



Queensland

# **TAB Queensland Limited Privatisation Act 1999**

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Queensland

# TAB Queensland Limited Privatisation Act 1999

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title .....	3
2	Dictionary .....	3
<b>Division 2</b>	<b>TABQ no longer a company GOC</b>	
3	TABQ stops being company GOC .....	3
<b>Division 3</b>	<b>Object and basic concepts</b>	
4	Object .....	4
5	Meaning of sale process .....	4
6	Meaning of listing day .....	4
7	Things done by Act Ministers .....	4
<b>Part 2</b>	<b>Management of sale process</b>	
<b>Division 1</b>	<b>Application of part 2</b>	
8	When pt 2 applies .....	5
<b>Division 2</b>	<b>Management of TABQ until listing day</b>	
9	Resolutions without meetings .....	5
10	TABQ's constitution may be amended by Act Ministers .....	6
11	Act Ministers may require amendment of subsidiary's constitution .....	6
12	Composition of board .....	7
13	Div 2 has effect despite Corporations Law .....	7
<b>Division 3</b>	<b>Sale process</b>	
14	Sale of TABQ .....	7
15	Minister's power to execute share transfers .....	7
16	Ministerial control of TABQ for certain purposes .....	8
17	Act Ministers not to be treated as directors of TABQ .....	8
<b>Part 4</b>	<b>Provisions about TABQ's staff</b>	

Contents

---

41	Staff's entitlements continue etc. ....	8
42	Application of certain provisions of GOC Act ....	9
<b>Part 5</b>	<b>Mandatory requirements regarding TABQ group companies' constitutions</b>	
43	Application of pt 5 ....	10
44	TABQ group companies to have constitutions containing certain provisions ....	10
45	Inconsistent alterations to TABQ group companies' constitutions have no effect ....	11
46	Injunctions ....	12
47	Other powers of Supreme Court ....	14
48	Jurisdiction of Supreme Court ....	14
49	Delegation by Minister ....	14
50	Pt 5 overrides Corporations Act ....	14
<b>Part 6</b>	<b>Miscellaneous</b>	
51	Exemption from State tax ....	15
52	Commonwealth tax equivalents ....	15
53	Minister's certificate ....	15
54	Act does not affect existing legal relationships ....	16
55	Act does not limit other powers ....	17
56	TABQ directors' immunity ....	17
57	Ministers' immunity ....	17
58	Non-application of certain provisions of GOC Act to TABQ ....	17
59	Regulation-making power ....	18
<b>Schedule</b>	<b>Dictionary</b> ....	19

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# TAB Queensland Limited Privatisation Act 1999

**An Act to provide for the sale of TAB Queensland Limited by the State, and for other purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *TAB Queensland Limited Privatisation Act 1999*.

#### **2 Dictionary**

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

### **Division 2 TABQ no longer a company GOC**

#### **3 TABQ stops being company GOC**

- (1) TABQ is no longer a company GOC and, other than to the extent this Act provides, the GOC Act stops applying to it.
- (2) Subsection (1) does not affect TABQ's registration under the Corporations Law.

## Division 3                      Object and basic concepts

### 4                      Object

The object of this Act is to facilitate the sale by the State of TABQ.

### 5                      Meaning of *sale process*

- (1) The *sale process* is the process relating to the sale of TABQ by the State.
- (2) The process includes anything connected with or relating to the disposal of all issued shares in TABQ held by a Minister on behalf of the State to persons other than Ministers who, in that capacity, hold the shares on behalf of the State.

### 6                      Meaning of *listing day*

- (1) The *listing day* is the day and time at which shares in TABQ are listed for quotation on the stock market of the Australian Stock Exchange Limited (ACN 008 624 691).

- (2) In this section—

*share* includes a unit in a share within the meaning of section 9 of the Corporations Law.

*Editor's note—*

Corporations Law, section 9—

*unit*, in relation to a share, debenture or other interest, means a right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever term called, and includes an option to acquire such a right or interest in the share, debenture or other interest.

### 7                      Things done by Act Ministers

- (1) If a thing is required to be, or may be, done under this Act by the Act Ministers, the thing must be done by them jointly.

- (2) However, if the Act Ministers' offices are held, or the functions of the offices are being performed, by 1 person, the thing may be done by that person alone.
- (3) Unless the context otherwise requires, a reference in this Act to the Minister is not a reference to the Minister in the capacity of an Act Minister.

## **Part 2                      Management of sale process**

### **Division 1                      Application of part 2**

#### **8                      When pt 2 applies**

This part applies until the listing day.

### **Division 2                      Management of TABQ until listing day**

#### **9                      Resolutions without meetings**

- (1) If, in relation to TABQ, the Act Ministers sign a document (the *Ministerial document*) containing a statement that they are in favour of a resolution stated in the Ministerial document—
  - (a) a resolution in those terms is taken to have been passed at a general meeting of TABQ held at the time at which, and on the day on which, the Ministerial document is signed by the last Act Minister; and
  - (b) TABQ is taken to have held a general meeting at that time on that day; and
  - (c) the Ministerial document is taken to be a minute of the meeting; and

[s 10]

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- (d) another document, attached to the Ministerial document and signed by the Act Ministers, is taken to have been laid before TABQ at the meeting; and
  - (e) if the resolution deals with all matters required to be dealt with at an annual general meeting of TABQ, TABQ 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 TABQ's constitution, to be passed at a general meeting, including a resolution—
  - (a) appointing an officer or auditor; or
  - (b) approving of, or agreeing to, anything.
- (3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by an Act Minister, are taken to be a single document.
- (4) This section has effect for the purposes of the Corporations Law.
- (5) Subsection (4) does not limit any other effect this section may have.
- (6) This section does not affect any rule of law providing for 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.

## **10 TABQ's constitution may be amended by Act Ministers**

- (1) The Act Ministers may amend TABQ's constitution.
- (2) Subsection (1) does not limit any other power to amend the constitution.

## **11 Act Ministers may require amendment of subsidiary's constitution**

- (1) The Act Ministers may, by notice given to TABQ's board of directors, direct the board to amend the constitution of a TABQ subsidiary.



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

## **12 Composition of board**

- (1) TABQ's board of directors is to continue 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 TABQ's commercial performance.
- (3) Subsection (1) has effect despite TABQ's constitution.

## **13 Div 2 has effect despite Corporations Law**

This division has effect despite anything in the Corporations Law.

# **Division 3                      Sale process**

## **14 Sale of TABQ**

- (1) The Act Ministers may do anything necessary or convenient for the sale process.
- (2) For subsection (1), the Act Ministers may bind the State and other Ministers who hold shares in TABQ on behalf of the State.

## **15 Minister's power to execute share transfers**

- (1) For the sale process, the Minister may execute on behalf of the State any document transferring shares in TABQ to a person.
- (2) Subsection (1) applies even if the shares are held on the State's behalf by a Minister other than the Minister.

## **16 Ministerial control of TABQ for certain purposes**

- (1) In the performance of its functions, TABQ's board of directors is subject to a direction of the Act Ministers given to the board under subsection (2).
- (2) The Act Ministers may, by notice given to the board, direct the board to do anything the Ministers consider necessary or convenient for the sale process.
- (3) The Act Ministers must publish a copy of the direction in the gazette within 21 days after giving it to the board.

## **17 Act Ministers not to be treated as directors of TABQ**

- (1) Despite the enactment of section 16 or the exercise of the Act Ministers' powers under the section, an Act Minister must not be treated as a director of TABQ or a person who participates in the management of TABQ.
- (2) This section has effect despite the Corporations Law.

# **Part 4 Provisions about TABQ's staff**

## **41 Staff's entitlements continue etc.**

- (1) Subsection (2) applies to persons who are employees of TABQ.
- (2) An event does not—
  - (a) affect the employees' benefits, entitlements or remuneration; or
  - (b) prejudice the employees' existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service; or
  - (d) constitute a retrenchment or redundancy.
- (3) Without limiting subsection (2), a person who immediately before an event is an employee of TABQ continues after the

event to be an employee of TABQ and, if an industrial instrument applies to the person immediately before the event, the instrument continues after the event to apply to the person.

- (4) The continuance of an industrial instrument as mentioned in subsection (3) is subject to the *Industrial Relations Act 2016*.
- (5) Persons who were employees of TABQ immediately before the commencement of section 3 are not entitled to a payment or other benefit merely because they are no longer employed by a company GOC.
- (6) In this section—
  - event* means—
    - (a) TABQ ceasing to be a company GOC; or
    - (b) all issued shares in TABQ ceasing to be held by a Minister on behalf of the State.

*industrial instrument* means an industrial instrument under the *Industrial Relations Act 1999*.

## **42 Application of certain provisions of GOC Act**

- (1) Subsection (2) applies to a person if the person was an employee of TABQ immediately before it ceased to be a company GOC and, at that time, section 173 or 174 of the GOC Act applied to the person.
- (2) The section continues to apply to the person as if TABQ had not ceased to be a company GOC.
- (3) For the application mentioned in subsection (2), TABQ is taken to continue to be a company GOC.

## **Part 5**

# **Mandatory requirements regarding TABQ group companies' constitutions**

### **43 Application of pt 5**

This part applies only to a TABQ group company that is—

- (a) a licensed monitoring operator under the *Gaming Machine Act 1991*; or
- (b) a wagering licensee or a wagering manager under the *Wagering Act 1998*.

### **44 TABQ group companies to have constitutions containing certain provisions**

- (1) Each TABQ group company must, at all times, have a constitution within the meaning of the Corporations Act.
- (2) The constitution of each TABQ group company must, at all times, require—
  - (a) the head office of the company to be located in Queensland; and
  - (b) at least 3 of the directors of the company to be ordinarily resident in Queensland; and
  - (c) the chief executive officer of the company to be ordinarily resident in Queensland; and
  - (d) each annual general meeting of the company to be held in Queensland.
- (3) For subsection (2) and each constitution, the head office of the company is located in Queensland only if—
  - (a) the principal operational offices of the following company personnel, however described, are located in Queensland—
    - (i) chairperson;

- (ii) chief executive officer;
  - (iii) chief financial officer;
  - (iv) chief operating officer; and
- (b) the principal operational offices for the following company services, however described, are located in Queensland—
  - (i) treasury operations;
  - (ii) information technology management;
  - (iii) marketing management;
  - (iv) credit control operations;
  - (v) human resource management;
  - (vi) account processing;
  - (vii) corporate services department;
  - (viii) purchasing department; and
- (c) in each year, at least 4 of the company's board meetings are held in Queensland; and
- (d) each meeting of the company's board held annually for the purpose of strategic planning is held in Queensland.

#### **45 Inconsistent alterations to TABQ group companies' constitutions have no effect**

- (1) A resolution of a TABQ group company that would, apart from this subsection, have the effect of the company ceasing to have a constitution or of altering the company's constitution so that the constitution would not comply with section 44(2) or (3) has no effect.
- (2) A resolution of the company has no effect if the resolution would—
  - (a) if acted on and apart from this subsection—result in a contravention of the mandatory constitutional requirements; or

- (b) apart from this subsection—ratify an act or omission contravening the mandatory constitutional requirements.

## **46 Injunctions**

- (1) Subsection (2) applies if a TABQ group company or another person has engaged, is engaging or is proposing to engage in conduct constituting—
  - (a) a contravention of the mandatory constitutional requirements; or
  - (b) attempting to contravene the mandatory constitutional requirements; or
  - (c) aiding, abetting, counselling or procuring a person to contravene the mandatory constitutional requirements; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene the mandatory constitutional requirements; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the mandatory constitutional requirements; or
  - (f) conspiring with others to contravene the mandatory constitutional requirements.
- (2) On the application of the Minister, the Supreme Court may grant an injunction restraining the company or other person from engaging in the conduct and, if the court considers it appropriate, requiring the company or other person to do something.
- (3) If a TABQ group company or another person has failed, is failing or is proposing to fail to do something that the company or other person is required by the mandatory constitutional requirements to do, the Supreme Court may, on the application of the Minister, grant an injunction requiring the company or other person to do the thing.

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- (4) On an application under subsection (2) or (3), the court may grant the injunction sought with the consent of all the parties to the proceeding, whether or not the court is satisfied the subsection applies.
  - (5) The court may grant an interim injunction pending a decision on an application under subsection (2) or (3).
  - (6) The court may discharge or vary an injunction, and may grant an injunction on conditions.
  - (7) The court's power to grant an injunction restraining a TABQ group company or another person from engaging in conduct may be exercised—
    - (a) whether or not it appears to the court that the company or other person intends to engage again, or to continue to engage, in the conduct; and
    - (b) whether or not the company or other person has previously engaged in conduct of that kind; and
    - (c) whether or not there is an imminent danger of substantial damage to a person if the company or other person engages, or continues to engage, in the conduct.
  - (8) The court's power to grant an injunction requiring a TABQ group company or another person to do something may be exercised—
    - (a) whether or not it appears to the court that the company or other person intends to fail again, or to continue to fail, to do the thing; and
    - (b) whether or not the company or other person has previously failed to do a thing of that kind; and
    - (c) whether or not there is an imminent danger of substantial damage to a person if the company or other person fails, or continues to fail, to do the thing.
  - (9) If the Minister makes an application under subsection (2) or (3), the court must not require the Minister, as a condition of granting an interim injunction, to give an undertaking as to damages.

#### **47 Other powers of Supreme Court**

- (1) Subsection (2) applies if the Supreme Court has power under section 46 to grant an injunction restraining a TABQ group company or another person from engaging in particular conduct, or requiring the company or another person to do a particular thing.
- (2) The court may, either in addition to, or in substitution for, the grant of the injunction, make any other order it considers appropriate against the company or the other person who engaged in the conduct or a person who was involved in the failure to do the thing.

#### **48 Jurisdiction of Supreme Court**

The Supreme Court has jurisdiction for matters arising under this part and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under the Commonwealth Constitution, section 75.

#### **49 Delegation by Minister**

The Minister may delegate the Minister's powers to apply to the Supreme Court under section 46 to the chief executive of the department.

#### **50 Pt 5 overrides Corporations Act**

- (1) This part has effect despite the Corporations Act.
- (2) Without limiting subsection (1), if there is any conflict or inconsistency between this part and a TABQ group company's constitution, this part prevails.



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## Part 6 Miscellaneous

### 51 Exemption from State tax

- (1) State tax is not payable in relation to anything done for the sale process.
- (2) No person has an obligation under a law imposing a State tax—
  - (a) to lodge a statement or return relating to anything done for the sale process; or
  - (b) to include in a statement or return a record or information relating to anything done for the sale process.
- (3) So far as the legislative power of Parliament permits, a reference in this section to State tax includes a reference to tax imposed under an Act of another State.

### 52 Commonwealth tax equivalents

- (1) This section applies to an amount payable by TABQ under section 155 of the GOC Act immediately before TABQ ceased to be a company GOC and not paid.
- (2) This section also applies to an amount that would have become payable by TABQ under section 155 of the GOC Act in relation to a period before TABQ ceased to be a company GOC if TABQ had not ceased to be a company GOC.
- (3) TABQ remains or becomes liable to pay the amount as if TABQ continued to be a company GOC.
- (4) However, the Treasurer may, by gazette notice, waive payment of the amount.

### 53 Minister's certificate

- (1) The Minister may issue a certificate stating that—

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- (a) State tax is not payable under section 51 in relation to something; or
  - (b) the payment of an amount has been waived under section 52.
- (2) A certificate purporting to be issued under subsection (1) is evidence of the things stated in it.

## **54 Act does not affect existing legal relationships**

- (1) This Act has effect despite anything in any instrument.
- (2) Nothing done under this Act in relation to TABQ—
  - (a) places TABQ or the State in breach of a contract, trust or confidence or otherwise makes TABQ or the State guilty of a civil wrong; or
  - (b) makes TABQ or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, transfer or assumption of any right or liability or the disclosure of any information; or
  - (c) is taken to fulfil a condition—
    - (i) allowing a person to terminate an instrument or be released, wholly or partly, from an obligation or modify the operation or effect of an instrument or obligation; or
    - (ii) requiring money to be paid, or anything else to be done, before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (3) If, apart from this subsection, obtaining the advice or consent of, or giving notice to, a person would be necessary under an instrument to give effect to a transaction contemplated by this Act, the advice or consent is taken to have been obtained or the notice is taken to have been given.
- (4) In this section—

**TABQ** includes a TABQ subsidiary.

**55 Act does not limit other powers**

- (1) This Act provides facilitative mechanisms.
- (2) Without limiting subsection (1), this Act does not prevent anything being done otherwise than under this Act.

**56 TABQ directors' immunity**

- (1) A director of TABQ does not incur any civil liability for anything done or omitted to be done in good faith for the purpose of complying with a direction of the Act Ministers given under section 11 or 16.
- (2) A liability that would, apart from subsection (1), attach to a director of TABQ attaches instead to the State.
- (3) This section has effect despite the Corporations Law.

**57 Ministers' immunity**

- (1) An Act Minister acting in that capacity or the Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under this Act.
- (2) A liability that would, apart from subsection (1), attach to an Act Minister or the Minister attaches instead to the State.
- (3) This section has effect despite the Corporations Law.

**58 Non-application of certain provisions of GOC Act to TABQ**

The following provisions of the GOC Act are taken never to have applied to TABQ—

- (a) chapter 3, parts 7 and 8;
- (b) sections 130 and 171.

**59 Regulation-making power**

The Governor in Council may make regulations under this Act.

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# Schedule Dictionary

## section 2

**Act Ministers** means both of the following—

- (a) the Minister;
- (b) the Minister for the time being administering the *Racing and Betting Act 1980*.

**company GOC** means a company GOC under the GOC Act.

**GOC Act** means the *Government Owned Corporations Act 1993*.

**holding company** see the Corporations Act, section 9.

**listing day** see section 6.

**mandatory constitutional requirements** means—

- (a) the requirement that a TABQ group company must, under section 44(1), have a constitution at all times; or
- (b) the requirements that must, under section 44(2), be in a TABQ group company's constitution at all times.

**notice** means a written notice.

**related body corporate** see the Corporations Act, section 9.

**sale process** see section 5.

**share** means a share in the share capital of a body corporate.

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

**subsidiary**, of TABQ, means an entity that is a subsidiary of TABQ under the Corporations Law.

**TABQ** means TAB Queensland Limited (ACN 085 691 738).

**TABQ group company** means—

- (a) TABQ; or
- (b) any holding company of TABQ; or

Schedule

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- (c) a wholly-owned subsidiary of TABQ that is the principal operating company in the group of companies consisting of TABQ and any related body corporate of TABQ.

***tax*** includes fee, duty and charge.

***transaction*** includes agreement, arrangement, understanding and undertaking.

***wholly-owned subsidiary*** see the Corporations Act, section 9.