

Queensland



ELECTRICITY AMENDMENT ACT 2000

Act No. 39 of 2000

Queensland



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Electricity Amendment Act 2000

Act No. 39 of 2000

*An Act to amend the *Electricity Act 1994**

[Assented to 13 October 2000]

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

1. This Act may be cited as the *Electricity Amendment Act 2000*.

Act amended

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

Amendment of s 40D (Connection and supply on nondiscriminatory terms)

3. Section 40D, heading, ‘**nondiscriminatory**’—
omit, insert—
‘**fair and reasonable**’.

Amendment of s 63 (Functions)

4. Section 63(1)—
insert—
‘(da) to investigate complaints by customers about the performance or operation of electricity entities; and’.

Insertion of new s 64AA

5. Chapter 2, part 8—

insert—

‘Funding for dispute resolution and complaint investigation functions

‘**64AA.(1)** The regulator’s functions mentioned in section 63(1)(d) and (da) are to be funded by a levy on electricity entities.

‘**(2)** The levy, and the way in which it must be paid, are to be prescribed by regulation.’

‘(3) An electricity entity must pay the levy in the prescribed way.

‘(4) The chief executive may recover an unpaid levy as a debt payable by the electricity entity liable to pay it.’

Insertion of new ch 2, pt 8B

6. Chapter 2—

insert—

‘PART 8B—ENERGY ARBITRATORS

‘Division 1—Appointment

‘Appointment of panel of energy arbitrators

‘**64S.(1)** The Minister, by gazette notice, may appoint not more than 7 persons as energy arbitrators to deal with disputes to which section 119¹ applies.

‘(2) A person may be appointed as an energy arbitrator only if the person—

- (a) is an arbitrator graded by the Institute of Arbitrators and Mediators, Australia; or
- (b) has the qualifications and experience the Minister considers appropriate to perform the functions, and exercise the powers, of an energy arbitrator.

‘Duration of appointment

‘**64T.** An energy arbitrator is appointed for a term of not more than 2 years stated in the instrument of appointment.

¹ Section 119 (Regulator’s role in disputes between electricity entity and customers or occupiers)

‘Remuneration

‘64U.(1) An energy arbitrator is to be paid the remuneration and allowances approved by the Governor in Council.

‘(2) The remuneration and allowances must be paid out of levies paid to the chief executive by electricity entities under section 64AA.

‘Resignation

‘64V.(1) An energy arbitrator may resign by signed notice of resignation given to the Minister.

‘(2) The Minister must give notice of the resignation by gazette notice.

‘Termination of appointment

‘64W.(1) The Minister, by written notice given to an energy arbitrator, may terminate the person’s appointment as an energy arbitrator if the Minister reasonably believes the person is not satisfactorily performing the functions of an energy arbitrator.

‘(2) The notice must contain the Minister’s reasons for terminating the appointment.

‘(3) The Minister must give notice of the termination by gazette notice.

‘Division 2—Functions and powers**‘Functions**

‘64X. An energy arbitrator’s function is to arbitrate disputes referred to the energy arbitrator under section 120ZZB.²

‘Powers

‘64Y. An energy arbitrator may do anything necessary or convenient to be done for performing the energy arbitrator’s functions.’.

² Section 120ZZB (How dispute is referred)

Amendment of s 69 (Electricity officer's identity card)

7. Section 69(2)(c)—

omit, insert—

‘(c) display the electricity officer's usual signature; and’.

Amendment of s 74 (Authorised person's identity card)

8. Section 74(2)(b)—

omit, insert—

‘(b) display the authorised person's usual signature; and’.

Amendment of s 119 (Regulator's role in disputes between electricity entity and customers or occupiers)

9.(1) Section 119—

insert—

‘(1A) However, this section does not apply to the following disputes—

- (a) a dispute to which section 117 applies;
- (b) a dispute that may be dealt with under—
 - (i) the *Queensland Competition Authority Act 1997*; or
 - (ii) the *Electricity—National Scheme (Queensland) Act 1997*.’.

(2) Section 119(2) and (3)—

omit, insert—

‘(2) A party to a dispute may refer the dispute to the regulator.

‘(3) The referral must be in the approved form.

‘(3A) The regulator may—

- (a) decline to act in the dispute; or
- (b) attempt to settle the dispute by mediation; or
- (c) if the regulator reasonably believes the dispute can not be settled

by mediation, refer the dispute to an energy arbitrator under section 120ZZB.³

‘**(3B)** Subsection (5)(c) does not apply to a dispute that arose more than 1 year before the commencement of section 120ZZB.

‘**(3C)** The regulator may give the parties written instructions about the procedures to be followed by the parties to attempt to resolve the dispute, or other action the parties must take before the regulator will attempt to settle the dispute by mediation or refer the dispute to an energy arbitrator.’.

(3) Section 119(1A) to (8)—

renumber as section 119(2) to (12).

Insertion of new ch 5, pt 1C

10. Chapter 5—

insert—

‘PART 1C—DISPUTES REFERRED TO ENERGY ARBITRATOR

‘Division 1—Preliminary

‘Application of pt 1C

‘**120ZY.** This part applies to a dispute to which section 119⁴ applies.

‘Excluded Commercial Arbitration Act 1990

‘**120ZZ.** The *Commercial Arbitration Act 1990* does not apply to a dispute to which this part applies.

³ Section 120ZZB (How dispute is referred)

⁴ Section 119 (Regulator’s role in disputes between electricity entity and customers or occupiers)

‘Exclusion of other jurisdictions

‘120ZZA.(1) If, under this part, a dispute has been referred to an energy arbitrator, the following matters are not justiciable by a court or tribunal at the instigation of an electricity entity that is a party to the dispute—

- (a) the issue in dispute;
- (b) any issue that emerges in the course of the arbitration.

‘(2) However, subsection (1) does not apply if—

- (a) the proceeding before the court or tribunal was started before the dispute was referred to the energy arbitrator; or
- (b) the referral to the energy arbitrator has been withdrawn or struck out for want of jurisdiction; or
- (c) the energy arbitrator decides that, because of the nature or complexity of an issue, the dispute should not be heard by the energy arbitrator.

‘Division 2—Referring and arbitrating disputes**‘How dispute is referred**

‘120ZZB.(1) The regulator, and only the regulator, may refer a dispute to an energy arbitrator.

‘(2) The regulator may make the referral only if the party to the dispute, other than the electricity entity, has agreed to the referral.

‘(3) The referral must be written.

‘(4) The regulator must not refer a dispute to an energy arbitrator if the regulator knows a party to the dispute has started an action in a court or tribunal concerning any issue in the dispute.

‘Giving notice of referral to parties to dispute

‘120ZZC.(1) If the regulator refers a dispute to an energy arbitrator, the regulator must give the parties written notice of the referral.

‘(2) The notice must state the following—

- (a) that the dispute has been referred to an energy arbitrator;
- (b) the name and contact details of the energy arbitrator.

‘Disclosure of interests

‘120ZZD.(1) The energy arbitrator must not arbitrate a dispute if—

- (a) the energy arbitrator has a direct or indirect interest in the dispute; and
- (b) the interest could conflict with the appropriate performance of the energy arbitrator’s functions concerning the dispute.

‘(2) However, this section does not apply to the energy arbitrator if the interest consists only of the receipt of services, or information about electricity supply, that—

- (a) are also available to members of the public; and
- (b) are made available on the same terms that apply to members of the public.

‘(3) If subsection (1) applies, the energy arbitrator must advise the regulator of the potential conflict of interest.

‘(4) After receiving the advice, the regulator must refer the dispute to another energy arbitrator.

‘Presentation of cases

‘120ZZE.(1) Each party to a dispute before the energy arbitrator must conduct their own case.

‘(2) A party may only be represented by an agent if the energy arbitrator agrees.

‘(3) A party must not be represented by a lawyer under subsection (2) unless—

- (a) the parties to the dispute agree; and
- (b) the energy arbitrator is satisfied there is no disadvantage to a party to the dispute.

‘Conduct of arbitration

‘120ZZF.(1) Evidence in the dispute may be given to the energy arbitrator in the way the energy arbitrator considers appropriate.

‘(2) Subject to this Act, the energy arbitrator—

- (a) may conduct the arbitration in the way he or she considers appropriate; and
- (b) is not bound by the rules of evidence and may inform himself or herself in the way he or she considers appropriate.

‘(3) Without limiting subsection (2), the energy arbitrator may rely on evidence given to the regulator in the course of the regulator attempting to settle the dispute.

‘Power to require information from electricity entity

‘120ZZG.(1) A party to the dispute must give the energy arbitrator the information the energy arbitrator reasonably requires to perform the energy arbitrator’s functions.

‘(2) The information must be given within a reasonable time after the energy arbitrator asks for it.

‘(3) A person must not contravene a requirement under this section without reasonable excuse.

Maximum penalty—500 penalty units.

‘(4) It is a reasonable excuse for a person not to comply with a requirement if doing so might tend to incriminate the person.

‘Division 3—Orders and enforcement**‘Orders that can be made**

‘120ZZH.(1) The energy arbitrator may make the following orders against an electricity entity that is a party to a dispute—

- (a) an order that the electricity entity must pay to another party to the dispute an amount of no more than \$10 000;

- (b) a non-monetary order the energy arbitrator considers appropriate against the electricity entity to remedy any issue in the dispute.

‘(2) When making the order, the energy arbitrator must consider the following—

- (a) the objects of this Act;
- (b) the rights and obligations of the parties under this Act, including under any contract between the parties.

‘(3) Despite subsection (1)(b), the energy arbitrator can not cancel, suspend or amend the authority of an electricity entity.

‘No costs

‘**120ZZI.** Costs may not be awarded by the energy arbitrator to or against a party to the dispute.

‘Copy of order to be given to parties

‘**120ZZJ.** The energy arbitrator must give a copy of any order given concerning the dispute to the parties to the dispute.

‘Order final

‘**120ZZK.(1)** Subject to section 120ZZL, an order made by the energy arbitrator binds an electricity entity that is a party to the dispute.

‘(2) The entity may not apply for review of, or appeal against, the order other than under the *Judicial Review Act 1991*.

‘Party, other than electricity entity, to advise whether order accepted

‘**120ZZL.(1)** A party to a dispute, other than the electricity entity, must give written notice to the energy arbitrator if the party decides not to accept the energy arbitrator’s order against the electricity entity.

‘(2) The notice must be given within 21 days after the party receives a copy of the order.

‘(3) If a notice under subsection (1) is not given within the 21 days, the

party is taken to have accepted the order and the order binds the party.

‘(4) If the order is binding on the party, the party may not apply for a review of, or appeal against, the order other than under the *Judicial Review Act 1991*.

‘When order takes effect

‘**120ZZM.** An order by the energy arbitrator takes effect—

- (a) when the order is made; or
- (b) if the order states a later day or event for the order to take effect—on the later day or event.

‘Failure to comply with order

‘**120ZZN.(1)** An electricity entity must comply with an order of the energy arbitrator.

‘(2) If an electricity entity contravenes an order of the energy arbitrator, the other party to the dispute may refer the matter to the regulator.

‘(3) If the matter is referred to the regulator by the other party, the regulator may take action against the electricity entity under section 133(1).

‘How order enforced

‘**120ZZO.(1)** If the energy arbitrator orders an electricity entity to pay an amount to a person, the person may enforce the order by filing the order in a Magistrates Court.

‘(2) Once the order is filed, it is taken to be a judgment of the Magistrates Court.’

‘Energy arbitrator’s report to regulator

‘**120ZZP.** The energy arbitrator must give the regulator—

- (a) a written report on the outcome of the arbitration; and
- (b) a copy of any order made by the energy arbitrator in the arbitration.’.

Amendment of s 253 (Advisory committees)

11.(1) Section 253(1), ‘Advisory committees for the administration of this Act’—

omit, insert—

‘For this Act, advisory committees’.

(2) Section 253—

insert—

‘**(3A)** Without limiting subsection (2) or (3), an advisory committee’s function may be to give information and advice on matters impacting on communities in a particular region to the following—

- (a) the Minister;
- (b) the department;
- (c) distribution entities or retail entities.

Examples of ‘matters impacting on communities in a particular region’ for subsection (4)—

1. Service levels provided by electricity entities.
2. Reliability of electricity supply.
3. Environmental concerns.
4. Major electricity infrastructure projects.
5. Proposed changes to the local electricity network.’.

(3) Section 253(3A) and (4)—

renumber as section 253(4) and (5).

Insertion of new ch 14, pt 2

12. Chapter 14—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR ELECTRICITY AMENDMENT ACT 2000

‘Continuation of existing regional electricity councils

‘303.(1) This section applies to a regional electricity council—

- (a) established by the Minister to provide information about regional electricity issues and requirements to the State and electricity retailers; and
- (b) in existence immediately before the commencement of the *Electricity Amendment Act 2000*.

‘(2) The council continues in existence as if it had been established as an advisory committee under section 253⁵ with the function of giving information and advice on matters impacting on the region for which it was established.’.

Amendment of sch 5 (Dictionary)

13. Schedule 5—

insert—

‘ “energy arbitrator” means a person appointed as an energy arbitrator under section 64S(1).

“reasonably believes” means believes on grounds that are reasonable in the circumstances.’.

⁵ Section 253 (Advisory committees)