



Queensland Productivity Commission Act 2015

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Queensland

Queensland Productivity Commission Act 2015

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Queensland Productivity Commission Act 2015

An Act to establish the Queensland Productivity Commission

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Productivity Commission Act 2015*.

2 Purpose of Act

The purpose of this Act is to establish the Queensland Productivity Commission to provide independent economic and policy advice to the State with the goal of increasing productivity, driving economic growth and improving living standards in Queensland.

3 Act binds all persons

- (1) This Act binds all persons, including the State.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

4 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

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- (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).

5 Definitions

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

Part 2 Queensland Productivity Commission

Division 1 Establishment of Queensland Productivity Commission

6 Establishment

The Queensland Productivity Commission is established.

7 Legal status

The commission—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

8 Relationship with State

- (1) The commission represents the State.
- (2) Without limiting subsection (1), the commission has the status, privileges and immunities of the State.

Division 2 Functions

9 Functions

- (1) The main functions of the commission are as follows—
 - (a) to facilitate and promote productivity in Queensland;
 - (b) to undertake inquiries about matters relating to productivity, economic development and industry in Queensland as directed by the Minister;
 - (c) to advise the Minister about matters relating to productivity, economic development and industry in Queensland as requested by the Minister;
 - (d) to conduct research and analysis of matters relating to productivity, economic development and industry in Queensland;
 - (e) to advise government agencies about complying with the principle of competitive neutrality;
 - (f) to receive, investigate and report on complaints about the alleged failures of government agencies to comply with the principle of competitive neutrality;
 - (g) to conduct research and analysis of, and to make recommendations about, regulatory matters as directed by the Minister;
 - (h) to promote public understanding of matters relating to productivity, economic development and industry.
- (2) The commission's functions also include any other function given to it under this Act or another Act.

10 General policy guidelines

- (1) In performing its functions, the commission may have regard to the following—
 - (a) the benefits to be gained from increasing the productivity and efficiency of the Queensland economy;
 - (b) living standards, employment, real wages, industry development, regional development, environmental sustainability and fiscal sustainability, in Queensland;
 - (c) the public interest.
- (2) Subsection (1) does not limit the matters to which the commission may have regard in performing its functions.

11 Committees

- (1) The commission may establish committees to assist it in performing its functions.
- (2) The commission may decide the membership and functions of a committee it establishes.

12 Ministerial direction about performance of functions

- (1) The Minister may give a written direction (a *Ministerial direction*) to the commission in relation to the commission.
- (2) However, a Ministerial direction must not be about—
 - (a) the conduct by the commission of an investigation of a competitive neutrality complaint; or
 - (b) the content of advice or a report prepared by the commission.
- (3) The commission must comply with the Ministerial direction.

Division 3 Powers

13 Powers

- (1) The commission has all the powers of an individual and may, for example—
 - (a) enter into contracts; and
 - (b) acquire, hold, deal with and dispose of property; and
 - (c) employ staff; and
 - (d) appoint agents and attorneys; and
 - (e) engage consultants; and
 - (f) do anything else necessary or convenient to be done in the performance of its functions.
- (2) The commission also has the other powers given to it under this Act or another Act.
- (3) The commission may exercise its powers inside and outside Queensland, including outside Australia.

Division 4 Board

14 Establishment

The board is established as the governing body of the commission.

15 Functions

The board has the following functions—

- (a) to manage the commission;
- (b) to ensure the commission performs its functions with independence, rigour, responsiveness, transparency, equity, efficiency and effectiveness.

16 Membership

- (1) The board consists of the principal commissioner and the other commissioners, if any, appointed by the Governor in Council.
- (2) A maximum of 3 commissioners (including the principal commissioner) may be appointed under subsection (1).
- (3) The commissioners are appointed under this Act and not the *Public Service Act 2008*.

17 Disqualification as commissioner

A person is disqualified from becoming, or continuing as, a commissioner if the person—

- (a) has a conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration under the Corporations Act, section 9; or
- (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
- (d) is a member of the commission's staff or a contractor of the commission.

18 Term of appointment

- (1) A commissioner holds office for the term, not longer than 3 years, stated in the commissioner's instrument of appointment.
- (2) Nothing in subsection (1) prevents a commissioner from being reappointed.

19 Conditions of appointment

- (1) A commissioner is to be paid the remuneration and allowances decided by the Governor in Council.

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- (2) A commissioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

20 Resignation

A commissioner may resign by signed notice given to the Minister.

21 Disclosure of interests

- (1) This section applies to a commissioner if—
- (a) the commissioner has a direct or indirect financial or personal interest in a matter; and
 - (b) the interest could conflict with the proper performance of the commissioner's duties in relation to the matter.
- (2) As soon as practicable after the relevant facts come to the commissioner's knowledge, the commissioner must disclose the nature of the interest to the Minister.
- (3) Unless the Minister directs otherwise, the commissioner must not—
- (a) perform the commissioner's duties in relation to the matter; or
 - (b) take part in a decision of the board on the matter.
- (4) A failure to make a disclosure under this section does not, of itself, invalidate a decision of the commission, the board or the commissioner.

Division 5 Staff

22 Staff of commission

- (1) The commission may employ the individuals (*staff*) it considers appropriate to perform its functions.

- (2) Staff are to be employed under this Act and not the *Public Service Act 2008*.

Part 3 Inquiries by commission

Division 1 Direction to undertake inquiry

23 Minister may direct commission to undertake inquiry

- (1) The Minister may, by written notice given to the commission, direct the commission to undertake an inquiry on a matter relating to productivity, economic development or industry in Queensland.
- (2) The direction may state the process the commission must adopt in undertaking the inquiry, including, for example, by requiring the commission to—
 - (a) have regard to particular matters in undertaking the inquiry; or
 - (b) undertake a particular type of public consultation as part of the process; or
 - (c) publish a preliminary report on the inquiry at a particular stage of the process; or
 - (d) give a report about the inquiry to the Minister within a stated period; or
 - (e) include recommendations in the commission's report to the Minister about the matter.
- (3) The commission must comply with the direction.

Division 2 Notice of inquiry and public consultation

24 Notice of inquiry

As soon as practicable after receiving the direction, the commission must publish the direction on its website.

25 Public consultation

The commission must undertake public consultation in relation to the inquiry.

Note—

The direction may require a particular type of public consultation to be undertaken. See section 23(2)(b).

Division 3 Report on inquiry

26 Commission to prepare report

After undertaking the inquiry, the commission must prepare a written report on the inquiry and give it to the Minister.

27 Minister's response to report

The Minister must give the commission a written response to the report within 6 months after receiving it.

28 Public availability of report

As soon as practicable after receiving the Minister's response to the report, the commission must publish the report on its website.

Part 4 Advice and research

Division 1 Requests for advice

29 Minister may ask for advice

- (1) The Minister may, by written notice given to the commission, ask it for advice on a matter relating to productivity, economic development or industry in Queensland.
- (2) The notice may include a requirement that—
 - (a) the commission give the Minister the advice within a stated period; or
 - (b) the commission have regard to particular matters in giving the advice.
- (3) The commission must comply with the notice and may, in addition to the requested advice, advise the Minister on any other matter it considers relevant to the requested advice.

Division 2 Research and analysis by commission

30 Research and analysis initiated by commission

- (1) The commission may, on its own initiative, conduct research into, or analysis of, a matter relating to productivity, economic development or industry in Queensland.
- (2) The commission must advise the chief executive it will publish the research or analysis before publishing the research or analysis.

Part 5 Competitive neutrality

Division 1 Preliminary

31 Definition for pt 5

In this part—

competitive neutrality complaint means a complaint about the alleged failure of a government agency to comply with the principle of competitive neutrality.

32 Principle of competitive neutrality

(1) The *principle of competitive neutrality* is the principle that a government agency carrying on a significant business activity should not enjoy a competitive advantage over competitors or potential competitors in a particular market solely because the agency's activities are not subject to 1 or more of the following—

- (a) full Commonwealth or State taxes or tax equivalent systems;
- (b) debt guarantee fees directed towards offsetting the competitive advantages of government guarantees;
- (c) procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.

(2) In this section—

significant business activity means a business activity included in the list published under section 33(1).

33 Significant business activities

- (1) The commission must publish a list of significant business activities on its website.
- (2) For subsection (1), a significant business activity is—
 - (a) a business activity carried out by a government owned corporation; or
 - (b) a business activity carried out by another government agency that the Minister decides, on the recommendation of the commission, is a significant business activity.
- (3) If the Minister decides under subsection (2)(b) that a business activity is a significant business activity, the Minister must, by written notice, inform the government agency carrying out the activity of the decision.

Division 2 Competitive neutrality complaints

34 Making competitive neutrality complaint

- (1) The following persons may make a competitive neutrality complaint to the commission—
 - (a) a person that is, or could be, in competition with a government agency in a particular market;
 - (b) a person that is, or could be, adversely affected by a competitive advantage the person alleges is enjoyed by a government agency.
- (2) The complaint must—
 - (a) be in writing; and
 - (b) contain details of the alleged failure of a government agency to comply with the principle of competitive neutrality; and
 - (c) include sufficient details to show—

- (i) the person and the government agency are, or could be, in competition in the particular market; or
 - (ii) how the person is, or could be, adversely affected by the competitive advantage the person alleges is enjoyed by the government agency; and
- (d) include sufficient details to show whether the person has made a genuine, but unsuccessful, attempt to resolve the subject matter of the complaint with the government agency.

35 Further information to support complaint

- (1) The commission may, by written notice given to the person making a competitive neutrality complaint, require the person to give it further information about the complaint within the reasonable time stated in the notice.
- (2) A notice under subsection (1) must relate to information that is necessary and reasonable to help the commission decide whether or not to investigate the complaint.

36 Handling competitive neutrality complaint

- (1) Subject to this part, the commission must follow the process for dealing with competitive neutrality complaints set out in the prescribed competitive neutrality policy.
- (2) In this section—
prescribed competitive neutrality policy means the policy about the application of the principle of competitive neutrality, and handling competitive neutrality complaints, prescribed by regulation.

Division 4 Report on investigation

39 Commission to prepare report

If the commission investigates a competitive neutrality complaint it must prepare a written report about the investigation, including the results of the investigation, and give the report to the Minister.

40 Delaying public availability of report

- (1) The commission may recommend in the report that the report, or a part of the report, not be made available for public inspection until the end of a stated period.
- (2) The commission must include the reasons for the recommendation in the report.

41 Minister's response to report

The Minister must give the commission a response to the report as soon as practicable after receiving it.

42 Public availability of report

- (1) As soon as practicable after receiving the Minister's response to the report, the commission must publish the report on its website.
- (2) However, if the Minister accepted a recommendation under section 40(1) to delay publication of the report or part of the report, the commission must publish the report, or part of the report, on its website at the end of the period stated in the recommendation.

Part 6 Regulatory review

43 Minister may direct commission to review regulatory matter

The Minister may, by written notice given to the commission, direct it to—

- (a) conduct research into, or analysis of, a regulatory matter; and
- (b) make recommendations about the regulatory matter.

Part 7 Administration

Division 1 Board meetings

44 Board meetings

- (1) Subject to the approval of the principal commissioner, the commission may conduct meetings of the board in the way it considers appropriate.
- (2) However, the commission must keep minutes of all board meetings.

Division 2 Reporting on operations

45 Commission to keep Minister informed

The commission must keep the Minister reasonably informed of its operations.

Division 3 Information management

46 Power to require certain information

- (1) The commission may exercise the power under subsection (2) for carrying out—
 - (a) a function mentioned in section 9(1)(b), (c) or (f); or
 - (b) another function prescribed by regulation.
- (2) The commission may, by written notice given to a relevant entity, require the entity to do either of the following—
 - (a) give the commission a copy of a related document or information on or before a reasonable stated day;
 - (b) make a related document or information available for inspection by the commission at a reasonable stated time and place.
- (3) The relevant entity must comply with the notice.
- (4) However, the relevant entity may refuse to give the commission the related document or information to the extent that—
 - (a) it is subject to legal professional privilege, parliamentary privilege or public interest immunity; or
 - (b) giving the document or information to the commission is prohibited under an Act; or
 - (c) giving the document or information to the commission could reasonably be expected to prejudice the investigation of a contravention, or possible contravention, of a law.
- (5) The relevant entity is not liable for a breach of a contract, confidence or duty for giving the commission a copy of the related document or information, or making the related document or information available for inspection by the commission, as required by the notice.
- (6) In this section—

local government company means—

- (a) a corporation incorporated under the Corporations Act and owned by a local government; or
- (b) a subsidiary, of a corporation mentioned in paragraph (a), under the Corporations Act, section 9.

related document or information, for a relevant entity, means a document or information in the possession or under the control of the entity and that relates to the entity or a business activity carried out by the entity.

relevant entity means—

- (a) a government agency; or
- (b) a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 8; or
- (c) a local government; or
- (d) a local government company prescribed by regulation.

47 Confidentiality requests

- (1) This section applies if an interested party believes the disclosure of a document or information made available, or to be made available, to the commission is likely to damage the party's commercial activities.
- (2) The interested party may write to the commission—
 - (a) informing the commission of the party's belief; and
 - (b) asking the commission not to disclose the document or information to external entities without the party's consent (a **confidentiality request**).
- (3) The commission may accept the interested party's confidentiality request if it is satisfied the party's belief is justified and that the disclosure of the document or information would not be in the public interest.
- (4) If the commission accepts the interested party's confidentiality request, the commission must not disclose the

document or information to external entities, including, for example, by publishing the information in a report prepared under this Act.

(5) However, the commission may publish the document or information in a way that could not reasonably be expected to result in the identification of the interested party.

(6) In this section—

commercial activities means activities conducted on a commercial basis.

external entities, in relation to a document or information, means an entity other than—

- (a) the Minister; or
- (b) if the document or information relates to a government agency—the responsible Minister for the government agency; or
- (c) a commissioner; or
- (d) a member of the commission’s staff, or a contractor of the commission, who would ordinarily receive the information in administering, or performing a function under, this Act; or
- (e) if the document or information relates to a local government—the local government.

interested party means—

- (a) an entity given a notice under section 46; or
- (b) a local government; or
- (c) any other person or government agency.

Division 4 Delegations

48 Delegations

(1) The commission may delegate any of its functions to—

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- (a) the board; or
 - (b) a commissioner; or
 - (c) an appropriately qualified member of the commission's staff.
- (2) In this section—
function includes power.

Part 8 Evidentiary provision

49 Authentication of documents

A document made by the commission, other than a document required to be sealed, is sufficiently made if it is signed by the principal commissioner or another person authorised by the commission.

Part 9 Miscellaneous

50 Application of other Acts to commission

- (1) The commission is—
- (a) a unit of public administration under the *Crime and Corruption Act 2001*; and
 - (b) a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the commission's powers.

51 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 10 Transitional provisions

52 Definitions for pt 10

In this part—

existing complaint means a complaint made to the QCA under former part 4, division 2 of the *Queensland Competition Authority Act 1997*.

former, in relation to a provision of an Act, means the provision as in force immediately before the amendment or repeal of the provision under part 11 of this Act.

QCA means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*, section 6.

53 Transfer of particular records to commission

On the commencement, all records of the QCA relating to the following become records of the commission—

- (a) directions of the Minister under former sections 10(lb) or (lc) of the *Queensland Competition Authority Act 1997*;
- (b) reviewing or reporting on any of the following under former sections 10(lb) or (lc) of the *Queensland Competition Authority Act 1997*—
 - (i) regulatory proposals of government agencies;
 - (ii) regulatory impact statements;
 - (iii) existing legislation.

54 Transfer of existing complaints to commission

- (1) This section applies if, immediately before the commencement—
 - (a) an existing complaint had not been withdrawn or otherwise resolved; and
 - (b) the QCA had not completed all actions in relation to the existing complaint that the QCA was required to take under former part 4, division 3 of the *Queensland Competition Authority Act 1997*.
- (2) The complaint is to be dealt with under this Act as if the complaint were made to the commission under section 34.

55 Transfer of existing investigations to commission

- (1) This section applies if, immediately before the commencement, the QCA was conducting an investigation of an existing complaint and the QCA had not completed all actions in relation to the complaint that the QCA was required to take under former part 4, division 3 of the *Queensland Competition Authority Act 1997*.
- (2) The investigation is to be carried out under part 5, division 3, as if the investigation had been started under this Act.
- (3) The Minister is to respond to a report on the investigation as if the report had been given to the Minister under section 39.

56 Transfer of employees from QCA to commission

- (1) On the commencement—
 - (a) each employee (*transferee*) of the QCA mentioned in a register of transferees approved by the chief executive—
 - (i) becomes a member of the commission's staff employed under this Act; and
 - (ii) ceases to be an employee of the QCA; and

- (b) the QCA's records, to the extent they relate to the employment of a transferee, become records of the commission.
- (2) The register of transferees must also identify the contract of employment between the QCA and each transferee.
 - (3) The transfer of a transferee under subsection (1)(a) has effect despite any contract, instrument or other law and does not—
 - (a) reduce the transferee's total remuneration; or
 - (b) prejudice the transferee's existing or accruing rights to superannuation or recreation, sick or long service leave; or
 - (c) interrupt the transferee's continuity of service, other than the transferee 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 redundancy or retrenchment, or termination of the transferee's employment by the QCA; or
 - (e) entitle the transferee to a payment or other benefit merely because the transferee is no longer employed by the QCA; or
 - (f) require the QCA to make any payment in relation to the transferee's accrued rights to recreation, sick or long service leave irrespective of any arrangement between the QCA and the transferee; or
 - (g) terminate or otherwise end a contract.
 - (4) Each contract identified in the register of transferees under subsection (2) applies to the commission in place of the QCA.
 - (5) Without limiting subsection (4)—
 - (a) any right, interest or liability of the QCA arising under or relating to the contract is taken to be transferred from the QCA to the commission, including, for example, a transferee's accrued rights to recreation, sick or long service leave; and

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- (b) the commission is taken to be a party to the contract in place of QCA; and
- (c) a reference in the contract to the QCA is, to the extent possible and if the context permits, taken to be a reference to the commission.

57 Transfer of employees from department to commission

- (1) On the commencement—
 - (a) each employee (*transferee*) of the State employed in the department and mentioned in a register of transferees approved by the chief executive—
 - (i) becomes a member of the commission's staff; and
 - (ii) ceases to be employed by the State; and
 - (b) to the extent a certified agreement covering a transferee applied to the State in its employment of the transferee, the agreement is taken to apply to the commission in place of the State; and
 - (c) the liability of the State for any recreation, sick or long service leave accrued but not taken by a transferee before the commencement is transferred to the commission; and
 - (d) the department's records, to the extent they relate to the employment of a transferee, become records of the commission.
- (2) Despite section 22(2), each transferee remains, as a member of the commission's staff, employed under the *Public Service Act 2008*.
- (3) The transfer of a transferee under subsection (1)(a) has effect despite any contract, instrument or other law and does not—
 - (a) reduce the transferee's total remuneration; or
 - (b) prejudice the transferee's existing or accruing rights to superannuation or recreation, sick or long service leave; or

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- (c) interrupt the transferee's continuity of service, other than the transferee 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 redundancy or retrenchment, or termination of the transferee's employment by the State; or
 - (e) entitle the transferee to a payment or other benefit merely because the transferee is no longer employed by the State; or
 - (f) require the State to make any payment in relation to the transferee's accrued rights to recreation, sick or long service leave irrespective of any arrangement between the State and the transferee.
- (4) In this section—
certified agreement see the *Industrial Relations Act 1999*, section 141(1).

58 Appointment of first principal commissioner

- (1) On the commencement, the person (appointee) employed by the State under section 122 of the *Public Service Act 2008* as the principal commissioner of the interim Queensland Productivity Commission—
 - (a) becomes the principal commissioner under this Act; and
 - (b) ceases to be an employee of the State.
- (2) The change under subsection (1) has effect despite any contract, instrument or other law (including sections 16 to 19) and does not—
 - (a) reduce the appointee's total remuneration; or
 - (b) prejudice the appointee's existing or accruing rights to superannuation or recreation, sick or long service leave; or
 - (c) interrupt the appointee's continuity of service, other than the appointee is not entitled to claim the benefit of a

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- right or entitlement more than once in relation to the same period of service; or
- (d) constitute a redundancy or retrenchment, or termination of the appointee's employment by the State; or
 - (e) entitle the appointee to a payment or other benefit merely because the appointee is no longer employed by the State; or
 - (f) require the State to make any payment in relation to the appointee's accrued rights to recreation, sick or long service leave irrespective of any arrangement between the State and the appointee; or
 - (g) terminate or otherwise end a contract.
- (3) Despite sections 18 and 19, the appointee holds office as the principal commissioner on the same terms and conditions as provided for under the appointee's individual contract of employment under section 122 of the *Public Service Act 2008*.

Schedule 1 Dictionary

section 5

board means the board established under section 14.

business activity means trading in goods or services.

commission means the Queensland Productivity Commission established under section 6.

commissioner means a person appointed as—

- (a) a commissioner (including the principal commissioner) under section 16; or
- (b) the principal commissioner under section 58(1).

competitive neutrality complaint see section 31.

contractor, of the commission, means a person (other than a commissioner or member of the commission's staff) who performs services for the commission—

- (a) under a contract between the person and the commission; or
- (b) under an arrangement between the commission and another person.

government agency—

- (a) means—
 - (i) a department or a division, branch or other part of a department; or
 - (ii) a State instrumentality, agency, authority or entity, or a division, branch or other part of a State instrumentality, agency, authority or entity; or
 - (iii) a government owned corporation; or
 - (iv) a subsidiary, of a government owned corporation, under the *Government Owned Corporations Act 1993*, section 2; or

(v) a corporation incorporated under the Corporations Act if all the stocks or shares in the capital of which are ultimately or beneficially owned by the State or an entity mentioned in subparagraphs (i) to (iv); but

(b) does not include a local government.

industry means industry of any kind (including any business or activity relating to goods or services), and a reference to industry is a reference to industry in general, a particular industry, a part of an industry, or a group or groups of particular industries.

principal commissioner means the person appointed as the principal commissioner under section 16 or 58(1).

principle of competitive neutrality see section 32(1).

regulatory matter means—

- (a) Queensland legislation; or
- (b) the policies and administrative processes of a government agency that relate to regulating industry in Queensland; or
- (c) proposed legislation, policies or administrative processes mentioned in paragraph (a) or (b).

responsible Minister, for a government agency, means—

- (a) for a government agency that is a department or a division, branch or other part of a department—the Minister administering the department; or
- (b) for a government agency established under an Act—the Minister administering the Act; or
- (c) for a government agency that is a government owned corporation—its shareholding Minister under the *Government Owned Corporations Act 1993*; or
- (d) in any other case—the Minister nominated to be responsible for the government agency by the Minister administering this Act.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.