

Queensland



**ELECTRICITY LEGISLATION
AMENDMENT AND REPEAL
ACT 2001**

Act No. 82 of 2001

Queensland



ELECTRICITY LEGISLATION AMENDMENT AND REPEAL ACT 2001

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Queensland



Electricity Legislation Amendment and Repeal Act 2001

Act No. 82 of 2001

An Act to amend the *Electricity Act 1994* and repeal the *Electricity
Amendment Act (No. 3) 1997*

[Assented to 3 December 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Electricity Legislation Amendment and Repeal Act 2001*.

2 Commencement

Part 2 and the schedule commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF ELECTRICITY ACT 1994

3 Act amended in pt 2

(1) This part amends the *Electricity Act 1994*.

(2) The schedule also includes amendments of the *Electricity Act 1994*.

4 Insertion of ch 2, pt 8 div 1, hdg

Chapter 2, part 8, before section 62—

insert—

‘Division 1—General provisions about regulator’.

5 Replacement of s 64AA (Funding for dispute resolution and complaint investigation functions)

Section 64AA—

omit, insert—

‘Division 2—Funding for dispute resolution and complaint investigation functions

‘64A Annual levy

‘(1) The regulator’s functions mentioned in section 63(1)(d) and (e) are funded by an annual levy on each of the following (a **“member entity”**) for each financial year—

- (a) a distribution entity;
- (b) a retail entity;
- (c) Country Energy while it holds special approval number SA 21/98;
- (d) another special approval holder prescribed under a regulation.

‘(2) The levy for each member entity consists of—

- (a) a membership fee (the **“membership fee”**), payable in advance on each 1 July; and
- (b) an amount (the **“contribution fee”**) worked out under section 64C, payable under section 64E; and
- (c) the amount of the costs (the **“user-pays fee”**) worked out under section 64D, payable under section 64E.

‘64B Membership fee

‘The membership fee for a member entity for each financial year is—

- (a) for a distribution entity—\$20 000; or
- (b) for a retail entity or Country Energy—\$5 000; or
- (c) for another member entity—nil.

‘64C Contribution fee

‘(1) The contribution fee for a distribution entity is nil.

‘(2) The contribution fee for another member entity for each financial year is worked out by applying the following formula—

$$\frac{120\,000 \times EC}{TEC}$$

where—

“EC” means the number of customers the entity has at the start of the year.

“TEC” means the total number of customers of all relevant entities at the start of the year.

‘(3) For subsection (2), customers—

- (a) of Ergon Energy are its customers in the State and the area under the *Local Government Act 1993* (NSW) named the ‘Tenterfield Area’; and
- (b) of another member entity are only its customers in the State.

‘64D User-pays fee

‘The user-pays fee for a member entity for each financial year is the amount of costs incurred quarterly by the State for the following, to the extent they relate to complaints by customers about the entity or disputes to which the entity is a party—

- (a) the regulator’s performance of the functions mentioned in section 63(1)(d) and (e);
- (b) referrals to energy mediators and arbitrators;
- (c) mediation under chapter 5, part 1B;
- (d) arbitration under chapter 5, part 1C.

‘64E Notice of contribution and user-pays fees and when they must be paid

‘(1) The regulator must, for each member entity—

- (a) as soon as practicable after each financial year starts, work out its contribution fee for the year and give it an information notice about the fee; and

- (b) as soon as practicable after each quarter year ends, work out its user-pays fee for the quarter and give it an information notice about the fee.

‘(2) The member entity must pay the regulator the amount of the fee within 14 days after it receives the notice.

‘(3) In this section—

“**information notice**”, about a fee, means a written notice stating—

- (a) the amount of the fee; and
 (b) how the fee was worked out; and
 (c) that the recipient of the notice may, within 28 days after receiving the notice, appeal to a Magistrates Court against the regulator’s decision on the working out of the fee.

‘64F Recovery of unpaid amounts

‘If a member entity does not pay a membership, contribution or user-pays fee payable under this division, the State may recover the amount of the fee from the entity as a debt.’.

6 Insertion of new ch 2, pt 8A

Chapter 2—

insert—

‘PART 8A—ENERGY MEDIATORS

‘Division 1—Appointment

‘64G Appointment of energy mediators

‘(1) The regulator, by gazette notice, may appoint a person as an energy mediator to deal with disputes to which section 119 applies.

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

- (a) is a mediator graded by the Institute of Arbitrators and Mediators, Australia; or

- (b) has the qualifications and experience the regulator considers appropriate to perform the functions, and exercise the powers, of an energy mediator.

‘64H Duration of appointment

‘An energy mediator is appointed for a term of not more than 2 years stated in the gazette notice.

‘64I Remuneration

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

‘(2) The remuneration and allowances must be paid out of fees paid to the regulator by member entities under part 8, division 2.

‘64J Resignation

‘(1) An energy mediator may resign by signed notice of resignation given to the regulator.

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

‘64K Termination of appointment

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

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

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

‘Division 2—Functions and powers

‘64L Function

‘An energy mediator’s function is to mediate disputes referred to the energy mediator under section 119(5).

‘64M Powers

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

7 Amendment of s 64S (Appointment of panel of energy arbitrators)

Section 64S, ‘Minister’—

omit, insert—

‘regulator’.

8 Amendment of s 64U (Remuneration)

Section 64U(2)—

omit, insert—

‘(2) The remuneration and allowances must be paid out of fees paid to the regulator by member entities under part 8, division 2.’.

9 Amendment of s 64V (Resignation)

Section 64V, ‘Minister’—

omit, insert—

‘regulator’.

10 Amendment of s 64W (Termination of appointment)

(1) Section 64W, ‘Minister’—

omit, insert—

‘regulator’.

(2) Section 64W(2), ‘Minister’s’—

omit, insert—

‘regulator’s’.

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

(1) Section 119(1)(a), from ‘other than’ to ‘ombudsman under this Act’—

omit.

(2) Section 119(3) to (12)—

omit, insert—

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

‘(4) The referral to the regulator must be in the approved form.

‘(5) The regulator must refer the dispute to an energy mediator if the customer or occupier requests it.

‘(6) The regulator must refer the dispute to an energy arbitrator if—

(a) the customer or occupier requests it, whether or not the dispute has already been referred to an energy mediator; or¹

(b) mediation of the dispute by an energy mediator has ended without a mediated agreement about the whole of the dispute being made.²

‘(7) A referral by the regulator or a request under subsection (5) or (6) must be written.

‘(8) The regulator must not make a referral if—

(a) the regulator knows a party to the dispute has started a proceeding concerning an issue in the dispute; or

(b) the dispute arose more than 1 year before—

(i) for subsection (5)—part 1B commenced; or

1 See also section 120ZN(1)(c) (When mediation ends).

2 See also chapter 5, part 1C (Disputes referred to energy arbitrator).

(ii) for subsection (6)—part 1C commenced.

‘(9) A dispute must not be referred to an energy arbitrator to whom the dispute, or part of the dispute, has been referred to as an energy mediator.

‘(10) This section does not prevent a party to the dispute exercising other rights before a court or tribunal.’.

12 Insertion of new ch 5, pt 1B

Chapter 5—

insert—

‘PART 1B—DISPUTES REFERRED TO ENERGY MEDIATOR

‘120ZD Application of pt 1B

‘This part applies if, under section 119(5),³ a dispute has been referred to an energy mediator.

‘120ZE Notice of referral to parties to dispute

‘The regulator must give the parties to the dispute written notice stating—

- (a) the dispute has been referred to an energy mediator; and
- (b) the mediator’s name and contact details.

‘120ZF Disclosure of interests

‘(1) An energy mediator must not mediate the dispute if—

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

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

‘(2) However, subsection (1) does not apply 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 mediator must advise the regulator of the potential conflict of interest.

‘(4) After receiving the advice, the regulator must refer the dispute to another energy mediator and give notice under section 120ZE about the referral.

‘120ZG Presentation of cases

‘(1) Each party to the dispute must conduct their own case before the energy mediator.

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

‘(3) However, a party must not be represented by a lawyer unless—

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

‘120ZH Parties bear own costs

‘Each party to the mediation of the dispute must bear their own costs of the mediation.

‘120ZI Conduct of mediation

‘(1) The energy mediator must act as an independent mediator and not make a decision or judgment about the dispute or part of the dispute.

‘(2) The mediator may conduct the mediation of the dispute in the way he or she considers appropriate to attempt to resolve the dispute.

‘120ZJ Energy mediator to maintain secrecy

‘(1) The energy mediator must not, without reasonable excuse, disclose information about a matter coming to the mediator’s knowledge during the mediation of the dispute.

Maximum penalty—40 penalty units.

‘(2) It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all parties to the dispute; or
- (b) for this Act; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the mediation; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or
- (f) under a requirement imposed under an Act.

‘120ZK Ordinary protection and immunity allowed

‘(1) An energy mediator has, in mediating the dispute, the same protection and immunity as a judge performing the functions of a judge.

‘(2) A party to the dispute in the mediation, and any lawyer or other agent representing the party under section 120ZG, has the same protection and immunity the party would have if the mediation were a proceeding being heard before the Supreme Court.

‘(3) A document produced at, or used for, the mediation has the same protection during the mediation it would have if produced before the Supreme Court.

‘120ZL Admissions made to energy mediators

‘(1) Evidence of anything done or said, or an admission made, at a mediation of the dispute is admissible in a proceeding before an energy arbitrator or elsewhere only if all parties to the dispute agree.

‘(2) In this section—

“**proceeding**” does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation.

‘120ZM Mediated agreement

‘(1) If, at the mediation of the dispute, the parties to the dispute negotiate an agreement (a “**mediated agreement**”) about the dispute or part of the dispute, the agreement must be written down and signed by or for each party and by the energy mediator.

‘(2) The agreement has the same effect as any other compromise.

‘120ZN When mediation ends

‘(1) The mediation of the dispute ends—

- (a) on the making of a mediated agreement about the whole of the dispute; or
- (b) if the parties to the dispute agree the mediation is ended; or
- (c) if a party to the dispute requests, under section 119(6)(a), it be referred to an energy arbitrator.

‘(2) The mediation of the dispute is taken to end on the later of the following days—

- (a) 28 days after the dispute is referred to the energy mediator;
- (b) if the parties to the dispute agree within the 28 days to a later day—the later day.

‘(3) The later day can not be more than 56 days after the referral.

‘120ZO Energy mediator’s report to regulator

‘The energy mediator must, as soon as practicable after the mediation ends, give the regulator—

- (a) a written report on the outcome of the mediation; and
- (b) a copy of any mediated agreement made between the parties to the dispute.’.

13 Replacement of s 120ZY (Application of pt 1C)

Section 120ZY—

omit, insert—

‘120ZP Application of pt 1C

‘This part applies for a referral, under section 119(6), of a dispute to an energy arbitrator.’

14 Omission of s 120ZZB (How dispute is referred)

Section 120ZZB—

omit.

15 Amendment of section 120ZZD (Disclosure of interests)

Section 120ZZD(4), after ‘arbitrator’—

insert—

‘and give notice under section 120ZS about the referral’.

16 Insertion of new ss 120ZZFA

After section 120ZZF—

insert—

‘120ZZFA Ordinary protection and immunity allowed

‘(1) An energy arbitrator has, in arbitrating the dispute, the same protection and immunity as a judge performing the functions of a judge.

‘(2) A party to the dispute in the arbitration, and any lawyer or other agent representing the party under section 120ZU, has the same protection and immunity the party would have if the arbitration were a proceeding being heard before the Supreme Court.

‘(3) A document produced at, or used for, an arbitration has the same protection during the arbitration it would have if produced before the Supreme Court.’

17 Amendment of s 120ZZH (Orders that can be made)

Section 120ZZH(1)(b), ‘\$10 000’—

omit, insert—

‘\$20 000’.

18 Amendment of s 254 (Protection from liability)

Section 254(1)(c)—

omit, insert—

‘(c) officers of the department assisting the regulator to perform functions mentioned in section 63(d) and (e); and’.

19 Amendment of sch 1 (Appeals against administrative decisions)

Schedule 1, after entry for section 134—

insert—

‘64E(1)	Working out of contribution or user-pays fee	Magistrates’.
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20 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

‘**“contribution fee”** see section 64A(2)(b).

“Country Energy” means the entity called ‘Country Energy’, mentioned in the *Electricity Supply Act 1995* (NSW), schedule 3.

“energy mediator” means a person appointed as an energy mediator under section 64G.

“mediated agreement” see section 120ZM(1).

“member entity” see section 64A(1).

“membership fee” see section 64A(2)(a).

“user-pays fee” see section 64A(2)(c).’.

**PART 3—REPEAL OF ELECTRICITY AMENDMENT
ACT (No. 3) 1997**

21 Repeal

The *Electricity Amendment Act (No. 3) 1997* is repealed.

SCHEDULE**MINOR AMENDMENTS OF ELECTRICITY ACT 1994**

section 3(2)

- 1 Section 63(1)(da) to (f)—**
renumber as section 63(1)(e) to (g).
- 2 Section 64X, ‘section 120ZZB’—**
omit, insert—
‘section 119(6)’
- 3 Sections 64S to 64Y—**
renumber as sections 64N to 64T.
- 4 Section 64T, ‘instrument of appointment’—**
omit, insert—
‘gazette notice’.
- 5 Sections 120ZZ to 120ZZP—**
renumber as sections 120ZQ to 120ZZG.
- 6 Section 120ZZK, ‘section 120ZZL’—**
omit, insert—
‘section120ZZC.’.

SCHEDULE (continued)

- 7** Schedule 5, definition “energy arbitrator”, ‘section 64S(1)’—
omit, insert—
‘section 64N(1)’.