing local government; and
  - (c) the responsibilities of the corporate entity.
- (4) The resolution may provide for anything that is necessary or convenient to corporatise the significant business.
- (5) The corporate entity comes into existence when the resolution takes effect.

*Note—*

See section 116 for when a resolution takes effect.

## **Part 6 Corporate entities**

### **Division 1 Key principles of corporatisation**

#### **50 Application of key principles of corporatisation**

The shareholder must ensure the corporate entity is conducted in accordance with the key principles of corporatisation.

#### **51 What are the *key principles of corporatisation***

The *key principles of corporatisation*, for a corporate entity, are—

- (a) clarity of objectives, namely that—
  - (i) the shareholder gives the entity clear and non-conflicting objectives; and
  - (ii) the shareholder sets specific financial and non-financial performance targets for the significant business the entity conducts; and
  - (iii) the shareholder keeps any activities relating to local government policy formulation, or that are of a regulatory nature, separate from the entity, wherever possible; and
  - (iv) the shareholder clearly identifies the nature and extent of any community service obligations the entity must perform; and
  - (v) the shareholder sets performance targets for the entity's community service obligations; and
  - (vi) the shareholder, or entity, separately costs the entity's community service obligations; and
  - (vii) the shareholder appropriately compensates the entity for performing the community service

- obligations, and discloses details of the compensation to the public; and
- (b) management autonomy and authority, namely that—
    - (i) the local government gives the entity autonomy, and the authority to make commercial decisions for its business activities; and
    - (ii) procedures for strategic monitoring of the entity replace the local government power to give the corporate entity directions about its business activities; and
    - (iii) the local government exercises, in an open way, a power under the Act to give the entity directions; and
    - (iv) the role of the shareholder is clearly defined; and
    - (v) the board uses its best endeavours to ensure the entity meets its performance targets; and
  - (c) accountability for performance, namely that—
    - (i) the entity's board is accountable to the shareholder; and
    - (ii) the entity's statement of corporate intent is the basis for accountability; and
    - (iii) the shareholder monitors the entity's performance against the performance targets; and
    - (iv) monitoring by the shareholder replaces the monitoring that listed corporations are subject to (under the Corporations Act, for example); and
  - (d) competitive neutrality, namely that the entity complies with the competitive neutrality principle by—
    - (i) removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and

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- (ii) promoting efficiency of the use of resources, to ensure markets are not unnecessarily distorted; and
- (iii) if the entity has a monopoly or a near monopoly—considering whether special monitoring is necessary to prevent any abuse of power.

## **Division 2                      Directors and employees of a corporate entity**

### **Subdivision 1            Introduction**

#### **52            What div 2 is about**

- (1) This division is about—
  - (a) the directors on the board of the corporate entity, including—
    - (i) the appointment conditions of the directors; and
    - (ii) meetings and other business of the board; and
  - (b) the employees of a corporate entity, including the employment conditions of the employees.
- (2) The employees of a corporate entity are—
  - (a) the chief executive officer of the corporate entity; and
  - (b) the other employees of the corporate entity.
- (3) The *appointment conditions* include conditions relating to—
  - (a) term of appointment; and
  - (b) ending an appointment.
- (4) The *employment conditions* include conditions relating to—
  - (a) wages; and

- (b) term of employment; and
- (c) ending employment.

## **Subdivision 2 Board of directors**

### **53 Establishing board**

- (1) A corporate entity must have a board.
- (2) The board's responsibilities include—
  - (a) using its best endeavours to ensure the corporate entity performs its responsibilities in an economical, effective and efficient way; and
  - (b) using its best endeavours to ensure the corporate entity acts in accordance with, and achieves, its statement of corporate intent; and
  - (c) accounting to the corporate entity's shareholder for the corporate entity's performance.

### **54 Appointing directors to the board**

- (1) This section is about appointing directors to the board of a corporate entity.
- (2) A board must consist of at least 5 directors.
- (3) The local government must, in readiness, appoint the directors to the board before the corporate entity comes into existence.
- (4) After a corporate entity comes into existence, the shareholder is responsible for appointing the directors.
- (5) Whoever is appointing the directors must adopt an appropriate appointment process.
- (6) The appointment process must, at least, provide for the following—
  - (a) identifying the key attributes required of a director;

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- (b) calling for applications through public advertising and canvassing suitable persons;
  - (c) evaluating applications by using independent expertise;
  - (d) interviewing the short-listed persons by a nominated group that is assisted by independent experts;
  - (e) appointing the most suitable applicants as directors.
- (7) A person is eligible to be a director if the person has the ability to contribute to—
- (a) the corporate entity’s commercial performance; and
  - (b) the corporate entity’s implementation of its statement of corporate intent.
- (8) However, a person is not eligible to be a director if the person is prohibited from managing a corporation, under the Corporations Act, section 201B.
- (9) A director may be appointed for a term of up to 5 years.
- (10) Whoever is appointing a director must decide the director’s appointment conditions, including whether the director is entitled to receive any payment—
- (a) for being a director; or
  - (b) on, or in connection with, retirement or ending of the appointment.
- (11) *Payment* includes any benefit, interest in property, or other valuable consideration.

## **55 Appointing the chairperson and deputy chairperson**

- (1) The shareholder must appoint a director to be the chairperson of the board.
- (2) The shareholder may appoint a director to be the deputy chairperson of the board.
- (3) A deputy chairperson acts for the chairperson whenever—
  - (a) there is a vacancy in the office of the chairperson; or

- (b) the chairperson is unable to perform the chairperson's duties (while on sick leave, for example).
- (4) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson but remain a director.

## **56 Appointing an acting director**

The shareholder may appoint a person to act as a director during any period when a director—

- (a) is absent from duty; or
- (b) can not, for another reason, perform the duties of a director.

## **57 Ending a director's appointment**

- (1) A person stops being a director if—
  - (a) the person gives a signed notice of resignation to the shareholder; or
  - (b) for a person who was a councillor or employee of a local government when the person was appointed as a director—the person stops being a councillor or employee; or
  - (c) the person is prohibited from managing a corporation, under the Corporations Act, section 201B; or
  - (d) the shareholder ends the director's appointment.
- (2) The shareholder may end a director's appointment—
  - (a) at any time; and
  - (b) for any reason, or for no reason.

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## **Subdivision 3 Meetings and other business of the board**

### **58 Meetings of the board**

- (1) This section sets out the way in which the board must conduct its meetings.
- (2) The board must decide the time when, and the place where, a meeting must be held.
- (3) However, the presiding officer—
  - (a) may call a meeting, at any time, by giving the other members at least 7 days notice of the meeting; and
  - (b) must call a meeting if a majority of the directors asks the presiding officer to do so.
- (4) The *presiding officer* is—
  - (a) the chairperson; or
  - (b) if the chairperson is absent—the deputy chairperson; or
  - (c) if the chairperson and deputy chairperson are absent—a director who is chosen by the other directors.
- (5) The presiding officer must preside over the meetings of the board.
- (6) The board may conduct business at a meeting only if there are at least 2 directors present who are entitled to vote on each question before the meeting.
- (7) A question before a meeting must be decided by a majority of the members who are present and voting at the meeting.
- (8) If the voting is tied, the presiding officer also has a casting vote.
- (9) The board must keep minutes of its meetings.
- (10) The board may conduct its meetings in any way it considers appropriate, provided it—



- (a) allows contemporaneous communication between the directors, including, for example, by phone or teleconferencing; and
- (b) is not contrary to this section.

## **59 Resolution without a meeting of the board**

- (1) This section is about how a resolution can be passed without the board holding a meeting.
- (2) A resolution may be passed if a majority of directors sign a document that states the directors are in favour of the resolution contained in the document.
- (3) For subsection (2), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to form a single document.
- (4) The resolution is taken to have been passed on the day when the director who casts the majority vote signs the document.
- (5) As soon as practical after the resolution is passed, the board must give a copy of the resolution to each director on the board.

## **60 Delegation by board**

A board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the chief executive officer of the corporate entity; or
- (d) an appropriately qualified employee of the corporate entity.

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## **Subdivision 4 Chief executive officer**

### **61 Chief executive officer**

- (1) A corporate entity must have a chief executive officer.
- (2) The chief executive officer is responsible for managing the corporate entity, under the direction of the board.
- (3) Anything done by the chief executive officer in the name of, or for, the corporate entity is taken to have been done by the corporate entity.
- (4) The chief executive officer may delegate the chief executive officer's powers to a qualified employee of the corporate entity.
- (5) A *qualified employee* is an employee who the chief executive officer considers has the qualifications, experience or standing appropriate to exercise the power.
- (6) However, the chief executive officer's power to delegate is subject to a direction of the board.

### **62 Appointing the chief executive officer**

- (1) The local government must, in readiness, appoint the chief executive officer before a corporate entity comes into existence.
- (2) The employment of the chief executive officer starts when the corporate entity comes into existence.
- (3) After a corporate entity comes into existence, the corporate entity's board is responsible for appointing the chief executive officer.
- (4) Whoever is appointing a chief executive officer must decide the chief executive officer's employment conditions.
- (5) This section does not apply if the interim entity for the local government has an interim board of directors.

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**63 Appointing an acting chief executive officer**

The board may appoint a person to act as the chief executive officer when the chief executive officer—

- (a) is absent from duty; or
- (b) can not, for another reason, perform the duties of chief executive officer.

**64 Ending the chief executive officer's appointment**

- (1) A person stops being the chief executive officer if—
  - (a) the person gives a signed notice of resignation to the board; or
  - (b) the board ends the chief executive's appointment.
- (2) The board may end the chief executive's appointment—
  - (a) at any time; and
  - (b) for any reason, or for no reason.
- (3) However, this does not affect any rights to compensation the chief executive officer may be entitled to under the chief executive officer's appointment or employment conditions.

**Subdivision 5 Other employees**

**65 What sdiv 5 is about**

This subdivision is about the employees of a corporate entity who are not the chief executive officer of the corporate entity.

**66 Appointing other employees**

- (1) The chief executive officer may engage the number of employees of the corporate entity the chief executive officer considers are necessary to conduct the corporate entity,

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including to carry out its business activities and perform any community service obligations.

- (2) The corporate entity must decide the employment conditions not already decided under an industrial instrument for the other employees.

## **Subdivision 6 Provisions applying to all employees**

### **67 Corporate entity super schemes**

- (1) A corporate entity may establish, amend or take part in a super scheme for all its employees.
- (2) A *super scheme* is a superannuation scheme that complies with the requirements of the Commonwealth Super Act.

### **68 LG super scheme**

- (1) This section applies to an employee of a corporate entity who, immediately before being employed by the corporate entity, was—
  - (a) employed by a local government; and
  - (b) a member of the LG super scheme.
- (2) The employee continues to be a member of the LG super scheme as if the employee were still an employee of the local government.
- (3) The corporate entity must contribute to the LG super scheme as if the corporate entity were the local government.
- (4) If the corporate entity establishes its own super scheme, the employee may choose—
  - (a) to stop being a member of the LG super scheme; and
  - (b) to become a member of the corporate entity's super scheme.

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## 69 Preserving entitlements of local government employees

- (1) This section applies to a person who—
  - (a) was employed by a local government in a permanent or full-time capacity; and
  - (b) leaves the local government to become an employee of a corporate entity, in a permanent or full-time capacity, within 1 year after the corporate entity comes into existence.
- (2) The end of the person's employment with the local government must not be treated as a termination of the person's employment under—
  - (a) a redundancy; or
  - (b) voluntary early retirement; or
  - (c) another similar arrangement.
- (3) If, when the person leaves the local government, the person has accrued leave entitlements, the leave entitlements must be treated as if the leave entitlements were accrued during the person's employment with the corporate entity.
- (4) If the person becomes entitled to any entitlement because of the length of the person's employment with the corporate entity, the person's employment with the local government must be treated as employment with the corporate entity.
- (5) However, a person can not claim or receive benefits more than once for the same entitlement.

## 70 Work performance arrangements

- (1) This section is about work performance arrangements between a corporate entity and a public entity.
- (2) A *public entity* is—
  - (a) a department; or
  - (b) an authority of the State; or

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- (c) a local government; or
  - (d) the Commonwealth or another State; or
  - (e) an authority of the Commonwealth or another State.
- (3) A corporate entity may enter into, and give effect to, an arrangement (a *work performance arrangement*) under which—
- (a) an employee of the corporate entity performs work for, or duties in, the public entity; or
  - (b) an employee of the public entity performs work for, or duties in, the corporate entity.
- (4) A work performance arrangement must be made with the chief executive officer, or the appropriate authority, of the other public entity.
- (5) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.

## **71 Who are not employees**

- (1) The shareholder or a shareholder delegate is not an employee of a corporate entity.
- (2) The employees of a corporate entity are not employees of the corporate entity's establishing local government.
- (3) A person who is both a councillor or employee of a local government and a director of a corporate entity at the same time, is an employee of the corporate entity only while the person is acting in the capacity of a director of the corporate entity.

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## **Subdivision 7      Dual service**

### **72      Dual service for directors of corporate entities**

- (1) A person may be both of the following at the same time only if the significant business is being conducted by a subsidiary of the corporate entity—
  - (a) a director of a corporate entity;
  - (b) a councillor or employee of a local government.
- (2) However, no more than half of the directors of the corporate entity may be councillors or employees of the local government.
- (3) The corporate entity must pay the local government the remuneration of a person who is a director, unless the local government decides otherwise.
- (4) Subject to subsection (5), a person may be, at the same time—
  - (b) a director of a corporate entity; and
  - (a) the chief executive officer of the corporate entity.
- (5) For subsection (4), the chief executive officer of the corporate entity can not also be a councillor or employee of the entity's establishing local government.
- (6) However, the person mentioned in subsection (4) must not vote at a meeting of the board on any matter relating to the chief executive officer's role, performance, or employment conditions.

### **73      Restrictions on dual service**

- (1) A person must not be, at the same time—
  - (a) the chief executive officer of a corporate entity; and
  - (b) an employee of a local government.
- (2) A person must not be, at the same time—

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- (a) an employee of a corporate entity; and
  - (b) a councillor of a local government.
- (3) A person must not be, at the same time—
- (a) a director of a corporate entity; and
  - (b) an employee of a subsidiary of the corporate entity.

## **Division 3                      Share capital, shares and shareholder**

### **74            What div 3 is about**

- (1) A corporate entity, being a body corporate, must raise share capital to finance the corporate entity's business activities.
- (2) A corporate entity does this by issuing shares to its shareholder.
- (3) This division is about the share capital, issued shares and the shareholder of a corporate entity.

### **75            Shares and shareholder of a corporate entity**

- (1) When a corporate entity comes into existence, the corporate entity must issue shares to the corporate entity's shareholder, in accordance with the corporatisation plan.
- (2) If 2 or more local governments created the corporate entity, each of the local governments—
  - (a) holds the number of shares the local governments agree to, by resolution; and
  - (b) is entitled to the rights as a shareholder the local governments agree to, by resolution, including, for example, rights of ownership of assets.
- (3) If 2 or more local governments are the shareholder of the corporate entity, they must act jointly as the shareholder.



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## 76 Shareholder delegates

- (1) A corporate entity's establishing local government may, by resolution, appoint 2 of its councillors as its delegates (each a *shareholder delegate*), to act in place of the local government.
- (2) The shareholder delegates must—
  - (a) act jointly; and
  - (b) act in a way that promotes the key principles of corporatisation.
- (3) The shareholder delegates may—
  - (a) appoint and remove directors on the board of the corporate entity; or
  - (b) monitor the performance of the corporate entity and any subsidiary of the corporate entity; or
  - (c) agree to, or change, the corporate entity's—
    - (i) corporate plan; or
    - (ii) statement of corporate intent; or
  - (d) exempt the corporate entity from including matters in its statement of corporate intent; or
  - (e) give directions about the corporate entity's corporate plan or statement of corporate intent; or
  - (f) give other directions to the corporate entity.
- (4) However—
  - (a) subsection (3)(e) does not apply to a power the local government is required to exercise by a resolution; and
  - (b) subsection (3) is subject to a direction by the establishing local government.
- (5) The shareholder delegates must give the local government a report on the performance of the corporate entity if asked by the local government.
- (6) The report—

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- (a) must contain information on the decisions made by the corporate entity; but
  - (b) must not contain commercially sensitive material of the corporate entity.
- (7) A reference in this regulation to a shareholder includes a reference to a shareholder delegate, other than the references to a shareholder in subsections (1) and (4).

### **77 Shareholder delegates who act honestly and without negligence are protected from liability**

- (1) A shareholder delegate of a corporate entity is not civilly liable for an act done, or omission made, honestly and without negligence under the Act in relation to the corporate entity or any subsidiary of the corporate entity.
- (2) The civil liability attaches instead to the corporate entity's establishing local government of the corporate entity.

### **78 Varying share capital of a corporate entity**

- (1) This section is about varying the share capital of a corporate entity, including for example by—
  - (a) issuing more shares; or
  - (b) cancelling shares that have been issued; or
  - (c) consolidating shares that have been issued; or
  - (d) dividing shares that have been issued.
- (2) The shareholders of a corporate entity may, by resolution, vary the share capital.

*Note—*

See section 116 for when a resolution takes effect.

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## **79 Transferring shares in a corporate entity**

- (1) This section is about a shareholder transferring shares in a corporate entity.
- (2) A shareholder that is a local government may transfer shares only to—
  - (a) if another local government is a shareholder of the corporate entity—the other local government; or
  - (b) if the local government is the establishing local government of another corporate entity—the other corporate entity.
- (3) A shareholder that is a corporate entity may transfer shares in a subsidiary corporate entity only to—
  - (a) the corporate entity’s establishing local government; or
  - (b) another corporate entity of the establishing local government.

## **80 Shareholder monitoring of corporate entities**

- (1) The shareholder of a corporate entity may ask the chief executive officer to investigate, and report on, anything related to the governance or operation of the corporate entity.
- (2) The chief executive officer may give the corporate entity the written directions or requests the chief executive officer considers are necessary or desirable for the investigation.
- (3) For example, the chief executive officer may request the corporate entity—
  - (a) to give the chief executive officer information about—
    - (i) the corporate entity; or
    - (ii) a subsidiary of the corporate entity; and
  - (b) to allow a person who is authorised by the chief executive officer to have access to stated documents about—

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- (i) the corporate entity; or
- (ii) a subsidiary of the corporate entity.

## **Division 4                      Dividends of a corporate entity**

### **81            What div 4 is about**

This division is about a corporate entity paying a dividend to its shareholder.

### **82            First dividend**

- (1) This section applies to a corporate entity that comes into existence after 1 July of a financial year.
- (2) The shareholder may direct the corporate entity to pay a dividend for—
  - (a) the part of the financial year for which it was in existence; or
  - (b) all of the financial year.

### **83            Full year dividend**

- (1) No later than 31 July each year, the board of a corporate entity must recommend to the shareholder that the corporate entity pay—
  - (a) a stated dividend for the previous financial year; or
  - (b) no dividend for the previous financial year.
- (2) The board must consult with the shareholder before making the recommendation.
- (3) No later than 31 October each year, the shareholder must—
  - (a) approve the recommendation, by resolution; or
  - (b) direct the corporate entity to pay a different dividend, by resolution.

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- (4) A corporate entity's establishing local government must ensure the public may inspect a copy of the local government's approval or direction—
    - (a) at the local government's public office; or
    - (b) on the local government's website.
  - (5) The corporate entity must pay any dividend to its shareholder no later than—
    - (a) 31 December each year; or
    - (b) if the shareholder agrees to a later day—the later day.

#### **84 Half year dividend**

- (1) After 1 January in a financial year, the shareholder of a corporate entity may request the corporate entity's board to make a recommendation about paying a dividend for the first half of the financial year.
- (2) Within 1 month after the board receives the request, the board must recommend to the shareholder that the corporate entity pay—
  - (a) a stated dividend for the first half of the financial year;  
or
  - (b) no dividend for the first half of the financial year.
- (3) Within 1 month after the shareholder receives the recommendation, the shareholder must, by resolution—
  - (a) approve the recommendation; or
  - (b) direct the corporate entity to pay a different dividend.
- (4) A corporate entity's establishing local government must ensure the public may inspect a copy of the local government's approval or direction—
  - (a) at the local government's public office; or
  - (b) on the local government's website.

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- (5) The corporate entity must pay any dividend to its shareholder no later than—
  - (a) 2 months after the board receives the approval or direction; or
  - (b) if the shareholder agrees to a later day—the later day.

## **85 Amount of dividend**

- (1) A corporate entity's dividend must be no more than the corporate entity's net profits.
- (2) The corporate entity's *net profits* are the corporate entity's profits less—
  - (a) the income tax, or tax equivalents, on the profits; and
  - (b) the unrealised capital gains from any upwards revaluation of non-current assets; and
  - (c) capital grants, subsidies and other contributions of a similar nature.

## **Division 5 Shareholder directions to a corporate entity**

### **86 What div 5 is about**

- (1) This division is about a shareholder's directions to a corporate entity.
- (2) A shareholder may give directions to a corporate entity only as allowed by this part or another Act.
- (3) A direction to a corporate entity must be written.
- (4) A corporate entity's establishing local government must ensure the public can inspect a copy of a direction given to the corporate entity—

- (a) at the local government's public office; or
- (b) on the local government's website.

### **87 Direction prohibiting disposal of assets**

- (1) A shareholder of a corporate entity may give the corporate entity a direction prohibiting the corporate entity or a subsidiary of the corporate entity from disposing of—
  - (a) a particular asset; or
  - (b) a class of assets.
- (2) However, the shareholder must consult with the corporate entity before giving the direction.

### **88 Directions in public interest**

- (1) A shareholder of a corporate entity may give a direction to a corporate entity if the shareholder considers, because of exceptional circumstances, it is in the public interest to give the direction.
- (2) However, the shareholder must consult with the corporate entity before giving the direction, including about whether complying with the direction would be in the commercial interests of the corporate entity.

### **89 Corporate entity may direct subsidiary**

A corporate entity may also give its subsidiary corporate entity a direction—

- (a) designed to ensure the subsidiary corporate entity complies with this regulation; or
- (b) about the payment of a dividend.

### **90 Complying with directions**

- (1) This section applies if a corporate entity receives a direction.

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- (2) The board must ensure the corporate entity complies with the direction.
- (3) If the direction concerns a subsidiary of the corporate entity, the board must, to the extent the direction concerns the subsidiary corporate entity—
  - (a) notify the subsidiary corporate entity of the direction; and
  - (b) ensure the subsidiary corporate entity complies with the direction.
- (4) The board of the subsidiary corporate entity must ensure the subsidiary corporate entity complies with a direction, to the extent the direction concerns the subsidiary corporate entity.

## **Division 6 Documents of corporate entity**

### **Subdivision 1 Corporate documents**

#### **91 What sdiv 1 is about**

- (1) This subdivision is about the following documents of a corporate entity—
  - (a) statement of corporate intent;
  - (b) corporate plan.
- (2) Each of the documents is a *corporate document*.

#### **92 What is a *statement of corporate intent***

- (1) A *statement of corporate intent* for a financial year is a document that contains at least the following information about a corporate entity for the financial year—
  - (a) the financial and non-financial performance targets for its activities;



- (b) an outline of its objectives and functions;
- (c) an outline of the nature and scope of the activities it proposes to carry on;
- (d) any changes to the activities the it carries on outside the local government area, since the last statement of corporate intent;
- (e) an outline of the its main business activities and any intention to dispose of those business activities in the financial year;
- (f) its capital structure and dividend policy;
- (g) an outline of its major infrastructure investments;
- (h) an outline of its outstanding and proposed borrowings;
- (i) an outline of its policy to minimise and manage the risk of investments and borrowings that may adversely affect the its financial stability;
- (j) an outline of its policy and procedure relating to the acquisition and disposal of major assets;
- (k) its policy relating to the preparation of its accounts;
- (l) the type of information to be given to the shareholder of the corporate entity, including in the quarterly and annual reports;
- (m) an outline of its employment and industrial relations policies;
- (n) any proposal by it to establish a subsidiary corporate entity;
- (o) the nature and extent of its community service obligations;
- (p) the ways in which, and the extent to which, the shareholder of the corporate entity must compensate the it for the community service obligations;
- (q) any restrictions placed on its powers.

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- (2) A statement of corporate intent need not include information mentioned in subsection (1) if the shareholder of the corporate entity exempts the corporate entity from including the information because the shareholder considers the information is not materially relevant to the corporate entity or its activities.
- (3) A statement of corporate intent must be consistent with—
  - (a) for a subsidiary of a corporate entity—the corporate entity’s corporate plan and statement of corporate intent; or
  - (b) for a corporate entity—the corporate entity’s corporate plan.
- (4) A statement of corporate intent represents an agreement between the corporate entity and its shareholder, but is not a contract for carrying out work or for the supply of goods or services.

### **93 What is a *corporate plan***

A *corporate plan* for a corporate entity is a document that—

- (a) provides the future direction, goals and priorities for the corporate entity, and its subsidiary corporate entities, for a period of at least 3 years after the corporate plan commences; and
- (b) guides the corporate entity’s decision-making, budget operations and resource allocations to achieve the future direction, goals and priorities.

### **94 Preparing and approving a draft corporate document**

- (1) A corporate entity must prepare a statement of corporate intent for each financial year.
- (2) A corporate entity, other than a subsidiary corporate entity, must prepare a corporate plan for each financial year.
- (3) The board of the corporate entity must—

- (a) prepare a draft corporate document; and
  - (b) give the draft corporate document to its shareholder for approval.
- (4) The board must comply with subsection (3)—
  - (a) no later than 1 month after the corporate entity comes into existence; and
  - (b) no later than 30 April of every year after the corporate entity comes into existence.
- (5) The board must consult with interested industrial organisations and the corporate entity's employees when preparing a draft statement of corporate intent.
- (6) After the board discusses a draft corporate document with the shareholder of the corporate entity, the shareholder may direct the board to make changes to the draft corporate document.
- (7) The board must make the changes as soon as practicable and give the shareholder a copy of the changed draft corporate document.
- (8) The shareholder must approve the draft corporate document within 2 months after the board first gave the shareholder the draft corporate document for approval.
- (9) The draft corporate document becomes the corporate entity's corporate document—
  - (a) when the shareholder approves the draft corporate document; or
  - (b) if the shareholder does not approve the draft corporate document within the period allowed under subsection (8)—2 months after the board first gives the draft corporate document to the shareholder for approval.
- (10) A corporate document continues in force until it is replaced by a new corporate document.

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## **95 Changing a corporate document**

- (1) The board of the corporate entity may change a corporate document with the approval of its shareholder.
- (2) The board must change a corporate document if the shareholder gives the board a direction to change the corporate document.
- (3) However, the shareholder must discuss the proposed change with the board before the shareholder gives the board a direction to change the corporate document.

## **Subdivision 2 Reports to shareholder**

### **96 What sdiv 2 is about**

This subdivision is about a corporate entity's reports to its shareholder, including—

- (a) quarterly reports; and
- (b) annual reports.

### **97 What is a *quarterly report***

A *quarterly report* is a document that contains at least the following information for each of the first 3 quarters of the financial year—

- (a) the information that will allow the shareholder of the corporate entity to make an informed assessment of the operations of the corporate entity and its subsidiary corporate entities;
- (b) any other information the corporate entity's statement of corporate intent requires to be included in the quarterly report.

*Note—*

See also section 171 (Use of information by councillors) of the Act.

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**98 What is an *annual report***

- (1) The *annual report* of a corporate entity for a financial year is a document that contains at least the following information for the year—
  - (a) the information that will allow the shareholder of the corporate entity to make an informed assessment of the operations of the corporate entity and its subsidiary corporate entities;
  - (b) a comparison of the corporate entity's performance with the corporate entity's statement of corporate intent;
  - (c) particulars of changes made to the statement of corporate intent during the financial year;
  - (d) particulars of the impact of changes to the statement of corporate intent, or directions the shareholder gave to the board, on—
    - (i) the financial position of the corporate entity and the subsidiary corporate entities; and
    - (ii) the profits and losses of the corporate entity and the subsidiary corporate entities; and
    - (iii) the prospects of the corporate entity and the subsidiary corporate entities;
  - (e) the corporate entity's dividend policy;
  - (f) a copy of the statement of corporate intent;
  - (g) particulars of directions the shareholder gave to the board during the financial year;
  - (h) a statement by the board about whether or not the board believes the corporate entity will be able to pay its debts when they become due.
- (2) However, an annual report may include a summary of information mentioned in subsection (1), rather than a full statement of the information, if—
  - (a) the summary states that it is a summary only; and

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- (b) a full statement of the information is given to the corporate entity's establishing local government when the annual report is given to the shareholder.

## **99 Annual report for corporate entity providing water or sewerage services**

The annual report of a corporate entity providing water or sewerage services must state, for a financial year—

- (a) the amount of cross-subsidies between the following classes of consumers for water or sewerage services provided for the financial year—
  - (i) domestic consumers;
  - (ii) commercial consumers;
  - (iii) industrial consumers;
  - (iv) any other class of consumers decided by the entity;
  - (v) other consumers; and
- (b) the community service obligations performed for a significant business; and
- (c) the cost of carrying out the obligations after revenue from performing the obligations is deducted; and
- (d) the classes of consumers who are provided with water and sewerage services at an amount that is below full cost; and
- (e) the amount mentioned in paragraph (d).

## **100 Reporting to shareholder**

- (1) A corporate entity must give its shareholder the information the shareholder requires to make an informed assessment of—
  - (a) the operations of the corporate entity and its subsidiary corporate entities; and

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- (b) the financial performance and position of the corporate entity and its subsidiary corporate entities, including information about—
    - (i) profits and losses; and
    - (ii) assets and liabilities; and
  - (c) the prospects of the corporate entity and its subsidiary corporate entities.
- (2) In particular, the corporate entity must give its shareholder—
- (a) a quarterly report within—
    - (i) 1 month after the end of each of the first 3 quarters of each financial year; or
    - (ii) a longer period agreed to by the shareholder; and
  - (b) an annual report within—
    - (i) 4 months after the end of each financial year; or
    - (ii) a longer period agreed to by the shareholder.
- (3) The corporate entity may omit information from the reports if—
- (a) the information is of a commercially sensitive nature to the corporate entity or its subsidiary corporate entities; and
  - (b) the information is given to—
    - (i) the shareholder or its delegates; or
    - (ii) each councillor of the local government.
- Note—*
- See also section 171 (Use of information by councillors) of the Act.
- (4) A corporate entity must give its shareholder any information the shareholder requires to make reports required under the Act or another Act.
- (5) A corporate entity must immediately inform its shareholder of any matter the board considers may prevent, or significantly

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affect, the corporate entity from achieving the objectives or targets stated in its statement of corporate intent.

## **101 Reporting suspected insolvency**

- (1) This section applies if a corporate entity's board suspects the corporate entity, or a subsidiary of the corporate entity, may or will become insolvent.
- (2) For example, the board may suspect that complying with a direction from the shareholder of the corporate entity—
  - (a) would cause the corporate entity to become insolvent; or
  - (b) substantially contribute to the corporate entity becoming insolvent.
- (3) The board must immediately give notice of the board's suspicion, and the reasons for the board's suspicion, to each of the following—
  - (a) the shareholder;
  - (b) the auditor-general;
  - (c) if the board suspects a subsidiary of the corporate entity, may or will become insolvent—the local government that is the shareholder of the corporate entity.
- (4) The notice must state that it is given under this section.
- (5) Once the notice is given, any direction of the type mentioned in subsection (2) is suspended until the shareholder—
  - (a) gives the board notice that the shareholder considers the board's suspicion is not justified; or
  - (b) revokes the direction.
- (6) The shareholder must immediately—
  - (a) if the shareholder considers the board's suspicion is justified—revoke the direction given to the board; and



- (b) give the directions to the board the shareholder considers necessary or desirable to prevent the insolvency.
- (7) For example, the shareholder may give a direction—
  - (a) designed to ensure the corporate entity or its subsidiary corporate entity—
    - (i) does not incur further debts; or
    - (ii) will be able to pay all its debts as and when they become due; or
  - (b) that requires a corporate entity or its subsidiary corporate entity to stop or limit particular activities.
- (8) If the shareholder is a local government, a direction must be made by resolution of the local government.
- (9) The shareholder must give the auditor-general a copy of every notice or direction given under this section to the board.
- (10) This section applies in addition to, and does not limit, another provision of this regulation or another law.

## **Subdivision 3      Public access to documents**

### **102      What sdiv 3 is about**

- (1) This subdivision is about the following documents of a corporate entity or its subsidiary corporate entity—
  - (a) a copy of a direction to change—
    - (i) a draft corporate document; or
    - (ii) a corporate document;
  - (b) a copy of—
    - (i) a corporate document; or
    - (ii) an annual report.

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- (2) This subdivision applies to an establishing local government of a corporate entity.

### **103 Public access to documents**

- (1) The local government must ensure the documents may be inspected and purchased at the local government's public office.
- (2) The price of a copy of one of those documents must be no more than the cost to the local government of having a copy available for purchase.
- (3) The corporate entity may omit information from the copies of those documents made public if—
  - (a) the information is of a commercially sensitive nature to the corporate entity or its subsidiary corporate entities; and
  - (b) the information is given to—
    - (i) the shareholder of the corporate entity or its delegates; or
    - (ii) each councillor of the local government.

*Note—*

See also section 171 (Use of information by councillors) of the Act.

## **Subdivision 4 Legal provisions**

### **104 Councillors or employees who act honestly and without negligence are protected from liability**

- (1) A councillor or employee of a local government is not civilly liable for an act done, or omission made, honestly and without negligence under the Act relating to a corporate entity or its subsidiary corporate entity.

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- (2) The civil liability attaches instead to the corporate entity's establishing local government.

*Note—*

For insurance restrictions on corporate entities, see sections 51 and 52 of the Act.

## **105 Authentication of documents**

- (1) This section is about the authentication of a corporate entity's documents.
- (2) If a law requires a document to be sealed, the document must also be signed by—
- (a) at least 2 directors of the corporate entity; or
  - (b) 1 director, and the chief executive officer, of the corporate entity; or
  - (c) 1 director of the corporate entity, and 1 or more persons who are authorised by the board; or
  - (d) the chief executive officer of the corporate entity, and 1 or more persons who are authorised by the board.
- (3) Otherwise, a document must be signed by—
- (a) the chairperson of the board; or
  - (b) the chief executive officer; or
  - (c) a person who is authorised to sign the document by—
    - (i) resolution of the board; or
    - (ii) direction of the chief executive officer.
- (4) All courts and persons acting judicially must take judicial notice of—
- (a) the imprint of the corporate entity's seal on a document; and
  - (b) the signature of a person who is or was—
    - (i) the chairperson of the board; or

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- (ii) a director; or
  - (iii) the chief executive officer; and
  - (c) the fact that the person holds or held the office in question.
- (5) A corporate entity's seal may be used only in the way the board authorises.

### **106 Giving documents to a corporate entity**

If this division authorises or requires a document to be given to a corporate entity, it may be given to the chairperson of the board.

## **Division 7 Finances of a corporate entity**

### **107 Guarantee**

- (1) This section applies if the State or a local government guarantees repayment of a corporate entity's debt.
- (2) The corporate entity must pay its establishing local government an amount that equals the cost of the funds advantage over commercial interest rates.

### **108 Liability of local government**

A local government is liable for the debts and other liabilities of its corporate entities only if, and to the extent that, the liability is expressly and lawfully incurred as the local government's agent.

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## **Division 8                      Changing a corporate entity**

### **109      Changing responsibilities or name of corporate entity**

An establishing local government of a corporate entity may, by resolution, change the responsibilities or name of the corporate entity.

### **110      Disposing of main business activities**

- (1) This section is about a corporate entity disposing of its main business activities.
- (2) The *main business activities* are the business activities the corporate entity's most recent statement of corporate intent identifies as the entity's main business activities.
- (3) The corporate entity may dispose of its main business activities only with the prior approval, by resolution, of its establishing local government.
- (4) If the corporate entity disposes of its main business activities, the corporate entity must promptly give its establishing local government notice of the disposal.

## **Division 9                      Subsidiary corporate entity**

### **111      Forming subsidiary corporate entities**

- (1) A corporate entity may form, or take part in forming, a subsidiary corporate entity only by complying with this chapter.
- (2) A corporate entity may acquire shares, or participate in a transaction, that will result in a body corporate becoming or ceasing to be its subsidiary corporate entity only by complying with this chapter.

## **Division 10                      Legal provisions**

### **112      Geographical application of div 10**

This division applies, as far as possible, to—

- (a) property outside the State, including outside Australia; and
- (b) acts, transactions and things done, entered into or happening outside the State, including outside Australia; and
- (c) property, acts and transactions, wherever situated, done, entered into or happening, that would, apart from this division, be governed or otherwise affected by the law of another jurisdiction, including of a foreign country.

### **113      Legal proceedings by or against a corporate entity**

A corporate entity may sue and be sued in its own name.

### **114      Powers of a corporate entity**

- (1) A corporate entity has all the powers that an individual may exercise.
- (2) However, a corporate entity must not—
  - (a) exercise a power in a way that is contrary to—
    - (i) any restrictions under an Act; or
    - (ii) any restrictions stated in the corporate entity's statement of corporate intent; or
    - (iii) the objectives and functions stated in the corporate entity's statement of corporate intent; or
  - (b) act in a way that is contrary to a direction the shareholder of the corporate entity gives the entity.
- (3) However, if the corporate entity exercises a power or acts under subsection (2)—

- (a) the exercise of the power is not invalid; and
- (b) the act is not invalid; and
- (c) the exercise of power, or the act, may be asserted or relied on only in proceedings between the corporate entity and a director or employee of the corporate entity.

### **115 Assumptions when dealing with corporate entity**

- (1) This section applies to any proceedings relating to a person's dealings with—
  - (a) a corporate entity; or
  - (b) another person who has acquired, or purports to have acquired, the title to a property from a corporate entity, whether directly or indirectly.
- (2) Subject to subsection (3), the following matters are proved to be true—
  - (a) that this part has been complied with;
  - (b) that a person who the corporate entity holds out as a director, employee or agent of the corporate entity—
    - (i) has been properly appointed; and
    - (ii) has the authority to exercise the powers and perform the functions that type of director, employee or agent customarily exercises or performs;
  - (c) that the corporate entity's directors, employees and agents have properly performed their duties to the corporate entity;
  - (d) that a director, employee or agent of the corporate entity who has authority to issue a document for the corporate entity has the authority to warrant the document is genuine;
  - (e) that a director, employee or agent of the corporate entity who has authority to issue a certified copy of a

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document for the corporate entity has the authority to warrant the copy is an unaltered copy of the document.

- (3) A matter is not proved to be true if the corporate entity or another person proves that the person—
  - (a) had actual knowledge that the matter was not true; or
  - (b) ought to have known that the matter was not true, given the person's connection or relationship with the corporate entity.

## **116 When particular resolutions take effect**

- (1) This section applies to a resolution made under—
  - (a) this part; or
  - (b) section 42 or 49.
- (2) The resolution takes effect—
  - (a) when notice of the making of the resolution is gazetted; or
  - (b) a later day stated in the notice and resolution.
- (3) If a resolution must be made by more than 1 local government jointly as the shareholder of a corporate entity—
  - (a) the local governments must each make the resolution; and
  - (b) the resolution takes effect when—
    - (i) the last of the local governments to make the resolution publishes a notice of the resolution in the gazette; or
    - (ii) a later day stated in the notice and resolution mentioned in subparagraph (i).
- (4) This section also applies to a resolution that amends another resolution.



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- (5) Once notice of the making of the resolution has been gazetted, all courts and persons acting judicially must take judicial notice of the resolution.
  - (6) Once a resolution takes effect, the resolution has the force of law.

## **117 How corporatisation affects existing legal relationships**

- (1) The corporatisation of a significant business does not—
  - (a) place the local government in breach of contract or confidence, or otherwise make the local government liable for a civil wrong; or
  - (b) place the local government in breach of a legal document, including a legal document that prohibits or regulates—
    - (i) the transfer of any right or liability; or
    - (ii) the disclosure of any information; or
  - (c) fulfil any condition that—
    - (i) allows a person to terminate, or modify the operation or effect of, a legal document or obligation; or
    - (ii) requires an amount to be paid before its stated maturity; or
  - (d) release a surety or other obligee, wholly or partly, from an obligation.
- (2) This section has effect despite anything in a legal document.
- (3) If, apart from this section, the advice or consent of a person would be necessary under a legal document—
  - (a) the advice is taken to have been obtained; or
  - (b) the consent is taken to have been given.



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advantages and disadvantages that make up the net advantage must be taken into account in deciding the required revenue under schedule 1, section 2.

## 121 Estimated activity statement

- (1) A local government's budget must, for each business activity, contain an estimated activity statement.
- (2) An *estimated activity statement* is a document that states, for the business activity—
  - (a) the estimated revenue that is payable to—
    - (i) the local government; or
    - (ii) anyone else; and
  - (b) the estimated expenses, including all items taken into account under the pricing provisions (other than return on capital); and
  - (c) the estimated surplus or deficit for the financial year; and
  - (d) if community service obligations are to be carried out during the business activity—
    - (i) a description of the nature of the community service obligations; and
    - (ii) the estimated cost of performing the community service obligations, less the estimated revenue for the community service obligations.
- (3) An estimated activity statement may contain a summary of the information mentioned in subsection (2), instead of a full statement of the information, if—
  - (a) the estimated activity statement states it is a summary only and that a full statement of the information may be—
    - (i) inspected or purchased at the local government's public office; and
    - (ii) inspected on the local government's website; and

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- (b) a full statement of the information can be—
  - (i) inspected or purchased at the local government’s public office; and
  - (ii) inspected on the local government’s website.
- (4) The fee for purchasing a full statement of the information must not be more than the reasonable cost to the local government of providing the statement.

## 122 Activity statement

- (1) A local government’s annual financial statement must contain, for each business activity, an activity statement.
- (2) An *activity statement* is a document that states—
  - (a) the revenue from the business activity that is payable to—
    - (i) the local government; or
    - (ii) anyone else; and
  - (b) the expenses for the business activity, including all items required to be taken into account under the pricing provisions (other than return on capital); and
  - (c) the surplus or deficit for the financial year; and
  - (d) if community service obligations were carried on during the business activity—
    - (i) a description of the nature of the community service obligations; and
    - (ii) the cost of carrying out the community service obligations, minus the revenue from the community service obligations.
- (3) An activity statement may contain a summary of the information mentioned in subsection (2), instead of a full statement of the information, if—
  - (a) the activity statement states it is a summary only and that a full statement of the information may be—

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- (i) inspected or purchased at the local government's public office; and
    - (ii) inspected on the local government's website; and
  - (b) a full statement of the information can be—
    - (i) inspected or purchased at the local government's public office; and
    - (ii) inspected on the local government's website.
- (4) The fee for purchasing a full statement of the information must not be more than the cost to the local government of providing the statement.

### **123 Cost of community service obligations**

- (1) This section applies when a local government is deciding what to charge for goods or services provided in conducting a business activity.
- (2) The cost of performing community service obligations, less any revenue received from carrying out those obligations, must be treated as revenue for the business activity.

### **124 Particular roads activities not to include community service obligations**

An offer or competitive tender for a roads activity on a State-controlled road must not include community service obligations.

### **125 Building certifying activity—Act, s 47(4)(b)**

Any business activity conducted by any of the following local governments is prescribed for section 47(4)(b) of the Act—

- Bundaberg Regional Council
- Cairns Regional Council
- Fraser Coast Regional Council
- Gladstone Regional Council

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- Gold Coast City Council
- Gympie Regional Council
- Ipswich City Council
- Logan City Council
- Mackay Regional Council
- Moreton Bay Regional Council
- Redland City Council
- Rockhampton Regional Council
- Scenic Rim Regional Council
- Sunshine Coast Regional Council
- Tablelands Regional Council
- Toowoomba Regional Council
- Townsville City Council
- Whitsunday Regional Council.

## **126 Prescribed business activities—Act, s 47(7)**

- (1) A business activity is prescribed for section 47(7) of the Act for a financial year if the amount of current expenditure for the business activity for the previous financial year is \$270000 or more.
- (2) The amount of *current expenditure* for a business activity for a financial year is the total of the following amounts spent in conducting the activity for the year—
  - (a) operational costs;
  - (b) administrative and overhead costs;
  - (c) cost of resources;
  - (d) depreciation.

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## Chapter 5 Water and sewerage services

### 127 What ch 5 is about

- (1) This chapter is about local governments achieving efficiency and sustainability in conducting relevant business activities.
- (2) A *relevant business activity* of a local government is—
  - (a) a significant business that is the providing of water or sewerage services; or
  - (b) an activity of a corporate entity that is the providing of water or sewerage services if the providing of the service was a significant business.

### 128 Full cost recovery for water and sewerage services

- (1) A local government conducting a relevant business activity must—
  - (a) conduct a 2-part charge assessment for the providing of water services; and

*Note—*

See chapter 3, part 2, division 2 (Assessing significant business for reform) for how a local government conducts a 2-part charge assessment relating to the supply of water to a consumer in its local government area.

  - (b) decide whether a 2-part charge is to be applied for water services; and
  - (c) if a 2-part charge is to be applied for water services—apply the charge in accordance with the decision; and
  - (d) apply full cost recovery for water and sewerage services; and
  - (e) identify and disclose cross-subsidies and community service obligations in the providing of water and sewerage services; and

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- (f) disclose a class of consumers who are provided with water and sewerage services at an amount below full cost and the amount.
- (2) A local government applies full cost recovery for a service if the estimated total revenue for the financial year is more than the estimated total costs of providing the service in the financial year.
- (3) The ***total revenue*** includes revenue from performing community service obligations, less the cost of performing the obligations.
- (4) The ***total costs*** include—
  - (a) the operational costs of providing the service; and
  - (b) a reasonable allocation of the administrative and overhead costs of conducting the local government's business activities to which this section applies; and
  - (c) the cost of resources used in providing the service, based on—
    - (i) if the resources have an identifiable cost—that cost; or
    - (ii) otherwise—the price at which the resources can be obtained on the open market on similar terms; and
  - (d) depreciation of each asset used in providing the service, based on—
    - (i) the depreciable amount for the asset, allocated over its useful life; or
    - (ii) an amount the local government decides is appropriate in the circumstances; and
  - (e) the return on the capital used in providing the service, based on a positive rate the local government decides.
- (5) The ***capital used in providing the service*** is the total value of the assets used for the service (using an accepted accounting method), less the liabilities attributable to the service.



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## **Chapter 6            Competitive neutrality                               complaints**

### **Part 1                Introduction**

#### **129    What ch 6 is about**

This chapter prescribes for section 48(4) of the Act the process for resolving competitive neutrality complaints.

### **Part 2                Complaint process**

#### **Division 1            Introduction**

#### **130    Application of pt 2**

- (1) This part applies to a business activity, conducted by a business entity, to which the competitive neutrality principle applies.
- (2) A business activity that is accredited is a business activity for section 48(5) of the Act.

*Note—*

The effect of subsection (2) is that a local government does not have to resolve a competitive neutrality complaint relating to a business activity that is accredited.

#### **131    Minimum requirements for complaint process**

- (1) This section sets out the minimum requirements for the local government's process for resolving a competitive neutrality complaint in relation to the business entity.

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- (2) The local government must ensure the process deals with the following—
- (a) resolving a matter before making a complaint, including, for example, the process for—
    - (i) a person to raise concerns about alleged failures of the business entity to comply with the competitive neutrality principle in conducting the business activity; and
    - (ii) clarifying the matter;
  - (b) recording all complaints, decisions and recommendations;
  - (c) if someone other than QCA is the referee—
    - (i) making a complaint; and
    - (ii) appointing a referee; and
    - (iii) sending a complaint to a referee; and
    - (iv) investigating a complaint; and
    - (v) advising a complainant about the process; and
    - (vi) giving a complainant an opportunity to give the referee further details about the complaint; and
    - (vii) periods within which the referee must give reports to the local government; and
    - (viii) any other matters the local government considers appropriate.

## **Division 2                      Process before investigation**

### **132      What div 2 is about**

This division explains—

- (a) how a person makes a competitive neutrality complaint; and

- 
- (b) what happens before an investigation into the competitive neutrality complaint starts.

### **133 Making a complaint**

- (1) A person who wants to make a competitive neutrality complaint must give the local government a written complaint.
- (2) The complaint must contain—
  - (a) details of the business entity’s alleged failure to comply with the competitive neutrality principle in conducting the business activity the subject of the competitive neutrality complaint; and
  - (b) information that shows—
    - (i) the person (the *complainant*) is, or could be, in competition with the business entity; and
    - (ii) how the complainant is, or may be, adversely affected by the business entity’s alleged failure; and
    - (iii) the complainant has made a genuine attempt to resolve the complaint through the process mentioned in section 131(2)(a).
- (3) A local government must not charge the complainant a fee of more than \$100 for making the complaint.
- (4) The making of a complaint does not stop the business entity from conducting the business activity.

### **134 Appointing a referee**

- (1) The local government must, by resolution, appoint a referee to investigate and report on the competitive neutrality complaint.
- (2) The referee must be—
  - (a) a person who is not involved in conducting the business activity; or

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- (b) QCA.
- (3) The local government must give the complaint to the appointed referee as soon as is practicable.

### **135 Referee requiring further information**

- (1) The referee may, by notice given to a complainant, require the complainant to give the referee further information about the complaint (the *additional information*) within the reasonable period stated in the notice (the *stated period*).
- (2) However, the referee may only require additional information that is necessary and reasonable to help the referee to decide whether or not to investigate the complaint.
- (3) A referee may refuse to investigate a complaint if the complainant fails, without reasonable excuse, to give the referee the additional information within the stated period.

### **136 Referee refusing to investigate**

- (1) A referee may refuse to investigate a competitive neutrality complaint if the referee reasonably believes that—
  - (a) the complainant has not shown that the complainant made a genuine attempt to resolve the matter through the process mentioned in section 131(2)(a); or
  - (b) the complainant is not, or will not be, in competition with the local government, after the referee considers—
    - (i) whether the complainant is, or will be, supplying goods or services that are similar to the goods or services the business activity supplies; and
    - (ii) the laws relating to competition that apply to the business activity; or
  - (c) the complainant is not, or is unlikely to be, adversely affected if the business activity is not conducted in a way that complies with the competitive neutrality principle; or

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- (d) the complaint is frivolous or vexatious.
  - (2) A referee must refuse to investigate a complaint if the business activity is accredited.
  - (3) If the referee refuses to investigate the complaint, the referee must prepare a refusal notice.
  - (4) A *refusal notice* is a document that states—
    - (a) that the referee has refused to investigate the complaint; and
    - (b) the reasons for the refusal.
  - (5) The referee must give each of the following the refusal notice within 14 days after refusing to investigate the complaint—
    - (a) the complainant;
    - (b) the local government.

### **137 Notice of intention to investigate**

- (1) This section is about investigation notices.
- (2) An *investigation notice* is a document that—
  - (a) states a referee's intention to investigate a competitive neutrality complaint; and
  - (b) states the subject matter of the complaint, or has a copy of the complaint attached; and
  - (c) invites the complainant to make written submissions or, if the referee approves, oral submissions about the matter to the referee; and
  - (d) states a reasonable period within which the submissions may be made; and
  - (e) states the referee's address.
- (3) The referee must give an investigation notice to—
  - (a) the complainant; and
  - (b) the local government; and

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- (c) if a corporate entity is conducting the business activity—the corporate entity; and
  - (d) another person, if the referee considers it is appropriate.
- (4) A referee must give the investigation notice before the investigation starts.

## **Division 3                    Process for investigation**

### **138    What div 3 is about**

- (1) This division is about a referee’s investigation of a competitive neutrality complaint.
- (2) However, this division does not apply if the referee is QCA.
- (3) Instead, the QCA Act, parts 6 and 9 and sections 236 to 241 and 243, with necessary changes, apply to QCA.

### **139    Referee’s conduct when investigating**

- (1) This section is about a referee’s conduct when investigating a competitive neutrality complaint.
- (2) The referee—
  - (a) must act fairly and impartially; and
  - (b) must comply with natural justice; and
  - (c) must act with as little formality as possible; and
  - (d) is not bound by technicalities, legal forms or rules of evidence.

### **140    Matters the referee must consider when investigating**

- (1) This section is about the matters a referee must consider when investigating a competitive neutrality complaint.
- (2) The referee must consider—

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- (a) all submissions—
    - (i) made in accordance with the investigation notice; and
    - (ii) given to the referee in the period stated in the investigation notice; and
  - (b) the need to ensure the competitive neutrality principle is complied with; and
  - (c) any local government policies about the competitive neutrality principle, including, for example—
    - (i) directions the local government gives to the business entity conducting the business activity the subject of the competitive neutrality complaint; and
    - (ii) arrangements between the local government and the business entity about a competitive advantage gained, or competitive disadvantage suffered, by the business entity; and
    - (iii) social welfare and equity considerations, including, for example, community service obligations, and the availability of goods and services to consumers; and
    - (iv) policies on economic and regional development issues, including, for example, policies on employment and investment growth; and
  - (d) local government policies, or a law, about—
    - (i) ecologically sustainable development; or
    - (ii) industrial relations; or
    - (iii) occupational health and safety; and
  - (e) the need to promote competition; and
  - (f) the need to allocate resources efficiently.
- (3) The matters mentioned in subsection (2)(b) to (f) are the ***competitive neutrality criteria***.

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- (4) The referee may consider any other matter the referee considers is relevant to the investigation, including, for example, the interests of consumers or a class of consumer.
- (5) The referee may inform himself or herself about a matter in any way the referee considers appropriate, including, for example, by consulting with other persons.
- (6) A person who discloses information to the referee in good faith is not liable for any loss, damage or injury someone else suffers because the information was disclosed.

#### **141 Documents for investigation**

- (1) This section applies if a person produces a document to a referee for the investigation of a competitive neutrality complaint.
- (2) The referee may—
  - (a) inspect the document; and
  - (b) make copies of the document; and
  - (c) keep the document while it is necessary for the investigation.
- (3) If the referee keeps a document, the referee must allow a person who is otherwise entitled to possess the document to inspect or copy the document, at the reasonable time and place the referee decides.
- (4) As soon as practicable after giving the referee's report to the local government, the referee must give the chief executive officer any document the referee has kept.
- (5) While the chief executive officer has the document, the document must be treated as the local government's document.

#### **142 Confidential information**

- (1) This section applies if a person believes—



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- (a) information that has been, or will be, made available in an investigation is confidential; and
  - (b) disclosing the information is likely to damage the person's commercial activities.
- (2) The person may—
    - (a) inform the referee of the person's belief; and
    - (b) ask the referee not to disclose the information to another person.
  - (3) The referee must take all reasonable steps to ensure the information is not, without the person's consent, disclosed to another person.
  - (4) However, the referee may disclose the information to someone who is helping the referee to perform the referee's functions.
  - (5) Each of the following persons under section 200(2)(c) of the Act is a local government employee to whom section 200 of the Act applies—
    - (a) the referee;
    - (b) someone who is helping the referee to carry out the referee's duties.
  - (6) As soon as practicable after giving a report on the investigation under division 4, the referee must return a document that contains confidential information to the person who produced it to the referee.

## **Division 4                      Process after investigation**

### **143      What div 4 is about**

This division is about what happens after a referee has investigated a competitive neutrality complaint.

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#### **144 Referee's report on investigation**

The referee must prepare a report on the results of the referee's investigation of the complaint, and give it to—

- (a) if the entity conducting the business activity is a local government—the local government; or
- (b) if the entity conducting the business activity is a corporate entity—the corporate entity and its shareholder.

#### **145 Required matters for referee's report**

- (1) The referee's report must state whether or not the referee considers the complaint has been substantiated.
- (2) The referee must not, when considering if the complaint has been substantiated, decide that—
  - (a) the business entity has a competitive advantage solely because the business entity owns the business activity; or
  - (b) the business entity suffers a competitive disadvantage solely because the business entity owns the business activity.
- (3) If the referee decides the business entity has a competitive advantage, the report must include—
  - (a) recommendations on how the business entity can conduct the business activity in a way that complies with the competitive neutrality principle; and
  - (b) the reasons for the recommendations; and
  - (c) for a complaint about a building certifying activity—comments on how carrying out the statutory building functions has resulted in a competitive advantage.
- (4) The *statutory building functions* are the building functions under the Building Act or Planning Act that—

- 
- (a) only a local government can provide; and
  - (b) a building certifier under the Building Act relies on.

*Examples—*

- providing site or town planning information to a building certifier
  - receiving and processing documents from a building certifier
- (5) If the referee decides the business entity suffers a competitive disadvantage, the report must include—
- (a) recommendations on how the business entity can overcome the competitive disadvantage; and
  - (b) the reasons for the recommendations; and
  - (c) comments about the competitive disadvantage, including comments about the effect of the disadvantage on the business entity.

#### **146 Public access to report**

A local government to whom the referee's report is given must ensure the public can inspect a copy of the report at the local government's public office as soon as practicable after the referee gives the local government the report.

#### **147 Information to persons given an investigation notice**

The referee must give the following documents to any other person to whom the referee gave an investigation notice—

- (a) a copy of the recommendations in the report;
- (b) notice that the person may inspect the report, including recommendations, at the local government's public office.

#### **148 Local government response to referee's report**

- (1) The local government must decide, by resolution, whether to implement the recommendations in the referee's report.

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- (2) The resolution must state the reasons for the local government's decision.
- (3) The local government must make the resolution—
  - (a) within 1 month after the referee gives the report to the local government; or
  - (b) if the local government does not ordinarily meet within that month—at the first meeting of the local government after that month.
- (4) The local government must, within 7 days after making the resolution, give notice of the resolution to—
  - (a) the complainant; and
  - (b) if the referee is QCA—QCA; and
  - (c) if a corporate entity is conducting the business activity—the corporate entity.
- (5) If a corporate entity is conducting the business activity, the corporate entity must implement the recommendations as soon as practicable.

**149 Protection from liability of referee or person assisting referee**

- (1) A referee, or a person assisting a referee, who is an employee of the local government is not civilly liable for an act done or an omission made honestly and without negligence under this part.
- (2) The civil liability attaches instead to the local government.

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## **Part 3**                      **References to QCA**

### **150**    **What pt 3 is about**

- (1) This part is about referring to QCA particular decisions about competitive neutrality complaints made against business entities conducting business activities.
- (2) This part applies to the following business activities—
  - (a) a significant business;
  - (b) a building certifying activity;
  - (c) a roads activity, other than a roads activity for which business is conducted only through a sole supplier arrangement.
- (3) However, this part does not apply if—
  - (a) QCA was the referee; or
  - (b) the business activity is accredited.

### **151**    **Who may refer and grounds for reference**

- (1) A person who made a competitive neutrality complaint relating to a business activity may, under this part, refer to QCA—
  - (a) the referee’s decision not to investigate the complaint; or
  - (b) the local government’s decision on the referee’s recommendation about the complaint.
- (2) The reference must be on 1 or more of the following grounds—
  - (a) the complaint process was not appropriate;
  - (b) the referee’s decision was not in accordance with the facts;
  - (c) the referee’s recommendation—
    - (i) was not in accordance with the facts; or

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- (ii) did not comply with the competitive neutrality principle; or
- (iii) was deficient because the business entity conducting the business activity did not give the referee the additional information;
- (d) the local government's decision did not comply with the competitive neutrality principle.

## **152 Making a reference**

The reference must be in writing and state—

- (a) details of the competitive neutrality complaint; and
- (b) if the reference alleges the competition neutrality complaint process was not appropriate—how the process was not appropriate; and
- (c) information showing how the applicant is, or may be, adversely affected by—
  - (i) the alleged failure to comply with the competitive neutrality principle; or
  - (ii) the alleged inappropriateness of the process; and
- (d) information showing how the applicant and the business entity conducting the business activity are, or could be, in competition.

## **153 Request for referee's documents**

- (1) QCA may ask the chief executive officer for a copy of the documents produced to the referee under section 141.
- (2) QCA may do so by giving a written request to the chief executive officer.
- (3) The chief executive officer must give QCA the documents as soon as practicable after receiving the request.

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## **154 Further information to support reference**

- (1) QCA may, by notice given to an applicant, require the applicant to give QCA further information about the reference within the reasonable period stated in the notice.
- (2) However, QCA may ask only for information that is necessary to help it decide whether or not to deal with the reference.

## **155 Matters QCA must consider**

- (1) This section is about the matters QCA must have regard to when considering a reference.
- (2) QCA must consider the competitive neutrality criteria.
- (3) QCA may have regard to any other matter relevant to the investigation, including, for example, the interests of—
  - (a) consumers; or
  - (b) a class of consumer.
- (4) QCA may inform itself about a matter in any way QCA considers appropriate, including, for example, by consulting with other persons.

## **156 Procedures for dealing with references**

The QCA Act, parts 6 and 9 and sections 236 to 241 and 243, with necessary changes, apply to QCA's investigation under this part.

## **157 Report on reference**

QCA must prepare a report on its consideration of a reference, and give the report to—

- (a) if the entity conducting the business activity is a local government—the local government; or

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- (b) if the entity conducting the business activity is a corporate entity—the corporate entity and its shareholder.

### **158 Required matters for QCA's report**

- (1) The report must state whether or not QCA considers any relevant allegation in the reference has been substantiated.
- (2) QCA must not, when considering if the reference has been substantiated, decide that—
  - (a) the business activity has a competitive advantage solely because a business entity owns the business activity; or
  - (b) the business activity suffers a competitive disadvantage solely because a business entity owns the business activity.
- (3) If the reference alleges the complaint process was not appropriate, the report must comment on the appropriateness of the process.
- (4) If QCA decides the business activity has a competitive advantage, the report must include—
  - (a) recommendations on how the local government can carry on the business activity in a way that complies with the competitive neutrality principle; and
  - (b) the reasons for the recommendations.
- (5) If QCA decides the business activity suffers a competitive disadvantage, the report must include—
  - (a) recommendations on how the business activity can overcome the competitive disadvantage; and
  - (b) the reasons for the recommendations; and
  - (c) comments about the competitive disadvantage, including comments about the effect of the disadvantage on the business activity.



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**159 Public access to report**

The local government must ensure the public may inspect a copy of the report at the local government's public office, as soon as practicable after QCA gives the report to the local government.

**160 Information to persons given an investigation notice**

QCA must give the following documents to any other person to whom the referee gave an investigation notice—

- (a) a copy of the recommendations in the report;
- (b) notice that the person may inspect the report, including recommendations, at the local government's public office.

**161 Local government decision about report**

- (1) The local government must decide, by resolution, whether to implement the recommendations in the report.
- (2) The resolution must include reasons for the decision.
- (3) The local government must make the resolution—
  - (a) within 1 month after QCA gives the local government the report; or
  - (b) if the local government does not ordinarily meet within the month—at the first meeting of the local government after the month.
- (4) Within 7 days after making the resolution, the local government must give notice of the resolution to—
  - (a) the applicant; and
  - (b) QCA; and
  - (c) if a corporate entity is conducting the business activity—the corporate entity.

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- (5) If a corporate entity is conducting the business activity, the corporate entity must implement the resolution as soon as practicable.

## **Part 4                      Accreditation**

### **Division 1                Introduction**

#### **162    What pt 4 is about**

- (1) This part is about the accreditation of a business activity.
- (2) This part applies to—
- (a) a business activity that is a significant business; and
  - (b) a business activity to which a local government—
    - (i) must, under section 47(3) of the Act, apply the code of competitive conduct; or
    - (ii) resolves, under section 47(7) of the Act, to apply the code of competitive conduct.

#### **163    Purpose of accreditation**

The purpose of accreditation is to remove doubt for a business entity conducting a business activity about whether it conducts the business activity in accordance with the competitive neutrality principle.

#### **164    Business activities to which the code of competitive conduct applies**

- (1) This section applies if the code of competitive conduct applies to the conduct of a business activity.

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- (2) For deciding if the business entity conducts the business activity in accordance with the competitive neutrality principle, the competitive neutrality principle includes the requirements of the code of competitive conduct, other than financial reporting under section 121 or 122.

## **Division 2                    Process before investigation**

### **165     Applying for accreditation**

- (1) A business entity conducting a business activity may, in the form approved by QCA, apply to QCA for accreditation of the business activity.
- (2) QCA may investigate the application to decide whether to accredit the business activity.

### **166     Notice before investigation starts**

- (1) QCA must give notice of the investigation to—
- (a) the applicant; and
  - (b) if the entity conducting the business activity is a local government—the local government; and
  - (c) if the entity conducting the business activity is a corporate entity—the corporate entity and the establishing local government for the entity; and
  - (d) another person, if QCA considers it is appropriate.
- (2) The notice must—
- (a) state QCA's intention to conduct the investigation; and
  - (b) invite the person given the notice to make written or, if QCA approves, oral submissions about the matter to QCA; and
  - (c) state a reasonable period for making the submissions; and

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- (d) state QCA's address.
- (3) QCA must give the notice before the investigation starts.

## **Division 3                    Process for investigation**

### **167    Procedures for investigations**

The QCA Act, parts 6 and 9 and sections 236 to 241 and 243, with necessary changes, apply to QCA's investigation under this part.

### **168    Matters QCA must consider**

- (1) This section is about the matters QCA must consider when investigating an application for accreditation.
- (2) QCA must consider the competitive neutrality criteria.
- (3) QCA may consider any other matter relevant to the investigation, including, for example, the interests of—
  - (a) consumers; or
  - (b) a class of consumer.
- (4) QCA may inform itself about a matter in any way QCA considers appropriate, including, for example, by consulting with other persons.

### **169    Decision on application**

- (1) QCA must consider each application for accreditation it receives, and grant, or refuse to grant, the accreditation.
- (2) QCA may grant the accreditation only if it is satisfied the business activity is being conducted in a way that complies with the competitive neutrality principle.
- (3) QCA may refuse to grant the accreditation if—

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- (a) QCA sought further information about the application under an investigation notice; and
  - (b) the applicant has failed, without reasonable excuse, to give QCA the information within the period stated in the investigation notice.
- (4) QCA must not, when deciding whether to accredit a business activity, decide that—
- (a) the business activity has a competitive advantage solely because a local government owns the business entity; or
  - (b) the business activity suffers a competitive disadvantage solely because a local government owns the business entity.

## **170 Conditions on grant of accreditation**

- (1) If QCA decides to grant an accreditation, the accreditation is subject to—
- (a) a condition that the business entity must continue to comply with the competitive neutrality principle in conducting the business activity; and
  - (b) a condition that the business activity must inform QCA of a change in the structure or operations of the business activity that may affect the business entity's continued compliance with the competitive neutrality principle.
- (2) QCA may impose other conditions it considers are necessary and reasonable to ensure compliance with the accreditation.
- (3) For example, a condition may require the business entity to give QCA relevant information—
- (a) from time to time, at reasonable intervals; or
  - (b) at stated reasonable times.
- (4) ***Relevant information*** is information that is necessary and reasonable to enable QCA to decide whether it is appropriate to maintain the accreditation.

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## **Division 4                      Process after investigation**

### **171      Notice of decision**

- (1) If QCA decides not to grant the accreditation, QCA must give the applicant a notice stating—
  - (a) the decision; and
  - (b) the reasons for the decision.
- (2) If QCA decides to grant an accreditation, QCA must—
  - (a) give notice to—
    - (i) the applicant; and
    - (ii) if the applicant is a corporate entity—the entity’s local government; and
  - (b) publish the notice in the gazette.
- (3) The notice under subsection (2) must state—
  - (a) the decision; and
  - (b) if QCA imposes a condition on the accreditation—
    - (i) the condition; and
    - (ii) the reasons for the condition; and
  - (c) the period of accreditation that is not more than 2 years.
- (4) The accreditation remains in force until the earlier of the following—
  - (a) the end of the period of accreditation stated in the notice;
  - (b) the accreditation is surrendered;
  - (c) the accreditation is cancelled.

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## 172 Surrendering accreditation

- (1) A business entity may surrender accreditation of a business activity by giving notice of surrender to QCA.
- (2) The surrender takes effect—
  - (a) on the day notice is given to QCA; or
  - (b) if a later day of effect is stated in the notice—the later day.

## 173 Cancelling accreditation

- (1) Subject to subsection (2) to (4), QCA may cancel the accreditation of a business activity if the business entity contravenes a condition of the accreditation.
- (2) If QCA believes the business entity has contravened a condition, it must give the business entity a notice that—
  - (a) states QCA proposes to cancel the accreditation because QCA believes the business entity has contravened a condition; and
  - (b) outlines the facts and circumstances forming the basis for QCA's belief; and
  - (c) invites the business entity to show in writing within the reply period why the accreditation should not be cancelled.
- (3) QCA may cancel the accreditation only if, after considering all written representations made within the reply period, QCA still believes the grounds exist to cancel the accreditation.
- (4) The *reply period* is the period ending not less than 14 days, and not more than 21 days, after QCA gives the business entity the notice.
- (5) QCA must give notice stating its decision about cancelling the accreditation and the reasons for the decision to—
  - (a) if the entity conducting the business activity is a local government—the local government; or

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- (b) if the entity conducting the business activity is a corporate entity—the corporate entity and the establishing local government for the entity.
- (6) The decision takes effect on—
- (a) the day QCA gives notice under subsection (5); or
  - (b) if a later day of effect is stated in the notice—the later day.

## 174 List of accreditations

QCA must keep a list of all accreditations granted and in force under this part available for inspection by any person.

*Editor's note—*

At the commencement of this section, the list of accreditations may be inspected at QCA's office at 12 Creek Street, Brisbane and is available on QCA's website at <[www.qca.org.au](http://www.qca.org.au)>.

# Part 5 Miscellaneous provisions

## 175 Register

- (1) A local government must establish a register of business activities to which the competitive neutrality principle applies.
- (2) The register must state the following—
  - (a) business activities to which the local government has applied the competitive neutrality principle, and the day from which the competitive neutrality principle applied to each business activity;
  - (b) business activities to which the code of competitive conduct applies, and the date from which the code applied to each business activity;
  - (c) business activities accredited;



- 
- (d) business activities for which QCA is the referee for a competitive neutrality complaint;
  - (e) a list of—
    - (i) current investigation notices for competitive neutrality complaints and references to QCA the local government has received; and
    - (ii) the local government's decisions on the referees' recommendations on the competitive neutrality complaints; and
    - (iii) the local government's decisions on QCA's recommendations on references relating to competitive neutrality complaints.

**176 Annual report to include summary of complaints and decisions by local government**

The local government must include the following information in its annual report for each financial year—

- (a) a summary of—
  - (i) investigation notices for competitive neutrality complaints given in the year; and
  - (ii) reports on references made to QCA that are received by the local government in the year;
- (b) a summary of the local government's decisions in the year on—
  - (i) the referee's recommendations on the complaints; and
  - (ii) QCA's recommendations on the references;
- (c) a list of the business activities accredited.

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## Chapter 7 Transitional provisions

### 177 New type 1 or 2 business activities

- (1) This section applies if a local government has, before the commencement of this section, given the Minister written notice under the repealed Act, section 547, of a business activity that is a new type 1 or 2 business activity for the financial year starting on 1 July 2010.
- (2) The repealed Act, part 6, continues to apply to the new type 1 or 2 business activity as if the Act had not commenced.
- (3) In this section—

*new type 1 or 2 business activity* means a new type 1 or 2 business activity under the repealed Act, section 545.

*repealed Act* means the repealed *Local Government Act 1993*.

### 178 Wide Bay Water Corporation's net profit for financial year ending 30 June 2011

- (1) This section applies to the Wide Bay Water Corporation.
- (2) The *Wide Bay Water Corporation* is the local government owned corporation continued in existence as a corporate entity under section 275 of the Act.
- (3) Despite section 85(2), Wide Bay Water Corporation's *net profit* for the financial year ending 30 June 2011 is its profit for the financial year less—
  - (a) the income tax, or tax equivalents, on its profit for the financial year; and
  - (b) the unrealised capital gains from any upwards revaluation of its non-current assets for the financial year.

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## Schedule 1 Pricing provisions

schedule 2, definition *pricing provisions*

### 1 Definitions for sch 1

In this schedule—

*relevant activity*, of a local government, means—

- (a) a significant business of the local government to which full cost pricing applies; or
- (b) a business activity of the local government to which the code of competitive conduct applies.

### 2 Required revenue for deciding charges

In deciding charges to persons for goods or services provided in conducting a relevant activity, a local government must ensure the projected total revenue from conducting the activity is enough to cover the projected total costs of conducting the activity for—

- (a) if the relevant activity is an activity to which the code of competitive conduct applies—a period of more than 1 year but not more than 5 years; or
- (b) otherwise—each financial year in which the activity is conducted.

### 3 Different charges for commercial reasons

- (1) A charge may be decided for providing particular goods or services in conducting a relevant activity that is, for commercial reasons, an appropriate charge for the goods or services provided.
- (2) For subsection (1), a charge is, for commercial reasons, an appropriate charge if it could reasonably be charged if the goods or services were provided by an entity conducting the

relevant activity with the primary object of making a profit from conducting the activity.

#### **4 Total costs of conducting relevant activity**

- (1) For this schedule, the total costs of conducting a relevant activity include each of the following—
  - (a) the operational costs incurred in conducting the activity;
  - (b) administrative and overhead costs;
  - (c) the cost of resources used in conducting the activity;
  - (d) depreciation;
  - (e) equivalents for Commonwealth or State taxes a local government is not liable to pay because it is a local government;
  - (f) equivalents for the cost of funds advantage a local government obtains over commercial interest rates because of State guarantees on borrowings;
  - (g) return on capital.
- (2) The total costs must be adjusted for other advantages and disadvantages of a local government conducting the relevant activity that are not eliminated.
- (3) Subsection (2) does not apply for a relevant activity to which commercialisation applies.

#### **5 Allocation of administrative and overhead costs**

For section 4(1)(b), a local government must make a reasonable allocation of its administrative and overhead costs to each relevant activity, having regard to all of a local government's relevant activities.

#### **6 Cost of resources used in conducting activity**

- (1) For section 4(1)(c), if resources are provided by or to a local government for conducting an activity, the cost of resources used in conducting the activity may be taken to be—

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- (a) if the resources have an identifiable cost—the cost of the resources; or
  - (b) if paragraph (a) does not apply and the resources are readily available on the open market—the price at which the resources can be obtained on the market.
- (2) If subsection (1)(b) applies, the local government must ensure the terms on which the cost is based are similar to the terms on which they are made available in conducting the relevant activity.

## **7 Depreciation**

- (1) For section 4(1)(d), depreciation of an asset used in conducting a relevant activity must be based on the depreciable amount for the asset allocated over its useful life.
- (2) However, a local government may decide to base the depreciation on an amount decided by the local government to be appropriate in the circumstances.

## **8 Equivalent amounts for taxes local government is not liable to pay**

- (1) This section applies for section 4(1)(e) for working out the equivalent amount for a Commonwealth or State tax a local government is not liable to pay because it is a local government.
- (2) The equivalent amount must be worked out—
  - (a) for a tax to which a tax equivalents manual applies—by applying the general principles provided for in the manual; or
  - (b) if paragraph (a) does not apply—by estimating the amount a private sector business conducting the relevant activity would calculate to be its liability to the tax.
- (3) Subsection (2)(a) does not, of itself, require the local government to comply with a process or other requirement under the tax equivalents manual.

Schedule 1

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- (4) However, the local government must keep, for 7 years from the day the equivalent amount is worked out, details of the calculations made in working out the equivalent amount.
- (5) This section does not apply for a relevant activity to which commercialisation applies.

## **9 Guarantees by State**

- (1) This section applies for section 4(1)(f) in relation to a relevant activity that is a business activity to which the code of competitive conduct applies.
- (2) If the State guarantees repayment of a debt of a local government attributed to the relevant activity, the local government must, in conducting the activity, take account of amounts equivalent to the cost of funds advantage the local government obtains over commercial interest rates because of the guarantee.

## **10 Return on capital**

- (1) This section applies for section 4(1)(g).
- (2) The amount for the return on the capital used by a local government in conducting a relevant activity must be decided using the rate at which, in the local government's opinion, a comparable private sector business conducting the activity would be able to obtain the capital in the market.
- (3) In deciding the rate under subsection (2), the local government must have regard to the split the local government considers appropriate, for the type of business activity, between equity and loan capital and the return appropriate to each.
- (4) However, the amount for the return on the capital used in conducting a business activity for the first year in which the business activity is a relevant activity may be the amount the local government decides.
- (5) In this section—

*capital used in conducting a business activity* means the total value, decided using an accepted accountancy method, of the assets used for the business activity less the liabilities attributable to the activity.

## Schedule 2 Dictionary

### section 4

**2-part charge** see section 11(4).

**2-part charge assessment** see section 11(3).

**accreditation** means an accreditation granted by QCA under chapter 6, part 4.

**annual performance plan** see section 31(2).

**annual report** see section 98(1).

**appointment conditions** see section 52(3).

**assessment**, of a significant business, see section 11(5).

**assessment report** see section 15(1).

**board**, for a provision about a corporate entity, means the board of directors appointed for the entity.

**borrow** includes—

- (a) obtain a financial benefit from—
  - (i) a credit card; or
  - (ii) issuing, endorsing or otherwise dealing in promissory notes; or
  - (iii) drawing, accepting, endorsing or otherwise dealing in bills of exchange; or
  - (iv) issuing, purchasing or otherwise dealing in securities; or
  - (v) granting or taking a lease of any property for financing purposes; and
- (b) borrow in a foreign currency.



***business entity*** means—

- (a) a local government to the extent it carries on the business activity, including a business unit of a local government; or
- (b) a corporate entity.

***commercial business unit*** see section 25(2).

***Commonwealth tax*** means tax imposed under a Commonwealth Act.

***community service obligation*** see section 22.

***competitive advantage*** see section 20(2).

***competitive disadvantage*** see section 20(4).

***competitive neutrality criteria*** see section 140(3).

***complainant*** see section 133(2)(b)(i).

***constitution*** see section 34(2).

***corporate document*** see section 91(2).

***corporate plan*** see section 93.

***corporatisation committee*** see section 35(1).

***corporatisation plan*** see section 34(3).

***employment conditions*** see section 52(4).

***establishing local government***, for a provision about a corporate entity, means a local government that decided to create the corporate entity.

***government taxes*** means taxes that are payable to the Commonwealth, a State or a local government.

***interim entity*** means a body corporate established under section 42.

***investigation notice*** see section 137(2).

***key principles of commercialisation*** see section 26.

***key principles of corporatisation*** see section 51.

**lease** includes—

- (a) licence, charter or hiring arrangement of property; and
- (b) an arrangement under which a person grants a right to use, operate or provide goods or services relating to property to another person.

**legal document** includes—

- (a) a contract, deed, agreement, arrangement, understanding or undertaking; and
- (b) a lease; and
- (c) a mortgage, charge or lien; and
- (d) a security; and
- (e) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (f) a transfer, conveyance or other assurance; and
- (g) a mandate, instruction, notice, authority or order.

**main business activities** see section 110(2).

**notice** means a written notice.

**pricing provisions** means the pricing provisions mentioned in schedule 1.

**private sector business** means a business in the private sector.

**QCA** means the Queensland Competition Authority established under the QCA Act.

**QCA Act** means the *Queensland Competition Authority Act 1997*.

**quarterly report** see section 97.

**referee** means a person who holds an appointment under section 134.

**reference**, to QCA, means a reference made to QCA under chapter 6, part 3.

**reform**, of a significant business, means to reform the business by—

- (a) commercialisation or corporatisation of the business; or
- (b) applying full cost pricing to the business.

**relevant business activity** see section 127(2).

**resolution**, of a shareholder of a corporate entity or subsidiary of a corporate entity, means a resolution made by—

- (a) if the shareholder is a local government—the local government; or
- (b) if the shareholder is a corporate entity—the board of the corporate entity.

**salary** includes allowances.

**security** includes inscribed stock, debenture, bond, debenture stock, note and any other document creating, evidencing or acknowledging indebtedness, whether or not the document creates a charge on property.

**shareholder**—

- (a) of a corporate entity, means any other entity to whom shares in the corporate entity were issued under section 75, or transferred under section 79; or
- (b) of a subsidiary of a corporate entity, means the corporate entity.

**shareholder delegate** see section 76(1).

**significant business** see section 7.

**standing** includes an employee's classification level.

**statement of corporate intent** see section 92(1).

**subsidiary corporate entity** means a corporate entity owned by another corporate entity.

**tax** see section 23(4).

**tax equivalent** see section 23(3).

**tax equivalents manual** see section 23(2).

*type 1 significant business* see section 9(2).

*type 2 significant business* see section 9(3).

*wages* include a salary.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 16 September 2011. Future amendments of the Local Government (Beneficial Enterprises and Business Activities) Regulation 2010 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2010	
1A	2011 SL No. 179	16 September 2011	

## 5 List of legislation

### **Local Government (Beneficial Enterprises and Business Activities) Regulation 2010 SL No. 123**

made by the Governor in Council on 17 June 2010

notfd gaz 18 June 2010 pp 529–35

ss 1–2 commenced on date of notification

remaining provisions commence 1 July 2010 (see s 2)

exp 1 September 2020 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Local Government (Beneficial Enterprises and Business Activities) Amendment Regulation (No. 1) 2011 SL No. 179**

notfd gaz 16 September 2011 pp 134–5

commenced on date of notification

Note—An explanatory note was prepared.

## 6 List of annotations

### **CHAPTER 7—TRANSITIONAL PROVISIONS**

ch hdg sub 2011 SL No. 179 s 3

**Wide Bay Water Corporation's net profit for financial year ending 30 June 2011**

s 178 ins 2011 SL No. 179 s 4