



# **Government Owned Corporations Act 1993**

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Queensland

# Government Owned Corporations Act 1993

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# Government Owned Corporations Act 1993

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

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

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

### Part 2 Interpretation

#### 2 Definitions

In this Act—

*associate* of a candidate GOC has the meaning given by section 22.

*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.

*board of directors*, for chapter 2, part 6, see section 68.

*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 21.

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

**community service obligations** has the meaning given by section 112.

**corporatisation** has the meaning given by section 13.

**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.

**dividend**, for sections 135 to 137, see section 134.

**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 5.

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

**GOC Minister** has the meaning given by section 6.

**government company** means a corporation incorporated under the Corporations Act 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 4.

**government entity that is to become a GOC** has the meaning given by section 23(1).

**government entity that is to become a subsidiary of a GOC** has the meaning given by section 23(2).

**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 16.

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

**portfolio Minister** has the meaning given by section 6.

**predecessor**, for sections 135 to 137, see section 134.

**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**—

- (a) of a candidate GOC—see section 29; or
- (b) of a candidate GOC associate—see section 30.

**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 2008*.

**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, see section 78.

**statement of corporate intent** has the meaning given by section 7.

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

**statutory GOC closing time** means the time at which the *Government Owned Corporations Amendment Act 2007*, section 11 commences.

**subsidiary** has the meaning given by the Corporations Act, and includes—

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

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

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**

### **4 Meaning of *government entity***

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) an entity prescribed by regulation.

## 5 Meaning of *GOC*

A *GOC* (or *government owned corporation*) is a government entity that is—

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

## 6 *GOC* and portfolio Ministers

- (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*.

## **7 Meaning of *statement of corporate intent***

- (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**

## **8 Act binds State**

This Act binds the State.

## **9 Extraterritorial operation**

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).

## **10 Application of other laws to GOCs**

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

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- (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.

## 11 Application of other laws to candidate GOCs

- (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

## 12 What Act provides

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

## 13 Meaning of *corporatisation*

*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.

#### **14 Objectives of corporatisation**

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.

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

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

#### **16 Meaning of *key principles of corporatisation***

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 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.

**17 Key objectives of GOC under corporatisation**

- (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.

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

- (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) This Act provides, if required, for a transitional stage of corporatisation through preparation and implementation of a corporatisation charter.
- (3) The Act also imposes accountability and performance monitoring requirements for all GOCs.



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## Chapter 2      Mechanisms for creating GOCs

### Part 1              Outline of the processes

#### 19      What this part provides

This part makes provision for the processes necessary to allow—

- (a) government entities to become GOCs; and
- (b) government entities to become subsidiaries of GOCs.

#### 20      Government entity becoming a GOC

Before becoming a GOC, a government entity must become a candidate GOC or a candidate GOC associate.

#### 21      Meaning of *candidate GOC*

A *candidate GOC* is a government entity nominated under part 2 to be a candidate GOC.

#### 22      Meaning of *associate of candidate GOC*

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

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

- (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 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**

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

- (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.

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

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

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

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

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## Part 3                      Preparation of corporatisation charter

### Division 1                  Preliminary

#### 27            Meaning of *corporatisation charter*

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; and
- (b) the key principles of corporatisation, and their elements, are to be implemented.

#### 28            Candidate GOC may become GOC following corporatisation charter

- (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.

### Division 2                  Responsible Ministers

#### 29            Responsible Ministers of candidate GOC

- (1) This section applies to a candidate GOC.

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

### **30 Responsible Ministers of candidate GOC associate**

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

### **31 Responsible Ministers not directors etc.**

- (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 Act.

## **Division 3 Draft corporatisation charter**

### **32 Responsible Ministers may determine that draft corporatisation charter be prepared and submitted**

- (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

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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.

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

- (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) an outline of any legislation under which the candidate GOC is to operate when it becomes a GOC;
  - (c) target dates for the enactment and commencement of any legislation;
  - (d) a timetable for the adoption of appropriate systems of accounting by the candidate GOC;
  - (e) a timetable for the adoption of commercial management and performance systems by the candidate GOC;
  - (f) a timetable and method for valuing the assets of the candidate GOC and determining its capital structure;
  - (g) recommendations regarding the activities the candidate GOC should undertake before it becomes a GOC;
  - (h) 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.

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

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

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

- (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**

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

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

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

- (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.

### **38 Terms of appointment**

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

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

- (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.

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

- (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**

### **41 Approval of draft corporatisation charter**

- (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.



#### **42 Approval of amendments of corporatisation charter**

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

### **Part 4 Implementation of corporatisation charter**

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

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.

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

- (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.

#### **45 Terms of appointment**

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

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

- (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.

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

- (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.

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

- (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.

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

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**

**50 Purpose of part**

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 government entity, other than a government entity that is to become a GOC, to become a GOC subsidiary.

## **51 Unincorporated entities**

- (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) may sue and be sued in its corporate name; and
  - (d) has the functions and powers specified by regulation.
- (2) An entity provided for under a regulation made under subsection (1) may have a seal.
- (3) 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.

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

- (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 Act; or
  - (b) a corporation sole; or
  - (c) a corporation aggregate; or
  - (d) 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.

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

- (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
  - (c) may sue and be sued in its corporate name; and
  - (d) has the functions and powers specified by regulation.
- (2) A candidate GOC associate or associate subsidiary provided for under a regulation made under subsection (1) may have a seal.
- (3) 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.

**54 Transfer of assets, liabilities etc. to government entity to become GOC or GOC subsidiary**

- (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—
  - (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 60 (Application of certain provisions about interim board of directors and executives of candidate GOC associates and associate subsidiaries)
  - section 92 (Appointment of chief executive officer)
  - section 146 (Appointment of senior executives)
  - schedule 2 (Executives of candidate GOC associates and associate subsidiaries), section 2 (Appointment of chief executive officer).
- (4) A regulation mentioned in subsection (2)(c) has effect despite the Corporations Act.
- (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.

## **55 Debt owned by State**

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

## **56 Constitution of candidate GOC**

- (1) The responsible Ministers of a government entity that is to become a GOC may—
  - (a) adopt a constitution for the entity; and
  - (b) amend the constitution previously adopted.
- (2) The constitution must not be inconsistent with this Act or the Corporations Act.
- (3) However, if there is any inconsistency between this Act and the Corporations Act regarding the constitution, this Act prevails to the extent of the inconsistency.
- (4) If there is any inconsistency between this Act and the constitution, this Act prevails to the extent of the inconsistency.
- (5) If there is any inconsistency between the Corporations Act and the constitution, then, subject to subsection (3), the Corporations Act 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 GOC; and
  - (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

## **57 Existing board of directors**

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.

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

- (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 interim board.
- (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).

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

- (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.

**60 Application of certain provisions about interim board of directors and executives of candidate GOC associates and associate subsidiaries**

- (1) Schedule 1 applies to the interim board of a candidate GOC associate or associate subsidiary.
- (2) Schedule 2 applies to a candidate GOC associate or associate subsidiary.

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

- (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.

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## 62 Entity must comply with directions

An entity must comply with a direction given to it under section 61.

## 63 Share capital and issue of shares

- (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 as if it were a 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.

## **64 Variation of share capital**

- (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.

## **65 Registration under Corporations Act**

- (1) A government entity that is to become a GOC is authorised by this section to transfer its incorporation to the Corporations Act and become registered under chapter 5B of that Act.
- (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 the Corporations Act, chapter 5B.
- (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 GOC; and
  - (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

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**66 Part does not affect existing legal relationships**

- (1) Nothing done under this part—
  - (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) is taken to fulfil a condition that—
    - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
    - (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iii) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this part, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under this part, the notice is taken to have been given.
- (4) This section applies despite anything in an instrument.
- (5) In this section—

***relevant entity*** means any of the following—

  - (a) the State;
  - (b) a government entity;

- (c) an officer, employee or agent of an entity mentioned in paragraph (a) or (b);
- (d) the responsible Ministers of a government entity.

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

- (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 GOC or a subsidiary of a 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 subsidiary of a candidate GOC; or
  - (c) a candidate GOC associate; or
  - (d) 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 Act; 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.

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- (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 6    First chief executive officers and senior executives of GOCs**

### **68            Definition for pt 6**

In this part—

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

### **69            Application of pt 6**

This part applies if the responsible Ministers of a candidate GOC authorise the candidate GOC's board of directors to act for the part.

### **70            Appointment of GOC's first chief executive officer**

- (1) The first chief executive officer of a GOC may be appointed under section 92 before the commencement of a regulation declaring the candidate GOC to be a GOC.
- (2) For acting under the section—
- (a) a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors; and
  - (b) a reference in the section to the shareholding Ministers is taken to be a reference to the responsible Ministers of the candidate GOC.

## **71 Appointment of GOC's first senior executives**

- (1) The first senior executives of a GOC may be appointed under section 146 before the commencement of a regulation declaring the candidate GOC to be a GOC.
- (2) For acting under the section—
  - (a) a reference in the section to the GOC's board is taken to be a reference to the candidate GOC's board of directors; and
  - (b) a reference in the section to the shareholding Ministers is taken to be a reference to the responsible Ministers of the candidate GOC.

## **Part 7 Candidate GOCs and candidate GOC associates becoming GOCs**

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

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, section 75;

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

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

- (1) This section applies if a regulation under section 54 (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 54, be otherwise ready to become a GOC; and
  - (b) the associate complies with, or on becoming a GOC will comply with, section 75.

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

- (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**

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

A GOC must be a public company, and a company limited by shares, under the Corporations Act.

### **Part 2                    Application of Corporations Act**

#### **76            Application of Corporations Act to GOCs**

The Corporations Act applies to a GOC except so far as this Act otherwise provides.

#### **77            GOC not exempt public authority**

A GOC is not an exempt public authority for the purposes of the Corporations Act.

### **Part 3                    Shares and shareholding Ministers**

#### **78            Shareholders of a GOC**

The shareholders of a GOC are the GOC Minister and the portfolio Minister of the GOC (the *shareholding Ministers*).

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**79 Shareholding Ministers must have equal number of voting shares and equal rights**

- (1) Each shareholding Minister must at all times have an equal number of voting shares in the GOC.
- (2) Each shareholding Minister must also at all times be entitled to voting rights equal to those to which the other shareholding Minister is entitled.
- (3) However, each shareholding Minister may hold non-voting shares and need not hold an equal number of non-voting shares.

**80 Shareholders hold shares for State etc.**

- (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.

**81 Transfer, issue etc. of shares**

- (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.

**82 Shareholding Ministers must act jointly**

- (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.

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

- (1) A GOC's shareholding Ministers 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 Act.

### **84 Resolutions without meetings**

- (1) If the shareholding Ministers of the 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 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 Act, or the GOC's constitution, 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 Act and has that effect despite anything in that Act.
- (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.

## Part 4                      Constitution

### **85      Constitution of GOC may be amended by shareholding Ministers**

- (1) The shareholding Ministers of a GOC may amend the GOC's constitution.
- (2) Subsection (1) does not limit any other power to amend the constitution.

**86 Shareholding Ministers of GOC may require amendment of subsidiary's constitution**

- (1) The shareholding Ministers of a GOC may, by written notice, direct the board to amend the constitution of a subsidiary of the GOC.
- (2) The board must, as far as practicable, ensure that the direction is complied with.

**87 Constitutions of GOC and its subsidiaries must not be inconsistent with Act or Corporations Act**

- (1) The constitutions of a GOC and its subsidiaries must not be inconsistent with this Act or the Corporations Act.
- (2) However, if there is any inconsistency between this Act and the Corporations Act regarding the constitution of a GOC or a GOC subsidiary, this Act prevails to the extent of the inconsistency.
- (3) If there is any inconsistency between this Act and the constitution, this Act prevails to the extent of the inconsistency.
- (4) If there is any inconsistency between the Corporations Act and the constitution, then, subject to subsection (2), the Corporations Act prevails to the extent of the inconsistency.

## **Part 5 Board of directors**

**88 Role of board**

The role of a 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

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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.

## **89 Composition of board**

- (1) A 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 GOC's constitution; and
  - (b) the Corporations Act.

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

- (1) A public service officer is not eligible for appointment as a director of a GOC.
- (2) Subsection (1) has effect despite the Corporations Act.

## **91 First board of GOC**

- (1) This section applies to candidate GOCs and candidate GOC associates.
- (2) For the appointment of the first board of the GOC, the Governor in Council may act under section 89 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 GOC's constitution; and
  - (b) the Corporations Act.

## **Part 6 Chief executive officer**

### **92 Appointment of chief executive officer**

A GOC's chief executive officer is to be appointed by the GOC's board with the prior written approval of the shareholding Ministers.

### **93 Appointment of chief executive officer—particular subsidiaries**

- (1) This section applies to a GOC subsidiary that is not a prescribed GOC subsidiary.

*Note—*

Schedule 4 provides for the appointment of a chief executive officer for a prescribed GOC subsidiary.

- (2) The subsidiary's chief executive officer is to be appointed by the subsidiary's board with the prior written approval of the shareholding Ministers of each GOC that is a shareholder of the subsidiary.
- (3) Subsection (2) does not limit a provision of the subsidiary's constitution requiring the subsidiary's board to consult the board of a GOC that is a shareholder of the subsidiary before appointing the chief executive officer under the subsection.
- (4) In this section—



*prescribed GOC subsidiary* means a GOC subsidiary prescribed under a regulation under section 155.

## **Part 7 Corporate plan**

### **Division 1 General**

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

Each GOC must have a corporate plan.

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

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

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

- (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**

#### **97 Draft corporate plan**

- (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 the start of the financial year.

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

- (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 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.

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## **99 Corporate plan on agreement**

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.

## **100 Corporate plan pending agreement**

- (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 99 (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 99.

## **101 Modifications of corporate plan**

- (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**

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

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

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

- (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.

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

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**

#### **105      Matters to be included in statement of corporate intent**

- (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 113 and 149.

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

- (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;
  - (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**

### **107      Draft statement of corporate intent**

- (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.

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

- (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.

### **109 Statement of corporate intent on agreement**

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.

### **110 Statement of corporate intent pending agreement**

- (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 109 (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

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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 109.

### **111 Modifications of statement of corporate intent**

- (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**

### **112 Meaning of *community service obligations***

- (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;



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- (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 98 (Special procedures in relation to draft corporate plan);
  - (b) a direction given to the GOC’s board under section 101 (Modifications of corporate plan);
  - (c) a direction given to the GOC’s board under section 108 (Special procedures in relation to draft statement of corporate intent);
  - (d) a direction given to the GOC’s board under section 111 (Modifications of statement of corporate intent);
  - (e) a notification given to the GOC’s board under section 114 (Reserve power of shareholding Ministers to notify board of public sector policies);
  - (f) a direction given to the GOC’s board under section 115 (Reserve power of shareholding Ministers to give directions in public interest);
  - (g) a direction given to the GOC’s board under section 138 (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.

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

- (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**

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

- (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.

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

- (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.

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

- (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
  - (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.

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

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**

### **118 Application of Financial Accountability Act 2009**

- (1) Subsection (2) applies to the provisions of the *Financial Accountability Act 2009* (the *FA Act*) that—
- (a) relate to the preparation, giving to the appropriate Minister and tabling of annual reports; and
  - (b) are prescribed under a regulation for this section.
- (2) The provisions apply to a GOC and a prescribed GOC subsidiary with the changes prescribed under the regulation.
- (3) Also, section 26 of the FA Act applies to a GOC and a prescribed GOC subsidiary.
- (4) The provisions of the FA Act, that apply under subsection (2) or (3), apply to a GOC or a prescribed GOC subsidiary as if—
- (a) it were a statutory body within the meaning of the FA Act; and
  - (b) a reference in the FA Act to the appropriate Minister were a reference—
    - (i) for a GOC—to the GOC’s shareholding Ministers;  
or

- (ii) for a prescribed GOC subsidiary—to the shareholding Ministers of each GOC that is a shareholder of the subsidiary.
- (5) The remaining provisions of the FA Act do not apply to a GOC.
- (6) In this section—  
*prescribed GOC subsidiary* means a GOC subsidiary prescribed under a regulation for this section.

### **119 Quarterly reports**

- (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.

### **120 Matters to be included in annual report**

- (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) 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 Act or another Act.

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

- (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 120 (Matters to be included in annual report) or another Act.
- (4) Subsection (1) has effect despite subsection (2).

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

- (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 Act or another Act.



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## **Part 12**                      **Duties and liabilities of directors and other officers**

### **123 Application of Corporations Act to officers of GOC**

- (1) In determining for the purposes of the Corporations Act the degree of care and diligence that a reasonable person in a like position in a GOC would exercise in the circumstances of the 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 or another 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 Act.

### **124 Application of Corporations Act to officers of GOC subsidiaries**

- (1) In determining for the purposes of the Corporations Act 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 or another 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 Act.

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

- (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 Act.

## **Part 13                      Legal capacity and powers**

### **126      General powers of GOCs**

- (1) A GOC has, in addition to powers conferred on it by the Corporations Act—
  - (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.

### **127      Doctrine of ultra vires etc. not revived**

- (1) The doctrine of ultra vires is not revived in relation to GOCs by this Act.
- (2) The abolition of the doctrine by the Corporations Act is not affected by this Act.
- (3) This section is enacted for the removal of doubt.

## Part 14 Finance

### Division 1 Taxation

#### 128 Liability to State taxes

- (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.
- (3) 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.
- (4) The GOC Minister may certify that a specified matter, instrument, transaction or thing is exempt from State tax under subsection (3), and the matter, instrument, transaction or thing is exempt from State tax.
- (5) So far as the legislative power of the Parliament permits, the reference in subsection (3) to State tax includes a reference to tax imposed under an Act of another State.

- (6) In this section—

*State tax* does not include duty under the *Duties Act 2001*.

*Note—*

For exemption for duty under the *Duties Act 2001*, see section 430 (Exemption—instruments and transactions under other Acts) of that Act.

#### 129 Liability for Commonwealth tax equivalents

- (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
  - (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

### 130      Guarantees by State

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

### 131      Payment of dividends

- (1) On or after 1 May, but before 16 May, of each financial year, a GOC's board must recommend to the GOC's shareholding Ministers that the GOC and its subsidiaries pay a specified dividend, or not pay a dividend, for the financial year.
- (2) The recommendation must be accompanied by—
  - (a) the board's estimate of the GOC's profits (the *estimated profits*) for the financial year, after provision has been made for income tax or its equivalent; and
  - (b) if the board has made any adjustment to the estimated profits in making the recommendation—a statement of the amount of, and reason for, each adjustment.

*Example of an adjustment to estimated profits—*

exclusion of an amount for unrealised capital gains from upwards revaluation of non-current assets

- (3) Before the end of the financial year, 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.
- (4) The dividend for a financial year must not exceed the amount allowed under the Corporations Act.

- (5) The dividend must be paid within 6 months after the end of the financial year or any further period that the shareholding Ministers allow.
- (6) The shareholding Ministers must cause a copy of a direction given under subsection (3)(b) to be published in the gazette within 21 days after it is given.

### **132 GOC's financial statements must state dividend payable**

- (1) A GOC's financial statements for a financial year given to the auditor-general by it under the *Financial Accountability Act 2009* must state any dividend payable, under section 131(3), for the financial year.
- (2) In this section, a reference to the *Financial Accountability Act 2009* is a reference to that Act as applying to the GOC under section 118.

### **133 Interim dividends**

- (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 131 (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 recommendation must be accompanied by—
  - (a) the board's estimate of the GOC's profits (the *estimated profits*) for the first 6 months of the financial year, after provision has been made for income tax or its equivalent; and
  - (b) if the board has made any adjustment to the estimated profits in making the recommendation—a statement of the amount of, and reason for, each adjustment.

*Example of an adjustment to estimated profits—*

exclusion of an amount for unrealised capital gains from upwards revaluation of non-current assets

- (4) 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.
- (5) In deciding the amount the GOC is to be directed to pay under subsection (4)(b), the shareholding Ministers must have regard to any adjustment identified by the board under subsection (3)(b).
- (6) A direction under subsection (4)(b) must not direct the payment of an amount that exceeds the GOC's estimated profits, after making any adjustment identified by the board under subsection (3)(b) to exclude an amount for unrealised capital gains from upwards revaluation of non-current assets.
- (7) The shareholding Ministers must cause a copy of a direction under subsection (4)(b) to be published in the gazette within 21 days after it is given.

## **134 Definitions**

In sections 135 to 137—

*dividend* includes an amount in the nature of a dividend.

*predecessor* of a GOC means a candidate GOC whose associate became the GOC.

## **135 Dividend payment for financial year of becoming a GOC**

For applying section 131 (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
  - (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 131 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.

## **136 Interim dividend for financial year of becoming a GOC**

- (1) For applying section 133 (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 133(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 135(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 133(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.

## **137 Dividend payment for previous financial year**

- (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 131 (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 131 are to be extended as stated in the direction.
- (4) For applying this section and section 131—
- (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**

### **138 Reserve power of shareholding Ministers to direct that asset not be disposed of**

- (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.

### **139 Disposal of main undertakings**

(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.

### **140 Acquiring and disposing of subsidiaries**

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 16 GOCs and GOC subsidiaries becoming and retiring as trustees**

### **141 GOCs and subsidiaries becoming trustees**

(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.

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**142 GOCs and subsidiaries retiring as trustees**

- (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.

**143 Part applies despite Corporations Act**

This part applies despite the Corporations Act.

## **Part 17 Employees**

**144 Part applies to subsidiaries**

- (1) This part applies to a GOC subsidiary and its employees in the same way as it applies to the GOC and its employees.
- (2) For subsection (1)—
  - (a) a reference in this part to the GOC's board is taken to be a reference to the subsidiary's board of directors; and
  - (b) a reference in this part to the shareholding Ministers is taken to be a reference to the shareholding Ministers of each GOC that is a shareholder of the subsidiary.
- (3) Section 146, as it applies to a GOC subsidiary under subsection (1), does not limit a provision of the subsidiary's constitution requiring the subsidiary's board to consult the board of a GOC that is a shareholder of the subsidiary before appointing senior executives under the section.

**145 Employees not employed under Public Service Act**

The employees of a GOC are not to be employed under the *Public Service Act 2008*.

**146 Appointment of senior executives**

The senior executives of a GOC are to be appointed by the GOC's board.

**147 Arrangements relating to staff**

- (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.

**148 Application of equal opportunity provisions under Public Service Act 2008**

A GOC is a relevant EEO agency for the *Public Service Act 2008*, chapter 2.

**149 Employment and industrial relations plan**

- (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.

## **150 Superannuation schemes**

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.

## **152 Preservation of leave entitlements of certain former officers and employees of government entities**

- (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.

### **153 Right of return to public service**

- (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 18 Other matters

### 154 Relationship of GOCs with the State

- (1) A GOC does not represent, and has never represented, the State.
- (2) Subsection (1) does not apply to the extent an Act expressly provides, or did provide, otherwise.

### 155 Application of chapter to certain GOC subsidiaries

- (1) The provisions of this chapter mentioned in schedule 4 apply to a prescribed GOC subsidiary—
  - (a) with the changes prescribed by the schedule; and
  - (b) as if the prescribed GOC subsidiary were a GOC.
- (2) In this section—

*prescribed GOC subsidiary* means a GOC subsidiary prescribed under a regulation for this section.

### 156 Application of Crime and Corruption Act

- (1) Subsection (2) applies if the chief executive officer of a GOC suspects that a complaint, or information or matter (also a *complaint*), relating to the GOC involves, or may involve, something that would be corrupt conduct under the *Crime and Corruption Act 2001* if the GOC were a unit of public administration.
- (2) The chief executive officer must notify the CCC of the complaint under the *Crime and Corruption Act 2001*, section 38 as if the GOC were a unit of public administration and the chief executive officer were a public official.
- (3) Subsection (4) applies if the chief executive of the department in which this Act is administered reasonably suspects that—
  - (a) a complaint, or information or matter (also a *complaint*), relating to a GOC involves, or may involve,

- 
- something that would be corrupt conduct under the *Crime and Corruption Act 2001* if the GOC were a unit of public administration; and
- (b) the chief executive officer of the GOC has not notified the CCC of the complaint as required under subsection (2).
- (4) The chief executive must notify the CCC of the complaint under the *Crime and Corruption Act 2001*, section 38 as if the GOC were a unit of public administration and the chief executive were a public official.
  - (5) The *Crime and Corruption Act 2001*, sections 39 and 40 apply in relation to the duty imposed by subsection (2) or (4).
  - (6) On notification under subsection (2) or (4), the *Crime and Corruption Act 2001* applies in relation to the GOC for the purposes of the complaint as if—
    - (a) the GOC were a unit of public administration; and
    - (b) the chief executive of the department in which this Act is administered were a public official or relevant public official; and
    - (c) the reference to the chief executive officer of a unit of public administration in the *Crime and Corruption Act 2001*, sections 49(2)(f) and 50(1) were a reference to the chief executive of the department in which this Act is administered.
  - (7) This section does not affect the operation of section 154.
  - (8) In this section—

**CCC** means the Crime and Corruption Commission.

**GOC** does not include a GOC that is a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* in relation to those parts of the entity's businesses, assets and liabilities that are being disposed of in a declared project under that Act.

**unit of public administration** means a unit of public administration under the *Crime and Corruption Act 2001*.

## **157 Application of Ombudsman Act 2001**

A GOC is not a public authority under the *Ombudsman Act 2001*.

# **Chapter 4 Miscellaneous**

## **157A Application of particular provisions**

- (1) This section applies if the declaration of Energex and Ergon Energy Corporation as GOCs under section 5 is repealed.
- (2) The purpose of this section is to provide for the application of particular provisions in relation to Energex, Ergon Energy Corporation and related group entities after the repeal of the declaration.
- (3) Sections 156 and 157 apply as if a reference in the sections to a GOC includes Energex and Ergon Energy Corporation.
- (4) Each provision of an Act or regulation mentioned in schedule 5 applies as if a reference in the provision to a GOC or government owned corporation includes Energex and Ergon Energy Corporation.
- (5) The *Duties Act 2001*, section 390 applies as if the reference in the section to a government entity does not include Energex and Ergon Energy Corporation.
- (6) A regulation may prescribe that a stated related group entity is, or is not, included in a reference to a GOC, government owned corporation or government entity in a stated provision of a law.
- (7) If a regulation prescribes matters under subsection (6), the stated provision of the law applies as if a reference in the provision to a GOC, government owned corporation or government entity includes, or does not include, the stated related group entity.
- (8) In this section—

***Energex*** means Energex Limited ACN 078 849 055.

***Ergon Energy Corporation*** means Ergon Energy Corporation Limited ACN 087 646 062.

***related group entity*** means an entity that is—

- (a) a related body corporate, of a State electricity entity, within the meaning of the Corporations Act, section 50; or
- (b) a subsidiary of a related body corporate mentioned in paragraph (a).

***State electricity entity*** see the *Electricity Act 1994*, schedule 5.

## 158 Monitoring and assessment of GOCs

- (1) The shareholding Ministers of a GOC may delegate their powers under section 122 (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)).

## **159 Giving of documents to board**

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.

## **160 Proceedings for offences**

- (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—
- (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.

**161 Transfer of assets, liabilities etc. to or from GOC or GOC subsidiary**

- (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, including the transfer of an asset or liability—
    - (i) from a GOC to another GOC, a GOC subsidiary or the State; or
    - (ii) from a GOC subsidiary to a GOC, another GOC subsidiary or the State; or
    - (iii) from the State to a GOC or GOC subsidiary; 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) for an instrument that applies, or is taken to apply, to a GOC subsidiary—whether a reference in the instrument to a shareholding Minister is taken to be a reference to a shareholding Minister of the parent company of the GOC subsidiary; and
  - (f) the proceedings to which the GOC or subsidiary becomes a party in substitution for the other GOC or subsidiary or for someone else; and
  - (g) 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) may make provision about accounting treatment in relation to a matter mentioned in the subsection; and

- (b) a regulation under subsection (1)(b) may make provision about anything necessary or incidental to the transfer of the assets or liabilities, including by providing that the transferee becomes a party to any instrument in substitution for the transferor; and
  - (c) 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
  - (d) 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.
- (3) In this section—

*parent company*, of a GOC subsidiary, means the GOC for which the GOC subsidiary is a subsidiary under this Act.

## **162 Effect of regulation made under s 161(1) on legal relationships**

- (1) Nothing done under a regulation made under section 161(1)—
- (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) is taken to fulfil a condition that—
    - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or

- (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
  - (iii) requires any money to be paid before its stated maturity; or
- (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under a regulation made under section 161(1), the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under a regulation made under section 161(1), the notice is taken to have been given.
- (4) This section applies despite anything in an instrument.
- (5) In this section—  
*relevant entity* means any of the following—
  - (a) the State;
  - (b) a GOC or GOC subsidiary;
  - (c) an officer, employee or agent of an entity mentioned in paragraph (a) or (b);
  - (d) the shareholding Ministers of a GOC.

## **162A Effect of GOC repeal regulation on legal relationships**

- (1) This section applies if a regulation repeals the declaration of an entity as a GOC.
- (2) The repeal of the declaration—
  - (a) does not make the entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; and

- (b) does not make the entity breach any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; and
  - (c) is not taken to fulfil a condition that—
    - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
    - (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iii) requires any money to be paid before its stated maturity; and
  - (d) does not release a surety or other obligee, wholly or partly, from an obligation.
- (3) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something because of the repeal, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (4) If, apart from this subsection, giving notice to a person would be necessary to do something because of the repeal, the notice is taken to have been given.
- (5) This section applies despite anything in an instrument.

### **163 Regulation about assets and liabilities not dealt with under s 54**

- (1) To the extent that anything about a candidate GOC or subsidiary of a candidate GOC could have been dealt with under section 54 (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.

## 164 Debt owned by State

A debt mentioned in section 161(1)(c) (Transfer of assets, liabilities etc. to GOC or GOC subsidiary) or 163(2)(c) (Regulation about assets and liabilities not dealt with under s 54) is owned by the State and held by the shareholding Ministers for the State.

## 165 Regulation about liability

- (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.

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## **166 Regulation dissolving certain government entities**

- (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 GOC.

## **167 Regulations**

- (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 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.).

## Chapter 5      **Transitional provisions for Government Owned Corporations Amendment Act 2007**

### **168      Company GOCs—transfer of non-voting shares**

- (1) Shares in a company GOC that are held by non-voting shareholders immediately before the commencement are, on the commencement, transferred to the GOC Minister by force of this section.

- (2) In this section—

*commencement* means the commencement of the *Government Owned Corporations Amendment Act 2007*, section 30.

### **169      References to statutory GOCs and company GOCs**

A reference in an Act or document to a statutory GOC or company GOC may, if the context permits, be taken to be a reference to a GOC.



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## Schedule 1      Interim boards of directors

sections 58(3) and 60(1)

### Part 1                      Interpretation

#### 1                      Definitions for sch 1

In this schedule—

*interim board* means the interim board of directors of a relevant entity.

*relevant entity* means—

- (a) a government entity that is to become a GOC or a GOC subsidiary that has an interim board of directors under a regulation made under section 58(1); or
- (b) a candidate GOC associate or associate subsidiary.

### Part 2                      Composition of interim board of relevant entities

#### 2                      Composition of interim board

A relevant entity's interim board consists of the number of directors appointed by the Governor in Council.

#### 3                      Chairperson and deputy chairperson

- (1) The Governor in Council may appoint a director to be the interim board's chairperson and another director to be the interim 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 3 Meetings and other business of interim board**

### **4 Meaning of *required minimum number* of directors**

In this part—

*required minimum number* of directors means the number that is half the number of directors of which the interim board for the time being consists or, if that number is not a whole number, the next higher whole number.

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

Subject to this part, the interim board may conduct its business (including its meetings) in the way it considers appropriate.

### **6 Times and places of meetings**

- (1) Meetings of the interim board are to be held at the times and places that the interim 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.

### **7 Presiding at meetings**

- (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.

## **8 Quorum and voting at meetings**

At a meeting of the interim 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
- (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.

## **9 Participation in meetings by telephone etc.**

- (1) The interim 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 interim board under a permission under subsection (1) is taken to be present at the meeting.

## **10 Resolutions without meetings**

- (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 interim 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 interim 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.

## **11 Minutes**

The interim board must keep minutes of its proceedings.

# **Part 4 Provisions relating to directors**

## **12 Appointment of directors**

- (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 relevant entity's commercial performance and, if the entity 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 Act, part 2D.6.

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**13 Terms of appointment not provided for under Act**

- (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
  - (b) in connection with retirement from office, or other termination of office, as a director.

**14 Appointment of acting director**

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.

**15 Resignation**

- (1) A director, or person appointed under section 3 (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.

**16 Termination of appointment as director**

The Governor in Council may, at any time, terminate the appointment of all or any directors of the interim board for any reason or none.

## **Schedule 2      Executives of candidate GOC associates and associate subsidiaries**

section 60(2)

### **Part 1                      Interpretation**

#### **1                      Definitions for sch 2**

In this schedule—

*interim board* means the interim board of directors of a relevant entity.

*relevant entity* means a candidate GOC associate or associate subsidiary.

*responsible Ministers*, for an associate subsidiary, means the responsible Ministers for the candidate GOC associate of which the associate subsidiary is a subsidiary.

### **Part 2                      Chief executive officer**

#### **2                      Appointment of chief executive officer**

The chief executive officer of a relevant entity is to be appointed by the entity's interim board with the prior written approval of the responsible Ministers.

#### **3                      Appointment of acting chief executive officer**

The interim 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.

#### **4 Terms of appointment not provided for under Act**

In relation to matters not provided for under this Act, the chief executive officer holds office on the terms of appointment determined by the interim board.

#### **5 Resignation**

The chief executive officer may resign by signed notice given to the chairperson of the interim board.

#### **6 Termination of appointment**

- (1) The interim board may, at any time, terminate the appointment of the chief executive officer for any reason or none.
- (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.

#### **7 Duties of chief executive officer**

A relevant entity's chief executive officer, under its interim board, manages the entity.

#### **8 Things done by chief executive officer**

Anything done in the name of, or for, a relevant entity by its chief executive officer is taken to have been done by the entity.

## **9 Delegation by chief executive officer**

- (1) The chief executive officer of a relevant entity may delegate the chief executive officer's functions, including a function delegated to the chief executive officer, to an appropriately qualified employee of the entity.
- (2) Subsection (1) has effect subject to any directions of the relevant entity's interim board.
- (3) In this section—

*appropriately qualified* includes having qualifications, experience or standing appropriate for the function.

*Example of standing—*

an employee's classification level in the relevant entity

*function* includes power.

## **Part 3 Senior executives**

### **10 Appointment of senior executives**

The senior executives of a relevant entity are to be appointed by the entity's interim board with the prior written approval of the responsible Ministers.



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## Schedule 4      **Application of chapter 3 of Act to prescribed GOC subsidiaries**

section 155

### Part 1                      **Preliminary**

#### 1            **Purpose**

This schedule provides for—

- (a) the application of provisions of chapter 3 of the Act to prescribed GOC subsidiaries as if they were GOCs; and
- (b) the modification of the provisions for their application to the subsidiaries.

#### 2            **Definitions**

In this schedule—

*applied provisions* means the provisions of chapter 3 of the Act as applying under section 3.

*prescribed GOC subsidiary* means a GOC subsidiary prescribed under a regulation under section 155 of the Act.

#### 3            **Application of ch 3 of the Act to prescribed GOC subsidiaries**

- (1) Chapter 3 of the Act applies to each prescribed GOC subsidiary with the changes shown in part 2.

*Note—*

Changes, other than changes in definitions, are shown in italics. Citations of Acts and definitions are also shown in italics. Changes in definitions are shown in roman type. Provisions not applied are indicated by “(omitted)”.

- (2) Subject to the changes mentioned in subsection (1), the provisions are applied as in force immediately after the

commencement of amendment 1 of the Act under the *Government Owned Corporations Amendment Act 2007*, schedule.

## **Part 2**                      **Provisions of chapter 3 of Act as applied to prescribed GOC subsidiaries**

section 3 of this schedule

### **Chapter 3**                      ***Prescribed GOC subsidiaries***

#### **Part 1**                      **Basic requirements**

##### **75**                      ***Prescribed GOC subsidiary must be proprietary company limited by shares***

*A prescribed GOC subsidiary must be a proprietary company, and a company limited by shares, within the meaning of the Corporations Act.*

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## Part 2                      Application of Corporations Act

### 76      **Application of Corporations Act to *prescribed GOC subsidiaries***

The Corporations Act applies to a *prescribed GOC subsidiary* except so far as *the applied provisions* otherwise provide.

### 77      ***Prescribed GOC subsidiary not exempt public authority***

A *prescribed GOC subsidiary* is not an exempt public authority for the purposes of the Corporations Act.

## Part 3                      Shares and shareholding Ministers

### 78      **Shareholders of a *prescribed GOC subsidiary***

- (1) *A prescribed GOC subsidiary may have any number of shareholders.*
- (2) *Each shareholder must be a GOC.*
- (3) *Each GOC that is a shareholder of the subsidiary is its shareholding GOC.*

### 79      **Shareholding GOCs must have equal number of shares (words omitted)**

- (1) *Each shareholding GOC need not have an equal number of shares.*
- (2) *(omitted)*
- (3) *(omitted)*

**80 Shareholders hold shares for State etc.**

*(omitted)*

**81 Transfer, issue etc. of shares**

*(omitted)*

*Note—*

Section 81 is not applied. The section applies to subsidiaries under its own force.

**82 Shareholding Ministers must act jointly**

*(omitted)*

**83 Shareholding GOCs not directors**

- (1) *A shareholding GOC of a prescribed 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)*

**84 Resolutions without meetings**

- (1) *If each shareholding GOC of a prescribed 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*

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- (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 Act, or the *subsidiary's* constitution, 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 *GOC*, are taken to constitute a single document.
  - (4) This section has effect for the purposes of the Corporations Act and has that effect despite anything in that Act.
  - (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.

## Part 4                      Constitution (*omitted*)

### *Note—*

Part 4 is not applied. Sections 86 (Shareholding Ministers of GOC may require amendment of subsidiary's constitution) and 87 (Constitutions of GOC and its subsidiaries must not be inconsistent with Act or Corporations Act) apply to subsidiaries under their own force.

## Part 5 Board of directors

### 88 Role of board

The role of a *prescribed 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 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 shareholding GOCs* 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.

### 89 Composition of board

- (1) A *prescribed 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* constitution; and
  - (b) the Corporations Act.

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

- (1) A public service officer is not eligible for appointment as a director of a *prescribed GOC subsidiary*.
- (2) Subsection (1) has effect despite the Corporations Act.

**91 (omitted)****Part 6 Chief executive officer****92 Appointment of chief executive officer**

- (1) A *prescribed GOC subsidiary's* chief executive officer is to be appointed by the *subsidiary's* board with the prior written approval of the shareholding Ministers *of each shareholding GOC of the subsidiary*.
- (2) *Subsection (1) does not limit a provision of the subsidiary's constitution requiring the subsidiary's board to consult the board of a GOC that is a shareholder of the subsidiary before appointing the chief executive officer under the subsection.*

**93 Appointment of chief executive officer—particular subsidiaries**

*(omitted)*

*Note—*

Section 93 is not applied. The section applies to subsidiaries not prescribed under a regulation made under section 155(1).

## **Part 7 Corporate plan (*omitted*)**

*Note—*

Part 7 is not applied. Under section 95, a GOC's corporate plan must apply to the GOC and its subsidiaries.

## **Part 8 Statement of corporate intent (*omitted*)**

*Note—*

Part 8 is not applied. Under section 103, a GOC's statement of corporate intent must apply to the GOC and its subsidiaries.

## **Part 9 Community service obligations (*omitted*)**

## **Part 10 General reserve powers of shareholding Ministers**

### **114 *Exercise of reserve power of shareholding Ministers to notify GOC's board of public sector policies***

- (1) *This section applies if, under section 114 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a prescribed GOC subsidiary notify the GOC's board, in writing, of a public sector policy that is to apply to the GOC and its subsidiaries.*



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- (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)*

**115 Exercise of reserve power of shareholding Ministers to give directions in public interest**

- (1) *This section applies if, under section 115 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a prescribed 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)*

**116 Direction given following notice of suspected insolvency**

- (1) *This section applies if—*
- (a) *the shareholding Ministers of a shareholding GOC of a prescribed GOC subsidiary give the GOC's board a notification under section 114 (as it applies to GOCs) or a direction under section 115 (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 116(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)*

**117     *Subsidiary and board not otherwise subject to government direction***

Except as otherwise provided by *the applied provisions or any Act*, a *prescribed GOC subsidiary* and its board are not subject to direction by or on behalf of the Government.

## **Part 11                             Reports and other   accountability matters**

**118     Application of Financial Accountability Act 2009**  
*(omitted)*

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**119 Quarterly reports**

*(omitted)*

*Note—*

Section 119 is not applied. The section applies to subsidiaries under its own force.

**120 Matters to be included in annual report**

- (1) Each annual report of a *prescribed 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 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) This section does not limit the matters that are required to be included in, or to accompany, a *prescribed GOC subsidiary's* annual report by the Corporations Act or another Act.

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

- (1) If a *prescribed 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 *prescribed 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 120 or another Act.
- (4) Subsection (1) has effect despite subsection (2).

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**122 Board to keep shareholding Ministers informed**

- (1) *The board of a prescribed 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* 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 prescribed 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 prescribed GOC subsidiary*, by the Corporations Act or another Act.

## Part 12 Duties and liabilities of directors and other officers

### 123 Application of Corporations Act to officers of GOC (omitted)

**124 Application of Corporations Act to officers of GOC subsidiaries**

*(omitted)*

*Note—*

Section 124 is not applied. The section applies to subsidiaries under its own force.

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

- (1) *This section applies if—*
- (a) *under section 125 (as it applies to GOCs) the board of a shareholding GOC of a prescribed 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 125(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 subsection (1)(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)*

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## Part 13 Legal capacity and powers

### 126 General powers of *prescribed GOC subsidiaries*

- (1) A *prescribed GOC subsidiary* has, in addition to powers conferred on it by the Corporations Act—
  - (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*.

### 127 Doctrine of ultra vires etc. not revived

- (1) The doctrine of ultra vires is not revived in relation to a *prescribed GOC subsidiary by the applied provisions*.
- (2) The abolition of the doctrine by the Corporations Act is not affected by *applied provisions*.
- (3) This section is *included* for the removal of doubt.

## Part 14 Finance (*omitted*)

*Note—*

Part 14 is not applied. The part applies to subsidiaries under its own force.

## **Part 15**                      **Acquisition and disposal of assets and subsidiaries**

### **138**      **Reserve power of shareholding Ministers to direct that asset not be disposed of**

- (1) *This section applies if, under section 138 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a prescribed 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)*

### **139**      **Disposal of main undertakings**

*(omitted)*

*Note—*

Section 139 is not applied. The section applies to subsidiaries under its own force.

### **140**      **Acquiring and disposing of subsidiaries**

*(omitted)*

*Note—*

Section 140 is not applied. The section applies to subsidiaries under its own force.



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**Part 16**                      **GOCs and GOC subsidiaries becoming and retiring as trustees (*omitted*)**

*Note—*

Part 16 is not applied. The part applies to subsidiaries under its own force.

**Part 17**                      **Employees (*omitted*)**

*Note—*

Part 17 is not applied. The part applies to subsidiaries under section 144.

**Part 18**                      **Other matters****154**      **Relationship of *prescribed GOC subsidiaries* with the State**

- (1) A *prescribed GOC subsidiary* does not represent, and has never represented, the State.
- (2) Subsection (1) does not apply to the extent an Act expressly provides, or did provide, otherwise.

**155**      **Application of chapter to certain GOC subsidiaries**  
*(omitted)*

*Note—*

Section 155 provides for the application of chapter 3 of the Act with the changes in this schedule to prescribed GOC subsidiaries.

## 156 Application of Crime and Corruption Act

- (1) Subsection (2) applies if the *chief executive officer of a prescribed GOC subsidiary* suspects that a complaint, or information or matter (also a **complaint**), relating to the *subsidiary* involves, or may involve, something that would be corrupt conduct under the *Crime and Corruption Act 2001* if the *subsidiary* were a unit of public administration.
- (2) The chief executive officer must notify the CCC of the complaint under the *Crime and Corruption Act 2001*, section 38 as if the *prescribed GOC subsidiary* were a unit of public administration and the chief executive officer were a public official.
- (3) Subsection (4) applies if the chief executive of the department in which this Act is administered reasonably suspects that—
  - (a) a complaint, or information or matter (also a **complaint**), relating to a *prescribed GOC subsidiary* involves, or may involve, something that would be corrupt conduct under the *Crime and Corruption Act 2001* if the *subsidiary* were a unit of public administration; and
  - (b) the *chief executive officer for the subsidiary* has not notified the CCC of the complaint as required under subsection (2).
- (4) The chief executive must notify the CCC of the complaint under the *Crime and Corruption Act 2001*, section 38 as if the *prescribed GOC subsidiary* were a unit of public administration and the chief executive were a public official.
- (5) The *Crime and Corruption Act 2001*, sections 39 and 40 apply in relation to the duty imposed by subsection (2) or (4).
- (6) On notification under subsection (2) or (4), the *Crime and Corruption Act 2001* applies in relation to the *prescribed GOC subsidiary* for the purposes of the complaint as if—
  - (a) the *subsidiary* were a unit of public administration; and
  - (b) the chief executive of the department in which this Act is administered were a public official or relevant public official; and

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- (c) the reference to the chief executive officer of a unit of public administration in the *Crime and Corruption Act 2001*, sections 49(2)(f) and 50(1) were a reference to the chief executive of the department in which this Act is administered.
- (7) This section does not affect the operation of section 154.
- (8) In this section—

**CCC** means the Crime and Corruption Commission.

**prescribed GOC subsidiary** does not include a prescribed GOC subsidiary that is a declared entity under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* in relation to those parts of the entity's businesses, assets and liabilities that are being disposed of in a declared project under that Act.

**unit of public administration** means a unit of public administration under the *Crime and Corruption Act 2001*.

## 157 Application of Ombudsman Act 2001

A *prescribed GOC subsidiary* is not a public authority under the *Ombudsman Act 2001*.

## Schedule 5      Application of provisions in relation to Energex or Ergon Energy Corporation

section 157A(4)

<b>Act or regulation</b>	<b>Section</b>
<i>Anti-Discrimination Act 1991</i>	section 106B(3), definition <i>government entity</i>
<i>Building Act 1975</i>	section 116(4), definition <i>government building</i>
Criminal Code	section 469A(5), definition <i>government entity</i>
<i>Duties Act 2001</i>	schedule 6, definition <i>new right</i>
<i>Economic Development Act 2012</i>	sections 42B(c)(i), 52(1) and (2), and 58(2)(b)(i) schedule 1, definition <i>government entity</i>
<i>Environmental Protection Regulation 2008</i>	section 106(4), definition <i>State or local government entity</i>
<i>Food Act 2006</i>	section 3(2)
<i>Land Regulation 2009</i>	section 30(3), definition <i>government leasing entity</i> section 37C(c)
<i>Land Valuation Act 2010</i>	sections 53(3)(b) and 62(1)(b) schedule, definition <i>owner</i> schedule, definition <i>subdivide</i>
<i>Neighbourhood Disputes (Dividing Fences and Trees) Act 2011</i>	schedule, definition <i>government authority</i>

<b>Act or regulation</b>	<b>Section</b>
<i>Public Sector Ethics Act 1994</i>	schedule, definition <i>public sector entity</i>
<i>Public Interest Disclosure Act 2010</i>	sections 6(2)(b) and 19 section 26, definition <i>public sector entity</i> section 43(3), definition <i>public sector entity</i> section 46(4), definition <i>public officer</i> section 57, definition <i>public sector entity</i> section 66(3), definition <i>proper authority</i> section 71(4), definition <i>public sector entity</i>
<i>Queensland Building and Construction Commission Regulation 2003</i>	schedule 1AA, section 8(2), definition <i>agency of the State</i>
<i>Queensland Competition Authority Act 1997</i>	schedule 2, definition <i>government agency</i>
<i>Queensland Reconstruction Authority Act 2011</i>	sections 65(b)(i) and 102(1) and (2) section 127(5), definition <i>relevant entity</i> schedule, definition <i>government entity</i>
<i>Sustainable Planning Act 2009</i>	schedule 3, definition <i>public sector entity</i>