

# **GOVERNMENT OWNED CORPORATIONS AND OTHER LEGISLATION AMENDMENT BILL 1998**

## **EXPLANATORY NOTES**

### **Short Title**

The short title of the Bill is the *Government Owned Corporations and Other Legislation Amendment Bill 1998*.

### **Policy objectives of the Bill and the reasons for those objectives**

The primary policy objectives of the Bill are to remove from the Government Owned Corporations Act (the “GOC Act”) provisions which could be regarded as “Henry VIII” clauses, and also to bring the processes to be followed for the corporatisation of company GOCs into line with that applying to statutory GOCs.

The Bill also amends the corporatisation modelled in the *Local Government Act 1993* to reflect the changes being made to the corporatisation model in the GOC Act upon which it is based. The corporatisation model was adopted by local government as part of its obligations under the National Competition Policy to provide for structural reform of significant local government monopolies. The Bill also amends the *Transport Infrastructure Act 1994* to clarify the functions of Queensland Rail.

Minor amendments to other legislation within the Treasurer’s portfolio are also addressed.

### **The way these policy objectives will be achieved by the Bill and why this way of achieving the policy objectives is reasonable and appropriate**

The provisions of the GOC Act were designed to give the Government a

large degree of flexibility in restructuring Government entities into corporatised bodies. Due to the variety of Government entities which could be corporatised and the many and varied ways in which they are established the GOC Act was drafted in a manner which would enable the Government to have the various Government entities go through the corporatisation process without having to have separate legislation passed to initiate the process. The provisions of the GOC Act have been extensively used by both this and the previous Government in corporatising numerous State Government entities. The powers of the Act which provide this flexibility have now come under scrutiny by the Parliamentary Committee for the Scrutiny of Legislation (“the Committee”).

In view of the Committee’s concerns that a number of the GOC Act’s provisions come within its meaning of a Henry VIII clause and as such are potentially in conflict with section 4(4)(c) of the *Legislative Standards Act 1992*, it is proposed that these provisions be removed.

Accordingly, the Bill provides for the elimination of all such provisions except where the continued use of those provisions can be justified.

Similar amendments are necessary to the Local Government Act to ensure that the corporatisation models remain essentially similar.

Further amendments have been made to the GOC Act to bring the corporatisation processes for company and statutory GOCs into line. There are no policy reasons for the two processes to be different.

As mentioned, appropriate amendments to the *Transport Infrastructure Act 1994* are also included in the Bill, to overcome difficulties with the functions of Queensland Rail as contained in that Act which are limiting its ability to operate commercially.

### **Alternative way of achieving the policy objectives**

There is no alternative way of achieving the policy objectives other than by means of the legislative initiatives and amendments contained in the Bill.

### **Administrative costs for Government implementation of the Bill**

There are no such costs for the Government arising from this Bill.

**Consistency with fundamental legislative principles**

The Bill is consistent with fundamental legislative principles except in relation to the determination of the bodies which are bound by new schedules 3 and 4. These schedules are to replace regulations which currently prescribe how the Financial Administration and Audit Act applies to company GOCs (made pursuant to section 128) and which prescribe how Chapter 3 of the GOC Act applies to company GOC subsidiaries (section 177).

The prescription by way of regulation of the company GOC subsidiaries which are bound by these schedules can be regarded as a “Henry VIII” provision and as such offend section 4(4) of the Legislative Standards Act. However, the regulation procedure is the only manner in which the appropriate company GOC subsidiaries can have the various schedules applied.

A number of provisions of the GOC Act apply in their own right to subsidiaries of GOCs. In the majority of cases, this is all that is required to effectively oversight the activities of these subsidiaries. However, most of Chapter 3 (Government Owned Corporations) applies only to GOCs. The current section 177 enables a regulation to apply the relevant provisions of Chapter 3 where it is considered that the usual controls over a subsidiary are not considered adequate.

This was the case with the initial structure of the electricity industry when corporatised in 1995 - the subsidiaries in question being the various distribution boards which were in themselves substantial bodies. With the current restructured electricity industry, only the subsidiary retail corporations (again substantial trading bodies) are subject to the application of Chapter 3 of the GOC Act.

It is therefore unknown, at this stage, whether any particular company GOC subsidiary should be covered by the modified provisions of Chapter 3 of the GOC Act. As a company GOC subsidiary can be created quickly without the need for legislation, there needs to be a mechanism to have these provisions applied in appropriate cases. The prescription by regulation is considered the most appropriate, enabling a degree of Parliamentary scrutiny and possible disallowance.

The same situation exists with the application of the Financial Administration and Audit Act pursuant to section 128 of the GOC Act. The proposed amendment to section 128 will apply schedule 3 to all

company GOCs automatically, but only to those company GOC subsidiaries that are prescribed by regulation. Again, the existing regulation made under this section only applies to the electricity industry retail corporations. All other subsidiaries of GOCs are caught in the normal reporting arrangements of the holding company under the Corporations Law and the provisions of the GOC Act applying the Financial Administration and Audit Act.

### **Consultation**

Intermittent but on-going discussions have been held with various GOCs over the last three years, especially with regard to the impact of the provisions of the GOC Act dealing with administrative and procedural matters. Discussions have also been held with all relevant State Government Departments.

## **PART 1—PRELIMINARY**

*Clause 1* specifies the short title of the Act.

*Clause 2* provides for the commencement of the Act.

## **PART 2—AMENDMENT OF GOVERNMENT OWNED CORPORATIONS ACT 1993**

*Clause 3* provides that, both this Part and schedule 1 (Amendments of *Government Owned Corporations Act 1993* relating to provisions that allow for modification of certain provisions of the Act and other legislation), amend the GOC Act.

*Clause 4* provides for the insertion of a definition of “senior executive” of a GOC.

*Clause 5* provides for the definition of “government entity” to be

amended to put beyond doubt that a statutory GOC or part of a statutory GOC is also a government entity.

*Clause 6* acknowledges that the principle of corporatisation called “competitive neutrality”, which provides that GOCs should compete on equal terms with the private sector requires amendment in the light of National Competition Policy reform because many GOCs compete with other GOCs in the State or other government sector bodies rather than the private sector. Hence the amendment proposes to refer to “other entities carrying on business”.

*Clause 7* provides for the replacement of section 23 of the GOC Act with a provision which indicates that a government entity must become a candidate GOC or a candidate GOC associate before becoming a statutory GOC or a company GOC. Also, a statutory GOC or part of a statutory GOC must become or become again a candidate GOC before it can become a company GOC.

*Clause 8* provides for the amendment of provisions concerning the preparation of a candidate GOC’s draft corporatisation charter by the charter preparation committee of a candidate GOC. The committee must comply with a request from responsible Ministers concerning a candidate GOC’s draft corporatisation charter, which is similar to the requirement placed on an establishment committee by a local government under the comparable provision in section 458EG of the *Local Government Act 1993*.

*Clause 9* inserts a provision putting beyond doubt that the corporatisation charter of a candidate GOC stops having effect when the candidate becomes a GOC.

*Clause 10* inserts a provision which indicates that the directors on the interim board of a government entity that is to become a GOC go out of office when the entity becomes a GOC and that the directors on the interim board of a government entity that is to become a GOC subsidiary go out of office when the entity of which it is a subsidiary or proposed subsidiary becomes a GOC.

*Clause 11* inserts a provision which indicates that the directors on the interim board of a candidate GOC associate go out of office when the associate becomes a GOC and that in the case of an associate subsidiary, the directors on the interim board go out of office when the candidate GOC associate of which it is a subsidiary becomes a GOC.

*Clause 12* indicates that it is the responsible Ministers rather than the shareholding Ministers who may give the direction under section 58(7), in line with other references to the term “responsible Ministers” within the section.

*Clause 13* replaces the existing Part 5A with a new Part 5A which extends the coverage of the part to include the appointment of a company GOC’s first chief executive officer and first senior executives, in addition to the previous coverage of the appointment of a statutory GOC’s first chief executive officer and first senior executives. Provision is also made for the use of the new Part by the board of directors of a candidate GOC that is to become a statutory GOC or a company GOC to be subject to authorisation by the relevant responsible Ministers.

*Clause 14* amends section 63A to permit an associate to become a company GOC. This brings the procedure for company GOCs into line with those applying to statutory GOCs.

*Clause 15* provides for further clarification of the matters which are not affected by the declaration of an entity as a GOC by extending the type of matters and circumstances which are not to be affected by such a declaration.

*Clause 16* provides for the qualifications of an employee of a statutory GOC to whom a statutory GOC’s board may appropriately delegate its powers.

*Clause 17* amends section 96(2) by indicating that in appointing a person as a director, the Governor in Council must have regard to the person’s ability to make a contribution to the implementation of the statement of corporate intent, if the relevant GOC has such a statement.

*Clause 18* inserts new provisions into Part 5-Board of Directors, Division 2-Company GOCs providing that public service officers are not eligible for appointment as directors of company GOCs. Also, in the case of a government entity being a candidate GOC or a candidate GOC associate that is to become a company GOC, for the appointment of the first board of the company GOC, the Governor in Council may act under section 96 (Composition of board) of the GOC Act before the commencement of a regulation declaring the candidate GOC, or the candidate GOC associate, to be a GOC.

*Clause 19* provides for the qualifications of an employee of a statutory GOC to whom a statutory GOC’s chief executive officer may appropriately delegate the chief executive officer’s powers.

*Clause 20* provides for a minor amendment of a drafting nature to section 114(2) of the GOC Act as a result of changes to section 115 (Additional matters to be included in statement of corporate intent).

*Clause 21* provides that the list of additional matters to be included in a statement of corporate intent is discretionary. The section as currently

Ministers it is considered more appropriate that they be discretionary. Other minor amendments of a drafting nature are made to section 115 of the GOC Act.

*Clause 22* omits section 129 of the GOC Act, because the *Public Accounts Committee Act 1988* was repealed by the *Parliamentary Committees Act 1995*, under which the Parliamentary Public Accounts Committee is explicitly given the role of examining government financial documents. The definition of the term “government financial documents” includes the “annual financial statements and annual reports of a GOC”.

*Clause 23* provides for a minor amendment to section 130 of the GOC Act, whereby it will be necessary for four quarterly reports, as well as the annual report, to be given to the shareholding Ministers. The present position whereby the annual report is taken to suffice for the fourth quarter is inefficient as, in practice, the annual report does not provide the same information as provided in the quarterly reports and arrives too late to provide the information required for monitoring purposes.

*Clause 24* provides for the insertion of a provision whereby the board of a GOC must comply with the requirements of section 159(1) of the GOC Act within 1 month after the end of each financial year or, in a case where the shareholding Ministers may have extended the period to a period not longer than 3 months after the end of a financial year, within that extended period.

*Clause 25* provides for the insertion of a new Part 15A-GOCs and GOC subsidiaries becoming and retiring as Trustees, dealing with GOCs or GOC subsidiaries becoming and retiring as trustees of a trust, subject to the prior written approval of the shareholding Ministers or the shareholding Ministers of the GOC of which it is a subsidiary, in each instance. This brings the use of trusts by GOCs into line with the creation and disposal of subsidiaries.

*Clause 26* omits section 176 of the GOC Act, because the *Electoral and Administrative Review Act 1989* was repealed by the *Parliamentary Committees Act 1995*.

*Clause 27* provides for the correction of a minor error in the definition in section 182(2) of the GOC Act from “competitive commercial activity” to “commercially competitive activity”.

*Clause 28* provides for a minor amendment to section 11(2) of Schedule 1 of the GOC Act and amends section 11(3) thereof by providing that public service officers are not eligible for appointment as directors of statutory GOCs. These amendments are consistent with similar amendments made in clauses 17 and 18 (part only) of the Bill in relation to company GOCs.

## **ACT 1993**

*Clause 29* provides for the amendment of the *Local Government Act 1993*.

*Clause 30* provides for the omitting of section 458DM(3) and (4), consistent with the omitting of sections 13(3) and (4) of the GOC Act, which is referred to in item 4 of schedule 1 (Amendments of *Government Owned Corporations Act 1993* relating to provisions that allow for modifications of certain provisions of the Act and other legislation).

*Clause 31* provides for the omitting of section 458DO, consistent with the omitting of section 14 of the GOC Act, which is referred to in item 6 of schedule 1.

*Clause 32* provides for amendments to section 458FH, removing any references to words such as “and any changes prescribed by regulation” consistent with the amendments made to section 57B(1) to (4) of the GOC Act, which is referred to in item 11 of schedule 1, and also omitting section 458FH(7).

*Clause 33* provides that the provisions of the *Corporations Law* do not apply to a corporatised corporation, consistent with the amendment made to section 67 of the GOC Act, which is referred to in item 13 of schedule 1.

*Clause 34* inserts a minor amendment regarding the qualifications of an employee of a corporation to whom the corporation’s board may appropriately delegate its powers. This amendment is consistent with a similar amendment made under the GOC Act and referred to in clause 16 of this Bill.

*Clause 35* inserts a minor amendment regarding the qualifications of an employee of a corporation to whom a corporation’s chief executive officer may appropriately delegate the chief executive officer’s powers. This amendment is consistent with a similar amendment made to the GOC Act in clause 19 of this Bill.

*Clause 36* provides for amendments to section 458IE, removing the reference to words “changes prescribed by regulation” consistent with the amendment made to section 127 of the GOC Act, which is referred to in item 14 of schedule 1, and also removing section 458IE(2).

## **PART 4—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994**



*Clause 37* provides for the amendment of the *Transport Infrastructure Act 1994*.

*Clause 38* provides for the omitting of Chapter 6, Part 2 of the Act, as the function of Queensland Rail deals with matters unconnected with rail.

*Clause 39* inserts a new Chapter 8A-Function of Queensland Rail, clarifying the function of Queensland Rail to enable it to operate commercially. The present provisions restrict the ability of Queensland Rail to operate within the transport industry generally in that its function is limited to rail transport and matters incidental to this. In addition, its function is limited to being carried out in Queensland. These restrictions create problems with the operation of certain of Queensland Rail activities which were undertaken by it at the time it was corporatised. The proposed amendment provides the means whereby Queensland Rail may properly pursue all aspects of its activities relative to its function.

## **PART 5—MINOR AMENDMENTS OF OTHER LEGISLATION**

*Clause 40* provides, in schedule 2 (Minor Amendments), for the amendment of the *Government Loans Redemption and Conversion Act 1923* and the *Queensland Treasury Corporation Act 1988*.

### ***Schedule 1***

Makes a number of amendments, by omitting provisions which enable provisions of acts to be amended by regulation. Apart from a number of minor amendments it inserts a new Schedule 3, which applies the Financial Administration and Audit Act to company GOCs and company GOC subsidiaries, and a new Schedule 4, which applies chapter 3 of the GOC Act to prescribed company GOC subsidiaries. These Schedules will replace existing regulations made under sections 128 and 177 respectively.

### ***Schedule 2***

Makes minor changes to the *Government Loans Redemption and Conversion Act 1923* and the *Queensland Treasury Corporation Act 1988*.

© The State of Queensland 1998