

Queensland



# GOVERNMENT OWNED CORPORATIONS ACT 1993

Reprinted as in force on 7 August 1998  
(includes amendments up to Act No. 21 of 1998)

Reprint No. 5

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This Act is reprinted as at 7 August 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- correct minor errors (s 44).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of corrected minor errors**
- **editorial changes made in earlier reprints.**



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# GOVERNMENT OWNED CORPORATIONS ACT 1993

[as amended by all amendments that commenced on or before 7 August 1998]

**An Act to provide for the corporatisation of nominated government entities and for related purposes**

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTION

#### Short title

1. This Act may be cited as the *Government Owned Corporations Act 1993*.

### PART 2—INTERPRETATION

#### Definitions

3. In this Act—

“**articles**” means articles of association.

“**associate**” of a candidate GOC has the meaning given by section 24A.

“**associate subsidiary**” means a GOC Act entity declared by regulation to be a subsidiary of a candidate GOC associate.

**“board”** of a GOC means the GOC’s board of directors.

**“borrow”** includes—

- (a) raise money or credit; and
- (b) obtain financial accommodation; and
- (c) borrow in a foreign currency.

**“candidate GOC”** has the meaning given by section 24.

**“Commonwealth tax”** means tax imposed under a Commonwealth Act.

**“community service obligations”** has the meaning given by section 121.

**“company GOC”** has the meaning given by section 7(3).

**“corporatisation”** has the meaning given by section 16.

**“corporatisation charter”** of a candidate GOC means—

- (a) the draft corporatisation charter approved by the candidate GOC’s responsible Ministers as its corporatisation charter; or
- (b) if the responsible Ministers approve an amendment of the corporatisation charter—the corporatisation charter as amended.

**“department”** means department of government.

**“financial accommodation”** includes a financial benefit, or assistance to obtain a financial benefit, arising from or because of—

- (a) a loan; or
- (b) issuing, endorsing or otherwise dealing in promissory notes; or
- (c) drawing, accepting, endorsing or otherwise dealing in bills of exchange; or
- (d) issuing, purchasing or otherwise dealing in securities; or
- (e) granting or taking a lease of any property for financing purposes; or
- (f) another arrangement prescribed by regulation.

**“GOC”** (or **“government owned corporation”**) has the meaning given by section 6.

**“GOC Act entity”** means an entity established by a regulation under this Act.

**“GOC Minister”** has the meaning given by section 8.

**“government company”** means a corporation incorporated under the Corporations Law all the stock or shares in the capital of which is or are beneficially owned by the State.

**“government entity”** has the meaning given by section 5.

**“government entity that is to become a company GOC”** has the meaning given by section 25(3).

**“government entity that is to become a GOC”** has the meaning given by section 25(1).

**“government entity that is to become a statutory GOC”** has the meaning given by section 25(2).

**“government entity that is to become a subsidiary of a GOC”** has the meaning given by section 25(4).

**“instrument”** means an instrument of any kind, and includes, for example—

- (a) a contract, deed, agreement, arrangement, understanding or undertaking; and
- (b) a mandate, instruction, notice, authority or order; and
- (c) a lease, licence, transfer, conveyance or other assurance; and
- (d) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) a mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing.

**“key principles of corporatisation”** has the meaning given by section 19.

**“lease”** includes—

- (a) a lease, licence, charter or hiring arrangement of property; and
- (b) an arrangement under which a right to use, operate or provide

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services in relation to property is granted by the owner to another person.

**“memorandum”** means memorandum of association.

**“portfolio Minister”** has the meaning given by section 8.

**“proposed subsidiary”** of a GOC or candidate GOC means a government entity that is declared by regulation to be a proposed subsidiary of the GOC or candidate GOC.

**“responsible Ministers”** has the meaning given by—

- (a) for a candidate GOC that is not already a statutory GOC or a part of a statutory GOC—section 31; or
- (b) for a candidate GOC that is already a statutory GOC or a part of a statutory GOC—section 33; or
- (c) for a candidate GOC associate—section 31A.

**“security”** includes inscribed stock, debenture, bond, debenture stock, note and any other document creating, evidencing or acknowledging indebtedness (whether or not constituting a charge on property).

**“senior executive”**, of a GOC, includes the holder of an office in the GOC that reports directly to the GOC’s chief executive officer and that is commensurate with an office held by a senior executive under the *Public Service Act 1996*.

**“share”**, in relation to a candidate GOC, a GOC or another corporation, means a share in the corporation’s share capital.

**“shareholding Ministers”** of a GOC has the meaning given by—

- (a) in the case of a statutory GOC—section 74; or
- (b) in the case of a company GOC—section 80.

**“statement of corporate intent”** has the meaning given by section 9.

**“State tax”** means tax imposed under an Act.

**“statutory GOC”** has the meaning given by section 7(2).

**“subsidiary”** has the meaning given by the Corporations Law, and includes—

- (a) for a GOC or candidate GOC—a government entity declared by



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- regulation to be a subsidiary of the GOC or candidate GOC; and
- (b) for a candidate GOC associate—a GOC Act entity declared by regulation to be a subsidiary of the associate.

“**tax**” includes any tax, fee, duty, levy or charge.

“**terms**” of appointment or employment include terms relating to—

- (a) remuneration and allowances; and
- (b) duration of appointment or employment; and
- (c) termination of appointment or employment.

### **References to doing of act by GOC**

**4.** In this Act, a reference to the doing of an act by a GOC includes a reference to—

- (a) the making or giving of an instrument by the GOC; and
- (b) the transfer of property by or to the GOC; and
- (c) the incurring of a liability by the GOC.

## **PART 3—BASIC CONCEPTS**

### **Meaning of “government entity”**

**5.** A “**government entity**” is—

- (a) a government company or part of a government company; or
- (b) a State instrumentality, agency, authority or entity or a division, branch or other part of a State instrumentality, agency, authority or entity; or
- (c) a department or a division, branch or other part of a department; or
- (d) a GOC Act entity; or

- (e) a statutory GOC or part of a statutory GOC; or
- (f) an entity prescribed by regulation.

### **Meaning of “GOC”**

6. A **“GOC”** (or **“government owned corporation”**) is a government entity that is—

- (a) established as a body corporate under an Act or the Corporations Law; and
- (b) declared by regulation to be a GOC.

### **Types of GOCs**

7.(1) A GOC may be either a statutory GOC or a company GOC.

(2) A **“statutory GOC”** is a GOC that is established as a body corporate under an Act and is not registered under the Corporations Law.

(3) A **“company GOC”** is a GOC that is incorporated or registered under the Corporations Law.

(4) These are not the only differences between a statutory GOC and a company GOC.

(5) Another important difference between a statutory GOC and a company GOC is the extent to which the Corporations Law applies.

(6) In the case of a statutory GOC, the Corporations Law does not apply.

(7) In the case of a company GOC, the Corporations Law applies to the GOC except so far as this Act otherwise provides.

### **GOC and portfolio Ministers**

8.(1) The Minister is the **“GOC Minister”** of every GOC.

(2) The Minister who has the duty to administer the legislation (if any) that established, or provides for the structure or management of, the entity that became a GOC is the **“portfolio Minister”** of the GOC.

(3) However, if—

- (a) there is not a Minister who is the portfolio Minister under subsection (2); or
- (b) the portfolio Minister under subsection (2) is the GOC Minister; or
- (c) the Premier is of the opinion that another Minister should be the portfolio Minister;

the “**portfolio Minister**” of the GOC is the Minister nominated by the Premier by gazette notice.

(4) The Premier must make the nomination by nominating the holder of a particular Ministerial office by reference to the title of the office concerned.

(5) The Premier may, in an appropriate case, be nominated under subsection (3) to be the portfolio Minister of the GOC.

(6) In this section—

“**GOC**” includes a candidate GOC.

### **Meaning of “statement of corporate intent”**

9.(1) The “**statement of corporate intent**” of a GOC is a document created in relation to the GOC under chapter 3, part 8.

(2) It is intended that the statement of corporate intent should represent an agreement between the GOC’s board of directors and its shareholding Ministers.

## **PART 4—OPERATION OF ACT AND APPLICATION OF LAWS**

### **Act binds State**

10. This Act binds the State.

**Extraterritorial operation**

**11.** It is the intention of Parliament that this Act should apply, as far as possible, to—

- (a) land and things outside Queensland (whether in or outside Australia); and
- (b) acts, transactions and things done, entered into or happening outside Queensland (whether in or outside Australia); and
- (c) land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction (including a foreign country).

**Application of other laws to GOCs**

**12.(1)** This Act applies to a GOC despite anything in an Act that was enacted before the commencement of this Act.

**(2)** If there is an inconsistency between this Act and an Act enacted before the commencement of this Act, this Act prevails to the extent of the inconsistency.

**(3)** This Act, and any provision of this Act, has effect subject to a provision of an Act enacted after the commencement of this Act that expressly provides that this Act or the provision is subject to it.

**Application of other laws to candidate GOCs**

**13.(1)** Chapter 2 applies to a candidate GOC despite anything in an Act that was enacted before the commencement of this Act.

**(2)** If there is an inconsistency between chapter 2 and an Act enacted before the commencement of this Act, chapter 2 prevails to the extent of the inconsistency.

**(3)** Chapter 2, and any provision of chapter 2, has effect subject to a provision of an Act enacted after the commencement of this Act that expressly provides that the chapter or provision is subject to it.

## **PART 5—OUTLINE OF ACT AND ITS BACKGROUND AND OBJECTIVES**

### **What Act provides**

**15.** This Act makes provision for a structural reform process (“**corporatisation**”) for nominated government entities.

### **Meaning of “corporatisation”**

**16. “Corporatisation”** is a structural reform process for nominated government entities that—

- (a) changes the conditions and (where required) the structure under which the entities operate so that they operate, as far as practicable, on a commercial basis and in a competitive environment; and
- (b) provides for the continued public ownership of the entities as part of the process; and
- (c) allows the State, as owner on behalf of the people of Queensland, to provide strategic direction to the entities by setting financial and non-financial performance targets and community service obligations.

### **Objectives of corporatisation**

**17.** The objectives of corporatisation are to improve Queensland’s overall economic performance, and the ability of the Government to achieve social objectives, by—

- (a) improving the efficiency and effectiveness of GOCs; and
- (b) improving the accountability of GOCs.

### **How objectives of corporatisation are to be achieved—key principles and their elements**

**18.** The objectives of corporatisation are to be achieved through application of the key principles of corporatisation and their elements.

**Meaning of “key principles of corporatisation”**

**19.** The 4 “key principles of corporatisation”, and their elements, are as follows—

**(a) Principle 1—Clarity of objectives**

The elements of this principle are that—

- each GOC will have clear, non-conflicting objectives;
- each GOC will be set specific financial and non-financial performance targets for its commercial activities;
- any activities of a governmental policy formulation or regulatory nature will, or, in the case of a statutory GOC, will wherever possible, be transferred from the GOC to a department, separate regulatory authority or other agency;
- any community service obligations of the GOC will be—
  - clearly identified in the GOC’s statement of corporate intent; and
  - separately costed;
- the GOC will be appropriately compensated for its community service obligations and any funding will be made apparent;
- the GOC will be set performance targets for its community service obligations;

**(b) Principle 2—Management autonomy and authority**

The elements of this principle are that—

- each GOC will have a board of directors;
- the board will be required to use its best endeavours to ensure that the GOC meets its performance targets;
- the board will be given the autonomy and authority to make commercial decisions within areas of responsibility defined by the corporatisation framework;
- existing detailed controls over management decision making will be replaced with strategic monitoring procedures;

- the role of Ministers in relation to the GOC will be clearly defined;
- Ministerial reserve powers will be required to be exercised in an open way;

**(c) Principle 3—Strict accountability for performance**

The elements of this principle are that—

- the GOC's board will be accountable to the shareholding Ministers for the GOC's performance;
- the GOC's statement of corporate intent will form the basis for accountability;
- performance will be monitored by the Government against performance targets specified in the statement of corporate intent;
- Government monitoring of the GOC is intended to compensate for the absence of the wide range of monitoring to which listed corporations are subject by, for example, the sharemarket and Commonwealth regulatory agencies;

**(d) Principle 4—Competitive neutrality**

The elements of this principle are that—

- the efficiency of overall resource use in the State is promoted by ensuring that markets are not unnecessarily distorted;
- in order to ensure, wherever possible, that each GOC competes on equal terms with other entities carrying on business, any special advantages or disadvantages of the GOC because of its public ownership or its market power will be removed, minimised or made apparent;
- in circumstances where a GOC has excessive market power—
  - structural reform may be necessary to increase competition; and
  - special monitoring may be necessary to prevent market abuse.

**Key objectives of GOC under corporatisation**

**20.(1)** Under corporatisation the key objectives of a GOC are to be commercially successful in the conduct of its activities and efficient in the delivery of its community service obligations.

**(2)** The commercial success and efficiency of a GOC are to be measured against its financial and non-financial performance targets.

**How Act will enable management of the corporatisation process**

**21.(1)** This Act is intended to enable the corporatisation process to be applied—

- (a) progressively as government entities move through various stages of the process; and
- (b) flexibly to achieve consistent outcomes that are appropriate to the broad range of government entities and the stage that they have reached in the corporatisation process.

**(2)** By providing for 2 types of GOCs and otherwise enabling the corporatisation process to be applied progressively and flexibly, the Act allows a choice to be made, both initially and subsequently, about the most appropriate corporatisation structure for a particular government entity.

**(3)** This Act provides, if required, for a transitional stage of corporatisation through preparation and implementation of a corporatisation charter.

**(4)** The Act also imposes accountability and performance monitoring requirements for all GOCs.



## **CHAPTER 2—MECHANISMS FOR CREATING AND ALTERING TYPES OF GOCs**

### **PART 1—OUTLINE OF THE PROCESSES**

#### **What this part provides**

**22.** This part makes provision for the processes necessary to allow—

- (a) government entities to become statutory GOCs and company GOCs; and
- (b) statutory GOCs and parts of statutory GOCs to become company GOCs; and
- (c) government entities to become subsidiaries of statutory GOCs and company GOCs.

#### **Government entity becoming a GOC**

**23.(1)** Before becoming a GOC, a government entity must become a candidate GOC or a candidate GOC associate.

**(2)** To remove doubt, it is declared that before becoming a company GOC—

- (a) a statutory GOC must become, or again become, a candidate GOC; and
- (b) a part of a statutory GOC must become a candidate GOC.

#### **Meaning of “candidate GOC”**

**24.** A “candidate GOC” is—

- (a) a government entity that is nominated under part 2 to be a candidate GOC; or
- (b) a statutory GOC, or part of a statutory GOC, that is nominated

under part 2 to be a candidate GOC that is to become a company GOC.

### **Meaning of “associate” of candidate GOC**

**24A.** An “associate” of a candidate GOC is a GOC Act entity nominated under part 2 to be an associate of the candidate GOC.

### **Meaning of certain expressions about government entities**

**25.(1)** A government entity is taken to be a government entity that is to become a GOC if it is a candidate GOC or a candidate GOC associate.

**(2)** A government entity is taken to be a government entity that is to become a statutory GOC if a regulation has declared that it is to become a statutory GOC.

**(3)** A government entity is taken to be a government entity that is to become a company GOC if a regulation has declared that it is to become a company GOC.

**(4)** A government entity is taken to be a government entity that is to become a GOC subsidiary if it is a subsidiary or proposed subsidiary of a candidate GOC or a subsidiary of a candidate GOC associate.

## **PART 2—NOMINATION AND DECLARATION OF ENTITIES**

### **Nomination of government entity to become candidate GOC**

**26.(1)** The Governor in Council may, by regulation, nominate a government entity that is not already a GOC to be a candidate GOC.

**(2)** To remove any doubt, it is declared that the Governor in Council may nominate 2 or more government entities that are not already GOCs to be a single candidate GOC.

(3) This Act applies to entities mentioned in subsection (2) with all necessary modifications.

### **Nomination of GOC Act entity to become candidate GOC associate**

**26A.** The Governor in Council may, by regulation, nominate a GOC Act entity to be an associate of a particular candidate GOC.

### **Declaration of GOC Act entity to be subsidiary of candidate GOC associate**

**26B.** A regulation may declare a GOC Act entity to be a subsidiary of a particular candidate GOC associate.

### **Nomination of statutory GOC etc. to become company GOC**

**27.** The Governor in Council may, by regulation, nominate a statutory GOC, or part of a statutory GOC, to be a candidate GOC that is to become a company GOC.

## **PART 3—PREPARATION OF CORPORATISATION CHARTER**

### *Division 1—Preliminary*

#### **Meaning of “corporatisation charter”**

**28.** The “corporatisation charter” of a candidate GOC sets out the steps by which, and the basis on which—

- (a) a candidate GOC is to become a GOC or is to change its type to a company GOC; and
- (b) the key principles of corporatisation, and their elements, are to be implemented.

**Candidate GOC may become GOC following corporatisation charter**

**29.(1)** A government entity that is a candidate GOC may become a GOC following the preparation and implementation of a corporatisation charter.

**(2)** However, in appropriate cases a candidate GOC may become a GOC even if—

- (a) it has not fully prepared a corporatisation charter; or
- (b) it has prepared, but has not fully implemented, a corporatisation charter; or
- (c) it has not prepared or implemented a corporatisation charter.

**Candidate GOC may change its type to company GOC following corporatisation charter**

**30.(1)** A candidate GOC that is a statutory GOC, or part of a statutory GOC, may become a company GOC following the preparation and implementation of a corporatisation charter.

**(2)** However, in appropriate cases a statutory GOC, or a part of a statutory GOC, may become a company GOC even if—

- (a) it has not fully prepared a corporatisation charter; or
- (b) it has prepared, but has not fully implemented, a corporatisation charter; or
- (c) it has not prepared or implemented a corporatisation charter.

***Division 2—Responsible Ministers*****Responsible Ministers of candidate GOC that is not existing GOC**

**31.(1)** This section applies to a candidate GOC that is not a statutory GOC or a part of a statutory GOC.

**(2)** The GOC Minister and the portfolio Minister of the candidate GOC are its responsible Ministers.

**Responsible Ministers of candidate GOC associate**

**31A.** The responsible Ministers of a candidate GOC associate are the Ministers who are the responsible Ministers of the associate's candidate GOC.

**Responsible Ministers not directors etc.**

**32.(1)** The responsible Ministers of a candidate GOC are not to be treated as directors of the candidate GOC or any subsidiary or proposed subsidiary of the candidate GOC.

**(2)** The responsible Ministers of a candidate GOC associate are not to be treated as directors of the associate or any subsidiary of the associate.

**(3)** A Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act in relation to a government entity that is to become a GOC or GOC subsidiary.

**(4)** A liability that would, apart from subsection (3), attach to a Minister attaches instead to the State.

**(5)** This section has effect despite the Corporations Law.

**Shareholding Ministers are responsible Ministers for existing GOC**

**33.(1)** This section applies to a candidate GOC that is a statutory GOC or a part of a statutory GOC.

**(2)** The shareholding Ministers of the GOC are the candidate GOC's responsible Ministers.

*Division 3—Draft corporatisation charter***Responsible Ministers may determine that draft corporatisation charter be prepared and submitted**

**34.(1)** If the responsible Ministers of a candidate GOC consider that the preparation and implementation of a corporatisation charter would facilitate the corporatisation process for the candidate GOC, the Ministers may

determine a draft corporatisation charter should be prepared and submitted to the Ministers.

(2) If the Ministers determine that a draft corporatisation charter should be prepared and submitted to the Ministers, the following provisions of this division apply.

### **Matters to be included in draft corporatisation charter**

**35.(1)** The responsible Ministers may determine that the draft corporatisation charter should contain all or any of the following matters—

- (a) an outline of how the key principles of corporatisation and their elements are to be applied to the candidate GOC and a timetable for their application;
- (b) if the candidate GOC is not already a GOC—a recommendation whether the candidate GOC should initially become a statutory GOC or company GOC and an outline of the reasons for the recommendation;
- (c) an outline of any legislation under which the candidate GOC is to operate when it becomes a GOC;
- (d) target dates for the enactment and commencement of any legislation;
- (e) a timetable for the adoption of appropriate systems of accounting by the candidate GOC;
- (f) a timetable for the adoption of commercial management and performance systems by the candidate GOC;
- (g) a timetable and method for valuing the assets of the candidate GOC and determining its capital structure;
- (h) recommendations regarding the activities the candidate GOC should undertake before it becomes a GOC;
- (i) any other matter specified by the responsible Ministers.

(2) The responsible Ministers may also determine that the draft corporatisation charter should contain a timetable for—

- (a) identifying any existing activities of the candidate GOC of a policy formulation or regulatory nature; and

- (b) identifying options for transferring the activities from the candidate GOC to a department, separate regulatory authority or other agency; and
- (c) identifying any other community service obligations of the candidate GOC; and
- (d) costing any community service obligations of the candidate GOC.

### **Responsible Ministers may determine other matters relevant to draft corporatisation charter preparation**

**36.(1)** The responsible Ministers may determine—

- (a) steps to be taken in preparing the draft corporatisation charter; and
- (b) any other matter with respect to the preparation of the draft corporatisation charter.

**(2)** Without limiting subsection (1), the responsible Ministers may determine that specified assumptions are to be made in preparing the draft corporatisation charter, including, for example, if the candidate GOC is not already a GOC, the assumption that the candidate GOC will become a statutory GOC or a company GOC.

**(3)** Without limiting subsection (1), the responsible Ministers may determine a timetable or time limit for the preparation of the draft corporatisation charter.

### **Responsible Ministers may give directions to candidate GOC about charter preparation**

**37.(1)** The responsible Ministers of the candidate GOC may give the candidate GOC written directions in relation to the candidate GOC and its subsidiaries that appear to them to be necessary or desirable to enable the draft corporatisation charter to be prepared.

**(2)** Without limiting subsection (1), if a charter preparation committee has been appointed to prepare the draft corporatisation charter for the candidate GOC, the responsible Ministers may direct the candidate GOC—

- (a) to give to the committee information about the candidate GOC and its subsidiaries that the committee considers necessary or

desirable for the preparation of the draft charter; or

- (b) to permit the committee to have access to records and other documents about the candidate GOC and its subsidiaries that the committee considers necessary or desirable for the preparation of the draft charter; or
- (c) to take steps that the committee considers necessary or desirable for the preparation of the draft charter.

(3) The candidate GOC must ensure that a direction given to it under this section is complied with in relation to itself and must, as far as practicable, ensure that it is also complied with in relation to its subsidiaries.

(4) In this section—

“**subsidiary**” includes proposed subsidiary.

#### *Division 4—Charter preparation committee*

### **Charter preparation committee may be appointed**

38. The responsible Ministers of a candidate GOC may appoint a charter preparation committee to prepare a draft corporatisation charter for the candidate GOC.

### **Conduct of meetings and other business**

39.(1) The charter preparation committee of a candidate GOC may conduct its business (including its meetings) in the way that it considers appropriate.

(2) However, the committee must comply with any direction given to it, and any determination made, by the responsible Ministers.

### **Terms of appointment**

40. A member of the charter preparation committee of a candidate GOC holds office on any terms of appointment determined by the responsible Ministers.



**Resignation and removal from office**

**41.(1)** A member of the charter preparation committee of a candidate GOC may resign by signed notice given to the responsible Ministers.

**(2)** The responsible Ministers may terminate the appointment of a member of the charter preparation committee for any reason or none.

**Draft corporatisation charter to be given to responsible Ministers**

**42.(1)** When the charter preparation committee of a candidate GOC has prepared the candidate GOC's draft corporatisation charter, the committee must give a copy of the draft charter to the responsible Ministers.

**(2)** The responsible Ministers may return the draft charter to the committee and request it to—

- (a)** consider or further consider any matter and deal with the matter in the draft charter; and
- (b)** revise the draft charter in the light of its consideration or further consideration.

**(3)** The committee must comply with the request.

***Division 5—Corporatisation charter*****Approval of draft corporatisation charter**

**43.(1)** The responsible Ministers of a candidate GOC may approve a draft corporatisation charter as the candidate GOC's corporatisation charter.

**(2)** Subsection (1) applies to a draft corporatisation charter whether or not the draft corporatisation charter was prepared by a charter preparation committee appointed for the candidate GOC.

**Approval of amendments of corporatisation charter**

**44.** The responsible Ministers of a candidate GOC may approve an amendment of the candidate GOC's corporatisation charter.

## **PART 4—IMPLEMENTATION OF CORPORATISATION CHARTER**

### **Charter administration committee may be appointed**

**45.** The responsible Ministers of a candidate GOC may appoint a charter administration committee to ensure that the candidate GOC's corporatisation charter is implemented in a timely, efficient and effective way.

### **Conduct of meetings and other business**

**46.(1)** The charter administration committee of a candidate GOC may conduct its business (including its meetings) in the way that it considers appropriate.

**(2)** However, the committee must comply with any direction given to it, and any determination made, by the responsible Ministers.

### **Terms of appointment**

**47.** A member of the charter administration committee of a candidate GOC holds office on any terms of appointment determined by the responsible Ministers.

### **Resignation and removal from office**

**48.(1)** A member of the charter administration committee of a candidate GOC may resign by signed notice given to the responsible Ministers.

**(2)** The responsible Ministers may terminate the appointment of a member of the charter administration committee for any reason or none.

### **Responsible Ministers may give directions to candidate GOC about charter implementation**

**49.(1)** The responsible Ministers of a candidate GOC may give the candidate GOC written directions in relation to the candidate GOC and its subsidiaries that appear to them to be necessary or desirable to enable the

candidate GOC's corporatisation charter to be implemented.

(2) Without limiting subsection (1), if a charter administration committee has been appointed for the candidate GOC, the responsible Ministers may direct the candidate GOC—

- (a) to give to the committee information about the candidate GOC and its subsidiaries that the committee considers necessary or desirable for the implementation of the candidate GOC's corporatisation charter; or
- (b) to permit the committee to have access to records and other documents about the candidate GOC and its subsidiaries that the committee considers necessary or desirable for the implementation of the candidate GOC's corporatisation charter; or
- (c) to take steps that the committee considers necessary or desirable for the implementation of the candidate GOC's corporatisation charter.

(3) The candidate GOC must ensure that a direction given to it under this section is complied with in relation to itself and must, as far as practicable, ensure that it is also complied with in relation to its subsidiaries.

(4) In this section—

“**subsidiary**” includes proposed subsidiary.

### **Responsible Ministers may give directions to candidate GOC associate about its functions**

**49A.(1)** The responsible Ministers of a candidate GOC associate may give the associate written directions for the associate and its subsidiaries that appear to them to be necessary or desirable about the performance of the associate's functions.

(2) The associate must ensure that a direction given to it under this section is complied with in relation to itself and must, as far as practicable, ensure that it is also complied with in relation to its subsidiaries.

**Corporatisation charter stops having effect when candidate GOC becomes GOC**

**49B.** The corporatisation charter of a candidate GOC stops having effect when the candidate, or an associate of the candidate, becomes a GOC.

**PART 5—CORPORATISATION FACILITATIVE MECHANISMS****Purpose of part**

**50.** This part provides mechanisms to facilitate the corporatisation process by enabling, among other things—

- (a) a government entity that is a candidate GOC, or a candidate GOC associate, to be in a suitable legal form to become a GOC; or
- (b) a statutory GOC, or part of a statutory GOC, to become a company GOC; or
- (c) a government entity, other than a government entity that is to become a GOC, to become a GOC subsidiary.

**Unincorporated entities**

**51.(1)** If a government entity that is not a body corporate is to become a GOC or a GOC subsidiary, a regulation may provide that, on a specified day, the entity—

- (a) becomes a body corporate; and
- (b) has the name specified by regulation; and
- (c) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) has the functions and powers specified by regulation.

**(2)** A regulation may make provision with respect to any matter for which it is necessary or convenient to make provision to facilitate the

change of the entity from a government entity that is not a body corporate to a body corporate that is to become a GOC or a GOC subsidiary.

### **Entities that are parts of bodies corporate**

**53.(1)** This section applies to a government entity that is part of a body corporate and is to become a GOC or a GOC subsidiary.

**(2)** The body corporate mentioned in subsection (1) may be a body corporate that is—

- (a) registered under the Corporations Law; or
- (b) a statutory GOC; or
- (c) a corporation sole; or
- (d) a corporation aggregate; or
- (e) any other form of body corporate.

**(3)** If this section applies to a government entity, a regulation may make provision with respect to any matter for which it is necessary or convenient to make provision—

- (a) to facilitate the change of the entity from a government entity that is part of a body corporate to a body corporate in its own right that is to become a GOC or a GOC subsidiary; and
- (b) to make provision for other parts of the body corporate.

**(4)** Without limiting subsection (3), a regulation may make provision with respect to any matter for which provision is made by, or about which a regulation may be made under section 51, even though the government entity concerned is part of a corporation.

### **Candidate GOC associates and subsidiaries of candidate GOC associates**

**54.(1)** A regulation may provide that, on a specified day, a candidate GOC associate or an associate subsidiary—

- (a) is a body corporate; and
- (b) has the name specified by regulation; and

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- (c) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) has the functions and powers specified by regulation.

(2) A regulation may make provision with respect to any matter for which it is necessary or convenient to make provision to facilitate the change of the associate or subsidiary from a government entity that is not a body corporate to a body corporate that is to become a GOC or GOC subsidiary.

**Transfer of assets, liabilities etc. to government entity to become GOC or GOC subsidiary****54A.(1) If—**

- (a) a government entity is to become a GOC or GOC subsidiary; and
- (b) any of the following subparagraphs applies to the entity—
  - (i) the entity is not a body corporate;
  - (ii) the entity is a part of a body corporate;
  - (iii) the entity is a candidate GOC associate or associate subsidiary;
  - (iv) a regulation declares that this section applies to the entity;

the regulations may make provision with respect to—

- (c) whether, and, if so, the extent to which, the entity is the successor in law of a particular person; and
- (d) the assets and liabilities that are, or are not, assets and liabilities of the entity or of someone else; and
- (e) the consideration for a transfer of assets to the entity, which may include a debt to be owed by the entity to the shareholding Ministers of the GOC that the entity is to become or of which it is to become a subsidiary; and
- (f) the instruments that are, or are not, to apply to the entity, including whether or not the instruments are taken to be instruments—

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- (i) to which the entity is a party; or
  - (ii) that were given to, by or in favour of the entity; or
  - (iii) in which a reference is made to the entity; or
  - (iv) 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 the entity; and
- (g) the proceedings to which the entity becomes a party in substitution for someone else; and
- (h) the existing officers and employees of the entity and their rights; and
- (i) if the entity is a candidate GOC associate or subsidiary of a candidate GOC associate—the existing officers and employees of the candidate GOC and any subsidiary of the candidate GOC and the officers' and employees' rights.
- (2)** Without limiting subsection (1)—
- (a) a regulation under subsection (1)(e) may make provision about—
    - (i) how the consideration is to be decided; and
    - (ii) the changing of the consideration, whether before or after the entity concerned becomes a GOC or subsidiary of a GOC; and
    - (iii) the terms of the debt; and
  - (b) a regulation under subsection (1)(f) may make provision about whether, and, if so, the extent to which, instruments apply to the entity in substitution for someone else; and
  - (c) a regulation under subsection (1)(h) or (i) may provide for the office (including that of chief executive officer or a senior executive) the officer or employee is to hold in the entity when it becomes a GOC or subsidiary of a GOC.
- (3)** A regulation under subsection (1)(h) or (i) has effect despite the following provisions—
- section 57B (Application of certain provisions about directors and executives to candidate GOC associates and associate

subsidiaries)

- section 102 (Appointment of chief executive officer)
- section 168 (Appointment of senior executives)
- schedule 2 (Additional provisions relating to chief executive officer of statutory GOC), section 1 (Appointment of chief executive officer).

(4) A regulation mentioned in subsection (2)(c) has effect despite the Corporations Law.

(5) A regulation under this section may be stated to commence on the entity's becoming a GOC or subsidiary of a GOC or at a later time.

### **Debt owned by State**

**54B.** A debt mentioned in section 54A(1)(e) is owned by the State and held by the shareholding Ministers for the State.

### **Memorandum and articles of candidate GOC**

**55.(1)** The responsible Ministers of a government entity that is to become a company GOC may—

- (a) adopt a memorandum and articles for the entity; and
- (b) amend the memorandum and articles previously adopted.

(2) The memorandum and articles must not be inconsistent with this Act or the Corporations Law.

(3) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(5) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (3), the Corporations Law prevails to the extent of the inconsistency.

(6) This section applies to a government entity that is to become a GOC



subsidiary as if—

- (a) the entity were a government entity that is to become a company GOC; and
- (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

### **Existing board of directors**

**56.** If a candidate GOC has a board of directors or an equivalent body, it is the role of the board or body—

- (a) to take the steps that the responsible Ministers direct regarding the implementation of the candidate GOC's corporatisation charter; and
- (b) to ensure that the candidate GOC otherwise performs its functions in a proper, efficient and effective way.

### **Interim board of directors for entity to become GOC or GOC subsidiary**

**57.(1)** If a government entity that is to become a GOC or a GOC subsidiary does not have a board of directors or an equivalent body, a regulation may provide that, on a specified day, the entity is to have an interim board of directors.

**(2)** It is the role of the interim board—

- (a) to take the steps that the responsible Ministers direct regarding the implementation of the entity's corporatisation charter; and
- (b) to ensure that the entity otherwise performs its functions in a proper, efficient and effective way.

**(3)** Schedule 1 applies to the entity, with all necessary modifications, as if the entity were a statutory GOC and the interim board of directors were its board of directors.

**(4)** The directors on the interim board go out of office—

- (a) if the entity is a government entity that is to become a GOC—when the entity becomes a GOC; or

- (b) if the entity is a government entity that is to become a GOC subsidiary—when the entity of which it is a subsidiary or proposed subsidiary becomes a GOC.

(5) Subsection (4) does not limit subsection (3).

### **Interim board of directors and chief executive officer for candidate GOC associate or associate subsidiary**

**57A.(1)** A regulation may provide—

- (a) that a candidate GOC associate or associate subsidiary is to have an interim board of directors and chief executive officer; and
- (b) for the role of the interim board of directors.

**(2)** The directors on the interim board go out of office—

- (a) for a candidate GOC associate—when the associate becomes a GOC; or
- (b) for an associate subsidiary—when the candidate GOC associate of which it is a subsidiary becomes a GOC.

### **Application of certain provisions about directors and executives to candidate GOC associates and associate subsidiaries**

**57B.(1)** Sections 98 to 100 apply to a candidate GOC associate or associate subsidiary, with all necessary changes, as if it were a statutory GOC.

**(2)** Section 168 applies to a candidate GOC associate or associate subsidiary, with all necessary changes, as if it were a GOC and its interim board of directors were its board of directors.

**(3)** Schedule 1 applies to a candidate GOC associate or associate subsidiary, with all necessary changes, as if it were a statutory GOC and its interim board of directors were its board of directors.

**(4)** Schedule 2 applies to a candidate GOC associate, with all necessary changes, as if it were a statutory GOC and its interim board of directors were its board of directors.

**(5)** Schedule 2 applies to an associate subsidiary, with all necessary

changes and the change set out in subsection (6), as if it were a statutory GOC and its interim board of directors were its board of directors.

(6) For an associate subsidiary, schedule 2, section 1 (Appointment of chief executive officer) is changed as follows—

**Appointment of associate subsidiary’s chief executive officer**

1.(1) An associate subsidiary’s chief executive officer is to be appointed by the Governor in Council on the recommendation of its interim board of directors.

(2) However, before the interim board of directors makes the recommendation, it must consult with the interim board of directors of its parent corporation.

(3) In this section—

“**parent corporation**” of an associate subsidiary means the candidate GOC associate of which the associate subsidiary is a subsidiary.

**Assistance to candidate GOC associates and associate subsidiaries**

57C.(1) The responsible Ministers of a candidate GOC may direct the entities mentioned in subsection (2) to assist an associate, or a subsidiary of an associate, of the candidate GOC.

(2) The entities are—

- (a) the chief executive of a government entity of which the candidate GOC, or a subsidiary of the candidate GOC, is part; and
- (b) the candidate GOC or a subsidiary of the candidate GOC.

(3) Without limiting by implication the matters about which directions may be given under subsection (1), a candidate GOC associate or its subsidiary may arrange with the chief executive of a department, or with the candidate GOC or its subsidiaries, for the services of officers and employees of the department, candidate GOC or subsidiaries to be made available to it.

**Entity must comply with directions**

57D. An entity must comply with a direction given to it under section 57C.

### **Share capital and issue of shares**

**58.(1)** If a candidate GOC does not have a share capital, a regulation may provide that, on a specified day, the candidate GOC is taken to have a share capital of a specified amount.

**(2)** Before becoming a GOC, the candidate GOC must apply the part of its capital that the responsible Ministers direct in paying up, in full, shares in itself.

**(3)** As soon as practicable after complying with subsection (2), the candidate GOC must issue the shares paid up under the subsection.

**(4)** If a candidate GOC does not have a board of directors (including an interim board of directors), the responsible Ministers may apply the part of the capital and issue the shares on the candidate GOC's behalf.

**(5)** Chapter 3, part 3 applies to the candidate GOC—

- (a) if it is to become a statutory GOC—as if it were a statutory GOC; and
- (b) if it is to become a company GOC—as if it were a company GOC.

**(6)** Subsections (1) to (4) apply to a government entity (the “**intended subsidiary**”) that is to become a GOC subsidiary as if—

- (a) the intended subsidiary were a candidate GOC; and
- (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

**(7)** The responsible Ministers may, by written notice to the intended subsidiary, give directions about the issue, holding and transfer of shares paid up under subsection (2).

**(8)** The intended subsidiary must ensure that the directions are complied with.

**(9)** In subsections (1) to (4)—

“**candidate GOC**” includes a candidate GOC associate.

**Variation of share capital**

**59.(1)** A regulation may vary the share capital of a candidate GOC.

**(2)** Without limiting subsection (1), a regulation may provide for—

- (a) the issue of further shares in a candidate GOC; or
- (b) the cancellation of issued shares in a candidate GOC; or
- (c) the consolidation or division of issued shares in a candidate GOC.

**(3)** In this section—

“**candidate GOC**” includes—

- (a) a candidate GOC associate; and
- (b) a government entity that is to become a GOC subsidiary.

**Registration under Corporations Law**

**60.(1)** If a government entity is to become a company GOC, the entity is authorised by this section to transfer its incorporation to the Corporations Law and become registered under part 2.2, division 3 of the Corporations Law.

**(2)** The responsible Ministers of the entity are authorised to take, and authorise other persons to take, any action necessary or desirable to enable the entity to become registered under part 2.2, division 3 of the Corporations Law.

**(3)** This section applies to a government entity that is to become a GOC subsidiary as if—

- (a) the entity were a government entity that is to become a company GOC; and
- (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

**Part does not affect existing legal relationships**

**61.(1)** This part has effect despite anything in any instrument.

**(2)** Nothing done under this part in relation to a government entity—

- (a) places the entity or the State in breach of contract or confidence or otherwise makes the entity or the State guilty of a civil wrong; or
- (b) makes the entity or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or
- (c) is taken to fulfil a condition—
  - (i) that allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
  - (ii) that requires any money to be paid before its stated maturity; or
- (d) releases a surety or other obligee (in whole or part) from an obligation.

**(3)** If, apart from this subsection, the advice or consent of a person would be necessary under an instrument in order to give effect to this part, the advice is taken to have been obtained or the consent is taken to have been given.

### **Regulations may deal with other matters**

**62.(1)** A regulation may make provision with respect to any matter for which it is necessary or convenient to make provision to facilitate the transition of a government entity to—

- (a) a statutory GOC; or
- (b) a company GOC (whether or not it is already a statutory GOC or a part of a statutory GOC); or
- (c) a subsidiary of a statutory GOC or company GOC.

**(2)** Without limiting subsection (1), a regulation may provide that a provision of this chapter or chapter 1 applies to a subsidiary of a candidate GOC, a proposed subsidiary of a GOC or candidate GOC, or a candidate GOC associate, or an associate subsidiary, with all necessary modifications and any modifications prescribed by regulation, as if it were—

- (a) a candidate GOC; or

- (b) a candidate GOC of a particular type; or
- (c) a subsidiary of a candidate GOC; or
- (d) a subsidiary of a candidate GOC of a particular type; or
- (e) a candidate GOC associate; or
- (f) an associate subsidiary.

(3) Also, a regulation may change the name of—

- (a) a candidate GOC, or a subsidiary or proposed subsidiary of a candidate GOC, if the entity or proposed entity is not registered as a corporation under the Corporations Law; or
- (b) a candidate GOC associate; or
- (c) an associate subsidiary.

(4) A regulation under subsection (3)—

- (a) does not affect the legal personality of the entity whose name is changed; and
- (b) is effective even if the name being changed was given to the entity under another Act.

(5) Unless a contrary intention appears, a reference in an Act or document to the entity by its former name is taken to be a reference to the entity by its new name.

## **PART 5A—FIRST CHIEF EXECUTIVE OFFICERS AND SENIOR EXECUTIVES OF GOCS**

### **Definition for pt 5A**

**62A.** In this part—

**“board of directors”**, of a candidate GOC, includes an interim board of directors of the candidate GOC.

**Application of provisions of pt 5A**

**62B.** Section 62C, 62D, 62E or 62F applies if the responsible Ministers of a candidate GOC that is to become a statutory GOC or company GOC authorise the candidate GOC's board of directors to act for the section.

**Appointment of statutory GOC's first chief executive officer**

**62C.(1)** For the appointment of the first chief executive officer of the statutory GOC, the Governor in Council may act under schedule 2, section 1 before the commencement of a regulation declaring the candidate GOC to be a GOC.

**(2)** For acting under the section, a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors.

**Appointment of statutory GOC's first senior executives**

**62D.(1)** For the appointment of the first senior executives of the statutory GOC, the Governor in Council may act under section 168 before the commencement of a regulation declaring the candidate GOC to be a GOC.

**(2)** For acting under the section, a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors.

**Appointment of company GOC's first chief executive officer**

**62E.(1)** For the appointment of the first chief executive officer of the company GOC, the Governor in Council may act under section 102 before the commencement of a regulation declaring the candidate GOC to be a GOC.

**(2)** For acting under the section, a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors.

**(3)** This section and section 62B have effect despite the Corporations Law.

**Appointment of company GOC's first senior executives**

**62F.(1)** For the appointment of the first senior executives of the



company GOC, the Governor in Council may act under section 168 before the commencement of a regulation declaring the candidate GOC to be a GOC.

(2) For acting under the section, a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors.

(3) This section and section 62B have effect despite the Corporations Law.

## **PART 6—CANDIDATE GOCs AND CANDIDATE GOC ASSOCIATES BECOMING GOCs**

### **Declaration of entity as GOC**

**63.** If the Governor in Council is satisfied that—

- (a) any corporatisation charter of a candidate GOC has been sufficiently implemented or the candidate GOC is otherwise ready to become a GOC; and
- (b) the candidate GOC complies with, or on becoming a GOC will comply with, either of the following provisions—
  - (i) section 65 (Statutory GOC must be body corporate etc.);
  - (ii) section 66 (Company GOC must be public company limited by shares);

the Governor in Council may, by regulation, declare that the candidate GOC is a GOC.

### **Declaration of candidate GOC associate as GOC**

**63A.(1)** This section applies if a regulation under section 54A (Transfer of assets, liabilities etc. to government entity to become GOC or GOC subsidiary) makes provision for the transfer of assets and liabilities from a candidate GOC to its associate.

(2) The Governor in Council may, by regulation, declare that the

associate is a GOC if satisfied that—

- (a) any corporatisation charter of the candidate GOC has been sufficiently implemented or the candidate GOC would, apart from the regulation under section 54A, be otherwise ready to become a GOC; and
- (b) the associate complies with, or on becoming a GOC will comply with, section 65 or 66.

**Declaration does not affect legal personality etc.**

**64.(1)** The declaration of an entity as a GOC does not, of itself, affect—

- (a) the legal personality of the entity; or
- (b) its functions and powers.

**(2)** Also, the declaration of an entity as a GOC—

- (a) does not place the entity or the State in breach of contract or confidence or otherwise make the entity or the State guilty of a civil wrong; and
- (b) does not make the entity or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; and
- (c) is not taken to fulfil a condition—
  - (i) that allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
  - (ii) that requires any money to be paid before its stated maturity; and
- (d) does not release a surety or other obligee (in whole or part) from an obligation.

## **CHAPTER 3—GOVERNMENT OWNED CORPORATIONS (GOCs)**

### **PART 1—BASIC REQUIREMENTS**

#### *Division 1—Statutory GOCs*

##### **Statutory GOC must be body corporate etc.**

**65.(1)** A statutory GOC must be established as a body corporate under an Act and must not be registered under the Corporations Law.

**(2)** A statutory GOC must—

- (a) have a board of directors; and
- (b) have a share capital and issued shares.

#### *Division 2—Company GOCs*

##### **Company GOC must be public company limited by shares**

**66.** A company GOC must be a public company, and a company limited by shares, within the meaning of the Corporations Law.

### **PART 2—APPLICATION OF CORPORATIONS LAW**

#### *Division 1—Statutory GOCs*

##### **Corporations Law does not apply to statutory GOCs**

**67.** The Corporations Law does not apply to a statutory GOC.

**Statutory GOC exempt public authority**

**68.** A statutory GOC is an exempt public authority for the purposes of the Corporations Law.

***Division 2—Company GOCs*****Application of Corporations Law to company GOCs**

**69.** The Corporations Law applies to a company GOC except so far as this Act otherwise provides.

**Company GOC not exempt public authority**

**70.** A company GOC is not an exempt public authority for the purposes of the Corporations Law.

**PART 3—SHARES AND SHAREHOLDING  
MINISTERS*****Division 1—Statutory GOCs*****Number of shareholders**

**71.** A statutory GOC must have only 2 shareholders.

**Shareholders must have equal number of shares and equal rights**

**72.(1)** Each shareholder must at all times have an equal number of shares in the statutory GOC.

**(2)** Each shareholder must also at all times be entitled to rights equal to those to which the other shareholder is entitled.

**Shareholders must be GOC and portfolio Ministers**

73. The GOC Minister and the portfolio Minister of the statutory GOC are taken to be its shareholders.

**Meaning of “shareholding Minister”**

74. The GOC Minister and the portfolio Minister of the statutory GOC are its “shareholding Ministers”.

**Variation of share capital**

75.(1) A regulation may vary the share capital of a statutory GOC.

(2) Without limiting subsection (1), a regulation may provide for—

- (a) the issue of further shares in a statutory GOC; or
- (b) the cancellation of issued shares in a statutory GOC; or
- (c) the consolidation or division of issued shares in a statutory GOC.

***Division 2—Company GOCs*****Number of shareholders**

76. A company GOC must have only 5 shareholders.

**Number of voting and non-voting shareholders**

77. Two of the shareholders must be voting shareholders, and 3 must be non-voting shareholders.

**Voting shareholders must have equal number of shares and voting rights**

78.(1) Each voting shareholder must at all times have an equal number of voting shares in the company GOC.

(2) Each voting shareholder must also at all times be in a position to cast an equal number of votes in relation to the company GOC.

**Shareholders must be certain Ministers**

**79.(1)** The GOC Minister and the portfolio Minister of the company GOC are to be its voting shareholders.

**(2)** Each non-voting shareholder must be a Minister (other than the GOC Minister or the portfolio Minister) nominated by the Premier, by gazette notice, to be a non-voting shareholder of the company GOC.

**(3)** The Premier must make the nomination by nominating the holder of a particular Ministerial office by reference to the title of the office concerned.

**(4)** The Premier may, in an appropriate case, be nominated under subsection (2) to be a non-voting shareholder of the company GOC.

**Meaning of “shareholding Ministers”**

**80.(1)** The GOC Minister and the portfolio Minister of the company GOC are its “shareholding Ministers”.

**(2)** Non-voting shareholders are not shareholding Ministers of the company GOC.

**Resolutions without meetings**

**81.(1)** If the shareholding Ministers of the company GOC sign a document containing a statement that they are in favour of a resolution set out in the document—

- (a) a resolution in those terms is taken to have been passed at a general meeting of the GOC held at the time at which, and on the day on which, the document is signed by the last shareholding Minister; and
- (b) the GOC is taken to have held a general meeting at that time on that day; and
- (c) the document is taken to be a minute of the meeting; and
- (d) any document that is attached to the first document, and is signed by the shareholding Ministers, is taken to have been laid before the GOC at the meeting; and
- (e) if the resolution deals with all matters that are required to be dealt

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with at an annual general meeting of the GOC—the GOC is taken to have held an annual general meeting.

(2) Subsection (1) applies to a resolution that is authorised or required by the Corporations Law, or the GOC’s memorandum or articles, to be passed at a general meeting, including a resolution—

- (a) appointing an officer or auditor; or
- (b) approving of, or agreeing to, anything.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by a shareholding Minister, are taken to constitute a single document.

(4) This section has effect for the purposes of the Corporations Law and has that effect despite anything in that Law.

(5) Subsection (4) does not limit any other effect that this section may have.

(6) This section does not affect any rule of law relating to the effectiveness of the assent of members of a company given to a document or anything else otherwise than at a general meeting of the company.

***Division 3—GOCs generally***

**Shareholders hold shares for State etc.**

**82.(1)** The State is the owner of all shares in a GOC.

(2) A GOC’s shareholders hold their shares in the GOC on behalf of the State.

**Transfer, issue etc. of shares**

**83.(1)** A GOC’s shareholder may transfer shares in the GOC only to another Minister.

(2) The Premier may execute a transfer of shares in a GOC or a GOC subsidiary for the purpose of giving effect to this Act.

(3) If the Premier executes a transfer of shares in a GOC or a GOC subsidiary, the GOC or subsidiary must register the transfer and take any

other action necessary to give effect to the transfer.

(4) Subject to the other provisions of this part, this Act does not prevent a GOC or a GOC subsidiary from issuing further shares to its shareholders.

### **Shareholding Ministers must act jointly**

**84.(1)** If this Act authorises a GOC's shareholding Ministers to do an act, the shareholding Ministers may only do the act jointly.

(2) If this Act requires the shareholding Ministers to do an act, the shareholding Ministers must do the act jointly.

### **Ministers not directors etc.**

**85.(1)** A GOC's shareholding Ministers, and any Ministers who are non-voting shareholders of the GOC, are not to be treated as directors of the GOC or any subsidiary or proposed subsidiary of the GOC.

(2) A Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act in relation to a GOC or a subsidiary or proposed subsidiary of a GOC.

(3) A liability that would, apart from subsection (2), attach to the Minister attaches instead to the State.

(4) This section has effect despite the Corporations Law.

## **PART 4—MEMORANDUM AND ARTICLES**

### *Division 1—Statutory GOCs*

### **Shareholding Ministers of statutory GOC may require amendment of subsidiary's memorandum and articles**

**86.(1)** The shareholding Ministers of a statutory GOC may, by written notice, direct the board to amend the memorandum or articles of a



subsidiary of the GOC.

(2) The board must, as far as practicable, ensure that the direction is complied with.

### **Memorandum and articles of statutory GOC subsidiary must not be inconsistent with Act or Corporations Law**

**87.(1)** The memorandum and articles of a statutory GOC subsidiary must not be inconsistent with this Act or the Corporations Law.

(2) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles of a statutory GOC subsidiary, this Act prevails to the extent of the inconsistency.

(3) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (2), the Corporations Law prevails to the extent of the inconsistency.

### ***Division 2—Company GOCs***

### **Memorandum and articles of company GOC may be amended by shareholding Ministers**

**88.(1)** The shareholding Ministers of a company GOC may amend the GOC's memorandum or articles.

(2) Subsection (1) does not limit any other power to amend the memorandum or articles.

### **Shareholding Ministers of company GOC may require amendment of subsidiary's memorandum and articles**

**89.(1)** The shareholding Ministers of a company GOC may, by written notice, direct the board to amend the memorandum or articles of a subsidiary of the GOC.

(2) The board must, as far as practicable, ensure that the direction is complied with.

### **Memorandum and articles of company GOC and its subsidiaries must not be inconsistent with Act or Corporations Law**

**90.(1)** The memorandum and articles of a company GOC and its subsidiaries must not be inconsistent with this Act or the Corporations Law.

(2) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles of a company GOC or a company GOC subsidiary, this Act prevails to the extent of the inconsistency.

(3) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (2), the Corporations Law prevails to the extent of the inconsistency.

## **PART 5—BOARD OF DIRECTORS**

### *Division 1—Statutory GOCs*

#### **Statutory GOC to have board of directors**

**91.** Each statutory GOC is to have a board of directors (the “**board**”).

#### **Role of board**

**92.** The role of a statutory GOC’s board includes the following matters—

- (a) responsibility for the GOC’s commercial policy and management;
- (b) ensuring that, as far as possible, the GOC achieves, and acts in

accordance with, its statement of corporate intent and carries out its objectives outlined in its statement of corporate intent;

- (c) accounting to the GOC's shareholders for its performance as required by this Act and other laws applying to the GOC;
- (d) ensuring that the GOC otherwise performs its functions in a proper, effective and efficient way.

### **Delegation by board**

**93.(1)** A statutory GOC's board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the GOC's chief executive officer; or
- (d) an appropriately qualified employee of the GOC.

**(2)** In this section—

**“appropriately qualified”** includes having qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

An employee's classification level in the GOC.

### **Additional provisions relating to board—sch 1**

**94.** Additional provisions relating to the board are set out in schedule 1.

### **First board of statutory GOC**

**94A.(1)** This section applies to a government entity that is to become a statutory GOC if the government entity is a candidate GOC or candidate GOC associate.

**(2)** For the appointment of the first board of the statutory GOC, the Governor in Council may act under schedule 1, sections 1 and 2 before the

commencement of a regulation declaring the candidate GOC, or the candidate GOC associate, to be a GOC.

- (3) The appointment takes effect when the regulation commences.

### *Division 2—Company GOCs*

#### **Role of board**

**95.** The role of a company GOC's board includes the following matters—

- (a) responsibility for the GOC's commercial policy and management;
- (b) ensuring that, as far as possible, the GOC achieves, and acts in accordance with, its statement of corporate intent and carries out the objectives outlined in its statement of corporate intent;
- (c) accounting to the GOC's shareholders for its performance as required by this Act and other laws applying to the GOC;
- (d) ensuring that the GOC otherwise performs its functions in a proper, effective and efficient way.

#### **Composition of board**

**96.(1)** A company GOC's board is to consist of the number of directors that are appointed by the Governor in Council.

(2) 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 GOC's commercial performance and, if the GOC has a statement of corporate intent, the implementation of the statement.

- (3) Subsection (1) has effect despite—

- (a) the company GOC's memorandum and articles; and
- (b) the Corporations Law.

**Public service officers not eligible for appointment as directors**

**96A.(1)** A public service officer is not eligible for appointment as a director of a company GOC.

(2) Subsection (1) has effect despite the Corporations Law.

**First board of company GOC**

**96B.(1)** This section applies to a government entity that is to become a company GOC if the government entity is a candidate GOC or a candidate GOC associate.

(2) For the appointment of the first board of the company GOC, the Governor in Council may act under section 96 before the commencement of a regulation declaring the candidate GOC, or the candidate GOC associate, to be a GOC.

(3) The appointment takes effect when the regulation commences.

(4) This section has effect despite—

- (a) the company GOC's memorandum and articles; and
- (b) the Corporations Law.

**PART 6—CHIEF EXECUTIVE OFFICER***Division 1—Statutory GOCs***Statutory GOC to have chief executive officer**

**97.** Each statutory GOC is to have a chief executive officer.

**Duties of chief executive officer**

**98.** A statutory GOC's chief executive officer is, under its board, to manage the GOC.

**Things done by chief executive officer**

**99.** Anything done in the name of, or for, a statutory GOC by its chief executive officer is taken to have been done by the GOC.

**Delegation by chief executive officer**

**100.(1)** The chief executive officer of a statutory GOC may delegate the chief executive officer's powers (including a power delegated to the chief executive) to an appropriately qualified employee of the GOC.

**(2)** Subsection (1) has effect subject to any directions of the GOC's board.

**(3)** In this section—

**“appropriately qualified”** includes having qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

An employee's classification level in the GOC.

**Additional provisions relating to chief executive officer—sch 2**

**101.** Additional provisions relating to the chief executive officer are set out in schedule 2.

***Division 2—Company GOCs*****Appointment of chief executive officer**

**102.(1)** A company GOC's chief executive officer is to be appointed by the Governor in Council on the recommendation of the GOC's board.

**(2)** This section has effect despite the Corporations Law.

## **PART 7—CORPORATE PLAN**

### *Division 1—General*

#### **GOC must have corporate plan**

**103.** Each GOC must have a corporate plan.

#### **Corporate plan to apply to subsidiaries**

**104.** If a GOC has subsidiaries, the GOC's corporate plan must apply to the GOC and its subsidiaries.

#### **Guidelines in relation to corporate plans**

**105.(1)** The GOC Minister may issue guidelines about the form and content of corporate plans.

**(2)** Every GOC must comply with the guidelines.

**(3)** Guidelines under this section are subordinate legislation.

### *Division 2—Preparation, agreement on and modification of corporate plan*

#### **Draft corporate plan**

**106.(1)** The board of a GOC must prepare, and submit to the shareholding Ministers for their agreement, a draft corporate plan—

(a) within 1 month of becoming a GOC; and

(b) not later than 2 months before the start of each subsequent financial year (a “**subsequent financial year**”).

**(2)** The board and the shareholding Ministers must endeavour to reach agreement on the draft plan as soon as possible and, in the case of a draft corporate plan for a subsequent financial year, in any event not later than 1 month before the start of the financial year.

**Special procedures in relation to draft corporate plan**

**107.(1)** The shareholding Ministers may return the draft corporate plan to the board and request it to—

- (a) consider or further consider any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

**(2)** The board must comply with the request as a matter of urgency.

**(3)** If a draft corporate plan has not been agreed to by the shareholding Ministers within 2 months from the day on which the GOC becomes a GOC, the shareholding Ministers may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified modifications to the draft plan.

**(4)** If, in the case of a subsequent financial year, a draft corporate plan has not been agreed to by the shareholding Ministers by 1 month before the start of the financial year, the shareholding Ministers may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified modifications to the draft plan.

**(5)** The board must immediately comply with a direction under subsection (3) or (4).

**(6)** The shareholding Ministers must cause a copy of a direction to be published in the gazette within 21 days after it is given.

**Corporate plan on agreement**

**108.** When a draft corporate plan of a GOC is agreed to by the shareholding Ministers, it becomes the GOC's corporate plan for the relevant financial year.

**Corporate plan pending agreement**

**109.(1)** If a draft corporate plan has not been agreed to by the



shareholding Ministers within 1 month from the day on which the GOC becomes a GOC, the draft corporate plan submitted, or last submitted, by the board to the shareholding Ministers before that time (with any modifications made by the board, whether before or after that time, at the direction of the shareholding Ministers) is taken to be the GOC's corporate plan until a draft corporate plan becomes the GOC's corporate plan under section 108 (Corporate plan on agreement).

(2) If, in the case of a subsequent financial year, the shareholding Ministers of a GOC have not agreed to a draft corporate plan before the start of the financial year, the draft corporate plan submitted, or last submitted, by the board to the shareholding Ministers before the start of the financial year (with any modifications made by the board, whether before or after that time, at the direction of the shareholding Ministers) is taken to be the GOC's corporate plan until a draft corporate plan becomes the GOC's corporate plan under section 108.

### **Modifications of corporate plan**

**110.(1)** A GOC's corporate plan may be modified by its board with the agreement of the shareholding Ministers.

(2) The shareholding Ministers may, by written notice, direct the board to modify the corporate plan.

(3) The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

## **PART 8—STATEMENT OF CORPORATE INTENT**

### *Division 1—General*

#### **GOC must have statement of corporate intent**

**111.** Each GOC must have a statement of corporate intent for each financial year.

**Statement of corporate intent to apply to subsidiaries**

**112.(1)** If a GOC has subsidiaries, the GOC's statement of corporate intent must apply to the GOC and its subsidiaries.

**(2)** Division 2 applies to the GOC as if a reference to the GOC included a reference to its subsidiaries.

**Statement of corporate intent must be consistent with corporate plan**

**113.** A GOC's statement of corporate intent must be consistent with its corporate plan.

*Division 2—Matters to be included in statement of corporate intent***Matters to be included in statement of corporate intent**

**114.(1)** A GOC's statement of corporate intent must specify the GOC's financial and non-financial performance targets for its activities for the relevant financial year.

**(2)** The statement of corporate intent must also include the matters required by sections 122 and 171.<sup>1</sup>

**Additional matters may be included in statement of corporate intent**

**115.(1)** A GOC's statement of corporate intent may include the following additional matters—

- (a) an outline of the GOC's objectives;
- (b) an outline of the nature and scope of the activities proposed to be undertaken by the GOC during the relevant financial year;
- (c) an outline of the GOC's main undertakings during the relevant financial year;
- (d) the GOC's capital structure and dividend policies;

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<sup>1</sup> Sections 122 (Community service obligations to be specified in statement of corporate intent) and 171 (Employment and industrial relations plan)

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- (e) an outline of the major infrastructure investments proposed to be undertaken by the GOC during the relevant financial year;
- (f) an outline of the borrowings made, and proposed to be made, by the GOC;
- (g) an outline of the policies adopted by the GOC to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (h) an outline of the GOC's policies and procedures relating to the acquisition and disposal of major assets;
- (i) the GOC's accounting policies that apply to the preparation of its accounts;
- (j) the type of information to be given to the shareholding Ministers, including information to be given in quarterly and annual reports.

(2) Subsection (1) does not limit the matters that may be included in a statement of corporate intent.

***Division 3—Preparation, agreement on and modification of statement of corporate intent***

**Draft statement of corporate intent**

**116.(1)** The board of a GOC must prepare, and submit to the shareholding Ministers for their agreement, a draft statement of corporate intent—

- (a) within 1 month of becoming a GOC; and
- (b) not later than 2 months before the start of each subsequent financial year (a “**subsequent financial year**”).

(2) The board and the shareholding Ministers must endeavour to reach agreement on the draft statement as soon as possible and, in the case of a draft statement of corporate intent for a subsequent financial year, in any event not later than the start of the financial year.

**Special procedures in relation to draft statement of corporate intent**

**117.(1)** The shareholding Ministers may return the draft statement of corporate intent to the board and request it to—

- (a) consider or further consider any matter and deal with the matter in the draft statement; and
- (b) revise the draft statement in the light of its consideration or further consideration.

**(2)** The board must comply with the request as a matter of urgency.

**(3)** If a draft statement of corporate intent has not been agreed to by the shareholding Ministers within 2 months from the day on which the GOC becomes a GOC, the shareholding Ministers may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft statement; or
- (b) to make specified modifications to the draft statement.

**(4)** If, in the case of a subsequent financial year, a draft statement of corporate intent of the GOC has not been agreed to by the shareholding Ministers before the start of the financial year, the shareholding Ministers may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft statement; or
- (b) to make specified modifications to the draft statement.

**(5)** The board must immediately comply with a direction under subsection (3) or (4).

**(6)** The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

**Statement of corporate intent on agreement**

**118.** When a draft statement of corporate intent of a GOC is agreed to by the shareholding Ministers, it becomes the GOC's statement of corporate intent for the relevant financial year.

**Statement of corporate intent pending agreement**

**119.(1)** If a draft statement of corporate intent has not been agreed to by the shareholding Ministers within 2 months from the day on which the GOC becomes a GOC, the draft statement of corporate intent submitted, or last submitted, by the board to the shareholding Ministers before that time (with any modifications made by the board, whether before or after that time, at the direction of the shareholding Ministers) is taken to be the GOC's statement of corporate intent until a draft statement of corporate intent becomes the GOC's statement of corporate intent under section 118 (Statement of corporate intent on agreement).

**(2)** If, in the case of a subsequent financial year, the shareholding Ministers of a GOC have not agreed to a draft statement of corporate intent before the start of the financial year, the draft statement of corporate intent submitted, or last submitted, by the board to the shareholding Ministers before the start of the financial year (with any modifications made by the board, whether before or after that time, at the direction of the shareholding Ministers) is taken to be the GOC's statement of corporate intent until a draft statement of corporate intent becomes the GOC's statement of corporate intent under section 118.

**Modifications of statement of corporate intent**

**120.(1)** A GOC's statement of corporate intent may be modified by its board with the agreement of the shareholding Ministers.

**(2)** The shareholding Ministers may, by written notice, direct the board to modify the statement of corporate intent.

**(3)** Before giving the direction, the shareholding Ministers must consult with the board and take its views into account.

**(4)** The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

## **PART 9—COMMUNITY SERVICE OBLIGATIONS**

### **Meaning of “community service obligations”**

**121.(1)** The “community service obligations” of a GOC are obligations to perform activities that the GOC’s board establishes to the satisfaction of the shareholding Ministers—

- (a) are not in the commercial interests of the GOC to perform; and
- (b) arise because of a direction, notification or duty to which this section applies; and
- (c) do not arise because of the application of the following key principles of corporatisation (and their elements)—
  - (i) Principle 3—Strict accountability for performance;
  - (ii) Principle 4—Competitive neutrality.

**(2)** This section applies to the following directions, notifications and duties—

- (a) a direction given to the GOC’s board under section 107 (Special procedures in relation to draft corporate plan);
- (b) a direction given to the GOC’s board under section 110 (Modifications of corporate plan);
- (c) a direction given to the GOC’s board under section 117 (Special procedures in relation to draft statement of corporate intent);
- (d) a direction given to the GOC’s board under section 120 (Modifications of statement of corporate intent);
- (e) a notification given to the GOC’s board under section 123 (Reserve power of shareholding Ministers to notify board of public sector policies);
- (f) a direction given to the GOC’s board under section 124 (Reserve power of shareholding Ministers to give directions in public interest);
- (g) a direction given to the GOC’s board under section 161 (Reserve power of shareholding Ministers to direct that asset not be disposed of);

- (h) a statutory duty to perform activities (including any economic development activities or activities of a regulatory or policy formulation nature) that arise under an Act applying specifically to the GOC or GOCs generally.

### **Community service obligations to be specified in statement of corporate intent**

**122.(1)** The community service obligations that a GOC is to perform are to be specified in its statement of corporate intent.

**(2)** The costings of, funding for, or other arrangements to make adjustments relating to, the GOC's community service obligations are also to be specified in its statement of corporate intent.

**(3)** The statement of corporate intent is conclusive, as between the Government and the GOC, of—

- (a) the nature and extent of the GOC's community service obligations; and
- (b) the ways in which, and the extent to which, the GOC is to be compensated by the Government for performing its community service obligations.

## **PART 10—GENERAL RESERVE POWERS OF SHAREHOLDING MINISTERS**

### **Reserve power of shareholding Ministers to notify board of public sector policies**

**123.(1)** The shareholding Ministers of a GOC may notify the GOC's board, in writing, of a public sector policy that is to apply to the GOC and its subsidiaries if the shareholding Ministers are satisfied that it is necessary to give the notification in the public interest.

**(2)** The board must ensure that the policy is carried out in relation to the GOC and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.

(3) Before giving a notification under this section, the shareholding Ministers must—

- (a) consult with the board; and
- (b) request the board to advise them whether, in its opinion, carrying out the policy would not be in the commercial interests of the GOC or any of its subsidiaries.

(4) The shareholding Ministers must cause a copy of the notification to be published in the gazette within 21 days after it is given.

### **Reserve power of shareholding Ministers to give directions in public interest**

**124.(1)** The shareholding Ministers of a GOC may give the GOC's board a written direction in relation to the GOC and its subsidiaries if the shareholding Ministers are satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.

(2) The board must ensure that the direction is complied with in relation to the GOC and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.

(3) Before giving the direction, the shareholding Ministers must—

- (a) consult with the board; and
- (b) request the board to advise them whether, in its opinion, complying with the direction would not be in the commercial interests of the GOC or any of its subsidiaries.

(4) The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

### **Notice of suspected insolvency because of direction or notification**

**125.(1)** If—

- (a) a GOC's board is given a direction or notification by the shareholding Ministers; and
- (b) the board suspects that the GOC, or a subsidiary of the GOC, will or may become insolvent; and



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- (c) in the board's opinion, the cause or a substantial cause of the suspected insolvency would be compliance with the direction or notification;

the board must immediately give written notice to the shareholding Ministers and the auditor-general of—

- (d) the suspicion; and
- (e) its reasons for the opinion.

(2) The notice must state that it is given under this section.

(3) The giving of the notice operates to suspend the direction or notification until—

- (a) the shareholding Ministers advise the board, in writing, that they are not satisfied—
  - (i) that the board's suspicion mentioned in subsection (1)(b) is well-founded; or
  - (ii) that the board's opinion mentioned in subsection (1)(c) is justified; or

(b) the direction or notification is revoked.

(4) If the shareholding Ministers are satisfied that the board's suspicion is well-founded, the shareholding Ministers must immediately—

- (a) if they are also satisfied that the board's opinion is justified—revoke the direction or notification; and
- (b) in any case—give the board the written directions that the shareholding Ministers consider necessary or desirable, including any directions necessary or desirable to ensure—
  - (i) that the GOC or subsidiary does not incur further debts; or
  - (ii) that the GOC or subsidiary will be able to pay all its debts as and when they become due.

(5) Without limiting subsection (4), a direction under this section may require the GOC or any of its subsidiaries to cease or limit particular activities.

(6) The board must ensure that a direction under this section is complied with in relation to the GOC and must, as far as practicable, ensure that it is

complied with in relation to its subsidiaries.

(7) The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

(8) This section is in addition to, and does not limit, another provision of this Act or another law.

### **GOC and board not otherwise subject to government direction**

**126.** Except as otherwise provided by this or another Act, a GOC and its board are not subject to direction by or on behalf of the Government.

## **PART 11—REPORTS AND OTHER ACCOUNTABILITY MATTERS**

### *Division 1—Statutory GOCs*

#### **Application of Financial Administration and Audit Act**

**127.(1)** The *Financial Administration and Audit Act 1977* (“**the Act**”) applies to a statutory GOC with any necessary changes.

(2) The Act applies to a statutory GOC as if—

- (a) it were a statutory body within the meaning of the Act; and
- (b) a reference in the Act to the appropriate Minister were a reference to the shareholding Ministers.

### *Division 2—Company GOCs*

#### **Application of Financial Administration and Audit Act**

**128.(1)** The provisions of the *Financial Administration and Audit Act 1977* (“**the Act**”), relating to audit and the furnishing to the appropriate Minister and tabling of annual reports, that are prescribed by schedule 3

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apply to a company GOC, or a company GOC subsidiary prescribed under a regulation, with the changes prescribed by the schedule.

(2) The Act applies to a company GOC or company GOC subsidiary as if—

- (a) it were a statutory body within the meaning of the Act; and
- (b) a reference in the Act to the appropriate Minister were a reference—
  - (i) for a company GOC—to the GOC's shareholding Ministers; or
  - (ii) for a company GOC subsidiary—to the shareholding Ministers of each GOC that is a shareholder of the subsidiary.

(3) The provisions of the Act (other than those prescribed by schedule 3) do not apply to a company GOC.

*Division 3—GOCs generally***Quarterly reports**

**130.(1)** A GOC's board must give to the shareholding Ministers a report on the operations of the GOC and its subsidiaries for each of the quarters of a financial year.

(2) A quarterly report must be given to the shareholding Ministers—

- (a) within 1 month after the end of the quarter; or
- (b) if another period after the end of the quarter is agreed between the board and the shareholding Ministers—within the agreed period.

(3) A quarterly report must include the information required to be given in the report by the GOC's statement of corporate intent.

**Matters to be included in annual report**

**131.(1)** Each annual report of a GOC must—

- (a) contain the information that is required to be included in the report

by the shareholding Ministers to enable an informed assessment to be made of the operations of the GOC and its subsidiaries, including a comparison of the performance of the GOC and its subsidiaries with the GOC's statement of corporate intent; and

- (b) state the GOC's dividend policy for the financial year to which the report relates; and
- (c) include the statement of corporate intent for the relevant financial year; and
- (d) include particulars of any modifications made to the statement of corporate intent during the relevant financial year; and
- (e) include particulars of any directions and notifications given to the GOC's board by the shareholding Ministers that relate to the relevant financial year; and
- (f) include particulars of the impact on the financial position, profits and losses and prospects of the GOC and its subsidiaries of any modifications to the statement of corporate intent, and any directions and notifications given to the board by the shareholding Ministers, that relate to the relevant financial year.

(2) Each annual report of a statutory GOC must also state whether or not, in the directors' opinion, there are, when the statement is made, reasonable grounds to believe that the GOC will be able to pay its debts as and when they fall due.

(3) Each annual report of a company GOC must also include the matters that are required to be included in, or to accompany, the GOC's annual return under the Corporations Law.

(4) This section does not limit the matters that are required to be included in, or to accompany, a GOC's annual report by the Corporations Law or another Act.

### **Deletion of commercially sensitive matters from annual report etc.**

**132.(1)** If a GOC's board requests the shareholding Ministers to delete from the copies of an annual report of the GOC (and accompanying documents) that are to be made public a matter that is of a commercially sensitive nature, the shareholding Ministers may delete the matter from the

copies of the annual report (and accompanying documents) that are laid before the Legislative Assembly or otherwise made public.

(2) An annual report of a GOC may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and
- (b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

(3) Subsections (1) and (2) have effect despite section 131 (Matters to be included in annual report) or another Act.

(4) Subsection (1) has effect despite subsection (2).

### **Board to keep shareholding Ministers informed**

**133.(1)** A GOC's board must—

- (a) keep the shareholding Ministers reasonably informed of the operations, financial performance and financial position of the GOC and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the GOC and its subsidiaries; and
- (b) give to the shareholding Ministers reports and information that they require to enable them to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of the GOC's objectives outlined in its statement of corporate intent or targets under its corporate plan—immediately inform the shareholding Ministers of the matters and its opinion in relation to them.

(2) Subsection (1) does not limit the matters of which the board is required to keep the shareholding Ministers informed, or limit the reports or information that the board is required, or may be required, to give to the shareholding Ministers, by the Corporations Law or another Act.

## **PART 12—DUTIES AND LIABILITIES OF DIRECTORS AND OTHER OFFICERS**

### *Division 1—Statutory GOCs*

#### **Disclosure of interests by directors**

**134.(1)** If a director of a statutory GOC has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the board's minutes.

#### **Voting by interested director**

**135.(1)** A director of a statutory GOC who has a material personal interest in a matter that is being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (2) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

- (a) specifies the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The shareholding Ministers may, by each signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subsection (3).

### **Duty and liability of certain officers of statutory GOC**

**136.(1)** In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management.

(2) An officer of a statutory GOC must act honestly in the exercise of powers, and discharge of functions, as an officer of the GOC.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the GOC, creditors of the GOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) in any other case—100 penalty units.

(3) In the exercise of powers and the discharge of functions, an officer of a statutory GOC must exercise the degree of care and diligence that a reasonable person in a like position in a statutory GOC would exercise in the statutory GOC’s circumstances.

Maximum penalty—100 penalty units.

(4) An officer of a statutory GOC, or a person who has been an officer of a statutory GOC, must not make improper use of information acquired because of his or her position as an officer of the GOC—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or

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- (b) to cause detriment to the GOC.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(5) An officer of a statutory GOC must not make improper use of his or her position as an officer of the GOC—

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or
- (b) to cause detriment to the GOC.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(6) If a person contravenes this section in relation to a statutory GOC, the statutory GOC may recover from the person as a debt due to the statutory GOC—

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and
- (b) if the statutory GOC suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(7) An amount may be recovered from the person under subsection (6) whether or not the person has been convicted of an offence in relation to the contravention.

(8) Subsection (6) is in addition to, and does not limit, the *Crimes (Confiscation) Act 1989*.

(9) In determining for the purposes of subsection (3) the degree of care and diligence that a reasonable person in a like position in a statutory GOC would exercise in the circumstances of the statutory GOC concerned, regard must be had to—

- (a) the fact that the person is an officer of a statutory GOC; and
- (b) the application of this Act to the GOC; and
- (c) relevant matters required or permitted to be done under this Act in relation to the GOC;

including, for example—

- (d) any relevant community service obligations of the GOC; and
- (e) any relevant directions, notifications or approvals given to the GOC by the GOC's shareholding Ministers.



(10) Subsection (9) does not limit the matters to which regard may be had for the purposes of subsection (3).

(11) This section—

- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation; and
- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

### **Prohibition on loans to directors**

**137.(1)** A statutory GOC must not, whether directly or indirectly—

- (a) make a loan to a director, a spouse of a director or a relative of a director or spouse; or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.

(2) Subsection (1) does not apply to the entering into by the GOC of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the GOC with members of the public.

(3) A director of a statutory GOC who is knowingly concerned in a contravention of subsection (1) by the GOC (whether or not in relation to the director) commits an offence.

Maximum penalty—100 penalty units.

(4) In this section—

**“relative”** means—

- (a) a parent or remoter lineal ancestor; or
- (b) a son, daughter or remoter issue; or
- (c) a brother or sister.

**Statutory GOC not to indemnify officers**

**138.(1)** A statutory GOC must not—

- (a) indemnify a person who is or has been an officer of the GOC against a liability incurred as an officer; or
- (b) exempt a person who is or has been an officer of the GOC from a liability incurred as an officer.

**(2)** An instrument is void so far as it provides for the statutory GOC to do something that subsection (1) prohibits.

**(3)** Subsection (1) does not prevent the statutory GOC from indemnifying a person against a civil liability (other than a liability to the GOC or a subsidiary of the GOC) unless the liability arises out of conduct involving a lack of good faith.

**(4)** Subsection (1) does not prevent the statutory GOC from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

**(5)** The statutory GOC may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the shareholding Ministers.

**(6)** In this section—

**“indemnify”** includes indemnify indirectly through 1 or more interposed entities;

**“officer”** of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management.

**Statutory GOC not to pay premiums for certain liabilities of officers**

**139.(1)** A statutory GOC must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the GOC against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
  - (i) a wilful breach of duty in relation to the GOC; or
  - (ii) without limiting subparagraph (i), a contravention of section 136(4) or (5).

**(2)** Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

**(3)** An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

**(4)** In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management;

“**pay**” includes pay indirectly through 1 or more interposed entities.

**Director’s duty to prevent insolvent trading**

**140.(1)** If—

- (a) immediately before a statutory GOC incurs a debt—
  - (i) there are reasonable grounds to suspect that the GOC will not be able to pay all its debts as and when they become due; or
  - (ii) there are reasonable grounds to suspect that, if the GOC incurs the debt, it will not be able to pay all its debts as and when they become due; and

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- (b) the GOC is, or later becomes, unable to pay all its debts as and when they become due;

a person who is a director of the GOC, or takes part in the GOC's management, at the time when the debt is incurred commits an offence.

Maximum penalty—100 penalty units or imprisonment for 1 year.

(2) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person's express or implied authority or consent; or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect—
- (i) that the GOC would not be able to pay all its debts as and when they became due; or
- (ii) that, if the GOC incurred that debt, it would not be able to pay all its debts as and when they became due; or
- (c) that the person took all reasonable steps to prevent the GOC from incurring the debt; or
- (d) in the case of a director—that the person did not take part at the time in the GOC's management because of illness or for some other good cause.

**Court may order compensation**

**141.(1)** If a person is found guilty of an offence against section 140 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a statutory GOC, the Supreme Court or a District Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the GOC of the amount required to satisfy the part of the GOC's debts that the court considers proper.

(2) This section does not affect any rights of a person to indemnity, subrogation or contribution.

(3) This section—

- (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to

a corporation; and

- (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

### **Examination of persons concerned with statutory GOCs**

**142.(1)** If it appears to the Attorney-General that—

- (a) a person who has been concerned, or taken part, in a statutory GOC's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the GOC; or
- (b) a person may be capable of giving information in relation to a statutory GOC's management, administration or affairs;

the Attorney-General may apply to the Supreme Court or a District Court for an order under this section in relation to the person.

(2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the GOC's management, administration or affairs.

(3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(4) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).

(5) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(6) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—200 penalty units or imprisonment for 2 years.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(14) The court may order the questions put to the person and the answers

given by the person at the examination to be recorded in writing and may require the person to sign the record.

(15) Subject to subsection (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(17) The court may adjourn the examination from time to time.

(18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

### **Power to grant relief**

**143.(1)** This section applies to a director, the chief executive officer or an employee of a statutory GOC.

(2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach; but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.

(3) If a person to whom this section applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person;

the judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the judge considers appropriate.

### **False or misleading information or documents**

**144.(1)** In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) an employee of the GOC.

(2) An officer of a statutory GOC must not—

- (a) make a statement concerning the affairs of the GOC to another officer or the shareholding Ministers that the first officer knows is false or misleading in a material particular; or
- (b) omit from a statement concerning the GOC’s affairs made to another officer or the shareholding Ministers anything without which the statement is, to the first officer’s knowledge, misleading in a material particular.

(3) A complaint against a person for an offence against subsection (2)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

(4) An officer of a statutory GOC must not give to another officer or the shareholding Ministers a document containing information that the first



officer knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the GOC, creditors of the GOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) in any other case—100 penalty units.

### *Division 2—Company GOCs*

#### **Application of Corporations Law to officers of company GOC**

**145.(1)** In determining for the purposes of the Corporations Law the degree of care and diligence that a reasonable person in a like position in a company GOC would exercise in the circumstances of the company GOC concerned, regard must be had to—

- (a) the application of this Act to the GOC; and
- (b) relevant matters required or permitted to be done under this Act in relation to the GOC;

including, for example—

- (c) any relevant community service obligations of the GOC; and
- (d) any relevant directions, notifications or approvals given to the GOC by the GOC's shareholding Ministers.

**(2)** This section has effect despite the Corporations Law.

***Division 3—GOCs generally*****Application of Corporations Law to officers of GOC subsidiaries**

**146.(1)** In determining for the purposes of the Corporations Law the degree of care and diligence that a reasonable person in a like position in a GOC subsidiary would exercise in the circumstances of the GOC subsidiary concerned, regard must be had to—

- (a) the application of this Act to the GOC and subsidiary; and
- (b) relevant matters required or permitted to be done under this Act in relation to the GOC and subsidiary;

including, for example—

- (c) any relevant community service obligations of the GOC; and
- (d) any relevant directions, notifications or approvals given to the GOC by the GOC's shareholding Ministers.

**(2)** This section has effect despite the Corporations Law.

**Notice of suspected insolvency otherwise than because of direction or notification**

**147.(1)** If—

- (a) a GOC's board suspects that the GOC or a subsidiary of the GOC is, may be, will or may become insolvent; and
- (b) in the board's opinion, compliance with a direction or notification given by the shareholding Ministers is not or would not be the cause or a substantial cause of the suspected insolvency;

the board must immediately give written notice to the shareholding Ministers and the auditor-general of—

- (c) the suspicion; and
- (d) its reasons for the opinion.

**(2)** The notice must state that it is given under this section.

**(3)** If the shareholding Ministers are satisfied that the board's suspicion is well-founded, the shareholding Ministers must immediately give the

board the written directions that the shareholding Ministers consider necessary or desirable, including any directions necessary or desirable to ensure—

- (a) that the GOC or subsidiary does not incur further debts; or
- (b) that the GOC or subsidiary will be able to pay all its debts as and when they become due.

(4) Without limiting subsection (3), a direction under this section may require the GOC or any of its subsidiaries to cease or limit particular activities.

(5) The board must ensure that a direction under this section is complied with in relation to the GOC and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.

(6) The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

(7) This section is in addition to, and does not limit, another provision of this Act or another law.

(8) This section has effect despite the Corporations Law.

## **PART 13—LEGAL CAPACITY AND POWERS**

### *Division 1—Statutory GOCs*

#### **Objects of division**

**148.** The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to statutory GOCs; and
- (b) ensuring that statutory GOCs give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.

### **General powers of statutory GOCs**

**149.(1)** A statutory GOC has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants; and
- (f) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the GOC has the powers that are conferred on it by this or another Act.

**(3)** The GOC may exercise its powers inside and outside Queensland.

**(4)** Without limiting subsection (3), the GOC may exercise its powers in a foreign country.

**(5)** The fact that the doing of an act by the GOC would not be, or is not, in its best interests does not affect its power to do the act.

**(6)** In this section—

“**power**” includes legal capacity.

### **Restrictions on powers of statutory GOCs**

**150.(1)** Section 149 (General powers of statutory GOCs) has effect in relation to a statutory GOC subject to any restrictions on the GOC’s powers expressly imposed under this or another Act.

**(2)** Section 149 also has effect in relation to the GOC subject to any restrictions expressly imposed by—

- (a) any relevant statement of corporate intent of the GOC; and
- (b) any relevant directions, notifications or approvals given to the GOC by the GOC’s shareholding Ministers.

**(3)** If—

- (a) the GOC exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) the Act by which the GOC is established, or a regulation under this Act, sets out the GOC's objects or functions and the GOC does an act otherwise than in pursuance of the objects or functions;

the GOC contravenes this subsection.

**(4)** The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

**(5)** An officer of the GOC who is involved in the contravention contravenes this subsection.

**(6)** An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

**(7)** The GOC or officer of the GOC is not guilty of an offence merely because of the relevant contravention.

**(8)** The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the GOC contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of the GOC contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the shareholding Ministers or the State and officers of the GOC.

**(9)** In this section—

**“officer”** of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC's chief executive officer; or
- (c) an employee of the GOC.

**“restriction”** includes prohibition.

**Persons having dealings with statutory GOCs etc.**

**151.(1)** A person having dealings with a statutory GOC is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the GOC that the matters that the person is entitled to assume were not correct must be disregarded.

(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from a statutory GOC (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the GOC or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, the Act by which the entity that became the GOC is established (if any) and this Act have been complied with; and
- (b) that a person who is held out by the GOC to be an officer or agent of the GOC has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the GOC who has authority to issue a document on behalf of the GOC has authority to warrant that the document is genuine and that an officer or agent of the GOC who has authority to issue a certified copy of a document on behalf of the GOC has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the GOC if—
  - (i) it bears what appears to be an imprint of the GOC's seal; and
  - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the GOC or the GOC's chief executive officer; and
- (e) that the directors, chief executive officer, employees and agents of the GOC have properly performed their duties to the GOC.

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(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person's connection or relationship with the GOC, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the GOC—subsection (1) does not apply to any assertion by the GOC in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the GOC of title to property—subsection (2) does not apply to any assertion by the GOC or another person in relation to the assumption.

(6) In this section—

**“officer”** of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC's chief executive officer; or
- (c) an employee of the GOC.

### *Division 2—Company GOCs*

#### **General powers of company GOCs**

**152.(1)** A company GOC has, in addition to powers conferred on it by the Corporations Law—

- (a) the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions; and
- (b) the powers that are conferred on it by this or another Act.

(2) Subsection (1) has effect subject to any restrictions on the GOC's powers expressly imposed by this or another Act.

**Doctrine of ultra vires etc. not revived**

**153.(1)** The doctrine of ultra vires is not revived in relation to company GOCs by this Act.

**(2)** The abolition of the doctrine by the Corporations Law is not affected by this Act.

**(3)** This section is enacted for the removal of doubt.

***Division 3—GOC may direct subsidiaries*****GOC may direct subsidiary**

**153A.(1)** A GOC may give written directions to a subsidiary of the GOC—

- (a) to ensure that the subsidiary complies with, and gives effect to the purposes of, this Act; and
- (b) about the payment of amounts to allow the GOC to make payments under sections 159 (Payment of dividends) and 160 (Interim dividends).

**(2)** A regulation may provide for a GOC to give directions to a subsidiary about anything else.

**(3)** In this section—

“**subsidiary**” does not include a subsidiary registered as a corporation under the Corporations Law.

**Subsidiaries must comply with directions**

**153B.** A subsidiary must comply with a direction given to it under section 153A.

**Division not limiting**

**153C.** This division does not, by implication, limit the powers that a GOC otherwise has to direct a subsidiary.



## PART 14—FINANCE

### *Division 1—Taxation*

#### **Liability to State taxes**

**154.(1)** A GOC is not exempt from State tax merely because it is a GOC.

**(2)** A GOC subsidiary is not exempt from State tax merely because it is a GOC subsidiary.

**(4)** State tax is not payable in relation to anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, chapter 2 or part 3 of this chapter.

**(5)** The GOC Minister may certify that a specified matter, instrument, transaction or thing is exempt from State tax under subsection (3) or (4), and the matter, instrument, transaction or thing is exempt from State tax.

**(6)** So far as the legislative power of the Parliament permits, the reference in subsection (4) to State tax includes a reference to tax imposed under an Act of another State.

#### **Liability for Commonwealth tax equivalents**

**155.(1)** The Treasurer may issue a manual (the “**tax equivalents manual**”) about deciding the amounts (“**tax equivalents**”) to be paid by a GOC to its GOC Minister for payment into the Consolidated Fund as the value of benefits derived by the GOC because it is not liable to pay Commonwealth tax that would be payable by it if it were neither a GOC nor a government entity.

**(2)** Without limiting subsection (1), the tax equivalents manual may provide for—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and
- (b) the lodging of returns by GOCs; and

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- (c) assessing returns; and
- (d) the functions and powers of the tax assessor appointed under subsection (3); and
- (e) objections and appeals against assessments and rulings.

(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

(4) A GOC must, as required under the tax equivalents manual, pay tax equivalents to the GOC Minister for payment into the Consolidated Fund.

(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

(6) For applying this section to a subsidiary of a GOC, the GOC Minister of the GOC is taken to be the GOC Minister of the subsidiary.

(7) In this section—

“GOC” includes a subsidiary of the GOC.

*Division 2—Guarantees***Guarantees by State**

**158.** The State is liable for the debts and other liabilities of a GOC or its subsidiaries only if, and to the extent that, the liability is expressly and lawfully undertaken on behalf of the State.

*Division 3—Dividends***Payment of dividends**

**159.(1)** A GOC’s board must advise the shareholding Ministers of the recommendation that, in the light of the information then available to the board, it is likely to make under subsection (2).

(1A) The board must comply with subsection (1) within—

- (a) 1 month after the end of each financial year; or

- (b) for a particular financial year, if the shareholding Ministers have extended the period to a period not longer than 3 months after the end of the financial year, the extended period.

(2) Within 4 months after the end of the financial year, the board must recommend to the shareholding Ministers that the GOC and its subsidiaries pay a specified dividend, or not pay a dividend, for the financial year.

(3) The board must consult with the shareholding Ministers before making the recommendation.

(4) Within 1 month after receiving the recommendation, the shareholding Ministers must either—

- (a) approve the recommendation; or
- (b) direct the payment of a specified dividend or a different specified dividend, as the case requires.

(5) If the GOC is a statutory GOC, the dividend for a financial year must not exceed its profits, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(6) If the GOC is a company GOC, the dividend for a financial year must not exceed the amount allowed under the Corporations Law.

(7) The dividend must be paid within 6 months after the end of the financial year or any further period that the shareholding Ministers allow.

(8) The shareholding Ministers must cause a copy of a direction given under subsection (4)(b) to be published in the gazette within 21 days after it is given.

### **Interim dividends**

**160.(1)** The shareholding Ministers of a GOC may, at any time after 1 January in a financial year, require the GOC's board to make a recommendation about the payment of interim amounts to the State (including the times at which the amounts are to be paid) on account of the dividend that may become payable under section 159 (Payment of dividends) for the financial year.

(2) Within 1 month after receiving notice of the requirement, the board must make a recommendation to the shareholding Ministers.

(3) The shareholding Ministers must, within 1 month after receiving the recommendation, either—

- (a) approve the recommendation; or
- (b) direct the payment, at specified times, of specified amounts, or different specified amounts, on account of the dividend that may become payable for the financial year.

(4) A direction under subsection (3)(b) must not direct the payment of an amount that exceeds the GOC's estimated profit for the first 6 months of the financial year, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(5) The shareholding Ministers must cause a copy of a direction under subsection (3)(b) to be published in the gazette within 21 days after it is given.

## **Definitions**

**160A.** In sections 160B to 160D—

**“dividend”** includes an amount in the nature of a dividend.

**“predecessor”** of a GOC means a candidate GOC whose associate became the GOC.

## **Dividend payment for financial year of becoming a GOC**

**160B.** For applying section 159 (Payment of dividends) to a GOC for the financial year when it became a GOC—

- (a) a dividend payable by the GOC is payable for, at the discretion of the shareholding Ministers—
  - (i) the entire financial year; or
  - (ii) the part of the financial year for which it was a GOC; and

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- (b) if the GOC has a predecessor—the predecessor and the GOC are taken to be the same entity; and
- (c) an interim dividend paid for the financial year by the GOC’s predecessor, or by the GOC before it became a GOC, is taken to have been paid on account of the dividend to be paid by the GOC under this Act.

*Example for paragraph (a)—*

A candidate GOC becomes a GOC on 1 January 1994. Depending on what the shareholding Ministers decide under paragraph (a), the dividend the GOC has to pay for the 1993–94 financial year will relate either to the entire financial year (even though it is a GOC for only half the year), or only to the period 1 January 1994 to 30 June 1994.

*Example for paragraph (b)—*

A, an entity, is nominated to be a candidate GOC on 8 October 1993. On 31 December 1993, B, a new entity, is established, and nominated to be the associate of A. On 1 January 1994, A’s assets and liabilities become B’s assets and liabilities, and B is declared to be a GOC. On 2 January 1994, B is dissolved. For applying section 159 to B, A and B are taken to be the same entity rather than 2 separate entities.

*Example for paragraph (c)—*

In February 1994, a candidate GOC, acting other than under this Act, pays to the State an interim dividend on account of the dividend that may become payable by it for the 1993–94 financial year. On 1 April 1994 the candidate GOC becomes a GOC. The interim dividend is taken to have been paid on account of any dividend for the 1993–94 financial year that becomes payable under this Act.

**Interim dividend for financial year of becoming a GOC**

**160C.(1)** For applying section 160 (Interim dividends) to a GOC for the financial year when it becomes a GOC—

- (a) the period (the “**applicable period**”) in relation to which an interim dividend is payable is, at the discretion of the shareholding Ministers—
  - (i) the first 6 months of the financial year; or
  - (ii) the part of the 6 months for which it was a GOC; and
- (b) the shareholding Ministers must, when acting under section 160(1) to require the GOC’s board to make a

recommendation, also notify the board of the applicable period.

(2) However, when a GOC's shareholding Ministers exercise their discretion under section 160B(a) (Dividend payment for financial year of becoming a GOC), they are not bound by an applicable period previously decided and notified under subsection (1).

*Example for subsection (1)—*

A candidate GOC becomes a GOC on 1 October 1994. Depending on what period the shareholding Ministers decide under subsection (1)(a), and notify to the GOC's board under subsection (1)(b), the payment subsequently directed under section 160(4) will relate to the GOC's profit for either the first 6 months of the 1994–95 financial year or only the period from 1 October 1994 to 31 December 1994.

### **Dividend payment for previous financial year**

**160D.(1)** In this section—

**“previous financial year”** for a GOC means the financial year immediately before the financial year when the GOC became a GOC.

(2) This section applies to a GOC if—

- (a) it has not paid a dividend (other than an interim dividend) to the State for the previous financial year; or
- (b) if the GOC has a predecessor—the predecessor has not paid a dividend (other than an interim dividend) to the State for the previous financial year.

(3) The shareholding Ministers may give a direction that—

- (a) section 159 (Payment of dividends) applies to the GOC for the previous financial year; and
- (b) if it is necessary for the operation of this section—the periods mentioned in section 159 are to be extended as stated in the direction.

(4) For applying this section and section 159—

- (a) to a GOC that has a predecessor—the predecessor and the GOC are taken to be the same entity; and
- (b) to a GOC that has paid to the State, or whose predecessor has paid to the State, an interim dividend for the previous financial

year—the interim dividend is taken to have been paid on account of the dividend to be paid by the GOC under this Act for the previous financial year.

## **PART 15—ACQUISITION AND DISPOSAL OF ASSETS AND SUBSIDIARIES**

### **Reserve power of shareholding Ministers to direct that asset not be disposed of**

**161.(1)** The shareholding Ministers of a GOC may, after consultation with the board of a GOC, give the board a written direction requiring the GOC or a subsidiary of the GOC not to dispose of a specified asset.

(2) The board must ensure that the direction is complied with in relation to the GOC and must, as far as practicable, ensure that it is complied with in relation to any relevant subsidiary.

(3) The shareholding Ministers must cause a copy of the direction to be published in the gazette within 21 days after it is given.

### **Disposal of main undertakings**

**162.(1)** A GOC or a GOC subsidiary may dispose of any of its main undertakings only with the prior written approval of the shareholding Ministers.

(2) In subsection (1)—

“**main undertakings**” means the undertakings specified in the GOC’s most recent statement of corporate intent as the GOC’s or subsidiary’s main undertakings.

### **Acquiring and disposing of subsidiaries**

**163.** A GOC or a GOC subsidiary may—

(a) form, or participate in the formation of, a company that will

become a subsidiary; or

- (b) acquire shares or participate in any other transaction that will result in a body corporate becoming or ceasing to be a subsidiary;

only with the prior written approval of the shareholding Ministers.

## **PART 15A—GOCs AND GOC SUBSIDIARIES BECOMING AND RETIRING AS TRUSTEES**

### **GOCs and subsidiaries becoming trustees**

**163A.(1)** A GOC may accept appointment as a trustee of a trust only with the prior written approval of the GOC's shareholding Ministers.

(2) A GOC subsidiary may accept appointment as a trustee of a trust only with the prior written approval of the shareholding Ministers of the GOC of which it is a subsidiary.

### **GOCs and subsidiaries retiring as trustees**

**163B.(1)** This section applies if a GOC or a GOC subsidiary is the trustee of a trust.

(2) The GOC may retire from its trusteeship only with the prior written approval of the GOC's shareholding Ministers.

(3) The GOC subsidiary may retire from its trusteeship only with the prior written approval of the shareholding Ministers of the GOC of which it is a subsidiary.

### **Part applies despite Corporations Law**

**163C.** This part applies despite the Corporations Law.



## **PART 16—EMPLOYEES**

### *Division 1—Application of part to GOC subsidiaries*

#### **Part applies to subsidiaries**

**164.** This part applies to a GOC subsidiary and its employees in the same way as it applies to the GOC and its employees.

### *Division 2—Statutory GOCs*

#### **Employees of statutory GOC**

**165.** A statutory GOC may engage the employees that it considers necessary to perform its functions.

#### **Terms of employment**

**166.(1)** The terms of employment of the employees of a statutory GOC are as determined by the GOC.

**(2)** Subsection (1) has effect subject to—

- (a)** this Act or another Act prescribed by regulation for the purposes of this section; or
- (b)** any relevant award or industrial agreement.

**(3)** The employees of a statutory GOC are not to be employed under the *Public Service Act 1996*.

### *Division 3—Company GOCs*

#### **Employees not employed under Public Service Act**

**167.** The employees of a company GOC are not to be employed under the *Public Service Act 1996*.

***Division 4—GOCs generally*****Appointment of senior executives**

**168.(1)** The senior executives of a GOC are to be appointed by the Governor in Council on the recommendation of the GOC's board.

(2) This section has effect despite the Corporations Law.

**Arrangements relating to staff**

**169.(1)** A GOC may arrange with the chief executive of a department, or with an authority of the State, for the services of officers or employees of the department or authority to be made available to it.

(2) A GOC may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) A GOC may arrange for the service of an employee of the GOC to be made available to—

- (a) the Commonwealth or another State; or
- (b) an authority of the Commonwealth or another State.

**Application of Equal Opportunity in Public Employment Act**

**170.** A GOC is a public sector unit for the *Equal Opportunity in Public Employment Act 1992*.

**Employment and industrial relations plan**

**171.(1)** A GOC's board must prepare an employment and industrial relations plan.

(2) The plan must specify the arrangements for all major employment and industrial relations issues for the GOC.

(3) The plan must include the following matters—

- (a) the GOC's remuneration arrangements, including—
  - (i) the remuneration payable to its chief executive officer and other senior executives; and
  - (ii) any gain sharing schemes;
- (b) other employment conditions applicable to its employees;
- (c) the approximate number of its employees that are covered by an award or industrial agreement;
- (d) the approximate number of its employees that are employed under an employment contract;
- (e) its redundancy policies;
- (f) the superannuation arrangements for its employees;
- (g) a summary of the outcome of consultations in relation to the plan.

(4) The plan may specify measures to ensure adherence to it.

(5) The employment and industrial relations plan must be included in the GOC's statement of corporate intent.

(6) The shareholding Ministers may, by written notice, direct the board to take specified steps in relation to the preparation or review of the employment and industrial relations plan.

(7) In preparing or reviewing the plan, the board must consult with—

- (a) the office of the public service; and
- (b) the department that deals with industrial relations; and
- (c) interested industrial organisations and employees.

(8) A direction under subsection (6) may specify the extent to which consultations are required either generally or in relation to a particular person or body.

(9) The board must provide the shareholding Ministers with information about the outcome of the consultations.

### **Superannuation schemes**

**172.** A GOC may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

### **Superannuation for officers and employees who were previously officers of the public service**

**173.(1)** In this section—

**“person to whom this section applies”** means a person employed by a GOC in a permanent or full-time capacity who, immediately before becoming employed, was a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme.

(2) If, at the time a person to whom this section applies becomes employed by a GOC, the GOC does not take part in a superannuation scheme, the person is to continue to be a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be an officer within the meaning of the *State Service Superannuation Act 1972* or eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

(3) If—

- (a) the GOC subsequently establishes, joins in establishing or takes part in establishing a superannuation scheme (other than the State Service Superannuation Fund or the State Public Sector Superannuation Scheme); and
- (b) a person continued to be a contributor to the fund, or a member of the scheme, under subsection (2);

the person may, under arrangements prescribed by regulation, stop being a contributor or member and become a member of the scheme established or taken part in by the GOC.

**Preservation of leave entitlements of certain former officers and employees of government entities****174.(1)** If—

- (a) a person becomes employed by a GOC in a permanent or full-time capacity within 1 year after the GOC becomes a GOC; and
- (b) the person was an officer or employee of a government entity, who was employed in a permanent or full-time capacity, immediately before becoming employed by the GOC; and
- (c) the person had leave entitlement at that time that had been accrued as an officer or employee of a government entity;

the person must be treated as having accrued the entitlements as an employee of the GOC.

(2) For accruing leave entitlements that have not accrued when a person mentioned in subsection (1)(a) and (b) becomes employed by the GOC, the person's employment mentioned in subsection (3) is taken to be employment by the GOC.

**(3)** For subsection (2), the person's employment is—

- (a) employment by the government entity; and
- (b) employment by another entity that under a law is taken to be employment of the person by the government entity.

**Right of return to public service****175.(1)** If—

- (a) a person becomes employed by a GOC in a permanent or full-time capacity within 1 year after the GOC becomes a GOC; and
- (b) the person was an officer of the public service, who was employed in a permanent or full-time capacity, immediately before becoming employed by the GOC; and
- (c) the person elects to re-become an officer of the public service within that period of 1 year or any further period that the shareholding Ministers allow;

the person is entitled to re-become an officer of the public service.

(2) If the person re-becomes an officer of the public service under subsection (1)—

- (a) the person's initial terms of employment must not be less favourable than the terms of employment that applied to the person before the person became employed by the GOC; and
- (b) for the purpose of calculating and providing the person's superannuation and leave entitlements, the person is to be treated as—
  - (i) not having left the public service when the person became employed by the GOC; and
  - (ii) having been an officer of the public service while the person was employed by the GOC.

## **PART 17—OTHER MATTERS**

### *Division 1—GOCs generally*

#### **Application of chapter to certain company GOC subsidiaries**

**177.(1)** This section applies to a company GOC subsidiary prescribed under a regulation.

(2) The provisions of this chapter prescribed by schedule 4 apply to the company GOC subsidiary with the changes prescribed by the schedule as if it were a GOC.

### *Division 2—Statutory GOCs*

#### **Statutory GOC's seal**

**178.(1)** A statutory GOC's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

(2) The affixing of the seal to a document must be attested by—

- (a) 2 or more directors; or
- (b) at least 1 director and the chief executive officer; or
- (c) a director or the chief executive officer and 1 or more persons authorised by the board.

(3) Judicial notice must be taken of the imprint of the statutory GOC's seal appearing on a document.

### **Authentication of documents**

**179.** A document made by a statutory GOC (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson of the board; or
- (b) the chief executive officer; or
- (c) a person authorised to sign the document by—
  - (i) resolution of the board; or
  - (ii) direction of the chief executive officer.

### **Judicial notice of certain signatures**

**180.** Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of the board of a statutory GOC, a director or chief executive officer of a statutory GOC; and
- (b) the fact that the person holds or has held the office concerned.

### **Application of Criminal Justice Act**

**181.** A statutory GOC is a unit of public administration for the purposes of the *Criminal Justice Act 1989*.

**Application of Parliamentary Commissioner Act 1974**

**182.(1)** The *Parliamentary Commissioner Act 1974* does not apply to—

- (a) a statutory GOC prescribed by regulation; or
- (b) the making of a recommendation to the shareholding Ministers of a statutory GOC; or
- (c) a decision about a statutory GOC's commercial policy; or
- (d) a statutory GOC in relation to its commercially competitive activities.

**(2)** In this section—

**“commercially competitive activities”** means activities carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State; or
- (b) a State authority; or
- (c) a local government.

***Division 3—Company GOCs*****Application of Criminal Justice Act**

**183.** A company GOC is not a unit of public administration for the purposes of the *Criminal Justice Act 1989*.

**Application of Parliamentary Commissioner Act 1974**

**184.** The *Parliamentary Commissioner Act 1974* does not apply to a company GOC.



## CHAPTER 4—MISCELLANEOUS

### Monitoring and assessment of GOCs

**185.(1)** The shareholding Ministers of a GOC may delegate their powers under section 133 (Board to keep shareholding Ministers informed) to any person.

(2) The shareholding Ministers of a GOC may request the chief executive of the department (the “**chief executive**”) to investigate, and report to them on, any matter relating to the GOC or a subsidiary or proposed subsidiary of the GOC.

(3) The responsible Ministers of a candidate GOC may request the chief executive to investigate, and report to them on, any matter relating to the candidate GOC or a subsidiary or proposed subsidiary of the candidate GOC.

(4) For the purposes of an investigation under this section of a matter relating to a GOC or candidate GOC (the “**entity**”) or a subsidiary or proposed subsidiary of the entity, the chief executive may give the entity written directions.

(5) Without limiting subsection (4), the chief executive may direct the entity—

- (a) to give to the chief executive any information about the entity and its subsidiaries and proposed subsidiaries that the chief executive considers necessary or desirable in connection with the investigation; and
- (b) to permit persons authorised by the chief executive to have access to specified records and other documents about the entity and its subsidiaries and proposed subsidiaries that the chief executive considers necessary or desirable in connection with the investigation; and
- (c) to take steps that the chief executive considers necessary or desirable for the purposes of the investigation.

(6) The entity must ensure that any direction given to it under this section is complied with in relation to itself and must, as far as practicable, ensure that it is also complied with in relation to its subsidiaries and

proposed subsidiaries.

(7) The chief executive may delegate to an officer of the department, an officer of the relevant portfolio Minister's department or another person the chief executive's powers under this section (including powers delegated to the chief executive under subsection (1)).

### **Giving of documents to board**

**186.** If this Act authorises or requires a document to be given to the board of a GOC or a candidate GOC, it may be given to the chairperson of the board.

### **Proceedings for offences**

**187.(1)** In this section—

**“prescribed offence”** means an offence against this Act for which the maximum penalty of imprisonment is 2 years or more.

(2) A proceeding for a prescribed offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(3) Any other offence against this Act is a summary offence.

(4) A proceeding must be before a magistrate if it is a proceeding—

- (a) with a view to the summary conviction of a person on a charge of a prescribed offence; or
- (b) for an examination of witnesses in relation to a charge for a prescribed offence.

(5) However, if a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(6) A proceeding for an offence by way of a summary proceeding under the *Justices Act 1886* must start—

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- (a) within 1 year after the commission of the offence; or
- (b) within 1 year after the offence comes to the complainant's knowledge, but not later than 2 years after the commission of the offence;

whichever is the later.

**(7)** If—

- (a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, requests, at the start of the proceeding, that the charge be prosecuted on indictment; or
- (b) the magistrate hearing and determining a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

- (c) must not hear and determine the charge as a summary offence; but
- (d) must proceed by way of an examination of witnesses in relation to an indictable offence.

**(8)** If a magistrate acts under subsection (7)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (7) is taken to be evidence in the proceeding with a view to the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence the magistrate must make a statement to the person in accordance with the *Justices Act 1886*, section 104(2)(b).

**(9)** The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or imprisonment for 1 year.

**(10)** In a complaint starting a proceeding for a prescribed offence, a

statement that the matter of the complaint came to the complainant's knowledge on a specified day is evidence of the matter of the statement.

### **Transfer of assets, liabilities etc. to GOC or GOC subsidiary**

**188.(1)** A regulation may make provision about a GOC or GOC subsidiary with respect to—

- (a) whether, and, if so, the extent to which, the GOC or subsidiary is the successor in law of a GOC or GOC subsidiary (the “**other GOC or subsidiary**”); and
- (b) the assets and liabilities that are, or are not, assets and liabilities of the GOC or subsidiary or of someone else; and
- (c) the consideration for a transfer of assets to the GOC or subsidiary, which may include—
  - (i) for the GOC—a debt to be owed by the GOC to its shareholding Ministers; or
  - (ii) for the subsidiary—a debt to be owed by the subsidiary to its GOC's shareholding Ministers; and
- (d) the instruments that are, or are not, to apply to the GOC or subsidiary, including whether or not the instruments are taken to be instruments—
  - (i) to which the GOC or subsidiary is a party; or
  - (ii) that were given to, by or in favour of the GOC or subsidiary; or
  - (iii) in which a reference is made to the GOC or subsidiary; or
  - (iv) 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 the GOC or subsidiary; and
- (e) the proceedings to which the GOC or subsidiary becomes a party in substitution for the other GOC or subsidiary or for someone else; and
- (f) the existing officers and employees of the other GOC or subsidiary and their rights.

**(2)** Without limiting subsection (1)—

- (a) a regulation under subsection (1)(c) may make provision about—
  - (i) how the consideration is to be decided; and
  - (ii) the changing of the consideration; and
  - (iii) the terms of the debt; and
- (b) a regulation under subsection (1)(d) may make provision about whether, and, if so, the extent to which, instruments apply to the GOC or subsidiary or the other GOC or subsidiary.

**Regulation about assets and liabilities not dealt with under s 54A**

**189.(1)** To the extent that anything about a candidate GOC or subsidiary of a candidate GOC could have been dealt with under section 54A (Transfer of assets, liabilities etc. to government entity to become GOC or GOC subsidiary) but was not dealt with under the section through inadvertence or otherwise, the thing may be dealt with under this section.

**(2)** For the purpose of dealing with the thing, a regulation may make provision with respect to—

- (a) whether and, if so, the extent to which a GOC or GOC subsidiary is the successor in law of the candidate GOC or candidate GOC subsidiary; and
- (b) the assets and liabilities that are, or are not, assets and liabilities of the GOC or subsidiary or of someone else; and
- (c) the consideration for a transfer of assets to the GOC or subsidiary, which may include—
  - (i) for the GOC—a debt to be owed by the GOC to its shareholding Ministers; or
  - (ii) for the subsidiary—a debt to be owed by the subsidiary to its GOC's shareholding Ministers; and
- (d) the instruments that are, or are not, to apply to the GOC or subsidiary, including whether or not the instruments are taken to be instruments—
  - (i) to which the GOC or subsidiary is a party; or

- (ii) that were given to, by or in favour of the GOC or subsidiary; or
  - (iii) in which a reference is made to the GOC or subsidiary; or
  - (iv) 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 the GOC or subsidiary; and
  - (e) the proceedings to which the GOC or subsidiary becomes a party in substitution for the candidate GOC or candidate GOC subsidiary or for someone else.
- (3) Without limiting subsection (2)—
- (a) a regulation under subsection (2)(c) may make provision about—
    - (i) how the consideration is to be decided; and
    - (ii) the changing of the consideration; and
    - (iii) the terms of the debt; and
  - (b) a regulation under subsection (2)(d) may make provision about whether, and if so, the extent to which, instruments apply to the GOC or subsidiary in substitution for the candidate GOC or candidate GOC subsidiary or for someone else.

(4) In this section—

**“candidate GOC”** includes a government entity, including an entity that has ceased to exist, of which the candidate GOC formed part;

**“subsidiary”** of a candidate GOC includes a government entity, including an entity that has ceased to exist, of which the subsidiary formed part.

### **Debt owned by State**

**190.** A debt mentioned in section 188(1)(c) (Transfer of assets, liabilities etc. to GOC or GOC subsidiary) or 189(2)(c) (Regulation about assets and liabilities not dealt with under s 54A) is owned by the State and held by the shareholding Ministers for the State.

**Regulation about liability**

**191.(1)** This section applies if—

- (a) a government entity affected by the operation of this Act may have incurred a liability; and
- (b) the liability may no longer exist because the government entity has ceased to exist.

**(2)** A regulation may allocate the liability to a GOC or GOC subsidiary for the purpose of enabling a person to bring a proceeding to enforce the liability against the GOC or subsidiary.

**Regulation dissolving certain government entities**

**192.(1)** This section applies if all the assets and liabilities of a government entity established under this Act (the “**first entity**”) have become the assets and liabilities of another government entity or have been otherwise disposed of by the first entity.

**(2)** A regulation may dissolve the first entity and make provision with respect to any matter for which it is necessary or convenient to make provision about the first entity’s dissolution and the preparation of its final accounts.

**(3)** Without limiting subsection (2), the regulation may make provision about—

- (a) access to information and documents for preparing final accounts; and
- (b) the entity who is to prepare the accounts.

**(4)** This section does not apply if the first entity is a government company or company GOC.

**Regulations**

**193.(1)** The Governor in Council may make regulations for the purposes of this Act.

**(2)** Regulations under this Act—

- (a) about a government entity’s functions or powers may express

*Government Owned Corporations Act 1993*

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them by reference to the requirements or directions of another entity; and

- (b) about a government entity's assets or liabilities (including the consideration for them) may identify, or otherwise provide for, them by reference to a document held, or to be held, by an entity; and
- (c) about a government entity's employees and officers may identify them, and things about them, by reference to a document held by an entity.

**(3)** A document mentioned in subsection (2)(b) need not exist when the regulations are made.

**(4)** A regulation making power in this Act does not by implication limit the *Statutory Instruments Act 1992*, section 26 (Statutory instrument may authorise determination etc. by specified person etc.).



## **SCHEDULE 1**

### **ADDITIONAL PROVISIONS RELATING TO BOARD OF STATUTORY GOC**

section 94

#### **PART 1—COMPOSITION OF BOARD**

##### **Composition of board**

**1.** A statutory GOC's board is to consist of the number of directors that are appointed by the Governor in Council.

##### **Chairperson and deputy chairperson**

**2.(1)** The Governor in Council may appoint a director to be the board's chairperson and another director to be the board's deputy chairperson.

**(2)** The deputy chairperson is to act as chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or is, for another reason, unable to perform the functions of the office.

#### **PART 2—MEETINGS AND OTHER BUSINESS OF BOARD**

##### **Meaning of “required minimum number” of directors**

**3.** In this part—

**“required minimum number”** of directors means the number that is half the number of directors of which the board for the time being consists

## SCHEDULE 1 (continued)

or, if that number is not a whole number, the next higher whole number.

**Conduct of meetings and other business**

4. Subject to this part, the board may conduct its business (including its meetings) in the way it considers appropriate.

**Times and places of meetings**

5.(1) Meetings of the board are to be held at the times and places that the board determines.

(2) However, the chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by at least the required minimum number of directors.

**Presiding at meetings**

6.(1) The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

(3) If both the chairperson and deputy chairperson are not present at a meeting, the director chosen by the directors present at the meeting is to preside.

**Quorum and voting at meetings**

7.(1) At a meeting of the board—

- (a) the required minimum number of directors constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and

## SCHEDULE 1 (continued)

- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

(2) Subsection (1)(a) has effect subject to section 135(3) of the Act (Voting by interested director).

**Participation in meetings by telephone etc.**

8.(1) The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication.

(2) A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

**Resolutions without meetings**

9.(1) If at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

## SCHEDULE 1 (continued)

**Minutes**

- 10.** The board must keep minutes of its proceedings.

**PART 3—PROVISIONS RELATING TO DIRECTORS****Appointment of directors**

**11.(1)** A director is to be appointed by the Governor in Council for a term of not more than 5 years.

**(2)** 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 statutory GOC's commercial performance and, if the GOC has a statement of corporate intent, the implementation of the statement.

**(3)** A person is not eligible for appointment if the person—

- (a) is a public service officer; or
- (b) is not able to manage a corporation because of the Corporations Law, section 229.<sup>2</sup>

**Terms of appointment not provided for under Act**

**12.(1)** In relation to matters not provided for under this Act, a director holds office on the terms of appointment determined by the Governor in Council.

**(2)** Except as determined by the Governor in Council, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or

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<sup>2</sup> Corporations Law, section 229 (Certain persons not to manage corporations)

## SCHEDULE 1 (continued)

- (b) in connection with retirement from office, or other termination of office, as a director.

**Appointment of acting director**

**13.** The Governor in Council may appoint a person to act as a director during any period, or all periods, when a director is absent from duty or is, for another reason, unable to perform the functions of the office.

**Resignation**

**14.(1)** A director, or person appointed under section 2 (Chairperson and deputy chairperson), may resign by signed notice given to the Governor.

**(2)** The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

**Termination of appointment as director**

**15.(1)** The Governor in Council may, at any time, terminate the appointment of all or any directors of the board for any reason or none.

**(2)** If a person who is an officer of the public service when appointed as a director ceases to be an officer of the public service, the person ceases to be a director.

**SCHEDULE 2****ADDITIONAL PROVISIONS RELATING TO CHIEF  
EXECUTIVE OFFICER OF STATUTORY GOC**

section 101

**Appointment of chief executive officer**

1. A statutory GOC's chief executive officer is to be appointed by the Governor in Council on the recommendation of the GOC's board.

**Appointment of acting chief executive officer**

2. The board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or is, for another reason, unable to perform the functions of the office.

**Terms of appointment not provided for under Act**

3. In relation to matters not provided for under this Act, the chief executive officer holds office on the terms of appointment determined by the board.

**Resignation**

4. The chief executive officer may resign by signed notice given to the chairperson.

**Termination of appointment**

5.(1) The board may, at any time, terminate the appointment of the chief executive officer for any reason or none.

## SCHEDULE 2 (continued)

(2) The termination of the appointment of the chief executive officer under subsection (1) does not affect any rights to compensation to which the chief executive officer is entitled under the terms of the chief executive officer's appointment.

**SCHEDULE 3****APPLICATION OF FA AND A ACT TO COMPANY  
GOCs AND PRESCRIBED COMPANY GOC  
SUBSIDIARIES**

section 128

**PART 1—PRELIMINARY****Purpose**

1. The purpose of this schedule is to apply certain provisions of the FA and A Act to company GOCs, and to company GOC subsidiaries prescribed under a regulation under section 128 of the Act.<sup>3</sup>

**Definition**

2. In this schedule—

“**FA and A Act**” means the *Financial Administration and Audit Act 1977*.

**PART 2—APPLICATION OF CERTAIN PROVISIONS  
OF FA AND A ACT TO COMPANY GOCs****Definitions for pts 2 and 4**

3. In this part and part 4—

“**applied provisions**” mean the provisions of the FA and A Act as applying under this part.

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<sup>3</sup> Section 128 (Application of Financial Administration and Audit Act)



## SCHEDULE 3 (continued)

**“authorised auditor”** means—

- (a) the auditor-general or deputy auditor-general; or
- (b) a member of the staff of the Queensland Audit Office; or
- (c) a contract auditor.

**“chairperson”**, of a company GOC, means the chairperson of the GOC’s board of directors.

**“contract auditor”** means a person appointed as a contract auditor under section 82 of the applied provisions.

**Application of FA and A Act—Act, s 128**

**4.(1)** The provisions of the FA and A Act set out in part 4 are applied to each company GOC.

**(2)** Subject to subsection (3), the provisions are applied as in force immediately before the commencement of this section.

**(3)** As applying, some provisions are changed to read as set out in part 4.<sup>4</sup>

**(4)** For the applied provisions, definitions and other interpretative provisions of the FA and A Act as in force immediately before the commencement of this section apply.

**(5)** Subsection (4) is subject to section 3.

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<sup>4</sup> Changes are shown in italics. Division headings are also shown in italics.

## SCHEDULE 3 (continued)

**PART 3—APPLICATION OF CERTAIN PROVISIONS  
OF FA AND A ACT TO COMPANY GOC  
SUBSIDIARIES****Definitions for pts 3 and 5**

5. In this part and part 5—

**“applied provisions”** mean the provisions of the FA and A Act as applying under section 6.

**“authorised auditor”** means—

- (a) the auditor-general or deputy auditor-general; or
- (b) a member of the staff of the Queensland Audit Office; or
- (c) a contract auditor.

**“chairperson”**, of a company GOC subsidiary, means the chairperson of the subsidiary’s board of directors.

**“company GOC subsidiary”** means a company GOC subsidiary prescribed under a regulation under section 128 of the Act.

**“contract auditor”** means a person appointed as a contract auditor under section 82 of the applied provisions.

**“shareholding GOC”**, of a company GOC subsidiary, means a GOC that is a shareholder of the subsidiary.

**Application of FA and A Act—Act, s 128**

**6.(1)** The provisions of the FA and A Act set out in part 5 are applied to each company GOC subsidiary.

**(2)** Subject to subsection (3), the provisions are applied as in force immediately before the commencement of this section.

## SCHEDULE 3 (continued)

(3) As applying, some provisions are changed to read as set out in part 5.<sup>5</sup>

(4) For the applied provisions, definitions and other interpretative provisions of the FA and A Act as in force immediately before the commencement of this section apply.

(5) Subsection (4) is subject to section 5.

**PART 4—PROVISIONS OF FA AND A ACT  
APPLYING UNDER SECTION 4 TO COMPANY  
GOCS**

**PART 3—FINANCIAL  
ADMINISTRATION—COMPANY GOCS**

**46C.** *Not applied.*

***Company GOCs to prepare annual financial statements***

**46F.(1)** *A company GOC must give to the auditor-general the financial statements prepared by it under the Corporations Law.*

(2) The *company GOC* must comply with subsection (1) within 2 months after the end of each financial year or the longer period agreed to between the *GOC* and the auditor-general.

(3) to (9) *Not applied.*

**46G.** *Not applied.*

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<sup>5</sup> Changes are shown in italics. Division headings are also shown in italics.

## SCHEDULE 3 (continued)

***Company GOCs must consider auditor-general's observations and suggestions***

**46H.** If a chairperson of a *company GOC* is given observations or suggestions (together with any comments on them) under section 93(4), the chairperson must ensure they are considered at the *GOC's* next ordinary meeting.

**Annual report**

**46J.(1)** As soon as possible after the close of each financial year but, subject to subsection (2), in no case later than 4 months after that close a *company GOC* shall prepare and furnish to *its shareholding Ministers* a report in writing on the operations of the *GOC* during that financial year.

(2) The *shareholding Ministers* may, in a particular case, extend or further extend the period of 4 months referred to in subsection (1) by written notice given to the *company GOC*.

(2A) If the *shareholding Ministers extend* the period referred to in subsection (1) to a period of more than 6 months, *the Ministers* must, within 14 days of granting that extension, give to the Legislative Assembly an explanation for the granting of that extension.

(3) The report—

- (a) shall contain such information as the *shareholding Ministers direct* to enable the *Ministers* to assess the efficiency, effectiveness and economy of the *company GOC* and the need for its continuance; and
- (b) shall contain a copy of the annual financial statements of the *company GOC* relating to that financial year *prepared under the Corporations Law; and*
- (c) *shall contain the information required, under the Government Owned Corporations Act 1993, to be included in the annual report of a GOC.*

## SCHEDULE 3 (continued)

(4) *Subsection (3) is subject to the Government Owned Corporations Act 1993, section 132.*<sup>6</sup>

**PART 3A—TABLING OF ANNUAL REPORTS*****Shareholding Ministers must table reports***

**46K.** Within 14 days after receiving the annual report of a *company GOC*, the *GOC's shareholding Ministers* must table a copy of it in the Legislative Assembly.

**46KA.** *Not applied.*

***Shareholding Ministers to explain late tabling of annual report***

**46KB.(1)** This section applies if the *shareholding Ministers table*, in the Legislative Assembly—

- (a) the annual report of a *company GOC* later than 4 months and 14 days after the end of a financial year; or
- (b) *Not applied.*

**(2)** The *shareholding Ministers* must also give the Legislative Assembly a written statement—

- (a) stating the report is being tabled late; and
- (b) stating the length of the delay; and
- (c) explaining the reasons for the delay.

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<sup>6</sup> Section 132 (Deletion of commercially sensitive matters from annual report etc.)

## SCHEDULE 3 (continued)

**Procedure if Legislative Assembly not in session or sitting**

**46KC.(1)** This section applies if the Legislative Assembly is not in session or is not actually sitting when the *shareholding Ministers are* required to do any of the following things—

- (a) table a copy of an annual report in the Legislative Assembly;
- (b) give the Legislative Assembly a written statement about the late tabling of an annual report;
- (c) if the *shareholding Ministers have* given a *company GOC* an extension of time for giving the *Ministers* a copy of its annual report—give the Legislative Assembly an explanation for giving the extension.

(2) The *shareholding Ministers* must give a copy of the report, the written statement or the explanation to the clerk of the Parliament.

(3) The clerk must table the report, statement or explanation before the Legislative Assembly on its next sitting day.

(4) The report, statement or explanation is taken to have been tabled in the Legislative Assembly on the day it is given to the clerk.

(5) The day of receipt of the report, statement or explanation must be recorded in the votes and proceedings on the next sitting day.

(6) If the Legislative Assembly orders the report, statement or explanation to be printed, the report, statement or explanation is taken to have been ordered to be printed by the Legislative Assembly on the day the clerk receives it.

## SCHEDULE 3 (continued)

**PART 6—AUDIT OF COMPANY GOCs***Division 1—Scope of auditor-general’s mandate*

73. *Not applied.*

74. *Not applied.*

**Shareholding Ministers to give auditor-general information relating to company GOCs**

75.(1) If a company GOC acts under the Government Owned Corporations Act 1993, section 163,<sup>7</sup> its shareholding Ministers must give the auditor-general any information about the matter that the auditor-general requires.

(2) *Not applied.*

**Auditor-general to be appointed auditor of every company GOC**

76.(1) The shareholding Ministers of a company GOC must—

- (a) appoint the auditor-general to be the auditor of the GOC; and
- (b) ensure that the auditor-general remains, at all times, the auditor of the GOC while the GOC remains a company GOC.

(2) *Not applied.*

**Audits at request of Parliament**

77.(1) If the Legislative Assembly, by resolution, requests the auditor-general to conduct an audit of a matter relating to the financial

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<sup>7</sup> Section 163 (Acquiring and disposing of subsidiaries)

## SCHEDULE 3 (continued)

administration of a *company GOC*, the auditor-general must conduct the audit.

(2) *Not applied.*

78. *Not applied.*

*Division 2—Conduct of audits***Way in which audit is to be conducted**

79.(1) The auditor-general may conduct an audit in the way the auditor-general considers appropriate.

(2) In determining the appropriate way to conduct an audit, the auditor-general may have regard to—

- (a) the character of the relevant internal control system (including internal audit); and
- (b) recognised standards and practices.

(3) Subsection (2) does not limit the matters to which the auditor-general may have regard.

(4) *The* auditor-general is not limited to conducting the audit in accordance with the Corporations Law, and may do anything else that the auditor-general considers appropriate.

**Audit of performance management systems**

80.(1) The auditor-general may conduct an audit of performance management systems of a *company GOC*.

(2) The audit may be conducted as a separate audit or as part of another audit (including an audit of another *company GOC* under this section).

(3) The object of the audit includes determining whether the performance management systems enable the *company GOC* to assess whether its



## SCHEDULE 3 (continued)

objectives are being achieved economically, efficiently and effectively.

(4) *Not applied.*

**81.** *Not applied.*

**Appointment of contract auditors**

**82.(1)** *For auditing company GOCs the auditor-general may appoint an appropriately qualified individual who is not a member of the staff of the Audit Office to be a contract auditor.*

(2) The appointment of a person to be a contract auditor may be general or limited to a particular audit.

(3) The contract auditor—

- (a) is appointed on the terms specified in the instrument of appointment; and
- (b) may resign the appointment by signed notice given to the auditor-general.

**Identity cards for contract auditors**

**83.(1)** The auditor-general may issue an identity card to *a contract auditor.*

(2) The identity card must—

- (a) contain a recent photograph of the *contract auditor*; and
- (b) be signed by the *contract auditor* and the auditor-general.

(3) A person who ceases to be *a contract auditor* must not, without reasonable excuse, fail to return the person's identity card to the auditor-general as soon as practicable after ceasing to be *a contract auditor.*

Maximum penalty for subsection (3)—10 penalty units.

## SCHEDULE 3 (continued)

**Proof of authority as authorised auditor**

**84.(1)** An authorised auditor may exercise a power *under the applied provisions* in relation to a person only if the authorised auditor produces his or her identity card for inspection by the person.

**(2)** *In this section—*

**“identity card”** means—

- (a)** *for a contract auditor, the identity card issued to the auditor under section 83; or*
- (b)** *for another authorised auditor, the identity card issued to the auditor under section 83<sup>8</sup> of the F A and A Act.*

**Access to documents and property**

**85.(1)** *Not applied.*

**(2)** For the purpose of conducting an audit of *a company GOC under the applied provisions*, an authorised auditor is entitled, at all reasonable times, to full and free access to all documents and property belonging to, in the custody of, or under the control of, the *GOC*.

**(3)** For the purpose of conducting an audit under *the applied provisions*, an authorised auditor may—

- (a)** enter, at any reasonable time—
  - (i)** a place occupied by a *company GOC*; or
  - (ii)** a place occupied by a financial institution with which a *company GOC* maintains an account; or
  - (iii)** another place if the occupier of the place consents to the entry; and
- (b)** inspect, examine, photograph or film anything in the place; and
- (c)** take extracts from, and make copies of, any documents in the place; and

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<sup>8</sup> Section 83 (Identity cards for authorised auditors)

## SCHEDULE 3 (continued)

- (d) take into the place persons, equipment and materials that the authorised auditor reasonably requires; and
- (e) require any person in the place to give to the authorised auditor reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d).

(4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (3)(e).

Maximum penalty—40 penalty units.

(5) It is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (3)(e) that complying with the requirement might tend to incriminate the person.

(6) Neither an answer by a person under a requirement made under subsection (3)(e), nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(7) The fact that a document was produced by a person under a requirement made under subsection (3)(e) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

**Obtaining information**

**86.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person to give to the authorised auditor specified

## SCHEDULE 3 (continued)

information, within a reasonable period and in a reasonable way specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty—40 penalty units.

(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

(4) Neither information given by a person under a requirement under subsection (1), nor any other information or a document or other thing obtained as a direct or indirect consequence of the person giving the information, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the information) if—

- (a) the person, before giving the information, claimed that giving the information might tend to incriminate the person; and
- (b) giving the information might in fact tend to incriminate the person.

**Obtaining evidence**

**87.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person—

- (a) to attend before an authorised auditor, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (b) to produce to an authorised auditor, at a reasonable time and place specified in the notice, documents belonging to, in the custody of, or under the control of, the person.

(2) The authorised auditor before whom the person attends may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the authorised auditor may administer an oath or affirmation.

## SCHEDULE 3 (continued)

(3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

(4) An authorised auditor to whom a document is produced under a notice under subsection (1)—

- (a) may keep the document for a reasonable period for the purposes of conducting the relevant audit; and
- (b) may take extracts from and make copies of the document.

(5) While the authorised auditor has possession of the document, the authorised auditor must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised auditor's possession.

(6) *Not applied.*

(7) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty—40 penalty units.

(8) It is not a reasonable excuse for a person to fail to comply with a notice under subsection (1) that complying with the notice might tend to incriminate the person.

(9) Neither an answer given by a person under this section, nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(10) The fact that a document was produced by a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that

## SCHEDULE 3 (continued)

- producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

**Compensation**

**88.(1)** A person (other than a *company GOC*) who incurs any loss or expense—

- (a) because of the exercise or purported exercise of a power under this division; or
- (b) in complying with a requirement made of the person under this division;

may claim compensation from the State.

**(2)** A payment of compensation may be claimed and ordered—

- (a) in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against *the applied provisions* brought against the person by whom the claim is made.

**(3)** A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to do so in the circumstances of the particular case.

**False or misleading information**

**89.(1)** A person must not—

- (a) make a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised auditor anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—80 penalty units.

**(2)** A complaint against a person for an offence against subsection (1)(a)

## SCHEDULE 3 (continued)

or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

**Obstruction of authorised auditor**

**90.** A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an authorised auditor in the exercise of a power under *the applied provisions*.

Maximum penalty—80 penalty units.

**Impersonation of authorised auditor**

**91.** A person must not pretend to be an authorised auditor.

Maximum penalty—80 penalty units.

**Confidentiality**

**92.(1)** In this section—

**“person to whom this section applies”** means a person who is or has been—

- (a) an authorised auditor; or
- (b) a person engaged or employed by a contract auditor;

**“protected information”** means information that is obtained under *the applied provisions*.

**(2)** A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate protected information;

unless the record is made, or the information *is* divulged or

## SCHEDULE 3 (continued)

communicated—

- (c) under or for the purposes of *the applied provisions*; or
- (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of *the applied provisions*.

Maximum penalty—200 penalty units or imprisonment for 1 year.

(3) Subsection (2) does not prevent the disclosure of information to—

- (a) the *Parliamentary Committee*;<sup>9</sup> or
- (b) the *Public Works Committee of the Legislative Assembly*; or
- (c) the Criminal Justice Commission; or
- (d) a police officer, or a person or body responsible for the investigation or prosecution of offences, if the information relates to the investigation or prosecution of an offence; or
- (e) a court for the purposes of the prosecution of a person for an offence.

**Report on audit**

**93.(1)** The auditor-general may prepare a report on any audit conducted under *the applied provisions*.

(2) An authorised auditor (other than the auditor-general) must give the auditor-general a report on every audit conducted *under the applied provisions* by the authorised auditor.

(3) A report under subsection (1) or (2) may contain observations and suggestions about anything arising out of the audit.

(4) If the auditor-general is of the opinion that observations or suggestions made under subsection (3) require attention or further consideration, the auditor-general must give them (together with any

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<sup>9</sup> FA and A Act, section 5—

**“parliamentary committee”** means the Public Accounts Committee of the Legislative Assembly.



## SCHEDULE 3 (continued)

comments on them)—

- (a) *not applied*;
- (b) *not applied*;
- (c) *to the chairperson of the company GOC concerned and the person responsible for the financial administration of the GOC.*

(5) If the auditor-general is of the opinion that the observations or suggestions made under subsection (3) are of significance, the auditor-general must also give them (together with any comments on them) to the *shareholding Ministers of the company GOC concerned*.

**Protection from liability**

94.(1) An authorised auditor does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for the purposes of *the applied provisions*.

(2) A liability that would, but for subsection (1), attach to an authorised auditor attaches instead to the State.

**Audit fees**

95.(1) The auditor-general may charge fees for an audit conducted by the auditor-general *under the applied provisions*.

(2) The auditor-general may, with the Treasurer's approval, determine the basic rates of fees.

(3) The auditor-general must assess the fees for an audit having regard to the basic rates of fees determined under subsection (2).

(4) Unpaid fees may be recovered by the auditor-general as a debt due to the auditor-general.

***Applied provisions do not limit other powers of auditor-general***

96. *The applied provisions do not limit any power that the auditor-general has apart from those provisions.*

## SCHEDULE 3 (continued)

***Division 3—Reports to the Legislative Assembly***

**97.** *Not applied.*

**98.** *Not applied.*

**Annual reports on audits of *company GOCs***

**99.(1)** The auditor-general must prepare a report to the Legislative Assembly on each audit conducted of a *company GOC* by an authorised auditor.

**(2)** The report must—

- (a) state whether or not—
  - (i) the audit of the *company GOC* has been completed; and
  - (ii) the statements relating to the accounts of the *company GOC* have been audited; and
- (b) draw attention to any case in which the functions relating to the financial management of the *company GOC* were not adequately and properly performed if, in the auditor-general's opinion, the matter is of sufficient significance to require inclusion in the report; and
- (c) set out—
  - (i) the results of audits conducted, in relation to the relevant financial year, of *subsidiaries of a company GOC* by an authorised auditor; and
  - (ii) if audits were not conducted in relation to particular *subsidiaries*—the reasons why they were not conducted; and
- (d) deal with the action (if any) taken to remedy significant deficiencies reported in previous reports on audits of the *company GOC*.

## SCHEDULE 3 (continued)

(3) *Subsection (2)(c) does not apply if section 99<sup>10</sup> of the FA and A Act applies to the subsidiaries concerned under the Government Owned Corporations Act 1993, section 128.<sup>11</sup>*

**Reports on audits requested by Parliament**

**100.** The auditor-general must prepare a report to the Legislative Assembly on each audit conducted at the request of the Legislative Assembly.

**Interim, supplementary and combined reports**

**101.(1)** The auditor-general may prepare interim and supplementary reports to the Legislative Assembly on any matter on which the auditor-general is to report or has reported.

(2) The auditor-general may combine reports on any 2 or more audits.

**Other reports**

**102.** The auditor-general may prepare any of the following reports to the Legislative Assembly—

- (a) if the auditor-general considers it desirable to do so at any particular time for reasons of urgency—a report on any significant matter arising out of an audit *under the applied provisions*;
- (b) if the auditor-general considers it to be in the public interest to do so—a full report on, or a report on any specific matters arising out of, a particular audit *under the applied provisions*;
- (c) if the auditor-general considers it otherwise appropriate to do so at

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<sup>10</sup> Section 99 (Annual reports on audits of public sector entities)

<sup>11</sup> Section 128 (Application of Financial Administration and Audit Act)

## SCHEDULE 3 (continued)

any time—a report on any matter arising out of an audit *under the applied provisions* to which attention should be drawn;

- (d) *not applied.*

**Comments on proposed audit reports**

**103.(1)** If the auditor-general proposes to include in a report to the Legislative Assembly under this division a matter that, in the auditor-general's opinion, is a matter of significance, the auditor-general must give written advice of the matter that is proposed to be included to—

- (a) *not applied;*  
 (b) *not applied;*  
 (c) *the chairperson of the company GOC concerned* and the person responsible for the financial administration of the *GOC*;

and—

- (d) *not applied;*  
 (e) (*words omitted*) to the *GOC's shareholding Ministers.*

**(2)** The advice must include a statement to the effect that comments on the proposed matter may be made in writing given to the auditor-general—

- (a) within 21 days after the advice is received; or  
 (b) within such longer period as is specified in the advice.

**(3)** If comments are received within the 21 days or longer period, the auditor-general must include them in the report.

**Procedure for reporting certain sensitive information**

**104.(1)** If the auditor-general considers that it would be against the public interest to disclose in a report under this division information that could—

- (a) have a serious adverse effect on the commercial interests of a *company GOC*; or  
 (b) reveal trade secrets of a *company GOC*; or

## SCHEDULE 3 (continued)

- (c) prejudice the investigation of a contravention or possible contravention of the law; or
- (d) prejudice the fair trial of a person; or
- (e) cause damage to the relations between the Government of the State and another Government;

the auditor-general must not disclose the information in the report but must instead include it in a report prepared and given to the Parliamentary Committee.

(2) This section has effect despite anything in *the applied provisions or any Act*.

**Tabling of reports**

**105.(1)** A report prepared under this division must be given to the speaker or, if there is no speaker or the speaker is unavailable, to the clerk of the Parliament.

(2) The speaker or clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

(3) For the purposes of its printing and publication, a report that is given to the speaker or the clerk under subsection (2) is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the speaker or the clerk.

## SCHEDULE 3 (continued)

**PART 5—PROVISIONS OF FA AND A ACT  
APPLYING UNDER SECTION 6 TO COMPANY GOC  
SUBSIDIARIES****PART 3—FINANCIAL  
ADMINISTRATION—COMPANY GOC SUBSIDIARIES**

**46C.** *Not applied.*

***Company GOC subsidiaries to prepare annual financial statements***

**46F.(1)** *A company GOC subsidiary must give to the auditor-general the financial statements prepared by it under the Corporations Law.*

**(2)** The *company GOC subsidiary* must comply with subsection (1) within 2 months after the end of each financial year or the longer period agreed to between the *subsidiary* and the auditor-general.

**(3) to (9)** *Not applied.*

**46G.** *Not applied.*

***Company GOC subsidiaries must consider auditor-general's observations and suggestions***

**46H.** If a chairperson of a *company GOC subsidiary* is given observations or suggestions (together with any comments on them) under section 93(4), the chairperson must ensure they are considered at the *subsidiary's* next ordinary meeting.

**Annual report**

**46J.(1)** As soon as possible after the close of each financial year but, subject to subsection (2), in no case later than 4 months after that close a *company GOC subsidiary* shall prepare and furnish to *the shareholding*

## SCHEDULE 3 (continued)

*Ministers of each shareholding GOC of the subsidiary* a report in writing on the operations of the *subsidiary* during that financial year.

(2) The *shareholding Ministers* may, in a particular case, extend or further extend the period of 4 months referred to in subsection (1) by written notice given to the *company GOC subsidiary*.

(2A) If the *shareholding Ministers extend* the period referred to in subsection (1) to a period of more than 6 months, *the Ministers* must, within 14 days of granting that extension, give to the Legislative Assembly an explanation for the granting of that extension.

(3) The report—

- (a) shall contain such information as the *shareholding Ministers direct* to enable the *Ministers* to assess the efficiency, effectiveness and economy of the *company GOC subsidiary* and the need for its continuance; and
- (b) shall contain a copy of the annual financial statements of the *company GOC subsidiary* relating to that financial year *prepared under the Corporations Law; and*
- (c) *shall contain the information required, under the Government Owned Corporations Act 1993 as applied to the company GOC subsidiary, to be included in the annual report of the subsidiary.*

(4) *Subsection (3) is subject to the Government Owned Corporations Act 1993, section 132,<sup>12</sup> as applied to a company GOC subsidiary.*

## PART 3A—TABLING OF ANNUAL REPORTS

### ***Shareholding Ministers must table reports***

**46K.** Within 14 days after receiving the annual report of a *company*

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<sup>12</sup> Section 132 (Deletion of commercially sensitive matters from annual report etc.)

## SCHEDULE 3 (continued)

*GOC subsidiary*, the *shareholding Ministers of a shareholding GOC of the subsidiary* must table a copy of it in the Legislative Assembly.

**46KA.** *Not applied.*

**Shareholding Ministers to explain late tabling of annual report**

**46KB.(1)** This section applies if the *shareholding Ministers of a shareholding GOC of a company GOC subsidiary* table, in the Legislative Assembly—

- (a) the annual report of *the subsidiary* later than 4 months and 14 days after the end of a financial year; or
- (b) *not applied.*

**(2)** The *shareholding Ministers* must also give the Legislative Assembly a written statement—

- (a) stating the report is being tabled late; and
- (b) stating the length of the delay; and
- (c) explaining the reasons for the delay.

**Procedure if Legislative Assembly not in session or sitting**

**46KC.(1)** This section applies if the Legislative Assembly is not in session or is not actually sitting when the *shareholding Ministers of a shareholding GOC of a company GOC subsidiary* are required to do any of the following things—

- (a) table a copy of an annual report in the Legislative Assembly;
- (b) give the Legislative Assembly a written statement about the late tabling of an annual report;
- (c) if the *shareholding Ministers* have given a *company GOC subsidiary* an extension of time for giving the *Ministers* a copy of its annual report—give the Legislative Assembly an explanation for giving the extension.



## SCHEDULE 3 (continued)

(2) The *shareholding Ministers* must give a copy of the report, the written statement or the explanation to the clerk of the Parliament.

(3) The clerk must table the report, statement or explanation before the Legislative Assembly on its next sitting day.

(4) The report, statement or explanation is taken to have been tabled in the Legislative Assembly on the day it is given to the clerk.

(5) The day of receipt of the report, statement or explanation must be recorded in the votes and proceedings on the next sitting day.

(6) If the Legislative Assembly orders the report, statement or explanation to be printed, the report, statement or explanation is taken to have been ordered to be printed by the Legislative Assembly on the day the clerk receives it.

**PART 6—AUDIT OF COMPANY GOC SUBSIDIARIES***Division 1—Scope of auditor-general's mandate*

73. *Not applied.*

74. *Not applied.*

***Shareholding Ministers to give auditor-general information relating to company GOC subsidiaries***

75.(1) *If a company GOC subsidiary acts under the Government Owned Corporations Act 1993, section 163,<sup>13</sup> the shareholding Ministers of each*

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<sup>13</sup> Section 163 (Acquiring and disposing of subsidiaries)

## SCHEDULE 3 (continued)

*shareholding GOC of the subsidiary* must give the auditor-general any information about the matter that the auditor-general requires.

(2) *Not applied.*

**Auditor-general to be appointed auditor of every *company GOC subsidiary***

76.(1) The shareholders of a *company GOC subsidiary* must—

- (a) appoint the auditor-general to be the auditor of the *subsidiary*; and
- (b) ensure that the auditor-general remains, at all times, the auditor of the *subsidiary* while the *subsidiary* remains a *company GOC subsidiary*.

(2) *Not applied.*

**Audits at request of Parliament**

77.(1) If the Legislative Assembly, by resolution, requests the auditor-general to conduct an audit of a matter relating to the financial administration of a *company GOC subsidiary*, the auditor-general must conduct the audit.

(2) *Not applied.*

78. *Not applied.*

***Division 2—Conduct of audits*****Way in which audit is to be conducted**

79.(1) The auditor-general may conduct an audit in the way the auditor-general considers appropriate.

(2) In determining the appropriate way to conduct an audit, the auditor-general may have regard to—

## SCHEDULE 3 (continued)

- (a) the character of the relevant internal control system (including internal audit); and
- (b) recognised standards and practices.

(3) Subsection (2) does not limit the matters to which the auditor-general may have regard.

(4) *The* auditor-general is not limited to conducting the audit in accordance with the Corporations Law, and may do anything else that the auditor-general considers appropriate.

**Audit of performance management systems**

**80.(1)** The auditor-general may conduct an audit of performance management systems of a *company GOC subsidiary*.

(2) The audit may be conducted as a separate audit or as part of another audit (including an audit of another *company GOC subsidiary* under this section).

(3) The object of the audit includes determining whether the performance management systems enable the *company GOC subsidiary* to assess whether its objectives are being achieved economically, efficiently and effectively.

(4) *Not applied.*

**81.** *Not applied.*

**Appointment of contract auditors**

**82.(1)** *For auditing company GOC subsidiaries* the auditor-general may appoint an appropriately qualified individual who is not a member of the staff of the Audit Office to be a contract auditor.

(2) The appointment of a person to be a contract auditor may be general or limited to a particular audit.

(3) The contract auditor—

## SCHEDULE 3 (continued)

- (a) is appointed on the terms specified in the instrument of appointment; and
- (b) may resign the appointment by signed notice given to the auditor-general.

**Identity cards for *contract* auditors**

**83.(1)** The auditor-general may issue an identity card to a *contract* auditor.

**(2)** The identity card must—

- (a) contain a recent photograph of the *contract* auditor; and
- (b) be signed by the *contract* auditor and the auditor-general.

**(3)** A person who ceases to be a *contract* auditor must not, without reasonable excuse, fail to return the person's identity card to the auditor-general as soon as practicable after ceasing to be a *contract* auditor.

Maximum penalty for subsection (3)—10 penalty units.

**Proof of authority as authorised auditor**

**84.(1)** An authorised auditor may exercise a power *under the applied provisions* in relation to a person only if the authorised auditor produces his or her identity card for inspection by the person.

**(2)** *In this section—*

**“identity card” means—**

- (a) *for a contract auditor, the identity card issued to the auditor under section 83; or*
- (b) *for another authorised auditor, the identity card issued to the auditor under section 83<sup>14</sup> of the FA and A Act.*

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<sup>14</sup> Section 83 (Identity cards for authorised auditors)

## SCHEDULE 3 (continued)

**Access to documents and property**

**85.(1)** *Not applied.*

(2) For the purpose of conducting an audit of a *company GOC subsidiary under the applied provisions*, an authorised auditor is entitled, at all reasonable times, to full and free access to all documents and property belonging to, in the custody of, or under the control of, the *subsidiary*.

(3) For the purpose of conducting an audit under *the applied provisions*, an authorised auditor may—

- (a) enter, at any reasonable time—
  - (i) a place occupied by a *company GOC subsidiary*; or
  - (ii) a place occupied by a financial institution with which a *company GOC subsidiary* maintains an account; or
  - (iii) another place if the occupier of the place consents to the entry; and
- (b) inspect, examine, photograph or film anything in the place; and
- (c) take extracts from, and make copies of, any documents in the place; and
- (d) take into the place persons, equipment and materials that the authorised auditor reasonably requires; and
- (e) require any person in the place to give to the authorised auditor reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d).

(4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (3)(e).

Maximum penalty—40 penalty units.

(5) It is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (3)(e) that complying with the requirement might tend to incriminate the person.

(6) Neither an answer by a person under a requirement made under subsection (3)(e), nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is

## SCHEDULE 3 (continued)

admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(7) The fact that a document was produced by a person under a requirement made under subsection (3)(e) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

**Obtaining information**

**86.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person to give to the authorised auditor specified information, within a reasonable period and in a reasonable way specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty—40 penalty units.

(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

(4) Neither information given by a person under a requirement under subsection (1), nor any other information or a document or other thing obtained as a direct or indirect consequence of the person giving the information, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the information) if—

- (a) the person, before giving the information, claimed that giving the

## SCHEDULE 3 (continued)

information might tend to incriminate the person; and

- (b) giving the information might in fact tend to incriminate the person.

**Obtaining evidence**

**87.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person—

- (a) to attend before an authorised auditor, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (b) to produce to an authorised auditor, at a reasonable time and place specified in the notice, documents belonging to, in the custody of, or under the control of, the person.

**(2)** The authorised auditor before whom the person attends may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the authorised auditor may administer an oath or affirmation.

**(3)** The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

**(4)** An authorised auditor to whom a document is produced under a notice under subsection (1)—

- (a) may keep the document for a reasonable period for the purposes of conducting the relevant audit; and
- (b) may take extracts from and make copies of the document.

**(5)** While the authorised auditor has possession of the document, the authorised auditor must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised auditor's possession.

**(6)** *Not applied.*

## SCHEDULE 3 (continued)

(7) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty—40 penalty units.

(8) It is not a reasonable excuse for a person to fail to comply with a notice under subsection (1) that complying with the notice might tend to incriminate the person.

(9) Neither an answer given by a person under this section, nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

(10) The fact that a document was produced by a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

**Compensation**

**88.(1)** A person (other than a *company GOC subsidiary*) who incurs any loss or expense—

- (a) because of the exercise or purported exercise of a power under this division; or
- (b) in complying with a requirement made of the person under this division;

may claim compensation from the State.



## SCHEDULE 3 (continued)

(2) A payment of compensation may be claimed and ordered—

- (a) in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against *the applied provisions* brought against the person by whom the claim is made.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to do so in the circumstances of the particular case.

**False or misleading information**

89.(1) A person must not—

- (a) make a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised auditor anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—80 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

**Obstruction of authorised auditor**

90. A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an authorised auditor in the exercise of a power under *the applied provisions*.

Maximum penalty—80 penalty units.

## SCHEDULE 3 (continued)

**Impersonation of authorised auditor**

**91.** A person must not pretend to be an authorised auditor.

Maximum penalty—80 penalty units.

**Confidentiality**

**92.(1)** In this section—

**“person to whom this section applies”** means a person who is or has been—

- (a) an authorised auditor; or
- (b) a person engaged or employed by a contract auditor;

**“protected information”** means information that is obtained under *the applied provisions*.

**(2)** A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate protected information;

unless the record is made, or the information *is* divulged or communicated—

- (c) under or for the purposes of *the applied provisions*; or
- (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of *the applied provisions*.

Maximum penalty—200 penalty units or imprisonment for 1 year.

**(3)** Subsection (2) does not prevent the disclosure of information to—

- (a) the *Parliamentary Committee*;<sup>15</sup> or
- (b) the *Public Works Committee of the Legislative Assembly*; or

<sup>15</sup> FA and A Act, section 5—

**“parliamentary committee”** means the Public Accounts Committee of the Legislative Assembly.

## SCHEDULE 3 (continued)

- (c) the Criminal Justice Commission; or
- (d) a police officer, or a person or body responsible for the investigation or prosecution of offences, if the information relates to the investigation or prosecution of an offence; or
- (e) a court for the purposes of the prosecution of a person for an offence.

**Report on audit**

**93.(1)** The auditor-general may prepare a report on any audit conducted under *the applied provisions*.

**(2)** An authorised auditor (other than the auditor-general) must give the auditor-general a report on every audit conducted *under the applied provisions* by the authorised auditor.

**(3)** A report under subsection (1) or (2) may contain observations and suggestions about anything arising out of the audit.

**(4)** If the auditor-general is of the opinion that observations or suggestions made under subsection (3) require attention or further consideration, the auditor-general must give them (together with any comments on them)—

- (a) *not applied*;
- (b) *not applied*;
- (c) *to the chairperson of the company GOC subsidiary concerned and the person responsible for the financial administration of the subsidiary.*

**(5)** If the auditor-general is of the opinion that the observations or suggestions made under subsection (3) are of significance, the auditor-general must also give them (together with any comments on them) to the *shareholding Ministers of each shareholding GOC, and each shareholding GOC, of the subsidiary concerned.*

## SCHEDULE 3 (continued)

**Protection from liability**

**94.(1)** An authorised auditor does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for the purposes of *the applied provisions*.

**(2)** A liability that would, but for subsection (1), attach to an authorised auditor attaches instead to the State.

**Audit fees**

**95.(1)** The auditor-general may charge fees for an audit conducted by the auditor-general *under the applied provisions*.

**(2)** The auditor-general may, with the Treasurer's approval, determine the basic rates of fees.

**(3)** The auditor-general must assess the fees for an audit having regard to the basic rates of fees determined under subsection (2).

**(4)** Unpaid fees may be recovered by the auditor-general as a debt due to the auditor-general.

***Applied provisions do not limit other powers of auditor-general***

**96.** *The applied provisions do not limit any power that the auditor-general has apart from those provisions.*

***Division 3—Reports to the Legislative Assembly***

**97.** *Not applied.*

**98.** *Not applied.*

**Annual reports on audits of company GOC subsidiaries**

**99.(1)** The auditor-general must prepare a report to the Legislative

## SCHEDULE 3 (continued)

Assembly on each audit conducted of a *company GOC subsidiary* by an authorised auditor.

(2) The report must—

- (a) state whether or not—
  - (i) the audit of the *company GOC subsidiary* has been completed; and
  - (ii) the statements relating to the accounts of the *company GOC subsidiary* have been audited; and
- (b) draw attention to any case in which the functions relating to the financial management of the *company GOC subsidiary* were not adequately and properly performed if, in the auditor-general's opinion, the matter is of sufficient significance to require inclusion in the report; and
- (c) set out—
  - (i) the results of audits conducted, in relation to the relevant financial year, of *subsidiaries of a company GOC subsidiary* by an authorised auditor; and
  - (ii) if audits were not conducted in relation to particular *subsidiaries*—the reasons why they were not conducted; and
- (d) deal with the action (if any) taken to remedy significant deficiencies reported in previous reports on audits of the *company GOC subsidiary*.

**Reports on audits requested by Parliament**

**100.** The auditor-general must prepare a report to the Legislative Assembly on each audit conducted at the request of the Legislative Assembly.

**Interim, supplementary and combined reports**

**101.(1)** The auditor-general may prepare interim and supplementary reports to the Legislative Assembly on any matter on which the

## SCHEDULE 3 (continued)

auditor-general is to report or has reported.

- (2) The auditor-general may combine reports on any 2 or more audits.

**Other reports**

**102.** The auditor-general may prepare any of the following reports to the Legislative Assembly—

- (a) if the auditor-general considers it desirable to do so at any particular time for reasons of urgency—a report on any significant matter arising out of an audit *under the applied provisions*;
- (b) if the auditor-general considers it to be in the public interest to do so—a full report on, or a report on any specific matters arising out of, a particular audit *under the applied provisions*;
- (c) if the auditor-general considers it otherwise appropriate to do so at any time—a report on any matter arising out of an audit *under the applied provisions* to which attention should be drawn;
- (d) *not applied*.

**Comments on proposed audit reports**

**103.(1)** If the auditor-general proposes to include in a report to the Legislative Assembly under this division a matter that, in the auditor-general's opinion, is a matter of significance, the auditor-general must give written advice of the matter that is proposed to be included to—

- (a) *not applied*;
- (b) *not applied*;
- (c) *the chairperson of the company GOC subsidiary concerned and the person responsible for the financial administration of the subsidiary*;

and—

- (d) *not applied*;

## SCHEDULE 3 (continued)

(e) (*words omitted*) to the *shareholding Ministers of each shareholding GOC, and each shareholding GOC, of the company GOC subsidiary.*

(2) The advice must include a statement to the effect that comments on the proposed matter may be made in writing given to the auditor-general—

- (a) within 21 days after the advice is received; or
- (b) within such longer period as is specified in the advice.

(3) If comments are received within the 21 days or longer period, the auditor-general must include them in the report.

**Procedure for reporting certain sensitive information**

**104.(1)** If the auditor-general considers that it would be against the public interest to disclose in a report under this division information that could—

- (a) have a serious adverse effect on the commercial interests of a *company GOC subsidiary*; or
- (b) reveal trade secrets of a *company GOC subsidiary*; or
- (c) prejudice the investigation of a contravention or possible contravention of the law; or
- (d) prejudice the fair trial of a person; or
- (e) cause damage to the relations between the Government of the State and another Government;

the auditor-general must not disclose the information in the report but must instead include it in a report prepared and given to the Parliamentary Committee.

(2) This section has effect despite anything in *the applied provisions or any Act.*

**Tabling of reports**

**105.(1)** A report prepared under this division must be given to the speaker or, if there is no speaker or the speaker is unavailable, to the clerk of

## SCHEDULE 3 (continued)

the Parliament.

(2) The speaker or clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

(3) For the purposes of its printing and publication, a report that is given to the speaker or the clerk under subsection (2) is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the speaker or the clerk.



## SCHEDULE 4

### APPLICATION OF CHAPTER 3 OF ACT TO COMPANY GOC SUBSIDIARIES

section 177

#### PART 1—PRELIMINARY

##### **Purpose**

1. This schedule provides for—
  - (a) the application of provisions of chapter 3<sup>16</sup> of the Act to company GOC subsidiaries as if they were GOCs; and
  - (b) the modification of the provisions for their application to the subsidiaries.

##### **Definitions**

2. In this schedule—

**“applied provisions”** means the provisions of chapter 3 of the Act as applying under section 3.

**“company GOC subsidiary”** means a company GOC subsidiary prescribed under a regulation under section 177 of the Act.

##### **Application of ch 3 of the Act to company GOC subsidiaries**

**3.(1)** Chapter 3 of the Act applies to each company GOC subsidiary with the changes shown in part 2.

**(2)** Subject to the changes mentioned in subsection (1), the provisions are applied as in force immediately before the commencement of this section.

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<sup>16</sup> Chapter 3 (Government owned corporations (GOCs))

## SCHEDULE 4 (continued)

**PART 2—PROVISIONS OF CHAPTER 3 OF ACT AS APPLIED TO COMPANY GOC SUBSIDIARIES<sup>17</sup>**

section 3 of this schedule

**CHAPTER 3—*COMPANY GOC SUBSIDIARIES*****PART 1—BASIC REQUIREMENTS***Division 1—Statutory GOCs (omitted)**Division 2—Company GOC subsidiaries***Company GOC subsidiary must be proprietary company limited by shares**

**66.** A company GOC subsidiary must be a *proprietary* company, and a company limited by shares, within the meaning of the Corporations Law.

**PART 2—APPLICATION OF CORPORATIONS LAW***Division 1—Statutory GOCs (omitted)*

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<sup>17</sup> This part shows how the *Government Owned Corporations Act 1993*, chapter 3 is applied. Changes other than in division headings appear in italics. Citation of Acts are also in italics. Changes in division headings are in roman type. Provisions that are not applied are indicated by “(omitted)”.

## SCHEDULE 4 (continued)

***Division 2—Company GOC subsidiaries*****Application of Corporations Law to *company GOC subsidiaries***

**69.** The Corporations Law applies to a company GOC *subsidiary* except so far as *the applied provisions* otherwise provide.

**Company GOC *subsidiary* not exempt public authority**

**70.** A company GOC *subsidiary* is not an exempt public authority for the purposes of the Corporations Law.

**PART 3—SHARES AND SHAREHOLDING  
MINISTERS*****Division 1—Statutory GOCs (omitted)******Division 2—Company GOC subsidiaries*****Number of shareholders**

**76.** A company GOC *subsidiary* may have any number of shareholders.

***All shareholders must be voting shareholders***

**77.** *Each shareholder must be a voting shareholder.*

***Shareholders must have equal number of shares (words omitted)***

**78.(1)** *Each shareholder need not have an equal number of shares.*

**(2)** *(omitted)*

## SCHEDULE 4 (continued)

**Shareholders must be *company GOCs***

**79.(1)** *Each shareholder must be a company GOC.*

**(2)** *(omitted)*

**(3)** *(omitted)*

**(4)** *(omitted)*

**Meaning of “shareholding GOC”**

**80.(1)** *Each GOC that is a shareholder of a subsidiary is its “shareholding GOC”.*

**(2)** *(omitted)*

**Resolutions without meetings**

**81.(1)** If *each shareholding GOC of a company GOC subsidiary signs a document containing a statement that it is in favour of a resolution set out in the document—*

- (a) a resolution in those terms is taken to have been passed at a general meeting of the *subsidiary* held at the time at which, and on the day on which, the document is signed by the last *GOC*; and
- (b) the *subsidiary* is taken to have held a general meeting at that time on that day; and
- (c) the document is taken to be a minute of the meeting; and
- (d) any document that is attached to the first document, and is signed by *each shareholding GOC*, is taken to have been laid before the *subsidiary* at the meeting; and
- (e) if the resolution deals with all matters that are required to be dealt with at an annual general meeting of the *subsidiary*—the *subsidiary* is taken to have held an annual general meeting.

**(2)** Subsection (1) applies to a resolution that is authorised or required by the Corporations Law, or the *subsidiary's* memorandum or articles, to be

## SCHEDULE 4 (continued)

passed at a general meeting, including a resolution—

- (a) appointing an officer or auditor; or
- (b) approving of, or agreeing to, anything.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by a shareholding *GOC*, are taken to constitute a single document.

(4) This section has effect for the purposes of the Corporations Law and has that effect despite anything in that Law.

(5) Subsection (4) does not limit any other effect that this section may have.

(6) This section does not affect any rule of law relating to the effectiveness of the assent of members of a company given to a document or anything else otherwise than at a general meeting of the company.

*Division 3—GOCs generally***Shareholders hold shares for State etc.**

82. *(omitted)*

**Transfer, issue etc. of shares**

83. *(omitted)*<sup>18</sup>

**Shareholding Ministers must act jointly**

84. *(omitted)*

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<sup>18</sup> Section 83 is not applied. The section applies to subsidiaries under its own force.

## SCHEDULE 4 (continued)

**Shareholding GOCs not directors**

**85.(1)** A *shareholding GOC of a company GOC subsidiary* is not to be treated as a *director* of the *subsidiary* or any subsidiary or proposed subsidiary of the *subsidiary*.

(2) *(omitted)*

(3) *(omitted)*

(4) *(omitted)*

**PART 4—MEMORANDUM AND ARTICLES *(omitted)***<sup>19</sup>**PART 5—BOARD OF DIRECTORS*****Division 1—Statutory GOCs (omitted)******Division 2—Company GOC subsidiaries*****Role of board**

**95.** The role of a company *GOC subsidiary's* board includes the following matters—

- (a) responsibility for the *subsidiary's* commercial policy and management;
- (b) ensuring that, as far as possible, the *subsidiary* achieves, and acts in accordance with, *the statement of corporate intent of each of its*

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<sup>19</sup> Part 4 is not applied. Sections 89 (Shareholding Ministers of company GOC may require amendment of subsidiary's memorandum and articles) and 90 (Memorandum and articles of company GOC and its subsidiaries must not be inconsistent with Act or Corporations Law) apply to subsidiaries under their own force.

## SCHEDULE 4 (continued)

*shareholding GOCs to the extent the statement is about the subsidiary and carries out the objectives outlined in the statement of corporate intent to the extent the objectives are about the subsidiary;*

- (c) accounting to the *subsidiary's* shareholders for its performance as required by the *applied provisions* and other laws applying to the *subsidiary*;
- (d) ensuring that the *subsidiary* otherwise performs its functions in a proper, effective and efficient way.

**Composition of board**

**96.(1)** A company *GOC subsidiary's* board is to consist of the number of directors that are appointed by the Governor in Council.

(2) 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 *subsidiary's* commercial performance and *the implementation of the statement of corporate intent (if any) of each shareholding GOC of the subsidiary to the extent the statement relates to the subsidiary.*

(3) Subsection (1) has effect despite—

- (a) the *subsidiary's* memorandum and articles; and
- (b) the Corporations Law.

**Public service officers not eligible for appointment as directors**

**96A.(1)** A public service officer is not eligible for appointment as a director of a company *GOC subsidiary.*

(2) subsection (1) has effect despite the Corporations Law.

**96B.** *(omitted)*

## SCHEDULE 4 (continued)

**PART 6—CHIEF EXECUTIVE OFFICER***Division 1—Statutory GOCs (omitted)**Division 2—Company GOC subsidiaries***Appointment of chief executive officer**

**102.(1)** A company *GOC subsidiary's* chief executive officer is to be appointed by the Governor in Council on the recommendation of the *subsidiary's* board.

**(2)** This section has effect despite the Corporations Law.

**PART 7—CORPORATE PLAN (omitted)<sup>20</sup>****PART 8—STATEMENT OF CORPORATE INTENT  
(omitted)<sup>21</sup>****PART 9—COMMUNITY SERVICE OBLIGATIONS  
(omitted)**

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<sup>20</sup> This part is not applied. Under part 7, division 1 (General), section 104 (Corporate plan to apply to subsidiaries), a GOC's corporate plan must apply to the GOC and its subsidiaries.

<sup>21</sup> This part is not applied. Under part 8, division 1 (General), section 112 (Statement of corporate intent to apply to subsidiaries), a GOC's statement of corporate intent must apply to the GOC and its subsidiaries.



## SCHEDULE 4 (continued)

**PART 10—GENERAL RESERVE POWERS OF  
SHAREHOLDING MINISTERS*****Exercise of reserve power of shareholding Ministers to notify GOC's board of public sector policies***

**123.(1)** *This section applies if, under section 123 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary notify the GOC's board, in writing, of a public sector policy that is to apply to the GOC and its subsidiaries.*

*(1A) The GOC must notify the subsidiary of the policy at least to the extent that the policy concerns the subsidiary.*

**(2)** *The subsidiary's board must ensure that the policy is carried out in relation to the subsidiary to the extent that the policy concerns the subsidiary.*

**(3)** *(omitted)*

**(4)** *(omitted)*

***Exercise of reserve power of shareholding Ministers to give directions in public interest***

**124.(1)** *This section applies if, under section 124 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC's board a written direction in relation to the GOC and its subsidiaries.*

*(1A) The GOC must notify the subsidiary of the direction at least to the extent that the direction concerns the subsidiary.*

**(2)** *The subsidiary's board must ensure that the direction is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.*

**(3)** *(omitted)*

**(4)** *(omitted)*

## SCHEDULE 4 (continued)

***Direction given following notice of suspected insolvency***

**125.(1)** *This section applies if—*

- (a) *the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC's board a notification under section 123 (as it applies to GOCs) or a direction under section 124 (as it applies to GOCs); and*
- (b) *the GOC gives written notice to the shareholding Ministers and the Auditor-General of—*
  - (i) *its suspicion that the subsidiary will or may become insolvent; and*
  - (ii) *the reasons for its opinion that the cause or a substantial cause of the suspected insolvency would be compliance with the notification or direction; and*
- (c) *the shareholding Ministers give the GOC's board written directions under section 125(4) (as it applies to GOCs).*

**(1A)** *The GOC must notify the subsidiary of the written directions mentioned in subsection (1)(c).*

**(2)** *(omitted)*

**(3)** *(omitted)*

**(4)** *(omitted)*

**(5)** *(omitted)*

**(6)** *The subsidiary's board must ensure that a direction under this section is complied with in relation to the subsidiary.*

**(7)** *(omitted)*

**(8)** *(omitted)*

***Subsidiary and board not otherwise subject to government direction***

**126.** *Except as otherwise provided by the applied provisions or any Act, a company GOC subsidiary and its board are not subject to direction by or on behalf of the Government.*

## SCHEDULE 4 (continued)

**PART 11—REPORTS AND OTHER  
ACCOUNTABILITY MATTERS***Division 1—Statutory GOCs (omitted)**Division 2—Company GOC subsidiaries***Application of Financial Administration and Audit Act****128.** *(omitted)***129.**<sup>22</sup>*Division 3—GOCs generally***Quarterly reports****130.** *(omitted)*<sup>23</sup>**Matters to be included in annual report****131.(1)** Each annual report of a *company GOC subsidiary* (the “*first subsidiary*”) must—

- (a) contain the information that is required to be included in the report by the shareholding Ministers of *each shareholding GOC of the first subsidiary* to enable an informed assessment to be made of the operations of the *first subsidiary* and its subsidiaries, including a comparison of the performance of the *first subsidiary* and its subsidiaries with *each shareholding GOC’s* statement of

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<sup>22</sup> There is no section 129.

<sup>23</sup> Section 130 is not applied. The section applies to subsidiaries under its own force.

## SCHEDULE 4 (continued)

corporate intent *to the extent it relates to the first subsidiary or its subsidiaries*; and

- (b) state the *first subsidiary's* dividend policy for the financial year to which the report relates; and
- (c) include the statement of corporate intent *of each shareholding GOC of the first subsidiary* for the relevant financial year *to the extent the statement relates to the first subsidiary or its subsidiaries*; and
- (d) include particulars of any modifications made to the statement of corporate intent during the relevant financial year *to the extent the modifications relate to the first subsidiary or its subsidiaries*; and
- (e) include particulars of any directions and notifications given to *the board of a shareholding GOC of the first subsidiary* by the *shareholding GOC's* shareholding Ministers that relate to the relevant financial year *to the extent the directions or notifications concern the first subsidiary or its subsidiaries*; and
- (f) include particulars of the impact on the financial position, profits and losses and prospects of the *first subsidiary* and its subsidiaries of any modifications to a statement of corporate intent, and any directions and notifications given to the board, *of a shareholding GOC of the first subsidiary* by the *shareholding GOC's* shareholding Ministers, that relate to the relevant financial year *to the extent the modifications, directions or notifications relate to or concern the first subsidiary or its subsidiaries*.

(2) Each annual report of a *company GOC subsidiary* must also state whether or not, in the directors' opinion, there are, when the statement is made, reasonable grounds to believe that the *subsidiary* will be able to pay its debts as and when they fall due.

(3) Each annual report of a *company GOC subsidiary* must also include the matters that are required to be included in, or to accompany, the *subsidiary's* annual return under the Corporations Law.

(4) This section does not limit the matters that are required to be included in, or to accompany, a *company GOC subsidiary's* annual report by the Corporations Law or another Act.

## SCHEDULE 4 (continued)

**Deletion of commercially sensitive matters from annual report etc.**

**132.(1)** If a *company GOC subsidiary's* board requests the shareholding Ministers of each shareholding GOC of the subsidiary to delete from the copies of an annual report of the subsidiary (and accompanying documents) that are to be made public a matter that is of a commercially sensitive nature, the shareholding Ministers may delete the matter from the copies of the annual report (and accompanying documents) that are laid before the Legislative Assembly or otherwise made public.

**(2)** An annual report of a *company GOC subsidiary* may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and
- (b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

**(3)** Subsections (1) and (2) have effect despite section 131 or another Act.

**(4)** Subsection (1) has effect despite subsection (2).

**Board to keep shareholding Ministers informed**

**133.(1)** *The board of a company GOC subsidiary (the “first subsidiary”)* must—

- (a) keep each of the first subsidiary's shareholding GOCs reasonably informed of the operations, financial performance and financial position of the first subsidiary and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the first subsidiary and its subsidiaries; and
- (b) give to each shareholding GOC of the first subsidiary reports and information that the GOC requires to enable it to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of the objectives outlined in the

## SCHEDULE 4 (continued)

statement of corporate intent or targets under *the* corporate plan of a *shareholding GOC of the first subsidiary*—immediately inform the *shareholding GOC* of the matters and its opinion in relation to them.

(2) Subsection (1) does not limit the matters of which the board is required to keep *a shareholding GOC of a company GOC subsidiary* informed, or limit the reports or information that the board is required, or may be required, to give to *a shareholding GOC of a company GOC subsidiary*, by the Corporations Law or another Act.

## **PART 12—DUTIES AND LIABILITIES OF DIRECTORS AND OTHER OFFICERS**

### *Division 1—Statutory GOCs (omitted)*

### *Division 2—Company GOCs (omitted)*

### *Division 3—GOCs generally*

#### **Application of Corporations Law to officers of GOC subsidiaries**

**146.** *(omitted)*<sup>24</sup>

#### **Notice of suspected insolvency otherwise than because of direction or notification**

**147.(1)** *This section applies if—*

*(a) under section 147 (as it applies to GOCs) the board of a*

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<sup>24</sup> Section 146 is not applied. The section applies to subsidiaries under its own force.

## SCHEDULE 4 (continued)

*shareholding GOC of a company GOC subsidiary gives written notice to the GOC's shareholding Ministers and the auditor-general of—*

*(i) the board's suspicion that the GOC or the subsidiary is, may be, will or may become insolvent; and*

*(ii) its reasons for the opinion; and*

*(b) under section 147(3) (as it applies to GOCs) the shareholding Ministers give the GOC's board written directions the shareholding Ministers consider necessary or desirable.*

*(1A) The GOC must notify the subsidiary of the written directions mentioned in paragraph (b).*

*(2) (omitted)*

*(3) (omitted)*

*(4) (omitted)*

*(5) The subsidiary's board must ensure that a direction under this section is complied with in relation to the subsidiary.*

*(6) (omitted)*

*(7) (omitted)*

*(8) (omitted)*

**PART 13—LEGAL CAPACITY AND POWERS***Division 1—Statutory GOCs (omitted)*

## SCHEDULE 4 (continued)

***Division 2—Company GOC subsidiaries*****General powers of company *GOC subsidiaries***

**152.(1)** A company *GOC subsidiary* has, in addition to powers conferred on it by the Corporations Law—

- (a) the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions; and
- (b) the powers that are conferred on it by *the applied provisions or any Act*.

(2) Subsection (1) has effect subject to any restrictions on the *subsidiary's* powers expressly imposed by *the applied provisions or any Act*.

**Doctrine of ultra vires etc. not revived**

**153.(1)** The doctrine of ultra vires is not revived in relation to *a company GOC subsidiary by the applied provisions*.

(2) The abolition of the doctrine by the Corporations Law is not affected by *applied provisions*.

(3) This section is *included* for the removal of doubt.

***Division 3—GOC may direct subsidiaries (omitted)*****PART 14—FINANCE (*omitted*)<sup>25</sup>**

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<sup>25</sup> Part 14 is not applied. The part applies to subsidiaries under its own force.



## SCHEDULE 4 (continued)

**PART 15—ACQUISITION AND DISPOSAL OF  
ASSETS AND SUBSIDIARIES**

**Reserve power of shareholding Ministers to direct that asset not be disposed of**

**161.(1)** *This section applies if, under section 161 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC's board a written direction requiring the subsidiary not to dispose of a specified asset.*

**(1A)** *The GOC must notify the subsidiary of the direction.*

**(2)** *The subsidiary's board must ensure the direction is complied with in relation to the subsidiary.*

**(3)** *(omitted)*

**Disposal of main undertakings**

**162.** *(omitted)*<sup>26</sup>

**Acquiring and disposing of subsidiaries**

**163.** *(omitted)*<sup>27</sup>

**PART 15A—GOCs AND GOC SUBSIDIARIES  
BECOMING AND RETIRING AS TRUSTEES**

*(omitted)*<sup>28</sup>

<sup>26</sup> Section 162 is not applied. The section applies to subsidiaries under its own force.

<sup>27</sup> Section 163 is not applied. The section applies to subsidiaries under its own force.

<sup>28</sup> Part 15A is not applied. The part applies to subsidiaries under its own force.

## SCHEDULE 4 (continued)

**PART 16—EMPLOYEES (*omitted*)<sup>29</sup>****PART 17—OTHER MATTERS***Division 1—GOCs generally (*omitted*)<sup>30</sup>**Division 2—Statutory GOCs (*omitted*)**Division 3—Company GOC subsidiaries***Application of Criminal Justice Act**

**183.** A company GOC *subsidiary* is not a unit of public administration for the purposes of the *Criminal Justice Act 1989*.

**Application of Parliamentary Commissioner Act 1974**

**184.** The *Parliamentary Commissioner Act 1974* does not apply to a company GOC *subsidiary*.

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<sup>29</sup> Part 16 is not applied. The part applies to subsidiaries under section 164 (Part applies to subsidiaries) of the Act.

<sup>30</sup> Section 177 provides for the application of chapter 3 of the Act with the changes in this schedule to certain company GOC subsidiaries.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 August 1998. Future amendments of the Government Owned Corporations Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	26 July 1993
2	to Act No. 31 of 1994	21 July 1994
3	to Act No. 36 of 1995	4 August 1995
3A	to Act No. 54 of 1996	11 February 1997
3B	to Act No. 54 of 1996	14 July 1997
4	to Act No. 81 of 1997	5 December 1997

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	2
Corrected minor errors	2, 3
Obsolete and redundant provisions	3

## **6 List of legislation**

### **Government Owned Corporations Act 1993 No. 28**

date of assent 2 June 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 19 July 1993 (1993 SL No. 256)

as amended by—

### **Treasury Legislation Amendment Act 1994 No. 31 pts 1, 5 sch 3**

date of assent 28 June 1994

commenced on date of assent

### **Electricity Act 1994 No. 64 s 293 sch 4**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (1994 SL No. 467)

### **Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2**

date of assent 16 June 1995

commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

### **Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3 sch**

date of assent 5 December 1997

commenced on date of assent

### **Government Owned Corporations and Other Legislation Amendment Act 1998 No. 21 ss 1, 2(3) pt 2 s 3 sch 1**

date of assent 1 May 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 20 July 1998 (1998 SL No. 200)

## **7 List of annotations**

### **Commencement**

s 2 om R3 (see RA s 37)

**Definitions**

- s 3** def “**asset**” om 1994 No. 31 s 17(1)  
 def “**associate**” ins 1994 No. 31 s 17(2)  
 def “**associate subsidiary**” ins 1994 No. 31 s 17(2)  
 def “**GOC Act entity**” ins 1994 No. 31 s 17(2)  
 def “**responsible Ministers**” om 1994 No. 31 s 17(1)  
 ins 1994 No. 31 s 17(2)  
 def “**senior executive**” ins 1998 No. 21 s 4  
 def “**subsidiary**” om 1994 No. 31 s 17(1)  
 ins 1994 No. 31 s 17(2)

**Meaning of “government entity”**

- s 5** amd 1994 No. 31 s 18; 1998 No. 21 s 5

**Types of GOCs**

- s 7** amd 1998 No. 21 s 3 sch 1

**Application of other laws to GOCs**

- s 12** amd 1998 No. 21 s 3 sch 1

**Application of other laws to candidate GOCs**

- s 13** amd 1998 No. 21 s 3 sch 1

**How Corporations Law is to be applied to GOCs**

- s 14** amd 1994 No. 31 s 16 sch 3  
 om 1998 No. 21 s 3 sch 1

**Meaning of “key principles of corporatisation”**

- s 19** amd 1994 No. 31 s 16 sch 3; 1998 No. 21 s 6

**Government entity becoming a GOC**

- s 23** sub 1994 No. 31 s 19; 1998 No. 21 s 7

**Meaning of “associate” of candidate GOC**

- s 24A** ins 1994 No. 31 s 20

**Meaning of certain expressions about government entities**

- s 25** sub 1994 No. 31 s 16 sch 3

**CHAPTER 2—MECHANISMS FOR CREATING AND ALTERING TYPES OF GOCs****PART 2—NOMINATION AND DECLARATION OF ENTITIES**

- pt hdg** sub 1994 No. 31 s 16 sch 3

**Nomination of government entity to become candidate GOC**

- s 26** amd 1994 No. 31 s 16 sch 3; 1998 No. 21 s 3 sch 1

**Nomination of GOC Act entity to become candidate GOC associate**

- s 26A** ins 1994 No. 31 s 21

**Declaration of GOC Act entity to be subsidiary of candidate GOC associate**

- s 26B** ins 1994 No. 31 s 21

**Responsible Ministers of candidate GOC associate**

- s 31A** ins 1994 No. 31 s 22

**Responsible Ministers not directors etc.**

s 32            amd 1994 No. 31 s 16 sch 3

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s 35            amd 1994 No. 31 s 16 sch 3

**Draft corporatisation charter to be given to responsible Ministers**

s 42            amd 1998 No. 21 s 8

**Responsible Ministers may give directions to candidate GOC associate about its functions**

s 49A          ins 1994 No. 31 s 23

**Corporatisation charter stops having effect when candidate GOC becomes GOC**

s 49B          ins 1998 No. 21 s 9

**Purpose of part**

s 50            amd 1994 No. 31 s 16 sch 3

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s 51            amd 1994 No. 31 s 16 sch 3

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om 1998 No. 21 s 3 sch 1**Entities that are parts of bodies corporate**

s 53            amd 1994 No. 31 s 16 sch 3; 1998 No. 21 s 3 sch 1

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s 54            sub 1994 No. 31 s 24

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s 54A          ins 1994 No. 31 s 24

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s 54B          ins 1994 No. 31 s 24

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s 55            amd 1994 No. 31 s 16 sch 3

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prov hdg      amd 1994 No. 31 s 16 sch 3

s 57            amd 1994 No. 31 s 16 sch 3; 1998 No. 21 ss 10, s 3 sch 1

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amd 1998 No. 21 s 11**Application of certain provisions about directors and executives to candidate GOC associates and associate subsidiaries**s 57B          ins 1994 No. 31 s 25  
amd 1998 No. 21 s 3 sch 1

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s 57C ins 1994 No. 31 s 25

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s 57D ins 1994 No. 31 s 25

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s 58 sub 1994 No. 31 s 26

amd 1998 No. 21 s 12

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s 59 amd 1994 No. 31 s 16 sch 3

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s 60 amd 1994 No. 31 s 16 sch 3

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s 62 amd 1994 No. 31 ss 27, 16 sch 3

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s 62A ins 1994 No. 31 s 28

sub 1998 No. 21 s 13

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s 62B ins 1994 No. 31 s 28

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s 62C ins 1998 No. 21 s 13

**Appointment of statutory GOC's first senior executives**

s 62D ins 1998 No. 21 s 13

**Appointment of company GOC's first chief executive officer**

s 62E ins 1998 No. 21 s 13

**Appointment of company GOC's first senior executives**

s 62F ins 1998 No. 21 s 13

**PART 6—CANDIDATE GOCS AND CANDIDATE GOC ASSOCIATES BECOMING GOCS**

pt hdg sub 1994 No. 31 s 16 sch 3

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s 63A ins 1994 No. 31 s 29

amd 1998 No. 21 s 14

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s 64 amd 1998 No. 21 s 15

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s 67 sub 1998 No. 21 s 3 sch 1



**Transfer, issue etc. of shares**

s 83      amd 1994 No. 31 s 16 sch 3

**Memorandum and articles of statutory GOC subsidiary must not be inconsistent with Act or Corporations Law**

prov hdg    amd 1994 No. 31 s 16 sch 3

s 87      amd 1994 No. 31 s 16 sch 3

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s 90      amd 1994 No. 31 s 16 sch 3

**Delegation by board**

s 93      amd 1998 No. 21 s 16

**First board of statutory GOC**

s 94A      ins 1994 No. 31 s 30

**Composition of board**

s 96      amd 1998 No. 21 s 17

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s 96A      ins 1998 No. 21 s 18

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s 96B      ins 1998 No. 21 s 18

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s 100      amd 1998 No. 21 s 19

**Matters to be included in statement of corporate intent**

s 114      amd 1998 No. 21 s 20

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prov hdg    amd 1998 No. 21 s 21(1)

s 115      amd 1998 No. 21 s 21(2)–(4)

**Application of Financial Administration and Audit Act**

s 127      amd 1998 No. 21 s 3 sch 1

**Application of Financial Administration and Audit Act**

s 128      amd 1998 No. 21 s 3 sch 1

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s 129      om 1998 No. 21 s 22

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s 136      amd 1997 No. 81 s 3 sch

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prov hdg    amd 1994 No. 31 s 16 sch 3

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s 176 om 1998 No. 21 s 26

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s 182 amd 1998 No. 21 s 27

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**Regulation about assets and liabilities not dealt with under s 54A**

s 189 ins 1994 No. 31 s 33

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s 191 ins 1994 No. 31 s 33

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s 192 ins 1994 No. 31 s 33

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**Regulations**

s 193 (prev s 188) amd 1994 No. 31 s 34(1)

renum 1994 No. 31 s 34(2)

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**8                    Table of corrected minor errors****TABLE OF CORRECTED MINOR ERRORS**  
under the Reprints Act 1992 s 44

Provision	Description
174(2)	om ‘subsections’ ins ‘subsection’