

Queensland



**GOVERNMENT OWNED
CORPORATIONS AND
OTHER LEGISLATION
AMENDMENT ACT 1998**

Act No. 21 of 1998

Queensland



GOVERNMENT OWNED CORPORATIONS AND OTHER LEGISLATION AMENDMENT ACT 1998

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Queensland



**Government Owned Corporations and Other
Legislation Amendment Act 1998**

Act No. 21 of 1998

**An Act to amend the *Government Owned Corporations Act 1993* and
certain other legislation**

[Assented to 1 May 1998]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Government Owned Corporations and Other Legislation Amendment Act 1998*.

Commencement

2.(1) Part 5 and schedule 2 commence on the date of assent of this Act.

(2) However, to the extent part 5 and schedule 2 amend the *Advance Bank Integration Act 1997* they are taken to have commenced on 31 March 1998.

(3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF GOVERNMENT OWNED CORPORATIONS ACT 1993

Act amended in pt 2 and sch 1

3. This part and schedule 1 amend the *Government Owned Corporations Act 1993*.

Amendment of s 3 (Definitions)

4. Section 3—

insert—

‘ **“senior executive”**, of a GOC, includes the holder of an office in the GOC that reports directly to the GOC’s chief executive officer and that

is commensurate with an office held by a senior executive under the *Public Service Act 1996*.’.

Amendment of s 5 (Meaning of “government entity”)

5. Section 5(e)—

omit, insert—

- ‘(e) a statutory GOC or part of a statutory GOC; or
- (f) an entity prescribed by regulation.’.

Amendment of s 19 (Meaning of “key principles of corporatisation”)

6. Section 19(d), second dot point, ‘the private sector’—

omit, insert—

‘other entities carrying on business’.

Replacement of s 23 (Government entity must first become a candidate GOC or a candidate GOC associate)

7. Section 23—

omit, insert—

‘Government entity becoming a GOC

‘**23.(1)** Before becoming a GOC, a government entity must become a candidate GOC or a candidate GOC associate.

‘**(2)** To remove doubt, it is declared that before becoming a company GOC—

- (a) a statutory GOC must become, or again become, a candidate GOC; and
- (b) a part of a statutory GOC must become a candidate GOC.’.

Amendment of s 42 (Draft corporatisation charter to be given to responsible Ministers)

8. Section 42—

insert—

‘(3) The committee must comply with the request.’.

Insertion of new s 49B

9. Chapter 2, part 4, after section 49A—

insert—

‘Corporatisation charter stops having effect when candidate GOC becomes GOC

‘49B. The corporatisation charter of a candidate GOC stops having effect when the candidate, or an associate of the candidate, becomes a GOC.’.

Amendment of s 57 (Interim board of directors for entity to become GOC or GOC subsidiary)

10. Section 57—

insert—

‘(4) The directors on the interim board go out of office—

- (a) if the entity is a government entity that is to become a GOC—when the entity becomes a GOC; or
- (b) if the entity is a government entity that is to become a GOC subsidiary—when the entity of which it is a subsidiary or proposed subsidiary becomes a GOC.

‘(5) Subsection (4) does not limit subsection (3).’.

Amendment of s 57A (Interim board of directors and chief executive officer for candidate GOC associate or associate subsidiary)

11. Section 57A—

insert—

‘(2) The directors on the interim board go out of office—

- (a) for a candidate GOC associate—when the associate becomes a GOC; or
- (b) for an associate subsidiary—when the candidate GOC associate of which it is a subsidiary becomes a GOC.’.

Amendment of s 58 (Share capital and issue of shares)

12. Section 58(7), ‘shareholding’—

omit, insert—

‘responsible’.

Replacement of ch 2, pt 5A (First chief executive officers and senior executives of statutory GOCs)

13. Chapter 2, part 5A—

omit, insert—

**‘PART 5A—FIRST CHIEF EXECUTIVE OFFICERS
AND SENIOR EXECUTIVES OF GOCS**

‘Definition for pt 5A

‘62A. In this part—

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

‘Application of provisions of pt 5A

‘62B. Section 62C, 62D, 62E or 62F applies if the responsible Ministers of a candidate GOC that is to become a statutory GOC or company GOC authorise the candidate GOC’s board of directors to act for the section.

‘Appointment of statutory GOC’s first chief executive officer

‘62C.(1) For the appointment of the first chief executive officer of the statutory GOC, the Governor in Council may act under schedule 2, section 1 before the commencement of a regulation declaring the candidate GOC to be a GOC.

‘(2) For acting under the section, a reference in the section to the GOC’s board is taken to be a reference to the candidate GOC’s board of directors.

‘Appointment of statutory GOC’s first senior executives

‘62D.(1) For the appointment of the first senior executives of the statutory GOC, the Governor in Council may act under section 168 before the commencement of a regulation declaring the candidate GOC to be a GOC.

‘(2) For acting under the section, a reference in the section to the GOC’s board is taken to be a reference to the candidate GOC’s board of directors.

‘Appointment of company GOC’s first chief executive officer

‘62E.(1) For the appointment of the first chief executive officer of the company GOC, the Governor in Council may act under section 102 before the commencement of a regulation declaring the candidate GOC to be a GOC.

‘(2) For acting under the section, a reference in the section to the GOC’s board is taken to be a reference to the candidate GOC’s board of directors.

‘(3) This section and section 62B have effect despite the Corporations Law.

‘Appointment of company GOC’s first senior executives

‘**62F.(1)** For the appointment of the first senior executives of the company GOC, the Governor in Council may act under section 168 before the commencement of a regulation declaring the candidate GOC to be a GOC.

‘**(2)** For acting under the section, a reference in the section to the GOC’s board is taken to be a reference to the candidate GOC’s board of directors.

‘**(3)** This section and section 62B have effect despite the Corporations Law.’.

Amendment of s 63A (Declaration of candidate GOC associate as GOC)

14. Section 63A(2)(b)—

omit, insert—

‘(b) the associate complies with, or on becoming a GOC will comply with, section 65 or 66.’.

Amendment of s 64 (Declaration does not affect legal personality etc.)

15. Section 64—

insert—

‘**(2)** Also, the declaration of an entity as a GOC—

- (a) does not place the entity or the State in breach of contract or confidence or otherwise make the entity or the State guilty of a civil wrong; and
- (b) does not make the entity or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; and
- (c) is not taken to fulfil a condition—
 - (i) that allows a person to terminate an instrument or obligation

or modify the operation or effect of an instrument or obligation; or

(ii) that requires any money to be paid before its stated maturity; and

(d) does not release a surety or other obligee (in whole or part) from an obligation.’.

Amendment of s 93 (Delegation by board)

16.(1) Section 93(d)—

omit, insert—

‘(d) an appropriately qualified employee of the GOC.’.

(2) Section 93—

insert—

‘**(2)** In this section—

“appropriately qualified” includes having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An employee’s classification level in the GOC.’.

Amendment of s 96 (Composition of board)

17. Section 96(2), ‘the implementation of its statement of corporate intent’—

omit, insert—

‘, if the GOC has a statement of corporate intent, the implementation of the statement’.

Insertion of new ss 96A and 96B

18. Chapter 3, part 5, after section 96—

insert—

‘Public service officers not eligible for appointment as directors

‘96A.(1) A public service officer is not eligible for appointment as a director of a company GOC.

‘(2) Subsection (1) has effect despite the Corporations Law.

‘First board of company GOC

‘96B.(1) This section applies to a government entity that is to become a company GOC if the government entity is a candidate GOC or a candidate GOC associate.

‘(2) For the appointment of the first board of the company GOC, the Governor in Council may act under section 96 before the commencement of a regulation declaring the candidate GOC, or the candidate GOC associate, to be a GOC.

‘(3) The appointment takes effect when the regulation commences.

‘(4) This section has effect despite—

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

Amendment of s 100 (Delegation by chief executive officer)

19.(1) Section 100(1), ‘employee’—

omit, insert—

‘appropriately qualified employee’.

(2) Section 100—

insert—

‘(3) In this section—

“appropriately qualified” includes having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An employee’s classification level in the GOC.’.

Amendment of s 114 (Matters to be included in statement of corporate intent)

20. Section 114(2)—

omit, insert—

‘(2) The statement of corporate intent must also include the matters required by sections 122 and 171.¹’.

Amendment of s 115 (Additional matters to be included in statement of corporate intent)

21.(1) Section 115, heading, ‘to’—

omit, insert—

‘may’.

(2) Section 115(1), ‘must’—

omit, insert—

‘may’.

(3) Section 115(2)—

omit.

(4) Section 115(3)—

renumber as section 115(2).

Omission of s 129 (Application of Public Accounts Committee Act)

22. Section 129—

omit.

¹ Sections 122 (Community service obligations to be specified in statement of corporate intent) and 171 (Employment and industrial relations plan)

Amendment of s 130 (Quarterly reports)

23. Section 130(1), ‘first 3’—

omit.

Amendment of s 159 (Payment of dividends)

24.(1) Section 159(1), from ‘Within’ to ‘a GOC’s’—

omit, insert—

‘A GOC’s’.

(2) Section 159—

insert—

‘**(1A)** The board must comply with subsection (1) within—

- (a) 1 month after the end of each financial year; or
- (b) for a particular financial year, if the shareholding Ministers have extended the period to a period not longer than 3 months after the end of the financial year, the extended period.’.

Insertion of new ch 3, pt 15A

25. After section 163—

insert—

‘PART 15A—GOCs AND GOC SUBSIDIARIES BECOMING AND RETIRING AS TRUSTEES

‘GOCs and subsidiaries becoming trustees

‘**163A.(1)** A GOC may accept appointment as a trustee of a trust only with the prior written approval of the GOC’s shareholding Ministers.

‘**(2)** A GOC subsidiary may accept appointment as a trustee of a trust only with the prior written approval of the shareholding Ministers of the GOC of which it is a subsidiary.

‘GOCs and subsidiaries retiring as trustees

‘**163B.(1)** This section applies if a GOC or a GOC subsidiary is the trustee of a trust.

‘**(2)** The GOC may retire from its trusteeship only with the prior written approval of the GOC’s shareholding Ministers.

‘**(3)** The GOC subsidiary may retire from its trusteeship only with the prior written approval of the shareholding Ministers of the GOC of which it is a subsidiary.

‘Part applies despite Corporations Law

‘**163C.** This part applies despite the Corporations Law.’.

Omission of s 176 (Application of Electoral and Administrative Review Act)

26. Section 176—

omit.

Amendment of s 182 (Application of Parliamentary Commissioner Act 1974)

27. Section 182(2)—

omit, insert—

‘**(2)** In this section—

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

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

Amendment of sch 1, pt 3, s 11 (Appointment of directors)

28.(1) Schedule 1, section 11(2), ‘implementation of its statement of corporate intent’—

omit, insert—

‘, if the GOC has a statement of corporate intent, the implementation of the statement’.

(2) Schedule 1, section 11(3)—

omit, insert—

(3) A person is not eligible for appointment if the person—

- (a) is a public service officer; or
- (b) is not able to manage a corporation because of the Corporations Law, section 229.².

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 3

29. This part amends the *Local Government Act 1993*.

Amendment of s 458DM (Application of existing laws)

30. Section 458DM(3) and (4)—

omit.

² Corporations Law, section 229 (Certain persons not to manage corporations)

Omission of s 458DO (How Corporations Law is to be applied to corporatised corporations)

31. Section 458DO—

omit.

Amendment of s 458FH (Application of certain provisions about directors and executives to significant business entities)

32.(1) Section 458FH(2) to (4), ‘and any changes prescribed by regulation’—

omit.

(2) Section 458FH(5), ‘, and any changes prescribed by regulation’—

omit.

(3) Section 458FH(7)—

omit.

Replacement of s 458GE (Application of Corporations Law to corporatised corporations)

33. Section 458GE—

omit, insert—

‘Corporations Law does not apply to corporatised corporations

‘458GE. The Corporations Law does not apply to a corporatised corporation.’.

Amendment of s 458GP (Delegation by board)

34.(1) Section 458GP(d)—

omit, insert—

‘(d) an appropriately qualified employee of the corporation.’.

(2) Section 458GP—

insert—

‘(2) In this section—

“**appropriately qualified**” includes having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An employee’s classification level in the corporatised corporation.’

Amendment of s 458GW (Delegation by chief executive officer)

35.(1) Section 458GW(1), ‘employee’—

omit, insert—

‘appropriately qualified employee’.

(2) Section 458GW—

insert—

‘(3) In this section—

“**appropriately qualified**” includes having qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

An employee’s classification level in the corporatised corporation.’

Amendment of s 458IE (Application of Financial Administration and Audit Act)

36.(1) Section 458IE(1), ‘changes prescribed by regulation’—

omit, insert—

‘necessary changes’.

(2) Section 458IE(2)—

omit.

(3) Section 458IE(3) and (4)—

renumber as section 458IE(2) and (3).

PART 4—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

Act amended in pt 4

37. This part amends the *Transport Infrastructure Act 1994*.

Omission of ch 6, pt 2 (Rail transport infrastructure)

38. Chapter 6, part 2—
omit.

Insertion of new ch 8A

39. After section 187—
insert—

‘CHAPTER 8A—FUNCTION OF QUEENSLAND RAIL

‘Function

‘187A.(1) The function of Queensland Rail is to provide comprehensive transport services and services ancillary to those services, whether in or outside Queensland or Australia.

‘(2) Without limiting subsection (1), the function includes—

- (a) the provision of passenger and freight transport services; and
- (b) the provision of consultancy and training services relating to transport services; and
- (c) establishing, maintaining and arranging for the provision of transport infrastructure; and
- (d) doing anything likely to complement or enhance the function or something mentioned in paragraphs (a) to (c).

‘(3) Queensland Rail is taken to have had the function from when it became a government owned corporation.’.

PART 5—MINOR AMENDMENTS OF OTHER LEGISLATION

Amended Acts—sch 2

40. Schedule 2 amends the Acts mentioned in it.

SCHEDULE 1**AMENDMENTS OF GOVERNMENT OWNED
CORPORATIONS ACT 1993 RELATING TO
PROVISIONS THAT ALLOW FOR MODIFICATION
OF CERTAIN PROVISIONS OF ACT AND OTHER
LEGISLATION**

section 3

1. Section 7(6), from ‘applies’ to ‘regulation’—*omit, insert—**‘does not apply’.***2. Sections 12(3) and (4)—***omit.***3. Section 12(5)—***renumber as section 12(3).***4. Section 13(3) and (4)—***omit.***5. Section 13(5)—***renumber as section 13(3).***6. Section 14—***omit.*

SCHEDULE 1 (continued)

7. Section 26(3), ‘and any modifications prescribed by regulation’—*omit.***8. Section 52—***omit.***9. Section 53(4), from ‘under—’***omit, insert—*

‘under section 51, even though the government entity concerned is part of a corporation.’.

10. Section 57(3), ‘and any modifications prescribed by regulation’—*omit.***11. Section 57B(1) to (4), ‘and any changes prescribed by regulation’—***omit.***12. Section 57B(5), ‘, and any changes prescribed by regulation’—***omit.***13. Section 67—***omit, insert—***‘Corporations Law does not apply to statutory GOCs**

‘67. The Corporations Law does not apply to a statutory GOC.’.

SCHEDULE 1 (continued)

14. Section 127(1), ‘modifications that are prescribed by regulation’—*omit, insert—*

‘necessary changes’.

15. Section 128(1), from ‘by regulation apply’—*omit, insert—*

‘by schedule 3 apply to a company GOC, or a company GOC subsidiary prescribed under a regulation, with the changes prescribed by the schedule.’.

16. Section 128(2)—*omit, insert—*

‘(2) The Act applies to a company GOC or company GOC subsidiary 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—
 - (i) for a company GOC—to the GOC’s shareholding Ministers; or
 - (ii) for a company GOC subsidiary—to the shareholding Ministers of each GOC that is a shareholder of the subsidiary.’.

17. Section 128(3), ‘regulation’—*omit, insert—*

‘schedule 3’.

SCHEDULE 1 (continued)

18. Section 154(3)—

omit.

19. Section 177—

omit, insert—

‘Application of chapter to certain company GOC subsidiaries

‘**177.(1)** This section applies to a company GOC subsidiary prescribed under a regulation.

‘**(2)** The provisions of this chapter prescribed by schedule 4 apply to the company GOC subsidiary with the changes prescribed by the schedule as if it were a GOC.’.

20. Section 192(1), after ‘a government entity’—

insert—

‘established under this Act’

21. Section 192(4)—

omit.

22. Section 192(5)—

renumber as section 192(4).

SCHEDULE 1 (continued)

23. After schedule 2—*insert—***‘SCHEDULE 3****‘APPLICATION OF FA AND A ACT TO COMPANY
GOCs AND PRESCRIBED COMPANY GOC
SUBSIDIARIES**

section 128

‘PART 1—PRELIMINARY**‘Purpose**

‘1. The purpose of this schedule is to apply certain provisions of the FA and A Act to company GOCs, and to company GOC subsidiaries prescribed under a regulation under section 128 of the Act.³

‘Definition

‘2. In this schedule—

‘FA and A Act’ means the *Financial Administration and Audit Act 1977*.

**‘PART 2—APPLICATION OF CERTAIN
PROVISIONS OF FA AND A ACT TO COMPANY
GOCs**

³ Section 128 (Application of Financial Administration and Audit Act)

SCHEDULE 1 (continued)

‘Definitions for pts 2 and 4

‘3. In this part and part 4—

“applied provisions” mean the provisions of the FA and A Act as applying under this part.

“authorised auditor” means—

- (a) the auditor-general or deputy auditor-general; or
- (b) a member of the staff of the Queensland Audit Office; or
- (c) a contract auditor.

“chairperson”, of a company GOC, means the chairperson of the GOC’s board of directors.

“contract auditor” means a person appointed as a contract auditor under section 82 of the applied provisions.

‘Application of FA and A Act—Act, s 128

‘4.(1) The provisions of the FA and A Act set out in part 4 are applied to each company GOC.

‘(2) Subject to subsection (3), the provisions are applied as in force immediately before the commencement of this section.

‘(3) As applying, some provisions are changed to read as set out in part 4.⁴

‘(4) For the applied provisions, definitions and other interpretative provisions of the FA and A Act as in force immediately before the commencement of this section apply.

‘(5) Subsection (4) is subject to section 3.

⁴ Changes are shown in italics. Division headings are also shown in italics.

SCHEDULE 1 (continued)

**‘PART 3—APPLICATION OF CERTAIN
PROVISIONS OF FA AND A ACT TO COMPANY
GOC SUBSIDIARIES****‘Definitions for pts 3 and 5**

‘5. In this part and part 5—

“applied provisions” mean the provisions of the FA and A Act as applying under section 6.

“authorised auditor” means—

- (a) the auditor-general or deputy auditor-general; or
- (b) a member of the staff of the Queensland Audit Office; or
- (c) a contract auditor.

“chairperson”, of a company GOC subsidiary, means the chairperson of the subsidiary’s board of directors.

“company GOC subsidiary” means a company GOC subsidiary prescribed under a regulation under section 128 of the Act.

“contract auditor” means a person appointed as a contract auditor under section 82 of the applied provisions.

“shareholding GOC”, of a company GOC subsidiary, means a GOC that is a shareholder of the subsidiary.

‘Application of FA and A Act—Act, s 128

‘6.(1) The provisions of the FA and A Act set out in part 5 are applied to each company GOC subsidiary.

‘(2) Subject to subsection (3), the provisions are applied as in force immediately before the commencement of this section.

SCHEDULE 1 (continued)

‘(3) As applying, some provisions are changed to read as set out in part 5.⁵

‘(4) For the applied provisions, definitions and other interpretative provisions of the FA and A Act as in force immediately before the commencement of this section apply.

‘(5) Subsection (4) is subject to section 5.

**‘PART 4—PROVISIONS OF FA AND A ACT
APPLYING UNDER SECTION 4 TO COMPANY
GOCS**

**‘PART 3—FINANCIAL
ADMINISTRATION—COMPANY GOCS**

‘46C. *Not applied.*

‘Company GOCs to prepare annual financial statements

‘46F.(1) *A company GOC must give to the auditor-general the financial statements prepared by it under the Corporations Law.*

‘(2) The *company GOC* must comply with subsection (1) within 2 months after the end of each financial year or the longer period agreed to between the *GOC* and the auditor-general.

‘(3) to (9) *Not applied.*

‘46G. *Not applied.*

⁵ Changes are shown in italics. Division headings are also shown in italics.

SCHEDULE 1 (continued)

‘Company GOCs must consider auditor-general’s observations and suggestions

‘46H. If a chairperson of a *company GOC* is given observations or suggestions (together with any comments on them) under section 93(4), the chairperson must ensure they are considered at the *GOC*’s next ordinary meeting.

‘Annual report

‘46J.(1) As soon as possible after the close of each financial year but, subject to subsection (2), in no case later than 4 months after that close a *company GOC* shall prepare and furnish to *its shareholding Ministers* a report in writing on the operations of the *GOC* during that financial year.

‘(2) The *shareholding Ministers* may, in a particular case, extend or further extend the period of 4 months referred to in subsection (1) by written notice given to the *company GOC*.

‘(2A) If the *shareholding Ministers extend* the period referred to in subsection (1) to a period of more than 6 months, *the Ministers* must, within 14 days of granting that extension, give to the Legislative Assembly an explanation for the granting of that extension.

‘(3) The report—

- (a) shall contain such information as the *shareholding Ministers direct* to enable the *Ministers* to assess the efficiency, effectiveness and economy of the *company GOC* and the need for its continuance; and
- (b) shall contain a copy of the annual financial statements of the *company GOC* relating to that financial year *prepared under the Corporations Law; and*
- (c) *shall contain the information required, under the Government Owned Corporations Act 1993, to be included in the annual report of a GOC.*

SCHEDULE 1 (continued)

‘(4) Subsection (3) is subject to the Government Owned Corporations Act 1993, section 132.⁶

‘PART 3A—TABLING OF ANNUAL REPORTS**‘Shareholding Ministers must table reports**

‘**46K.** Within 14 days after receiving the annual report of a *company GOC*, the GOC’s *shareholding Ministers* must table a copy of it in the Legislative Assembly.

‘**46KA.** *Not applied.*

‘Shareholding Ministers to explain late tabling of annual report

‘**46KB.(1)** This section applies if the *shareholding Ministers table*, in the Legislative Assembly—

- (a) the annual report of a *company GOC* later than 4 months and 14 days after the end of a financial year; or
- (b) *Not applied.*

‘(2) The *shareholding Ministers* must also give the Legislative Assembly a written statement—

- (a) stating the report is being tabled late; and
- (b) stating the length of the delay; and
- (c) explaining the reasons for the delay.

⁶ Section 132 (Deletion of commercially sensitive matters from annual report etc.)

SCHEDULE 1 (continued)

‘Procedure if Legislative Assembly not in session or sitting

‘46KC.(1) This section applies if the Legislative Assembly is not in session or is not actually sitting when the *shareholding Ministers are* required to do any of the following things—

- (a) table a copy of an annual report in the Legislative Assembly;
- (b) give the Legislative Assembly a written statement about the late tabling of an annual report;
- (c) if the *shareholding Ministers have* given a *company GOC* an extension of time for giving the *Ministers* a copy of its annual report—give the Legislative Assembly an explanation for giving the extension.

‘(2) The *shareholding Ministers* must give a copy of the report, the written statement or the explanation to the clerk of the Parliament.

‘(3) The clerk must table the report, statement or explanation before the Legislative Assembly on its next sitting day.

‘(4) The report, statement or explanation is taken to have been tabled in the Legislative Assembly on the day it is given to the clerk.

‘(5) The day of receipt of the report, statement or explanation must be recorded in the votes and proceedings on the next sitting day.

‘(6) If the Legislative Assembly orders the report, statement or explanation to be printed, the report, statement or explanation is taken to have been ordered to be printed by the Legislative Assembly on the day the clerk receives it.

SCHEDULE 1 (continued)

‘PART 6—AUDIT OF COMPANY GOCs**‘Division 1—Scope of auditor-general’s mandate**

‘73. *Not applied.*

‘74. *Not applied.*

‘Shareholding Ministers to give auditor-general information relating to company GOCs

‘75.(1) If a company GOC acts under the Government Owned Corporations Act 1993, section 163,⁷ its shareholding Ministers must give the auditor-general any information about the matter that the auditor-general requires.

‘(2) *Not applied.*

‘Auditor-general to be appointed auditor of every company GOC

‘76.(1) The shareholding Ministers of a company GOC must—

- (a) appoint the auditor-general to be the auditor of the GOC; and
- (b) ensure that the auditor-general remains, at all times, the auditor of the GOC while the GOC remains a company GOC.

‘(2) *Not applied.*

‘Audits at request of Parliament

‘77.(1) If the Legislative Assembly, by resolution, requests the auditor-general to conduct an audit of a matter relating to the financial

⁷ Section 163 (Acquiring and disposing of subsidiaries)

SCHEDULE 1 (continued)

administration of a *company GOC*, the auditor-general must conduct the audit.

‘(2) *Not applied.*

‘78. *Not applied.*

‘Division 2—Conduct of audits**‘Way in which audit is to be conducted**

‘79.(1) The auditor-general may conduct an audit in the way the auditor-general considers appropriate.

‘(2) In determining the appropriate way to conduct an audit, the auditor-general may have regard to—

- (a) the character of the relevant internal control system (including internal audit); and
- (b) recognised standards and practices.

‘(3) Subsection (2) does not limit the matters to which the auditor-general may have regard.

‘(4) *The* auditor-general is not limited to conducting the audit in accordance with the Corporations Law, and may do anything else that the auditor-general considers appropriate.

‘Audit of performance management systems

‘80.(1) The auditor-general may conduct an audit of performance management systems of a *company GOC*.

‘(2) The audit may be conducted as a separate audit or as part of another audit (including an audit of another *company GOC* under this section).

‘(3) The object of the audit includes determining whether the performance management systems enable the *company GOC* to assess

SCHEDULE 1 (continued)

whether its objectives are being achieved economically, efficiently and effectively.

‘(4) *Not applied.*

‘81. *Not applied.*

‘Appointment of contract auditors

‘82.(1) *For auditing company GOCs the auditor-general may appoint an appropriately qualified individual who is not a member of the staff of the Audit Office to be a contract auditor.*

‘(2) The appointment of a person to be a contract auditor may be general or limited to a particular audit.

‘(3) The contract auditor—

- (a) is appointed on the terms specified in the instrument of appointment; and
- (b) may resign the appointment by signed notice given to the auditor-general.

‘Identity cards for *contract auditors*

‘83.(1) The auditor-general may issue an identity card to *a contract auditor.*

‘(2) The identity card must—

- (a) contain a recent photograph of the *contract auditor*; and
- (b) be signed by the *contract auditor* and the auditor-general.

‘(3) A person who ceases to be *a contract auditor* must not, without reasonable excuse, fail to return the person’s identity card to the auditor-general as soon as practicable after ceasing to be *a contract auditor.*

Maximum penalty for subsection (3)—10 penalty units.

SCHEDULE 1 (continued)

‘Proof of authority as authorised auditor

‘84.(1) An authorised auditor may exercise a power *under the applied provisions* in relation to a person only if the authorised auditor produces his or her identity card for inspection by the person.

‘(2) *In this section—*

“*identity card*” means—

- (a) *for a contract auditor, the identity card issued to the auditor under section 83; or*
- (b) *for another authorised auditor, the identity card issued to the auditor under section 83⁸ of the F A and A Act.*

‘Access to documents and property

‘85.(1) *Not applied.*

‘(2) For the purpose of conducting an audit of *a company GOC under the applied provisions*, an authorised auditor is entitled, at all reasonable times, to full and free access to all documents and property belonging to, in the custody of, or under the control of, the *GOC*.

‘(3) For the purpose of conducting an audit under *the applied provisions*, an authorised auditor may—

- (a) enter, at any reasonable time—
 - (i) a place occupied by a *company GOC*; or
 - (ii) a place occupied by a financial institution with which a *company GOC* maintains an account; or
 - (iii) another place if the occupier of the place consents to the entry; and
- (b) inspect, examine, photograph or film anything in the place; and

⁸ Section 83 (Identity cards for authorised auditors)

SCHEDULE 1 (continued)

- (c) take extracts from, and make copies of, any documents in the place; and
- (d) take into the place persons, equipment and materials that the authorised auditor reasonably requires; and
- (e) require any person in the place to give to the authorised auditor reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d).

‘(4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (3)(e).

Maximum penalty—40 penalty units.

‘(5) It is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (3)(e) that complying with the requirement might tend to incriminate the person.

‘(6) Neither an answer by a person under a requirement made under subsection (3)(e), nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

‘(7) The fact that a document was produced by a person under a requirement made under subsection (3)(e) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

SCHEDULE 1 (continued)

‘Obtaining information

‘**86.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person to give to the authorised auditor specified information, within a reasonable period and in a reasonable way specified in the notice.

‘(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty—40 penalty units.

‘(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

‘(4) Neither information given by a person under a requirement under subsection (1), nor any other information or a document or other thing obtained as a direct or indirect consequence of the person giving the information, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the information) if—

- (a) the person, before giving the information, claimed that giving the information might tend to incriminate the person; and
- (b) giving the information might in fact tend to incriminate the person.

‘Obtaining evidence

‘**87.(1)** If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person—

- (a) to attend before an authorised auditor, at a reasonable time and place specified in the notice, and then and there answer questions; and
- (b) to produce to an authorised auditor, at a reasonable time and place

SCHEDULE 1 (continued)

specified in the notice, documents belonging to, in the custody of, or under the control of, the person.

‘(2) The authorised auditor before whom the person attends may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the authorised auditor may administer an oath or affirmation.

‘(3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

‘(4) An authorised auditor to whom a document is produced under a notice under subsection (1)—

- (a) may keep the document for a reasonable period for the purposes of conducting the relevant audit; and
- (b) may take extracts from and make copies of the document.

‘(5) While the authorised auditor has possession of the document, the authorised auditor must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised auditor’s possession.

‘(6) *Not applied.*

‘(7) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty—40 penalty units.

‘(8) It is not a reasonable excuse for a person to fail to comply with a notice under subsection (1) that complying with the notice might tend to incriminate the person.

‘(9) Neither an answer given by a person under this section, nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

SCHEDULE 1 (continued)

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

‘(10) The fact that a document was produced by a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

‘Compensation

‘88.(1) A person (other than a *company GOC*) who incurs any loss or expense—

- (a) because of the exercise or purported exercise of a power under this division; or
- (b) in complying with a requirement made of the person under this division;

may claim compensation from the State.

‘(2) A payment of compensation may be claimed and ordered—

- (a) in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against *the applied provisions* brought against the person by whom the claim is made.

‘(3) A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to do so in the circumstances of the particular case.

SCHEDULE 1 (continued)

‘False or misleading information

‘89.(1) A person must not—

- (a) make a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised auditor anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—80 penalty units.

‘(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

‘Obstruction of authorised auditor

‘90. A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an authorised auditor in the exercise of a power under *the applied provisions*.

Maximum penalty—80 penalty units.

‘Impersonation of authorised auditor

‘91. A person must not pretend to be an authorised auditor.

Maximum penalty—80 penalty units.

‘Confidentiality

‘92.(1) In this section—

“person to whom this section applies” means a person who is or has been—

SCHEDULE 1 (continued)

- (a) an authorised auditor; or
- (b) a person engaged or employed by a contract auditor;

“protected information” means information that is obtained under *the applied provisions*.

‘(2) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate protected information;

unless the record is made, or the information *is* divulged or communicated—

- (c) under or for the purposes of *the applied provisions*; or
- (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of *the applied provisions*.

Maximum penalty—200 penalty units or imprisonment for 1 year.

‘(3) Subsection (2) does not prevent the disclosure of information to—

- (a) the *Parliamentary Committee*;⁹ or
- (b) the *Public Works Committee of the Legislative Assembly*; or
- (c) the Criminal Justice Commission; or
- (d) a police officer, or a person or body responsible for the investigation or prosecution of offences, if the information relates to the investigation or prosecution of an offence; or
- (e) a court for the purposes of the prosecution of a person for an offence.

⁹ FA and A Act, section 5—

“parliamentary committee” means the Public Accounts Committee of the Legislative Assembly.

SCHEDULE 1 (continued)

‘Report on audit

‘93.(1) The auditor-general may prepare a report on any audit conducted under *the applied provisions*.

‘(2) An authorised auditor (other than the auditor-general) must give the auditor-general a report on every audit conducted *under the applied provisions* by the authorised auditor.

‘(3) A report under subsection (1) or (2) may contain observations and suggestions about anything arising out of the audit.

‘(4) If the auditor-general is of the opinion that observations or suggestions made under subsection (3) require attention or further consideration, the auditor-general must give them (together with any comments on them)—

(a) *not applied*;

(b) *not applied*;

(c) *to the chairperson of the company GOC concerned and the person responsible for the financial administration of the GOC.*

‘(5) If the auditor-general is of the opinion that the observations or suggestions made under subsection (3) are of significance, the auditor-general must also give them (together with any comments on them) to the *shareholding Ministers of the company GOC concerned*.

‘Protection from liability

‘94.(1) An authorised auditor 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 *the applied provisions*.

‘(2) A liability that would, but for subsection (1), attach to an authorised auditor attaches instead to the State.

SCHEDULE 1 (continued)

‘Audit fees

‘95.(1) The auditor-general may charge fees for an audit conducted by the auditor-general *under the applied provisions*.

‘(2) The auditor-general may, with the Treasurer’s approval, determine the basic rates of fees.

‘(3) The auditor-general must assess the fees for an audit having regard to the basic rates of fees determined under subsection (2).

‘(4) Unpaid fees may be recovered by the auditor-general as a debt due to the auditor-general.

‘Applied provisions do not limit other powers of auditor-general

‘96. *The applied provisions do not limit any power that the auditor-general has apart from those provisions.*

‘Division 3—Reports to the Legislative Assembly

‘97. *Not applied.*

‘98. *Not applied.*

‘Annual reports on audits of company GOCs

‘99.(1) The auditor-general must prepare a report to the Legislative Assembly on each audit conducted of a *company GOC* by an authorised auditor.

‘(2) The report must—

(a) state whether or not—

(i) the audit of the *company GOC* has been completed; and

SCHEDULE 1 (continued)

- (ii) the statements relating to the accounts of the *company GOC* have been audited; and
- (b) draw attention to any case in which the functions relating to the financial management of the *company GOC* were not adequately and properly performed if, in the auditor-general's opinion, the matter is of sufficient significance to require inclusion in the report; and
- (c) set out—
 - (i) the results of audits conducted, in relation to the relevant financial year, of *subsidiaries of a company GOC* by an authorised auditor; and
 - (ii) if audits were not conducted in relation to particular *subsidiaries*—the reasons why they were not conducted; and
- (d) deal with the action (if any) taken to remedy significant deficiencies reported in previous reports on audits of the *company GOC*.

‘(3) Subsection (2)(c) does not apply if section 99¹⁰ of the FA and A Act applies to the subsidiaries concerned under the Government Owned Corporations Act 1993, section 128.¹¹

‘Reports on audits requested by Parliament

‘100. The auditor-general must prepare a report to the Legislative Assembly on each audit conducted at the request of the Legislative Assembly.

‘Interim, supplementary and combined reports

‘101.(1) The auditor-general may prepare interim and supplementary

¹⁰ Section 99 (Annual reports on audits of public sector entities)

¹¹ Section 128 (Application of Financial Administration and Audit Act)

SCHEDULE 1 (continued)

reports to the Legislative Assembly on any matter on which the auditor-general is to report or has reported.

‘(2) The auditor-general may combine reports on any 2 or more audits.

‘Other reports

‘102. The auditor-general may prepare any of the following reports to the Legislative Assembly—

- (a) if the auditor-general considers it desirable to do so at any particular time for reasons of urgency—a report on any significant matter arising out of an audit *under the applied provisions*;
- (b) if the auditor-general considers it to be in the public interest to do so—a full report on, or a report on any specific matters arising out of, a particular audit *under the applied provisions*;
- (c) if the auditor-general considers it otherwise appropriate to do so at any time—a report on any matter arising out of an audit *under the applied provisions* to which attention should be drawn;
- (d) *not applied*.

‘Comments on proposed audit reports

‘103.(1) If the auditor-general proposes to include in a report to the Legislative Assembly under this division a matter that, in the auditor-general’s opinion, is a matter of significance, the auditor-general must give written advice of the matter that is proposed to be included to—

- (a) *not applied*;
- (b) *not applied*;
- (c) *the chairperson of the company GOC concerned* and the person responsible for the financial administration of the *GOC*;

and—

- (d) *not applied*;

SCHEDULE 1 (continued)

(e) (*words omitted*) to the *GOC's shareholding Ministers*.

‘(2) The advice must include a statement to the effect that comments on the proposed matter may be made in writing given to the auditor-general—

- (a) within 21 days after the advice is received; or
- (b) within such longer period as is specified in the advice.

‘(3) If comments are received within the 21 days or longer period, the auditor-general must include them in the report.

‘Procedure for reporting certain sensitive information

‘104.(1) If the auditor-general considers that it would be against the public interest to disclose in a report under this division information that could—

- (a) have a serious adverse effect on the commercial interests of a *company GOC*; or
- (b) reveal trade secrets of a *company GOC*; or
- (c) prejudice the investigation of a contravention or possible contravention of the law; or
- (d) prejudice the fair trial of a person; or
- (e) cause damage to the relations between the Government of the State and another Government;

the auditor-general must not disclose the information in the report but must instead include it in a report prepared and given to the Parliamentary Committee.

‘(2) This section has effect despite anything in *the applied provisions or any Act*.

‘Tabling of reports

‘105.(1) A report prepared under this division must be given to the

SCHEDULE 1 (continued)

speaker or, if there is no speaker or the speaker is unavailable, to the clerk of the Parliament.

‘(2) The speaker or clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

‘(3) For the purposes of its printing and publication, a report that is given to the speaker or the clerk under subsection (2) is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the speaker or the clerk.

**‘PART 5—PROVISIONS OF FA AND A ACT
APPLYING UNDER SECTION 6 TO COMPANY GOC
SUBSIDIARIES**

**‘PART 3—FINANCIAL
ADMINISTRATION—*COMPANY GOC SUBSIDIARIES***

‘46C. *Not applied.*

‘*Company GOC subsidiaries to prepare annual financial statements*

‘46F.(1) *A company GOC subsidiary must give to the auditor-general the financial statements prepared by it under the Corporations Law.*

‘(2) The *company GOC subsidiary* must comply with subsection (1) within 2 months after the end of each financial year or the longer period agreed to between the *subsidiary* and the auditor-general.

‘(3) to (9) *Not applied.*

‘46G. *Not applied.*

SCHEDULE 1 (continued)

‘Company GOC subsidiaries must consider auditor-general’s observations and suggestions

‘**46H.** If a chairperson of a *company GOC subsidiary* is given observations or suggestions (together with any comments on them) under section 93(4), the chairperson must ensure they are considered at the *subsidiary’s* next ordinary meeting.

‘Annual report

‘**46J.(1)** As soon as possible after the close of each financial year but, subject to subsection (2), in no case later than 4 months after that close a *company GOC subsidiary* shall prepare and furnish to *the shareholding Ministers of each shareholding GOC of the subsidiary* a report in writing on the operations of the *subsidiary* during that financial year.

‘(2) The *shareholding Ministers* may, in a particular case, extend or further extend the period of 4 months referred to in subsection (1) by written notice given to the *company GOC subsidiary*.

‘(2A) If the *shareholding Ministers extend* the period referred to in subsection (1) to a period of more than 6 months, *the Ministers* must, within 14 days of granting that extension, give to the Legislative Assembly an explanation for the granting of that extension.

‘(3) The report—

- (a) shall contain such information as the *shareholding Ministers direct* to enable the *Ministers* to assess the efficiency, effectiveness and economy of the *company GOC subsidiary* and the need for its continuance; and
- (b) shall contain a copy of the annual financial statements of the *company GOC subsidiary* relating to that financial year *prepared under the Corporations Law; and*
- (c) *shall contain the information required, under the Government Owned Corporations Act 1993 as applied to the company GOC subsidiary, to be included in the annual report of the subsidiary.*

SCHEDULE 1 (continued)

‘(4) Subsection (3) is subject to the Government Owned Corporations Act 1993, section 132,¹² as applied to a company GOC subsidiary.

‘PART 3A—TABLING OF ANNUAL REPORTS***‘Shareholding Ministers must table reports***

‘46K. Within 14 days after receiving the annual report of a *company GOC subsidiary*, the *shareholding Ministers of a shareholding GOC of the subsidiary* must table a copy of it in the Legislative Assembly.

‘46KA. *Not applied.*

‘Shareholding Ministers to explain late tabling of annual report

‘46KB.(1) This section applies if the *shareholding Ministers of a shareholding GOC of a company GOC subsidiary table*, in the Legislative Assembly—

- (a) the annual report of *the subsidiary* later than 4 months and 14 days after the end of a financial year; or
- (b) *not applied.*

‘(2) The *shareholding Ministers* must also give the Legislative Assembly a written statement—

- (a) stating the report is being tabled late; and
- (b) stating the length of the delay; and
- (c) explaining the reasons for the delay.

¹² Section 132 (Deletion of commercially sensitive matters from annual report etc.)

SCHEDULE 1 (continued)

‘Procedure if Legislative Assembly not in session or sitting

‘46KC.(1) This section applies if the Legislative Assembly is not in session or is not actually sitting when the *shareholding Ministers of a shareholding GOC of a company GOC subsidiary* are required to do any of the following things—

- (a) table a copy of an annual report in the Legislative Assembly;
- (b) give the Legislative Assembly a written statement about the late tabling of an annual report;
- (c) if the *shareholding Ministers have given a company GOC subsidiary* an extension of time for giving the *Ministers* a copy of its annual report—give the Legislative Assembly an explanation for giving the extension.

‘(2) The *shareholding Ministers* must give a copy of the report, the written statement or the explanation to the clerk of the Parliament.

‘(3) The clerk must table the report, statement or explanation before the Legislative Assembly on its next sitting day.

‘(4) The report, statement or explanation is taken to have been tabled in the Legislative Assembly on the day it is given to the clerk.

‘(5) The day of receipt of the report, statement or explanation must be recorded in the votes and proceedings on the next sitting day.

‘(6) If the Legislative Assembly orders the report, statement or explanation to be printed, the report, statement or explanation is taken to have been ordered to be printed by the Legislative Assembly on the day the clerk receives it.

SCHEDULE 1 (continued)

‘PART 6—AUDIT OF COMPANY GOC SUBSIDIARIES***‘Division 1—Scope of auditor-general’s mandate***

‘73. *Not applied.*

‘74. *Not applied.*

‘Shareholding Ministers to give auditor-general information relating to company GOC subsidiaries

‘75.(1) *If a company GOC subsidiary acts under the Government Owned Corporations Act 1993, section 163,¹³ the shareholding Ministers of each shareholding GOC of the subsidiary must give the auditor-general any information about the matter that the auditor-general requires.*

‘(2) *Not applied.*

‘Auditor-general to be appointed auditor of every company GOC subsidiary

‘76.(1) *The shareholders of a company GOC subsidiary must—*

- (a) appoint the auditor-general to be the auditor of the subsidiary; and*
- (b) ensure that the auditor-general remains, at all times, the auditor of the subsidiary while the subsidiary remains a company GOC subsidiary.*

‘(2) *Not applied.*

¹³ Section 163 (Acquiring and disposing of subsidiaries)

SCHEDULE 1 (continued)

‘Audits at request of Parliament

‘77.(1) If the Legislative Assembly, by resolution, requests the auditor-general to conduct an audit of a matter relating to the financial administration of a *company GOC subsidiary*, the auditor-general must conduct the audit.

‘(2) *Not applied.*

‘78. *Not applied.*

‘Division 2—Conduct of audits**‘Way in which audit is to be conducted**

‘79.(1) The auditor-general may conduct an audit in the way the auditor-general considers appropriate.

‘(2) In determining the appropriate way to conduct an audit, the auditor-general may have regard to—

- (a) the character of the relevant internal control system (including internal audit); and
- (b) recognised standards and practices.

‘(3) Subsection (2) does not limit the matters to which the auditor-general may have regard.

‘(4) *The* auditor-general is not limited to conducting the audit in accordance with the Corporations Law, and may do anything else that the auditor-general considers appropriate.

‘Audit of performance management systems

‘80.(1) The auditor-general may conduct an audit of performance management systems of a *company GOC subsidiary*.

‘(2) The audit may be conducted as a separate audit or as part of another

SCHEDULE 1 (continued)

audit (including an audit of another *company GOC subsidiary* under this section).

‘(3) The object of the audit includes determining whether the performance management systems enable the *company GOC subsidiary* to assess whether its objectives are being achieved economically, efficiently and effectively.

‘(4) *Not applied.*

‘81. *Not applied.*

‘Appointment of contract auditors

‘82.(1) *For auditing company GOC subsidiaries the auditor-general may appoint an appropriately qualified individual who is not a member of the staff of the Audit Office to be a contract auditor.*

‘(2) The appointment of a person to be a contract auditor may be general or limited to a particular audit.

‘(3) The contract auditor—

- (a) is appointed on the terms specified in the instrument of appointment; and
- (b) may resign the appointment by signed notice given to the auditor-general.

‘Identity cards for *contract auditors*

‘83.(1) The auditor-general may issue an identity card to a *contract auditor*.

‘(2) The identity card must—

- (a) contain a recent photograph of the *contract auditor*; and
- (b) be signed by the *contract auditor* and the auditor-general.

‘(3) A person who ceases to be a *contract auditor* must not, without

SCHEDULE 1 (continued)

reasonable excuse, fail to return the person's identity card to the auditor-general as soon as practicable after ceasing to be a *contract* auditor.

Maximum penalty for subsection (3)—10 penalty units.

'Proof of authority as authorised auditor

'84(1). An authorised auditor may exercise a power *under the applied provisions* in relation to a person only if the authorised auditor produces his or her identity card for inspection by the person.

'(2) *In this section—*

"identity card" means—

- (a) *for a contract auditor, the identity card issued to the auditor under section 83; or*
- (b) *for another authorised auditor, the identity card issued to the auditor under section 83¹⁴ of the FA and A Act.*

'Access to documents and property

'85.(1) *Not applied.*

'(2) For the purpose of conducting an audit of a *company GOC subsidiary under the applied provisions*, an authorised auditor is entitled, at all reasonable times, to full and free access to all documents and property belonging to, in the custody of, or under the control of, the *subsidiary*.

'(3) For the purpose of conducting an audit under *the applied provisions*, an authorised auditor may—

- (a) enter, at any reasonable time—
 - (i) a place occupied by a *company GOC subsidiary*; or
 - (ii) a place occupied by a financial institution with which a *company GOC subsidiary* maintains an account; or

¹⁴ Section 83 (Identity cards for authorised auditors)

SCHEDULE 1 (continued)

- (iii) another place if the occupier of the place consents to the entry; and
- (b) inspect, examine, photograph or film anything in the place; and
- (c) take extracts from, and make copies of, any documents in the place; and
- (d) take into the place persons, equipment and materials that the authorised auditor reasonably requires; and
- (e) require any person in the place to give to the authorised auditor reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d).

‘(4) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (3)(e).

Maximum penalty—40 penalty units.

‘(5) It is not a reasonable excuse for a person to fail to comply with a requirement made under subsection (3)(e) that complying with the requirement might tend to incriminate the person.

‘(6) Neither an answer by a person under a requirement made under subsection (3)(e), nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

‘(7) The fact that a document was produced by a person under a requirement made under subsection (3)(e) is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and

SCHEDULE 1 (continued)

- (b) producing the document might in fact tend to incriminate the person.

‘Obtaining information

‘86.(1) If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person to give to the authorised auditor specified information, within a reasonable period and in a reasonable way specified in the notice.

‘(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1).

Maximum penalty—40 penalty units.

‘(3) It is not a reasonable excuse for a person to fail to comply with a requirement under subsection (1) that complying with the requirement might tend to incriminate the person.

‘(4) Neither information given by a person under a requirement under subsection (1), nor any other information or a document or other thing obtained as a direct or indirect consequence of the person giving the information, is admissible against the person in a criminal proceeding (other than a proceeding relating to the falsity of the information) if—

- (a) the person, before giving the information, claimed that giving the information might tend to incriminate the person; and
- (b) giving the information might in fact tend to incriminate the person.

‘Obtaining evidence

‘87.(1) If it is reasonably necessary for the purposes of an audit under *the applied provisions*, an authorised auditor may, by written notice given to a person, require the person—

- (a) to attend before an authorised auditor, at a reasonable time and

SCHEDULE 1 (continued)

place specified in the notice, and then and there answer questions;
and

- (b) to produce to an authorised auditor, at a reasonable time and place specified in the notice, documents belonging to, in the custody of, or under the control of, the person.

‘(2) The authorised auditor before whom the person attends may require answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the authorised auditor may administer an oath or affirmation.

‘(3) The oath to be taken, or affirmation to be made, by a person for the purposes of this section is an oath or affirmation that the answers the person will give will be true.

‘(4) An authorised auditor to whom a document is produced under a notice under subsection (1)—

- (a) may keep the document for a reasonable period for the purposes of conducting the relevant audit; and
- (b) may take extracts from and make copies of the document.

‘(5) While the authorised auditor has possession of the document, the authorised auditor must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised auditor’s possession.

‘(6) *Not applied.*

‘(7) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty—40 penalty units.

‘(8) It is not a reasonable excuse for a person to fail to comply with a notice under subsection (1) that complying with the notice might tend to incriminate the person.

‘(9) Neither an answer given by a person under this section, nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible against the

SCHEDULE 1 (continued)

person in a criminal proceeding (other than a proceeding relating to the falsity of the answer) if—

- (a) the person, before giving the answer, claimed that giving the answer might tend to incriminate the person; and
- (b) the answer might in fact tend to incriminate the person.

‘**(10)** The fact that a document was produced by a person under this section is not admissible in evidence against the person in a criminal proceeding (other than a proceeding relating to the falsity of the document) if—

- (a) the person, before producing the document, claimed that producing the document might tend to incriminate the person; and
- (b) producing the document might in fact tend to incriminate the person.

‘Compensation

‘**88.(1)** A person (other than a *company GOC subsidiary*) who incurs any loss or expense—

- (a) because of the exercise or purported exercise of a power under this division; or
- (b) in complying with a requirement made of the person under this division;

may claim compensation from the State.

‘**(2)** A payment of compensation may be claimed and ordered—

- (a) in a proceeding for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against *the applied provisions* brought against the person by whom the claim is made.

‘**(3)** A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to do so in the circumstances of the particular case.

SCHEDULE 1 (continued)

‘False or misleading information

‘89.(1) A person must not—

- (a) make a statement to an authorised auditor that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised auditor anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—80 penalty units.

‘(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

‘Obstruction of authorised auditor

‘90. A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an authorised auditor in the exercise of a power under *the applied provisions*.

Maximum penalty—80 penalty units.

‘Impersonation of authorised auditor

‘91. A person must not pretend to be an authorised auditor.

Maximum penalty—80 penalty units.

‘Confidentiality

‘92.(1) In this section—

“person to whom this section applies” means a person who is or has been—

SCHEDULE 1 (continued)

- (a) an authorised auditor; or
- (b) a person engaged or employed by a contract auditor;

“protected information” means information that is obtained under *the applied provisions*.

‘(2) A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate protected information;

unless the record is made, or the information *is* divulged or communicated—

- (c) under or for the purposes of *the applied provisions*; or
- (d) in the performance of duties, as a person to whom this section applies, under or for the purposes of *the applied provisions*.

Maximum penalty—200 penalty units or imprisonment for 1 year.

‘(3) Subsection (2) does not prevent the disclosure of information to—

- (a) the *Parliamentary Committee*;¹⁵ or
- (b) the *Public Works Committee of the Legislative Assembly*; or
- (c) the Criminal Justice Commission; or
- (d) a police officer, or a person or body responsible for the investigation or prosecution of offences, if the information relates to the investigation or prosecution of an offence; or
- (e) a court for the purposes of the prosecution of a person for an offence.

¹⁵ FA and A Act, section 5—

“parliamentary committee” means the Public Accounts Committee of the Legislative Assembly.

SCHEDULE 1 (continued)

‘Report on audit

‘93.(1) The auditor-general may prepare a report on any audit conducted under *the applied provisions*.

‘(2) An authorised auditor (other than the auditor-general) must give the auditor-general a report on every audit conducted *under the applied provisions* by the authorised auditor.

‘(3) A report under subsection (1) or (2) may contain observations and suggestions about anything arising out of the audit.

‘(4) If the auditor-general is of the opinion that observations or suggestions made under subsection (3) require attention or further consideration, the auditor-general must give them (together with any comments on them)—

(a) *not applied*;

(b) *not applied*;

(c) *to the chairperson of the company GOC subsidiary concerned and the person responsible for the financial administration of the subsidiary.*

‘(5) If the auditor-general is of the opinion that the observations or suggestions made under subsection (3) are of significance, the auditor-general must also give them (together with any comments on them) to the *shareholding Ministers of each shareholding GOC, and each shareholding GOC, of the subsidiary concerned.*

‘Protection from liability

‘94.(1) An authorised auditor 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 *the applied provisions*.

‘(2) A liability that would, but for subsection (1), attach to an authorised auditor attaches instead to the State.

SCHEDULE 1 (continued)

‘Audit fees

‘95.(1) The auditor-general may charge fees for an audit conducted by the auditor-general *under the applied provisions*.

‘(2) The auditor-general may, with the Treasurer’s approval, determine the basic rates of fees.

‘(3) The auditor-general must assess the fees for an audit having regard to the basic rates of fees determined under subsection (2).

‘(4) Unpaid fees may be recovered by the auditor-general as a debt due to the auditor-general.

‘Applied provisions do not limit other powers of auditor-general

‘96. *The applied provisions do not limit any power that the auditor-general has apart from those provisions.*

‘Division 3—Reports to the Legislative Assembly

‘97. *Not applied.*

‘98. *Not applied.*

‘Annual reports on audits of company GOC subsidiaries

‘99.(1) The auditor-general must prepare a report to the Legislative Assembly on each audit conducted of a *company GOC subsidiary* by an authorised auditor.

‘(2) The report must—

(a) state whether or not—

(i) the audit of the *company GOC subsidiary* has been completed; and

SCHEDULE 1 (continued)

- (ii) the statements relating to the accounts of the *company GOC subsidiary* have been audited; and
- (b) draw attention to any case in which the functions relating to the financial management of the *company GOC subsidiary* were not adequately and properly performed if, in the auditor-general's opinion, the matter is of sufficient significance to require inclusion in the report; and
- (c) set out—
 - (i) the results of audits conducted, in relation to the relevant financial year, of *subsidiaries of a company GOC subsidiary* by an authorised auditor; and
 - (ii) if audits were not conducted in relation to particular *subsidiaries*—the reasons why they were not conducted; and
- (d) deal with the action (if any) taken to remedy significant deficiencies reported in previous reports on audits of the *company GOC subsidiary*.

‘Reports on audits requested by Parliament

‘100. The auditor-general must prepare a report to the Legislative Assembly on each audit conducted at the request of the Legislative Assembly.

‘Interim, supplementary and combined reports

‘101.(1) The auditor-general may prepare interim and supplementary reports to the Legislative Assembly on any matter on which the auditor-general is to report or has reported.

‘(2) The auditor-general may combine reports on any 2 or more audits.

SCHEDULE 1 (continued)

‘Other reports

‘102. The auditor-general may prepare any of the following reports to the Legislative Assembly—

- (a) if the auditor-general considers it desirable to do so at any particular time for reasons of urgency—a report on any significant matter arising out of an audit *under the applied provisions*;
- (b) if the auditor-general considers it to be in the public interest to do so—a full report on, or a report on any specific matters arising out of, a particular audit *under the applied provisions*;
- (c) if the auditor-general considers it otherwise appropriate to do so at any time—a report on any matter arising out of an audit *under the applied provisions* to which attention should be drawn;
- (d) *not applied*.

‘Comments on proposed audit reports

‘103.(1) If the auditor-general proposes to include in a report to the Legislative Assembly under this division a matter that, in the auditor-general’s opinion, is a matter of significance, the auditor-general must give written advice of the matter that is proposed to be included to—

- (a) *not applied*;
- (b) *not applied*;
- (c) *the chairperson of the company GOC subsidiary concerned and the person responsible for the financial administration of the subsidiary*;

and—

- (d) *not applied*;
- (e) *(words omitted) to the shareholding Ministers of each shareholding GOC, and each shareholding GOC, of the company GOC subsidiary.*

SCHEDULE 1 (continued)

‘(2) The advice must include a statement to the effect that comments on the proposed matter may be made in writing given to the auditor-general—

- (a) within 21 days after the advice is received; or
- (b) within such longer period as is specified in the advice.

‘(3) If comments are received within the 21 days or longer period, the auditor-general must include them in the report.

‘Procedure for reporting certain sensitive information

‘104.(1) If the auditor-general considers that it would be against the public interest to disclose in a report under this division information that could—

- (a) have a serious adverse effect on the commercial interests of a *company GOC subsidiary*; or
- (b) reveal trade secrets of a *company GOC subsidiary*; or
- (c) prejudice the investigation of a contravention or possible contravention of the law; or
- (d) prejudice the fair trial of a person; or
- (e) cause damage to the relations between the Government of the State and another Government;

the auditor-general must not disclose the information in the report but must instead include it in a report prepared and given to the Parliamentary Committee.

‘(2) This section has effect despite anything in *the applied provisions or any Act*.

‘Tabling of reports

‘105.(1) A report prepared under this division must be given to the speaker or, if there is no speaker or the speaker is unavailable, to the clerk of the Parliament.

SCHEDULE 1 (continued)

‘(2) The speaker or clerk must cause a copy of the report to be laid before the Legislative Assembly on its next sitting day.

‘(3) For the purposes of its printing and publication, a report that is given to the speaker or the clerk under subsection (2) is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the speaker or the clerk.

SCHEDULE 1 (continued)

‘SCHEDULE 4**‘APPLICATION OF CHAPTER 3 OF ACT TO
COMPANY GOC SUBSIDIARIES**

section 177

‘PART 1—PRELIMINARY**‘Purpose****‘1.** This schedule provides for—

- (a) the application of provisions of chapter 3¹⁶ of the Act to company GOC subsidiaries as if they were GOCs; and
- (b) the modification of the provisions for their application to the subsidiaries.

‘Definitions**‘2.** In this schedule—**“applied provisions”** means the provisions of chapter 3 of the Act as applying under section 3.**“company GOC subsidiary”** means a company GOC subsidiary prescribed under a regulation under section 177 of the Act.**‘Application of ch 3 of the Act to company GOC subsidiaries****‘3.(1)** Chapter 3 of the Act applies to each company GOC subsidiary with the changes shown in part 2.

¹⁶ Chapter 3 (Government owned corporations (GOCs))

SCHEDULE 1 (continued)

‘(2) Subject to the changes mentioned in subsection (1), the provisions are applied as in force immediately before the commencement of this section.

**‘PART 2—PROVISIONS OF CHAPTER 3 OF ACT AS
APPLIED TO COMPANY GOC SUBSIDIARIES¹⁷**

section 3 of this schedule

‘CHAPTER 3—*COMPANY GOC SUBSIDIARIES*

‘PART 1—BASIC REQUIREMENTS

‘Division 1—Statutory GOCs (omitted)

‘Division 2—Company GOC subsidiaries

‘Company GOC *subsidiary must be proprietary company limited by shares*

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

¹⁷ This part shows how the *Government Owned Corporations Act 1993*, chapter 3 is applied. Changes other than in division headings appear in italics. Citation of Acts are also in italics. Changes in division headings are in roman type. Provisions that are not applied are indicated by “(omitted)”.

SCHEDULE 1 (continued)

‘PART 2—APPLICATION OF CORPORATIONS LAW*‘Division 1—Statutory GOCs (omitted)**‘Division 2—Company GOC subsidiaries***‘Application of Corporations Law to *company GOC subsidiaries***

‘69. The Corporations Law applies to a company GOC *subsidiary* except so far as *the applied provisions* otherwise provide.

‘Company GOC *subsidiary* not exempt public authority

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

**‘PART 3—SHARES AND SHAREHOLDING
MINISTERS***‘Division 1—Statutory GOCs (omitted)**‘Division 2—Company GOC subsidiaries***‘Number of shareholders**

‘76. A company GOC *subsidiary* may have any number of shareholders.

SCHEDULE 1 (continued)

‘All shareholders must be voting shareholders

‘77. Each shareholder must be a voting shareholder.

‘Shareholders must have equal number of shares (words omitted)

‘78.(1) Each shareholder need not have an equal number of shares.

‘(2) (omitted)

‘Shareholders must be company GOCs

‘79.(1) Each shareholder must be a company GOC.

‘(2) (omitted)

‘(3) (omitted)

‘(4) (omitted)

‘Meaning of “shareholding GOC”

‘80.(1) Each GOC that is a shareholder of a subsidiary is its “shareholding GOC”.

‘(2) (omitted)

‘Resolutions without meetings

‘81.(1) If each shareholding GOC of a company GOC subsidiary signs a document containing a statement that it is in favour of a resolution set out in the document—

- (a) a resolution in those terms is taken to have been passed at a general meeting of the subsidiary held at the time at which, and on the day on which, the document is signed by the last GOC; and*
- (b) the subsidiary is taken to have held a general meeting at that time on that day; and*

SCHEDULE 1 (continued)

- (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 *each shareholding GOC*, is taken to have been laid before the *subsidiary* at the meeting; and
- (e) if the resolution deals with all matters that are required to be dealt with at an annual general meeting of the *subsidiary*—the *subsidiary* is taken to have held an annual general meeting.

‘(2) Subsection (1) applies to a resolution that is authorised or required by the Corporations Law, or the *subsidiary’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 *GOC*, 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. (omitted)

SCHEDULE 1 (continued)

‘Transfer, issue etc. of shares**‘83. (omitted)¹⁸****‘Shareholding Ministers must act jointly****‘84. (omitted)****‘Shareholding GOCs not directors**

‘85.(1) A *shareholding GOC of a company GOC subsidiary* is not to be treated as a *director* of the *subsidiary* or any subsidiary or proposed subsidiary of the *subsidiary*.

‘(2) (omitted)**‘(3) (omitted)****‘(4) (omitted)****‘PART 4—MEMORANDUM AND ARTICLES (omitted)¹⁹****‘PART 5—BOARD OF DIRECTORS****‘Division 1—Statutory GOCs (omitted)****‘Division 2—Company GOC subsidiaries**

¹⁸ Section 83 is not applied The section applies to subsidiaries under its own force.

¹⁹ Part 4 is not applied. Sections 89 (Shareholding Ministers of company GOC may require amendment of subsidiary’s memorandum and articles) and 90 (Memorandum and articles of company GOC and its subsidiaries must not be inconsistent with Act or Corporations Law) apply to subsidiaries under their own force.

SCHEDULE 1 (continued)

‘Role of board

‘95. The role of a company *GOC subsidiary’s* board includes the following matters—

- (a) responsibility for the *subsidiary’s* commercial policy and management;
- (b) ensuring that, as far as possible, the *subsidiary* achieves, and acts in accordance with, *the statement of corporate intent of each of its shareholding GOCs to the extent the statement is about the subsidiary* and carries out the objectives outlined in *the statement of corporate intent to the extent the objectives are about the subsidiary*;
- (c) accounting to the *subsidiary’s* shareholders for its performance as required by the *applied provisions* and other laws applying to the *subsidiary*;
- (d) ensuring that the *subsidiary* otherwise performs its functions in a proper, effective and efficient way.

‘Composition of board

‘96.(1) A company *GOC subsidiary’s* board is to consist of the number of directors that are appointed by the Governor in Council.

‘(2) In appointing a person as a director, the Governor in council must have regard to the person’s ability to make a contribution to the *subsidiary’s* commercial performance and *the implementation of the statement of corporate intent (if any) of each shareholding GOC of the subsidiary to the extent the statement relates to the subsidiary*.

‘(3) Subsection (1) has effect despite—

- (a) the *subsidiary’s* memorandum and articles; and
- (b) the Corporations Law.

SCHEDULE 1 (continued)

‘Public service officers not eligible for appointment as directors

‘96A.(1) A public service officer is not eligible for appointment as a director of a company GOC *subsidiary*.

‘(2) subsection (1) has effect despite the Corporations Law.

‘96B. (*omitted*)

‘PART 6—CHIEF EXECUTIVE OFFICER

‘Division 1—Statutory GOCs (omitted)

‘Division 2—Company GOC subsidiaries

‘Appointment of chief executive officer

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

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

‘PART 7—CORPORATE PLAN (*omitted*)²⁰

²⁰ This part is not applied. Under part 7, division 1 (General), section 104 (Corporate plan to apply to subsidiaries), a GOC’s corporate plan must apply to the GOC and its subsidiaries.

SCHEDULE 1 (continued)

**‘PART 8—STATEMENT OF CORPORATE INTENT
(omitted)²¹****‘PART 9—COMMUNITY SERVICE OBLIGATIONS
(omitted)****‘PART 10—GENERAL RESERVE POWERS OF
SHAREHOLDING MINISTERS****‘Exercise of reserve power of shareholding Ministers to notify GOC’s
board of public sector policies**

‘123.(1) *This section applies if, under section 123 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary notify the GOC’s board, in writing, of a public sector policy that is to apply to the GOC and its subsidiaries.*

‘(1A) *The GOC must notify the subsidiary of the policy at least to the extent that the policy concerns the subsidiary.*

‘(2) *The subsidiary’s board must ensure that the policy is carried out in relation to the subsidiary to the extent that the policy concerns the subsidiary.*

‘(3) *(omitted)*

‘(4) *(omitted)*

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

‘124.(1) *This section applies if, under section 124 (as it applies to*

²¹ This part is not applied. Under part 8, division 1 (General), section 112 (Statement of corporate intent to apply to subsidiaries), a GOC’s statement of corporate intent must apply to the GOC and its subsidiaries.

SCHEDULE 1 (continued)

GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC's board a written direction in relation to the GOC and its subsidiaries.

'(1A) The GOC must notify the subsidiary of the direction at least to the extent that the direction concerns the subsidiary.

'(2) The subsidiary's board must ensure that the direction is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

'(3) (omitted)

'(4) (omitted)

'Direction given following notice of suspected insolvency

'125.(1) This section applies if—

- (a) the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC's board a notification under section 123 (as it applies to GOCs) or a direction under section 124 (as it applies to GOCs); and*
- (b) the GOC gives written notice to the shareholding Ministers and the Auditor-General of—*
 - (i) its suspicion that the subsidiary will or may become insolvent; and*
 - (ii) the reasons for its opinion that the cause or a substantial cause of the suspected insolvency would be compliance with the notification or direction; and*
- (c) the shareholding Ministers give the GOC's board written directions under section 125(4) (as it applies to GOCs).*

'(1A) The GOC must notify the subsidiary of the written directions mentioned in subsection (1)(c).

'(2) (omitted)

'(3) (omitted)

SCHEDULE 1 (continued)

‘(4) (omitted)

‘(5) (omitted)

‘(6) The *subsidiary’s* board must ensure that a direction under this section is complied with in relation to the *subsidiary*.

‘(7) (omitted)

‘(8) (omitted)

‘Subsidiary and board not otherwise subject to government direction

‘126. Except as otherwise provided by *the applied provisions or any Act*, a *company GOC subsidiary* 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 (omitted)

‘Division 2—Company GOC subsidiaries

‘Application of Financial Administration and Audit Act

‘128. (omitted)

‘129.²²

²² There is no section 129.

SCHEDULE 1 (continued)

*‘Division 3—GOCs generally***‘Quarterly reports****‘130. (omitted)²³****‘Matters to be included in annual report****‘131.(1)** Each annual report of a *company GOC subsidiary (the “first subsidiary”)* must—

- (a) contain the information that is required to be included in the report by the shareholding Ministers *of each shareholding GOC of the first subsidiary* to enable an informed assessment to be made of the operations of the *first subsidiary* and its subsidiaries, including a comparison of the performance of the *first subsidiary* and its subsidiaries with *each shareholding GOC’s* statement of corporate intent *to the extent it relates to the first subsidiary or its subsidiaries*; and
- (b) state the *first subsidiary’s* dividend policy for the financial year to which the report relates; and
- (c) include the statement of corporate intent *of each shareholding GOC of the first subsidiary* for the relevant financial year *to the extent the statement relates to the first subsidiary or its subsidiaries*; and
- (d) include particulars of any modifications made to the statement of corporate intent during the relevant financial year *to the extent the modifications relate to the first subsidiary or its subsidiaries*; and
- (e) include particulars of any directions and notifications given to *the board of a shareholding GOC of the first subsidiary* by the *shareholding GOC’s* shareholding Ministers that relate to the

²³ Section 130 is not applied. The section applies to subsidiaries under its own force.

SCHEDULE 1 (continued)

relevant financial year *to the extent the directions or notifications concern the first subsidiary or its subsidiaries*; and

- (f) include particulars of the impact on the financial position, profits and losses and prospects of the *first subsidiary* and its subsidiaries of any modifications to a statement of corporate intent, and any directions and notifications given to the board, *of a shareholding GOC of the first subsidiary by the shareholding GOC's shareholding Ministers*, that relate to the relevant financial year *to the extent the modifications, directions or notifications relate to or concern the first subsidiary or its subsidiaries*.

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

‘(3) Each annual report of a *company GOC subsidiary* must also include the matters that are required to be included in, or to accompany, the *subsidiary'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 *company GOC subsidiary's* annual report by the Corporations Law or another Act.

‘Deletion of commercially sensitive matters from annual report etc.

‘132.(1) If a *company GOC subsidiary's* board requests the shareholding Ministers *of each shareholding GOC of the subsidiary* to delete from the copies of an annual report of the *subsidiary* (and accompanying documents) that are to be made public a matter that is of a commercially sensitive nature, the shareholding Ministers may delete the matter from the copies of the annual report (and accompanying documents) that are laid before the Legislative Assembly or otherwise made public.

‘(2) An annual report of a *company GOC subsidiary* may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and

SCHEDULE 1 (continued)

- (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 or another Act.

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

‘Board to keep shareholding Ministers informed

‘133.(1) *The board of a company GOC subsidiary (the “first subsidiary”)* must—

- (a) keep *each of the first subsidiary’s shareholding GOCs* reasonably informed of the operations, financial performance and financial position of the *first subsidiary* and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the *first subsidiary* and its subsidiaries; and
- (b) give to *each shareholding GOC of the first subsidiary* reports and information that *the GOC requires* to enable it to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board’s opinion may prevent, or significantly affect, achievement of *the objectives* outlined in *the statement of corporate intent or targets under the corporate plan of a shareholding GOC of the first subsidiary*—immediately inform the shareholding *GOC* of the matters and its opinion in relation to them.

‘(2) Subsection (1) does not limit the matters of which the board is required to keep *a shareholding GOC of a company GOC subsidiary* informed, or limit the reports or information that the board is required, or may be required, to give to *a shareholding GOC of a company GOC subsidiary*, by the Corporations Law or another Act.

SCHEDULE 1 (continued)

**‘PART 12—DUTIES AND LIABILITIES OF
DIRECTORS AND OTHER OFFICERS***‘Division 1—Statutory GOCs (omitted)**‘Division 2—Company GOCs (omitted)**‘Division 3—GOCs generally***‘Application of Corporations Law to officers of GOC subsidiaries***‘146. (omitted)²⁴***‘Notice of suspected insolvency otherwise than because of direction or
notification***‘147.(1) This section applies if—*

- (a) under section 147 (as it applies to GOCs) the board of a shareholding GOC of a company GOC subsidiary gives written notice to the GOC’s shareholding Ministers and the Auditor-General of—*
 - (i) the board’s suspicion that the GOC or the subsidiary is, may be, will or may become insolvent; and*
 - (ii) its reasons for the opinion; and*
- (b) under section 147(3) (as it applies to GOCs) the shareholding Ministers give the GOC’s board written directions the shareholding Ministers consider necessary or desirable.*

²⁴ Section 146 is not applied. The section applies to subsidiaries under its own force.

SCHEDULE 1 (continued)

‘(1A) The GOC must notify the subsidiary of the written directions mentioned in paragraph (b).

‘(2) (omitted)

‘(3) (omitted)

‘(4) (omitted)

‘(5) The *subsidiary’s* board must ensure that a direction under this section is complied with in relation to the *subsidiary*.

‘(6) (omitted)

‘(7) (omitted)

‘(8) (omitted)

‘PART 13—LEGAL CAPACITY AND POWERS

‘Division 1—Statutory GOCs (omitted)

‘Division 2—Company GOC subsidiaries

‘General powers of company GOC subsidiaries

‘152.(1) A company GOC *subsidiary* 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 *the applied provisions or any Act*.

‘(2) Subsection (1) has effect subject to any restrictions on the *subsidiary’s* powers expressly imposed by *the applied provisions or any Act*.

SCHEDULE 1 (continued)

‘Doctrine of ultra vires etc. not revived

‘153.(1) The doctrine of ultra vires is not revived in relation to a company GOC subsidiary by the applied provisions.

‘(2) The abolition of the doctrine by the Corporations Law is not affected by applied provisions.

‘(3) This section is *included* for the removal of doubt.

‘Division 3—GOC may direct subsidiaries (omitted)

‘PART 14—FINANCE (omitted)²⁵**‘PART 15—ACQUISITION AND DISPOSAL OF
ASSETS AND SUBSIDIARIES****‘Reserve power of shareholding Ministers to direct that asset not be disposed of**

‘161.(1) *This section applies if, under section 161 (as it applies to GOCs), the shareholding Ministers of a shareholding GOC of a company GOC subsidiary give the GOC’s board a written direction requiring the subsidiary not to dispose of a specified asset.*

‘(1A) *The GOC must notify the subsidiary of the direction.*

‘(2) *The subsidiary’s board must ensure the direction is complied with in relation to the subsidiary.*

‘(3) *(omitted)*

²⁵ Part 14 is not applied. The part applies to subsidiaries under its own force.

SCHEDULE 1 (continued)

‘Disposal of main undertakings**‘162. (omitted)²⁶****‘Acquiring and disposing of subsidiaries****‘163. (omitted)²⁷****‘PART 15A—GOCs AND GOC SUBSIDIARIES
BECOMING AND RETIRING AS TRUSTEES
(omitted)²⁸****‘PART 16—EMPLOYEES (omitted)²⁹****‘PART 17—OTHER MATTERS****‘Division 1—GOCs generally (omitted)³⁰**

²⁶ Section 162 is not applied. The section applies to subsidiaries under its own force.

²⁷ Section 163 is not applied. The section applies to subsidiaries under its own force.

²⁸ Part 15A is not applied. The part applies to subsidiaries under its own force.

²⁹ Part 16 is not applied. The part applies to subsidiaries under section 164 (Part applies to subsidiaries) of the Act.

³⁰ Section 177 provides for the application of chapter 3 of the Act with the changes in this schedule to certain company GOC subsidiaries.

SCHEDULE 1 (continued)

*'Division 2—Statutory GOCs (omitted)**'Division 3—Company GOC subsidiaries***'Application of Criminal Justice Act**

'183. A company GOC *subsidiary* 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 *subsidiary*.'

SCHEDULE 2

MINOR AMENDMENTS

section 40

ADVANCE BANK INTEGRATION ACT 1997

1. Section 3, definition “NSW regulation”, ‘Bank Mergers (Advance Bank) Regulation 1997 (NSW)’—

omit, insert—

‘Bank Mergers (Advance Bank) Regulation 1998 (NSW)’.

GOVERNMENT LOANS REDEMPTION AND CONVERSION ACT 1923

1. Section 2, definition “inscribed stock”, ‘and’—

omit.

QUEENSLAND TREASURY CORPORATION ACT 1988

1. Section 4—

insert—

“‘chief executive” means the chief executive of the department.’.