

Queensland



Subordinate Legislation 1995 No. 161

Government Owned Corporations Act 1993

**GOVERNMENT OWNED CORPORATIONS
(PORTS) REGULATION 1995**

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PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Government Owned Corporations (Ports) Regulation 1995*.

Commencement

2.(1) Sections 3, 4 and 5 and part 2 (other than section 9) commence on 8 June 1995.

(2) Section 9 and part 3 commence on 30 June 1995.

(3) Parts 4 to 7 commence on 1 July 1995.

(4) Part 8 commences on 2 July 1995.

Purpose of this regulation

3. The purpose of this regulation is—

(a) to establish associates of the following candidate GOCs—

- Bundaberg Port Authority
- Cairns Port Authority
- Mackay Port Authority
- Rockhampton Port Authority
- Townsville Port Authority; and

(b) to divest the assets from, and release the liabilities of, the candidate GOCs; and

(c) to make all appropriate name changes to the candidate GOCs and their associates; and

(d) to provide for a transition from the candidate GOCs to their associates, including transferring the officers and employees of the candidate GOCs to their associates; and

(e) to transfer the assets and liabilities of the candidate GOCs to their associates; and

- (f) to make provision for the associates to assume certain additional liabilities; and
- (g) to make the associates GOCs; and
- (h) to dissolve the candidate GOCs.

Definitions

4. In this regulation—

“associates” means—

- (a) until the changes of name that happen under part 4¹—
 - (i) New BPA; and
 - (ii) New CPA; and
 - (iii) New MPA; and
 - (iv) New RPA; and
 - (v) New TPA; and
- (b) after the changes of name that happen under part 4—
 - (i) Bundaberg Port Authority; and
 - (ii) Cairns Port Authority; and
 - (iii) Mackay Port Authority; and
 - (iv) Rockhampton Port Authority; and
 - (v) Townsville Port Authority.

“candidate GOCs” means—

- (a) until the changes of name that happen under part 4—
 - (i) Bundaberg Port Authority; and
 - (ii) Cairns Port Authority; and
 - (iii) Mackay Port Authority; and
 - (iv) Rockhampton Port Authority; and

¹ Part 4 (Changes of name of candidate GOCs and associates)

- (v) Townsville Port Authority; and
- (b) after the changes of name that happen under part 4—
 - (i) Old BPA; and
 - (ii) Old CPA; and
 - (iii) Old MPA; and
 - (iv) Old RPA; and
 - (v) Old TPA.

Provisions having continuing effect after associates become GOCs

5. In a provision of parts 5 to 7² having continuing effect after the associates become GOCs, a reference to an associate (including a reference to a candidate GOC's associate) is taken to include a reference to the GOC the associate becomes.

PART 2—ENTITIES ARE ESTABLISHED AND NOMINATED AS CANDIDATE GOC ASSOCIATES

Establishment of 5 GOC Act entities

6. The following entities are established—
- (a) New BPA;
 - (b) New CPA;
 - (c) New MPA;
 - (d) New RPA;
 - (e) New TPA.

² Parts 5 (Transition from candidate GOCs to their associates), 6 (Assets and liabilities transferred to associates) and 7 (Associates become statutory GOCs)

Nomination of GOC Act entities to become candidate GOC associates

7.(1) New BPA is nominated to be the associate of Bundaberg Port Authority.

(2) New CPA is nominated to be the associate of Cairns Port Authority.

(3) New MPA is nominated to be the associate of Mackay Port Authority.

(4) New RPA is nominated to be the associate of Rockhampton Port Authority.

(5) New TPA is nominated to be the associate of Townsville Port Authority.

Status of associates

8. Each associate—

- (a) is a body corporate; and
- (b) has the name under which it is established; and
- (c) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) before 1 July 1995, has no powers or functions.

Share capital

9.(1) New BPA is taken to have a share capital of \$100 000 000 made up of 100 000 000 ordinary shares of \$1 each.

(2) New CPA is taken to have a share capital of \$1 000 000 000 made up of 1 000 000 000 ordinary shares of \$1 each.

(3) New MPA is taken to have a share capital of \$200 000 000 made up of 200 000 000 ordinary shares of \$1 each.

(4) New RPA is taken to have a share capital of \$100 000 000 made up of 100 000 000 ordinary shares of \$1 each.

(5) New TPA is taken to have a share capital of \$500 000 000 made up of 500 000 000 ordinary shares of \$1 each.

PART 3—CANDIDATE GOCs ARE DIVESTED OF ASSETS AND RELEASED FROM LIABILITIES

Assets and liabilities of candidate GOCs

10.(1) This section takes effect immediately after 30 June 1995.

(2) The candidate GOCs are divested of all their assets and released from all their liabilities.

PART 4—CHANGES OF NAME OF CANDIDATE GOCs AND ASSOCIATES

Changes of name of candidate GOCs

11.(1) Bundaberg Port Authority's name is changed to Old BPA.

(2) Cairns Port Authority's name is changed to Old CPA.

(3) Mackay Port Authority's name is changed to Old MPA.

(4) Rockhampton Port Authority's name is changed to Old RPA.

(5) Townsville Port Authority's name is changed to Old TPA.

Changes of name of associates

12.(1) New BPA's name is changed to Bundaberg Port Authority.

(2) New CPA's name is changed to Cairns Port Authority.

(3) New MPA's name is changed to Mackay Port Authority.

(4) New RPA's name is changed to Rockhampton Port Authority.

(5) New TPA's name is changed to Townsville Port Authority.

Identification of entities after name changes

13. After the changes of name that happen under this part—

- (a) Bundaberg Port Authority is Old BPA's associate, and Old BPA is Bundaberg Port Authority's candidate GOC; and
- (b) Cairns Port Authority is Old CPA's associate, and Old CPA is Cairns Port Authority's candidate GOC; and
- (c) Mackay Port Authority is Old MPA's associate, and Old MPA is Mackay Port Authority's candidate GOC; and
- (d) Rockhampton Port Authority is Old RPA's associate, and Old RPA is Rockhampton Port Authority's candidate GOC; and
- (e) Townsville Port Authority is Old TPA's associate, and Old TPA is Townsville Port Authority's candidate GOC.

PART 5—TRANSITION FROM CANDIDATE GOCs TO THEIR ASSOCIATES

Division 1—Status of associates

Status of associates

14. Under the *Transport Infrastructure (Ports) Regulation 1994*, section 50A, each associate is a port authority.³

³ This section is included for information only. The status of port authority is given under the *Transport Infrastructure (Ports) Regulation 1994*, section 50A (Declaration of port authorities). Accordingly, each associate has the functions and powers set out in the *Transport Infrastructure Act 1994*, chapter 6 (Port infrastructure), part 3 (Functions and powers of port authorities), and on becoming a statutory GOC, each associate also has the general powers set out in the *Government Owned Corporations Act 1993*, section 149 (General powers of statutory GOCs). However, a statutory GOC's powers are subject to the restrictions mentioned in the *Government Owned Corporations Act 1993*, section 150 (Restrictions on powers of statutory GOCs).

Division 2—Staff

Officers and employees of candidate GOCs

15.(1) A person who, immediately before 1 July 1995, was an officer or employee of a candidate GOC becomes an officer or employee of the candidate GOC's associate.

(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 174⁴ of the Act, subsection (2) has no effect.

(4) If an officer or employee was suspended by a candidate GOC before 1 July 1995, the suspension continues, and must be dealt with by the candidate GOC's associate.

Equivalent positions

16. A person who under this division becomes an officer or employee of a candidate GOC's associate becomes the holder of a position equivalent to the position the person held in the candidate GOC.

Example—

A person who immediately before 1 July 1995 was the chief executive officer (however called) of a candidate GOC becomes the holder of the office of chief executive officer of the candidate GOC's associate.

Division 3—General

Associate is successor of its candidate GOC

17.(1) Each associate is the successor in law of its candidate GOC.

(2) The other provisions of this division do not limit subsection (1).

⁴ Section 174 (Preservation of leave entitlements of certain former officers and employees of government entities)

Instruments

18.(1) This section applies to an instrument (other than a statutory instrument) in existence immediately before 1 July 1995.

(2) An instrument applying to a candidate GOC is to apply to the candidate GOC's associate in place of the candidate GOC.

(3) Without limiting subsection (2)—

- (a) an instrument to which, immediately before 1 July 1995, a candidate GOC was a party is taken to be an instrument to which its associate is a party; and
- (b) an instrument given to, by or in favour of a candidate GOC is taken to be an instrument given to, by or in favour of its associate; and
- (c) an instrument in which a reference is made to a candidate GOC (including, for example, an instrument to which the candidate GOC was a party) is taken to be an instrument in which the reference is made to its associate; and
- (d) an instrument under which money is or may become payable, or other property is to be, or may become liable to be, transferred, conveyed or assigned to or by a candidate GOC is taken to be an instrument under which the money is or may become payable, or the other property is to be, or may become liable to be, transferred, conveyed or assigned to or by its associate.

Pending legal proceedings by or against candidate GOC

19. A legal proceeding by or against a candidate GOC that is not finished before 1 July 1995 may be continued and finished by or against the candidate GOC's associate.

PART 6—ASSETS AND LIABILITIES TRANSFERRED TO ASSOCIATES

Transfer of assets to associates

20. The assets mentioned in section 10⁵—

- (a) if, immediately before section 10 takes effect, they were the assets of the candidate GOC then known as Bundaberg Port Authority—become the assets of the associate whose name is changed under this regulation to Bundaberg Port Authority; and
- (b) if, immediately before section 10 takes effect, they were the assets of the candidate GOC then known as Cairns Port Authority—become the assets of the associate whose name is changed under this regulation to Cairns Port Authority; and
- (c) if, immediately before section 10 takes effect, they were the assets of the candidate GOC then known as Mackay Port Authority—become the assets of the associate whose name is changed under this regulation to Mackay Port Authority; and
- (d) if, immediately before section 10 takes effect, they were the assets of the candidate GOC then known as Rockhampton Port Authority—become the assets of the associate whose name is changed under this regulation to Rockhampton Port Authority; and
- (e) if, immediately before section 10 takes effect, they were the assets of the candidate GOC then known as Townsville Port Authority—become the assets of the associate whose name is changed under this regulation to Townsville Port Authority.

Consideration for transfer of assets to associates

21.(1) The liabilities mentioned in section 10⁶—

- (a) if, immediately before section 10 takes effect, they were the

⁵ Section 10 (Assets and liabilities of candidate GOCs)

⁶ Section 10 (Assets and liabilities of candidate GOCs)

liabilities of the candidate GOC then known as Bundaberg Port Authority—are assumed by the associate whose name is changed under this regulation to Bundaberg Port Authority; and

- (b) if, immediately before section 10 takes effect, they were the liabilities of the candidate GOC then known as Cairns Port Authority—are assumed by the associate whose name is changed under this regulation to Cairns Port Authority; and
- (c) if, immediately before section 10 takes effect, they were the liabilities of the candidate GOC then known as Mackay Port Authority—are assumed by the associate whose name is changed under this regulation to Mackay Port Authority; and
- (d) if, immediately before section 10 takes effect, they were the liabilities of the candidate GOC then known as Rockhampton Port Authority—are assumed by the associate whose name is changed under this regulation to Rockhampton Port Authority; and
- (e) if, immediately before section 10 takes effect, they were the liabilities of the candidate GOC then known as Townsville Port Authority—are assumed by the associate whose name is changed under this regulation to Townsville Port Authority.

(2) The assumption by an associate of the liabilities of its candidate GOC is part of the consideration for the transfer of the assets of the candidate GOC to the associate.

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

(4) The amount of the debt is the market value, at 1 July 1995, of the assets transferred to the associate, less the amount, at 1 July 1995, of the liabilities assumed by the associate.

Example of calculation of debt owed to shareholding Ministers—

If the market value of the assets vested in an associate is \$1 000 000, and the liabilities assumed by it amount to \$400 000, the shareholding Ministers are owed a debt of \$600 000.

(5) For subsection (4)—

- (a) the market value, at 1 July 1995, of an asset transferred to an

associate is, unless another valuation is decided under subsection (7), taken to be the market value specified for the asset in the asset schedule of the associate for 1 July 1995; and

- (b) the amount, at 1 July 1995, of the liabilities assumed by an associate is, unless another amount is decided under subsection (7), taken to be the amount of the liabilities listed in the balance sheet of the associate for 1 July 1995.

(6) As soon as practicable after the commencement of this section, each associate must complete the asset schedule mentioned in subsection 5(a) and the balance sheet mentioned in subsection (5)(b).

(7) The shareholding Ministers of a GOC that an associate becomes under this regulation may change the asset schedule mentioned in subsection (5)(a) or the balance sheet mentioned in subsection (5)(b) at any time before 1 November 1995 to correct the market value of an asset or the amount of a liability as at 1 July 1995.

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

PART 7—ASSOCIATES BECOME STATUTORY GOCs

Declaration of associates as GOCs

22.(1) Subsection (2) takes effect as soon as the assets and liabilities of the candidate GOCs become the assets and liabilities of their associates under sections 20 and 21.⁷

- (2) Each associate is a GOC.

⁷ Sections 20 (Transfer of assets to associates) and 21 (Consideration for transfer of assets to associates)

PART 8—CANDIDATE GOCs ARE DISSOLVED

Dissolution of candidate GOCs

23.(1) The candidate GOCs are dissolved and their members go out of office.

(2) The final accounts of each candidate GOC must be prepared by the GOC the candidate's associate becomes.

ENDNOTES

1. Made by the Governor in Council on 8 June 1995.
2. Notified in the Gazette on 8 June 1995.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Treasury Department.