



Queensland

*Government Owned Corporations Act 1993*

# **Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019**

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Queensland

# Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019

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# Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019*.

### 2 Purpose

The purpose of this regulation is to make provision for the following matters under the Act, section 161—

- (a) to transfer particular assets, liabilities, instruments and employees of Stanwell to CleanCo or a wholly-owned subsidiary of CleanCo;
- (b) to make CleanCo, or a wholly-owned subsidiary of CleanCo, successor in law in relation to particular assets, liabilities and instruments of Stanwell;
- (c) to ensure Stanwell remains liable for particular proceedings and liabilities;
- (d) to transfer particular assets, liabilities, instruments and employees of CS Energy to CleanCo or a wholly-owned subsidiary of CleanCo;
- (e) to make CleanCo, or a wholly-owned subsidiary of CleanCo, successor in law in relation to particular assets, liabilities and instruments of CS Energy;
- (f) to ensure CS Energy remains liable for particular proceedings and liabilities;
- (g) to provide for matters incidental to the purposes mentioned in paragraphs (a) to (f).

### 3 Dictionary

The dictionary in schedule 1 defines particular words used in this regulation.

## Part 2                      **Transfer of particular assets, liabilities, instruments and employees of Stanwell**

### 4 Definitions for part

In this part—

*exclusion schedule* see section 11(4).

*relevant departments* means the departments of government administered by the shareholding Ministers for Stanwell.

*transfer date* means—

- (a) for the transfer schedule prepared by the relevant departments under section 11(1)—9 May 2019; or
- (b) for any other transfer schedule—the date fixed for the schedule under section 12.

*transfer schedule* see section 11(1) and (2).

### 5 Transferring assets

- (1) This section applies if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies an asset of Stanwell.
- (2) The asset is transferred to the recipient entity for the asset on the transfer date.
- (3) Stanwell and the recipient entity must do all things necessary to enable the asset to be transferred to the recipient entity on the transfer date.
- (4) For the purpose of accounting—
  - (a) Stanwell must treat—

- 
- (i) the transfer of the asset to the recipient entity as a distribution to an owner that is to be considered as a redemption of contributed equity; and
  - (ii) the value of the asset as being the value of the asset as recorded in the accounts of Stanwell for the day immediately before the transfer date; and
- (b) the recipient entity must treat—
- (i) the transfer of the asset to the recipient entity as a contribution by an owner that is to be considered as an increase in contributed equity; and
  - (ii) the value of the asset as being the value of the asset as recorded in the accounts of Stanwell for the day immediately before the transfer date.

## **6 Transferring liabilities**

- (1) This section applies to a liability of Stanwell, in existence immediately before the transfer date for a transfer schedule, to the extent the liability arose as a result of Stanwell—
  - (a) acquiring, owning or maintaining an interest in an asset identified, immediately before the transfer date, in the transfer schedule; or
  - (b) being party to an instrument identified, immediately before the transfer date, in the transfer schedule; or
  - (c) employing an employee identified, immediately before the transfer date, in the transfer schedule.
- (2) This section also applies to a liability of Stanwell if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies the liability.
- (3) However, this section does not apply to a liability mentioned in subsection (1) or (2) to the extent that, immediately before the transfer date, the liability—
  - (a) has been discharged or otherwise satisfied; or
  - (b) is mentioned in an exclusion schedule.

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*Note—*

See also section 10.

- (4) Stanwell is released from the liability, and the liability is assumed by the recipient entity for the liability, on the transfer date.
- (5) Stanwell and the recipient entity must do all things necessary to enable the liability to be assumed by the recipient entity on the transfer date.
- (6) For the purpose of accounting—
  - (a) Stanwell must treat—
    - (i) the assumption of the liability by the recipient entity as a contribution by an owner that is to be considered as an increase in contributed equity; and
    - (ii) the value of the liability as being the value of the liability as recorded in the accounts of Stanwell for the day immediately before the transfer date; and
  - (b) the recipient entity must treat—
    - (i) the assumption of the liability by the recipient entity as a distribution to an owner that is to be considered as a redemption of contributed equity; and
    - (ii) the value of the liability as being the value of the liability as recorded in the accounts of Stanwell for the day immediately before the transfer date.

## **7 Transferring instruments**

- (1) This section applies if, immediately before the transfer date for a transfer schedule—
  - (a) the transfer schedule identifies an instrument relating to Stanwell; and
  - (b) the instrument is still in effect.



- (2) The instrument applies to the recipient entity for the instrument instead of Stanwell on and from the transfer date.
- (3) Stanwell, the recipient entity and any other party to the instrument must do all things necessary to enable the instrument to be applied to the recipient entity on and from the transfer date.
- (4) Without limiting subsection (2), on and from the transfer date—
  - (a) any right, title or interest arising under or relating to the instrument is taken to be transferred from Stanwell to the recipient entity; and
  - (b) a benefit or right provided by the instrument, given to, by or in favour of Stanwell is taken to have been given to, by or in favour of the recipient entity; and
  - (c) the recipient entity is taken to be a party to the instrument instead of Stanwell; and
  - (d) a reference in the instrument to Stanwell is taken to be a reference to the recipient entity; and
  - (e) a reference in the instrument to the shareholding Ministers of Stanwell is taken to be a reference to the shareholding Ministers of CleanCo; and
  - (f) an amount that is, or may become, payable to or by Stanwell under the instrument is taken to be an amount that is, or may become, payable to or by the recipient entity in the way the amount was, or might have become, payable to or by Stanwell.
- (5) However, nothing in this section imposes a liability on the recipient entity to the extent that—
  - (a) the liability has not been transferred to the recipient entity under section 6; or
  - (b) Stanwell is liable for the liability under section 10.

## **8 Transferring employees**

- (1) This section applies if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies an employee of Stanwell.
- (2) The employee becomes an employee of the recipient entity for the employee, and is no longer an employee of Stanwell, on and from the transfer date.
- (3) Stanwell and the recipient entity must do all things necessary to enable the employee to become an employee of the recipient entity on and from the transfer date.
- (4) The transfer of the employee under subsection (2) does not—
  - (a) affect the employee's benefits, entitlements or remuneration; or
  - (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) constitute a termination of employment by Stanwell or a retrenchment or redundancy; or
  - (e) entitle the employee to a payment or other benefit because he or she is no longer employed by Stanwell; or
  - (f) require Stanwell to make any payment in relation to the employee's accrued rights to recreation, sick, long service or other leave regardless of any arrangement between Stanwell and the employee.

## **9 Successor in law and new liability**

- (1) The recipient entity of an asset, liability or instrument transferred under this part is the successor in law of Stanwell in relation to the asset, liability or instrument.

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- (2) However, nothing in subsection (1) imposes a liability on the recipient entity to the extent that—
- (a) the liability has not been transferred to the recipient entity under section 6; or
  - (b) Stanwell is liable for the liability under section 10.
- (3) The recipient entity is liable for a liability, relating to an asset, liability or instrument transferred under this part, that arises on or after the transfer.

*Note—*

However, see section 10.

## 10 Current proceedings

- (1) If a proceeding by or against Stanwell, relating to an asset, liability, instrument or employee transferred under this part, has not been concluded before the relevant transfer—
- (a) the proceeding must be continued and concluded by or against Stanwell; and
  - (b) Stanwell is liable for any liability of Stanwell that arose before the transfer, or arises after the transfer, as a result of—
    - (i) the proceeding; or
      - Examples of liabilities for subparagraph (i)—*
      - 1 a judgment debt
      - 2 a liability incurred as a result of discontinuing the proceeding
      - 3 costs of the proceeding
    - (ii) an act or omission that is the subject of the proceeding.
- (2) This section applies despite anything else in this part.

## 11 Preparation of transfer schedules and exclusion schedules

- (1) The relevant departments may prepare a schedule (a *transfer schedule*) identifying the assets to be transferred under this part on 9 May 2019.
- (2) Stanwell and CleanCo may jointly prepare a schedule (also a *transfer schedule*) identifying the following matters—
  - (a) assets to be transferred under this part;
  - (b) liabilities to be transferred under this part;
  - (c) instruments to be applied under this part;
  - (d) employees to be transferred under this part.

*Note—*

See section 12 for the fixing of a transfer date for a transfer schedule mentioned in this subsection.

- (3) More than 1 transfer schedule may be prepared under subsection (2) about the assets, liabilities, instruments or employees if any of the assets, liabilities, instruments or employees are to be transferred under this part—
  - (a) on different days; or
  - (b) to different entities.
- (4) Stanwell and CleanCo may jointly prepare a schedule (an *exclusion schedule*)—
  - (a) identifying liabilities, or classes of liabilities, that are excluded from transfer under this part; and
  - (b) stating the extent to which the liabilities, or classes or liabilities, are excluded from transfer.
- (5) More than 1 exclusion schedule may be prepared under subsection (4) if more than 1 transfer schedule is prepared under subsection (2).
- (6) Stanwell and CleanCo must—
  - (a) give each other, and the relevant departments, access to all information and documents reasonably required for

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- the preparation of a transfer schedule or an exclusion schedule; and
- (b) cooperate with each other, and the relevant departments, in the preparation of a transfer schedule or an exclusion schedule; and
  - (c) comply with a request from the relevant departments in relation to the preparation of a transfer schedule or an exclusion schedule; and
  - (d) hold copies of the final version of each transfer schedule and exclusion schedule; and
  - (e) ensure the relevant departments have copies of the final version of each transfer schedule and exclusion schedule.
- (7) A transfer schedule, or an exclusion schedule, may be prepared and held as 1 or more documents.

## **12 Fixing transfer dates for particular transfer schedules**

- (1) The shareholding Ministers for Stanwell and the shareholding Ministers for CleanCo may jointly, by gazette notice, fix the date when a transfer schedule mentioned in section 11(2) takes effect.
- (2) However, the date fixed must not be before 10 May 2019 or after 1 July 2021.
- (3) The notice has effect on the day it is published in the gazette.
- (4) The date fixed may be the day the notice is published in the gazette or a later date stated in the notice.
- (5) The notice must identify the transfer schedule to which it applies.

## **13 Correction of errors**

- (1) At any time within 1 year after the transfer date for a transfer schedule, the shareholding Ministers of Stanwell and the shareholding Ministers for CleanCo may jointly—



*transfer date* means—

- (a) for the transfer schedule prepared by the relevant departments under section 21(1)—9 May 2019; or
- (b) for any other transfer schedule—the date fixed for the schedule under section 22.

*transfer schedule* see section 21(1) and (2).

## 15 Transferring assets

- (1) This section applies if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies an asset of CS Energy.
- (2) The asset is transferred to the recipient entity for the asset on the transfer date.
- (3) CS Energy and the recipient entity must do all things necessary to enable the asset to be transferred to the recipient entity on the transfer date.
- (4) For the purpose of accounting—
  - (a) CS Energy must treat—
    - (i) the transfer of the asset to the recipient entity as a distribution to an owner that is to be considered as a redemption of contributed equity; and
    - (ii) the value of the asset as being the value of the asset as recorded in the accounts of CS Energy for the day immediately before the transfer date; and
  - (b) the recipient entity must treat—
    - (i) the transfer of the asset to the recipient entity as a contribution by an owner that is to be considered as an increase in contributed equity; and
    - (ii) the value of the asset as being the value of the asset as recorded in the accounts of CS Energy for the day immediately before the transfer date.

## **16 Transferring liabilities**

- (1) This section applies to a liability of CS Energy, in existence immediately before the transfer date for a transfer schedule, to the extent the liability arose as a result of CS Energy—
  - (a) acquiring, owning or maintaining an interest in an asset identified, immediately before the transfer date, in the transfer schedule; or
  - (b) being party to an instrument identified, immediately before the transfer date, in the transfer schedule; or
  - (c) employing an employee identified, immediately before the transfer date, in the transfer schedule.
- (2) This section also applies to a liability of CS Energy if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies the liability.
- (3) However, this section does not apply to a liability mentioned in subsection (1) or (2) to the extent that, immediately before the transfer date, the liability—
  - (a) has been discharged or otherwise satisfied; or
  - (b) is mentioned in an exclusion schedule.

*Note—*

See also section 20.

- (4) CS Energy is released from the liability, and the liability is assumed by the recipient entity for the liability, on the transfer date.
- (5) CS Energy and the recipient entity must do all things necessary to enable the liability to be assumed by the recipient entity on the transfer date.
- (6) For the purpose of accounting—
  - (a) CS Energy must treat—
    - (i) the assumption of the liability by the recipient entity as a contribution by an owner that is to be considered as an increase in contributed equity; and



- (ii) the value of the liability as being the value of the liability as recorded in the accounts of CS Energy for the day immediately before the transfer date; and
- (b) the recipient entity must treat—
  - (i) the assumption of the liability by the recipient entity as a distribution to an owner that is to be considered as a redemption of contributed equity; and
  - (ii) the value of the liability as being the value of the liability as recorded in the accounts of CS Energy for the day immediately before the transfer date.

## **17 Transferring instruments**

- (1) This section applies if, immediately before the transfer date for a transfer schedule—
  - (a) the transfer schedule identifies an instrument relating to CS Energy; and
  - (b) the instrument is still in effect.
- (2) The instrument applies to the recipient entity for the instrument instead of CS Energy on and from the transfer date.
- (3) CS Energy, the recipient entity and any other party to the instrument must do all things necessary to enable the instrument to be applied to the recipient entity on and from the transfer date.
- (4) Without limiting subsection (2), on and from the transfer date—
  - (a) any right, title or interest arising under or relating to the instrument is taken to be transferred from CS Energy to the recipient entity; and
  - (b) a benefit or right provided by the instrument, given to, by or in favour of CS Energy is taken to have been given to, by or in favour of the recipient entity; and

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- (c) the recipient entity is taken to be a party to the instrument instead of CS Energy; and
  - (d) a reference in the instrument to CS Energy is taken to be a reference to the recipient entity; and
  - (e) a reference in the instrument to the shareholding Ministers of CS Energy is taken to be a reference to the shareholding Ministers of CleanCo; and
  - (f) an amount that is, or may become, payable to or by CS Energy under the instrument is taken to be an amount that is, or may become, payable to or by the recipient entity in the way the amount was, or might have become, payable to or by CS Energy.
- (5) However, nothing in this section imposes a liability on the recipient entity to the extent that—
- (a) the liability has not been transferred to the recipient entity under section 16; or
  - (b) CS Energy is liable for the liability under section 20.

## **18 Transferring employees**

- (1) This section applies if, immediately before the transfer date for a transfer schedule, the transfer schedule identifies an employee of CS Energy.
- (2) The employee becomes an employee of the recipient entity for the employee, and is no longer an employee of CS Energy, on and from the transfer date.
- (3) CS Energy and the recipient entity must do all things necessary to enable the employee to become an employee of the recipient entity on and from the transfer date.
- (4) The transfer of the employee under subsection (2) does not—
  - (a) affect the employee's benefits, entitlements or remuneration; or

- 
- (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) constitute a termination of employment by CS Energy or a retrenchment or redundancy; or
  - (e) entitle the employee to a payment or other benefit because he or she is no longer employed by CS Energy; or
  - (f) require CS Energy to make any payment in relation to the employee's accrued rights to recreation, sick, long service or other leave regardless of any arrangement between CS Energy and the employee.

## **19 Successor in law and new liability**

- (1) The recipient entity of an asset, liability or instrument transferred under this part is the successor in law of CS Energy in relation to the asset, liability or instrument.
- (2) However, nothing in subsection (1) imposes a liability on the recipient entity to the extent that—
  - (a) the liability has not been transferred to the recipient entity under section 16; or
  - (b) CS Energy is liable for the liability under section 20.
- (3) The recipient entity is liable for a liability, relating to an asset, liability or instrument transferred under this part, that arises on or after the transfer.

*Note—*

However, see section 20.

## 20 Current proceedings

- (1) If a proceeding by or against CS Energy, relating to an asset, liability, instrument or employee transferred under this part, has not been concluded before the relevant transfer—
  - (a) the proceeding must be continued and concluded by or against CS Energy; and
  - (b) CS Energy is liable for any liability of CS Energy that arose before the transfer, or arises after the transfer, as a result of—
    - (i) the proceeding; or
      - 1 a judgment debt
      - 2 a liability incurred as a result of discontinuing the proceeding
      - 3 costs of the proceeding
    - (ii) an act or omission that is the subject of the proceeding.
- (2) This section applies despite anything else in this part.

## 21 Preparation of transfer schedules and exclusion schedules

- (1) The relevant departments may prepare a schedule (a *transfer schedule*) identifying the assets to be transferred under this part on 9 May 2019.
- (2) CS Energy and CleanCo may jointly prepare a schedule (also a *transfer schedule*) identifying the following matters—
  - (a) assets to be transferred under this part;
  - (b) liabilities to be transferred under this part;
  - (c) instruments to be applied under this part;
  - (d) employees to be transferred under this part.

*Note—*

See section 22 for the fixing of a transfer date for a transfer schedule mentioned in this subsection.

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- (3) More than 1 transfer schedule may be prepared under subsection (2) about the assets, liabilities, instruments or employees if any of the assets, liabilities, instruments or employees are to be transferred under this part—
    - (a) on different days; or
    - (b) to different entities.
  - (4) CS Energy and CleanCo may jointly prepare a schedule (an *exclusion schedule*)—
    - (a) identifying liabilities, or classes of liabilities, that are excluded from transfer under this part; and
    - (b) stating the extent to which the liabilities, or classes or liabilities, are excluded from transfer.
  - (5) More than 1 exclusion schedule may be prepared under subsection (4) if more than 1 transfer schedule is prepared under subsection (2).
  - (6) CS Energy and CleanCo must—
    - (a) give each other, and the relevant departments, access to all information and documents reasonably required for the preparation of a transfer schedule or an exclusion schedule; and
    - (b) cooperate with each other, and the relevant departments, in the preparation of a transfer schedule or an exclusion schedule; and
    - (c) comply with a request from the relevant departments in relation to the preparation of a transfer schedule or an exclusion schedule; and
    - (d) hold copies of the final version of each transfer schedule and exclusion schedule; and
    - (e) ensure the relevant departments have copies of the final version of each transfer schedule and exclusion schedule.
  - (7) A transfer schedule, or an exclusion schedule, may be prepared and held as 1 or more documents.

## **22 Fixing transfer dates for particular transfer schedules**

- (1) The shareholding Ministers for CS Energy and the shareholding Ministers for CleanCo may jointly, by gazette notice, fix the date when a transfer schedule mentioned in section 21(2) takes effect.
- (2) However, the date fixed must not be before 10 May 2019 or after 1 July 2021.
- (3) The notice has effect on the day it is published in the gazette.
- (4) The date fixed may be the day the notice is published in the gazette or a later date stated in the notice.
- (5) The notice must identify the transfer schedule to which it applies.

## **23 Correction of errors**

- (1) At any time within 1 year after the transfer date for a transfer schedule, the shareholding Ministers of CS Energy and the shareholding Ministers for CleanCo may jointly—
  - (a) correct a minor error in—
    - (i) the transfer schedule; or
    - (ii) an exclusion schedule that applies in relation to the transfer schedule under section 16(3)(b); or
  - (b) correct the misidentification of an asset, liability, instrument or employee identified in the transfer schedule; or  
*Example—*  
correction of the real property description of an asset
  - (c) correct the misidentification of a liability, or a class of liabilities, identified in an exclusion schedule that applies in relation to the transfer schedule under section 16(3)(b); or
  - (d) correct an error in the accounts of CS Energy or a recipient entity relating to the value of—

- 
- (i) an asset, liability or instrument identified in the transfer schedule; or
    - (ii) an associated liability for an asset, instrument or employee identified in the transfer schedule.
  - (2) The correction or change is taken to have been made immediately before the transfer date.

## Part 4 Miscellaneous

### 24 Registering authority to note transfers

- (1) This section applies to an asset, liability or instrument transferred, under this regulation, to a recipient entity.
- (2) A registering authority—
  - (a) may, without formal application, register or record the transfer in an appropriate way; and
  - (b) must, on written application by the recipient entity, register or record the transfer in an appropriate way.
- (3) The recipient entity must comply with the procedures required by the registering authority for the purpose of registering or recording the transfer.

*Example—*

The registering authority may require the recipient entity to complete and submit a particular form.

- (4) In this section—

***registering authority*** means the registrar of titles or another entity required or authorised by law to register or record transactions affecting assets, liabilities or instruments.

***registrar of titles*** means—

- (a) the registrar of titles under the *Land Title Act 1994*; or
- (b) another person who is responsible for keeping, under another Act, a register of interests in land.

## Schedule 1 Dictionary

### section 3

***associated liability***, for an asset, instrument or employee identified in a transfer schedule, means a liability to which section 6(1) or 16(1) applies as result of the asset, instrument or employee being identified in the transfer schedule immediately before the transfer date for the transfer schedule.

***CleanCo*** means CleanCo Queensland Limited ACN 628 008 159.

***CS Energy*** means C S Energy Limited ACN 078 848 745.

***exclusion schedule***—

- (a) for part 2—see section 11(4); or
- (b) for part 3—see section 21(4).

***instrument*** includes a part of an instrument.

***recipient entity***, for an asset, liability, instrument or employee identified in a transfer schedule, or an associated liability for an asset, instrument or employee identified in a transfer schedule, means—

- (a) a wholly-owned subsidiary of CleanCo if, immediately before the transfer date for the transfer schedule, the subsidiary—
  - (i) is stated, in the transfer schedule, to be the recipient entity for the asset, liability, instrument or employee; and
  - (ii) has not ceased to exist; or
- (b) if paragraph (a) does not apply—CleanCo.

***relevant departments***—

- (a) for part 2—see section 4; or
- (b) for part 3—see section 14.



***Stanwell*** means Stanwell Corporation Limited ACN 078 848 674.

***transfer date***—

- (a) for part 2—see section 4; or
- (b) for part 3—see section 14.

***transfer schedule***—

- (a) for part 2—see section 11(1) and (2); or
- (b) for part 3—see section 21(1) and (2).

***wholly-owned subsidiary*** see the *Income Tax Assessment Act 1997* (Cwlth), section 995-1.