

# QUEENSLAND INVESTMENT CORPORATION AMENDMENT BILL 1994

## EXPLANATORY NOTE

### GENERAL OUTLINE

#### Objectives of the Legislation

The objectives of the Bill are to amend:

- (i) *Queensland Investment Corporation Act 1991* (“QIC Act”)

To enable the Queensland Investment Corporation (“the Corporation”) to become a government owned corporation (“GOC”) under the Government Owned Corporations Act 1993 (“GOC Act”).

The majority of the amendments to the QIC Act are required to ensure that the Act is consistent with the GOC Act. Predominantly, this will be achieved by deleting those sections of the QIC Act which conflict with the GOC Act.

However, certain provisions of the GOC Act will be expressed not to apply to the Corporation in order to reflect the peculiar circumstances affecting the Corporation and the environment in which it operates.

The Bill also provides for an exemption for the Corporation, in respect of certain of its activities, from the application of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991*.

- (ii) *Freedom of Information Act 1992*

To provide that the *Freedom of Information Act 1992* does not apply to the activities of a GOC mentioned in the new Schedule 2, to the extent provided under the application provision mentioned in the Schedule. The amendments remove the existing exemptions provided for in the Act for the Corporation and the Queensland Industry Development Corporation. Schedule 2 also provides for an exemption for port authorities, within the meaning of the *Transport Infrastructure Act 1994*, that are GOCs.

(iii) *Judicial Review Act 1991*

To provide that the *Judicial Review Act 1991* does not apply to decisions of a GOC mentioned in the new Schedule 6, to the extent provided under the application provision mentioned in the Schedule. The amendments remove the existing exemptions provided for in the Act for the Corporation and the Queensland Industry Development Corporation. Schedule 6 also provides for an exemption for port authorities, within the meaning of the *Transport Infrastructure Act 1994*, that are GOCs.

(iv) *Transport Infrastructure Act 1994*

To amend the *Transport Infrastructure Act 1994* to provide an exemption for port authorities which are GOCs from the *Freedom of Information Act 1992* and the *Judicial Review Act 1991* in terms identical to the exemption provided for the Corporation in this Bill.

## **Reasons for the Bill**

(i) *Amendment of Queensland Investment Corporation Act 1991*

The QIC Act was given assent in 1991 and was drafted along the lines then being contemplated for the GOC Act. However, the QIC Act is not entirely consistent with the GOC Act as finally passed.

In particular, changes are necessary to enable the accountability structure and reporting regime to mirror that required under the GOC Act.

(ii) *Amendment of Freedom of Information Act 1992*

The amendments will give effect to the policy that, in general, documents received or brought into existence by a GOC in conducting its commercial activities and prescribed community service obligations, be exempt from the provisions of the *Freedom of Information Act 1992*.

(iii) *Amendment of Judicial Review Act 1991*

The amendments will give effect to the policy that, in general, decisions of a GOC made in conducting its commercial activities and prescribed community service obligations, be exempt from the provisions of the *Judicial Review Act 1991*.

(iv) Amendment of *Transport Infrastructure Act 1994*

The amendments are required to give effect to the policy that port authorities that are GOCs should be exempt from the application of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991* in respect to their commercial activities and prescribed community service obligations.

### **Estimated Cost for Government Implementation**

There will be no cost for the Government as a result of these amendments.

### **Consultation**

(i) Amendment of *Queensland Investment Corporation Act 1991*

This matter has primarily concerned Treasury and the Corporation. Previous consultation has been had with affected bodies, such as the Government Superannuation Office and Superannuation Fund Trustees, in the course of preparing the corporatisation charter for the Corporation as required under the GOC Act.

(ii) Amendment of *Freedom of Information Act 1992*

The Department of Justice and the Attorney-General and Office of the Cabinet have been consulted in relation to these amendments.

(iii) Amendment of *Judicial Review Act 1991*

The Department of Justice and the Attorney-General and Office of the Cabinet have been consulted in relation to these amendments.

(iv) Amendment of *Transport Infrastructure Act 1994*

The Department of Transport, Department of Justice and the Attorney-General and Office of the Cabinet have been consulted in relation to these amendments.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2* provides for the commencement of the provisions of the Bill on the day the Queensland Investment Corporation becomes a government owned corporation under the GOC Act.

### **PART 2—AMENDMENT OF QUEENSLAND INVESTMENT CORPORATION ACT 1991**

*Clause 3* identifies the Act being amended as the *Queensland Investment Corporation Act 1991*.

*Clause 4* omits the definitions of “chairperson”, “financial year”, “Public Finance Standards”, “prescribed interest”, “Treasurer”, “Under Treasurer” and “writing”, replaces the definitions of “Board” (to “board”), “Corporation”, “director”, “person”, “QTC”, “related body corporate” and “relevant interest” and also inserts definitions of “benefit”, “GOC”, “GOC Act”, “holding company”, “minor interest”, “public company”, “relative”, “relevant particulars”, “shareholding Ministers”, “spouse”, “statutory GOC” “subsidiary” and “transaction”.

*Clause 5* replaces section 2.7 (renamed Existing legal relationships not affected). This section strengthens the existing provision in the QIC Act that provides that the amendment of the QIC Act and the Corporation becoming a GOC does not affect existing legal relationships as specified. The section also inserts a definition of “instrument”

*Clause 6* replaces section 2.12 (Custody of official seal of Corporation) to allow for the affixing of the seal to be effected by two persons involved in the Corporation’s management authorised by the board to give the attestation, despite section 178(2) of the GOC Act. This amendment is similar in application to the existing provision in the QIC Act and is

necessary due to the large number of documents which must be routinely sealed and the limited availability of directors to attend to these matters.

*Clause 7* replaces section 3.2 (Powers of Corporation) and enumerates a number of specific powers of the Corporation. Despite the GOC Act conferring the powers of a natural person on the Corporation and many of the powers contained in 3.2 falling within this category, these specific powers are listed to give comfort to parties dealing with the Corporation who wish to satisfy themselves that the Corporation has the power to enter into certain types of transactions. Some powers have been deleted from the QIC Act as they conflict with powers expressly provided for in the GOC Act.

*Clause 8* replaces section 4.8 (Disclosure of interest by directors) with a new Division 1 (Disclosure of interests) comprising sections 4.8 to 4.16 and replaces section 4.9 (General duty to make disclosure) with a new Division 2 (General duty to disclose information) comprising sections 4.17 to 4.18A.

### ***Division 1—Disclosure of interests***

Sections 4.8 (Matters Corporation concerned with) defines what matters the Corporation is concerned with for the purpose of this Part of the Bill. Generally, the matters that the Corporation is concerned with include a transaction which the Corporation has entered into or is proposing to enter into but may also include a matter that has not been and will not be considered by the board. The purpose of this is to ensure that directors disclose their interests in all matters which the Corporation is concerned with, not only those matters which are considered by the board.

Section 4.9 (Interests of director) defines the parameters of director's interests for the purposes of this Part of the Bill.

A director is taken to have an interest in a matter if, because of the matter, a benefit will, is likely to, or might accrue to:

- (a) the director,
- (b) a relative of the director, or
- (c) a relative of the director's spouse, or
- (d) a person, other than the Corporation, to whom the director has a duty about the matter.

An example of Section 4.9(1)(d) is—if the Corporation has contracted with another corporation, a director of the Corporation who is also a director of the other corporation has an interest in the contract.

Section 4.9(2) does not, limit by implication, what amounts to an interest had by a director.

Section 4.10 (Register of Relevant Interests) requires the Corporation to keep a Register of Relevant Interests and sets down the responsibilities in relation to that Register. The Register is required to minimise conflict of interests and the requirements are similar to those required by the Corporation’s competitors. The chief executive officer is responsible for keeping in the Register.

Section 4.10(3) requires the Register to contain particulars of the interests of each director required by Section 4.13 (Directors to give notice of interests to chief executive officer).

Section 4.10(4) requires the Corporation to ensure that the Register is open for inspection during normal business hours by the directors, the chief executive officer, the shareholding Ministers, the Auditor-General and persons nominated by the shareholding Ministers or Auditor-General. This is to ensure reasonable access to the information pertaining to interests of directors by those persons who have an entitlement to inspect the Register.

Section 4.10(5) requires the Corporation to have the Register available and open for inspection by the directors and the chief executive officer immediately before and during each meeting of the board so that the directors may be informed of any director’s interests which may be relevant to matters considered at the meeting.

Section 4.10 (6) requires the Corporation to send a copy of the Register or part of it within seven days to a person entitled to inspect the Register if that person asks for it.

Section 4.11 (Meaning of “minor interest”) defines the term “minor interest” for the purposes of this Part of the Bill. The term is defined to mean:

- A directorship held by a director of the Corporation in another body corporate which is a related body corporate of the Corporation;

- A relevant interest (“relevant interest” is defined as having the same meaning as it does in the Corporations Law) in shares in another body corporate with a nominal value not exceeding 5% of the nominal value of all issued shares of that body corporate.

There are different disclosure requirements for directors having major and minor interests in related bodies corporate and these are addressed in Division 1 of this Part.

Section 4.11(4) amplifies the method of determining the nominal value of the director’s relevant interest in shares of another body corporate by assuming that:

- an option or right to buy shares in a body corporate under an option contract in which the person has a relevant interest has been exercised and the person has a relevant interest; and
- any convertible note issued by the body corporate in which the person has a relevant interest has been converted into shares and the person has a relevant interest in the shares.

Section 4.12 (Meaning of “relevant particulars”) defines the term “relevant particulars” for the purposes of this Part of the Bill. The purpose of the definition is to set out what information a director is required to disclose where a director has an interest in a matter with which the Corporation is concerned.

Section 4.13 (Directors to give notice of interests to chief executive officer) details directors’ responsibilities in relation to declaration of interests. These include:

Section 4.13(1)—A director who has an interest in a matter with which the Corporation is concerned must give written notice to the chief executive officer containing the relevant particulars of the interest:

- as soon as practical after the relevant facts come to the director’s knowledge, or
- if the facts came to the director’s knowledge before the director’s appointment as a director, as soon as practicable after that appointment.

This is required to ensure timely consideration of the implications of the director’s interest in the things which the Corporation is concerned with and there is a maximum penalty of 50 penalty units for non compliance.

Section 4.13(2) requires the chief executive officer to enter the relevant particulars for the director who gave notice in the Register and to give a copy of the notice to each other director within three days of receiving the notice. This is required to ensure timely consideration of the implications of the director's interest in the matters with which the Corporation is concerned.

Section 4.13(3) requires the directors to ensure that the particulars of the directors' interests are formally recognised by the board by causing them to be recorded in the minutes of the next meeting of the board held after the notice is given.

Section 4.13(4) accepts that where a notice given by a director under Section 4.18 (General duty to make disclosure) contains the relevant particulars of an interest had by the director in something with which the Corporation is concerned, the notice is taken to be given under this Clause.

Section 4.13(5) reduces the frequency of individual disclosures where a director gives a general notice to the effect that the director is an officer or member of a specified entity and is to be regarded as interested in each transaction that may, after the notice is given, be entered into by the Corporation with the entity, by allowing that the notice is sufficient compliance with Section 4.13(1) for a transaction entered into, by the entity with the Corporation within one year after giving the notice.

Section 4.13(6) ensures that notice of disclosure under Section 4.13(5) contains sufficient information for the board to take into consideration, precludes the operation of Section 4.13(5). This means that a general notice under Section 4.13(5) will not be sufficient unless:

- (a) the notice states the nature extent of the director's interest in the entity, and
- (b) when the question of confirming or entering into the transaction is first considered by the board, the extent of the director's interest in the entity is not greater than that stated in the notice.

Section 4.13(7) allows that, where the interest of a person in the body corporate is a minor interest, it is sufficient compliance with Section 4.13(6)(a) if the notice contains a statement to that effect. This reduces the time spent by the board on review of interests.



Section 4.14 (board may require further information) has the purpose of allowing the board to ask a director to provide further information in relation to a director's interest should it require it to make more informed decisions. It authorises the board to obtain additional information in relation to directors interests where the board is of the opinion that the notice given by a director under Section 4.13 (Directors to give notice of interests to chief executive officer) is insufficient to enable the board to decide whether the interest is material or to decide what action should be taken about the matter in the Corporation's interests.

The board may ask the director to give further written particulars or to answer questions to give further information about the interest.

The section requires the director to comply with the requirement and has a maximum penalty of 50 penalty units for non compliance.

The section also provides that the other provisions of the division do not limit the powers of the board under this Clause.

Section 4.15 (Voting by interested director) details the voting entitlements of directors with interests in matters which the board is considering in order to minimise the possibility of conflict of interest. A distinction is made in relation to minor interests and other interests which are not minor interests. If the interest is minor, the board must then consider whether it is material. The relevant director is not entitled to vote on a resolution about the matter only if the board resolves that the interest is a material interest.

If the director's interest is not a minor interest, the director is entitled to vote on a resolution only if the board has resolved that the director's interest is not a material interest.

Section 4.15(4) precludes a director who has given notice under Section 4.13 (Directors to give notice of interests to chief executive officer) of an interest the director has in a matter, from voting on a resolution about whether the director or another director has a material interest in the matter.

The director therefore takes no part in determining whether his or her interest is a material interest.

Section 4.15(5), ensures proper recording of the resolution, requires the directors present at the board meeting at which the resolution is passed to ensure that the minutes of the meeting record:

- 1 the passing of the resolution; and
- 2 the name of the directors who cast votes in favour of the resolution; and
- 3 the names of those who cast votes against the resolution (if any); and
- 4 the names of those directors who abstained from voting (if any).

Section 4.15(6) also defines a quorum for these provisions only if at least two directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

Section 4.15(7) allows the Corporation's shareholding Ministers to deal with a matter, if the board cannot deal with it because of Section 4.15(6), by each signing consent to a proposed resolution. This allow matters to be resolved when a quorum is not present.

Section 4.16 (Transactions etc. not invalid because of this Division) prevents the invalidation of transactions which may have been invalidated only by virtue of the effect of the disclosure provisions or by virtue of a director contravening the provisions relating to declaration of interests.

### ***Division 2—General Duty to disclose information***

Section 4.17 (Register of General Disclosures) requires the Corporation to keep a Register of General Disclosures and sets down the responsibilities in relation to that Register. The Register is required to minimise conflict of interests and the requirements are similar to those required by the Corporation's competitors. The chief executive officer is responsible for making entries in the Register.

Section 4.17(3) requires the Register to contain the notices given by each director under 4.18 (General duty to make disclosure).

Section 4.17(4) requires that, within seven days after receiving notice from a director under Section 4.18 (General duty to make disclosure) or within three days after receiving notice of any change of particulars

previously advised under that section, the chief executive officer must enter the notice in the Register.

Section 4.17(5) requires the Corporation to ensure that the Register is open for inspection during normal business hours by the directors, the chief executive officer, the shareholding Ministers, the Auditor-General and a person nominated by the shareholding Ministers or Auditor-General. This is to ensure reasonable access to the information pertaining to interests of directors by those persons who have an entitlement to inspect the Register.

Section 4.17(6) requires the Corporation to have the Register available and open for inspection by the directors and the chief executive officer immediately before and during each meeting of the board so that the directors may be informed of any director's interests which may be relevant to matters considered at the meeting.

Section 4.17(7) requires the Corporation to send a copy of the Register or part of it within seven days to a person entitled to inspect the Register if that person asks for it.

Section 4.18 (General duty to make disclosure) details director's responsibilities in relation to general disclosures similar to those required by directors of competing financial institutions, to minimise the possibility of exceeding the limits of related party transactions and to minimise the possibility of conflict of interests.

Section 4.18(1) requires the directors to give written notice to the chief executive officer of:

- (a) particulars of directorships and changes of directorships held by the director in public companies and subsidiaries of public companies, unless they are related bodies of the Corporation; and
- (b) other matters affecting or about the director that are necessary to allow the Corporation to comply with Chapter 6 of the Corporations Law (which contains takeover provisions). This is aimed at ensuring that the Corporation will be aware of directors' interests in a target company whenever it is making a takeover offer. Under the Corporations Law, directors' interests in shares in the target company are taken to be interest held by the Corporation in the target company.

Failure to comply has a maximum penalty of 50 penalty units.

If Section 4.18(1)(a) is relevant, Section 4.18(2)(a) requires the director to give the necessary notice within 14 days after he or she becomes a director of the company or subsidiary.

If Section 4.18(1)(b) is relevant, Section 4.18(2)(b) requires the director to give the necessary notice as soon as practicable after the director becomes aware that the Corporation requires, or will require, information about the matters to allow it to comply with Chapter 6 of the Corporations Law.

Section 4.18(3) allows sufficient compliance with Section 4.18(1)(a) if the person is a director of one or more subsidiaries of the same holding company and it is disclosed that the person is the holder of one or more directorships of the group of companies that are subsidiaries of the holding company.

Section 4.18A (Transactions etc. not invalid because of this Division) ensures that transactions entered into or something else done by the Corporation is not invalidated by virtue of the effect of the disclosure provisions or of contravention of the provisions relating to general disclosures.

*Clause 8* also adds a new heading “Division 3—Miscellaneous”

*Clause 9* replaces section 4.20 (renamed Director taken not to have interest as public servant) and widens the application of the clause to include any public servant appointed to the board, so that any such person is not taken to have an interest in a matter before the board merely because the person is an officer of the public service or is performing a function or exercising a power as such an officer. The Under Treasurer will no longer be an *ex officio* director of the Corporation as a result of the deletion of section 4.2 of the QIC Act.

*Clause 10* replaces section 5.7 (renamed Superannuation for certain employees) which deals with superannuation for persons previously officers of the Public Service or the Queensland Treasury Corporation. On advice from the Government Superannuation Office and in consultation with the Corporation, the Bill amends this section so that it only applies to those persons who were employees of the Corporation immediately prior to corporatisation. The superannuation entitlements of such persons newly employed after corporatisation will be preserved under section 173 of the GOC Act.

*Clause 11* deletes sections 6.4 to 6.6 and inserts new sections 6.4 (Restriction on reserve powers of shareholding Ministers) and 6.5 (Certain dealings must be made public). The new section 6.4 contains provisions restricting the reserve powers of shareholding Ministers (provided under Sections 123, 124 and 161 of the GOC Act) by precluding shareholding Ministers from giving directions to the board of the Corporation in respect of matters such as investments, voting rights or otherwise dealing with assets and liabilities. The section, 6.4(1), is not taken to affect the operation of section 133 of the GOC Act (board to keep shareholding Ministers informed).

The amended section 6.5 of the QIC Act requires the Corporation to make public any representations made to it or its directors by members of the Legislative Assembly in respect of any asset subsequently acquired or disposed of by the Corporation. Both provisions are slightly modified versions of similar provisions already contained in the QIC Act.

*Clause 12* replaces section 7.1 with sections 7.1 (renamed Non-application of certain provisions of GOC Act to Corporation) and 7.1A (*Application of Freedom of Information Act and Judicial Review Act*).

Section 7.1 sets out which provisions of the GOC Act do not apply to the Corporation and also lists the corresponding provisions of the amended QIC Act which will prevail.

Section 7.1A provides that the *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the Corporation in conducting its commercial activities or such community service obligations (as defined in the GOC Act) as are prescribed by regulation, such activities and obligations being together defined as the Corporation's "excluded activities". Section 7.1A further provides that the *Judicial Review Act 1991* does not apply to a decision made by the Corporation in conducting its "excluded activities".

A regulation may declare the activities of the Corporation that are taken to be, or not to be, activities conducted on a commercial basis.

Community service obligations of a GOC are, as indicated in section 121(1)(a) of the GOC Act, activities that are not in the commercial interests of a GOC to perform and, as such would generally be subject to the *Freedom of Information Act 1992* and the *Judicial Review Act 1991*. However, this provision allows a regulation to be made declaring a community service obligation to be an "excluded activity" and not subject to the *Freedom of Information Act 1992* or the *Judicial Review Act 1991*.

### **PART 3—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992**

*Clauses 13 to 17* amend the *Freedom of Information Act 1992* to provide that the *Freedom of Information Act 1992* does not apply to documents received, or brought into existence, in carrying out activities of a GOC mentioned in the new Schedule 2, to the extent provided under the application provision mentioned in the Schedule.

Schedule 2 mentions the following GOCs and their relevant application provisions, namely, a port authority within the meaning of the *Transport Infrastructure Act 1994* that is a GOC, the Corporation and the Queensland Industry Development Corporation. *Clause 15* removes the existing exemptions for the Corporation and the Queensland Industry Development Corporation provided for in subsections 11 (1) (k) and (l) of the *Freedom of Information Act 1992*.

### **PART 4—AMENDMENT OF JUDICIAL REVIEW ACT 1991**

*Clauses 18 to 22* amend the *Judicial Review Act 1991* to provide that the *Judicial Review Act 1991* does not apply to decisions of a GOC mentioned in the new Schedule 6 to the extent provided under the application provision mentioned in the Schedule.

Schedule 6 mentions the following GOCs and their relevant application provisions, namely, a port authority within the meaning of the *Transport Infrastructure Act 1994* that is a GOC, the Corporation and the Queensland Industry Development Corporation. *Clause 21* removes the existing exemptions for the Corporation and the Queensland Industry Development Corporation provided for in Schedule 2, clause 14, paragraphs (c) and (d) of the *Judicial Review Act 1991*.

**PART 5—AMENDMENT OF TRANSPORT  
INFRASTRUCTURE ACT 1994**

Clauses 23 and 24 insert a new Section 61ZAA into the *Transport Infrastructure Act 1994* which provides for an exemption from the *Freedom of Information Act 1992* and the *Judicial Review Act 1991* in terms identical to the exemption provided in *Clause 12* of this Bill in respect of the Corporation, except that the exemption, in this case, relates to GOC port authorities.

**SCHEDULE****MINOR AMENDMENTS TO THE QUEENSLAND  
INVESTMENT CORPORATION ACT 1991**

This schedule makes minor amendments to the QIC Act to bring it into line with the GOC Act and current drafting practice and inserts a new “PART 8—SAVING AND TRANSITIONAL PROVISIONS” to deal with the following issues.

**8.1 “Approvals about superannuation schemes”**

This provision provides for any approval by Governor in Council under section 5.6 of the QIC Act in respect of a superannuation scheme to be an approval for the purposes of section 172 of the GOC Act.

**8.2 “Existing directors go out of office”**

This provision is required to terminate current appointments. It is proposed to appoint the Corporation’s new board of directors under section 94A of the GOC Act.

**8.3 “Provisions about registers and notices”**

This section inserts transitional provisions concerning the operation of Part 4, Division 1 (Disclosure of interests) and Part 4, Division 2 (General duty to disclose information).

**8.4 “Numbering and renumbering of Act”**

This section provides for the renumbering of the QIC Act in its next reprint in accordance with the changes and amendments proposed by this Bill.

**8.5 “Expiry of Part”**

This section provides for the expiry of Part 8, 6 months after it commences.