

TREASURY LEGISLATION AMENDMENT BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the Bill are to amend:

(i) *Queensland Treasury Corporation Act*

To enable the State to impose a dividend on Queensland Treasury Corporation's (QTC) liability management operations and to allow QTC to recover that dividend from its borrowers.

The amendment to the QTC Act will establish the framework for these arrangements, whilst details regarding the nature of the performance dividend and its method of calculation will be prescribed by regulation.

Under the regulations, QTC will be responsible for calculation and remittance of the QTC performance dividend payable to the State on an annual basis. QTC will be empowered to recover an appropriate amount from each of its borrowers.

(ii) *Statutory Bodies Financial Arrangements Act*

To give to the Treasurer a discretion to require that statutory bodies who borrow from a financial institution other than QTC and who enjoy the benefit of the Treasurer's guarantee in respect of those borrowings, pay to the State a guarantee fee. The guarantee fee shall be set at a rate equivalent to the performance dividend that otherwise would have been payable had the statutory body borrowed through QTC.

Where such statutory bodies elect to borrow on a non-guaranteed, non-recourse basis to the State, then no guarantee fee will be payable. However, such bodies will be required to re-finance all of their existing debt on a non-guaranteed, non-recourse basis, with the Treasurer retaining the final

responsibility to refuse approval for such financial arrangements where it is considered that there may be some adverse implications for State finances as a whole. The lending institutions providing funding will be required to acknowledge in writing the non-guaranteed, non-recourse basis of such financial arrangements.

(iii) *Offshore Banking Units and Regional Headquarters Act*

To remove aspects of the Act that have been found to be unnecessary and simplify administrative processes of the Office of State Revenue. The amendments will permit the specification, in the Regulations, of those RHQ activities which will receive concessional taxation treatment, facilitate the administration of the land tax and pay-roll tax concessions, clarify the operation of the RHQ taxation concessions and enable penalties to be set under the Regulations.

(iv) *Government Owned Corporations Act*

To make a number of amendments to the Government Owned Corporations Act (“the GOC Act”). The major amendments provide a mechanism to overcome any potential problems which may arise with:

- the application of a Commonwealth tax equivalent regime to Government Owned Corporations (“GOCs”); or
- if a GOC does become subject to Commonwealth tax, with the application of the Commonwealth taxation legislation to the GOC.

Other technical amendments are being made to facilitate the corporatisation process. These include provisions which will enable a restructuring of GOCs and their subsidiaries to be carried out under the GOC Act.

Reasons for the Bill

- (i) *Amendments to the Queensland Treasury Corporation Act and Statutory Bodies Financial Arrangements Act.*

Participants in the Queensland Treasury Corporation (QTC) currently enjoy the benefits of lower borrowing costs that arise as a result of Queensland's credit standing relative to other States and QTC's actual liability management performance. The State currently does not receive any share of these benefits which flow to QTC and its participants. The

proposed legislative amendments will allow the State to recover a share of these benefits in the form of a performance dividend. The State's share will be set at 50% initially, reflecting an equal sharing of the benefits of QTC liability management between the State and borrowers.

Statutory bodies currently undertaking financial arrangements with lenders other than QTC do not pay any fee for the benefit of the Treasurer's guarantee. The proposed legislative amendment to the *Statutory Bodies Financial Arrangements Act* will give to the Treasurer a discretion to impose a guarantee fee as a condition of granting a Government guarantee that secures financial arrangements by a statutory body from financial institutions other than QTC.

The rate of the guarantee fee will be equivalent to the performance dividend that is payable by QTC to the State in accordance with the QTC Act in respect of those financial arrangements as if the financial arrangements had been provided by QTC. In this way, authorities who borrow from other than QTC will be required to pay the same fee as those authorities who borrow from QTC and pay the performance dividend.

The proposed legislative amendments will give formal effect to the proposal announced in the 1993-94 State Budget.

(ii) *Amendments to the Offshore Banking Units and Regional Headquarters Act.*

In December 1993 the *Offshore Banking Units and Regional Headquarters Bill* was passed by the Queensland Parliament. The effect of the Act will be to enable Offshore Banking Units and Regional Headquarters establishing in Queensland to receive concessional taxation treatment in relation to State taxes.

Regulations will be required to give full effect to the Act. The proposed amendments, whilst minor in nature, will clarify the existence of certain concessions under the Act and facilitate the making of those Regulations.

(iii) *Government Owned Corporations Act*

The GOC Act was enacted whilst negotiations were being carried out between the Commonwealth and State Governments on the taxation treatment of GOCs. The GOC Act was drafted on the basis that arrangements would be made with the Commonwealth which would result in statutory GOCs not being under the Income Tax Assessment Act ("ITAA").

An agreement has been negotiated between the Commonwealth and the States whereby the ITAA will be amended so that wholly owned State trading enterprises will be exempt from Commonwealth income tax and not bear wholesale sales tax. However, this agreement is not yet concluded and, in any event, requires a Tax Equivalent Regime to be established which will achieve uniformity amongst States and Territories and with tax treatment of other trading enterprises. Having regard to these qualifications and the possibility of removal of the exemption, the GOC Act is being amended to provide mechanisms which will enable GOCs to comply with the requirements of the ITAA.

The difficulties associated with ITAA centre on the need for a corporatised body (a GOC and its subsidiaries) which has substantial depreciable assets to be able to establish a proper market value for its assets in order to take benefit of depreciation provisions, and to be able to obtain deductions for interest paid on borrowings which are used to produce income where the borrowing could not have been incurred for the purpose of earning assessable income.

These difficulties are obviated where a new entity acquires the assets at market value in consideration of the assumption of the requisite liabilities.

The GOC Act does not provide a mechanism for an acquisition to occur where an existing entity is to be corporatised without changing the legal personality of a body. The GOC Act also does not make provision for the corporatisation of an entirely new body which is not presently part of any government entity. To overcome these problems, the Bill provides for the incorporation of a body corporate (which will be corporatised) to enable an acquisition of assets to occur at market value to overcome ITAA problems.

The Bill also contains other technical amendments to facilitate the corporatisation process. Provisions have also been included to enable restructuring of government entities after they become GOCs.

Estimated Cost for Government Implementation

- (i) Amendments to the *Queensland Treasury Corporation Act* and the *Statutory Bodies Financial Arrangements Act*.

There will be no cost to the Government. The net revenue from imposition of the performance dividend is estimated at \$25 million per annum, based on QTC's actual performance in recent years. The precise

level of net revenue will depend upon QTC's actual performance. The first performance dividend will accrue in respect of the 1993-94 financial year.

Net revenue from guarantee fees under the *Statutory Bodies Financial Arrangements Act* is estimated at \$50,000 per annum.

- (ii) Amendments to the *Offshore Banking Units and Regional Headquarters Act*.

The proposed amendments will be taxation neutral.

- (iii) *Government Owned Corporations Act*

There will be no cost for the Government.

Consultation

- (i) Amendments to the *Queensland Treasury Corporation Act* and the *Statutory Bodies Financial Arrangements Act*.

The relevant Ministers, including the Premier and the Deputy Premier have been consulted as well as the Office of the Cabinet, the Office of Rural Communities and the Department of Housing, Local Government and Planning. Affected parties including the Local Government Association and a number of Local Authorities also have been consulted.

- (ii) Amendments to the *Offshore Banking Units and Regional Headquarters Act*.

No consultation with other Departments or industry was considered necessary given the nature of the amendments.

- (iii) *Government Owned Corporations Act*

All relevant Government Departments have been consulted together with the initially affected GOCs - Port of Brisbane Authority, Ports Corporation of Queensland, Gladstone Port Authority, Queensland Electricity Commission, Queensland Investment Corporation and Queensland Industry Development Corporation.

NOTES ON PROVISIONS**PART 1 - PRELIMINARY**

Clause 1 sets out the short title of the Act.

**PART 2 - AMENDMENT OF THE QUEENSLAND
TREASURY CORPORATION ACT 1988**

Clause 2 identifies the Act being amended by Part 2 and Schedule 1.

Clause 3 amends section 4 of the QTC Act to include definitions for a number of terms used in the Bill.

Clause 4 provides for a number of new sections to be inserted into the Act.

The proposed Section 19A provides for QTC to pay a performance dividend to the State. The performance dividend is to be calculated and paid in accordance with the formulae and payment periods as prescribed in the regulations. This section also empowers the Treasurer to obtain information from QTC on any matter relating to the performance dividend.

Under the proposed Section 19B QTC is also empowered to recover the attributed amount from each of its borrowers. The attributed amount is to be calculated and paid in accordance with the formulae and payment periods as prescribed in the regulations.

If a statutory body does not pay an attributed amount to QTC, Section 19C empowers the QTC to add the attributed amount to the statutory body's outstanding balance with the QTC. The attributed amount will be repaid to the QTC as part of that financial arrangement. QTC must advise the statutory body accordingly.

The Treasurer is empowered to provide exemptions to a QTC borrower from the payment of all or part of an attributed amount. Where such an exemption has been provided to a QTC borrower, QTC is not liable for that part of the performance dividend relating to the exemption.

Clause 5 empowers the Governor-in-Council to make regulations in relation to any matter about the performance dividend or attributed amount.

This clause also allows regulations to be made with respect to transitional arrangements over the period 1 July 1993 to 31 December 1994.

PART 3 - AMENDMENT OF THE STATUTORY BODIES FINANCIAL ARRANGEMENTS ACT 1982

Clause 6 identifies the Act being amended by Part 3 and Schedule 2.

Clause 7 empowers the Treasurer to impose a fee for the provision of a guarantee to statutory bodies which undertake financial arrangements with lenders other than QTC.

The fee is to be equivalent to (but not more than) the amount of the performance dividend (ie. attributed amount) which would be recoverable from a statutory body had it undertaken the financial arrangement with QTC.

Clause 8 expands the range of financial institutions from which statutory bodies (to which the section applies) may obtain overdrafts to include not only banks, but also building societies and credit unions.

The current arrangements for the prudential supervision of credit unions and building societies are considered adequate (subject to continued compliance with the requirements of the Financial Institutions Scheme and relevant legislation) to allow such financial institutions to be utilised by statutory bodies in the same way as banks.

PART 4 - AMENDMENT OF THE OFFSHORE BANKING UNITS AND REGIONAL HEADQUARTERS ACT 1993

Clause 9 specifies that the effect of Part 4 is to amend the *Offshore Banking Units and Regional Headquarters Act 1993*.

Clause 10 removes the definition of RHQ activity from section 3 and refers to a more comprehensive definition provided in section 3A.

Clause 11 provides a more comprehensive definition of RHQ activity to enable those RHQ activities which qualify for a concession to be specified by regulation, and to clarify that the definition excludes the provision of services by the QRHQ directly or indirectly to parts of the groups in Australia.

Clause 12 amends section 18 (which provides for a land tax concession to QOBUs and QRHQs) to more closely align the calculation of the concession with the assessment of land tax under the *Land Tax Act*.

Clause 13 amends section 19 (which provides for a pay-roll tax concession to QOBUs and QRHQs) to more closely align the calculation of the concession with the assessment of pay-roll tax under the *Pay-roll Tax Act*.

Clause 14 amends section 21 to clarify that section 21 only applies to stamp duty concessions and not other tax concessions.

Clause 15 amends section 24 to enable the creation of offences and the prescription of penalties by regulation.

PART 5 - AMENDMENT OF THE GOVERNMENT OWNED CORPORATIONS ACT 1993

Clause 16 specifies that Part 5 and Schedule 3 amend the GOC Act.

Clause 17 omits definitions of “asset”, “responsible Ministers” and “subsidiary” and inserts definitions of “associate”, “associate subsidiary”, “GOC Act entity”, “responsible Ministers”, and “subsidiary”. The terms “associate” and “associate subsidiary” refer to the new entity established under the GOC Act (a “GOC Act entity”) which is nominated to be an associate of a candidate GOC or declared to be a subsidiary of a candidate GOC. The definitions of “responsible Ministers” and “subsidiary” are amended as a result of these new terms.

Clause 18 amends section 5 by extending the definition of “government entity” to include a GOC Act entity.

Clause 19 replaces section 23. This section will now enable a government entity which is an associate of a candidate GOC to become a statutory GOC. The associate will not need to become a candidate before becoming a statutory GOC.

Clause 20 inserts a new section 24A. This section provides for a GOC Act entity to be nominated as the associate of a candidate GOC. The associate will be the entity which will complete the corporatisation process of the candidate. However, the nomination of the associate will not affect the obligation of the candidate to implement its corporatisation charter.

Clause 21 inserts new sections 26A and 26B. Section 26A provides for the nomination of an associate for a particular candidate GOC. Section 26B enables an entity to be declared to be a subsidiary of an associate.

Clause 22 inserts new section 31A. This section defines the responsible Ministers for the associate to be those of the associate's candidate GOC.

Clause 23 inserts new section 49A. This section enables the responsible Ministers to give directions to the associate and its subsidiaries about the performance of their functions.

Clause 24 replaces section 54 and inserts new sections 54A and 54B. It provides for a regulation to be made to give corporate status to an associate or a subsidiary of an associate. The regulation may also specify the functions and powers of the entity. It may also make provision for any matter which is considered necessary and convenient to facilitate the change of this entity to one which is to become a GOC or a subsidiary of a GOC.

The functions of the associate or subsidiary associate will relate to matters in preparation for corporatisation. The implementation of the corporatisation charter will still rest with the candidate GOC.

Section 54A is similar to the existing section 54 and provides for a transfer of assets etc. to a government entity that is to become a GOC or a subsidiary of a GOC. The section enables a regulation to be made where the entity in question is an associate or a subsidiary of an associate.

The regulation may also provide that part of the consideration for the transfer of the assets may be a debt due to the shareholding Ministers of the GOC which is to be held by them on behalf of the State. Such a debt will arise where the market value of the assets exceeds the value of the liabilities assumed. This debt may be adjusted after the transfer.

Section 54A also provides that a regulation may be made to transfer the Chief Executive Officer (“CEO”) and senior executives to the GOC. The regulation will satisfy the requirements for the CEO and senior executives to be appointed by the Governor in Council and avoid the necessity for

these to be reappointed by the GOC after the entity has been declared to be a GOC.

Section 54B provides that the debt to the shareholding Ministers, which forms part of the consideration for a transfer of assets, is owned by the State and is held by them on behalf of the State.

Clause 25 inserts new sections 57A to 57D which deal with associates and associate subsidiaries.

Section 57A enables a regulation to be made to provide that an associate or associate subsidiary may have an interim board and specify the role of the interim board. This interim board is not the same as that which can be appointed under section 57.

Section 57B applies provisions of the GOC Act which deal with the CEO, senior officers and the board of directors to associates and associate subsidiaries with appropriate modifications.

Section 57C empowers the responsible Ministers to give directions to government entities to assist the associate or the associate subsidiary in carrying out their functions. The responsible department, candidate GOC or subsidiary of a candidate GOC can provide staff to the associate or associate subsidiary.

Section 57D requires an entity to comply with a Ministerial direction under section 57C.

Clause 26 amends section 58 by providing that the responsible Ministers may apply part of the entity's capital to issue shares on the candidate GOC's behalf. This will only occur where the candidate does not have a board of directors to carry out this function. A candidate GOC in this section also includes an associate of a candidate GOC.

Section 58 also becomes applicable to entities which will become GOC subsidiaries and provides for the shareholding Ministers of the body which will be the parent of the subsidiary to give directions relating to the shares of the subsidiary.

Clause 27 amends section 62 to enable regulations to be made which can change the name of a candidate GOC, a subsidiary or proposed subsidiary of a candidate, an associate or a subsidiary of an associate.

Clause 28 inserts new Part 5A which covers the appointment of the first CEO and senior executives of a statutory GOC.

Currently, the CEO must be appointed on the recommendation of the board of the statutory GOC. Therefore, until an entity becomes a statutory GOC, it cannot act to appoint a CEO and therefore there is a delay whilst an appointment is to be made.

New section 62A overcomes this by providing that the Governor in Council may appoint a CEO for a statutory GOC prior to the regulation declaring the candidate GOC to be a statutory GOC. This will only apply if the responsible Ministers have authorised the board of directors of the candidate GOC to do so.

New section 62B provides for the same arrangements to be made for senior executives.

Clause 29 inserts new section 63A. This section provides for the declaration of an associate as a GOC.

The section is applicable only where a regulation makes provision for the transfer of assets and liabilities from a candidate GOC to its associate.

The Governor in Council can declare an associate to be a GOC if satisfied that the candidate's corporatisation charter has been sufficiently implemented or that the candidate would itself be ready to become a GOC but for the regulation transferring its assets and liabilities to the associate and that the associate does or upon becoming a GOC will comply with the basic requirements that it have a board of directors and authorised and issued capital.

Clause 30 inserts new section 94A. This section enables the Governor in Council to make a prior appointment of the board of directors of a statutory GOC. The appointments will take effect from the time the regulation is made declaring the candidate or associate to be a GOC.

Clause 31 inserts new Division 3 in Part 13 of Chapter 3. The purpose of this new Division is to provide GOCs with an ability to direct their subsidiaries which are not companies.

Section 153A provides that a GOC may give directions to its subsidiaries to ensure that the subsidiary complies with the Act and to require payments to be made regarding dividends. Regulations may provide that directions can be given about other matters.

Section 154B requires a subsidiary to comply with the directions.

Section 153C provides that nothing in the Division limits the ability of a GOC to otherwise direct its subsidiaries.

Clause 32 replaces the existing section 155 which deals with the liability for the payment of Commonwealth tax equivalents. The new section arises out of negotiations with the Commonwealth on a tax equivalent regime for statutory GOCs. The section provides for the issue of a tax equivalents manual which will be tabled in Parliament. The manual will provide for:-

- the application of the Commonwealth tax laws;
- lodging returns;
- assessing returns;
- the powers and functions of the tax assessor;
- objections and appeals.

Any amendments to the manual will also be tabled in Parliament.

Clause 33 inserts new sections 188 to 192.

Section 188 enables GOCs and subsidiaries to be restructured without the need for other legislation. It provides for regulations to be made to transfer assets etc. to and from a GOC or a subsidiary of a GOC. It is similar in terms to section 54A.

Section 189 provides a mechanism for dealing with assets and liabilities which were not otherwise dealt with under section 54A. It enables assets and liabilities which were not transferred under section 54A through inadvertence or otherwise to be transferred in a similar manner.

Section 190 provides that where consideration involved in the transfer of the assets referred to in sections 188(1)(c) and 189(2)(c) includes a debt to the shareholding Ministers, the debt is owned by the State and held by them on behalf of the State.

Section 191 enables a regulation to be made which can allocate a particular liability to a GOC or a subsidiary of a GOC. The provision is to ensure that a person is not disadvantaged in regard to a government entity affected by the operation of the GOC Act which would result in a liability no longer existing because the government entity has ceased to exist.

Section 192 provides that a regulation may dissolve a government entity where all of its assets and liabilities have been transferred to another government entity or otherwise disposed of. The regulation may also

provide for the preparation of the dissolved entity's final accounts and for assistance to be given in the preparation of those accounts.

Clause 34 amends the current section 188 (Regulations) and renumbers it as section 193. The regulation making power is expressed in terms which relate to specific processes which are carried out under the Act to facilitate the corporatisation process. For example, a regulation may refer to a document held or to be held by a particular government entity rather than incorporate the contents of that document in the regulation. This will be the case where the regulation transferring assets of a government entity may need to refer to a document setting out the assets of the government entity.

SCHEDULE 1

MINOR AMENDMENTS TO THE QUEENSLAND TREASURY CORPORATION ACT 1988

This schedule makes minor amendments to the *Queensland Treasury Corporation Act 1988* to bring it into line with current drafting practice.

SCHEDULE 2

MINOR AMENDMENTS TO THE STATUTORY BODIES FINANCIAL ARRANGEMENTS ACT 1982

This schedule makes minor amendments to the *Statutory Bodies Financial Arrangements Act 1982* to bring it into line with current drafting practice.

SCHEDULE 3

MINOR AMENDMENTS TO THE GOVERNMENT OWNED CORPORATIONS ACT 1993

This Schedule makes minor drafting changes to the GOC Act including minor changes as a consequence of the above amendments.

