

Queensland



**ELECTRICITY
AMENDMENT ACT (No. 2)
1997**

Act No. 50 of 1997

Queensland



ELECTRICITY AMENDMENT ACT (No. 2) 1997

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Queensland



Electricity Amendment Act (No. 2) 1997

Act No. 50 of 1997

An Act to amend the *Electricity Act 1994* and another Act and for other purposes

[Assented to 8 September 1997]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Electricity Amendment Act (No. 2) 1997*.

Commencement

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

Act amended

3. This Act amends the *Electricity Act 1994*.

Omission of s 7 (System control)

4. Section 7—
omit.

Amendment of s 18 (Application of Act to government entities)

5. Section 18(2)(e), after ‘(Gladstone power station provisions)’—
insert—
‘ and section 287A (Gladstone power station arrangements)’.

Amendment of s 26 (Generation authorities)

6. Section 26(1)—
omit, insert—
‘(1) A “**generation authority**” authorises its holder—
 - (a) to connect the generating plant stated in the authority to the transmission grid or supply network stated in the authority; and
 - (b) to sell electricity—

- (i) if stated in the authority or otherwise authorised under this Act—through the pool in accordance with the Market Code; or
- (ii) as stated in the authority or otherwise authorised under this Act.’.

Amendment of s 27 (Conditions of generation authority)

7.(1) Section 27(b)(ii)—

omit, insert—

- ‘(ii) if the entity is a code participant—the Market Code; and
- (iii) if the entity is connected to the Queensland system—directions given to it by the Queensland System Operator under this Act or the Market Code; and’.

(2) Section 27(b)(iii) to (v)—

renumber as section 27(iv) to (vi).

Amendment of s 31 (Conditions of transmission authority)

8. Section 31(a)(ii)—

omit, insert—

- ‘(ii) if the entity is a code participant—the Market Code and directions given to it by the Queensland System Operator under this Act or the Market Code; and’.

Amendment of s 42 (Conditions of distribution authority)

9.(1) Section 42, ‘distribution entity authority’—

omit, insert—

‘distribution authority’.

(2) Section 42(a)(i)—

omit, insert—

- ‘(i) if the entity is a code participant—the Market Code and

directions given to it by the Queensland System Operator under this Act or the Market Code; and’.

Amendment of s 55D (Conditions of retail authority)

10.(1) After section 55D(b)—

insert—

‘(c) if the retail entity is a code participant—the entity must comply with the Market Code and directions given to it by the Queensland System Operator under this Act or the Market Code;’.

(2) Section 55D(c) to (e)—

renumber as 55D(d) to (f).

Amendment of s 60 (Conditions of special approval)

11.(1) Section 60(a)—

insert—

- ‘(i) if the holder is a code participant—the Market Code; and
- (ii) if connected to the Queensland system—directions given to it by the Queensland System Operator under this Act or the Market Code; and’.

(2) Section 60(a)(i) to (iii)—

renumber as section 60(a)(iii) to (v).

Amendment of s 87 (Connection of generating plant to transmission grid or supply network only if authorised)

12. Section 87(2), after ‘this Act’—

insert—

‘or the Market Code’.

Amendment of s 88 (Prohibition on operating transmission grid unless authorised)

13. Section 88(2), after ‘this Act’—
insert—
‘or the Market Code’.

Amendment of s 88A (Prohibition on operating supply network unless authorised)

14. Section 88A(2), after ‘this Act’—
insert—
‘or the Market Code’.

Amendment of s 89 (Restriction on sale of electricity)

15.(1) Section 89(1)—
omit, insert—

‘(1) A person must not sell electricity other than in accordance with—
(a) a generation authority or a retail authority held by the person; or
(b) any other authorisation to sell electricity under the Act.

Maximum penalty—5 000 penalty units.’.

(2) Section 89(2), after ‘this Act’—
insert—
‘or the Market Code’.

Amendment of ch 4, pt 2 (Market, settlements, system control and pricing)

16. Chapter 4, part 2, heading—
omit, insert—

**‘PART 2— MARKET AND SYSTEM
ARRANGEMENTS AND PRICING’.**

Replacement of ss 90–92

17. Sections 90 to 92—

omit, insert—

‘Division 1—Queensland System Operator**‘Appointment of Queensland System Operator**

‘90. Queensland Electricity Transmission Corporation Limited is the Queensland System Operator.

‘Functions of Queensland System Operator

‘91.(1) The Queensland System Operator must administer the wholesale market for electricity and seek to maintain the security and reliability of the Queensland system in accordance with the Market Code.

‘(2) For its function under subsection (1), the Queensland System Operator also has the following functions—

- (a) monitoring, controlling and coordinating the transfer of electricity to, from and along the transmission grid or grids;
- (b) monitoring the actions of market participants and, if requested, reporting on them to the Minister, the regulator or other person responsible for market surveillance;
- (c) regulating the measurement of the supply of electricity to, from and along the transmission grid or grids;
- (d) providing information and other services to facilitate decisions for investment and the use of resources in the electricity industry;
- (e) any other functions it may be given under a regulation.

‘Separation of functions of Queensland System Operator

‘92.(1) Queensland Electricity Transmission Corporation Limited must perform its functions as Queensland System Operator in a way that separates the functions from its other functions.

‘(2) The way in which the Queensland Electricity Transmission

Corporation Limited must perform its functions as Queensland System Operator so that they are separate from its other functions may be provided for under a regulation.

‘(3) Without limiting subsection (2) a regulation may provide for—

- (a) the principles, policies and reporting procedures that must be followed; and
- (b) the funds, accounts and records that must be kept.

‘Responsibility for network control

‘92A.(1) A distribution entity is responsible for network control of its supply network.

‘(2) However, a distribution entity is subject to directions given to it by the Queensland System Operator under section 92B.

‘Queensland System Operator may give directions

‘92B.(1) The Queensland System Operator may direct code participants and other persons about things to be observed and action taken—

- (a) to ensure the reliability of supply of electricity in the Queensland system; or
- (b) to ensure the security of the Queensland system; or
- (c) to maintain the voltage or reactive flow of power through the Queensland system; or
- (d) in the interest of public safety; or
- (e) to give effect or to help give effect to a direction given or action taken by the Queensland System Operator.

‘(2) Without limiting subsection (1) a direction may require a code participant or other person—

- (a) to switch off, reconnect or re-route the output of generating plant; or
- (b) to call equipment into service; or
- (c) to take equipment out of service; or

- (d) to begin operation or maintain, increase or reduce active or reactive power output; or
- (e) to shut down or vary operation; or
- (f) to shed or restore customer load; or
- (g) to disconnect a code participant's facilities, works or electrical installations from a transmission grid or a supply network; or
- (h) to do anything necessary or desirable in relation to a matter mentioned in subsection (1).

'Code participant or other persons must comply with direction

'92C. A code participant or other persons must comply with a direction given to it by the Queensland System Operator under section 92B.

Maximum penalty—1 333 penalty units.

'Action that may be taken for failure to comply with direction or for a breach of the Market Code

'92D.(1) If a code participant or other person fails to comply with a direction given to it by the Queensland System Operator under section 92B or a code participant breaches a provision of the Market Code the Queensland System Operator may take the action stated in subsection (2).

'(2) The Queensland System Operator may—

- (a) give directions under section 92B(2); or
- (b) itself do, or authorise another person to do, anything it may direct anyone to do under section 92B(2); or
- (c) suspend the registration of a person as a code participant for a stated period or until stated conditions are satisfied; or
- (d) suspend other stated rights of the code participant under the Market Code for a stated period or until stated conditions are satisfied.

'(3) To remove doubt, it is declared that action under this section is in addition to other action that may be taken by the Queensland System

Operator against a code participant or other person under this Act, the Market Code, a regulation or otherwise.

‘Limitation of liability of Queensland System Operator

‘**92E.(1)** The Queensland System Operator is not civilly liable to anyone for anything done or omitted to be done in good faith by it in the exercise of its powers and performance of its functions as Queensland System Operator.

‘(2) However, the Queensland System Operator may agree with a person to vary or exclude the operation of subsection (1) in relation to the person.

‘(3) In this section—

“**Queensland System Operator**” includes—

- (a) agents appointed by the Queensland System Operator; and
- (b) persons authorised by the Queensland System Operator under section 92D(2).

‘Division 2—Queensland Interim Market Code

‘Approval of Queensland Interim Market Code

‘**92F.(1)** The Minister must approve a code of conduct called the Queensland Interim Market Code for the administration of the pool.

‘(2) The Minister must notify the approval of the Market Code by gazette notice within 14 days.

‘(3) The approval takes effect—

- (a) on a day stated in the notice; or
- (b) if no day is stated in the notice—on the day the notice is given.

‘Amendment of Market Code

‘**92G.(1)** The Minister may amend the Market Code by written notice to the Queensland System Operator.

‘(2) The amendment takes effect on the day, or on the day and at the time stated in the Minister’s written notice.

‘(3) After amendment, the Market Code as amended becomes the Market Code.

‘(4) The Minister must notify the amendment, and when it took effect, by gazette notice within 7 days.

‘**Market Code to be open for inspection**

‘**92H.(1)** The regulator must keep a copy of the Market Code available for inspection at the office of the regulator at any time when the regulator’s office is open for public business.¹

‘(2) The regulator must give a copy of the Market Code to anyone on payment of an amount—

- (a) that the regulator considers reasonable; and
- (b) that is not more than the reasonable cost of providing the copy.

‘**Registration with Queensland System Operator**

‘**92I.(1)** A person must not engage in the activity of owning, controlling or operating—

- (a) generating plant that supplies electricity to the Queensland system; or
- (b) a transmission grid or supply network forming part of the Queensland system;

unless the person is registered by the Queensland System Operator under the Market Code as a code participant for the activity or exempted from registration under the Market Code.

Maximum penalty—1 333 penalty units.

‘(2) A person (“**the purchaser**”) must not purchase electricity from a person administering a market for wholesale trade in electricity unless—

- (a) the person administering the market is the Queensland System

¹ The office of the regulator is located at 61 Mary Street, Brisbane.

Operator; and

- (b) the purchaser is registered by the Queensland System Operator under the Market Code as a code participant for the purchase, or is exempted under the Market Code from the requirement to be registered for the purchase.

Maximum penalty—1 333 penalty units.

‘Queensland System Operator to operate market

‘92J. A person, other than the Queensland System Operator, must not engage in the activity of administering or operating a market for wholesale trade in electricity.

Maximum penalty—1 333 penalty units.

‘Proceedings in relation to the Market Code

‘92K.(1) A person may bring proceedings against a code participant for an alleged contravention of the Market Code only if the alleged contravention is recognised under the Market Code or this Act, as a contravention giving rise to an obligation or liability of the code participant to the person.

‘(2) A person may not in any proceedings rely on an alleged contravention of the Market Code by another person unless the person and the other person are code participants.

‘(3) Nothing in subsection (1) or (2)—

- (a) affects the right of a person to bring proceedings in relation to a matter or thing, or seek a relief or remedy, if the cause of action arises, or the relief or remedy is sought, on grounds that do not rely on the Market Code; or
- (b) prevents the use of the Market Code in any proceedings as evidence of standards of conduct, practices, procedures or rules that apply in the electricity industry.

‘Recovery of amounts payable under the Market Code

‘92L. If an amount payable under the Market Code by one code participant to another remains unpaid for 28 days it may be recovered as a civil debt in a court of competent jurisdiction.

‘Limitation of liability of other persons

‘92M.(1) This section applies to a member of any of the following panels established under the Market Code—

- (a) the code change panel;
- (b) the dispute resolution panel;
- (c) the reliability panel.

‘(2) The member is not civilly liable to a code participant or anyone else because of an act or omission done in good faith as a member of the panel.

‘Regulation making power about market and system arrangements

‘92N. A regulation may make provision for any matter about market and system arrangements including, for example, about—

- (a) procedures for registration with the Queensland System Operator;
or
- (b) the appointment of persons to exercise powers and perform functions under the Market Code.

‘Division 3—Pricing’.**Amendment of s 93 (Powers (including reserve powers) about electricity pricing)**

18. Section 93(1)(b), ‘the regulations’—

omit, insert—

‘this Act’.

Insertion of new s 116B

19. After section 116A—

insert—

‘Easements to include carriage services

‘116B.(1) Despite anything to the contrary in any Act or instrument, an easement, licence or consent to which a transmission or distribution entity is entitled may be used by the entity or another person authorised by the entity for the provision of a carriage service or content service.

‘(2) This section does not authorise a transmission or distribution entity to take land under the *Acquisition of Land Act 1967* only for a carriage service or content service.

‘(3) In this section—

“carriage service” has the meaning given in the *Telecommunications Act 1997* (Cwlth).

“content service” has the meaning given in the *Telecommunications Act 1997* (Cwlth).².

Amendment of s 133 (Types of disciplinary action)

20.(1) Section 133(2), ‘400’—

omit, insert—

‘1 333’.

(2) Section 133(3), ‘supply entity or authorised supplier’—

omit, insert—

‘generation entity or retail entity’.

(3) Section 133(3), after ‘this Act’—

insert—

‘or the Market Code’.

² The attachment contains extracts of the relevant provisions of the *Telecommunications Act 1997* (Cwlth).

Insertion of new s 133A

21. After section 133—

insert—

‘Disciplinary action under the Market Code

‘133A.(1) If a code participant or other person fails to comply with a direction given to it by the Queensland System Operator under section 92B, or a code participant fails to comply with a provision of the Market Code, the regulator may make 1 or more of the orders mentioned in subsection (2).

‘(2) The orders that may be made are—

- (a) to stop, within a stated time, the act, activity or practice that is the non-compliance with the direction or failure to comply with the Market Code; or
- (b) to take the action or adopt the practice the regulator requires for remedying or preventing a recurrence the non-compliance with the direction or failure to comply with the Market Code; or
- (c) to carry out a stated program for compliance with—
 - (i) for a code participant—directions given by the Queensland System Operator and the Market Code; or
 - (ii) for another person—directions given by the Queensland System Operator.

‘(3) To remove doubt, it is declared that action by the regulator under this section does not affect any other action that may be taken about the matters mentioned in subsection (1).’.

Amendment of s 178 (Issue of generation authorities)

22. Section 178(2)(c)—

omit, insert—

- ‘(c)** whether the person is authorised to sell electricity and, if so, the basis of the authorisation; and
- (d)** the term of the authority.’.

Amendment of s 179 (Application for generation authority)

23. Section 179(1)(b)—

insert—

‘(iii) whether the applicant intends to sell electricity and, if so, the basis on which the applicant intends to sell; and’.

Amendment of s 285 (Licences under s 138 of repealed Act)

24. Section 285(1)(b), ‘supply entity or authorised supplier’—

omit, insert—

‘distribution entity or retail entity’.

Insertion of new s 287A

25. After section 287—

insert—

‘Gladstone power station arrangements

‘287A.(1) A regulation may limit the power of the Queensland System Operator to do anything, or to give a code participant a direction requiring it to do anything, that is inconsistent with the obligations of the Queensland System Operator or the code participant under a transaction document.

‘(2) The application of this Act may be changed under the State agreement or a further agreement under the *Gladstone Power Station Agreement Act 1993*.

‘(3) In this section—

“State agreement” has the meaning given in *Gladstone Power Station Agreement Act 1993*.

“transaction document” has the meaning given in *Gladstone Power Station Agreement Act 1993*.³.

³ The attachment contains extracts of the relevant provisions of the *Gladstone Power Station Agreement Act 1993*.

Amendment of ch 14, pt 2

26. Chapter 14, part 2, heading after ‘1997’—

insert—

‘**AND ELECTRICITY AMENDMENT ACT (No. 2) 1997**’.

Amendment of s 291 (Generation authorities for new generation entities)

27. Section 291(3)(b)—

omit, insert—

- (b) sell electricity through the pool in accordance with the Market Code or as otherwise approved by the Minister; and
- (c) perform other functions approved by the Minister.’.

Amendment of s 295 (Expiry of State authorised supplier authorities)

28. Section 295(f) and (g), ‘1966’—

omit, insert—

‘1996’.

Amendment of s 298 (Dispensing with formal requirements for the issue of interim authorities)

29.(1) Section 298, heading, ‘**interim**’—

omit.

(2) Section 298(1), ‘interim’—

omit.

Amendment of s 300 (Minister may give exemptions from holding a retail authority)

30.(1) Section 300, heading, ‘**a retail authority**’—

omit, insert—

‘an authority or being authorised to sell’.

(2) Section 300(1)—

omit, insert—

‘(1) The Minister may exempt a person or class of person from section 89(1).’.

Insertion of new ss 300A and 300B

31. After section 300—

insert—

‘Notifying exemption under s 300

‘300A.(1) If the Minister gives an exemption under section 300, the Minister must notify the making of the exemption by gazette notice within 14 days.

‘(2) The notice must state any conditions on which the exemption is given.

‘(3) Failure to notify under subsection (1) does not invalidate the exemption.

‘(4) This section expires when section 300 expires.

‘Amending or cancelling exemption under s 300

‘300B.(1) The Minister may amend or cancel an exemption under section 300.

‘(2) If an exemption is amended or cancelled, the Minister must—

- (a) give notice of the amendment or cancellation to the holder of the exemption within 7 days;⁴ and
- (b) publish a copy of the notice in the gazette within 14 days.

⁴ Under the *Judicial Review Act 1991*, part 4 a person aggrieved by an administrative decision of the Minister can ask the Minister to give a written statement of reasons for the decision, if they are not given. See the *Acts Interpretation Act 1954*, section 27B (Content of statement of reasons for decision) for what the Minister must set out in those reasons.

‘(3) An amendment or cancellation takes effect—

- (a) on a day stated in the notice; or
- (b) if no day is stated in the notice—on the day the notice is given.

‘(4) This section expires when section 300 expires.’.

Insertion of new ss 302A–302C

32. After section 302—

insert—

‘Interim registration under s 92I

‘**302A.(1)** If the Minister is satisfied that a person is entitled to be registered as a code participant under section 92I, the Minister may grant the person interim registration for the person’s activity.

‘(2) If the Minister grants interim registration the Minister must notify the grant by gazette notice within 14 days.

‘(3) The notice must state any conditions on which the grant is given.

‘(4) A person granted interim registration is taken to be registered until the first occurring of the following—

- (a) registration by the Queensland System Operator under section 92I;
- (b) 1 January 1998.

‘Amending or cancelling grant under s 302A

‘**302B.(1)** The Minister may amend or cancel a grant under section 302A.

‘(2) If a grant is amended or cancelled, the Minister must—

- (a) give notice of the amendment or cancellation to the holder of the grant within 7 days; and
- (b) publish a copy of the notice in the gazette within 14 days.

‘(3) An amendment or cancellation takes effect—

- (a) on a day stated in the notice; or
- (b) if no day is stated in the notice—on the day the notice is given.

‘Market Code replaces Queensland Grid Code

‘302C.(1) This section applies for any reference in any Act or document to the Queensland Grid Code as applied under this Act.

‘(2) If the Market Code deals with matters that the Queensland Grid Code also deals with, the Market Code replaces the Queensland Grid Code to the extent that the Market Code deals with those matters.’.

Insertion of new s 254A

33. Chapter 11, part 3, after section 254—

insert—

‘Attachment—words defined in other legislation referred to in this Act

‘254A.(1) Attached to this Act is an attachment containing relevant provisions from other legislation referred to in this Act.⁵

‘(2) The attachment is not part of this Act.

‘(3) The attachment must be revised so that it is an accurate copy of the provisions as amended from time to time.

‘(4) The revision under subsection (3) must happen in the first reprint of this Act after an amendment of a provision.’.

Amendment of sch 1 (Appeals against administrative decisions)

34. Schedule 1, ‘134’ and the entry opposite—

omit, insert—

‘134	Disciplinary action taken against electricity entity	Supreme’.
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⁵ The attachment appears immediately after the dictionary.

Amendment of sch 5 (Dictionary)**35.** Schedule 5—*insert—*

“**code participant**” means the Queensland System Operator or a person registered with the Queensland System Operator as a code participant.

“**Market Code**” means the code of conduct called the Queensland Interim Market Code approved by the Minister under section 92F as the code of conduct for the purposes of this Act and, if the code is amended, the code as amended.

“**pool**” means the market for wholesale trading in electricity administered by the Queensland System Operator.

“**Queensland grid code**” means the Code of Conduct for the Interconnected Queensland Network first published by the department on 28 November 1994.

“**Queensland system**” means the interconnected power system that is connected to and includes the 275 kV transmission grid in Queensland.

“**Queensland System Operator**” see section 90.

“**trading arrangements**” means arrangements about trading in electricity under this Act or the Market Code by electricity entities, customers, electricity brokers and other persons.’.

Insertion of attachment**36.** After schedule 5—*insert—*

‘ATTACHMENT**‘EXTRACTS FROM OTHER LEGISLATION
REFERRED TO IN THE ACT****‘GLADSTONE POWER STATION AGREEMENT ACT
1993****‘Definitions**

‘2. In this Act—

“State agreement” means the agreement made under section 3, and the agreement as amended by a further agreement under section 5 or 6;

“transaction document” has the meaning given in the State agreement.⁶

‘SCHEDULE**‘STATE AGREEMENT****‘1. Definitions**

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

“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

⁶ These definitions are referred to in section 287A of the Act.

- (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).

‘TELECOMMUNICATIONS ACT 1997 (CWLTH)

‘Definitions

‘7. In this Act, unless the contrary intention appears:

“carriage service” means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

“content service” has the meaning given by section 15.⁷

‘Content service

‘15.(1) For the purposes of this Act, a content service is:

- (a) a broadcasting service; or
- (b) an on-line information service (for example, a dial-up information service); or
- (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service); or
- (d) any other on-line service (for example, an education service

⁷ These definitions are referred to in section 116B of the Act.

provided by a State or Territory government); or

- (e) a service of a kind specified in a determination made by the Minister for the purposes of this paragraph.

‘(2) A Minister may make a written determination for the purposes of paragraph (1)(e).

‘(3) A determination made for the purposes of paragraph (1)(e) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.’.

Amended Act—Schedule

37. The schedule amends the Act mentioned in it.

SCHEDULE**AMENDED ACT**

section 35

**GLADSTONE POWER STATION AGREEMENT ACT
1993****1. Section 5—***insert—*

‘**(1A)** Without limiting subsection (1), the further agreement may add or delete a party to the State agreement.’.