



Queensland Investment Corporation Act 1991

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Queensland

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Queensland Investment Corporation Act 1991

An Act to provide for matters relating to the Queensland Investment Corporation as a government owned corporation, and for various other matters

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Investment Corporation Act 1991*.

2 Commencement

- (1) Section 1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.
- (2) The remaining provisions of this Act, commence on 1 July 1991.

3 Definitions

In this Act—

assets means any legal or equitable right, title, estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes, without limitation, money, liquidated and unliquidated claims, securities, choses in action and documents, instruments or other mercantile indicia or tokens of title.

bank includes an entity that carries on banking business outside Australia and is approved by the Treasurer.

benefit means a financial or other benefit, and includes a benefit that does not involve the payment of cash.

board means the Corporation's board of directors.

chief executive officer means the chief executive officer of the Corporation.

contracts includes deeds, covenants, contracts, agreements, arrangements and undertakings.

Corporation means Queensland Investment Corporation.

Note—

The Corporation is a government owned corporation.

Corporation as trustee of the Investment Trust means the Corporation in its capacity as trustee of the Investment Trust only.

director means a director of the Corporation.

GOC Act means the *Government Owned Corporations Act 1993*.

Investment Trust means the trust established on 1 July 1988 known as the 'Queensland Treasury Corporation Investment Trust' and which after the commencement of this Act is known as the 'Queensland Investment Corporation Investment Trust'.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent) and includes, without limitation, moneys payable, securities and liquidated and unliquidated claims and documents or instruments.

money means the lawful currency of Australia or any other country.

person includes an unincorporated body.

QTC means Queensland Treasury Corporation.

QTC as trustee of the Investment Trust means QTC in its capacity as trustee of the Investment Trust only.

relative, of a person, means the person's—

- (a) spouse; or
- (b) parent or remoter lineal ancestor; or
- (c) child or remoter issue; or
- (d) brother or sister.

shareholding Ministers means the Ministers who are the Corporation's shareholding Ministers under the GOC Act.

transaction includes contract.

4 Entitlement of trustee to be indemnified

For the purposes of this Act, a trustee, merely because the relevant trust has no assets, or the assets of the relevant trust are insufficient to indemnify the trustee in respect of the liability concerned, does not cease to be entitled to be fully indemnified out of the assets of the relevant trust in respect of the liability.

Part 2 Queensland Investment Corporation

6 Change of trustee of Investment Trust

- (1) On and from the commencement of this Act—
 - (a) QTC is removed as trustee of the Investment Trust and the Corporation is appointed as the trustee of the Investment Trust to act in the execution of the trusts of the Investment Trust in the place of QTC and—
 - (i) has and may exercise all the powers; and
 - (ii) enjoys all the rights; and
 - (iii) is subject to all the duties; and
 - (iv) is to carry out all the obligations;

- of QTC as trustee of the Investment Trust as fully as though it had originally been named as trustee of the Investment Trust; and
- (b) for all purposes QTC is to be taken to have duly retired, and the Corporation is to be taken to have been duly appointed, as trustee in accordance with the provisions of the deed recording the terms of the Investment Trust in all respects, despite any provisions of that deed relating to the requirements for the valid retirement or appointment of trustees or any law, so as to enable the Investment Trust to continue and the Corporation to act as trustee of the Investment Trust in place of QTC; and
 - (c) all assets and rights and all management or control of anything which, immediately prior to that commencement were vested in, payable to, recoverable by, or which belonged to, QTC as trustee of the Investment Trust are transferred to and vested in, payable to or recoverable by and belong to the Corporation as trustee of the Investment Trust without any transfer, assignment, notice or assurance other than this Act and despite any other Act or law; and
 - (d) all suits, actions and proceedings commenced and pending immediately prior to that commencement by or against QTC as trustee of the Investment Trust are to be taken to be pending and may be carried and prosecuted by or against the Corporation as trustee of the Investment Trust, and no such suit, action or proceeding is abated or prejudicially affected by this Act; and
 - (e) all liabilities of QTC as trustee of the Investment Trust in respect of which (and only to the extent that) QTC is entitled to be fully indemnified out of the assets of the Investment Trust immediately prior to that commencement are liabilities of the Corporation as trustee of the Investment Trust; and
 - (f) all contracts entered into by or with QTC as trustee of the Investment Trust and in force immediately prior to that commencement are to be taken to be contracts

entered into by or with the Corporation as trustee of the Investment Trust.

- (2) On and from the commencement of this Act the name by which the Investment Trust is known is changed to the 'Queensland Investment Corporation Investment Trust'.
- (3) This section, other than subsection (4), does not affect assets, liabilities, rights, suits, actions proceedings, contracts or any other matter or thing, whether specifically mentioned in subsection (1) or not, of or relating to QTC otherwise than in its capacity as trustee of the Investment Trust.
- (4) In the event that any question or dispute arises as to whether or not any matter or thing, whether specifically mentioned in subsection (1) or not, is a matter or thing of or relating to QTC as trustee of the Investment Trust or QTC in some other capacity then the question or dispute is to be determined in writing by the chief executive of the department whose determination of the question or dispute is final and binding upon all persons (whether or not party to the question or dispute).
- (5) The Corporation is prohibited from becoming a beneficiary of the Investment Trust.
- (6) Except as modified or excluded by this Act, the law of trusts and the terms and conditions of the Investment Trust apply to the change of trustee effected by this Act.

7 Transfer of other investments

- (1) From time to time the chief executive of the department in consultation with the Corporation may determine that certain assets, liabilities, rights or contracts which are vested in, payable to, recoverable by, or belong to, QTC in a capacity other than as trustee of the Investment Trust and which relate to the investment activities of QTC for the benefit of some other person are to be transferred to and vested in, payable to or recoverable by and belong to the Corporation.
- (2) In any such case the chief executive of the department is to so certify in writing and on and from the date specified in the

relevant certification, the assets, liabilities, rights or contracts the subject of that certification are transferred to and vested in, payable to or recoverable by and belong to the Corporation without any transfer, assignment, notice or assurance other than this Act and despite any other Act or law.

- (3) Any such assets, liabilities, rights or contracts do not form part of the capital of the Corporation.

8 Existing legal relationships not affected

- (1) The operation of this part, part 5 and sections 40 and 44, an amendment of this Act or the Corporation becoming a GOC—
- (a) does not place the Corporation in breach of a contract or confidence or otherwise make it guilty of a civil wrong; and
 - (b) does not make the Corporation in breach of an instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of a right or liability or the disclosure of information; and
 - (c) is taken not to fulfil a condition—
 - (i) allowing a person to end an instrument or obligation or change the operation or effect of an instrument or obligation; or
 - (ii) requiring an amount to be paid before its stated maturity; and
 - (d) does not release a surety or other obligee (in whole or part) from an obligation; and
 - (e) does not require any attornment to the Corporation by a lessee from QTC.
- (2) In this section—
- instrument* has the same meaning as in the GOC Act.

9 State charges

In respect of any determination by the chief executive of the department under section 6, or the transfer to, acquisition by, vesting in or entry into by the Corporation of any assets, liabilities, rights, contracts or other matters or things under this part or the change of trustee effected by this part any registration, lodgement or other fees or amounts of any description which might be payable under any Act (other than this Act) are not payable.

10 Duty to assist transfer of property

- (1) The registrar of titles and all other persons who are required or authorised to keep a register or other record about dealings in property must, if asked by the Corporation or QTC, make in the register or other record all entries necessary to record a transfer, acquisition, or vesting of property to, by or in the Corporation under this part or because of the change of trustee effected by this Act.
- (2) In this section—
property includes assets, liabilities, rights and contracts.

11 Corporation represents State

- (1) The Corporation represents the State.
- (2) The Corporation has all the powers, immunities, privileges, rights and remedies of the State.

13 Offices of Corporation

- (1) The Corporation may establish and maintain offices at any place in or outside Queensland and may discontinue offices maintained at any place by it.
- (2) The Corporation is to designate 1 of its offices (where it maintains more than 1) as its principal office.

Part 5 Officers of Corporation

30 Rights of officers previously employed in the public service or by QTC

- (1) A person who, immediately prior to being employed as an officer or employee of the Corporation in a permanent or full-time capacity, was employed in the public service, or engaged or employed by QTC (whether or not an officer of the public service) in a permanent or full-time capacity, for so long as that person continues in the employment of the Corporation, in a permanent or full-time capacity, may claim against the Corporation leave and all other entitlements equivalent to those that had accrued to that person by virtue of employment in the public service or with QTC and had not been taken or claimed and paid. For the purpose of the accrual of long service leave and other relevant purposes the immediately prior service in employment with the public service or QTC is taken to be service as an officer of the Corporation but allowance is to be made for any leave taken.
- (2) The Corporation may request that the Treasurer pay to the Corporation from the consolidated fund a sum calculated on an actuarial basis representing a fair value for long service leave, sick leave and recreation and other leave and other relevant entitlements of such person calculated as at the date of the person becoming a permanent or full-time officer or employee of the Corporation, which request may be agreed to by the Treasurer.
- (3) Nothing in this section allows a person to claim, or receive benefits, twice in respect of the same entitlement.

32 Disclosure of interest by officers of Corporation

- (1) The chief executive officer and any other officer or employee of the Corporation nominated by the board must disclose all interests not otherwise disclosed by that person under this Act (including, without limitation, securities of any description) which may be required to be disclosed by the board from time

to time and they are to be recorded by the Corporation in a register of such interests.

- (2) Nomination by the board may limit the disclosure of interests that is required in any particular case.
- (3) The chief executive officer and any other officer or employee nominated as provided in subsection (1) must disclose any material change to the interests of that officer as recorded in the register of interests referred to in subsection (1).
- (4) In subsections (1) and (3), an interest which is notifiable—
 - (a) does not include an interest an officer or employee may have in a matter in common with members of the public or as a contributor to any superannuation scheme the Corporation maintains or participates in; but
 - (b) includes an interest of the officer or employee or a relative of the officer or employee or of the spouse of an officer or employee of which the officer or employee has knowledge which if it had been an interest of the officer or employee would have been liable to be disclosed by the officer or employee.
- (5) The board may cause written directions to be given to officers or employees employed by the Corporation which set out the procedure to be followed where an officer or employee is in a position where duties and interests are in conflict whether directly or indirectly in respect of any matter with which the Corporation is concerned.
- (6) These directions may preclude an officer or employee from dealing with or being involved in discussions concerning the matter in any way.
- (7) An officer or employee must not fail to comply with this section or a written direction referred to in subsection (5).

Maximum penalty—50 penalty units.

- (8) The register maintained under this section must be open and available for inspection by the directors, the chief executive officer or the auditor-general or any nominee of the auditor-general for the purposes of this Act generally and at

meetings of the board and must be kept in the custody and under the control of the chief executive officer or a director nominated for that purpose by the board.

- (9) A contravention of this section does not invalidate any decision of the board or the discharge of a function, exercise of power or the performance of a duty by the Corporation or the board.

Part 6 Finance

33 Guarantee of Corporation's obligations

- (1) With the prior approval of the Governor in Council, the Treasurer may, on behalf of the State, agree with the Corporation or any other person to guarantee the payment of any moneys payable by, or the discharge of any liability of, or to indemnify the Corporation on such terms as the Treasurer agrees with the Corporation or such other person (including payment of fees and charges).
- (2) The Treasurer is authorised without further appropriation, to pay out of the consolidated fund any amount required to satisfy a liability under a guarantee or indemnity under subsection (1) and any sums received or recovered by the Treasurer from the Corporation or otherwise in respect of any sums so paid by the Treasurer (including fees or charges payable by the Corporation) are to be paid into the consolidated fund.

34 Restriction on reserve powers of shareholding Ministers

- (1) The shareholding Ministers of the Corporation may not notify, or give directions to, the Corporation's board under the GOC Act about the Corporation's—
- (a) decision making generally about investments; or
 - (b) dealing in, or exercising voting rights attached to, securities of a corporation; or

-
- (c) otherwise dealing with assets or liabilities; or
 - (d) control, or conduct of affairs, of an entity (including a business undertaking or trust) in which the Corporation has an investment.
- (2) Subsection (1) does not affect section 133 of the GOC Act (Board to keep shareholding Ministers informed).
- (3) Subsection (1) applies despite the following sections of the GOC Act—
- section 123 (Reserve power of shareholding Ministers to notify board of public sector policies)
 - section 124 (Reserve power of shareholding Ministers to give directions in public interest)
 - section 161 (Reserve power of shareholding Ministers to direct that asset not be disposed of).

35 Certain dealings must be made public

If a member of the Legislative Assembly makes a direct or indirect representation to the Corporation or a director about an asset and the Corporation later acquires or disposes of the asset, the Corporation must, either at or before the acquisition or disposal, make details of the representation public.

Part 7 Miscellaneous provisions

36 Nonapplication of certain provisions of GOC Act to Corporation

Despite section 12 of the GOC Act (Application of other laws to GOCs)—

- (a) the GOC Act, section 174 (Preservation of leave entitlements of certain former officers and employees of government entities) does not apply to the Corporation as a GOC; and
- (b) the following provisions of this Act do apply—

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- section 30 (Rights of officers previously employed in the public service or by QTC)
- section 38 (Taxation).

37 Application of Judicial Review Act

(1) In this section—

commercial activities means activities conducted on a commercial basis.

Editor's note—

Section 13 of the GOC Act (Meaning of *corporatisation*) defines corporatisation as a structural reform process for nominated government entities that, among other things, 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 (emphasis added).

community service obligations has the same meaning as in the GOC Act.

excluded activities means—

- (a) commercial activities; or
 - (b) community service obligations prescribed by regulation.
- (2) A regulation may declare the activities of the Corporation that are taken to be, or are taken not to be, activities conducted on a commercial basis.
- (3) The *Judicial Review Act 1991* does not apply to a decision of the Corporation made in carrying out its excluded activities.

37A Liability of Corporation and directors for debts incurred when acting as trustee

(1) Where—

- (a) the Corporation while acting or purporting to act in the capacity of trustee of a trust, incurs a liability, whether in Australia or overseas; and

-
- (b) the Corporation is for any reason not entitled to be fully indemnified out of the assets of the trust in respect of the liability; and
 - (c) the Corporation has not discharged, and is unable to discharge, the liability or a part of the liability out of its own funds;

the State is to discharge the relevant liability or relevant part of the liability and may recover the amount paid by the State and any loss or damage suffered by the State as a result of that discharge from the persons who were directors of the Corporation when the liability was incurred and were not innocent directors in relation to the incurring of the liability, which persons are jointly and severally liable to the State for that amount and such loss or damage, without prejudice to the operation of section 42.

- (2) In this section, a reference to an innocent director means a person who—
 - (a) was a director at the time when the liability was incurred; and
 - (b) if the persons who were directors at that time had been at that time the trustees of the relevant trust and had incurred the liability, would have been entitled to be fully indemnified in respect of the liability by 1 or more of the other trustees.

38 Taxation

- (1) The Corporation is to pay to the Treasurer sums of money at such times as determined by the Treasurer in consultation with the Corporation.
- (2) Each sum determined by the Treasurer is to be an amount that reasonably reflects the amount that the Corporation, if it did not represent the State, would have been liable to pay in respect of any tax, duty, charge, levy, rates or fee or other similar amount under any Act of this, another State or a Territory.

- (3) If the Corporation is or becomes liable for any payment referred to in subsection (2) then it is not required to make payments to the Treasurer under this section to that extent.

39 Fees or charges for State services etc.

The Treasurer may, in consultation with the Corporation, determine amounts to be paid by the Corporation by way of fees or charges for any services, facilities or support provided by the State to the Corporation, and the Corporation is to pay such amounts to the Treasurer.

40 Fees and commissions

- (1) The Corporation may charge any person any commissions, fees or charges in respect of the conduct of its operations or otherwise performing its functions or exercising its powers.
- (2) The Corporation may pay moneys by way of commissions, fees or charges in respect of the conduct of its operations or otherwise performing its functions or exercising its powers, despite the provisions of any Act to the contrary.
- (3) Despite the terms and conditions of the Investment Trust prior to the commencement of this Act, the Corporation is required to charge fees to members of the Investment Trust by way of remuneration for acting as trustee of the Investment Trust so as to entitle the Corporation to derive a total fee in excess of the total of all costs, charges and expenses incurred in the course of operation and administration of the Investment Trust on the basis as set out in the schedule, sections 11, 15 and 16 as from the commencement of this Act.

42 Indemnity

- (1) Every director and every officer, employee or agent of the Corporation is indemnified and held harmless by the Corporation against all actions, proceedings, suits, claims or demands arising out of anything done by the director, officer, employee or agent for the purpose of carrying out or giving

effect to this Act or done without negligence and in good faith purporting to act for the purposes of this Act except where the person has contravened or caused a contravention of a provision of this Act in so doing.

- (2) Subsection (1) applies only for anything done before 1 October 1994.

43 Notice of trusts not to be received

Unless the Corporation otherwise expressly agrees in a particular case, the Corporation and persons acting on its behalf—

- (a) are not to receive and are to be taken to have not received notice of any trust (express, implied or constructive) in relation to any contract entered into by the Corporation; and
- (b) is not bound to see to the execution of any trust that may affect any such contract.

44 Changes to Investment Trust

- (1) The Corporation is required and, despite the provisions of the deed, is authorised to amend the deed which records the terms of the Investment Trust by supplemental deed and to take all such other steps as are otherwise necessary to incorporate and give effect to the changes to the terms of the Investment Trust set out in the schedule.
- (2) This Act is to be taken to be a statute passed and affecting trusts of the nature of the Investment Trust and the changes to the terms of the Investment Trust set out in the schedule are to be taken to be required to satisfy the requirements of this Act in relation to the Investment Trust.
- (3) None of the changes to the terms of the Investment Trust required by the schedule affects the terms of an agreement made 30 June 1989 between QTC, QTC as trustee and the Board of Trustees established under the *Superannuation (Government and Other Employees) Act 1988* which

[s 45]

agreement is to prevail over the terms of the deed recording the terms of the Investment Trust as amended by the schedule with respect to the relationship between the trustee of the Investment Trust from time to time and the Board of Trustees and investment of moneys comprising the Government Officers' Superannuation Fund in the Investment Trust and, without limitation, the terms of withdrawal of those invested moneys from the Investment Trust.

45 Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about matters that are necessary or convenient to give effect to a transfer, assignment or vesting of assets or liabilities contemplated by this Act.

Schedule Investment Trust amendments

sections 40 and 44

- 11 Omit clause 9.1 and substitute the following clause—

9.1 Trustee Fee

The Trustee shall be entitled to a fee from each Member by way of remuneration for acting as trustee under this Deed which shall be amounts determined and paid in the manner set out in Part 1 of the Third Schedule in respect of each Member. In addition to this remuneration the Trustee shall be entitled to be indemnified and to be reimbursed out of the income of the Trust, or if the income is insufficient out of the Trust Fund, for all costs, charges and expenses (whether direct or indirect) which it may reasonably and properly incur in the operation and administration of the Trust, the Register and the Trust Fund including, without limiting the generality of the foregoing, such costs, charges and expenses as are set out in Part 2 of the Third Schedule.’.

- 15 In the Third Schedule, insert after the heading “*TRUSTEE FEE*” the following words—

Part 1

The Trustee shall be entitled to a fee by way of remuneration from each Member payable out of the income of the Trust or if that is insufficient out of the Trust Fund which shall be deducted from the relevant Member’s Account if sufficient or from any amount which may otherwise be credited to

Schedule

that Member's Account from time to time which fee shall accrue on a daily basis and shall be payable monthly in arrears at the end of each month calculated as follows—

Member's Account dollar amount as at the end of each month	Schedule of Rates %	
<u>More than:</u>	<u>Up to and including:</u>	
—	\$ 5,000,000	Such initial schedule of rates as agreed between the Treasurer of the State of Queensland and the Trustee to apply as from and including 1 July, 1991 until amended in accordance with this Schedule
\$ 5,000,000	\$ 10,000,000	
\$ 10,000,000	\$ 20,000,000	
\$ 20,000,000	\$ 50,000,000	
\$ 50,000,000	\$ 100,000,000	
\$ 100,000,000	\$ 250,000,000	
\$ 250,000,000	—	

or such other dollar amounts or rates or both as may be agreed between the Trustee and individual Members or potential Members from time to time as being applicable to that Member in place of the dollar amounts or rates or both in this Schedule.

Any of the dollar amounts or any rates or both may be amended by the Trustee at any time by three (3) months' notice in writing to all of the Members or the relevant Members as the case may require.

The Trustee shall be entitled to such other fees in addition to or in substitution for existing fees as it shall agree with any Member or Members, or advise to all of the Members at least three (3) months' prior to such fees taking effect, from time to time including, without limitation, fees in relation to withdrawal of Members.

Part 2

- 16 In Part 2 of the Third Schedule—
- (a) omit all words from and including the words “a fee by way of” to and including the words “not in excess of,”;
 - (b) omit all words from and including paragraph (g) to the end of the Schedule and substitute—
 - (g) the costs of any supplemental deed or of appointing a new or additional Trustee;
 - (h) the costs of convening meetings of Members, printing of reports and communications to Members and postage and distribution of the same to the Members or any other person required by law or this Deed;
 - (i) costs of insurances, government charges, registration fees and costs incurred for day to day operation, ownership, care and cleaning of Authorised Investments;
 - (j) disbursements, foreign exchange and currency charges, stamp duty, banking charges, costs, duties and taxes howsoever incurred related to the borrowing or raising of money, bank accounts, the receipt, transfer or payment of money, the giving and discharging of securities and cheques and any financial institutions duties and similar imposts; and
 - (k) all rates, taxes, charges, assessments and impositions whatsoever (whether parliamentary, municipal or otherwise and whether assessed, charged or imposed by or under Federal, State or Territory law or by Federal, State, Territory or local authorities and whether on a capital or revenue value or any other basis) which may be or are assessed, charged or imposed in respect of the Trust Fund or any part thereof or payable by the Trustee in respect of the Trust.