

Queensland



Government Owned Corporations Act 1993

**GOVERNMENT OWNED
CORPORATIONS
(STATUTORY GOC
SUBSIDIARIES)
REGULATION 1994**

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This regulation is reprinted as at 25 January 1995.

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See Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint.**

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**GOVERNMENT OWNED
CORPORATIONS (STATUTORY GOC
SUBSIDIARIES) REGULATION 1994**

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GOVERNMENT OWNED CORPORATIONS (STATUTORY GOC SUBSIDIARIES) REGULATION 1994

[reprinted as in force on 25 January 1995]

Short title

1. This regulation may be cited as the *Government Owned Corporations (Statutory GOC Subsidiaries) Regulation 1994*.

Purpose

2. This regulation provides for—

- (a) the application of provisions of Chapter 3 (Government Owned Corporations (GOCs)) of the Act to certain statutory GOC subsidiaries as if they were GOCs; and
- (b) the modification of the provisions for their application to the subsidiaries.

Definitions

3. In this regulation—

“QTSC” means Queensland Transmission and Supply Corporation.

“QTSC entities” means the following entities—

- Capricornia Electricity Corporation
- Far North Queensland Electricity Corporation
- Mackay Electricity Corporation
- North Queensland Electricity Corporation
- Queensland Electricity Transmission Corporation
- South East Queensland Electricity Corporation

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- South West Queensland Electricity Corporation
- Wide Bay-Burnett Electricity Corporation.

Application of Ch 3 of Act

4.(1) Chapter 3, and Schedules 1 and 2, of the Act apply to a statutory GOC subsidiary with the modifications shown in the Schedule.

(2) Subsection (1) does not prevent the appointment, under section 94A of the Act as applied by this regulation, of the first board of a statutory GOC subsidiary before it becomes a statutory GOC subsidiary.

Limited application of regulation

5. An entity is a statutory GOC subsidiary for the purposes of section 4 only if—

- (a) it is a QTSC entity; and
- (b) it is a subsidiary of QTSC; and
- (c) QTSC is a statutory GOC.

SCHEDULE

APPLICATION OF CHAPTER 3 OF ACT TO STATUTORY GOC SUBSIDIARIES¹

section 4 of this regulation

CHAPTER 3—*GOC SUBSIDIARIES*

PART 1—BASIC REQUIREMENTS

Division 1—Statutory GOC subsidiaries

Subsidiary must be body corporate etc.

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

(2) A *subsidiary* must—

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

Division 2—Company GOCs (omitted)

¹ This Schedule shows how Chapter 3, and Schedules 1 and 2, of the *Government Owned Corporations Act 1993* are applied. Modifications other than in Division headings appear in italics. Citations of Acts are also in italics. Modifications in Division headings are in roman type. Provisions that are not applied under this regulation are indicated by “(omitted)”.

SCHEDULE (continued)

PART 2—APPLICATION OF CORPORATIONS LAW

Division 1—Statutory GOC subsidiaries

Application of Corporations Law to *subsidiaries*

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

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

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

Subsidiary exempt public authority

68. A *subsidiary* is an exempt public authority for the purposes of the Corporations Law.

Division 2—Company GOCs (omitted)

PART 3—SHARES AND SHAREHOLDING *GOC*

Division 1—Statutory GOC subsidiaries

Number of shareholders

71. A *subsidiary* must have only 1 shareholder.

SCHEDULE (continued)

Shareholders must have equal number of shares and equal rights

72. (omitted)

GOC as shareholder

73. A GOC is taken to be its subsidiary's shareholder.

Meaning of "shareholding GOC"

74. The shareholder of a subsidiary is its "shareholding GOC".

Variation of share capital

75.(1) A regulation may vary the share capital of a *subsidiary*.

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

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

Division 2—Company GOCs (omitted)

Division 3—Subsidiaries generally

Shareholders hold shares for State etc.

82. (omitted)

Transfer, issue etc. of shares

83. (omitted)

SCHEDULE (continued)

Shareholding Ministers must act jointly

84. (omitted)

Shareholding GOC not director

85.(1) A subsidiary's shareholding GOC is not to be treated as a director of the subsidiary.

(2) (omitted)

(3) (omitted)

(4) (omitted)

PART 4—MEMORANDUM AND ARTICLES (omitted)²

PART 5—BOARD OF DIRECTORS

Division 1—Statutory GOC subsidiaries

Subsidiary to have board of directors

91. Each subsidiary is to have a board of directors (the “board”).

Role of board

92. The role of a subsidiary's board includes the following matters—

- (a) responsibility for the subsidiary's commercial policy and management;

² Part 4 is not applied under this regulation. The Part applies to subsidiaries under its own force.

SCHEDULE (continued)

- (b) ensuring that, as far as possible, the *subsidiary* achieves, and acts in accordance with, its *shareholding GOC's* statement of corporate intent *to the extent the statement is about the subsidiary* and carries out *the* objectives outlined in its *shareholding GOC's* statement of corporate intent *to the extent the objectives are about the subsidiary*;
- (c) accounting to *its shareholding GOC* for its performance as required by this Act and other laws applying to the *subsidiary*;
- (d) ensuring that the *subsidiary* otherwise performs its functions in a proper, effective and efficient way.

Delegation by board

93. A *subsidiary's* board may, by resolution, delegate its powers to—

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

Additional provisions relating to board—Appendix 1

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

First board of *subsidiary*

94A.(1) This section applies to a government entity that is to become a statutory GOC *subsidiary* if the government entity is *a subsidiary of a candidate GOC or candidate GOC associate*.

(2) For the appointment of the first board of the *subsidiary*, the Governor in Council may act under *Appendix 1*, clauses 1 and 2 before the commencement of a regulation declaring the candidate GOC, or the candidate GOC associate, to be a GOC.

SCHEDULE (continued)

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

Division 2—Company GOCs (omitted)

PART 6—CHIEF EXECUTIVE OFFICER

Division 1—Statutory GOC subsidiaries

Subsidiary to have chief executive officer

97. Each *subsidiary* is to have a chief executive officer.

Duties of chief executive officer

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

Things done by chief executive officer

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

Delegation by chief executive officer

100.(1) The chief executive officer of a *subsidiary* may delegate the chief executive officer's powers (including a power delegated to the chief executive) to an employee of the *subsidiary*.

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

SCHEDULE (continued)

Additional provisions relating to chief executive officer—Appendix 2

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

Division 2—Company GOCs (omitted)

PART 7—CORPORATE PLAN (omitted)³

**PART 8—STATEMENT OF CORPORATE INTENT
(omitted)⁴**

**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 subsidiary's shareholding GOC notify the GOC's board, in writing, of a public sector policy that is to apply to the GOC and its subsidiaries.*

³ This Part is not applied under this regulation. Under Part 7, Division 1 (General), section 104 (Corporate plan to apply to subsidiaries), a GOC corporate plan must apply to the GOC and its subsidiaries.

⁴ This Part is not applied under this regulation. 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 (continued)

(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 GOCs), the shareholding Ministers of a subsidiary's shareholding GOC 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 subsidiary's shareholding GOC 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—

SCHEDULE (continued)

- (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 paragraph (c).*
- (2) *(omitted)*
 - (3) *(omitted)*
 - (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 this or another Act, a *subsidiary* and its board are not subject to direction by or on behalf of the Government.

SCHEDULE (continued)

**PART 11—REPORTS AND OTHER
ACCOUNTABILITY MATTERS*****Division 1—Statutory GOC subsidiaries*****Application of Financial Administration and Audit Act**

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

(2) The Act applies to a *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 to the shareholding Ministers *of the subsidiary’s shareholding GOC*.

Division 2—Company GOCs (omitted)***Division 3—Subsidiaries generally*****Quarterly reports**

130. *(omitted)*

Matters to be included in annual report

131. *(omitted)*

Deletion of commercially sensitive matters from annual report etc.

132. *(omitted)*

SCHEDULE (continued)

Board to keep shareholding GOC informed

133.(1) A *subsidiary's* board must—

- (a) keep the *subsidiary's* shareholding GOC reasonably informed of the operations, financial performance and financial position of the *subsidiary*, including the assets and liabilities, profits and losses and prospects of the *subsidiary*; and
- (b) give to the shareholding GOC reports and information that *it* requires to enable *it* to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the *opinion of the subsidiary's board* may prevent, or significantly affect, achievement of the *subsidiary's* objectives outlined in its *shareholding GOC's* statement of corporate intent or targets under its *shareholding GOC's* corporate plan—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 *subsidiary's* board is required to keep the shareholding GOC informed, or limit the reports or information that the board is required, or may be required, to give to the shareholding GOC, by the Corporations Law or another Act.

**PART 12—DUTIES AND LIABILITIES OF
DIRECTORS AND OTHER OFFICERS**

Division 1—Statutory GOC subsidiaries

Disclosure of interests by directors

134.(1) If a director of a *subsidiary* has a direct or indirect interest in a matter being considered, or about to be considered, by the *subsidiary's* board, the director must disclose the nature of the interest to a meeting of the

SCHEDULE (continued)

board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

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

Voting by interested director

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

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

Maximum penalty—100 penalty units.

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

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

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

(4) The *subsidiary's* shareholding *GOC* may, by *giving* consent to a proposed resolution, deal with a matter if the *subsidiary's* board cannot deal with it because of subsection (3).

(5) *However, if the shareholding GOC's board cannot deal with the*

SCHEDULE (continued)

matter under subsection (4) because of the operation of section 135 (as it applies to GOCs), the GOC's shareholding Ministers may, by each signing consent to a proposed resolution, deal with the matter.

Duty and liability of certain officers of *subsidiary*

136.(1) In this section—

“**officer**” of a *subsidiary* means—

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

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

Maximum penalty—

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

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

Maximum penalty—100 penalty units.

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

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

SCHEDULE (continued)

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

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

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

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

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

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

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

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

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

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

including, for example—

- (d) any relevant community service obligations of the *subsidiary's* *shareholding* GOC; and

SCHEDULE (continued)

- (e) any relevant directions, notifications or approvals given to the *subsidiary's shareholding GOC* by the GOC's shareholding Ministers *and of which the GOC has notified the subsidiary; and*
- (f) *any relevant directions given to the subsidiary by the subsidiary's shareholding GOC.*

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

(11) This section—

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

Prohibition on loans to directors

137.(1) A *subsidiary* must not, whether directly or indirectly—

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

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

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

Maximum penalty—100 penalty units.

(4) In this section—

SCHEDULE (continued)

“**relative**” means—

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

Subsidiary not to indemnify officers

138.(1) A *subsidiary* must not—

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

(2) An instrument is void so far as it provides for the *subsidiary* to do something that subsection (1) prohibits.

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

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

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

(5) The *subsidiary* may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the *subsidiary's* shareholding GOC and the GOC's shareholding Ministers

(6) In this section—

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

SCHEDULE (continued)

“officer” of a *subsidiary* means—

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

Subsidiary not to pay premiums for certain liabilities of officers

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

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
 - (i) a wilful breach of duty in relation to the *subsidiary*; or
 - (ii) without limiting subparagraph (i), a contravention of section 136(4) or (5) (*as applied to subsidiaries*).

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

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

(4) In this section—

“officer” of a *subsidiary* means—

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

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

SCHEDULE (continued)

Director's duty to prevent insolvent trading**140.(1)** If—

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

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

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

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

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

SCHEDULE (continued)

Court may order compensation

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

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

(3) This section—

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

Examination of persons concerned with *subsidiaries*

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

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

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

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

(3) The examination of the person is to be held in public except so far as

SCHEDULE (continued)

the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(4) The court may give directions about—

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

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

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

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

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

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

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

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

(8) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

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

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

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

(11) The person must not knowingly make a statement at the

SCHEDULE (continued)

examination that is false or misleading in a material particular.

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

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

(13) If—

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

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

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

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

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

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

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

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

(18) If the court is satisfied that the order for the examination of the

SCHEDULE (continued)

person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

Power to grant relief

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

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

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

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

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

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

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a Judge with a jury; and
- (b) the Judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person;

the Judge may withdraw the case (in whole or part) from the jury and direct

SCHEDULE (continued)

that judgment be entered for the defendant on the terms (as to costs or otherwise) that the Judge considers appropriate.

False or misleading information or documents

144.(1) In this section—

“**officer**” of a *subsidiary* means—

- (a) a director of the *subsidiary*; or
- (b) the *subsidiary*'s chief executive officer; or
- (c) an employee of the *subsidiary*.

(2) An officer of a *subsidiary* must not—

- (a) make a statement concerning the affairs of the *subsidiary* to—
 - (i) *another officer of the subsidiary; or*
 - (ii) *an officer of the subsidiary's shareholding GOC; or*
 - (iii) *the shareholding GOC; or*
 - (iv) *the GOC's shareholding Ministers;*

that the first officer knows is false or misleading in a material particular; or

- (b) omit from a statement concerning the *subsidiary*'s affairs made to—
 - (i) *another officer of the subsidiary; or*
 - (ii) *an officer of the subsidiary's shareholding GOC; or*
 - (iii) *the shareholding GOC; or*
 - (iv) *the GOC's shareholding Ministers;*

anything without which the statement is, to the first officer's knowledge, misleading in a material particular.

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

SCHEDULE (continued)

misleading to the person's knowledge.

(4) An officer of a *subsidiary* must not give to—

- (a) *another officer of the subsidiary; or*
- (b) *an officer of the subsidiary's shareholding GOC; or*
- (c) *the shareholding GOC; or*
- (d) *the GOC's shareholding Ministers;*

a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—

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

Maximum penalty—

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

Division 2—Company GOCs (omitted)

SCHEDULE (continued)

Division 3—Subsidiaries generally

Application of Corporations Law to officer of GOC subsidiaries

146. *(omitted)*⁵

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 subsidiary's shareholding GOC 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.*

(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)*

⁵ Section 146 is not applied under this regulation. The section applies to subsidiaries under its own force.

SCHEDULE (continued)

(7) (omitted)

(8) (omitted)

PART 13—LEGAL CAPACITY AND POWERS***Division 1—Statutory GOC subsidiaries*****Objects of Division**

148. The objects of this Division include—

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

General powers of *subsidiaries*⁶

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

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and

⁶ For subsidiaries of Queensland Transmission and Supply Corporation, section 149 is applied for completeness. Sections 78(5) (QETC's functions) and 80(5) (Functions and powers of State authorised suppliers) of the *Electricity Act 1994* already provide for the subsidiaries to have the powers of a statutory GOC set out in section 149 of the *Government Owned Corporations Act 1993*.

SCHEDULE (continued)

- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants; and
- (f) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

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

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

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

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

(6) In this section—

“power” includes legal capacity.

Restrictions on powers of *subsidiaries*

150.(1) Section 149 (General powers of *subsidiaries*) has effect in relation to a *subsidiary* subject to any restrictions on the *subsidiary's* powers expressly imposed under this or another Act.

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

- (a) any relevant statement of corporate intent of the *subsidiary's* *shareholding* GOC; and
- (b) any relevant directions, notifications or approvals given to the *subsidiary's* *shareholding* GOC by the GOC's *shareholding* Ministers and of which the GOC has notified the *subsidiary*; and
- (c) any relevant directions given to the *subsidiary* by the *subsidiary's* *shareholding* GOC.

SCHEDULE (continued)

(3) If—

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

the *subsidiary* contravenes this subsection.

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

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

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

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

(8) The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the *subsidiary* contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of the *subsidiary* contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between *the subsidiary's* shareholding GOC, the GOC's shareholding Ministers or the State and officers of the *subsidiary*.

(9) In this section—

“**officer**” of a *subsidiary* means—

- (a) a director of the *subsidiary*; or
- (b) the *subsidiary's* chief executive officer; or

SCHEDULE (continued)

(c) an employee of the *subsidiary*.

“restriction” includes prohibition.

Persons having dealings with *subsidiaries* etc.

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

(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from a *subsidiary* (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the *subsidiary* or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

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

- (a) that, at all relevant times, the Act by which the entity that became the *subsidiary* is established (if any) and this Act have been complied with; and
- (b) that a person who is held out by the *subsidiary* to be an officer or agent of the *subsidiary* has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the *subsidiary* who has authority to issue a document on behalf of the *subsidiary* has authority to warrant that the document is genuine and that an officer or agent of the *subsidiary* who has authority to issue a certified copy of a document on behalf of the *subsidiary* has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the *subsidiary* if—
 - (i) it bears what appears to be an imprint of the *subsidiary*'s

SCHEDULE (continued)

seal; and

(ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the *subsidiary* or the *subsidiary's* chief executive officer; and

(e) that the directors, chief executive officer, employees and agents of the *subsidiary* have properly performed their duties to the *subsidiary*.

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

(a) the person has actual knowledge that the assumption would be incorrect; or

(b) because of the person's connection or relationship with the *subsidiary*, the person ought to know that the assumption would be incorrect.

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

(a) if the assumption is in relation to dealings with the *subsidiary*—subsection (1) does not apply to any assertion by the *subsidiary* in relation to the assumption; or

(b) if the assumption is in relation to an acquisition or purported acquisition from the *subsidiary* of title to property—subsection (2) does not apply to any assertion by the *subsidiary* or another person in relation to the assumption.

(6) In this section—

“officer” of a *subsidiary* means—

(a) a director of the *subsidiary*; or

(b) the *subsidiary's* chief executive officer; or

(c) an employee of the *subsidiary*.

SCHEDULE (continued)

Division 2—Company GOCs (omitted)

*Division 3—GOC may direct subsidiaries (omitted)*⁷

PART 14—FINANCE

*Division 1—Taxation (omitted)*⁸

Division 2—Borrowings and guarantees

Application of the Statutory Bodies Financial Arrangements Act

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

Procedures for borrowing

157.(1) A *subsidiary* may borrow in accordance with *the* policies, as outlined in its *shareholding GOC's* statement of corporate intent, to minimise and manage any risk of investments and borrowings that may adversely affect *the subsidiary's* financial stability.

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

⁷ Division 3 is not applied under this regulation. The Division applies to subsidiaries under its own force.

⁸ Division 1 is not applied under this regulation. The Division applies to subsidiaries under its own force.

SCHEDULE (continued)

Guarantees by State

158. (omitted)⁹

*Division 3—Dividends (omitted)*¹⁰

**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 subsidiary's shareholding GOC 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 that the direction is complied with in relation to the *subsidiary*.

(3) (omitted)

Disposal of main undertakings

162. (omitted)¹¹

⁹ Section 158 is not applied under this regulation. The section applies to subsidiaries under its own force.

¹⁰ Division 3 is not applied under this regulation. The Division applies to subsidiaries under its own force.

¹¹ Section 162 is not applied under this regulation. The section applies to subsidiaries under its own force.

SCHEDULE (continued)

Acquiring and disposing of subsidiaries

163. *(omitted)*¹²

PART 16—EMPLOYEES *(omitted)*¹³

PART 17—OTHER MATTERS

Division 1—Subsidiaries generally

Application of Electoral and Administrative Review Act

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

Application of Chapter to GOC subsidiaries by regulation

177. *(omitted)*¹⁴

Division 2—Statutory GOC subsidiaries

Subsidiary's seal

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

¹² Section 163 is not applied under this regulation. The section applies to subsidiaries under its own force.

¹³ Part 16 is not applied under this regulation. The Part applies to subsidiaries under section 164 (Part applies to subsidiaries) of the Act.

¹⁴ Section 177 gives authority for this regulation.

SCHEDULE (continued)

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

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

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

Authentication of documents

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

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

Judicial notice of certain signatures

180. Judicial notice must be taken of—

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

Application of Criminal Justice Act

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

SCHEDULE (continued)

Application of Parliamentary Commissioner Act 1974

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

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

(2) In this section—

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

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

Division 3—Company GOCs (omitted)

SCHEDULE (continued)

APPENDIX 1**ADDITIONAL PROVISIONS RELATING TO BOARD
OF STATUTORY GOC *SUBSIDIARY***

section 94 of this Schedule

PART 1—COMPOSITION OF BOARD**Composition of board**

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

Chairperson and deputy chairperson

2.(1) The Governor in Council may appoint a director to be the board's chairperson and another director to be the board's deputy chairperson.

(2) The deputy chairperson is to act as chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or is, for another reason, unable to perform the functions of the office.

SCHEDULE (continued)

**PART 2—MEETINGS AND OTHER BUSINESS OF
BOARD**

Meaning of “required minimum number” of directors

3. In this Part—

“required minimum number” of directors means the number that is half the number of directors of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

Conduct of meetings and other business

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

Times and places of meetings

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

(2) However, the chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by at least the required minimum number of directors.

Presiding at meetings

6.(1) The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

(3) If both the chairperson and deputy chairperson are not present at a

SCHEDULE (continued)

meeting, the director chosen by the directors present at the meeting is to preside.

Quorum and voting at meetings

7.(1) At a meeting of the board—

- (a) the required minimum number of directors constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

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

Participation in meetings by telephone etc.

8.(1) The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication.

(2) A director who participates in a meeting of the board under a permission under subclause (1) is taken to be present at the meeting.

Resolutions without meetings

9.(1) If at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors

SCHEDULE (continued)

do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

(2) If a resolution is, under subclause (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

Minutes

10. The board must keep minutes of its proceedings.

PART 3—PROVISIONS RELATING TO DIRECTORS

Appointment of directors

11.(1) A director is to be appointed by the Governor in Council for a term of not more than 5 years.

(2) In appointing a person as a director, the Governor in Council must have regard to the person's ability to make a contribution to the *subsidiary's* commercial performance and implementation of its *shareholding GOC's* statement of corporate intent.

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

Terms of appointment not provided for under Act

12.(1) In relation to matters not provided for under this Act, a director holds office on the terms of appointment determined by the Governor in Council.

SCHEDULE (continued)

(2) Except as determined by the Governor in Council, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or
- (b) in connection with retirement from office, or other termination of office, as a director.

Appointment of acting director

13. The Governor in Council may appoint a person to act as a director during any period, or all periods, when a director is absent from duty or is, for another reason, unable to perform the functions of the office.

Resignation

14.(1) A director, or person appointed under clause 2 (Chairperson and deputy chairperson), may resign by signed notice given to the Governor.

(2) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

Termination of appointment as director

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

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

SCHEDULE (continued)

APPENDIX 2**ADDITIONAL PROVISIONS RELATING TO CHIEF
EXECUTIVE OFFICER OF STATUTORY GOC
SUBSIDIARY**

section 101 of this Schedule

Appointment of chief executive officer

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

(2) *However, before the subsidiary's board makes the recommendation, it must consult with its shareholding GOC's board of directors.*

Appointment of acting chief executive officer

2. The *subsidiary's* board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or is, for another reason, unable to perform the functions of the office.

Terms of appointment not provided for under Act

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

SCHEDULE (continued)

Resignation

4. The chief executive officer may resign by signed notice given to the chairperson of *the subsidiary's board*.

Termination of appointment

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

(2) The termination of the appointment of the chief executive officer under subclause (1) does not affect any rights to compensation to which the chief executive officer is entitled under the terms of the chief executive officer's appointment.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Government Owned Corporations (Statutory GOC Subsidiaries) Regulation 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

**Government Owned Corporations (Statutory GOC Subsidiaries) Regulation
1994 SL No. 447**
notfd Gaz 16 December 1994 pp 1792–7
commenced on date of notification