

Queensland



Subordinate Legislation 1994 No. 448

*Government Owned Corporations Act 1993*

**GOVERNMENT OWNED CORPORATIONS  
(QGC CORPORATISATION) REGULATION  
1994**

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**TERMS OF DEBT**

## **PART 1—PRELIMINARY**

### **Short title**

1. This regulation may be cited as the *Government Owned Corporations (QGC Corporatisation) Regulation 1994*.

### **Commencement**

2.(1) Part 3 commences on 31 December 1994.

(2) Parts 4 to 7 commence on 1 January 1995.

### **Purpose**

3. The purpose of this regulation is—

- (a) to divest certain assets from, and release certain liabilities of, QEC; and
- (b) to provide for a transition from GBU to QGC, including transferring certain officers and employees of QEC to QGC; and
- (c) to transfer the assets and liabilities mentioned in paragraph (a) to QGC; and
- (d) to make provision about debt owed by QGC because of the transfer of assets to it; and
- (e) to make QGC a GOC.

### **Operation of this regulation is subject to certain Electricity Act transitional provisions**

4.(1) The operation of this regulation is limited to the extent necessary to allow subsection (2) to have full effect.

(2) Despite the earlier commencement of a provision of this regulation about employees, assets or liabilities of QEC, the Electricity Act transitional provisions apply as if the provision of this regulation had not commenced.

*Example—*

Under provisions of this regulation (the “**regulation provisions**”) certain assets of QEC are divested from it and become the assets of QGC. Section 277 (Transfer of assets and liabilities to the department) of the *Electricity Act 1994* allows for the chief executive of the Department of Minerals and Energy to identify certain QEC assets and for the vesting in the State of those assets. Although section 277 commences later than the regulation provisions commence, the section operates as if the regulation provisions had not commenced, so that neither the chief executive’s identification of QEC assets, nor their vesting in the State, is limited by the earlier operation of the regulation provisions.

## Definitions

5. In this regulation—

“**CBU**” means the candidate GOC known as Corporate Business Unit of QEC.

“**corporatisation day**” means 1 January 1995.

“**Electricity Act transitional provisions**” means the provisions of Chapter 14 (Transitional) of the *Electricity Act 1994* that are about the employees, assets or liabilities of QEC.

“**GBU**” means the candidate GOC known as Generation Business Unit of QEC.

“**GBU asset**” see section 6.

“**GBU asset schedule**” means the part of the QEC asset schedule showing assets of GBU.

“**GBU balance sheet**” means the part of the QEC balance sheet showing liabilities of GBU.

“**GBU liability**” see section 7.

“**purposes of GBU**” does not include purposes of the Electrical Safety Coordination Section of QEC or the Electrical Workers and Contractors Board.

“**QEC**” means the Queensland Electricity Commission within the meaning of the *Electricity Act 1976*.

“**QEC asset schedule**” means a schedule prepared under the QTSC

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corporatisation regulation showing assets of QEC immediately before corporatisation day.

**“QEC balance sheet”** means a balance sheet prepared under the QTSC corporatisation regulation showing liabilities of QEC immediately before corporatisation day.

**“QEC (GBU)”** means QEC, but only in its capacity as GBU, including to the extent of the responsibilities of GBU, immediately before corporatisation day.

**“QEC intellectual property”** means QEC Intellectual Property under the Power Station Sale Agreement mentioned in the State agreement under the *Gladstone Power Station Agreement Act 1993*.

**“QETC”** means Queensland Electricity Transmission Corporation.

**“QGC”** means Queensland Generation Corporation.

**“QTSC”** means Queensland Transmission and Supply Corporation.

**“QTSC corporatisation regulation”** means the *Government Owned Corporations (QTSC Corporatisation) Regulation 1994*.

**“TBU”** means the subsidiary of CBU known as Transmission Business Unit of QEC.

**“third party intellectual property”** means Third Party Intellectual Property under the Power Station Sale Agreement mentioned in the State agreement under the *Gladstone Power Station Agreement Act 1993*.

### Meaning of “GBU asset”

**6.(1)** A GBU asset is an asset shown in the QEC asset schedule as an asset of GBU.

**(2)** An asset is also a GBU asset although not shown in the QEC asset schedule as an asset of GBU if—

- (a) it is not shown in the QEC asset schedule as an asset of CBU or TBU; and
- (b) immediately before corporatisation day it is an asset of QEC held for the purposes of GBU; and

- (c) it is not an asset that becomes an asset of the State under section 277 (Transfer of assets and liabilities to the department) of the *Electricity Act 1994*.

(3) Despite anything in subsection (1) or (2), all QEC intellectual property held by QEC immediately before corporatisation day is also a GBU asset.

### Meaning of “GBU liability”

7.(1) A GBU liability is a liability shown in the QEC balance sheet as a liability of GBU.

(2) A liability is also a GBU liability although not shown in the QEC balance sheet as a liability of GBU if—

- (a) it is not shown in the QEC balance sheet as a liability of CBU or TBU; and
- (b) immediately before corporatisation day it is a liability to which QEC is subject for the purposes of GBU; and
- (c) it is not a liability that becomes a liability of the State under section 277 (Transfer of assets and liabilities to the department) of the *Electricity Act 1994*.

## PART 2—PREPARATORY MATTERS

### Share capital

8. On the commencement of this section, QGC is taken to have a share capital of \$7 000 000 000 made up of 7 000 000 000 ordinary shares of \$1 each.<sup>1</sup>

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<sup>1</sup> This section provides for QGC’s authorised share capital. Under section 58(2) of the Act, before QGC becomes a GOC, it must apply the part of its capital that the responsible Ministers direct in paying up, in full, shares in itself.

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## **PART 3—QEC IS DIVESTED OF GBU ASSETS AND RELEASED FROM GBU LIABILITIES**

### **GBU assets and liabilities**

**9.(1)** This section takes effect immediately after 31 December 1994.

**(2)** QEC is divested of all GBU assets and released from all GBU liabilities.

## **PART 4—TRANSITION TO QGC**

### *Division 1—Staff*

#### **Officers and employees**

**10.(1)** A person who, immediately before corporatisation day, was an officer or employee of QEC for the purposes of GBU becomes an officer or employee of QGC.

**(2)** Until the rights of the officer or employee are changed, the officer or employee continues to be entitled to all existing and accruing rights of employment.

**(3)** To the extent that a right mentioned in subsection (2) is preserved by section 174 (Preservation of leave entitlements of certain former officers and employees of government entities) of the Act, subsection (2) has no effect.

**(4)** If a person mentioned in subsection (1) was suspended by QEC before corporatisation day, the suspension continues, and must be dealt with by QGC.

**(5)** This section does not apply to a person who becomes an officer of the department under section 276 (Transfer of officers to the department) of the *Electricity Act 1994*.

### **Positions of officers and employees**

**11.(1)** A person who under this Division becomes an officer or employee of QGC becomes the holder of a position equivalent to the position the person held for the purposes of GBU.

**(2)** Despite subsection (1), a person does not, under this Division, become the chief executive officer of QGC.

### ***Division 2—General***

#### **Extent of application of Division**

**12.** This Division applies subject to the operation of sections 286 (References to electricity boards, electricity authorities and electricity supply industry) and 287 (Gladstone power station provisions) of the *Electricity Act 1994*.

#### **QGC is successor of QEC (GBU)**

**13.(1)** QGC is the successor in law of QEC (GBU).

**(2)** Subsection (1) applies subject to the operation of this regulation, the QTSC corporatisation regulation and the *Electricity Act 1994*.

#### **Instruments**

**14.(1)** This section applies to an instrument (other than a statutory instrument) in existence immediately before corporatisation day.

**(2)** An instrument applying to QEC for the purposes of GBU is to apply to QGC in place of QEC to the extent that it applied for the purposes of GBU.<sup>2</sup>

**(3)** Without limiting subsection (2), an instrument—

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<sup>2</sup> Under this provision and equivalent provisions in the QTSC corporatisation regulation, it is possible that an instrument that previously applied to QEC alone could apply to 2 or more of QGC, QTSC and QETC.



- (a) to which, immediately before corporatisation day, QEC was a party for the purposes of GBU, is taken to be an instrument to which QGC is a party in the same way QEC was a party for the purposes of GBU; and
- (b) given to, by or in favour of QEC for the purposes of GBU is taken to be an instrument given to, by or in favour of QGC in the way it was given to, by or in favour of QEC for the purposes of GBU; and
- (c) in which a reference is made to QEC for the purposes of GBU (including, for example, an instrument to which QEC was a party for the purposes of GBU) is taken to be an instrument in which the reference is made to QGC in the way the reference was made to QEC for the purposes of GBU; and
- (d) under which an amount is or may become payable to or by QEC for the purposes of GBU is taken to be an instrument under which the amount is or may become payable to or by QGC in the way the amount was or might have become payable to or by QEC for the purposes of GBU; and
- (e) under which other property is to be, or may become liable to be, transferred, conveyed or assigned to or by QEC for the purposes of GBU is taken to be an instrument under which the other property is to be, or may become liable to be, transferred, conveyed or assigned to or by QGC in the way the property was to be, or might have become liable to be, transferred, conveyed or assigned to or by QEC for the purposes of GBU.

(4) Despite anything in subsections (1) to (3), a licence under which, immediately before corporatisation day, QEC has a right to use QEC intellectual property or third party intellectual property applies to QGC in place of QEC.

(5) Subsections (1) to (3) do not apply to an instrument which QEC, on or before 31 December 1994, agrees with QGC to assign to QGC, or with QTSC to assign to QTSC, or with QETC to assign to QETC, if it is agreed the assignment is to become effective at a time earlier than the commencement of section 3 of the *Electricity Act 1994*.

### **Pending proceedings**

**15.(1)** QGC becomes a party to a proceeding mentioned in Schedule 1 instead of QEC.

**(2)** Subject to subsection (1), a proceeding (other than a proceeding mentioned in Schedule 2 to the QTSC corporatisation regulation) by or against QEC arising out of acts or omissions of QEC for the purposes of GBU that is not finished before corporatisation day may be continued and finished by or against QGC to the extent it might have been continued by or against QEC for the purposes of GBU.

## **PART 5—TRANSFER OF ASSETS AND LIABILITIES**

### **Transfer of assets and liabilities to QGC**

**16.(1)** The assets mentioned in section 9(2) become the assets of QGC.

**(2)** The liabilities mentioned in section 9(2) are assumed by QGC.

### **Consideration for transfer of assets to QGC**

**17.(1)** The assumption of liabilities by QGC under section 16(2) is part of the consideration for the transfer of assets to QGC under section 16(1).

**(2)** The remainder of the consideration is the creation of a debt owed by QGC to the shareholding Ministers of the GOC that QGC becomes under this regulation.

**(3)** The terms of the debt are in Schedule 2.

**(4)** The amount of the debt is the market value, at 1 January 1995, of the assets shown in the GBU asset schedule, less—

- (a)** the amount, at 1 January 1995, of the liabilities shown in the GBU balance sheet; and
- (b)** any amount that QGC's responsible Ministers direct QGC, under section 58(2) of the Act, to apply in paying up shares in itself.

(5) For subsection (4)—

- (a) the market value, at 1 January 1995, of an asset is, unless another valuation is decided under subsection (6), taken to be the market value shown for the asset in the GBU asset schedule for 1 January 1995; and
- (b) the amount, at 1 January 1995, of the liabilities is, unless another amount is decided under subsection (6), taken to be the amount of the liabilities shown in the GBU balance sheet for 1 January 1995.

(6) The shareholding Ministers of the GOC that QGC becomes under this regulation may change the GBU asset schedule or the GBU balance sheet at any time not later than 31 March 1996 to correct the market value of an asset or the amount of a liability as at 1 January 1995.

(7) A change mentioned in subsection (6) must be taken into account for calculating the debt amount under subsection (4).

## **PART 6—QGC BECOMES STATUTORY GOC**

### **Declaration of QGC as GOC**

**18.(1)** Subsection (2) takes effect as soon as the assets and liabilities mentioned in section 9(2) become the assets and liabilities of QGC under section 16 (Transfer of assets and liabilities to QGC).

(2) QGC is a GOC.

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## PART 7—STATUS, FUNCTIONS AND DUTIES OF QGC

### When Part takes effect

19. This Part takes effect when QGC becomes a GOC.

### Status of QGC

20. Under the *Electricity Act 1994*, QGC is a generation entity.<sup>3</sup>

### Functions of QGC

21. QGC has the following functions<sup>4</sup>—

- (a) taking part in electricity trading arrangements provided for under section 90 of the *Electricity Act 1994*;
- (b) carrying out its obligations under the transaction documents within the meaning of the *Gladstone Power Station Agreement Act 1993* and helping QTSC to meet its obligations under the transaction documents;
- (c) promoting the efficient and economic use of electricity;
- (d) undertaking or contributing to the cost of programs to educate the public in electrical safety.

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<sup>3</sup> This section is included for information only. The status of generation entity is given by sections 25 (Generation entities) and 270 (QGC to be issued generation authority etc.) of the *Electricity Act 1994*.

<sup>4</sup> These are not the only functions of QGC. Under section 76 of the *Electricity Act 1994*, the primary function of QGC is to generate electricity for sale. It also has the function of carrying on any activity relating or helpful to its primary function or any other function. It also has any other function given to it under that Act or another Act.

**Limitation on function**

**22.(1)** This section states a limitation on the function mentioned in section 21(a).

**(2)** QGC may not enter into an arrangement for the sale of electricity in the State if the arrangement, together with all other arrangements entered into by QGC for the sale of electricity in the State, is for a level of demand greater than the total capacity of the generating plant QGC owns or controls, or reasonably expects to own or control, in the State.

**(3)** For subsection (2), a reference to the capacity of a generating plant is, for a plant only partly owned or controlled by QGC, taken to be a reference to the capacity of the plant to the extent of QGC's ownership or control.

**QGC to help QTSC**

**23.** QGC must—

- (a) give QTSC access to information and documents required by QTSC for the preparation of the final accounts of QEC and reports about QEC; and
- (b) cooperate with QTSC in QTSC's preparation of the QEC asset schedule and the QEC balance sheet.

**SCHEDULE 1****PROCEEDINGS TO WHICH QGC BECOMES A  
PARTY INSTEAD OF QEC**

section 15(1)

<b>Court</b>	<b>Proceeding Number</b>	<b>Plaintiff</b>	<b>Defendant</b>
Supreme Court Rockhampton	Writ No. 175 of 1986	Anthony John Osborne	Queen sland El ectri ci ty Commission
Supreme Court Rockhampton	Writ No. 7 of 1987	Garry Paul Percival	Queen sland El ectri ci ty Commission
Supreme Court Rockhampton	Writ No. 58 of 1987	Roman Ift	Simon Engineering C Itoh & Co Queensland Electricity Commission Workers' Compensation Board of Queensland C E Health Underwriting Insurance (Australia)
Supreme Court Rockhampton	Writ No. 11 of 1988	Paul Leslie Jose	Queensland Electricity Commission

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SCHEDULE 1 (continued)

<b>Court</b>	<b>Proceeding Number</b>	<b>Plaintiff</b>	<b>Defendant</b>
Supreme Court Brisbane	Writ No. 12 of 1990	Paul Innes	Queensland Electricity Commission
Supreme Court Brisbane	Writ No. 198 of 1990	Alexander Robert O'Neill	Queensland Electricity Commission
Supreme Court Brisbane	Writ No. 304 of 1991	Peter Rosak	Queensland Electricity Commission
District Court Gladstone	Plaint No. 82 of 1992	John Stewart Gourley	Queensland Electricity Commission
Magistrates Court Gladstone	Plaint No. 89 of 1992	Ian Patrick Brushe	Queensland Electricity Commission
Supreme Court Rockhampton	Writ No. 47 of 1993	Ljubisav Radovanovic	Queensland Electricity Commission
District Court Gladstone	Plaint No. 49 of 1993	Gary Ian Underdown	Queensland Electricity Commission
District Court Brisbane	Plaint No. 617 of 1993	Colin Elton McElligott	Queensland Electricity Commission
Supreme Court Brisbane	Writ No. 1008 of 1993	Patrick John Keith McAuliffe	Queensland Electricity Commission

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**SCHEDULE 1 (continued)**

<b>Court</b>	<b>Proceeding Number</b>	<b>Plaintiff</b>	<b>Defendant</b>
District Court Gladstone	Plaint No. 16 of 1994	John Edward McGarrow	Queensland Electricity Commission
District Court Rockhampton	Plaint No. 27 of 1994	Neville Patrick Dunne	Queensland Electricity Commission
Magistrates Court Gladstone	Plaint No. 126 of 1994	Ronald Keith Plant	Queensland Electricity Commission



## **SCHEDULE 2**

### **TERMS OF DEBT**

section 17(3)

#### **Definitions**

1. In this Schedule—

“**business day**” means a business day for Sydney.

“**11 am rate**” means the rate calculated by taking the buy rate (low side) of the first rate quoted on the page numbered “AFMZ” of the Reuters Monitor System at, or approximately at, 11 am (Sydney time).

“**QTC**” means Queensland Treasury Corporation.

#### **Interest payable**

2.(1) QGC must pay interest on the amount of debt unpaid from time to time.

(2) The interest is calculated on a daily basis and is payable monthly in arrears.

(3) The interest for a month is payable on the 15th day of the next month.

(4) The interest rate for a day is the 11 am rate for that day.

(5) However, if the day is not a business day, the rate of interest for the day is the 11 am rate for the last business day before the day.

#### **Role of QTC**

3.(1) QTC is to calculate the interest payable.

(2) QTC’s calculation binds QGC unless QTC makes an error that is not a trivial error.

## SCHEDULE 2 (continued)

**Term of debt**

4. The debt is repayable on or before 1 January 2005.

**Assignment of debt**

5. The debt may be assigned in whole or in part by the shareholding Ministers by giving written notice to QGC.
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## ENDNOTES

1. Made by the Governor in Council on 15 December 1994.
2. Notified in the Gazette on 16 December 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Treasury Department.