

# Government Owned Corporations (Pumped Hydro Energy Storage Restructure) Regulation 2022

Explanatory notes for SL 2022 No. 134

made under the

*Government Owned Corporations Act 1993*

## General Outline

### Short title

*Government Owned Corporations (Pumped Hydro Energy Storage Restructure) Regulation 2022*

### Authorising law

Sections 161 and 167 of the *Government Owned Corporations Act 1993*.

### Policy objectives and the reasons for them

The Queensland Government is committed to both reducing Queensland's emissions in line with its target of a 30 per cent reduction on 2005 emissions by 2030 (as well as the longer-term target of net zero emissions by 2050), and reaching 50 per cent renewable energy generation by 2030.

A key enabler to achieving the Government's emissions and renewable energy targets involves establishing large-scale pumped hydro energy storage (PHES) assets to provide firming capacity, in conjunction with variable renewable energy generation such as wind and solar photovoltaic generation.

Queensland Electricity Transmission Corporation Limited (trading as Powerlink Queensland) (Powerlink) has been coordinating a detailed feasibility and costing study for the Borumba Dam PHES, which is expected to be submitted to Government in early 2023. If approved, it would be Queensland's largest PHES project with an indicative capacity of up to two gigawatts and 24 hours of storage, equivalent to over 15 per cent of Queensland electricity demand. Powerlink was engaged for this purpose due to its experience in delivering infrastructure and its knowledge of the electricity market.

Powerlink owns a large portion of land within the Borumba Dam PHES footprint and, in the course of carrying out the detailed feasibility study, has acquired assets, liabilities and instruments relevant to Borumba Dam PHES.

The delivery, ownership and operation of the Borumba Dam PHES assets fall outside of Powerlink's core business operations as the State's transmission network provider, and the Government has determined that the Borumba Dam PHES assets and any future State-owned large scale, long duration PHES assets should be planned, delivered, owned and operated by a State-owned entity. A pumped hydro entity (defined as 239 George Pty Ltd ACN 661 444 515) has been incorporated as a new wholly-owned subsidiary of Powerlink on 3 August 2022.

The purpose of this Regulation is to effect the transfer of assets, liabilities, instruments and employees relating to the Borumba Dam PHES from Powerlink to the pumped hydro entity. After the transfer of relevant assets, it is proposed that shares in the pumped hydro entity will be transferred to the Under Treasurer to hold on trust for the State.

## **Achievement of policy objectives**

The Regulation achieves its policy objectives by transferring the ownership of the assets, liabilities, instruments and employees relating to the Borumba Dam PHES from Powerlink to the pumped hydro entity.

The use of the regulation-making power in section 161 of the *Government Owned Corporations Act 1993* (the GOC Act) has been relied upon in implementing previous Government-initiated restructures, including the *Government Owned Corporations (Generator Restructure – CleanCo) Regulation 2019* (Qld) and the *Government Owned Corporations (Energy Consolidation) Regulation 2016* (Qld) for government-owned corporation (GOC) energy sector restructures. The regulation-making power provides an appropriate mechanism by which assets, liabilities, instruments, proceedings and employees may be transferred between GOCs, the State, and GOC subsidiaries.

This process facilitates a timely and efficient transfer of the relevant assets, liabilities, instruments, proceedings and employees of Powerlink to the pumped hydro entity. Insofar as it helps to expedite the establishment and operationalisation of the delivery entity, the process supports the Government's commitments in relation to renewable energy targets.

The Regulation provides for the transfer of liabilities of Powerlink identified in a transfer schedule. It clarifies that, unless the liability has been discharged or otherwise satisfied or expressly identified in an exclusion schedule, a liability existing immediately before the transfer date which arises from a transferred asset, instrument or employee in a specified way, will be transferred to the pumped hydro entity, without needing to be specified in a liability transfer schedule. Other liabilities of Powerlink may be transferred to the pumped hydro entity if identified in a liability transfer schedule, unless the liability has been discharged or otherwise satisfied or mentioned in an exclusion schedule.

The detailed items to be transferred are particularised in commercial-in-confidence schedules, but broadly include:

- interests in land (including freehold, leasehold and agistment agreements);
- rights and entitlements under contracts, such as the existing engagements of contractors;
- intellectual property rights licensed to Powerlink;
- employees; and
- various other assets, such as piezometers.

The transfer will not cause any loss or reduction of employee entitlements. There will be no forced employee relocations or retrenchments.

Additional provisions also clarify the liability position of Powerlink for the benefit of third parties, including specifying:

- successor-at-law status for the pumped hydro entity in relation to transferred assets, liabilities and instruments, and liabilities relating to these which arise on or after transfer; and
- for the completion of proceedings commenced by or against Powerlink, which retains the associated liabilities both of the proceedings and for the acts or omissions that are the subject of the proceedings.

The use of the Regulation to transfer the ownership of the assets, liabilities, instruments and employees relating to the Borumba Dam PHES from Powerlink to the pumped hydro entity is reasonable, appropriate, effective and proportional, as outlined under the heading 'Alternative ways of achieving policy objectives' below.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the main objects of the GOC Act, which is to provide a structural reform process for GOCs and subsidiaries, and to ensure the commercial success and efficiency of those entities.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

The regulation-making power in section 161 of the GOC Act is expressly designed to provide a mechanism by which assets, liabilities, instruments and employees may be transferred or reallocated between GOCs and subsidiaries. It has been relied upon in implementing a number of Government-initiated restructures.

The use of the section 161 power provides certainty to affected stakeholders and facilitates expeditious action to achieve the Government's commitments in relation to renewable energy targets. A negotiated transfer process between individual stakeholders and the pumped hydro entity would not be as well-suited to accomplishing these objectives.

## **Benefits and costs of implementation**

The Regulation will enable the pumped hydro entity to plan, deliver, own and operate future State-owned large-scale, long-duration PHES assets. This will assist the Government to meet its renewable energy targets. The transfer of assets to the pumped hydro entity will also continue the Government's commitment to public ownership of electricity assets.

The cost of implementing the Regulation will be borne by Powerlink and the pumped hydro entity. It is not anticipated that there will be material ongoing additional costs to government. Effecting the transfer by Regulation avoids the higher transaction costs that otherwise may have been incurred had the transfer proceeded by way of commercial negotiation.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles.

It is noted that Powerlink and the pumped hydro entity are corporate entities, not natural persons.

While the Regulation changes ownership of assets and the legal rights and responsibilities as between Powerlink and the pumped hydro entity, no third-party rights are extinguished in this process, even if they become effective as against a different entity because of the operation of the Regulation. Relevant provisions deal with successor-in-law and liabilities arising on or after transfer (section 8), proceedings which have not been concluded at transfer (section 9), the transfer and exclusion of liabilities (section 7), the operation of transferred instruments (section 5), and the employment arrangements of transferred employees (section 6).

To the extent that employees are the subject of transfers under the Regulation, they have been consulted, agree to the transfer, and will not have any loss or reduction of entitlements.

The Regulation accords with specific powers contained within the GOC Act. A regulation, rather than primary legislation, is therefore the appropriate vehicle for these provisions and is consistent with the policy objectives of the authorising law.

The use of schedules for the specification of assets, liabilities, instruments and employees for the purposes of treatment under a regulation is a long-standing method of ensuring certainty of the subject matter of the Regulation, whilst maintaining the confidentiality of arrangements which are commercially sensitive.

## Consultation

Powerlink, the pumped hydro entity, Powerlink employees being transferred to the pumped hydro entity, and the Queensland Audit Office have been consulted on this Regulation.

The consulted parties do not oppose the making of the Regulation.

In accordance with the Queensland Government Guide to Better Regulation, Queensland Treasury has self-assessed the Regulation to be excluded from further regulatory impact analysis under exclusion category (c) – regulatory proposals for the internal management of the public sector or statutory authority. The Office of Best Practice Regulation was also consulted in relation to the regulatory proposal and has confirmed the conclusion of Queensland Treasury's self-assessment.