

Queensland



GOVERNMENT OWNED CORPORATIONS ACT 1993

Act No. 28 of 1993

Queensland



GOVERNMENT OWNED CORPORATIONS ACT 1993

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Queensland



Government Owned Corporations Act 1993

Act No. 28 of 1993

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

[Assented to 2 June 1993]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

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

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—INTERPRETATION

Definitions

3. In this Act—

“**articles**” means articles of association;

“**asset**” includes property of any kind;

“**board**” of a GOC means the GOC’s board of directors;

“**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 24;

“Commonwealth tax” means tax imposed under a Commonwealth Act;

“community service obligations” has the meaning given by section 121;

“company GOC” has the meaning given by section 7(3);

“corporatisation” has the meaning given by section 16;

“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;

“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 6;

“GOC Minister” has the meaning given by section 8;

“government company” means a corporation incorporated under the Corporations Law 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 5;

“government entity that is to become a company GOC” has the meaning given by section 25(3);

“government entity that is to become a GOC” has the meaning given by section 25(1);

“government entity that is to become a statutory GOC” has the meaning given by section 25(2);

“government entity that is to become a subsidiary of a GOC” has the meaning given by section 25(4);

“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 19;

“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;

“memorandum” means memorandum of association;

“portfolio Minister” has the meaning given by section 8;

“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” of a candidate GOC has the meaning given by—

- (a) if the candidate GOC is not already a statutory GOC or a part of a statutory GOC—section 31; or

- (b) if the candidate GOC is already a statutory GOC or a part of a statutory GOC—section 33;

“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);

“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 has the meaning given by—

- (a) in the case of a statutory GOC—section 74; or
(b) in the case of a company GOC—section 80;

“statement of corporate intent” has the meaning given by section 9;

“State tax” means tax imposed under an Act;

“statutory GOC” has the meaning given by section 7(2);

“subsidiary” has the meaning given by the Corporations Law, and includes, in relation to a GOC or candidate GOC, a government entity that is declared by regulation to be a subsidiary of the GOC or candidate GOC;

“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.

References to doing of act by GOC

4. 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

Meaning of “government entity”

5. 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) an entity prescribed by regulation.

Meaning of “GOC”

6. A “GOC” (or “government owned corporation”) is a government entity that is—

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

Types of GOCs

7.(1) A GOC may be either a statutory GOC or a company GOC.

(2) A “**statutory GOC**” is a GOC that is established as a body corporate under an Act and is not registered under the Corporations Law.

(3) A “**company GOC**” is a GOC that is incorporated or registered under the Corporations Law.

(4) These are not the only differences between a statutory GOC and a company GOC.

(5) Another important difference between a statutory GOC and a company GOC is the extent to which the Corporations Law applies.

(6) In the case of a statutory GOC, the Corporations Law applies to the GOC only to the extent to which it is expressly applied by regulation.

(7) In the case of a company GOC, the Corporations Law applies to the GOC except so far as this Act otherwise provides.

GOC and portfolio Ministers

8.(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.

Meaning of “statement of corporate intent”

9.(1) The “**statement of corporate intent**” of a GOC is a document created in relation to the GOC under Part 8 of Chapter 3.

(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

Act binds State

10. This Act binds the State.

Extraterritorial operation

11. 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).

Application of other laws to GOCs

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

(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) A regulation may provide that an Act, or a provision of an Act, that—

- (a) was enacted before the commencement of this Act; and
- (b) established a government entity that becomes a GOC or provides for its structure, management, operation or accountability;

applies to the GOC with modifications prescribed by regulation.

(4) A regulation made for the purposes of subsection (3) expires 6 months from the day on which it is notified in the Gazette unless it is

earlier repealed or its operation is extended by regulation for a period, or a single further period, of not longer than 6 months.

(5) 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.

Application of other laws to candidate GOCs

13.(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) A regulation may provide that an Act, or a provision of an Act, that—

- (a) was enacted before the commencement of this Act; and
- (b) established a government entity that becomes a candidate GOC or provides for its structure, management, operation or accountability;

applies to the candidate GOC with modifications prescribed by regulation.

(4) A regulation made for the purposes of subsection (3) expires 6 months from the day on which it is notified in the Gazette unless it is earlier repealed or its operation is extended by regulation for a period, or a single further period, of not longer than 6 months.

(5) 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.

How Corporations Law is to be applied to GOCs

14. If this Act provides that the Corporations Law, or a particular provision of the Corporations Law, applies to a GOC, the Law or provision applies to the GOC, with any necessary modifications and any modifications prescribed by regulation, to the greatest extent possible.

PART 5—OUTLINE OF ACT AND ITS BACKGROUND AND OBJECTIVES

What Act provides

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

Meaning of “corporatisation”

16. “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.

Objectives of corporatisation

17. 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.

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

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

Meaning of “key principles of corporatisation”

19. 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, or, in the case of a statutory GOC, will wherever possible, 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 the private sector and 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.

Key objectives of GOC under corporatisation

20.(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.

How Act will enable management of the corporatisation process

21.(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) By providing for 2 types of GOCs and otherwise enabling the corporatisation process to be applied progressively and flexibly, the Act allows a choice to be made, both initially and subsequently, about the most appropriate corporatisation structure for a particular government entity.

(3) This Act provides, if required, for a transitional stage of corporatisation through preparation and implementation of a corporatisation charter.

(4) The Act also imposes accountability and performance monitoring requirements for all GOCs.

CHAPTER 2—MECHANISMS FOR CREATING AND ALTERING TYPES OF GOCs

PART 1—OUTLINE OF THE PROCESSES

What this Part provides

22. This Part makes provision for the processes necessary to allow—

- (a) government entities to become statutory GOCs and company GOCs; and
- (b) statutory GOCs and parts of statutory GOCs to become company GOCs; and
- (c) government entities to become subsidiaries of statutory GOCs and company GOCs.

Government entity must first become a candidate GOC

23.(1) A government entity must become a candidate GOC before becoming a statutory GOC or a company GOC.

(2) Similarly, a statutory GOC, or part of a statutory GOC, must again become a candidate GOC before becoming a company GOC.

Meaning of “candidate GOC”

24. A “candidate GOC” is—

- (a) a government entity that is nominated under Part 2 to be a candidate GOC; or
- (b) a statutory GOC, or part of a statutory GOC, that is nominated under Part 2 to be a candidate GOC that is to become a company GOC.

Meaning of “government entity that is to become a GOC” etc.

25.(1) A government entity is taken to be a **“government entity that is to become a GOC”** if it is a candidate GOC.

(2) A government entity is taken to be a **“government entity that is to become a statutory GOC”** if a regulation has declared that it is to become a statutory GOC.

(3) A government entity is taken to be a **“government entity that is to become a company GOC”** if a regulation has declared that it is to become a company GOC.

(4) A government entity is taken to be a **“government entity that is to become a subsidiary of a GOC”** if it is a subsidiary or proposed subsidiary of a candidate GOC.

PART 2—NOMINATION OF ENTITIES**Nomination of government entity to become candidate GOC**

26.(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 any necessary modifications and any modifications prescribed by regulation.

Nomination of statutory GOC etc. to become company GOC

27. The Governor in Council may, by regulation, nominate a statutory GOC, or part of a statutory GOC, to be a candidate GOC that is to become a company GOC.

PART 3—PREPARATION OF CORPORATISATION CHARTER

Division 1—Preliminary

Meaning of “corporatisation charter”

28. 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 or is to change its type to a company GOC; and
- (b) the key principles of corporatisation, and their elements, are to be implemented.

Candidate GOC may become GOC following corporatisation charter

29.(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.

Candidate GOC may change its type to company GOC following corporatisation charter

30.(1) A candidate GOC that is a statutory GOC, or part of a statutory GOC, may become a company GOC following the preparation and implementation of a corporatisation charter.

(2) However, in appropriate cases a statutory GOC, or a part of a statutory GOC, may become a company 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

Responsible Ministers of candidate GOC that is not existing GOC

31.(1) This section applies to a candidate GOC that is not a statutory GOC or a part of a statutory GOC.

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

Responsible Ministers not directors etc.

32.(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) 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 a subsidiary of a GOC.

(3) A liability that would, apart from subsection (2), attach to a Minister attaches instead to the State.

(4) This section has effect despite the Corporations Law.

Shareholding Ministers are responsible Ministers for existing GOC

33.(1) This section applies to a candidate GOC that is a statutory GOC or a part of a statutory GOC.

(2) The shareholding Ministers of the GOC are the candidate GOC's responsible Ministers.

Division 3—Draft corporatisation charter**Responsible Ministers may determine that draft corporatisation charter be prepared and submitted**

34.(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 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.

Matters to be included in draft corporatisation charter

35.(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) if the candidate GOC is not already a GOC—a recommendation whether the candidate GOC should initially become a statutory GOC or company GOC and an outline of the reasons for the recommendation;
- (c) an outline of any legislation under which the candidate GOC is to operate when it becomes a GOC;
- (d) target dates for the enactment and commencement of any legislation;
- (e) a timetable for the adoption of appropriate systems of accounting by the candidate GOC;
- (f) a timetable for the adoption of commercial management and performance systems by the candidate GOC;
- (g) a timetable and method for valuing the assets of the candidate GOC and determining its capital structure;

- (h) recommendations regarding the activities the candidate GOC should undertake before it becomes a GOC;
- (i) 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) a timetable for costing any community service obligations of the candidate GOC.

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

36.(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, including, for example, if the candidate GOC is not already a GOC, the assumption that the candidate GOC will become a statutory GOC or a company GOC.

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

Responsible Ministers may give directions to candidate GOC about charter preparation

37.(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**Charter preparation committee may be appointed**

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

Conduct of meetings and other business

39.(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.

Terms of appointment

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

Resignation and removal from office

41.(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.

Draft corporatisation charter to be given to responsible Ministers

42.(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.

Division 5—Corporatisation charter**Approval of draft corporatisation charter**

43.(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.

Approval of amendments of corporatisation charter

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

**PART 4—IMPLEMENTATION OF
CORPORATISATION CHARTER****Charter administration committee may be appointed**

45. 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.

Conduct of meetings and other business

46.(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.

Terms of appointment

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

Resignation and removal from office

48.(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.

Responsible Ministers may give directions to candidate GOC about charter implementation

49.(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.

PART 5—CORPORATISATION FACILITATIVE MECHANISMS

Purpose of Part

50. This Part provides mechanisms to facilitate the corporatisation process by enabling, among other things—

- (a) a government entity that is a candidate GOC to be in a suitable legal form to become a GOC; or
- (b) a statutory GOC, or part of a statutory GOC, to become a company GOC; or
- (c) a government entity, other than a government entity that is to become a GOC, to become a subsidiary of a GOC.

Unincorporated entities

51.(1) If a government entity that is not a body corporate is to become a GOC or a subsidiary of a GOC, 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) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) has the functions and powers specified by regulation.

(2) 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 subsidiary of a GOC.

Entities that are corporations sole or corporations aggregate

52.(1) If a government entity that is a corporation sole or a corporation aggregate (other than under the Corporations Law) is to become a GOC or a subsidiary of a GOC, a regulation may provide that, on a specified day, the person or persons constituting the entity go out of office.

(2) The regulation does not affect—

- (a) the legal personality of the entity; or
- (b) its functions and powers.

(3) The vacation of office by the person or persons constituting the entity does not of itself give rise to a right to compensation unless a regulation otherwise provides.

(4) 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 corporation sole or corporation aggregate to a body corporate that is to become a GOC or a subsidiary of a GOC.

(5) This section does not apply to a government entity to which section 53 (Entities that are parts of bodies corporate) applies.

Entities that are parts of bodies corporate

53.(1) This section applies to a government entity that is part of a body corporate and is to become a GOC or a subsidiary of a GOC.

(2) The body corporate mentioned in subsection (1) may be a body corporate that is—

- (a) registered under the Corporations Law; or
- (b) a statutory GOC; or
- (c) a corporation sole; or
- (d) a corporation aggregate; or
- (e) 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 subsidiary of a GOC; 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—

- (a) section 51 (Unincorporated entities), even though the government entity concerned is part of a corporation; and
- (b) section 52 (Entities that are corporations sole or corporations aggregate), whether or not the government entity concerned is a corporation sole or corporation aggregate.

Transfer of assets, liabilities etc. in certain cases

54. If—

- (a) a government entity is to become a GOC or a subsidiary of a GOC; and
- (b) any of the following subparagraphs apply to the entity—
 - (i) the entity is not a body corporate;
 - (ii) the entity is a part of a body corporate;
 - (iii) 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; and
- (e) 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 any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the entity; and
- (f) the proceedings to which the entity becomes a party in substitution for another person; and
- (g) the existing officers and employees of the entity and their rights.

Memorandum and articles of candidate GOC

55.(1) The responsible Ministers of a government entity that is to become a company GOC may—

- (a) adopt a memorandum and articles for the entity; and
- (b) amend the memorandum and articles previously adopted.

(2) The memorandum and articles must not be inconsistent with this Act or the Corporations Law.

(3) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(5) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (3), the Corporations Law prevails to the extent of the inconsistency.

(6) This section applies to a government entity that is to become a subsidiary of a GOC as if—

- (a) the entity were a government entity that is to become a company GOC; and
- (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

Existing board of directors

56. 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.

Interim board of directors

57.(1) If a government entity that is to become a GOC or a subsidiary of a GOC 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 entity, with any necessary modifications and any modifications prescribed by regulation, as if the entity were a statutory GOC and the interim board of directors were its board of directors.

Share capital and issue of shares

58.(1) If a candidate GOC does not have a share capital, a regulation may provide that, on a specified day, the entity is taken to have a share capital of a specified amount.

(2) Before becoming a GOC, the entity 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 government entity must issue the shares paid up under that subsection.

(4) Part 3 of Chapter 3 applies to the entity—

- (a) if it is to become a statutory GOC—as if it were a statutory GOC; and
- (b) if it is to become a company GOC—as if it were a company GOC.

(5) Subsections (1) to (3) apply to a government entity (the “**intended subsidiary**”) that is to become a subsidiary of a GOC as if—

- (a) the intended entity 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.

(6) The shareholding Ministers may, by written notice to the intended subsidiary, give directions in relation to the issue, holding and transfer of shares paid up under subsection (2).

(7) The intended subsidiary must ensure that the directions are complied with.

Variation of share capital

59.(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 government entity that is to become a subsidiary of a GOC.

Registration under Corporations Law

60.(1) If a government entity is to become a company GOC, the entity is authorised by this section to transfer its incorporation to the Corporations Law and become registered under Division 3 of Part 2.2 of the Corporations Law.

(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 Division 3 of Part 2.2 of the Corporations Law.

(3) This section applies to a government entity that is to become a subsidiary of a GOC as if—

- (a) the entity were a government entity that is to become a company GOC; and
- (b) the responsible Ministers of the government entity of which it is to become a subsidiary were also its responsible Ministers.

Part does not affect existing legal relationships

61.(1) This Part has effect despite anything in any instrument.

(2) Nothing done under this Part in relation to a government entity—

- (a) places the entity or the State in breach of contract or confidence or otherwise makes the entity or the State guilty of a civil wrong; or
- (b) makes 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; or
- (c) is 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; or
- (d) releases a surety or other obligee (in whole or part) from an obligation.

(3) If, apart from this subsection, the advice or consent of a person would be necessary under an instrument in order to give effect to this Part, the advice is taken to have been obtained or the consent is taken to have been given.

Regulations may deal with other matters

62.(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) a statutory GOC; or
- (b) a company GOC (whether or not it is already a statutory GOC or a part of a statutory GOC); or
- (c) a subsidiary of a statutory GOC or company 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 or a proposed subsidiary of a GOC or candidate GOC, with any necessary modifications and any modifications prescribed by regulation, as if it were—

- (a) a candidate GOC; or
- (b) a candidate GOC of a particular type; or
- (c) a subsidiary of a candidate GOC; or
- (d) a subsidiary of a candidate GOC of a particular type.

PART 6—CANDIDATE GOCs BECOMING GOCs**Declaration of entity as GOC**

63. 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, either of the following provisions—
 - (i) section 65 (Statutory GOC must be body corporate etc.);
 - (ii) section 66 (Company GOC must be public company limited by shares);

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

Declaration does not affect legal personality etc.

64. 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.

CHAPTER 3—GOVERNMENT OWNED CORPORATIONS (GOCs)

PART 1—BASIC REQUIREMENTS

Division 1—Statutory GOCs

Statutory GOC must be body corporate etc.

65.(1) A statutory GOC must be established as a body corporate under an Act and must not be registered under the Corporations Law.

(2) A statutory GOC must—

- (a) have a board of directors; and
- (b) have a share capital and issued shares.

Division 2—Company GOCs**Company GOC must be public company limited by shares**

66. A company GOC must be a public company, and a company limited by shares, within the meaning of the Corporations Law.

PART 2—APPLICATION OF CORPORATIONS LAW***Division 1—Statutory GOCs*****Application of Corporations Law to statutory GOCs**

67.(1) The provisions of the Corporations Law prescribed by regulation apply to a statutory GOC as if—

- (a) the statutory GOC were a public company and a company limited by shares; and
- (b) the shares in the GOC held by the shareholding Ministers were shares held in the GOC as a public company and a company limited by shares.

(2) The provisions of the Corporations Law (other than those prescribed by regulation) do not apply to a statutory GOC.

Statutory GOC exempt public authority

68. A statutory GOC is an exempt public authority for the purposes of the Corporations Law.

Division 2—Company GOCs**Application of Corporations Law to company GOCs**

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

Company GOC not exempt public authority

70. A company GOC is not an exempt public authority for the purposes of the Corporations Law.

**PART 3—SHARES AND SHAREHOLDING
MINISTERS*****Division 1—Statutory GOCs*****Number of shareholders**

71. A statutory GOC must have only 2 shareholders.

Shareholders must have equal number of shares and equal rights

72.(1) Each shareholder must at all times have an equal number of shares in the statutory GOC.

(2) Each shareholder must also at all times be entitled to rights equal to those to which the other shareholder is entitled.

Shareholders must be GOC and portfolio Ministers

73. The GOC Minister and the portfolio Minister of the statutory GOC are taken to be its shareholders.

Meaning of “shareholding Minister”

74. The GOC Minister and the portfolio Minister of the statutory GOC are its “shareholding Ministers”.

Variation of share capital

75.(1) A regulation may vary the share capital of a statutory GOC.

(2) Without limiting subsection (1), a regulation may provide for—

- (a) the issue of further shares in a statutory GOC; or
- (b) the cancellation of issued shares in a statutory GOC; or
- (c) the consolidation or division of issued shares in a statutory GOC.

Division 2—Company GOCs**Number of shareholders**

76. A company GOC must have only 5 shareholders.

Number of voting and non-voting shareholders

77. Two of the shareholders must be voting shareholders, and 3 must be non-voting shareholders.

Voting shareholders must have equal number of shares and voting rights

78.(1) Each voting shareholder must at all times have an equal number of voting shares in the company GOC.

(2) Each voting shareholder must also at all times be in a position to cast an equal number of votes in relation to the company GOC.

Shareholders must be certain Ministers

79.(1) The GOC Minister and the portfolio Minister of the company GOC are to be its voting shareholders.

(2) Each non-voting shareholder must be a Minister (other than the GOC Minister or the portfolio Minister) nominated by the Premier, by Gazette notice, to be a non-voting shareholder of the company GOC.

(3) The Premier must make the nomination by nominating the holder of a particular Ministerial office by reference to the title of the office concerned.

(4) The Premier may, in an appropriate case, be nominated under subsection (2) to be a non-voting shareholder of the company GOC.

Meaning of “shareholding Ministers”

80.(1) The GOC Minister and the portfolio Minister of the company GOC are its “shareholding Ministers”.

(2) Non-voting shareholders are not shareholding Ministers of the company GOC.

Resolutions without meetings

81.(1) If the shareholding Ministers of the company 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 Law, or the GOC’s memorandum or articles, 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 Law and has that effect despite anything in that Law.

(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.

Division 3—GOCs generally

Shareholders hold shares for State etc.

82.(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.

Transfer, issue etc. of shares

83.(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 subsidiary of a GOC for the purpose of giving effect to this Act.

(3) If the Premier executes a transfer of shares in a GOC or a subsidiary of a GOC, 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 subsidiary of a GOC from issuing further shares to its shareholders.

Shareholding Ministers must act jointly

84.(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.

Ministers not directors etc.

85.(1) A GOC's shareholding Ministers, and any Ministers who are non-voting shareholders of the GOC, 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 Law.

PART 4—MEMORANDUM AND ARTICLES*Division 1—Statutory GOCs***Shareholding Ministers of statutory GOC may require amendment of subsidiary's memorandum and articles**

86.(1) The shareholding Ministers of a statutory GOC may, by written notice, direct the board to amend the memorandum or articles of a subsidiary of the GOC.

(2) The board must, as far as practicable, ensure that the direction is complied with.

Memorandum and articles of subsidiary of statutory GOC must not be inconsistent with Act or Corporations Law

87.(1) The memorandum and articles of a subsidiary of a statutory GOC must not be inconsistent with this Act or the Corporations Law.

(2) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles of a subsidiary of a statutory GOC, this Act prevails to the extent of the inconsistency.

(3) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (2), the Corporations Law prevails to the extent of the inconsistency.

Division 2—Company GOCs**Memorandum and articles of company GOC may be amended by shareholding Ministers**

88.(1) The shareholding Ministers of a company GOC may amend the GOC's memorandum or articles.

(2) Subsection (1) does not limit any other power to amend the memorandum or articles.

Shareholding Ministers of company GOC may require amendment of subsidiary's memorandum and articles

89.(1) The shareholding Ministers of a company GOC may, by written notice, direct the board to amend the memorandum or articles of a subsidiary of the GOC.

(2) The board must, as far as practicable, ensure that the direction is complied with.

Memorandum and articles of company GOC and its subsidiaries must not be inconsistent with Act or Corporations Law

90.(1) The memorandum and articles of a company GOC and its subsidiaries must not be inconsistent with this Act or the Corporations Law.

(2) However, if there is any inconsistency between this Act and the Corporations Law regarding the memorandum and articles of a company GOC or a subsidiary of a company GOC, this Act prevails to the extent of the inconsistency.

(3) If there is any inconsistency between this Act and the memorandum and articles, this Act prevails to the extent of the inconsistency.

(4) If there is any inconsistency between the Corporations Law and the memorandum and articles, then, subject to subsection (2), the Corporations Law prevails to the extent of the inconsistency.

PART 5—BOARD OF DIRECTORS*Division 1—Statutory GOCs***Statutory GOC to have board of directors**

91. Each statutory GOC is to have a board of directors (the “**board**”).

Role of board

92. The role of a statutory 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 and carries out its 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.

Delegation by board

93. A statutory GOC's board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the GOC's chief executive officer; or
- (d) an employee of the GOC.

Additional provisions relating to board—Schedule 1

94. Additional provisions relating to the board are set out in Schedule 1.

Division 2—Company GOCs**Role of board**

95. The role of a company 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 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.

Composition of board

96.(1) A company 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 the implementation of its statement of corporate intent.

(3) Subsection (1) has effect despite—

- (a) the company GOC's memorandum and articles; and
- (b) the Corporations Law.

PART 6—CHIEF EXECUTIVE OFFICER*Division 1—Statutory GOCs***Statutory GOC to have chief executive officer**

97. Each statutory GOC is to have a chief executive officer.

Duties of chief executive officer

98. A statutory GOC's chief executive officer is, under its board, to manage the GOC.

Things done by chief executive officer

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

Delegation by chief executive officer

100.(1) The chief executive officer of a statutory GOC may delegate the chief executive officer's powers (including a power delegated to the chief

executive) to an employee of the GOC.

(2) Subsection (1) has effect subject to any directions of the GOC's board.

Additional provisions relating to chief executive officer—Schedule 2

101. Additional provisions relating to the chief executive officer are set out in Schedule 2.

Division 2—Company GOCs

Appointment of chief executive officer

102.(1) A company GOC's chief executive officer is to be appointed by the Governor in Council on the recommendation of the GOC's board.

(2) This section has effect despite the Corporations Law.

PART 7—CORPORATE PLAN

Division 1—General

GOC must have corporate plan

103. Each GOC must have a corporate plan.

Corporate plan to apply to subsidiaries

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

Guidelines in relation to corporate plans

105.(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

Draft corporate plan

106.(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 1 month before the start of the financial year.

Special procedures in relation to draft corporate plan

107.(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 by 1 month 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.

Corporate plan on agreement

108. 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.

Corporate plan pending agreement

109.(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 108 (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 108.

Modifications of corporate plan

110.(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***GOC must have statement of corporate intent**

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

Statement of corporate intent to apply to subsidiaries

112.(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.

Statement of corporate intent must be consistent with corporate plan

113. 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**Matters to be included in statement of corporate intent**

114.(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 the following sections—

- (a) section 115 (Additional matters to be included in statement of corporate intent);
- (b) section 122 (Community service obligations to be specified in statement of corporate intent);
- (c) section 171 (Employment and industrial relations plan).

Additional matters to be included in statement of corporate intent

115.(1) A GOC's statement of corporate intent must 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) The GOC's shareholding Ministers may exempt the GOC from including any matter, or any aspect of a matter, mentioned in subsection (1) in the statement of corporate intent.

(3) 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

Draft statement of corporate intent

116.(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.

Special procedures in relation to draft statement of corporate intent

117.(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.

Statement of corporate intent on agreement

118. 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.

Statement of corporate intent pending agreement

119.(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 118

(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 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 118.

Modifications of statement of corporate intent

120.(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

Meaning of “community service obligations”

121.(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;
- (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 107 (Special procedures in relation to draft corporate plan);
- (b) a direction given to the GOC's board under section 110 (Modifications of corporate plan);
- (c) a direction given to the GOC's board under section 117 (Special procedures in relation to draft statement of corporate intent);
- (d) a direction given to the GOC's board under section 120 (Modifications of statement of corporate intent);
- (e) a notification given to the GOC's board under section 123 (Reserve power of shareholding Ministers to notify board of public sector policies);
- (f) a direction given to the GOC's board under section 124 (Reserve power of shareholding Ministers to give directions in public interest);
- (g) a direction given to the GOC's board under section 161 (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.

Community service obligations to be specified in statement of corporate intent

122.(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

Reserve power of shareholding Ministers to notify board of public sector policies

123.(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.

Reserve power of shareholding Ministers to give directions in public interest

124.(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.

Notice of suspected insolvency because of direction or notification

125.(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.

GOC and board not otherwise subject to government direction

126. 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

Division 1—Statutory GOCs

Application of Financial Administration and Audit Act

127.(1) The *Financial Administration and Audit Act 1977* (“**the Act**”) applies to a statutory GOC with any modifications that are prescribed by regulation.

(2) The Act applies to a statutory GOC as if—

- (a) it were a statutory body within the meaning of the Act; and
- (b) a reference in the Act to the appropriate Minister were a reference to the shareholding Ministers.

Division 2—Company GOCs

Application of Financial Administration and Audit Act

128.(1) The provisions of the *Financial Administration and Audit Act 1977* (“**the Act**”), relating to audit and the furnishing to the appropriate Minister and tabling of annual reports, that are prescribed by regulation apply to a company GOC with any modifications that are prescribed by regulation.

(2) The Act applies to a company GOC as if—

- (a) it were a statutory body within the meaning of the Act; and
- (b) a reference in the Act to the appropriate Minister were a reference to the shareholding Ministers.

(3) The provisions of the Act (other than those prescribed by regulation) do not apply to a company GOC.

Application of Public Accounts Committee Act

129. To remove any doubt, it is declared that the *Public Accounts Committee Act 1988* applies to the annual reports and financial statements of a company GOC in the same way as it applies to the annual reports and financial statements of a statutory GOC.

Division 3—GOCs generally

Quarterly reports

130.(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 first 3 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.

Matters to be included in annual report

131.(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) Each annual report of a statutory GOC must also state whether or not, in the directors' opinion, there are, when the statement is made, reasonable grounds to believe that the GOC will be able to pay its debts as and when they fall due.

(3) Each annual report of a company GOC must also include the matters that are required to be included in, or to accompany, the GOC's annual return under the Corporations Law.

(4) 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 Law or another Act.

Deletion of commercially sensitive matters from annual report etc.

132.(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 131 (Matters to be

included in annual report) or another Act.

(4) Subsection (1) has effect despite subsection (2).

Board to keep shareholding Ministers informed

133.(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 Law or another Act.

PART 12—DUTIES AND LIABILITIES OF DIRECTORS AND OTHER OFFICERS

Division 1—Statutory GOCs

Disclosure of interests by directors

134.(1) If a director of a statutory GOC has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the

director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

Voting by interested director

135.(1) A director of a statutory GOC who has a material personal interest in a matter that is being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **“related resolution”**) under subsection (2) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

- (a) specifies the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The shareholding Ministers may, by each signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subsection (3).

Duty and liability of certain officers of statutory GOC

136.(1) In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management.

(2) An officer of a statutory GOC must act honestly in the exercise of powers, and discharge of functions, as an officer of the GOC.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the GOC, creditors of the GOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) in any other case—100 penalty units.

(3) In the exercise of powers and the discharge of functions, an officer of a statutory GOC must exercise the degree of care and diligence that a reasonable person in a like position in a statutory GOC would exercise in the statutory GOC’s circumstances.

Maximum penalty—100 penalty units.

(4) An officer of a statutory GOC, or a person who has been an officer of a statutory GOC, must not make improper use of information acquired because of his or her position as an officer of the GOC—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or
- (b) to cause detriment to the GOC.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(5) An officer of a statutory GOC must not make improper use of his or her position as an officer of the GOC—

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or

- (b) to cause detriment to the GOC.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(6) If a person contravenes this section in relation to a statutory GOC, the statutory GOC may recover from the person as a debt due to the statutory GOC—

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and
- (b) if the statutory GOC suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(7) An amount may be recovered from the person under subsection (6) whether or not the person has been convicted of an offence in relation to the contravention.

(8) Subsection (6) is in addition to, and does not limit, the *Crimes (Confiscation of Profits) Act 1989*.

(9) In determining for the purposes of subsection (3) the degree of care and diligence that a reasonable person in a like position in a statutory GOC would exercise in the circumstances of the statutory GOC concerned, regard must be had to—

- (a) the fact that the person is an officer of a statutory GOC; and
- (b) the application of this Act to the GOC; and
- (c) relevant matters required or permitted to be done under this Act in relation to the GOC;

including, for example—

- (d) any relevant community service obligations of the GOC; and
- (e) any relevant directions, notifications or approvals given to the GOC by the GOC's shareholding Ministers.

(10) Subsection (9) does not limit the matters to which regard may be had for the purposes of subsection (3).

(11) This section—

- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation; and

- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

Prohibition on loans to directors

137.(1) A statutory GOC must not, whether directly or indirectly—

- (a) make a loan to a director, a spouse of a director or a relative of a director or spouse; or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.

(2) Subsection (1) does not apply to the entering into by the GOC of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments (if any) are entered into by the GOC with members of the public.

(3) A director of a statutory GOC who is knowingly concerned in a contravention of subsection (1) by the GOC (whether or not in relation to the director) commits an offence.

Maximum penalty—100 penalty units.

(4) In this section—

“**relative**” means—

- (a) a parent or remoter lineal ancestor; or
- (b) son, daughter or remoter issue; or
- (c) a brother or sister.

Statutory GOC not to indemnify officers

138.(1) A statutory GOC must not—

- (a) indemnify a person who is or has been an officer of the GOC against a liability incurred as an officer; or
- (b) exempt a person who is or has been an officer of the GOC from a liability incurred as an officer.

(2) An instrument is void so far as it provides for the statutory GOC to

do something that subsection (1) prohibits.

(3) Subsection (1) does not prevent the statutory GOC from indemnifying a person against a civil liability (other than a liability to the GOC or a subsidiary of the GOC) unless the liability arises out of conduct involving a lack of good faith.

(4) Subsection (1) does not prevent the statutory GOC from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) The statutory GOC may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the shareholding Ministers.

(6) In this section—

“indemnify” includes indemnify indirectly through 1 or more interposed entities;

“officer” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management.

Statutory GOC not to pay premiums for certain liabilities of officers

139.(1) A statutory GOC must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the GOC against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
 - (i) a wilful breach of duty in relation to the GOC; or

- (ii) without limiting subparagraph (i), a contravention of section 136(4) or (5).

(2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

(4) In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the GOC’s management;

“**pay**” includes pay indirectly through 1 or more interposed entities.

Director’s duty to prevent insolvent trading

140.(1) If—

- (a) immediately before a statutory GOC incurs a debt—
 - (i) there are reasonable grounds to suspect that the GOC will not be able to pay all its debts as and when they become due; or
 - (ii) there are reasonable grounds to suspect that, if the GOC incurs the debt, it will not be able to pay all its debts as and when they become due; and
- (b) the GOC is, or later becomes, unable to pay all its debts as and when they become due;

a person who is a director of the GOC, or takes part in the GOC’s management, at the time when the debt is incurred commits an offence.

Maximum penalty—100 penalty units or imprisonment for 1 year.

(2) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person's express or implied authority or consent; or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect—
 - (i) that the GOC would not be able to pay all its debts as and when they became due; or
 - (ii) that, if the GOC incurred that debt, it would not be able to pay all its debts as and when they became due; or
- (c) that the person took all reasonable steps to prevent the GOC from incurring the debt; or
- (d) in the case of a director—that the person did not take part at the time in the GOC's management because of illness or for some other good cause.

Court may order compensation

141.(1) If a person is found guilty of an offence against section 140 (Director's duty to prevent insolvent trading) in relation to the incurring of a debt by a statutory GOC, the Supreme Court or a District Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the GOC of the amount required to satisfy the part of the GOC's debts that the court considers proper.

(2) This section does not affect any rights of a person to indemnity, subrogation or contribution.

(3) This section—

- (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a corporation; and
- (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

Examination of persons concerned with statutory GOCs

142.(1) If it appears to the Attorney-General that—

- (a) a person who has been concerned, or taken part, in a statutory GOC's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the GOC; or
- (b) a person may be capable of giving information in relation to a statutory GOC's management, administration or affairs;

the Attorney-General may apply to the Supreme Court or a District Court for an order under this section in relation to the person.

(2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the GOC's management, administration or affairs.

(3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(4) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).

(5) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(6) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession,

or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—200 penalty units or imprisonment for 2 years.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

(15) Subject to subsection (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(16) The person may, at his or her own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(17) The court may adjourn the examination from time to time.

(18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

Power to grant relief

143.(1) This section applies to a director, the chief executive officer or an employee of a statutory GOC.

(2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach; but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person (in whole or part) from liability on terms that the court considers appropriate.

(3) If a person to whom this section applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a Judge with a jury; and

- (b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person;

the Judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate.

False or misleading information or documents

144.(1) In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) an employee of the GOC.

(2) An officer of a statutory GOC must not—

- (a) make a statement concerning the affairs of the GOC to another officer or the shareholding Ministers that the first officer knows is false or misleading in a material particular; or
- (b) omit from a statement concerning the GOC’s affairs made to another officer or the shareholding Ministers anything without which the statement is, to the first officer’s knowledge, misleading in a material particular.

(3) A complaint against a person for an offence against subsection (2)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

(4) An officer of a statutory GOC must not give to another officer or the shareholding Ministers a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the GOC, creditors of the GOC or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) in any other case—100 penalty units.

Division 2—Company GOCs

Application of Corporations Law to officers of company GOC

145.(1) In determining for the purposes of the Corporations Law the degree of care and diligence that a reasonable person in a like position in a company GOC would exercise in the circumstances of the company 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 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 Law.

Division 3—GOCs generally

Application of Corporations Law to officers of subsidiaries of GOCs

146.(1) In determining for the purposes of the Corporations Law the degree of care and diligence that a reasonable person in a like position in a subsidiary of a GOC would exercise in the circumstances of the subsidiary of the GOC 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 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 Law.

Notice of suspected insolvency otherwise than because of direction or notification

147.(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 Law.

PART 13—LEGAL CAPACITY AND POWERS

Division 1—Statutory GOCs

Objects of Division

148. The objects of this Division include—

- (a) abolishing any application of the doctrine of ultra vires to statutory GOCs; and
- (b) ensuring that statutory GOCs give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with outsiders.

General powers of statutory GOCs

149.(1) A statutory GOC has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services and information

supplied by it; and

- (e) engage consultants; and
- (f) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the GOC has the powers that are conferred on it by this or another Act.

(3) The GOC may exercise its powers inside and outside Queensland.

(4) Without limiting subsection (3), the GOC may exercise its powers in a foreign country.

(5) The fact that the doing of an act by the GOC would not be, or is not, in its best interests does not affect its power to do the act.

(6) In this section—

“power” includes legal capacity.

Restrictions on powers of statutory GOCs

150.(1) Section 149 (General powers of statutory GOCs) has effect in relation to a statutory GOC subject to any restrictions on the GOC’s powers expressly imposed under this or another Act.

(2) Section 149 also has effect in relation to the GOC subject to any restrictions expressly imposed by—

- (a) any relevant statement of corporate intent of the GOC; and
- (b) any relevant directions, notifications or approvals given to the GOC by the GOC’s shareholding Ministers.

(3) If—

- (a) the GOC exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) the Act by which the GOC is established, or a regulation under this Act, sets out the GOC’s objects or functions and the GOC does an act otherwise than in pursuance of the objects or functions;

the GOC contravenes this subsection.

(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

(5) An officer of the GOC who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) The GOC or officer of the GOC is not guilty of an offence merely because of the relevant contravention.

(8) The fact that—

(a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the GOC contravened, or would contravene, subsection (3); or

(b) by doing a particular act, an officer of the GOC contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the shareholding Ministers or the State and officers of the GOC.

(9) In this section—

“**officer**” of a statutory GOC means—

(a) a director of the GOC; or

(b) the GOC’s chief executive officer; or

(c) an employee of the GOC;

“**restriction**” includes prohibition.

Persons having dealings with statutory GOCs etc.

151.(1) A person having dealings with a statutory GOC is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the GOC that the matters that the person is entitled to assume were not correct must be disregarded.

(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from a statutory GOC (whether directly or indirectly) is entitled to make the assumptions mentioned in

subsection (3) and, in a proceeding in relation to the dealings, any assertion by the GOC or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, the Act by which the entity that became the GOC is established (if any) and this Act have been complied with; and
- (b) that a person who is held out by the GOC to be an officer or agent of the GOC has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the GOC who has authority to issue a document on behalf of the GOC has authority to warrant that the document is genuine and that an officer or agent of the GOC who has authority to issue a certified copy of a document on behalf of the GOC has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the GOC if—
 - (i) it bears what appears to be an imprint of the GOC's seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the GOC or the GOC's chief executive officer; and
- (e) that the directors, chief executive officer, employees and agents of the GOC have properly performed their duties to the GOC.

(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person's connection or relationship with the GOC, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a

particular assumption—

- (a) if the assumption is in relation to dealings with the GOC—subsection (1) does not apply to any assertion by the GOC in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the GOC of title to property—subsection (2) does not apply to any assertion by the GOC or another person in relation to the assumption.

(6) In this section—

“**officer**” of a statutory GOC means—

- (a) a director of the GOC; or
- (b) the GOC’s chief executive officer; or
- (c) an employee of the GOC.

Division 2—Company GOCs

General powers of company GOCs

152.(1) A company GOC has, in addition to powers conferred on it by the Corporations Law—

- (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.

Doctrine of ultra vires etc. not revived

153.(1) The doctrine of ultra vires is not revived in relation to company GOCs by this Act.

(2) The abolition of the doctrine by the Corporations Law is not affected by this Act.

(3) This section is enacted for the removal of doubt.

PART 14—FINANCE

Division 1—Taxation

Liability to State taxes

154.(1) A GOC is not exempt from State tax merely because it is a GOC.

(2) A subsidiary of a GOC is not exempt from State tax merely because it is a subsidiary of a GOC.

(3) A regulation may exempt a GOC or a subsidiary of a GOC from liability to pay a State tax (in whole or part).

(4) 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.

(5) The GOC Minister may certify that a specified matter, instrument, transaction or thing is exempt from State tax under subsection (3) or (4), and the matter, instrument, transaction or thing is exempt from State tax.

(6) So far as the legislative power of the Parliament permits, the reference in subsection (4) to State tax includes a reference to tax imposed under an Act of another State or a Territory.

Liability for Commonwealth tax equivalents

155.(1) A GOC must from time to time pay to the GOC Minister for payment into the Consolidated Fund amounts (“**tax equivalents**”) that the GOC’s tax assessor determines to be the value of benefits derived by the GOC because it is not liable to pay Commonwealth tax that would be payable if it were neither a GOC nor a government entity.

(2) In making a determination under subsection (1), the GOC’s tax assessor must ignore the effect of an instrument to which the GOC is a party if a purpose and effect of entering into the instrument would be, in the opinion of the GOC’s tax assessor, to reduce an amount otherwise payable to the GOC Minister by the GOC under this section but increase the amount

of Commonwealth tax payable by another person.

(3) Payments are to be made under subsection (1) on the terms (the “**terms of payment**”) that the GOC’s tax assessor determines to be equivalent to the terms on which amounts of Commonwealth tax would be payable by the GOC if the GOC were neither a GOC nor a government entity.

(4) Determinations by the GOC’s tax assessor are final.

(5) The GOC Minister and the GOC’s board may enter into an agreement regarding the GOC’s liability to pay amounts under this section.

(6) Without limiting subsection (5), an agreement under the subsection may—

- (a) fix the amounts to be paid by the GOC under this section and the terms on which they are to be paid; or
- (b) provide that the tax equivalents or terms of payment are to be determined by the GOC’s tax assessor as specified in the agreement.

(7) An agreement under subsection (5) has effect despite anything else in this section.

(8) The GOC Minister may, after consultation with a GOC’s board, appoint a person to be the GOC’s tax assessor.

(9) In this section—

“**GOC**” includes all subsidiaries of the GOC.

Division 2—Borrowings and guarantees

Application of the Statutory Bodies Financial Arrangements Act

156. A GOC is a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*.

Procedures for borrowing

157.(1) A GOC may borrow in accordance with its policies, as outlined in its statement of corporate intent, to minimise and manage any risk of

investments and borrowings that may adversely affect its financial stability.

(2) If a proposed borrowing is in accordance with those policies, the *Statutory Bodies Financial Arrangements Act 1982* does not apply to the borrowing.

Guarantees by State

158. 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

Payment of dividends

159.(1) Within 1 month after the end of each financial year, a GOC's board must advise the shareholding Ministers of the recommendation that, in the light of the information then available to the board, it is likely to make under subsection (2).

(2) Within 4 months after the end of the financial year, the board must recommend to the shareholding Ministers that the GOC and its subsidiaries pay a specified dividend, or not pay a dividend, for the financial year.

(3) The board must consult with the shareholding Ministers before making the recommendation.

(4) Within 1 month after receiving the recommendation, 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.

(5) If the GOC is a statutory GOC, the dividend for a financial year must not exceed its profits, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(6) If the GOC is a company GOC, the dividend for a financial year must not exceed the amount allowed under the Corporations Law.

(7) The dividend must be paid within 6 months after the end of the financial year or any further period that the shareholding Ministers allow.

(8) The shareholding Ministers must cause a copy of a direction given under subsection (4)(b) to be published in the Gazette within 21 days after it is given.

Interim dividends

160.(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 159 (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 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.

(4) A direction under subsection (3)(b) must not direct the payment of an amount that exceeds the GOC's estimated profit for the first 6 months of the financial year, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(5) The shareholding Ministers must cause a copy of a direction under subsection (3)(b) to be published in the Gazette within 21 days after it is given.

PART 15—ACQUISITION AND DISPOSAL OF ASSETS AND SUBSIDIARIES

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

161.(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.

Disposal of main undertakings

162.(1) A GOC or a subsidiary of a GOC 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.

Acquiring and disposing of subsidiaries

163. A GOC or a subsidiary of a GOC 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—EMPLOYEES

Division 1—Application of Part to GOC subsidiaries

Part applies to subsidiaries

164. This Part applies to a subsidiary of a GOC and its employees in the same way as it applies to the GOC and its employees.

Division 2—Statutory GOCs

Employees of statutory GOC

165. A statutory GOC may engage the employees that it considers necessary to perform its functions.

Terms of employment

166.(1) The terms of employment of the employees of a statutory GOC are as determined by the GOC.

(2) Subsection (1) has effect subject to—

- (a)** this Act or another Act prescribed by regulation for the purposes of this section; or
- (b)** any relevant award or industrial agreement.

(3) The *Public Sector Management Commission Act 1990* does not apply to a statutory GOC or its employees.

Division 3—Company GOCs

Application of certain Acts

167. The *Public Sector Management Commission Act 1990* does not apply to a company GOC or its employees.

Division 4—GOCs generally**Appointment of senior executives**

168.(1) The senior executives of a GOC are to be appointed by the Governor in Council on the recommendation of the GOC's board.

(2) This section has effect despite the Corporations Law.

Arrangements relating to staff

169.(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, another State or a Territory, or with an authority of the Commonwealth, another State or a Territory, for the services of officers or employees of the public service of the Commonwealth, State or Territory, 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, another State or a Territory; or
- (b) an authority of the Commonwealth, another State or a Territory.

Application of Equal Opportunity in Public Employment Act

170. A GOC is a unit of the public sector for the purposes of the *Equal Opportunity in Public Employment Act 1992*.

Employment and industrial relations plan

171.(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 Public Sector Management Commission; 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.

Superannuation schemes

172.(1) A GOC may, with the prior approval of the Governor in

Council, establish and maintain, or participate in, a scheme to provide superannuation benefits to the GOC's employees and, for that purpose—

- (a) establish and maintain any fund; and
- (b) contribute to the scheme.

(2) The GOC may, with the prior approval of the Governor in Council, amend a scheme established by it.

Superannuation for officers and employees who were previously officers of the public service

173.(1) In this section—

“person to whom this section applies” means a person employed by a GOC in a permanent or full-time capacity who, immediately before becoming employed, was a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme.

(2) If, at the time a person to whom this section applies becomes employed by a GOC, the GOC does not maintain or participate in a superannuation scheme for the benefit of its employees, the person is to continue to be a contributor to the State Service Superannuation Fund or a member of the State Public Sector Superannuation Scheme and, for that purpose, is taken to be an officer within the meaning of the *State Service Superannuation Act 1972* or eligible for membership of the scheme under the *Superannuation (State Public Sector) Act 1990*.

(3) If—

- (a) the GOC subsequently maintains or participates in a superannuation scheme for the benefit of its employees (other than the State Service Superannuation Fund or the State Public Sector Superannuation Scheme); and
- (b) a person continued to be a contributor to the fund, or a member of the scheme, under subsection (2);

the person may, under arrangements prescribed by regulation, stop being a contributor or member and become a member of the scheme maintained or participated in by the GOC.

Preservation of leave entitlements of certain former officers and employees of government entities**174.** 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.

Right of return to public service**175.(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 17—OTHER MATTERS

Division 1—GOCs generally

Application of Electoral and Administrative Review Act

176. The *Electoral and Administrative Review Act 1989* does not apply to a GOC.

Application of Chapter to subsidiaries of GOCs by regulation

177. A regulation may provide that a provision of this Chapter applies to a subsidiary of a GOC, with any necessary modifications and with any modifications prescribed by regulation, as if it were a GOC or a GOC of a particular type.

Division 2—Statutory GOCs**Statutory GOC's seal**

178.(1) A statutory GOC's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

(2) The affixing of the seal to a document must be attested by—

- (a) 2 or more directors; or
- (b) at least 1 director and the chief executive officer; or
- (c) a director or the chief executive officer and 1 or more persons authorised by the board.

(3) Judicial notice must be taken of the imprint of the statutory GOC's seal appearing on a document.

Authentication of documents

179. A document made by a statutory GOC (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson of the board; or
- (b) the chief executive officer; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the board; or
 - (ii) direction of the chief executive officer.

Judicial notice of certain signatures

180. Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of the board of a statutory GOC, a director or chief executive officer of a statutory GOC; and
- (b) the fact that the person holds or has held the office concerned.

Application of Criminal Justice Act

181. A statutory GOC is a unit of public administration for the purposes of the *Criminal Justice Act 1989*.

Application of Parliamentary Commissioner Act 1974

182.(1) The *Parliamentary Commissioner Act 1974* does not apply to—

- (a) a statutory GOC prescribed by regulation; or
- (b) the making of a recommendation to the shareholding Ministers of a statutory GOC; or
- (c) a decision about a statutory GOC's commercial policy; or
- (d) a statutory GOC in relation to its commercially competitive activities.

(2) In this section—

“competitive commercial activity” means an activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State or Territory; or
- (b) a State authority; or
- (c) a local government authority.

Division 3—Company GOCs

Application of Criminal Justice Act

183. A company GOC is not a unit of public administration for the purposes of the *Criminal Justice Act 1989*.

Application of Parliamentary Commissioner Act 1974

184. The *Parliamentary Commissioner Act 1974* does not apply to a company GOC.

CHAPTER 4—MISCELLANEOUS

Monitoring and assessment of GOCs

185.(1) The shareholding Ministers of a GOC may delegate their powers under section 133 (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)).

Giving of documents to board

186. 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.

Proceedings for offences

187.(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 section 104(2)(b) of the *Justices Act 1886*.

(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.

Regulations

188. The Governor in Council may make regulations for the purposes of this Act.

SCHEDULE 1

ADDITIONAL PROVISIONS RELATING TO BOARD OF STATUTORY GOC

section 94

PART 1—COMPOSITION OF BOARD

Composition of board

1. A statutory GOC's board is to consist of the number of directors that are appointed by the Governor in Council.

Chairperson and deputy chairperson

2.(1) The Governor in Council may appoint a director to be the board's chairperson and another director to be the 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 2—MEETINGS AND OTHER BUSINESS OF BOARD

Meaning of “required minimum number” of directors

3. In this Part—

“required minimum number” of directors means the number that is half the number of directors of which the board for the time being consists

SCHEDULE 1 (continued)

or, if that number is not a whole number, the next higher whole number.

Conduct of meetings and other business

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

Times and places of meetings

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

Presiding at meetings

6.(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.

Quorum and voting at meetings

7.(1) At a meeting of the 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

SCHEDULE 1 (continued)

- (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.

(2) Subclause (1)(a) has effect subject to section 135(3) (Voting by interested director).

Participation in meetings by telephone etc.

8.(1) The 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 board under a permission under subclause (1) is taken to be present at the meeting.

Resolutions without meetings

9.(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 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 subclause (1), taken to have been passed at a meeting of the 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 subclause (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.

SCHEDULE 1 (continued)

Minutes

10. The board must keep minutes of its proceedings.

PART 3—PROVISIONS RELATING TO DIRECTORS**Appointment of directors**

11.(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 statutory GOC's commercial performance and implementation of its statement of corporate intent.

(3) A person is not eligible for appointment if the person is not able to manage a corporation because of section 229 of the Corporations Law.

Terms of appointment not provided for under Act

12.(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.

Appointment of acting director

13. The Governor in Council may appoint a person to act as a director

SCHEDULE 1 (continued)

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.

Resignation

14.(1) A director, or person appointed under clause 2 (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.

Termination of appointment as director

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

(2) If a person who is an officer of the public service when appointed as a director ceases to be an officer of the public service, the person ceases to be a director.

SCHEDULE 2

ADDITIONAL PROVISIONS RELATING TO CHIEF EXECUTIVE OFFICER OF STATUTORY GOC

section 101

Appointment of chief executive officer

1. A statutory GOC's chief executive officer is to be appointed by the Governor in Council on the recommendation of the GOC's board.

Appointment of acting chief executive officer

2. The 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.

Terms of appointment not provided for under Act

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

Resignation

4. The chief executive officer may resign by signed notice given to the chairperson.

Termination of appointment

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

SCHEDULE 2 (continued)

(2) The termination of the appointment of the chief executive officer under subclause (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.