



# Gladstone Power Station Agreement Act 1993

Reprinted as in force on 1 January 2011

Reprint No. 2A

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This Act is reprinted as at 1 January 2011. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

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Queensland

# Gladstone Power Station Agreement Act 1993

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# Gladstone Power Station Agreement Act 1993

[as amended by all amendments that commenced on or before 1 January 2011]

**An Act authorising the making of an agreement about the sale of the Gladstone Power Station, and for related purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Gladstone Power Station Agreement Act 1993*.

### 2 Definitions

In this Act—

*Commission* has the meaning given by the Electricity Act.

*Electricity Act* means the *Electricity Act 1994*.

*Gladstone Power Station* has the meaning given in the State agreement.

*GPS licensee* has the meaning given in the State agreement.

*Land Act* means the *Land Act 1962*.

*licence* means the licence issued by the Minister for Energy under the State agreement.

*Minister for Energy* means the Minister responsible for the administration of the Electricity Act.

*operator* has the meaning given in the State agreement.

*participants* has the meaning given in the State agreement.

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***Power Station Sale Agreement*** has the meaning given in the State agreement.

***receiving and delivery arrangement*** means an arrangement between each of the participants and the Commission under which electricity is—

- (a) received by the Commission from each of the participants; and
- (b) delivered by the Commission to customers of each of the participants.

***smelter*** has the meaning given in the State agreement.

***State agreement*** means the agreement made under section 3, and the agreement as amended by a further agreement under section 5 or 6.

***State body*** has the meaning given in the State agreement.

***transaction document*** has the meaning given in the State agreement.

## **Part 2 State agreement**

### **3 Minister may make agreement substantially in form of agreement**

- (1) The Minister is authorised to make, for the State, an agreement substantially in the form of the agreement set out in schedule 1.
- (2) The Minister must notify, by gazette notice—
  - (a) the names of the parties to the agreement; and
  - (b) the day of the making of the agreement.
- (3) The agreement is not effective unless it is made by—
  - (a) 31 March 1994; or
  - (b) if a later day is prescribed by regulation—the later day.

- (4) A regulation made after 31 March 1994 may prescribe a later day.

#### **4 State agreement has force of law**

- (1) The State agreement has effect as if it were part of this Act.
- (2) If the State agreement is inconsistent with an Act, the State agreement prevails over the Act to the extent of the inconsistency.
- (3) Nothing in this Act, the State agreement or a transaction document restricts the Parliament in making laws affecting the rights or obligations of any party under the State agreement or a transaction document.

#### **5 Amendment of State agreement**

- (1) The State agreement may be amended by a further agreement between the Minister and the other parties to the State agreement.
- (1A) Without limiting subsection (1), the further agreement may add or delete a party to the State agreement.
- (2) The further agreement is made by the Minister for the State.
- (3) The Minister may make a further agreement only if the proposed further agreement has been approved by an Act or regulation.
- (4) The Minister must notify the day of the making of the further agreement by gazette notice.

#### **5A Approval of proposed further agreement**

- (1) For section 5, approval is given for the Minister to enter into a further agreement for the State.
- (2) The further agreement is to be in, or substantially in, the form set out in schedule 2.

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## **6 Amendment of Second Schedule to State agreement**

- (1) The Second Schedule to the State agreement may be amended by a further agreement between the chief executive of the department principally administering environmental planning and the other parties to the State agreement.
- (2) The further agreement is made by the chief executive for the State.
- (3) The chief executive may make a further agreement only if the proposed further agreement has been approved by an Act or regulation.
- (4) The chief executive must notify the day of the making of the further agreement by gazette notice.

## **7 Enforcement of State agreement**

- (1) The State agreement may be enforced only by, or for, a party to the State agreement or a successor or permitted assign of a party.
- (2) Subsection (1)—
  - (a) applies subject to section 55 (Contracts for the benefit of third parties) of the *Property Law Act 1974*; and
  - (b) does not apply to the enforcement of a law that applies under, or is amended by, the State agreement.

# **Part 3 State and other agreements**

## **8 Application of part**

This part applies despite any other Act.



## **9 Arrangements for making agreements**

The Minister may direct State instrumentalities (including local authorities) and all other entities of the State to make arrangements about the making of the State agreement and associated agreements to facilitate the timely making of the agreements.

## **10 Performance of State agreement**

The State, Ministers, State instrumentalities (including local authorities) and all other entities of the State are authorised and required to do all things necessary or convenient to perform and give effect to—

- (a) directions by the Minister under section 9; and
- (b) the State agreement.

## **11 Commission authorised to sell Gladstone Power Station**

The Commission—

- (a) is authorised to make the Power Station Sale Agreement; and
- (b) may do all things necessary or convenient to enable it to perform its obligations and exercise its entitlements under the agreement.

## **12 State bodies authorised to act under transaction documents**

A State body mentioned as a party to an agreement that is a transaction document—

- (a) is authorised to make the agreement; and
- (b) may do all things necessary or convenient to enable it to perform its obligations and exercise its entitlements under the agreement.

## **Part 4                      Licence**

### **13        Issue of licence**

- (1) The Minister for Energy must issue a licence to the GPS licensee as required by the State agreement.
- (2) The licence is taken to be a special approval under the *Electricity Act 1994* authorising the following activities if done in accordance with the licence—
  - (a) connection of the generating plant at the Gladstone Power Station to a transmission grid or supply network;
  - (b) supplying electricity.
- (3) Sections 60, 61, 211C and 212 of the Electricity Act do not apply to the licence or the issuing of the licence but the holder of the special approval holds the approval subject to the conditions stated in the licence.
- (4) Sections 14 to 17 are taken to be provisions of the Electricity Act.

### **14        Amendment of licence**

- (1) The licence may be amended by the Minister for Energy if each of the participants agrees.
- (2) The Minister for Energy must notify full details of an amendment of the licence by gazette notice.

### **15        Revocation of licence**

- (1) The Minister for Energy may revoke the licence at any time by written notice to each of the participants.
- (2) Subsection (1) applies only if an event specified in the licence as a ground for revocation of the licence happens.

**16 Termination of licence**

The licence is terminated if an event specified in the licence as causing termination of the licence happens.

**17 Assignment, mortgage or charge of licence**

The licence, or an interest in the licence, may be assigned, mortgaged or charged on the terms specified in the licence.

**18 Receiving and delivery arrangements authorised**

- (1) The Commission is authorised to undertake receiving and delivery arrangements while the licence is in force.
- (2) When the Commission undertakes the receiving and delivery arrangements, it is the doing of a thing the Commission is required to do under the Electricity Act.

**19 Minister for Energy must not fix prices for supply under licence**

- (1) The Minister for Energy must not fix or control prices of, or methods of charging for, electricity supplied under the licence.
- (2) Subsection (1) applies despite the Electricity Act.
- (3) Subsection (1) does not prevent the Commission from—
  - (a) agreeing with each of the participants or another person on prices or methods of charging; or
  - (b) charging for its services under receiving and delivery arrangements.

## Part 6                      Miscellaneous

### 25            **Unimproved value of power station land**

- (1) A determination under section 207D of the Land Act of the unimproved value of the power station land must be \$1.
- (2) The purchasing price to be specified in the written offer to the Commission under section 207C(a) or 207G(1)(a) of the Land Act must be \$1.
- (3) If the application is made before this Act commences, this section is taken to have commenced immediately before the application was made.
- (4) In this section—

*application* means the application made by the Commission under section 207(1) of the Land Act to purchase an estate in fee simple in the power station land.

*power station land* means the part of the land contained in Special Lease No. 19/42584 for which the Commission makes the application.

### 26            **Certificate of employees' rights at completion of sale of Gladstone Power Station**

- (1) Within 30 days after the completion of the sale of the Gladstone Power Station, the Commission must give a written certificate to each person who—
  - (a) immediately before the completion was an employee of the Commission at the Gladstone Power Station; and
  - (b) immediately after the completion becomes an employee, other than of the Commission, at the Gladstone Power Station.
- (2) The certificate must state—
  - (a) the leave entitlements that had accrued to the person immediately before the completion as an employee of

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- the Commission less leave taken (whether as leave or by way of payment instead of the leave); and
- (b) the day from which the person's service has been regarded as continuous service as a person employed in the electricity supply industry; and
  - (c) the person's salary classification immediately before the completion.
- (3) In subsection (2)—
- leave* includes annual leave and long service leave (or service that would be counted towards long service leave).
- (4) A person to whom a certificate under subsection (1) should have been given may ask—
- (a) if a certificate has not been given—that a certificate be given; or
  - (b) if a certificate has been given and the person claims that the information contained in the certificate is inaccurate—that an accurate certificate be given.
- (5) The person must make the request under subsection (4) within 30 days of—
- (a) the giving of the certificate; or
  - (b) the completion of the sale;
- whichever is the later.
- (6) The Commission must comply with the request within 30 days of receiving it.

## **27 Employees' superannuation**

- (1) Regulations may be made under the Electricity Act amending the effect of the Articles of the Queensland Electricity Supply Industry Employees' Superannuation Scheme and the Rules for the Queensland Electricity Industry Employer-funded Accumulations Superannuation Fund with respect to the benefits and entitlements and consequent functions of persons who—

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- (a) immediately before the completion of the sale of the Gladstone Power Station under the Power Station Sale Agreement, are employees of the Commission; and
  - (b) on the completion, become employees, other than of the Commission, at the Gladstone Power Station.
- (2) Despite section 380(1) of the *Electricity Act 1976*, an employee—
- (a) to whom the subsection applied; and
  - (b) who elected to transfer from the State Service Superannuation Fund to the State Public Sector Superannuation Scheme; and
  - (c) who has been excepted from the State Public Sector Superannuation Scheme under section 3.4(4) of the *Superannuation (State Public Sector) Act 1990*; and
- Editor's note—*
- Section 3.4(4) was renumbered as section 13(4) under the *Superannuation (State Public Sector) Act 1990*, section 4.18.
- (d) who is employed in the electricity supply industry; becomes a member of the Queensland Electricity Supply Industry Employees' Superannuation Scheme.

## 28 Records

The records that the Power Station Sale Agreement requires the Commission to deliver to the participants are not public records under the *Public Records Act 2002*.

## 30 Trade Practices Act exceptions

The Governor in Council may, if it is necessary or desirable to do so to avoid contravention of a provision of Part IV of the *Competition and Consumer Act 2010* (Cwlth), by regulation specifically authorise or approve—

- (a) the establishment of a joint venture for the acquisition or operation of the Gladstone Power Station; and

- (b) the acquisition of the Gladstone Power Station by the participants; and
- (c) the making of and giving effect to a transaction document; and
- (d) the making of and giving effect to an agreement for the supply or acquisition of goods or services (including electricity, coal and rail freight) by or to the operator or a participant about the operation of the Gladstone Power Station; and
- (e) the giving effect to existing agreements about the smelter and its operation; and
- (f) the making of and giving effect to arrangements about the operation or expansion of the smelter.

### **31 Regulation-making power**

The Governor in Council may make regulations for the purposes of this Act (including the State agreement).

## Schedule 1 State agreement

### section 3

*Editor's note—*

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

**THIS AGREEMENT** is made the                      day of                      1993.

**BETWEEN**

- I. The Honourable Wayne Keith Goss, the Premier of Queensland and Minister for Economic and Trade Development for Queensland, for and on behalf of the State of Queensland (“**the State**”);
- II. #                      (the “**Participants**” and each a “**Participant**”); and
- III. #                      (the “**Operator**”).

**RECITALS—**

- A. The Participants are negotiating to purchase from the Queensland Electricity Commission the Gladstone Power Station and are negotiating a number of agreements relating to or connected with the acquisition and operation of the Gladstone Power Station.
- B. The Participants propose to purchase the Gladstone Power Station to facilitate the supply of power to the Boyne Island aluminium smelter, which it is proposed, once expanded, will have an annual production capacity of approximately 460000 tonnes of aluminium.
- C. The Participants have requested the State to provide certain undertakings and assurances relating to the acquisition by the Participants and future operation by the Participants and the Operator of the Gladstone Power Station.



- D. Recognising the benefits to the State from the involvement of the Participants in the acquisition and operation of the Gladstone Power Station, the State has agreed to provide those undertakings and assurances in accordance with and subject to the terms of this Agreement.

**IT IS AGREED—**

## **Part I Preliminary**

### **1 Definitions**

In this Agreement, unless the context otherwise requires or indicates—

“**Acquire**” has the same meaning in relation to an interest in a corporation as it has under subsection 56FA(1) of the Stamp Act as if the prescribed provisions (as defined in section 56F of the Stamp Act) applied to that corporation and “**Acquisition**” has a corresponding meaning;

“**Acquirer**” means a person who has made an Acquisition;

“**Agreement Act**” means the *Gladstone Power Station Agreement Act 1993*;

“**ash**” means ash produced from the burning of coal in the operation of the GPS;

“**Ash Management Agreement**” means the agreement to be entered into between each of the Participants, the Gladstone Port Authority, the Gladstone City Council, the Minister for Industrial Development of Queensland, Queensland Railways and The Director-General, Department of Transport for the management of ash disposal matters over the life of the GPS from the Date of Transfer;

“**BSL**” means Boyne Smelters Limited (A.C.N. 010 061 935);

“**Business Day**” means any day other than a Saturday, Sunday or bank or public holiday;

**“Callide Assignment Deed”** means the deed that may be entered into between QEC, each of the Participants and the Callide Co-Venture under which QEC will assign to each of the Participants part of its right, title and interest in the Callide Coal Supply Agreement with the consent of the Callide Co-Venture;

**“Callide Coal Supply Agreement”** means the agreements dated 20 August 1987 and 12 October 1989 between QEC of the one part and the Callide Co-Venture of the other part for the supply and sale of coal by the Callide Co-Venture to QEC and any agreement or agreements in substitution or replacement of them;

**“Callide Co-Venture”** means The Shell Company of Australia Limited (A.C.N. 004 610 459) and Australian Mutual Provident Society (A.R.B.N. 008 387 371);

**“Callide On-Sale Contract”** means the agreement that may be entered into between QEC and each of the Participants for the sale of coal by QEC to each of the Participants from coal to be purchased by QEC from the Callide Co-Venture under the Callide Coal Supply Agreement;

**“Capacity Purchase Agreement”** means an agreement to be entered into between QEC and each Participant separately under which the Participant will maintain a capacity to supply electricity from the GPS to QEC, and QEC will pay to the Participant a capacity charge referable to the capacity to supply maintained by the Participant;

**“Comalco”** means Comalco Limited (A.C.N. 004 502 694);

**“Contaminated Land Act”** means the *Contaminated Land Act 1991* (as amended);

**“Curragh Coal Supply Agreement”** means the agreement dated 30 January 1981 (as amended) between QEC of the one part and Anaconda Australia Inc., ACI Operations Pty Ltd, ACI Coal Limited, R.W. Miller & Company Pty Limited and Mitsui Coal Development (Australia) Pty Ltd of the other part for the supply and sale of coal to QEC;

**“Curragh On-Sale Contract”** means the agreement to be entered into between QEC and each of the Participants for the

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sale of coal by QEC to each of the Participants from coal purchased by QEC under the Curragh Coal Supply Agreement;

**“Date of Transfer”** means the date of completion of the sale by QEC to the Participants of the GPS under the Power Station Sale Agreement;

**“Disponsor”** means a person who has made a Disposal;

**“Dispose”** means, in relation to any property, assign, transfer, convey, settle, gift, deal with, declare a trust in respect of or otherwise dispose of the property and **“Disposal”** has a corresponding meaning;

**“Electricity Act”** means the *Electricity Act 1976* (as amended);

**“Environment”** includes—

- (a) ecosystems in their constituent parts including people in the community; and
- (b) all natural and physical resources; and
- (c) those qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect the matters referred to in paragraphs (a), (b) and (c) or that are affected by those matters;

**“Environmental Legislation”** means an Act of the State that has as its object, purpose or effect or one of its objects, purposes or effects any 1 or more of—

- (a) the protection of the Environment from harm or degradation; or
- (b) the prevention, control, abatement or investigation of Pollution or its effects; or
- (c) the regulation of waste, waste generation or waste disposal; or

- (d) the regulation of discharges to the Environment; or
- (e) the prevention, control, abatement, remediation or mitigation of contamination or Pollution;

**“First Power Agreement”** means the agreement dated 20 June 1972 as amended to 12 August 1992 between QEC, formerly known as the State Electricity Commission of Queensland, the State and Comalco for the supply of electricity to the Smelter;

**“Five Year Bond Rate”** means, on any day, the rate that is the assessed secondary market yield, in respect of 5-year non-rebate Commonwealth Treasury bonds, published by the Reserve Bank of Australia in respect of the month in which the day falls;

**“Gladstone City Council”** means the Council of the City of Gladstone constituted under the *Local Government Act 1936* (as amended);

**“Gladstone Power Station”** and **“GPS”** mean the coal-fired electricity generating facility and the associated combustion turbine located at Gladstone, Queensland, together with all plant, equipment, transformers, switch gear, protective devices, fuel handling and residue disposal infrastructure, all real property, fixtures and other associated property, both real and personal, owned, leased, controlled, operated or managed in connection with, or necessary for the proper operation of, the Gladstone Power Station;

**“GPS Environmental Policy Schedule”** means the Second Schedule to this Agreement;

**“GPS Licence”** means the licence to supply electricity from the GPS the form of which is set out in the First Schedule to this Agreement;

**“GPS Licensee”** means the person nominated by each Participant as its nominee to whom the GPS Licence is to be issued in accordance with this Agreement;

**“GPS Site”** means the following lands for so long as the Participants hold an estate or interest in them—

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- (a) the lands in which the Participants acquire an estate or interest under the Power Station Sale Agreement;
  - (b) the lands adjacent to the GPS in which the Participants acquire an estate or interest at or about the Date of Transfer for purposes incidental to, or associated with, the operation of the GPS (but excluding any lands in which the Participants acquire an estate or interest under the Ash Management Agreement);

**“Initial Participant”** means a Participant which is an initial signatory to this Agreement;

**“Initial Transaction Documents”** means those Transaction Documents referred to in paragraphs (a) to (k) (inclusive) of the definition of “Transaction Document”;

**“Interconnection and Power Pooling Agreement”** means the agreement to be entered into between QEC and each of the Participants under which—

- (a) the GPS will be taken to be interconnected with the System (as defined in the agreement); and
- (b) there will be Mutual Capacity Support (as defined in the agreement) provided by or to QEC and/or each of the Participants; and
- (c) there will be a pooling of Energy (as defined in the agreement) between QEC and each of the Participants; and
- (d) there will be regulations providing for the integration of the GPS into the System; and
- (e) there will be charges payable by QEC to each of the Participants and/or by each of the Participants to QEC;

**“Inter Creditor Deed”** means the deed to be entered into between (among others) QEC, each of the Participants and the banks and financial institutions that advance monies for the acquisition of the GPS;

**“interest”** in relation to a corporation has the same meaning as in subsection 56FN(1) of the Stamp Act;

**“Joint Venture”** means the unincorporated joint venture formed or to be formed by the Participants for purposes including the acquisition (as tenants in common in undivided shares) of the GPS from QEC and the operation and maintenance of the GPS;

**“Local Authority”** means the Gladstone City Council and any local authority or joint local authority board constituted under the *Local Government Act 1936* (as amended) having jurisdiction in relation to the Local Authority Area in which the GPS Site is situated;

**“Local Authority Area”** means the area over which a Local Authority has jurisdiction including any place under the control of the Local Authority outside the boundaries of the area;

**“Long Term Investor”** means a person or corporation, other than an Initial Participant, who, in relation to the acquisition of an interest described in Clause 18(e), executes and delivers to the State a statutory declaration in a form satisfactory to the State declaring an intention to hold the whole of the interest so acquired for a continuous period of at least 7 years from the date of the acquisition in question;

**“Minister”** means the Minister of the Crown for the time being responsible for the administration of the Agreement Act;

**“Minister for Energy”** means the Minister of the Crown for the time being responsible for the administration of the Electricity Act;

**“Operator”** includes the successors and permitted assigns under this Agreement of the Operator;

**“Participant”** includes the successors and permitted assigns under this Agreement of a Participant;

**“Participants Charge”** means a charge in favour of QEC to be granted by each Participant over its interest in certain of the Relevant Assets;

**“Permit”** includes a permit, licence, consent, approval, exemption, permission or other authorisation;

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**“Planning Legislation”** means legislation relating to the zoning or use of land including, without limitation, the *Local Government Act 1936* (as amended) and the *Local Government (Planning and Environment) Act 1990* (as amended);

**“Planning Scheme”** has the same meaning as defined in the *Local Government (Planning and Environment) Act 1990* (as amended);

**“Pollution”** means a discharge, emission or deposit of anything in any state or combination of states, however caused, which brings about or causes or may be reasonably expected to bring about or cause any deterioration, degradation, harm or damage to the Environment so as to create or be likely to create the following conditions—

- (a) a risk to the health of any person or conditions unsuitable for occupation or any material use;
- (b) a material degradation in the capacity to support life;
- (c) a requirement to remediate or clean up to any extent;

**“Power Station Sale Agreement”** means the agreement to be entered into between QEC and the Participants under which, among other things, the GPS is to be purchased by the Participants from QEC;

**“QEC”** means the Queensland Electricity Commission together with its successors and assigns;

**“Queensland Railways”** includes its successors and assigns;

**“Rail Haulage Agreement”** means the deed to be entered into between Queensland Railways and each of the Participants under which Queensland Railways will rail coal to the GPS and each of the Participants will pay to Queensland Railways charges for rail haulage;

**“Refurbishment and Testing Deed”** means the deed between QEC and Comalco dated 10 May 1993 for the refurbishment of the GPS and includes any replacement deed contemplated by it;

**“Refurbishment Works”** means the works for the refurbishment of the GPS that are the subject of or contemplated by the Refurbishment and Testing Deed;

**“related person”** means, in relation to any corporation, a related body corporate (as defined in the Corporations Law) of that corporation or the trustee of a trust of which that corporation, or a related body corporate of that corporation, is a beneficiary;

**“Relevant Assets”** means—

- (a) all of the assets and undertaking of the Joint Venture; and
- (b) the interests and rights of Participants under this Agreement, the GPS Licence and the Transaction Documents; and
- (c) the interests and rights of Participants under any agreement entered into by them for, or in connection with, the sale of their respective shares of electricity generated at the GPS (or their capacity to supply it); and
- (d) if the Callide Assignment Deed is entered into, the interests and rights of Participants under the Callide Coal Supply Agreement; and
- (e) the interests and rights of Participants under any other agreements entered into by or on their behalf for purposes connected with the Joint Venture or the GPS;

**“Relevant Percentage”** means—

- (a) in relation to the year commencing on the Date of Transfer, the rate per cent a year that is the aggregate of the Five Year Bond Rate on that date and 6% a year; and
- (b) in relation to each subsequent year, the rate per cent a year that is the aggregate of the Five Year Bond Rate on the first day of the year and 6% a year;

**“Seawater Usage Agreement”** means the agreement to be entered into between the Gladstone Port Authority and each of the Participants for the use of seawater in connection with the operation of the GPS;



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**“Smelter”** means the aluminium smelter located at Boyne Island owned by BSL including, where the context so requires, the Third Potline;

**“Smelter Expansion”** means the construction and commissioning of the Third Potline;

**“Smelter Upgrade”** means the improvements to be made to the existing 2 potlines of the Smelter to increase their annual production capacity to approximately 260000 tonnes of aluminium;

**“Stamp Act”** means the *Stamp Act 1894* (as amended);

**“State Body”** means any one or more of QEC, Queensland Railways, Gladstone Port Authority, Gladstone City Council, the Minister for Industrial Development of Queensland and The Director-General, Department of Transport each together with its successors and assigns;

**“statutory body”** means a body constituted by or under an Act of the State for a public purpose;

**“Third Potline”** means the third potline having an annual production capacity of approximately 200000 tonnes of aluminium that, it is anticipated, will be constructed at the Smelter;

**“Transaction Document”** means each of—

- (a) any Capacity Purchase Agreement; and
- (b) the Interconnection and Power Pooling Agreement; and
- (c) the Power Station Sale Agreement; and
- (d) the Ash Management Agreement; and
- (e) the Rail Haulage Agreement; and
- (f) the Curragh On-Sale Contract; and
- (g) the Seawater Usage Agreement; and
- (h) the Refurbishment and Testing Deed; and
- (i) the Inter Creditor Deed; and
- (j) the Participants Charge; and

- (k) the Callide Assignment Deed or the Callide On-Sale Contract, whichever is entered into; and
- (l) any permitted variations of any of the documents mentioned in paragraphs (a) to (k).

## **2 Interpretation**

In this Agreement, unless the context otherwise requires—

- (a) words importing the singular include the plural and vice versa; and
- (b) words importing any gender include the other gender; and
- (c) references to persons include corporations, bodies corporate, associations, statutory authorities and bodies politic; and
- (d) references to a corporation that is a party to this Agreement means and includes the corporation, its successors in title and permitted assigns; and
- (e) references to this or any other document include the document as varied or replaced despite any change in the identity of the parties to the document; and
- (f) headings do not affect the construction or interpretation of this Agreement; and
- (g) references to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by any other person in its place are taken to refer to the person established or constituted in its place or by which its functions have become exercisable; and
- (h) a reference to an Act or legislation includes any regulations, rules, by-laws, ordinances and orders made under that Act or legislation and a reference to an Act, legislation, regulation, rule, by-law, ordinance or order includes an amendment, re-enactment, variation or extension of it or statutory provision substituted for it; and

- (i) references to parts, recitals, clauses and schedules are references to the Parts, Recitals, Clauses and Schedules of this Agreement and references to this Agreement include its Recitals and Schedules; and
- (j) derivatives of defined words have a corresponding meaning.

### **3 Authority to enter into Agreement**

The State acknowledges and confirms that approval has been given by the Agreement Act for the Minister, for and on behalf of the State, to enter into this Agreement.

### **4 Authority of the Minister**

The Minister has authority to decide all matters on behalf of the State relating to this Agreement unless specified in this Agreement to the contrary.

### **5 Conditions precedent**

- (a) Part I and Part VI of this Agreement take effect on the date of this Agreement.
- (b) The remainder of this Agreement does not come into effect until each of the Initial Transaction Documents, in a form acceptable to the Minister, has been executed.
- (c) If the condition precedent specified in paragraph (b) is not completely fulfilled or waived within 14 days of the execution of this Agreement, or by a later date agreed to by each party within 14 days of the execution of this Agreement, then this Agreement may be terminated by the State giving written notice to the other parties.

### **6 Minister's copies of Transaction Documents**

Promptly after executing a Transaction Document the Participants will ensure that an accurate copy of the Transaction Document is given to the Minister.

**7 Agreement to have force of law**

The parties acknowledge that, under section 4 of the Agreement Act, on this Agreement being entered into and the conditions precedent in Clause 5 being fulfilled, the provisions of this Agreement have effect as if the Agreement were part of the Agreement Act.

**Part II Obligations of the state**

**8 Electricity rationing orders**

The Minister for Energy will not prohibit, restrict, control or regulate the supply of electricity by QEC to the Smelter by an electricity rationing order if the order would prevent QEC from complying with its obligations under Clause 7 of the Interconnection and Power Pooling Agreement.

**9 Issue of GPS Licence**

On the Date of Transfer, the Minister for Energy will issue the GPS Licence to the GPS Licensee.

**10 Credit support**

- (a) For the purpose of this Clause 10—
- (i) **“Monetary Obligation”** means an obligation to pay money whether in debt or damages including damages for breach of any non-monetary obligation;
  - (ii) **“Power Agreements”** means the Interconnection and Power Pooling Agreement and each of the Capacity Purchase Agreements;
  - (iii) **“QEC”** includes as the case may be—
    - (A) an entity which becomes obliged to perform all or any of the QEC Obligations;
    - (B) any assignee of all or any of the QEC Obligations;

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- (iv) **“QEC Guarantor”** means any entity which enters into a guarantee in favour of each of the Participants to guarantee the QEC Obligations, which guarantee—
- (A) is unconditional and, subject to paragraph (c), irrevocable; and
  - (B) is expressed not to be discharged by the grant of any time, waiver or indulgence, the liquidation, dissolution or insolvency of any person, any variation to or invalidity of any document or agreement or any other event or circumstance which would or might operate to release or discharge a surety; and
  - (C) excludes any obligation on the part of a Participant to marshal or appropriate in favour of the guarantor any other security or guarantee or other funds or assets to which the Participant has a claim; and
  - (D) excludes the right of the guarantor to be subrogated to or claim the benefit of any other security interest or guarantee held by a Participant or to prove in the liquidation of QEC in competition with a Participant; and
  - (E) is reinstated upon any payment by or transaction entered into with QEC being declared or conceded to be void, voidable or otherwise capable of being set aside; and
  - (F) contains such other provisions as would reasonably be expected to be included in an unconditional guarantee;
- (v) **“QEC Obligations”** means all of the Monetary Obligations of QEC under the Power Agreements (including any Monetary Obligation in respect of which QEC might be in default and any other accrued or unsatisfied Monetary Obligation of QEC);
- (vi) **“QEC Rating”** means a credit rating of QEC in relation to its domestic debt as determined by S & P Australian Ratings on the basis that the rating specifically disregards any implicit or explicit support for QEC by

the State (if QEC is a State instrumentality) other than any credit support given by the State in order to restore the QEC Rating to an 'A' Rating in compliance with its undertaking in paragraph (b);

- (vii) **“QEC Guarantor Rating”** means a credit rating of a QEC Guarantor in relation to its domestic debt as determined by S & P Australian Ratings on the basis that the rating specifically disregards any implicit or explicit support for the QEC Guarantor by the State (if the QEC Guarantor is a State instrumentality) other than any credit support given by the State in order to restore the QEC Guarantor Rating to an 'A' Rating in compliance with its undertaking in paragraph (b);
- (viii) **“Rating”** means a credit rating determined by S & P Australian Ratings;
- (ix) **“Rating Period”** means a period commencing on the Date of Transfer and expiring on the first to occur of the following events—
  - (A) the date upon which the balance of debt outstanding in respect of the initial project financing for the Participants' acquisition of the GPS has been fully and finally repaid, unless there is a refinancing which does not increase the debt outstanding at the time of the refinancing, in which case if that refinancing (or any subsequent such refinancing in its place)—
    - (a) has a term expiring no later than 15 years from the Date of Transfer, the date on which the debt outstanding in respect of the refinancing is fully and finally repaid; or
    - (b) has a term expiring later than 15 years from the Date of Transfer, the date which is 15 years from the Date of Transfer;
  - (B) the lawful termination by QEC or the discharge (by performance, effluxion of time or otherwise) of the Interconnection and Power Pooling Agreement;

(C) 20 years from the Date of Transfer (unless at that time the initial project financing or any subsequent refinancing which does not increase the debt outstanding at the time of the refinancing has not been fully and finally repaid, substantially as a result of a failure by QEC to perform the QEC Obligations);

except that if on the occurrence of such event (other than an event described in sub-paragraph (ix)(A) above) there are accrued QEC Obligations, the Rating Period will be extended until such accrued QEC Obligations have been discharged;

(x) **“S & P Australian Ratings”** means Standard & Poor’s Australian Ratings Limited’s rating service or if—

(A) Standard & Poor’s Australian Ratings Limited or its successor or assignee ceases to rate QEC or any QEC Guarantor, then the primary internationally recognised credit rating agency that at that time rates the State at the request of the State; or

(B) at any time there is no credit rating agency that rates the State, then the credit rating agency of international repute and standing nominated by QEC and consented to by the Participants (which consent will not be unreasonably withheld).

(b) If, during the Rating Period—

(i) the QEC Rating is not equal to or above an ‘A’ Rating or there is no QEC Rating then, by not later than 90 days after receipt by the State of written notice from a Participant of that circumstance, the State will either—

(A) restore the QEC Rating to an ‘A’ Rating; or

(B) procure another entity having a Rating equal to or above an ‘A’ Rating to become the QEC Guarantor and remain the QEC Guarantor until the QEC Rating is restored to an ‘A’ Rating;

(ii) the QEC Guarantor Rating is not equal to or above an ‘A’ Rating or there is no QEC Guarantor Rating then, by not later than 90 days after receipt by the State of written

notice from a Participant of that circumstance, the State will either—

- (A) restore the QEC Guarantor Rating to an ‘A’ Rating;  
or
  - (B) procure another entity having a Rating equal to or above an ‘A’ Rating to become the QEC Guarantor and remain the QEC Guarantor until the QEC Guarantor Rating or the QEC Rating is restored to an ‘A’ Rating;
- (iii) QEC is dissolved or wound up, the State will procure another entity having a Rating equal to or above an ‘A’ Rating to assume the QEC Obligations.
- (c) Upon the QEC Rating or any QEC Guarantor Rating being restored to an ‘A’ Rating under paragraph (b), all other QEC Guarantors (if any) will cease to be bound by any guarantees in relation to the QEC Obligations.
- (d) The sole obligations of the State under this Clause 10 are its undertakings as set out in paragraph (b) and the undertakings of the State under paragraph (b) do not impose any actual or contingent liability on the State to perform or satisfy any of the QEC Obligations. The obligation of the State in paragraph (b) will apply despite the insolvency, dissolution or winding up of QEC or a QEC Guarantor.

## **11 Non-Discrimination**

- (a) Subject to the exceptions specified in paragraphs (c), (d), (e) and (f) of this Clause 11, the State will not, and will not authorise or permit any instrumentality of the State or any body (including a statutory body), authority (including a local authority), agency or public officer of the State to, take any action or combination of actions that is discriminatory to a material extent as between the GPS or the rights, benefits or obligations of each of the Participants in relation to the GPS and other operating coal-fired power stations in the State which were operational at the Date of Transfer or the rights, benefits or obligations of the proprietors of those other coal-fired power stations.



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- (b) Without limitation, in determining whether the taking of any action or combination of actions contravenes paragraph (a), the effect of the action or combination of actions must be taken into account, including—
- (i) whether the GPS or the rights, benefits or obligations of each of the Participants in relation to the GPS is, are or would be the only thing or things affected; and
  - (ii) whether in the same circumstances other currently operating coal-fired power stations in the State which were operational at the Date of Transfer or the rights, benefits or obligations of the proprietors of those other coal-fired power stations are or would be affected and, if so, the nature and extent of that effect; and
  - (iii) whether, taken individually or in combination, some elements of the action or combination of actions are discriminatory and other elements are beneficial, in which case the net effect of the action or combination of actions will be the relevant effect for the purposes of this paragraph (b).
- (c) The exercise of a right conferred on a person by this Agreement, the Agreement Act or a Transaction Document, or the performance or satisfaction of any condition, obligation or requirement imposed on a person thereunder, does not contravene paragraph (a).
- (d) Paragraph (a) does not prevent or restrict the State, any instrumentality of the State or any body (including a statutory body), authority (including a local authority), agency or public officer of the State doing anything that is or involves—
- (i) a sale, lease or other disposal of all or part of any interest in—
    - (A) a power station;
    - (B) facilities associated with the generation by, or supply, transmission or distribution of electricity from, a power station;on terms different to those contained in this Agreement or any Transaction Document; or

- (ii) the supply of products, by-products, materials or services used or produced by, or through the operation of, a power station on terms different to those contained in this Agreement or any Transaction Document; or
- (iii) the sale, purchase or supply of electricity from a power station on terms different to those contained in this Agreement or any Transaction Document; or
- (iv) the issue of any Permit in relation to a power station which Permit is subject to conditions or provisions different to the conditions and provisions applying to an equivalent Permit issued in relation to the GPS or its operations;

and the doing of anything described in subparagraphs (i) to (iv) does not contravene paragraph (a).

- (e) Paragraph (a) does not prevent or restrict the taking of any action or combination of actions by the State, any instrumentality of the State or any body (including a statutory body), authority (including a local authority), agency or public officer of the State to enforce compliance by a Participant or the Operator with a law even though the law does not apply to QEC because QEC represents the Crown.
- (f) The making or enforcement of by-laws by the Local Authority that are of general application throughout its Local Authority Area and the granting of approval by the Governor in Council to the by-laws does not contravene paragraph (a).

## **12 No State electricity taxes**

Each Participant, BSL, the Operator and the GPS Licensee will be exempt from all taxes, levies and imposts which may be specifically imposed under an Act of the State on the generation, transmission, sale or consumption of electricity in so far as they would otherwise apply to the generation, transmission or sale of electricity to, or consumption of electricity by, BSL.

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**13 Environmental matters**

- (a) From the Date of Transfer and despite any Environmental Legislation or other law to the contrary—
- (i) the standards, parameters, conditions and requirements set out in the GPS Environmental Policy Schedule (“**Prescribed Requirements**”) apply to and regulate the environmental effects and emissions from or in connection with the GPS and its operations; and
  - (ii) environmental effects and emissions from or in connection with the GPS and its operations that conform with the Prescribed Requirements are authorised; and
  - (iii) a Permit required under any Environmental Legislation in relation to the GPS or its operations will—
    - (A) be issued to the Operator; and
    - (B) conform with the Prescribed Requirements relevant to the Permit; and
    - (C) be issued so that it is consistent with the provisions and conditions contained in the GPS Environmental Policy Schedule that are relevant to the Permit.
- (b) To the extent that the Prescribed Requirements differ from or are inconsistent with standards, parameters, conditions and requirements contained or prescribed in any Environmental Legislation, the application of that Environmental Legislation to the GPS, its operation, the Participants and the Operator is modified only to the extent of that difference or inconsistency and, in all other respects (including those mentioned in paragraph (c)), the Environmental Legislation applies with full force and effect.
- (c) To the extent to which any Environmental Legislation (as modified by paragraph (b)) is not complied with, the provisions of that Environmental Legislation in relation to offences, penalties and remedies for noncompliance with or breaches of that Environmental Legislation (as so modified) will apply.

- (d) To avoid doubt, the GPS Environmental Policy Schedule and the authority contained in subparagraph (a)(ii) remain in force only for so long as this Agreement is in force.

## **14 Ash management**

- (a) For the purposes of the Contaminated Land Act, the parties to the Ash Management Agreement and the Operator will be taken not to have caused or permitted land contamination, and not to have approved any action that causes land contamination, by disposing of ash, or permitting the disposal of ash, under the Ash Management Agreement if—
  - (i) the ash disposed of in accordance with the Ash Management Agreement conforms to the physical and/or chemical criteria specified in the GPS Environmental Policy Schedule; and
  - (ii) the rehabilitation obligations of the Participants and the Operator specified in the GPS Environmental Policy Schedule are complied with in all material respects.
- (b) If the rehabilitation obligations of the Participants and the Operator specified in the GPS Environmental Policy Schedule are complied with in all material respects, then, for the purposes of the Contaminated Land Act, the disposal of ash in accordance with the Ash Management Agreement prior to the date of termination of this Agreement is expressly authorised.
- (c) The parties to the Ash Management Agreement (and their delegates under that Agreement from time to time) are entitled to exercise their respective rights under the Ash Management Agreement despite anything to the contrary contained or implied in any Act of the State (including, without limitation, any Planning Legislation).
- (d) For the purposes of this Clause 14, a mortgagee or chargee of a Participant's rights under the Ash Management Agreement (or a receiver or a receiver and manager appointed by it) will be taken to be a party to the Ash Management Agreement.

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**15 Resumption and zoning of GPS Site**

- (a) The State will not resume or compulsorily acquire, and will not suffer or permit to be resumed or compulsorily acquired under an Act of the State, any part of the GPS Site if the resumption or compulsory acquisition would unduly prejudice or interfere with the operation of the GPS by the Participants.
- (b) For the purposes of any Planning Scheme in force in the Local Authority Area in which the GPS Site is situated—
  - (i) the GPS Site is taken to be zoned as a Special Facilities (Gladstone Power Station) Zone; and
  - (ii) the use of the GPS Site for the development or operation of the GPS (and for uses incidental to the development or the operation of the GPS) is a permitted use and the Local Authority may not require an application to be made under any Planning Legislation in respect of the permitted use of the GPS Site; and
  - (iii) the GPS Site is to remain zoned as a Special Facility (Gladstone Power Station) Zone for the term of this Agreement.

**16 Compliance with Building Act**

QEC and the Queensland Electricity Generating Board are taken to have complied in all respects with the requirements of the *Building Act 1975* (as amended) and the *Standard Building By-laws 1975* (as amended) in relation to the construction of generating units 5 and 6 at the GPS.

**Part III Rights of the state****17 State's exclusive right to reacquire the GPS**

- (a) If, subject to Force Majeure, the Smelter has not been expanded by the construction and commissioning of the Third Potline so that the Smelter is fully operable as expanded by 30 September 1998 then the State (or any statutory body nominated by the State) has the exclusive right until 1 April

2001 to acquire the GPS from the Participants and any mortgagee or receiver of any Participant's interest in the GPS (the "**Vendors**") on terms to be agreed between the State and the Vendors. The terms are to include the reinstatement of the First Power Agreement.

- (b) For the purposes of paragraph (a), "**Force Majeure**" means any event or circumstance or combination of events and circumstances which is beyond the control of BSL, examples of which are mentioned in paragraph (c), which causes or results in delay by BSL in constructing, commissioning or putting into operation the Third Potline where both such delay and the occurrence and the effects of such event and/or circumstance could not have been prevented, overcome or remedied by the exercise by BSL of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances, which standard includes (but is not limited to) the expenditure of reasonable sums of money and the application of technology known to prudent and competent persons.
- (c) Force Majeure includes, provided it satisfies the requirements of paragraph (b), the following—
- (i) fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, riots, civil commotion, malicious damage, natural disaster, sabotage, act of a public enemy, act of God, war (declared or undeclared), blockade, revolution, radioactive contamination, toxic or dangerous chemical contamination or force of nature;
  - (ii) action or inaction by a Court, Government or authority (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely best endeavours to obtain the grant);
  - (iii) strikes, lockouts, industrial and/or labour disputes and/or difficulties, workbans, blockades or picketing;
  - (iv) breakdown or failure of any facilities, machinery or equipment which by the exercise of due diligence BSL is unable to prevent or overcome provided however that such breakdown or failure has been caused by any one

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- or more of the events set out in subparagraphs (i), (ii) and (iii);
- (v) unavailability of essential equipment, goods, supplies or services that, by the exercise of due diligence or the expenditure of reasonable sums of money, BSL is unable to prevent or overcome.
- (d) The Participants will ensure that BSL—
- (i) gives written notice as soon as practicable to the Minister of any Force Majeure giving full particulars of the relevant cause; and
  - (ii) takes all reasonable steps to minimise the effect of any event of Force Majeure.

## **18 Stamp duty**

- (a) Subject to the limitation specified in paragraph (c) of this Clause 18, the following instruments and any transactions evidenced or effected by them are exempt from stamp duty under the Stamp Act—
  - (i) the Power Station Sale Agreement and any transfer or other instrument executed under it;
  - (ii) any instrument entered into by a Participant in connection with the financing of the acquisition by the Participants from QEC of the GPS, or any subsequent refinancing, that is otherwise dutiable under the ‘MORTGAGE, BOND, DEBENTURE and COVENANT’ head of charge in the Stamp Act;
  - (iii) any instrument entered into in connection with the Acquisition by a Long Term Investor of an interest in a Participant or the acquisition of all or part of the interest of a Participant in the Joint Venture and in the Relevant Assets (including any instrument providing for or securing the payment or repayment of any financing or refinancing referred to in subparagraph (ii));
  - (iv) any instrument otherwise dutiable under the ‘MORTGAGE, BOND, DEBENTURE and COVENANT’ head of charge in the Stamp Act entered

- into in connection with the financing of the Smelter Expansion and/or the Smelter Upgrade to the extent that it secures moneys borrowed or raised and used in connection with the Smelter Expansion or Smelter Upgrade;
- (v) any of the following instruments if entered into in connection with the Smelter Expansion—
    - (A) any instrument entered into in connection with the Acquisition of an interest in BSL or a shareholder in BSL;
    - (B) any transfer by a shareholder in BSL of any rights it may have under documentation relating to the Smelter;
    - (C) any restatements or amendments of documentation relating to the Smelter;
  - (vi) the Participants Charge and any collateral, auxiliary, additional or substituted security or security by way of further assurance;
  - (vii) any cross charges between the Participants and any collateral, auxiliary, additional or substituted security or security by way of further assurance.
- (b) A person who might otherwise be obliged to prepare, and lodge with the Commissioner of Stamp Duties, a statement in relation to a transaction mentioned in paragraph (a) is relieved from the obligation to do so.
  - (c) The stamp duty exemptions contained in paragraph (a) and the relief contained in paragraph (b) do not apply to any instrument executed or transaction entered into on a date more than 3 years after the Date of Transfer.
  - (d) If a Long Term Investor Disposes (otherwise than by way of mortgage) of the whole or any part of an interest described in subparagraph (a)(iii) (a “**Relevant Interest**”) within 7 years of the date of its acquisition of that Relevant Interest, that Long Term Investor must pay to the State that proportion of the stamp duty that (but for the exemption contained in paragraph (a)) would have been chargeable under the Stamp Act on the acquisition by that Long Term Investor of the



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Relevant Interest that is equal to the proportion of the Relevant Interest being Disposed of.

- (e) (i) If the Participants Dispose of the whole (or substantially the whole) of the Relevant Assets within 5 years after the Date of Transfer, then (in addition to any liability the Participants or any other person may have under the Stamp Act in respect of that Disposal), the Participants will pay to the State an amount calculated by—
  - (A) determining the stamp duty that would have been chargeable under the Stamp Act, on the Date of Transfer, on a conveyance or transfer of property (other than marketable securities) for a consideration equal to the amount by which the full value of the consideration received or derived by the Participants (and any related person of a Participant) in respect of the Disposal exceeds the Relevant Amount on the day of the Disposal in question; and
  - (B) deducting from the amount determined under subparagraph (e)(i)(A) any amount previously paid to the State under paragraph (f) or paragraph (g).
- (ii) If by 2 or more Disposals, whether involving the same or different Disponees—
  - (A) that arise from a single agreement (whenever made); or
  - (B) that together form, or arise from, substantially one transaction or one series of transactions;

the Participants Dispose of the whole (or substantially the whole) of the Relevant Assets, then, despite the provisions of paragraph (f), those Disposals are taken to constitute one and the same Disposal to which the provisions of subparagraph (e)(i) apply.

- (f) Subject to subparagraph (e)(ii), if an Initial Participant Disposes of the whole or any part of the interest held by it in the Joint Venture and in the Relevant Assets at the Date of Transfer within 5 years after the Date of Transfer, then (in addition to any liability that Initial Participant or any other

person may have under the Stamp Act in relation to that Disposal) that Initial Participant must pay to the State an amount calculated by—

- (i) determining the stamp duty that would have been chargeable under the Stamp Act, on the Date of Transfer, on a conveyance or transfer of marketable securities for a consideration equal to—

$$A - (B \times C)$$

where—

A is the full value of the consideration received or derived by that Initial Participant (or any of its related persons) in relation to the interest in question; and

B is the percentage interest of that Initial Participant in the Joint Venture at the Date of Transfer that is being Disposed of; and

C is the Relevant Amount on the day of the Disposal in question; and

- (ii) deducting from the amount determined under subparagraph (f)(i) any amount previously paid to the State by the relevant Initial Participant under subparagraph (g)(i) as a result of the Acquisition of an interest in a Relevant Corporation as mentioned in subparagraph (g)(i).
- (g) (i) If a shareholder (a **“Relevant Shareholder”**) in an Initial Participant, an unlisted corporation interposed between an Initial Participant and its ultimate holding company or an Initial Participant’s unlisted ultimate holding company (each a **“Relevant Corporation”**) Disposes of the whole or any part of the percentage indirect or direct interest held by it in that Relevant Corporation at the Date of Transfer within 5 years after the Date of Transfer, then (in addition to any liability any person may have under the Stamp Act in relation to that Disposal) the relevant Initial Participant must pay to the State an amount equal to the stamp duty that would have been chargeable under the Stamp Act on the Date

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of Transfer at the Applicable Rate on a conveyance or transfer for a consideration equal to—

$A - (B \times C \times D)$

where—

A is the full value of the consideration received or derived by the Relevant Shareholder or any of its related persons (other than by way of subscription moneys paid on the allotment or issue of any shares) in respect of the interest in question (the “**Full Consideration**”) less that proportion of the Full Consideration that the amount that would be the value of the interest in question at the time of the Disposal if the relevant Initial Participant did not at that time hold an interest in the Joint Venture and in the Relevant Assets bears to the full value of the interest in question; and

B is the Relevant Shareholder’s percentage indirect or direct interest in the Relevant Corporation at the Date of Transfer that is being Disposed of; and

C is the lesser of—

- (1) the percentage interest of the relevant Initial Participant in the Joint Venture at the date of Transfer; and
- (2) the percentage interest of the relevant Initial Participant in the Joint Venture on the date of the Disposal in question; and

D is the Relevant Amount on the date of the Acquisition in question.

(ii) For the purposes of subparagraph (g)(i)—

(A) a Relevant Shareholder is taken to Dispose of a percentage indirect or direct interest in a Relevant Corporation where, as a result of the Acquisition by a person of an interest in that Relevant Corporation, the Relevant Shareholder’s percentage indirect or direct interest in that Relevant Corporation is reduced; and

- (B) the percentage interest so Disposed of is the percentage by which the Relevant Shareholder's percentage indirect or direct interest in that Relevant Corporation is reduced.
- (iii) For the purposes of subparagraph (g)(i), the Applicable Rate is the rate applicable to a conveyance of marketable securities except where the Disposal in question is one of a number of Disposals of all interests in all Participants (whether Initial Participants or not) whether or not involving the same Disponors or different Disponors and the same Acquirers or different Acquirers—
- (A) that arise from a single agreement (whenever made) to Dispose of the same; or
- (B) that together form, or arise from, substantially one transaction or one series of transactions;
- in which case the Applicable Rate is the rate applicable to a conveyance of property other than marketable securities.
- (iv) For the purposes of subparagraph (g)(i), a corporation is taken to have been an unlisted corporation at a particular time if at the time no shares or securities in the corporation were listed for quotation in the official list of a stock exchange or securities exchange in Australia or elsewhere.
- (h) For the purposes of paragraphs (e), (f) and (g), the **“Relevant Amount”** means, on the day on which it is to be calculated (the **“Relevant Day”**), an amount equal to—
- $A + B - C$
- where—
- A is the sum of—
- (i) the purchase price paid by the Participants under the Power Station Sale Agreement for inventories; and

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- (ii) the purchase price paid by the Participants under the Power Station Sale Agreement for the GPS (other than inventories); and
  - (iii) each of the amounts expended by the Participants, or reimbursed by the Participants to QEC, under the Refurbishment and Testing Deed in relation to capital improvements effected under that Deed in the period up to the Date of Transfer; and
  - (iv) the Relevant Percentage of the aggregate of the amounts referred to in (ii) and (iii), calculated on a daily basis from the Date of Transfer to the Relevant Day and compounded on 30 June and 31 December in each year during that period; and

B is the sum of—

- (i) each of the amounts expended by the Participants in the making of capital improvements to the GPS in the period from the Date of Transfer to the Relevant Day; and
- (ii) the Relevant Percentage of each of the amounts so expended, calculated on a daily basis in relation to each of those amounts from the date on which it was expended to the Relevant Day and compounded on 30 June and 31 December in each year during that period; and

C is the sum of—

- (i) each of the daily amounts by which each capital improvement mentioned in the definitions of A and B depreciates in value in the period up to the Relevant Day (being in each case the amount determined by dividing by 365 the aggregate depreciation, if any, that would be claimable by the Participants under the *Income Tax Assessment Act 1936* (as amended) of the Commonwealth in relation to the capital improvement in question for the whole of the financial year in which the day in question falls); and

- (ii) the Relevant Percentage of each of those daily amounts, calculated in relation to each of those amounts from the date as at which it was determined to the Relevant Day and compounded on 30 June and 31 December in each year during that period.
- (i) A person liable to pay an amount to the State under one or more of paragraphs (d), (e), (f) or (g) must, on the Disposal or Acquisition in question, immediately give to the Minister written notice of the Disposal or Acquisition that gave rise to the liability, all details of or in connection with the Disposal or Acquisition and true certified copies of all documents of or incidental to the Disposal or Acquisition, together with any other information requested at any time and from time to time by the Minister to enable a calculation to be made of the amount payable.
- (j)
  - (i) Persons liable to pay an amount to the State under one or more of paragraphs (d), (e), (f) or (g) (“**Amount Due**”) must pay the Amount Due within 1 month of the date of the written demand by the Minister for the Amount Due.
  - (ii) If an Amount Due is not paid in full to the State within the 1 month period, the person liable must pay as default interest to the State until the Amount Due has been paid in full an amount equal to 3% of the unpaid Amount Due in relation to the first month after expiry of that initial 1 month period and an additional 2% of the unpaid Amount Due in relation to each further month or part of a month during which the Amount Due is not paid in full.

## Part IV Liability of parties

### 19 Liability of the State

A variation, modification or replacement of a Capacity Purchase Agreement or the Interconnection and Power Pooling Agreement from that originally entered into does not

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vary, modify or reduce the rights or add to the obligations of the State under Clause 10 in relation to credit support unless the variation, modification or replacement has the prior written approval of the Minister.

## **20 Liability of Participants**

The obligations of each Participant under this Agreement are—

- (a) several (in proportion to their respective percentage interests from time to time in the Joint Venture) as regards monetary obligations (whether in debt or in damages, including damages for breach of any non-monetary obligation); and
- (b) joint as regards non-monetary obligations.

## **Part V Mortgage, assignment and termination**

### **21 Mortgage and assignment of interests**

- (a)
  - (i) Rights and interests under this Agreement cannot be assigned, mortgaged, charged, disposed of or otherwise dealt with by a Participant or the Operator except as provided in this Clause 21.
  - (ii) An assignment, mortgage, charge, disposition or other dealing by a Participant or the Operator with rights or interests under this Agreement other than as provided in this Clause 21 is void.
- (b) A Participant and the Operator may at any time mortgage or charge all or any of its rights or interests under this Agreement with the prior written consent of the Minister, which consent will not be unreasonably withheld where the Participant or the Operator, as the case may be, first procures the mortgagee or chargee to enter into a deed of covenant in favour of the State (in such form as the Minister reasonably requires) under which the mortgagee or chargee agrees that—

- (i) in the exercise of any power of sale or other power of enforcement in the instrument creating the mortgage or charge or conferred by law, the mortgagee or chargee will be bound to comply with the provisions of this Clause 21; and
  - (ii) the mortgagee or chargee will procure an assignee of all or part of its interest in the mortgage or charge to enter into a deed of covenant in favour of the State in the same terms.
- (c) If a Participant is not in default under this Agreement, that Participant (and any person exercising power of sale under any mortgage or charge) may assign or dispose of all or any of the rights or interests of that Participant under this Agreement to an assignee or disponee of the whole of that Participant's interest or an equivalent part of that Participant's interest in the Joint Venture and in the Relevant Assets if that assignee or disponee is another Participant.
- (d) A Participant (and any person exercising power of sale under any mortgage or charge) may at any time assign or dispose of all or any of the rights or interests of that Participant under this Agreement with the prior written consent of the Minister, which consent will not be unreasonably withheld where—
  - (i) the Participant is not in default under this Agreement; and
  - (ii) the Participant is also assigning or disposing of the whole of its interest or an equivalent part of its interest in the Joint Venture and in the Relevant Assets to the assignee or disponee; and
  - (iii) the Participant first procures the assignee or disponee to enter into a deed of covenant in favour of the State (in such form as the Minister reasonably requires) under which the assignee or disponee agrees that as from the date of the assignment or disposal it will be bound by this Agreement as if named as a party to this Agreement in place of the Participant from which its interest is derived to the extent of the interest assigned or disposed of.



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- (e) The Operator may assign or dispose of the whole of its rights and interest under this Agreement with the prior written consent of the Minister, which consent will not be unreasonably withheld where—
- (i) the Operator is not in default under this Agreement; and
  - (ii) the Operator first procures the assignee or disponee to enter into a deed of covenant in favour of the State (in such form as the Minister reasonably requires) under which the assignee or disponee agrees that as from the date of the assignment or disposal it will be bound by this Agreement as if named as a party to this Agreement in place of the Operator.
- (f) (i) A Participant which has assigned or disposed of its rights and interests under this Agreement in accordance with this Clause 21 is released from its obligations under this Agreement to the extent of the interest so assigned or disposed of.
- (ii) If the Operator has assigned or disposed of the whole of its rights and interests under this Agreement in accordance with this Clause 21, the Operator is released from its obligations under this Agreement.

## **22 Termination of Agreement**

- (a) The State may terminate this Agreement without penalty by written notice to the Participants and the Operator at any time after—
- (i) the Interconnection and Power Pooling Agreement has been lawfully terminated by QEC or discharged (by performance, effluxion of time or otherwise); or
  - (ii) the State (or any statutory body nominated by the State) acquires the GPS from the Participants or a mortgagee or receiver of the Participants exercising a power of sale.
- (b) The State may terminate the obligations of the State under this Agreement to a Participant without penalty by written notice to the Participant—

- (i) at any time after the Capacity Purchase Agreement between the Participant and QEC is lawfully terminated by QEC or discharged (by performance, effluxion of time or otherwise); or
  - (ii) if the Participant goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and fails to observe a material financial obligation under a Transaction Document to which the Participant is a party (other than the Capacity Purchase Agreement between the Participant and QEC) which failure is not caused by a failure by a State Body to observe its obligations under a Transaction Document and which is not finally cured within 90 days; or
  - (iii) if the Participant is in default under any provision of this Agreement and the default is not remedied within 90 days of the date of receipt by the Participant of a notice from the Minister requiring that the default be remedied; or
  - (iv) if an amount that the Participant is liable to pay to the State under Clause 18 is not paid within 90 days of the date of the Minister's demand for payment of the amount.
- (c) At the time the State issues a notice under subparagraph (b)(iii) or (iv) to a Participant, it will also give a copy of the notice to each of the other Participants.
  - (d) A termination of this Agreement does not affect a right or liability acquired, accrued or incurred under it before its termination or a provision of this Agreement that is intended to survive termination.

## **Part VI                      General**

### **23       Notices**

- (a) A notice, notification, approval, consent, demand, election, requisition, agreement or other document or communication

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required, permitted or appropriate to be given by a party under this Agreement (“**Notice**”) must—

- (i) be in writing and signed by the party or its agent; and
  - (ii) be delivered personally or sent by ordinary mail postage prepaid or by facsimile transmission; and
  - (iii) be addressed to the party to whom it is to be given at the address or facsimile number of the party advised under paragraph (b) or at such other address or facsimile number as a party may have substituted for it by notice to the other parties.
- (b) The address and facsimile number of a party, until another address or facsimile number is substituted in accordance with Clause 23(a), is the address and facsimile number of that party as advised to the other parties on or prior to the execution of this Agreement.
- (c) (i) If a party delivers a Notice—
- (A) by hand; or
  - (B) by facsimile and the sending party completes the transmission;
- the Notice is taken to be given on the day of delivery if delivered before 4p.m. local time on a Business Day in the place of delivery and, in any other case, on the next Business Day.
- (ii) If a party gives a Notice by post, the Notice is taken to be given on the fourth day in the place of delivery after the Notice is posted unless it can be established that the Notice was not received until a subsequent date (in which case the later date is the date the Notice was given) or was not received at all.
  - (iii) If a party gives a Notice by facsimile transmission and the transmission is not fully intelligible, or if the sending party at the time of transmission has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely on this Clause 23 to prove the giving of the notice.

- (iv) The receiving party cannot object to a facsimile transmission as not being fully intelligible unless the receiving party requests re-transmission within 4 working hours (being hours between 9a.m. and 5p.m. local time on a Business Day in the place of delivery) after completion of the transmission.
- (d)
  - (i) For the purposes of this Clause 23, the Participants must nominate a person as their representative for the giving and receiving of Notices.
  - (ii) Although copies of Notices required to be given under the provisions of this Agreement to a nominated representative may also be forwarded to such other person specifically designated in writing by the nominated representative, the additional copies do not substitute for the primary service.
- (e)
  - (i) A party is entitled to rely on any communication or document believed by it to be genuine, correct and duly authorised, and to have been communicated or signed by the person by or on behalf of whom it purports to be communicated or signed, and is not liable to another person for the consequences of the reliance.
  - (ii) The appearance of the name of the person signing at the end of a facsimile transmission is sufficient evidence of signing.

## **24 Dispute resolution**

- (a) If a dispute arises between the State and any other party under or in relation to this Agreement (a **“Dispute”**), a party to the Dispute may give to the other party or parties to the Dispute a notice in writing (a **“Notice of Dispute”**) specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause.
- (b) If a party gives a Notice of Dispute, the Minister (or the Minister’s nominee) and the chief executive officer (or the chief executive’s nominee) of each of the other parties to the Dispute must meet in Brisbane within 30 days of the giving of

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the Notice of Dispute to attempt in good faith, and using their reasonable endeavours, to resolve the Dispute.

- (c) If the Dispute is not resolved within 60 days of the date on which the Notice of Dispute is given, a party to the Dispute may commence proceedings in relation to the Dispute in a Court of competent jurisdiction.

## **25 Governing law, jurisdiction and service of process**

- (a) This Agreement is governed by the laws of Queensland.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Queensland and courts of appeal from them. Each party waives any right it has to object to any action being brought in those Courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.
- (c) Without preventing another mode of service, a document in an action (including, but not limited to, a writ of summons or other originating process or any third or other party notice) may be served on a party by being delivered to or left for the party at its address for service of notices under Clause 23.

## **26 Amendment of Agreement**

This Agreement may from time to time be amended in accordance with Section 5 of the Agreement Act.

## **27 Waiver**

A provision or a right granted under this Agreement may not be waived except in writing signed by the party granting the waiver. No omission by a party to require the performance by another or the others of a term or condition of this Agreement nor a forbearance or indulgence granted or shown by a party to another or others releases, discharges or in any way affects or prejudices the right of a party at any time to require strict and full performance by another or others of any or all of the

terms or conditions to be observed or performed under this Agreement.

**28 Exercise of rights**

A party may exercise a right, power or remedy at its discretion, separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

**29 Remedies cumulative**

The rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of rights, powers or remedies provided by law independently of this Agreement.

**30 Entire understanding**

- (a) This Agreement embodies the entire understanding and Agreement between the parties as to the subject matter of this Agreement.
- (b) No oral explanation or information provided by a party, or its advisers, servants or agents, to another party affects the meaning or interpretation of this Agreement or constitutes a collateral agreement, warranty or understanding between any of the parties.

**31 Costs**

Each party must bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

**32 Ministerial amendments**

If the Minister may under this Agreement make or give conditions or directions to persons, the Minister may in the Minister's absolute discretion amend or revoke and replace

those conditions or directions but not so as to adversely affect the other parties or persons claiming through or under them.

**EXECUTED** by the parties as an Agreement.

## First schedule Licence to supply electricity

Licensee— #

Date of issue of Licence— #

# being the Minister responsible for the administration of the *Electricity Act 1976* grants to the Licensee (as nominee for each of the Participants) a licence to supply electricity subject to the following conditions—

- (a) (i) the maximum continuous capacity for Gladstone Power Station will be the Net Maximum Capacity (as defined in the Interconnection and Power Pooling Agreement) from time to time under the Interconnection and Power Pooling Agreement but in any event the Gladstone Power Station must not exceed 6 operating units of a capacity each of nominally 280MW;
- (ii) only Participants are entitled to sell or supply electricity under this Licence;
- (iii) there must be no on-supply or resale by Boyne Smelters Limited (A.C.N. 010 061 935) of electricity supplied or sold by Participants to Boyne Smelters Limited (A.C.N. 010 061 935);
- (iv) neither a Participant nor the Licensee may mortgage or charge its interest in this Licence without the prior written consent of the Minister of the Crown for the time being responsible for the administration of the *Electricity Act 1976* (the “**Minister**”), which consent will not be unreasonably withheld;
- (v) neither a Participant nor the Licensee may assign, transfer or otherwise deal with its interest in this Licence without the prior written consent of the Minister, which consent will not be unreasonably withheld if there is no default under this paragraph (a), paragraph (b) or any material provision of the *Electricity Act 1976* by a Participant or the Licensee; and



- (vi) an assignment, transfer, mortgage, charge or other dealing with this Licence other than in accordance with subparagraph (iv) or (v) is void.
- (b) The sale or supply of electricity by Participants under this Licence is only authorised to the Queensland Electricity Commission and Boyne Smelters Limited (A.C.N. 010 061 935) (and to third parties where Participants become entitled to make third party sales under the Interconnection and Power Pooling Agreement).
- (c) The Minister may revoke this Licence if a breach or default of a condition specified in paragraph (a) or (b) of this Licence or any material provision of the *Electricity Act 1976* is not remedied within 90 days of receipt by each Participant and the Licensee of notice of the breach from the Minister or the Queensland Electricity Commission.
- (d) This Licence will automatically terminate on—
- (i) lawful termination of the State Agreement; or
  - (ii) lawful termination by Queensland Electricity Commission or discharge (whether by performance, effluxion of time or otherwise) of the Interconnection and Power Pooling Agreement.
- (e) In this Licence—
- “Interconnection and Power Pooling Agreement”** means the agreement so titled between Queensland Electricity Commission and the Participants dated #;
- “Participant”** and **“Participants”** have the meanings given in the State Agreement;
- “State Agreement”** has the meaning given in the *Gladstone Power Station Agreement Act 1993*.

## Second schedule GPS environmental policy

### Part A Definitions and interpretation

0.1 In this Schedule—

“**Chief Executive**” means the Chief Executive of the Department;

“**the Department**” means the department principally administering environmental planning;

“**the Licensee**” means, where used in respect of any Part of this Schedule, the person to whom a licence is issued in conformity with the requirements of that Part under Clause 13 of the State Agreement;

“**State Agreement**” means the Agreement of which this Schedule forms part.

### Part B Air emissions

This Part sets out the standards, parameters, conditions and requirements which shall apply in respect of emissions of air impurities from the GPS.

1 The provisions in this Section 1 shall apply subject to the provisions of Section 2.

#### 1.1 Definitions

In this Part—

“**original coal**” means coal extracted from the Callide, Curragh or Blackwater mines (including any extensions of

those mines occurring during the term of the State Agreement);

**“original coals impact”** means the environmental impact arising out of the use of original coals in boilers at the GPS on the basis of the conditions set out in this Schedule applicable to those boilers after the refurbishment contemplated under the Refurbishment and Testing Deed;

**“prescribed fuel”** means any original coal and any other fuel source which is made a prescribed fuel under the provisions of paragraph 1.12;

**“prescribed NOx measurement point”** means a point labelled as such on the plan marked ‘Gladstone Power Station—NOx measurement points’ initialled by or on behalf of each of the Participants and the Chief Executive and held in the offices of the Department;

**“prescribed oxygen measurement point”** means a point labelled as such on the plan marked ‘Gladstone Power Station—oxygen measurement points’ initialled by or on behalf of each of the Participants and the Chief Executive and held in the offices of the Department;

**“prescribed particulates measurement point”** means a point labelled as such on the plan marked ‘Gladstone Power Station—particulates measurement points’ initialled by or on behalf of each of the Participants and the Chief Executive and held in the offices of the Department.

## 1.2 Chimneys

The emission of air impurities from each boiler to the atmosphere is to be via a chimney which discharges at least 150m above the level of the floor of the turbine house to which the chimney is related.

## 1.3 Efflux velocity

The efflux velocity of emissions of air impurities from each chimney to the atmosphere when the 2 boilers connected to that chimney are operating at their nominal maximum

capacity is to be not less than a velocity equivalent to 22.87 m/s at 160°C.

#### 1.4 Particulates

The concentration of solid particle emissions from each boiler during each named month shall be such that the averaged obscuration values for the chimney to which it is related, measured at 5 minutes intervals, fall within the range specified in respect of that chimney in Table 1 for at least the proportion specified in that table of the number of those intervals in that month during which the chimney is operating.

#### 1.5 For the purposes of paragraph 1.4—

- (a) the term **“averaged obscuration value”** means, in respect of any chimney for any hour, the flow-weighted averaged obscuration level value, (V), calculated in accordance with the following formula—

$$V = \frac{\frac{F_x(R_{x,a} + R_{x,b})}{2} + \frac{F_y(R_{y,a} + R_{y,b})}{2}}{F_x + F_y}$$

Where—

F = the average of the effluent gas flow rates from a boiler over the hour, determined on the basis of the load on the boiler during that hour or such other basis of estimation as the Participants may reasonably determine;

R = the average of the obscuration readings recorded in respect of effluent gas passing through an effluent duct during the hour, measured at the prescribed particulates measurement point for that duct and expressed as a percentage;

$x$  and  $y$  represent the boilers connected to a chimney; and

$a$  and  $b$  represent, in respect of a boiler, the effluent ducts for that boiler;

- (b) **“hour”** means a period of 60 minutes; and
- (c) **“effluent duct”** means a duct leading from a boiler to a chimney for the purpose of conveying effluent gas from the boiler to the chimney and for which a prescribed particulates measurement point exists.

**1.6** The Licensee shall install and operate automatic obscuration meters at each prescribed particulates measurement point to indicate to the boiler operator the levels of particulate concentrations in the effluent gas at that point and which produce a record of the measured data.

### **1.7 Nitrogen oxides**

The concentration of nitric acid or oxides of nitrogen or a mixture thereof in the effluent gas from each boiler at each prescribed NO<sub>x</sub> measurement point in respect of that boiler, before admixture with air, smoke or other gases, shall not exceed the equivalent of 2.8 grams of nitrogen dioxide per cubic metre (at 0°C and 101.325 kPa when corrected to a reference level of 7% by volume of oxygen).

**1.8** The Licensee shall install and operate automatic oxygen meters at each prescribed oxygen measurement point to indicate to the boiler operator the concentration of oxygen in the effluent gas at that point and which produce a record of the measured data.

**1.9** The Licensee shall install and operate automatic nitrogen oxide meters to indicate to the boiler operator the concentration of nitrogen oxides in effluent gases at relevant prescribed NO<sub>x</sub> measurement points, on the following basis—

- (a) One of the operative boilers at the station shall be termed the “**nominated boiler**” for the purposes of this paragraph.
- (b) The nominated boiler shall be, initially, boiler number 3 but, from time to time (but no more frequently than annually), another operative boiler, selected by the Participants on a rotational basis having regard to boiler operating schedules, shall become the nominated boiler.
- (c) The Licensee shall install and operate a meter on the nominated boiler to indicate to the boiler operator the concentration of nitrogen oxides in the effluent gas at the prescribed NO<sub>x</sub> measurement point for that boiler.
- (d) In addition (but subject to subparagraph (e)), the Licensee shall monitor each of the operative boilers other than the nominated boiler for the whole of 1 day in each named month (which day need not be the same day for all such boilers) to determine the concentration of nitrogen oxides in the effluent gas at the prescribed NO<sub>x</sub> measurement points for those boilers.
- (e) If the Participants are able to demonstrate to the Chief Executive that the results of monitoring of the boilers referred to in subparagraph (d) are such as to indicate a general consistency of control of emissions of nitrogen oxides, the Chief Executive may nominate, in place of the requirements of subparagraph (d), such other arrangements for determining consistency of nitrogen oxide emissions as may be agreed with the Participants.
- (f) Meters used for the purposes of this paragraph shall produce a record of the measured data.

### **1.10 Dark smoke emissions**

Dark smoke emissions will be measured on the basis of obscuration only.

### 1.11 Other gaseous emissions

The emission of all gaseous substances and air impurities other than those referred to in paragraphs 1.4 and 1.7 from each boiler shall be regulated on the basis of the chemical composition of fuels used to operate the boiler, as follows—

- (a) The sulphur content of fuel oil burnt in the boiler is not to exceed 1.8% by weight.
- (b) The sulphur content of coal burnt in the boiler is not to exceed 0.8% by weight.
- (c) The content of arsenic, boron, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, vanadium, zinc, fluorine, chlorine and other trace elements other than sulphur in fuels (other than fuel oil) burnt in the boiler shall be—
  - (i) where the only such fuels are prescribed fuels—not greater than the maximum values of those elements occurring in prescribed fuels;
  - (ii) in any other case—such as to enable air emissions from the boiler to comply with air emission standards under applicable Environmental Legislation.

### 1.12 Prescription of new fuels

The Participants may, at any time, request the Chief Executive to provide a determination in respect of a fuel other than a prescribed fuel for the purposes of this Schedule, in which case the following provisions shall apply—

- (a) The Chief Executive may require the Participants to provide all such technical and other information as may be reasonably necessary for the Chief Executive to assess the new fuel and the likely environmental impact of its use in the manner proposed by the Participants when compared with the original coals impact.
- (b) The Chief Executive shall consider the application and determine whether, in the Chief Executive's reasonable opinion, the new fuel is capable of being used (whether

in the manner proposed by the Participants or on the basis of particular conditions) in such a manner as to be unlikely to give rise to air emissions with an environmental impact which is adverse, to a material extent, when compared with the original coals impact.

- (c) The Chief Executive shall notify the Participants of the determination and any conditions referred to in subparagraph (b) (“**relevant conditions**”).
- (d) If the Chief Executive’s determination is that the new fuel satisfies the test set out in (b) (whether alone or on the basis of relevant conditions) the Participants shall then be at liberty to notify the Chief Executive of their acceptance of the determination and any relevant conditions.
- (e) The effect of such an acceptance will be—
  - (i) to make the new fuel a prescribed fuel for the purposes of this Schedule; and
  - (ii) to entitle the Participants to use the new fuel subject to any relevant conditions.

### **1.13 Miscellaneous**

Records of the monitoring data required to be kept under this Part shall be retained by the Licensee in a safe place for a period of 3 years and shall be produced for examination by officers of the Department upon request and copies of such records are to be provided to the Department upon request.

**1.14** The Licensee shall provide to the Chief Executive, in respect of any named month during which there has occurred an incident as a result of which the limits specified in this Part have been (or are believed to have been) exceeded, a report which sets out—

- (a) the nature of the incident; and
- (b) the limit which is believed to have been exceeded; and
- (c) the actions taken and/or proposed to be taken to—



- (i) correct the exceedance; and
- (ii) prevent future such exceedances.

**1.15** The Licensee shall conduct studies with a view to determining ways in which the particulate emission levels can be minimised pending refurbishment of the boilers and shall keep the Chief Executive informed of the progress of those studies and the implementation of recommendations arising out of them.

**1.16** If a breakdown of any fuel burning equipment or control equipment or industrial plant causes or is likely to cause the emission of any air impurities from the GPS otherwise than as authorised (whether by this Schedule or otherwise by the Chief Executive), the Licensee shall—

- (a) as soon as practicable, notify the Chief Executive or such other officer of the Department as the Chief Executive shall nominate of all information concerning the breakdown then available to the Licensee; and
- (b) take all practicable means to prevent or minimise those unscheduled emissions.

**1.17** If the testing of any new or overhauled fuel burning equipment or control equipment or industrial plant is likely to cause the emission of any air impurities from the GPS otherwise than as authorised (whether by this Schedule or otherwise by the Chief Executive), the Licensee shall—

- (a) give reasonable notice in writing thereof to the Chief Executive specifying the time when such testing is to be carried out and all other information relating to the proposed testing; and
- (b) take all reasonable steps to prevent or minimise air pollution resulting from those activities.

**1.18** The Chief Executive may, in connection with the testing of new fuel sources or equipment by the Participants, substitute different requirements from those set out in this Part in respect of that testing.

### **1.19 Gas turbine**

The gas turbine located on the GPS Site shall be regulated on the following basis—

- (a) The height of the chimney shall be not less than 10m above ground level.
- (b) The sulphur content of fuel oil burnt in the turbine is not to exceed 1.8% by weight.

## **2 Variation of requirements post-refurbishment**

The standards, parameters, conditions and requirements applicable under Section 1 of this Part shall be modified in respect of each boiler from the day after the date on which the Acceptance Test Certificate is given in respect of that boiler in accordance with the terms of the Refurbishment and Testing Deed or 31 December 1997 (whichever is the earlier) (the “**Refurbishment Date**”) in the following respects (and only those respects).

**2.1** The concentration of solid particles in the effluent gas from the boiler at each prescribed particulates measurement point in respect of that boiler, before admixture with air, smoke and other gases (at 0°C and 101.32kPa and when corrected to a reference level of 12% by volume of carbon dioxide) is to be—

- (a) not greater than 0.080 g/m<sup>3</sup> for 85% of annual operating hours; and
- (b) not greater than 0.150 g/m<sup>3</sup> for 97% of annual operating hours; and
- (c) not greater than 0.23 g/m<sup>3</sup> at all times.

- 2.2** The concentration of nitric acid or oxides of nitrogen or a mixture thereof in the effluent gas from the boiler at each prescribed NO<sub>x</sub> measurement point in respect of that boiler, before admixture with air, smoke or other gases (at 0°C and 101.325kPa and when corrected to a reference level of 7% by volume of oxygen) is to be—
- (a) not greater than the equivalent of 1.6 grams of nitrogen dioxide per cubic metre for 80% of annual operating hours; and
  - (b) not greater than the equivalent of 1.8 grams of nitrogen dioxide per cubic metre for 95% of annual operating hours; and
  - (c) not greater than the equivalent of 2.5 grams of nitrogen dioxide per cubic metre at all times.
- 2.3** For the purposes of paragraphs 2.1 and 2.2, the term “**annual operating hours**” in respect of a boiler shall mean the number of hours the boiler was in actual operation, determined over any period of 12 months commencing on or after the Refurbishment Date applicable to that boiler.
- 2.4** The sections of duct at which measurements are made for calibrating the opacity meters shall be the same sections of duct leading from the boilers as are used for those measurements as at the day prior to the date of commencement of operation of this Schedule.

## **Part C**                      **Water emissions**

- 3** This Part sets out the standards, parameters, conditions and requirements which shall apply in respect of all aqueous and liquid waste discharges from the GPS and related areas to waters.

### 3.1 Definitions

In this Part, (including Table 2)—

**“Discharge Point”** means, in respect of any discharge, the place marked as the discharge point for that discharge on a Reference Plan using the descriptions set out in Table 2;

**“Intake Area”** means the area, located at the western end of the canal connecting the GPS with Auckland Inlet, of which the Participants are lessees;

**“Intake Level”** means, in respect of any parameter, the level of that parameter which occurs in the waters of the Intake Area at a given time;

**“Mixed Waste Stream”** means all of the wastes which, at the Date of Transfer, are discharged from a Discharge Point referred to in column (1) or (5) of Table 2;

**“Prescribed Limit”** means, in respect of any parameter set out in Table 2 in respect of a Discharge Point, the minimum and/or maximum levels or values for that parameter specified in that table;

**“Reference Plan”** means a plan marked ‘Gladstone Power Station—waste water discharge and sampling points’ initialled by or on behalf of each of the Participants and the Chief Executive and held in the offices of the Department and includes that plan as amended from time to time (or any plan lodged in substitution for that plan) under the provisions of paragraph 3.14;

**“Runoff Quantity”** means, in respect of a discharge occurring at any Discharge Point, the quantity of runoff water produced by rainfall occurring in areas which drain to that Discharge Point;

**“Sampling Point”** means, in respect of any discharge, the point marked as the sampling point for that discharge on a Reference Plan;

**“Tolerance”** means, in respect of a Prescribed Limit, a range either side of that level or value, expressed in the same unit of measurement as the Prescribed Limit.

**3.2** The further terms defined at the foot of Table 2 shall have, in that Table, the meanings assigned to them there.

### **3.3 Requirements for discharges**

The discharge of wastes from the Discharge Points described in each of columns (1), (5), (8), (9) and (10) of Table 2 to the waters described in that table in respect of those Discharge Points as 'Receiving Waters' shall comply with—

- (a) the Prescribed Limits and other requirements set out in the column of the table that relates to those discharges, measured at the Sampling Point applicable to each such discharge; and
- (b) the other requirements of this Part.

**3.4** For the purposes of paragraph 3.3, a discharge from a Discharge Point shall be deemed to comply with a Prescribed Limit applicable to that Discharge Point for which a Tolerance is indicated where, during the period specified in Table 2 in respect of that Discharge Point, commencing on the Date of Transfer—

- (a) for parameters other than Dissolved Oxygen—the level or value is less than the sum of the Prescribed Limit and the Tolerance; and
- (b) for Dissolved Oxygen—the level or value is greater than the difference between the Prescribed Limit and the Tolerance.

**3.5** If the Participants determine that it is economically viable to segregate a Mixed Waste Stream into 1 or more separate waste streams, the following provisions shall apply—

- (a) The Participants shall be entitled to construct new works and/or alter existing works so as to—
  - (i) segregate the Mixed Waste Stream into 2 or more of the following streams—
    - (A) condenser cooling water;

- (B) screen wash water;
  - (C) auxiliary cooling water;
  - (D) other wastes; and
- (ii) allow the separate discharge of each of the new, segregated, waste streams to the Receiving Waters applicable to the Mixed Waste Stream from which they are derived.
- (b) The Discharge Points for the new waste streams shall be located at or near the places referred to on the Reference Plan as the approximate location for those Discharge Points.
- (c) The discharge of the wastes comprised in the new waste streams shall be regulated by those of the provisions of—
  - (i) columns (2), (3) and (4); or
  - (ii) columns (5), (6) and (7);of Table 2 as are appropriate (having regard to the Mixed Waste Stream from which the new streams are derived and the nature and extent of segregation which has occurred), in replacement of the requirements specified for the existing Mixed Waste Stream.
- (d) The combined total of the volumes of wastes discharged from a group of segregated waste streams is not to exceed the volume specified in Table 2 in respect of the Mixed Waste Stream from which they are derived.

### **3.6 General requirements in respect of monitored waste discharges**

The following provisions shall apply in respect of all discharges referred to in paragraphs 3.3 and 3.5—

- (a) The Licensee shall measure and determine the waste quality parameters referred to in Table 2 for each discharge at each Sampling Point as often as necessary to check that the relevant requirements are being complied with, but not less frequently than the

frequency specified in Table 2 as the 'Minimum Monitoring Frequency' in respect of that discharge.

- (b) Records of those waste quality measurements, including time, date, location and details of sampling, are to be prepared and retained by the Licensee in a safe place for a period of 3 years and are to be produced for examination by officers of the Department upon request and copies of such records are to be provided to the Department upon request.
- (c) Convenient access to all Sampling Points is to be provided and maintained by the Licensee at all reasonable times.
- (d) The Licensee shall provide to the Chief Executive, in respect of any named month during which there has occurred an incident as a result of which the limits specified in this Part have been (or are believed to have been) exceeded, a report which sets out—
  - (i) the nature of the incident; and
  - (ii) the limit which is believed to have been exceeded; and
  - (iii) the actions taken and/or proposed to be taken to—
    - (A) correct the exceedance; and
    - (B) prevent future such exceedances.

### **3.7 Discharges to Intake Area**

The discharge of wastes from the GPS to the Intake Area shall be permitted on the following basis—

- (a) for all periods during which the condenser cooling water system is operating—
  - (i) the quantity of such wastes discharged per day shall not exceed 3000m<sup>3</sup> plus Runoff Quantity; and
  - (ii) the quality of such wastes is to be such as to ensure that the Prescribed Limits and requirements applicable in respect of any Discharge Point at

which those wastes are subsequently discharged to waters external to the Intake Area are complied with;

- (b) at all other times, the discharge shall consist of uncontaminated stormwater runoff only.

### **3.8 General requirements in respect of all discharges**

The following provisions shall apply in respect of all discharges referred to in this Part—

- (a) For characteristics not listed in respect of any waste discharge, the wastes are not to have any properties and shall not contain any matter or organisms in concentrations which make, or which are likely to make, the affected waters less fit for their environmental values when account is taken of the effective dilution of those wastes and the quality of the receiving waters in the absence of the discharge.
- (b) The discharge is not to produce any slick or other visual evidence of oil or grease.

### **3.9** For the purposes of requirements which impose limitations on the quantities of wastes authorised as being discharged—

- (a) determinations of those quantities are to be made on the basis of estimates, calculated by the Licensee—
  - (i) in respect of emissions which are pumped from the station (such as cooling water), by multiplying the rating of the pumps (at the average operating head) used to discharge those wastes by the number of hours the pumps were in operation; and
  - (ii) in respect of other emissions, by such other method(s) as may be reasonably adopted by the Participants; and
- (b) records of estimates of the quantities of wastes discharged are to be prepared and retained by the Licensee in a safe place for a period of 3 years and are to



be produced for examination by officers of the Department upon request and copies of such records are to be provided to the Department upon request.

**3.10** The waste discharge authorisations referred to in this Part include an authorisation of all intermediate discharges to holding or settling ponds and other intermediate points prior to the final discharge of the wastes to receiving waters from the Discharge Points referred to in this Part.

**3.11** The Participants shall not make any of the areas referred to in paragraph 3.10 available for use by the public.

**3.12 Miscellaneous**

The Licensee shall ensure that all of its employees are instructed in procedures—

- (a) to avoid accidental discharges of wastes; and
- (b) to remove, disperse or destroy any wastes accidentally discharged to any waters; and
- (c) to otherwise prevent, abate or mitigate any water pollution caused by any accidental discharge of wastes.

**3.13** The Licensee shall notify the Chief Executive or such other Officer of the Department as the Chief Executive shall nominate, as soon as practicable, of any accidental discharge of wastes to any waters which causes or is likely to cause water pollution other than discharges authorised (whether by this Schedule or otherwise by the Chief Executive) and shall furnish to the Chief Executive any information the Chief Executive or such other Officer of the Department as the Chief Executive shall nominate may request concerning such discharges and shall comply with any reasonable requirements of the Chief Executive for the prevention, abatement or mitigation of any such water pollution.

### **3.14 Amendment of Reference Plans**

Where necessary or desirable to give effect to the requirements of the Ash Management Agreement, the Participants may nominate different or additional points as the Discharge Points in respect of lands used as reclamation areas under that Agreement and the following provisions shall apply in respect of any such new and/or replaced Discharge Points—

- (a) The location of the new and/or replaced points shall be determined with a degree of precision consistent with that of the Reference Plan and shall be subject to the approval of the Chief Executive.
- (b) The new location shall be—
  - (i) endorsed on a Reference Plan; or
  - (ii) marked on a new plan, together with all other existing Discharge Points shown on the relevant Reference Plan, and that new plan shall become a Reference Plan in replacement of the then-existing Reference Plan.
- (c) Emissions from any new points shall conform to the requirements set out in column (9) or (10) of Table 2, depending on the method of treatment applicable to the ash.

## **Part D Noise emissions**

**4** This Part sets out the standards, parameters, conditions and requirements which shall apply in respect of noise emissions and effects from the GPS.

**4.1** The noise levels resulting from the operation of the GPS, measured at the points on or near the boundary of the GPS Site which are specified on the plan marked 'Gladstone Power

Station—noise measurement points’ initialled by or on behalf of each of the Participants and the Chief Executive and held in the offices of the Department (the “**Specified Noise Points**”) shall be such as to not exceed the values, determined in accordance with paragraph 4.2, for the following parameters—

$L_{Aeq,T}$

$L_{A50,T}$

$L_{A90,T}$

$L_{A10,T}$

where those parameters have the meanings specified in Australian Standard AS 1055 Acoustics—Descriptors and Measurement of Environmental Noise—Part 1, General Procedures (“**AS1055**”).

- 4.2** The Participants shall, prior to the Date of Transfer, carry out noise level measurements over a minimum of 7 days at the Specified Noise Points and otherwise in accordance with AS1055 to determine the baseline values for the noise level parameters in paragraph 4.1 and shall notify those measurements to the Chief Executive within 60 days of their determination.

## **Part E                      Ash disposal**

- 5** This Part sets out the standards, parameters, conditions and requirements which shall apply in respect of ash and ash slurry from the GPS.

### **5.1      Definitions**

In this Part—

**“Landholder”** means a landholder as defined in the Ash Management Agreement;

**“reclamation area”** means a reclamation area as defined in the Ash Management Agreement.

## 5.2 Ash criteria

The physical and chemical criteria applicable to all ash disposed of from the GPS (other than that sold by or on behalf of each of the Participants to ash purchasers as a raw material for other processes or products) are as follows (determined at the time the ash is deposited)—

- (a) The chemical composition of the ash is to meet the criteria in Table 3.
- (b) The nature of the ash is not to be such as to produce leachate of a nature or to an extent which would cause the waters adjoining the reclamation area on which that ash is deposited, in a baseline condition, to be unfit for any baseline use.

## 5.3 For the purposes of paragraph 5.2—

**“baseline condition”**, where used in respect of any waters, means those waters in the condition they would be in if they contained the ambient contaminant levels which existed in those waters, on the Date of Transfer or, at the Participant’s election but subject to the approval of the Chief Executive (which shall not be withheld unless the Chief Executive has reasonable grounds for believing that the ambient contaminant levels have materially altered since the Date of Transfer due to the effects of the ash), such later date on which sampling for the purposes of the study (if any) under paragraph 5.7 is completed;

**“baseline uses”**, where used in respect of any waters, means the uses to which those waters were legally ordinarily put on the Date of Transfer or, at the Participants election but subject to the approval of the Chief Executive (which shall not be withheld unless the Chief Executive has reasonable grounds

for believing that the ambient contaminant levels have materially altered since the Date of Transfer due to the effects of the ash), such later date on which sampling for the purposes of the study (if any) under paragraph 5.7 is completed.

**5.4** Where, at a point on which ash has been deposited (a **“reference point”**), a composite core sample is taken from the surface to the specified depth below the surface and is tested, then all of the ash contained within a reference area, determined in accordance with paragraph 5.5 based on the reference point, will be deemed to comply and to have complied at all times with the criteria specified in paragraph 5.2 if, at the time the sample is tested—

- (a) the composition of the ash in the sample complies with each limit specified in Table 3; and
- (b) the level of each relevant parameter in leachate from the ash (collected from elutriation tests conducted in accordance with the United States Environmental Protection Agency Method 1311, Toxicity Characteristic Leaching Procedure (TCLP), modified to use water at pH 6.8), when reduced applying the dilution factor (if any) determined in accordance with paragraph 5.7, is less than the specified value for that parameter.

**5.5** For the purposes of paragraph 5.4—

**“reference area”**, with respect to any reference point, means an area bounded by—

- (i) any 1 or more lines running—
  - (A) in a north-south direction; or
  - (B) in an east-west direction;at the specified distance from the reference point; and
- (ii) any physical boundaries of the reclamation areas on which the ash is to be deposited which are within the specified distance of that point;

**“relevant parameter”** means a parameter set out in Table 4 and includes, at any particular time, any other parameter which, at that time, is listed in the marine waters standard as an inorganic toxicant and for which a maximum value is specified and which, in the opinion of the Chief Executive, is sufficiently likely to be present in the leachate as to justify testing for it;

**“specified depth”**, for the purposes of any reference point, means the lesser of—

- (i) 1000mm; or
- (ii) the depth of ash placed at that point by the Participants;

**“specified value”**, in respect of a relevant parameter, means, subject to paragraph 5.9—

- (i) where the parameter is set out in Table 4—the value specified in that table; or
- (ii) where the parameter is not set out in Table 4—the value specified as the maximum value for that parameter in the marine waters standard;

**“the marine waters standard”** means the aspects of Table 2.1 of the Australian Water Quality Guidelines for Fresh and Marine Waters (Australian & New Zealand Environment & Conservation Council, Canberra 1992) (as amended) which are stated to be applicable to marine waters or, where some other standard regulating the nature of inorganic toxicants allowable in marine waters is given the force of law as a requirement of general application throughout Queensland, the aspects of that standard applicable to waters with baseline uses.

**5.6** For the purposes of paragraph 5.5, the **“specified distance”** shall be 25m but the Chief Executive may, from time to time, increase this distance if it appears to the Chief Executive that such a course is justified having regard to—

- (a) the results of analyses of core samples carried out; and
- (b) other relevant circumstances.

- 5.7** The Participants may carry out a study to determine—
- (a) the extent to which the concentration of the parameters listed in Table 4 in leachate from the ash deposited by the Participants on each reclamation area would be expected to be diluted when introduced into waters adjacent to those areas in a baseline condition (the “**dilution effect**”); and
  - (b) a number, for each reclamation area, which represents quantitatively the estimated extent of the dilution effect applicable to leachate from that area (the “**dilution factor**”).

- 5.8** Any such study shall be undertaken as soon as is reasonably practicable after the Date of Transfer in accordance with the following criteria—

- (a) the study will be of such a scope and design as is appropriate, in the reasonable opinion of the Chief Executive, to enable the determination of the matters referred to in paragraph 5.7;
- (b) the study shall take account of the tidal, cooling water and other flows in the receiving waters and the seepage flows from the relevant areas as determined by hydro-geological and/or other data and analysis.

- 5.9** The Participants may apply to the Chief Executive to vary any specified values determined under paragraph 5.5 if, on the basis of data and analysis acceptable to the Chief Executive, it appears that levels other than those so determined are more appropriate for the waters adjoining a reclamation area (such new values to become the specified values in place of those determined in accordance with that paragraph).

## **5.10 Rehabilitation requirements**

The Participants and the Landholders shall be responsible for ensuring that rehabilitation of each reclamation area on which

ash is deposited under the Ash Management Agreement is carried out in accordance with the following requirements—

- (a) The areas are to be filled in stages to their full design heights, commencing at the ends furthest from the settling basins.
- (b) As soon as reasonably practicable after each stage has been filled to its full design height, it is to be covered with at least 100mm of uncontaminated clay or soil and grass cover is to be established.
- (c) Filled stages are to be sloped and drained and stormwater runoff is to be directed into settling basins until vegetation cover is established.

### **5.11 Land use requirements**

The Landholders shall observe and comply with the following requirements in respect of all lands held by them on which ash is deposited under the Ash Management Agreement—

- (a) The land uses for rehabilitated areas are to be restricted to industrial activities and public open space, subject to management plans to minimise human contact with the ash and protect the environment.
- (b) Management plans are to include the following requirements—
  - (i) Excavation spoil is to be disposed of as excess ash in accordance with the Ash Management Agreement and the requirements of this Part.
  - (ii) Traffic areas, footpaths and bike tracks, are to be paved with concrete or asphalt.
  - (iii) Buildings are to have concrete floors at ground level.
  - (iv) Where activities involving possible disturbance of the surface are likely in a particular area, the surface of the area in question is to be covered with at least 500mm of uncontaminated clay, or sealed with concrete or asphalt.



- (v) Grass clippings and tree prunings derived from the area are not to be fed to animals and grazing animals are not to be allowed onto the relevant land.

**5.12** The Participants will be responsible for carrying out all sampling and testing required to demonstrate compliance with the requirements of this Part other than those set out in paragraph 5.11.

## **Part F                      Miscellaneous**

**6.1** The terms of any plan referred to in this Schedule may be varied by agreement between—

- (a) the Chief Executive; and
- (b) the Participants.

**6.2** Any notification or communication to be given by the Chief Executive to the Participants shall be given to the Operator on the Participant's behalf.

### **Table 1**

<b>Chimney and Related Boilers</b>	<b>Averaged Obscuration Value Range</b>	<b>Proportion of Monthly Intervals</b>
1–2 CHIMNEY (Servicing Boilers 1 and 2)	0–35	80%

<b>Chimney and Related Boilers</b>	<b>Averaged Obscuration Value Range</b>	<b>Proportion of Monthly Intervals</b>
3-4 CHIMNEY (Servicing Boilers 3 and 4)	0-35	80%
5-6 CHIMNEY (Servicing Boilers 5 and 6)	0-40	80%

**Table 2**

		(1)	(2)	(3)	(4)
Aspect	Unit	Northern Station Drain (Existing 535)	[Possible New Point] (Note 1)	[Possible New Point] (Note 1)	[Possible Modified Point] (Note 2)
Discharge Points(s) Description on Plan:		General Outlet (North)	Screen Wash Outlet (North)	Auxiliary Cooling Outlet (North)	General Outlet (North)
Sampling Point Ref:		A1	A2	A3	A1
Receiving Waters:		Calliope River	Calliope River	Calliope River	Calliope River
Maximum quantity:	m <sup>3</sup> /day	50 000 + Runoff Quantity	[To be specified] (Note 3)	[To be specified] (Note 3)	[To be specified] (Note 3)
BOD <sub>5</sub> (Maximum):	mg/L	Intake Level + 10	[No conditions]	[As for (5)]	[As for (1)]
Suspended Solids (Maximum):	mg/L	Intake Level + 30 (Tolerance: 70)	[No conditions]	[As for (5)]	[As for (1)]
pH level:		6.5–9.0	[No conditions]	[As for (5)]	[As for (1)]
Dissolved Oxygen (Minimum):	mg/L	2	[No conditions]	[As for (5)]	[As for (1)]
Temperature (Maximum):	°C	NSR	[No conditions]	[As for (5)]	[As for (1)]
Residual chlorine (Maximum):	mg/L	0.3	[No conditions]	[As for (5)]	NSR
Total iron (Maximum):	mg/L	Intake Level +1.5	[No conditions]	[As for (5)]	[As for (1)]
Minimum Monitoring Frequency:		Weekly	[No conditions]	[As for (5)]	[As for (1)]
Other (Specific):		Period during which Tolerance applies: 12 months	Floating material and debris to be screened from water before discharge	Nil	Nil

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Schedule 1

Second schedule

		(5)	(6)	(7)	
Aspect	Unit	Cooling Water outlet (Existing 534)	[Possible New Point] (Note 1)	[Possible Modified Point] (Note 2)	
Discharge Points(s) Description on Plan:		Condenser cooling water system outlet	Screen Wash Outlet (South)	General Outlet (South)	
Sampling Point Ref:		B1	B2	B3	
Receiving Waters:		Calliope River	Calliope River	Calliope River	
Maximum quantity:	m <sup>3</sup> /day	6 000 000 + Runoff Quantity (Note 3)	[To be specified] (Note 3)	[To be specified] (Note 3)	
BOD <sub>5</sub> (Maximum):	mg/L	NSR	[No conditions]	[As for (1)]	
Suspended Solids (Maximum):	mg/L	NSR	[No conditions]	Intake Level + 30	
pH level:		6.5–9.0	[No conditions]	[As for (1)]	
Dissolved Oxygen (Minimum):	mg/L	The greater of 4 or (Intake Level – 2)	[No conditions]	[As for (1)]	
Temperature (Maximum):	°C	Intake Level + 8.5	[No conditions]	[As for (1)]	
Residual chlorine (Maximum):	mg/L	0.3	[No conditions]	NSR	
Total iron (Maximum):	mg/L	Intake Level + 1.5	[No conditions]	[As for (1)]	
Minimum Monitoring Frequency:		Weekly	[No conditions]	[As for (1)]	
Other (Specific):		Nil	Floating material and debris to be screened from water before discharge	Nil	

		(8)	(9)	(10)	
Aspect	Unit	Coal Pond Overflow (Existing 536)	Ash Placement Areas—Wet (Existing 623)	Ash Placement Areas—Dry [New Points]	
Discharge Points(s) Description on Plan:		Coal area settling pond outlets	Ash pond discharge outlets (Note 4)	Ash pond discharge outlets (Note 4)	
Sampling Point Ref:		C1, C2	D1, D2 [etc] (Note 4)	E1, E2 [etc] (Note 4)	
Receiving Waters:		Calliope River	Tidal waters of Gladstone Harbour (Note 4)	Tidal waters of Gladstone Harbour (Note 4)	
Maximum quantity:	m <sup>3</sup> /day	100 + Runoff Quantity	Per Area: 30,000 + Runoff Quantity	Runoff Quantity only	
BOD <sub>5</sub> (Maximum):	mg/L	NSR	Intake Level + 20	[As for (9)]	
Suspended Solids (Maximum):	mg/L	200	Intake Level + 30 (Tolerance: 20)	Intake Level + 30	
pH level:		6.5–9.0	6.0–9.5	[As for (9)]	
Dissolved Oxygen (Minimum):	mg/L	2	2 (Tolerance: 1)	[As for (9)]	
Temperature (Maximum):	°C	NSR	NSR	[As for (9)]	
Residual chlorine (Maximum):	mg/L	NSR	NSR	[As for (9)]	
Total iron (Maximum):	mg/L	NSR	NSR	[As for (9)]	
Minimum Monitoring Frequency:		Once each period of discharge	Fortnightly	[As for (9)]	
Other (Specific):		Nil	Period during which Tolerance applies: 6 months	Nil	

In this Table—

“BOD<sub>5</sub>” means the 5 days biochemical oxygen demand;

“**NSR**” means no specific requirements other than those general requirements of the GPS Environmental Policy Schedule which are applicable in respect of all emissions.

**Notes—**

1. This Discharge Point is not in existence at the Date of Transfer. The conditions specified will only become effective if the Discharge Point is later constructed and operated.
2. This Discharge Point is currently in existence but the requirements specified in this column will only apply if the Mixed Waste Stream currently discharged at this point is segregated.
3. The volume limitation for this point is to be determined based upon the nature of the waste sources which are discharged upon segregation of the Mixed Waste Stream from which this point is derived. However, the aggregate volumes of segregated waste streams is not to exceed the maximum volume specified in respect of the Mixed Waste Stream from which the point is derived plus any Runoff Quantity.
4. The location of the Discharge Points and Sampling Points for the ash reclamation areas is necessarily determined by the requirements of the Ash Management Agreement. The points shown on the Reference Plan may need to be varied over time with changes in the arrangements under the Ash Management Agreement. The receiving waters for those discharges will be the waters shown on the Reference Plan which are adjacent to the Discharge Points from time to time.

**Table 3**

<b>Parameter</b>	<b>Maximum Content (mg/kg)</b>
Antimony	40
Arsenic	100
Barium	2000
Beryllium	10
Boron	100
Cadmium	5
Chromium	250
Cobalt	50
Copper	100
Cyanide	10
Lead	300
Manganese	1000
Mercury	2
Molybdenum	40
Nickel	100
Selenium	50
Silver	50
Tin	100
Vanadium	200
Zinc	500

**Table 4**

<b>Parameter</b>	<b>Maximum Concentration (mg/L)</b>
Antimony	0.5
Arsenic	0.05
Cadmium	0.002
Chromium	0.05
Copper	0.005
Cyanide	0.005
Lead	0.005
Mercury	0.0001
Nickel	0.015
Selenium	0.07
Silver	0.001
Sulfide	0.002
Thallium	0.02
Tin (tributyltin)	0.000002
Zinc	0.05

Note—These levels, taken from the Australian Water Quality Guidelines for Fresh and Marine Waters (Australian & New Zealand Environment & Conservation Council, Canberra 1992), have been specified in the absence of empirical data as to the nature of the leachate from ash from the GPS or as to the baseline condition and baseline uses of the waters adjoining the reclamation areas. They may require revision in



accordance with the terms of this Schedule where location-specific empirical data becomes available.

## **Schedule 2 Further agreement amending State agreement**

section 5A

**THIS AGREEMENT** is made the                      day of                      1997.

### **BETWEEN:**

**1. THE HONOURABLE DOUGLAS SLACK, MINISTER FOR ECONOMIC DEVELOPMENT AND TRADE OF THE STATE OF QUEENSLAND, FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF QUEENSLAND (“the State”);**

**2. GPS POWER PTY. LIMITED** (ACN 009 103 422) of 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000

**GPS ENERGY PTY LIMITED** (ACN 063 207 456) of 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000

**SUNSHINE STATE POWER B.V.** (ARBN 062 295 425) of C/- Goudsmit & Branbergen, Advocaten, JJ Viottastraat 46 Postbus 75458, 1070 AL Amsterdam

**SUNSHINE STATE POWER (NO. 2) B.V.** (ARBN 063 382 829) of C/- Goudsmit & Branbergen, Advocaten, JJ Viottastraat 46 Postbus 75458, 1070 AL Amsterdam

**SLMA. GPS PTY LTD** (ACN 063 779 028) of C/- KPMG, Level 30, Central Plaza I, 345 Queen Street, Brisbane, Queensland, 4000

**RYOWA II GPS PTY. LIMITED** (ACN 063 780 058) of Suite 2207, Riverside Centre, 123 Eagle Street, Brisbane, Queensland, 4000

**YKK GPS (QUEENSLAND) PTY LIMITED** (ACN 062 905 275) of 127 Hyde Road, Yeronga, Brisbane, Queensland, 4104

(the “**Participants**” and each a “**Participant**”);

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**AND:**

- 3. NRG GLADSTONE OPERATING SERVICES PTY LTD** (ACN 061 519 275) of Gladstone Power Station, Hanson Road, Gladstone, Queensland, 4680 (the “**Operator**”).

**RECITALS—**

- A.** By agreement dated 30 March 1994 (as amended by agreement dated 23 December 1994) between the State, the Participants and the Operator made under section 3 of the *Gladstone Power Station Agreement Act 1993* the State provided certain undertakings and assurances relating to the acquisition by the Participants and future operation by the Participants and the Operator of the Gladstone Power Station (“the **State agreement**”).
- B.** The *Electricity Amendment Act (No. 2) 1997* amended the *Electricity Act 1994* to enable the establishment of an interim competitive wholesale electricity market in Queensland to facilitate the Queensland electricity industry’s transition to the National Electricity Market arrangements that are scheduled to commence in Queensland, New South Wales, Victoria, the Australian Capital Territory and South Australia, on 29 March 1998. Under the *Electricity—National Scheme (Queensland) Act 1997* the National Electricity (Queensland) Law will implement the regulatory arrangements for the National Electricity Market.
- C.** Section 287A of the *Electricity Act 1994* provides that the application of that Act may be changed under the State agreement or a further agreement under the *Gladstone Power Station Agreement Act 1993*.
- D.** Under section 5 of the *Gladstone Power Station Agreement Act 1993* the State agreement may be amended by a further agreement between the Minister responsible for the administration of that Act and the other parties to the State agreement.
- E.** The parties have entered into this further agreement made pursuant to section 5 of the *Gladstone Power Station Agreement Act 1993*.

**IT IS AGREED—**

**Part I Preliminary**

**1 Definitions**

- (a) All words, terms and expressions which have a defined meaning in the State agreement have the same respective meanings when used in this agreement, unless and except as otherwise provided in this agreement.

- (b) In this agreement, unless the context otherwise requires or indicates—

**“Effective Date”** means the time immediately after the commencement of provisions about the maintenance of security of supply to sensitive loads in the Market Code approved under section 92F of the Electricity Act.

**2 Interpretation**

Clause 2 of the State agreement is incorporated into this agreement as if set out in full in this agreement except that the reference to “this Agreement” in Clause 2 of the State agreement shall be a reference to “this agreement”.

**3 Amendment of State agreement**

This agreement is made under section 5 of the Agreement Act and amends the State agreement.

**4 Commencement**

- (a) Parts I and II of this agreement take effect on the date of this agreement.
- (b) Part III of this agreement takes effect on the Effective Date.

## 5 Agreement to have force of law

The parties acknowledge that under section 4 of the Agreement Act the State agreement as amended by the provisions of this agreement has effect as if it were part of the Agreement Act.

## 6 No Waiver

The entering into this agreement by a party does not constitute a waiver of its rights and obligations under the State agreement which have accrued prior to the date of this agreement.

# Part II Amendments

## 7 The State agreement is amended as follows—

### (a) Amendment of Clause 1 (Definitions)

In Clause 1—

#### (i) after the definition of “Capacity Purchase Agreement” *insert—*

‘ “Code” means—

- (a) the Market Code under the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) the Code under the National Electricity (Queensland) Law after its commencement under the *Electricity—National Scheme (Queensland) Act 1997*;’.

#### (ii) after the definition of “Queensland Railways” *insert—*

‘ “Queensland System Operator”—

- (a) has the meaning given in the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) thereafter means the person from time to time appointed as System Operator under the Code for Queensland.’.

- (iii) *omit* the definition of “**system control**” and *insert*—
- ‘ “**system control**” means—
- (a) scheduling and directing the output of the generators and other sources of supply connected to the power system; or
  - (b) coordinating maintenance programs and schedules for generating and transmission plant; or
  - (c) ensuring the integrity of the power system;
  - (d) controlling switching of transmission elements and access to them for maintenance, inspection and testing; or
  - (e) controlling the switching of parts of supply networks relevant to the integrity of the power system; or
  - (f) coordinating arrangements, and issuing directions, for the reduction of demand by distribution entities or retail entities in emergencies when available electricity is limited; or
  - (g) scheduling and directing the provision of ancillary services; or
  - (h) shedding or restoring customer load,
- and any words or expressions used in this definition of “**system control**” which have a defined meaning in the Electricity Act have the same meaning where used in this definition of “**system control**”.’; and
- (iv) *omit* the definition of “system control entity” and *insert*—
- ‘ “**system control entity**” means the Queensland System Operator.’.
- (b) Deletion of Clauses 16B and 16F**
- Omit* Clause 16B and *omit* Clause 16F.
- (c) Amendment of Clause 16G**
- (i) *Omit* paragraph (a) of Clause 16G and *insert*—

- (a) despite section 301 of the Electricity Act, the Minister for Energy may not fix the prices that QTSC must charge for the electricity that it sells or the services that it provides under the Interconnection and Power Pooling Agreement; and’.
- (ii) In paragraph (b) of Clause 16G before ‘section 264’ *insert* ‘section 92N or’.

**(d) Amendment of Clause 16H**

*Omit* Clause 16H and *insert*—

**‘16H System Control**

Subject to the other provisions of this agreement the Queensland System Operator may not give, except in accordance with the Code, a direction under section 92B of the Electricity Act about system control which would prevent QTSC from complying with its obligations under Clause 7 of the Interconnection and Power Pooling Agreement.’.

**(e) Amendment of Clause 16I**

*Omit* Clause 16I and *insert*—

**‘16I Removal of Immunity for Certain Breaches of Interconnection and Power Pooling Agreement**

- (a) If as a result of a State Electricity Entity, the Queensland System Operator or NEMMCO complying with—
- (i) a provision of the Code or the Queensland Grid Code (as defined in the Electricity Act) about system control;
  - (ii) a condition about system control imposed under the Electricity Act on the State Electricity Entity or the Queensland System Operator;
  - (iii) a direction about system control from NEMMCO or the Queensland System Operator; or
  - (iv) a direction about system control given under section 299 of the Electricity Act,





- (iii) use its best endeavours to procure NEMMCO to agree under clause 4.3.5(c) of the Code to the power system frequency of 47.0 Hz so nominated by the State for automatic disconnection of the load of the Smelter; and
  - (iv) ensure that this schedule is provided to NEMMCO by the date of commencement of the Code, and that all updates of it are provided to NEMMCO.
- (b) All words and expressions which have a defined meaning in the Code have the same meanings where used in Clause 16J(a) unless the context otherwise requires or indicates.’.

**EXECUTED BY THE PARTIES AS AN AGREEMENT.**

**SIGNED** by **THE HONOURABLE DOUGLAS** )  
**SLACK, MINISTER FOR ECONOMIC** )  
**DEVELOPMENT AND TRADE OF THE** )  
**STATE OF QUEENSLAND, FOR AND ON** )  
**BEHALF OF THE CROWN IN RIGHT OF THE** )  
**STATE OF QUEENSLAND** )

in the presence of:

Witness

**SIGNED** for and on behalf of )  
**GPS POWER PTY. LIMITED** )  
(ACN 009 103 422) by )  
) )  
its duly constituted attorney )

in the presence of:

Witness

**SIGNED** for and on behalf of) )  
**GPS ENERGY PTY LIMITED** )  
(ACN 063 207 456) by )

Schedule 2

---

its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of )  
**SUNSHINE STATE POWER B.V.** )  
(ARBN 062 295 425) by )  
its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of )  
**SUNSHINE STATE POWER (NO. 2) B.V.** )  
(ARBN 063 382 829) by )  
its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of )  
**SLMA. GPS PTY LTD** )  
(ACN 063 779 028) by )  
its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of)

---

**RYOWA II GPS PTY. LIMITED** )  
(ACN 063 780 058) by )  
 )  
its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of)  
**YKK GPS (QUEENSLAND) PTY LIMITED** )  
(ACN 062 905 275) by )  
 )  
its duly constituted attorney )  
in the presence of: )

Witness

**SIGNED** for and on behalf of)  
**NRG GLADSTONE OPERATING** )  
**SERVICES PTY LTD** (ACN 061 519 275) by )  
 )  
its duly constituted attorney )  
in the presence of: )

Witness

## Endnotes

### 1 Index to 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). Accordingly, this reprint includes all amendments that commenced operation on or before 1 January 2011. Future amendments of the Gladstone Power Station Agreement Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	17 December 1993	18 January 1994
1A	1994 Act No. 64	1 January 1995	5 September 1997
1B	1997 Act No. 77	19 December 1997	10 February 1998
1C	1997 Act No. 77	6 November 1998	6 January 2000

Reprint No.	Amendments included	Effective	Notes
1D	2002 Act No. 11	1 July 2002	
1E rv	2004 Act No. 53	29 November 2004	R1E rv withdrawn, see R2
2	—	29 November 2004	
2A	2010 Act No. 54	1 January 2011	

## 5 List of legislation

### **Gladstone Power Station Agreement Act 1993 No. 84**

date of assent 17 December 1993

commenced on date of assent

amending legislation—

### **Gladstone Power Station Agreement Amendment Act 1994 No. 5**

date of assent 7 March 1994

commenced on date of assent

### **Electricity Act 1994 No. 64 s 293 sch 4**

date of assent 1 December 1994

commenced 1 January 1995 (1994 SL No. 467)

### **Electricity Amendment Act (No. 2) 1997 No. 50 ss 1–2, 37 sch**

date of assent 8 September 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1997 (1997 SL No. 312)

### **Gladstone Power Station Agreement Amendment Act 1997 No. 60**

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 6 November 1998 (automatic commencement under AIA s 15DA(2))

### **Electricity Amendment Act (No. 3) 1997 No. 77 pts 1, 3**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1997 (1997 SL No. 472)

### **Public Records Act 2002 No. 11 ss 1, 2(2), 62 sch 1**

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 115)

### **Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004

commenced on date of assent

### **Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 22**

date of assent 14 October 2010

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

### **Fair Trading (Australian Consumer Law) Amendment Act 2010 No. 54 ss 1–2, 67 sch**

date of assent 1 December 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 359)

## 6 List of legislation for variation of agreement (see Act section 5)

### **Gladstone Power Station Agreement Amendment Act 1994 No. 5 s 5 sch**

date of assent 7 March 1994  
commenced on date of assent

### **Gladstone Power Station Agreement Variation Regulation 1994 SL No. 440**

notfd gaz 16 December 1994 pp 1792–7  
commenced on date of notification  
rep 1999 SL No. 167 s 6

### **Gladstone Power Station Agreement Amendment Act 1997 No. 60 s 9**

date of assent 5 November 1997  
ss 1–2 commenced on date of assent  
remaining provision commenced 6 November 1998 (automatic commencement under AIA s 15DA(2))

## 7 List of annotations

### **Definitions**

s 2 def “Electricity Act” sub 1994 No. 64 s 293 sch 4

### **Minister may make agreement substantially in form of agreement**

s 3 amd 1994 No. 5 s 3; 1997 No. 60 s 4

### **Amendment of State agreement**

s 5 amd 1997 No. 50 s 37 sch; 1997 No. 60 s 5

### **Approval of proposed further agreement**

s 5A ins 1997 No. 60 s 6

### **Amendment of Schedule 2 to State agreement**

prov hdg amd 1997 No. 60 s 7(1)

s 6 amd 1997 No. 60 s 7(2)–(3)

### **Issue of licence**

s 13 amd 1994 No. 64 s 293 sch 4; 1997 No. 77 s 85

### **Minister for Energy must not fix prices for supply under licence**

prov hdg amd 1994 No. 64 s 293 sch 4

s 19 amd 1994 No. 64 s 293 sch 4

### **PART 5—AMENDMENT OF ELECTRICITY ACT**

pt 5 (ss 20–24) om R1 (see RA s 40)

### **Employees’ superannuation**

s 27 amd 1994 No. 5 s 4

### **Records**

s 28 amd 2002 No. 11 s 62 sch 1

**Application of s 36D of the Electricity Act**

**s 29** om 1994 No. 64 s 293 sch 4

**Trade Practices Act exceptions**

**s 30** amd 2010 No. 54 s 67 sch

**Regulation-making power**

**s 31 prov hdg** sub 2004 No. 53 s 2 sch

**SCHEDULE 1—STATE AGREEMENT**

**sch hdg** amd 1997 No. 60 s 8

**SCHEDULE 2—FURTHER AGREEMENT AMENDING STATE AGREEMENT**

ins 1997 No. 60 s 9

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