



Queensland

Electricity Amendment Act 2004

Act No. 50 of 2004



Queensland

Electricity Amendment Act 2004

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Queensland

Electricity Amendment Act 2004

Act No. 50 of 2004

An Act to amend the *Electricity Act 1994*

[Assented to 29 November 2004]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Electricity Amendment Act 2004*.

2 Commencement

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

3 Act amended

This Act amends the *Electricity Act 1994*.

4 Amendment of s 64A (Annual levy)

Section 64A(1)(b)—

omit, insert—

‘(b) a retail entity whose retail authority states a retail area or that supplies customers whose consumption of electricity has been less than 200 000 kWh in any 12 month period;’.

5 Insertion of new ss 113A and 113B

After section 113—

insert—

‘113A Authority to transmit over land

‘(1) A transmission entity is authorised to operate works to transmit electricity across, over or through the following land—

- (a) land that it owns;
- (b) land over which it holds the benefit of an easement, licence or other agreement or a consent mentioned in section 112 in relation to the works.

- ‘(2) Subsection (1)(b) applies whether or not the easement, licence, agreement or consent authorises the transmission.

‘113B Authority to supply over land

- ‘(1) A distribution entity is authorised to operate works to supply electricity using a supply network across, over or through the following land—
- (a) land that it owns;
 - (b) land over which it holds the benefit of an easement, licence or other agreement or a consent mentioned in section 112 in relation to the works.
- ‘(2) Subsection (1)(b) applies whether or not the easement, licence, agreement or consent authorises the supply.’.

6 Amendment of s 114 (Compensation payable by electricity entity for damage etc.)

Section 114—

insert—

- ‘(3) Subsection (2) is subject to sections 97 and 97A.¹’.

7 Amendment of s 117 (Resolution of certain disputes between electricity entities or between electricity entities and public entities)

Section 117(1A), after ‘Market Code’—

insert—

‘or to disputes that relate to chapter 5A (including a dispute about what is a chargeable amount under section 309)²’.

1 Sections 97 (Limitation of liability of electricity entities and special approval holders that are not code participants) and 97A (Limitation of liability for National Electricity (Queensland) Law)

2 Chapter 5A (13% gas scheme)
Section 309 (Existing electricity supply contracts)

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

(1) Section 119(2)—

insert—

‘(c) a dispute between an electricity entity and a customer if the customer’s consumption of electricity has been more than 200 000 k Wh in any 12 month period;

(d) a dispute that relates to chapter 5A.’.

(2) Section 119(8)—

insert—

‘(c) the regulator considers the subject of the dispute, as referred to the regulator, is frivolous or vexatious.’.

9 Amendment of s 120ZE (Notice of referral to parties to dispute)

Section 120ZE(b)—

omit, insert—

‘(b) the mediator’s name.’.

10 Amendment of s 120ZS (Giving notice of referral to parties to dispute)

Section 120ZS(2)(b)—

omit, insert—

‘(b) the arbitrator’s name.’.

11 Amendment of s 120ZZC (Party, other than electricity entity, to advise whether order accepted)

Section 120ZZC(1), ‘energy arbitrator’—

omit, insert—

‘regulator’.

12 Insertion of new ch 5A

After chapter 5—

insert—

‘Chapter 5A 13% gas scheme**‘Part 1 Introduction****‘Division 1 Purposes of chapter****‘135A Main purposes of ch 5A**

‘The main purposes of this chapter are to—

- (a) reduce the growth in greenhouse gases associated with electricity use in the State; and
- (b) contribute to the diversification of the State’s energy mix towards the greater use of gas in electricity generation; and
- (c) encourage the development of new gas sources and gas infrastructure to meet the State’s future energy requirements.

‘135AA How main purposes are achieved

- ‘(1) The main purposes of this chapter are achieved by providing for a certificate-based scheme.
- ‘(2) The scheme consists of—
 - (a) persons (called ‘accredited generators’) who generate, or who are involved in the generation of, particular gas-fired electricity that supports the State’s electricity load; and
 - (b) persons (called ‘liable persons’), most of whom are retail entities and others who sell or use electricity in the State, who have a liability under the scheme.
- ‘(3) Under the scheme—

- (a) accredited generators can create gas electricity certificates (each called a **GEC**) for each MWh of particular gas-fired electricity worked out under part 3³ (**eligible gas-fired electricity**) generated by the accredited power station; and
 - (b) accredited generators may sell GECs to liable persons and anyone else registered under this chapter as a scheme participant who wishes to trade in GECs; and
 - (c) liable persons must surrender to the regulator the number of GECs that, in general terms, equates to 13% of the electricity sold or used by them for each year from 2005 to 2019; and
 - (d) accredited generators and persons registered under part 6⁴ as scheme participants may, subject to part 4, division 4,⁵ sell, transfer or surrender their GECS.
- ‘(4) Accredited generators and persons registered under part 6 are collectively called a **scheme participant**.⁶
- ‘(5) It is Parliament’s expectation that income earned from the sale of GECs will help gas-fired electricity to compete with electricity generated from other more greenhouse-intensive energy sources.

‘Division 2 Definitions for ch 5A

‘135AB **Power stations and their nameplate capacity**

- ‘(1) A **power station** is an electricity generating plant or system.
- ‘(2) **Power station** also includes all buildings, components, equipment and infrastructure of the plant or system directly related to its operation or to its electricity production, including, for example, a thing needed—

3 Part 3 (Eligible gas-fired electricity)

4 Part 6 (Scheme participants)

5 Part 4, division 4 (Dealings with GECs)

6 For persons who are taken to be registered under part 6 as a scheme participant, see sections 135BO (Effect of surrender), 135BZ (Effect of cancellation) and 135GH (Who obtains the benefit of liable load exemption).

- (a) to store, retrieve, measure, distribute or prepare the fuel or energy source for the plant or system; or
- (b) to combust, convert or otherwise use the fuel or energy source for the plant or system to generate electricity directly or to energise an intermediate medium; or

Example of an intermediate medium—

steam, produced from the burning of fuel in a boiler, that is used to drive a steam turbine to generate electricity

- (c) to convert the energy in an intermediate medium into electricity; or
- (d) to control, switch or transform the electricity generated; or
- (e) to control the processes involved in the main and auxiliary processes associated with the electricity generation; or
- (f) to control emissions to ensure compliance with a relevant environmental authority under the *Environmental Protection Act 1994* if the thing is directly related to the electricity generation; or
- (g) to do any of the following for a matter or process mentioned in paragraphs (a) to (f)—
 - (i) cooling;
 - (ii) heating;
 - (iii) preparing or distributing a fluid or gas to use in, or to control, the matter or process;
 - (iv) distributing or controlling electricity used;
 - (v) metering, recording or transmitting relevant parameters;
 - (vi) waste disposal or removal; or
- (h) to comply with the *Workplace Health and Safety Act 1995* or a requirement or standard under any other Act relating to safety if the thing is directly related to the electricity generation.

- (3) However, a thing mentioned in subsection (2) is not part of the power station if it—

-
- (a) is located more than 1 km from the boundary of the plant or system; or
- (b) is only used to—
- (i) extract or mine a fuel source for the plant or system; or
- (ii) separate or process wastes only part of which form a fuel source for the power station.
- ‘(4) A power station’s *nameplate capacity* is the capacity of its main generating unit or units, as stated by its manufacturer.

‘135AC Who is the *economic operator* of a power station

‘The *economic operator* of a power station is—

- (a) the person who, under the Market Code, is registered as the generator for the power station; or
- (b) if no one is registered, or required to be registered, under the code as the generator for the power station—the person who has the physical control of the power station.

Example for paragraph (b)—

a person who has the physical control of a power station not connected to the national grid

‘135AD What is *eligible fuel*

‘(1) An *eligible fuel* is—

- (a) natural gas formed naturally in the earth; or

Examples—

- liquefied natural gas or ‘LNG’
- compressed natural gas or ‘CNG’
- gas (commonly called ‘coal seam gas’) occurring naturally in association with coal and produced as a resource in its own right
- gas (commonly called ‘waste mine gas’) occurring naturally in association with coal and—

-
- (a) released during the process of coal mining, either directly or indirectly by disturbance of gas-bearing strata; or
 - (b) released before mining for the purpose of safety; or
 - (c) drained from underground areas previously mined for coal
- (b) a substance that is—
- (i) a by-product of processes carried out at a petroleum refinery; and
 - (ii) a gas at an absolute pressure of 101.325 kPa and at a temperature of 15°C; or
- (c) a gas not formed naturally in the earth that consists predominately of methane and—
- (i) is of the composition, characteristics and quality prescribed, under the *Gas (Residual Provisions) Act 1965*, for natural gas as defined under that Act (whether or not the gas is natural gas as defined under that Act);⁷ or
 - (ii) is of another quality approved under that Act;⁸ or
 - (iii) is of a quality prescribed under a regulation; or
- (d) liquefied petroleum gas.
- ‘(2) However, ***eligible fuel*** does not include an eligible renewable energy source under the *Renewable Energy (Electricity) Act 2000* (Cwlth).
- ‘(3) In this section—
- petroleum refinery*** means an organised and coordinated arrangement of manufacturing processes the primary purpose of which is to separate and purify crude oil for the production and sale of liquid fuel products.

7 For the prescribed quality, see the *Gas (Residual Provisions) Regulation 1989*, section 10 (Composition, characteristics and quality of gas).

8 See the *Gas (Residual Provisions) Regulation 1989*, section 21 (Non-conforming gases).

‘135AE What is *auxiliary load* for a power station

- ‘(1) *Auxiliary load*, for a power station, is—
- (a) electricity used within the power station as part of an electricity generation process; or
 - (b) electricity—
 - (i) used within its boundaries to power buildings, components, equipment or infrastructure that are not part of the power station; and
 - (ii) that is not separately metered from electricity mentioned in paragraph (a); or
 - (c) electricity used for a purpose mentioned in paragraph (a) or (b) at any time from when the power station first sends out electricity to a grid; or
 - (d) electricity used to run the power station in synchronous condenser mode if the electricity is able to be separately measured and is distinguishable from other energy uses for the power station.
- ‘(2) However, if electricity used within a power station as part of an electricity generation process is a pumping load for a pumped storage hydro power station, only the proportion of the load that is equal to the amount of the electricity generated that is sent out by the power station is auxiliary load.

‘135AF What is a *major grid* and a *small grid*

- ‘(1) A *major grid* is—
- (a) a supply network or transmission grid if—
 - (i) it is not interconnected with another transmission grid or supply network; and
 - (ii) the power stations connected to it have a combined nameplate capacity of more than 100 MW; or
 - (b) a network of interconnected transmission grids or supply networks the power stations connected to which have a combined nameplate capacity of more than 100 MW.
- ‘(2) A *small grid* is—

- (a) a supply network or transmission grid if—
 - (i) it is not interconnected with another transmission grid or supply network; and
 - (ii) the power stations connected to it have a combined nameplate capacity of 100 MW or less; or
- (b) a network of interconnected transmission grids or supply networks the power stations connected to which have a combined nameplate capacity of 100 MW or less.

‘135AG What is a *substantive traceable link* to a major grid

‘A *substantive traceable link*, to a major grid, is a connection of electric lines that allows electricity to be sent into or received from the grid.

‘135AH What is a *direct supply arrangement*

‘A *direct supply arrangement* is an arrangement under which—

- (a) a power station supplies electricity to an end user in the State using a dedicated line; or
- (b) electricity is supplied to a customer in the State through a grid if—
 - (i) the grid is not directly or indirectly connected to the national grid; and
 - (ii) 90% or more of the annual electricity supplied to the grid is generated from eligible fuels.

‘135AI What is an *electricity load*

- ‘(1) An *electricity load* is an amount of electricity to supply all or part of the electricity of—
 - (a) a customer or a group of customers; or
 - (b) an end user, or a group of end users, of electricity.
- ‘(2) The *electricity load* of the State is the total amount of electricity to supply the needs of end users of electricity who are in the State.

‘135AJ Who are the *baseline customers* of a power station

- ‘(1) A *baseline customer*, of a power station, is each person mentioned in subsection (2)—
- (a) who is a customer of the power station or to whom the power station supplies electricity; and
 - (b) who is in the State; and
 - (c) to whom the power station delivers electricity generated from eligible fuels.
- ‘(2) For subsection (1), the persons are—
- (a) a person to whom the power station supplies electricity under a direct supply arrangement; and
 - (b) NEMMCO; and
 - (c) if the power station is not directly or indirectly connected to the national grid—a retailer supplying electricity under a direct supply arrangement.
- ‘(3) Subsection (1) applies even if, under part 3, division 5, the amount of the baseline for the person is 0.

‘135AK Other definitions for ch 5A

‘In this chapter—

13% liability see section 135EM(1).

accreditation means accredited as an accredited generator under part 2.

accredited generator means a person who holds an accreditation that is in force.

accredited generator register see section 135JE(1)(a).

accredited power station means the power station or the parts of the power station, as decided by the regulator under section 135AN, for which an accreditation is held.

amended assessment see section 135FK(2).

ancillary matters, for a power station, see section 135AM(2).

annual loss factor, for a power station, see section 135CR(2).

annual QUF, for a power station, see section 135CM(2).

applicant, for part 8, division 1, see section 135IX(a).

application, for part 8, division 1, see section 135IX(b).

approved auditor means a person who, under part 7, division 1, holds an appointment as an approved auditor.

approved form means the form approved, under section 135JV, by the regulator.

assessment, by the regulator, means an assessment by the regulator made under part 5, division 4, subdivision 2.

auditable person see section 135IO.

audit notice see section 135IP(1).

auxiliary load, for a power station, see section 135AE.

baseline, for an accredited power station, see section 135CV(1).

baseline customer, of a power station, see section 135AJ.

baseline loss factor, for a power station, see section 135CS(3).

baseline QUF, for a power station, see section 135CN(3).

baseline year, for a power station—

- 1 Generally, the **baseline year** for a power station is the period mentioned in section 135CY(2).
- 2 However, if, under section 135CY(3) or 135CZ(3), the regulator has fixed a sent out or delivered amount by reference to another period, the **baseline year** for the power station is the other period.

civil penalty means the civil penalty imposed under section 135EY.

complete suspension, of the right to create GECs, see section 135BT(2)(a).

compromise assessment see section 135FJ(2).

dedicated line means an electric line that supplies only 1 end user or only 1 group of interrelated end users.

default assessment see section 135FH(1).

direct method means direct method A or direct method B under section 135CD.

direct supply arrangement see section 135AH.

economic operator, of a power station, see section 135AC.

electricity load see section 135AI.

eligible electricity guidelines see section 135CK.

eligible fuel see section 135AD.

eligible gas-fired electricity see section 135AA(3)(a).

eligible renewable electricity see section 135GR(2).

end user, of electricity, means any one who uses it.

exempted load see section 135EM(4)(b).

GEC see section 135AA(3)(a).

GEC register see section 135JE(1)(b).

GEC review see section 135B(1).

GEC surrender direction see section 135DQ(2).

general method see section 135CC.

information notice, for a decision, means a notice stating each of the following—

- (a) the decision;
- (b) reasons for the decision;
- (c) all rights of review or appeal under this Act for the decision;
- (d) the period in which any review or appeal must be started;
- (e) how the rights of review or appeal must be exercised;
- (f) that a stay of a decision the subject of review or appeal under this Act may be applied for under this Act.

interested person, for an electricity load, see section 135GG.

liable load see section 135EM(5).

liable load exemption means an exemption granted under part 5, division 6 that is in force.

liable load exemption register see section 135JE(1)(d).

liable person see section 135EM(3).

liable year, for the 13% liability, see section 135EM(6).

limited suspension see section 135BT(2)(b).

major grid see section 135AF(1).

measurement method, for a power station, see section 135AM(3).

nameplate capacity, for a power station, see section 135AB(4).

non-liable load see section 135EM(4)(c).

notice means a written notice.

official, for part 8, division 4, see section 135JL.

penalty imposition day, for the 13% liability, see section 135EY(2).

power station see section 135AB.

prescribed renewable energy source see section 135GR(1)(a).

proponent, for a significant project, means the person who proposes or owns the project.

reassessment see section 135FI.

recognised program see section 135GR(1)(b).

referrer see section 135FY(1).

registered owner, of a GEC—

- 1 The **registered owner**, of a GEC, is the person who, under section 135DN or 135DW, is or becomes its registered owner.
- 2 However, the person ceases to be the registered owner if, under part 4, division 3, the GEC is cancelled.

registration, for a GEC, means registration under section 135DJ.

retailer means a person who holds a retail authority.

scheme participant see section 135AA(4).

scheme participant register see section 135JE(1)(c).

self-assessment report see section 135FD.

significant project see section 135GI(1).

small grid see section 135AF(2).

special conditions, for accreditation, see section 135AN(4)(a).

standard accreditation conditions see section 133AU(2).

State development exemption see section 135GI(4).

substantive traceable link, to a major grid, see section 135AG.

surrender application, for a GEC, means an application made under part 4, division 4, subdivision 3.

transmission zone see section 135CO(2).

valid, for the creation or purported creation of a GEC, means creation under the requirements of part 4, division 1.

vintage year, for a GEC, means the year in which it was registered.

‘Part 2 Accreditation

‘Division 1 Applying for and obtaining accreditation

‘135AL Who may apply for accreditation

- ‘(1) The following persons may apply to the regulator to become an accredited generator for a power station or proposed power station—
- (a) for a power station—
 - (i) its economic operator; or
 - (ii) a person nominated by the economic operator;

- (b) for a proposed power station—
 - (i) a person who proposes to become its economic operator; or
 - (ii) a person nominated by the proposed economic operator.
- ‘(2) However, only 1 person can be nominated under subsection (1) for the same application.
- ‘(3) If more than 1 person is the economic operator or proposed economic operator—
 - (a) the application must be made by them jointly; but
 - (b) only 1 of them can be the nominated accredited generator.
- ‘(4) A person can not apply for an accreditation that applies for more than 1 power station or proposed power station.
- ‘(5) However, subsection (4) does not prevent the same person holding more than 1 accreditation.

‘135AM Requirements for application

- ‘(1) The application must—
 - (a) be in the approved form; and
 - (b) identify the power station or proposed power station, its location and each of its constituent parts; and
 - (c) state any relevant transmission zones known to the applicant; and
 - (d) state the nameplate capacity of the power station or proposed power station; and
 - (e) state details of the ownership of, and operating arrangements for, the power station or proposed power station; and
 - (f) state details of the fuels used or to be used by the power station or proposed power station; and
 - (g) give information that will allow the regulator to decide each of the following matters for the power station or proposed power station—

- (i) its baseline customers;
- (ii) the baseline for each of the customers;
- (iii) its annual and baseline loss factors;
- (iv) its approved measurement points;

Example of measurement points—

meters measuring sent out electricity or, if a direct method is used, electricity delivered

- (v) if the power station or proposed power station generates or uses unmetered electricity—a methodology to estimate the generation or use; and
- (h) give information that will allow the regulator to decide, under section 135JA, a method for working out—
 - (i) the amount of electricity sent out from the power station or proposed power station or, if the applicant proposes to apply to use a direct method, delivered to an end user under a direct supply arrangement; or
 - (ii) an amount incidental to subparagraph (i); and
- (i) give information relevant to the working out of eligible gas-fired electricity generated by the power station or proposed power station; and
- (j) be accompanied by—
 - (i) evidence that, under section 135AL, the applicant is entitled to make the application; and
 - (ii) the fee prescribed under a regulation.

‘(2) The matters mentioned in subsection (1)(g) are the *ancillary matters* for the power station or proposed power station.

‘(3) The method mentioned in subsection (1)(h) is the *measurement method* for the power station or proposed power station.

‘135AN Deciding application

- ‘(1) The regulator must decide whether to grant or refuse the application.

- ‘(2) The regulator may grant the application only if—
- (a) the regulator is satisfied—
 - (i) the power station or proposed power station generates, or will generate, eligible gas-fired electricity; and
 - (ii) the amount of the eligible gas-fired electricity is, or will be, able to be worked out from time to time; and
 - (b) the regulator is able to decide—
 - (i) the parts of the power station or proposed power station that are relevant to the accreditation; and
 - (ii) the ancillary matters for the power station or proposed power station.
- ‘(3) If the power station or proposed power station is not in a transmission zone under a regulation, the regulator may defer the deciding of the application for a reasonable period to allow a transmission zone to be prescribed that includes the power station or proposed power station, and for the fixing of relevant QUFs.
- ‘(4) If the regulator decides to grant the application—
- (a) the regulator may impose conditions (*special conditions*) on the accreditation the regulator considers necessary or desirable;⁹ and
 - (b) the regulator must decide the ancillary matters.

‘135AO Provisions for deciding ancillary matters for power station

- ‘(1) This section applies if the regulator is deciding the ancillary matters for the power station or proposed power station.
- ‘(2) The regulator need not decide its annual loss factor or baseline loss factor if the regulator has, under section 135CD(3),¹⁰ approved direct method A for working out the eligible

⁹ See also division 3 (Standard accreditation conditions).

¹⁰ Section 135CD (Alternate methods for direct supply arrangement)

gas-fired electricity generated by the power station or proposed power station.

- ‘(3) Different measurement methods may be approved for different measurement points for the power station or proposed power station.
- ‘(4) If the regulator is satisfied arrangements for an approved measurement point comply with any relevant requirements under the Market Code, the regulator must approve the arrangements as the measurement methods for the measurement point.

‘135AP Provisional decision to grant

- ‘(1) This section applies if the regulator is deciding the application and the regulator is unable to decide whether or not the regulator is satisfied about a matter mentioned in section 135AN(2)¹¹ (the *undecided matter*).
- ‘(2) The regulator may—
 - (a) defer the deciding of the application; and
 - (b) give the applicant a notice stating that, subject to being satisfied about the undecided matter as required under section 135AN(2), the regulator will grant the application.
- ‘(3) If after giving the notice the applicant satisfies the regulator about the undecided matter as required under section 135AN(2), the regulator must grant the application.
- ‘(4) However, subsection (3) ceases to apply if, because of a change in circumstances, the regulator is no longer satisfied about another matter mentioned in section 135AN(2).

‘135AQ Steps after deciding application

- ‘(1) If the regulator decides to grant the application, the regulator must issue the accreditation as soon as practicable.
- ‘(2) The accreditation must—

¹¹ Section 135AN (Deciding application)

-
- (a) state—
 - (i) any special conditions imposed; and
 - (ii) the ancillary matters decided for the power station or proposed power station; and
 - (iii) a unique accreditation code for the accredited generator and the power station or proposed power station; and
 - (b) be accompanied by an information notice about the decisions about each of the ancillary matters and to impose any special conditions.
- ‘(3) Subsection (2)(b) does not apply for a condition or ancillary matter that is the same, or is to the same effect as, a condition or ancillary matter agreed to or requested by the applicant.
- ‘(4) If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

‘135AR Term of accreditation

- ‘(1) An accreditation takes effect on the day of effect stated in the accreditation or, if it states no day of effect, the day it is issued.
- ‘(2) The stated day of effect may be any day not before 1 January 2005.
- ‘(3) Subject to suspension under division 5, subdivision 3,¹² the accreditation continues in force until 31 December 2020, unless it is sooner cancelled or surrendered under this part.

‘135AS Withdrawal of nomination to be accredited generator

- ‘(1) This section applies if a person has applied to be, or is, the accredited generator of a power station or proposed power station and the person is not the economic operator of the power station or proposed power station.

¹² Division 5, subdivision 3 (Other amendments, cancellation and suspension)

- ‘(2) The economic operator of the power station may, by notice to the regulator, withdraw the nomination given for the person to become the accredited generator.¹³
- ‘(3) A change in the economic operator of the power station does not, of itself, affect the nomination.

‘Division 2 Accredited generator’s rights

‘135AT Right to create, mortgage and transfer GEC

- ‘(1) An accredited generator has, from when the accredited generator’s accreditation takes effect,¹⁴ the following rights—
 - (a) to create, under part 4,¹⁵ GECs for eligible gas-fired electricity generated by the power station on and from the day the accreditation takes effect until—
 - (i) the accreditation is cancelled or surrendered; or
 - (ii) the end of 31 December 2019;
 - (b) to mortgage or transfer GECs of which the accredited generator is the owner up to and including 31 December 2020.¹⁶
- ‘(2) However—
 - (a) the rights are subject to part 4; and
 - (b) the right to create GECs is subject to any suspension under division 5, subdivision 3.¹⁷

13 See also section 135BU(2)(c) (Conditions for other amendments and for cancellation or suspension by regulator).

14 For when an accreditation takes effect, see section 135AR (Term of accreditation)

15 Part 4 (GECs)

16 For the transfer of GECs by accredited generators or scheme participants see part 4, division 4 (Dealings with GECs).

For mortgages of GECS, see section 135DY (Mortgage of GEC).

17 Division 5, subdivision 3 (Other amendments, cancellation and suspension)

‘Division 3 Standard accreditation conditions

‘135AU Operation of div 3

- ‘(1) This division imposes conditions on each accreditation.
- ‘(2) Conditions imposed under this division are the *standard accreditation conditions*.
- ‘(3) The standard accreditation conditions apply as well as any special conditions stated in the accreditation.
- ‘(4) If a standard accreditation condition conflicts with any of the special conditions, the standard accreditation condition prevails to the extent of the inconsistency.
- ‘(5) As well as imposing a condition, section 135BI¹⁸ also imposes a penalty for not complying with the conditions.

‘135AV Obligation to give information when GEC created

‘If an accredited generator creates a GEC, the generator must immediately give the regulator the following information—

- (a) information relevant to the calculation of the eligible gas-fired electricity for which the GEC was created;
- (b) information that shows the accredited power station’s baseline has been exceeded.

‘135AW Obligation to keep documents used for GEC creation

‘An accredited generator must, unless the generator has a reasonable excuse, keep all documents the generator uses to work out eligible gas-fired electricity for the creation of a GEC by the generator for 5 years after the creation of the GEC.

18 Sections 135BI (Accreditation conditions must not be contravened)

‘135AX Compliance with directions by regulator

‘If an accredited generator is given a GEC surrender direction or a direction under section 135CF or 135JC(2),¹⁹ the generator must comply with the direction.

‘135AY Condition not to improperly create GECs

‘An accredited generator must comply with section 135DO.²⁰

‘135AZ Notice to regulator of particular matters

‘An accredited generator must give the regulator notice within 20 business days after—

- (a) a change in the economic operator of the power station; or
- (b) a change to the accredited power station that may affect the generation of electricity or the working out of eligible gas-fired electricity generated by the power station; or
- (c) the happening of an arrangement or circumstance that may, under part 3, division 5, subdivision 4,²¹ change the baseline for the power station’s baseline customers; or
- (d) a change in a factor used to work out eligible gas-fired electricity generated by the power station.

‘135B Periodic GEC reviews

- ‘(1) An accredited generator must, as soon as practicable after the end of each of the following periods during which the accreditation is in force, review (a *GEC review*) the accuracy of information the accredited generator has used to work out eligible gas-fired electricity generated by the power station in the year to date—

19 Sections 135CF (Directions for working out eligible gas-fired electricity) and 135JC (Decided method must be applied)

20 Section 135DO (Offence of improper creation of GEC)

21 Part 3, division 5, subdivision 4 (Changes to baseline)

- (a) the period notified by the regulator to the accredited generator;
 - (b) if no period has been notified—each quarter.
- ‘(2) In carrying out a GEC review, the accredited generator must comply with the eligible electricity guidelines.²²

‘135BA Obligation to take action because of improper creation of GECs or GEC review

- ‘(1) This section applies if—
- (a) an accredited generator discovers the generator has not complied with section 135DO;²³ or
 - (b) the result of a GEC review is that the information an accredited generator has used to work out eligible gas-fired electricity is not accurate.
- ‘(2) The generator must take appropriate action—
- (a) to correct the working out of the relevant eligible gas-fired electricity; and
 - (b) to ensure the generator does not create more than 1 GEC for each MWh of eligible gas-fired electricity; and
 - (c) if the generator did not comply with section 135DO before carrying out the review—to correct the effect of the failure to comply.

Examples of appropriate action—

- when the accredited generator next creates GECs, the generator creates less GECs than the generator is entitled to create, to ensure the entitlement is not exceeded at that time
- acquiring enough GECs (either by creation or transfer) to surrender the number of GECs equivalent to the number of GECs the accredited generator created improperly and that have since been transferred to others

²² See section 135CK (Guidelines).

²³ Section 135DO (Offence of improper creation of GEC)

See also section 135DP (Defence to proceeding for improper creation of GEC).

- ‘(3) After taking the action, the accredited generator must give the regulator a notice describing the action taken and the reasons for taking it.

‘135BB Obligation to keep GEC review documents

‘An accredited generator must, unless the generator has a reasonable excuse, keep the following documents in relation to a GEC review for 5 years after the end of the year in which the review was carried out—

- (a) documents the generator used to make the GEC review;
- (b) if, because of the review, action was taken under section 135BA—documents showing what the action was and the reasons for taking it.

‘135BC Access to power station

‘An accredited generator must, on the giving of reasonable notice, allow, or make arrangements that allow, safe access to the accredited power station by an approved auditor, an inspection officer or a person authorised by the regulator to—

- (a) obtain information relevant to the accreditation; or
- (b) monitor compliance with this chapter or the conditions of the accreditation.

‘135BD Obligation to provide information for annual loss factor

‘An accredited generator must, as soon as practicable after receiving a request from the regulator, give the regulator information the generator has that the regulator reasonably requires to allow the regulator to decide the accredited power station’s annual loss factor.

‘135BE Annual fee and return

- ‘(1) An accredited generator must, on or before the relevant day in each year during which the accreditation is in force (the *current year*), give the regulator the following for each power station for which the generator is accredited—

- (a) an annual electricity generation return for the last year, in the approved form;
 - (b) the annual fee for the current year, as prescribed under a regulation.
- ‘(2) In this section—
- relevant day* means—
- (a) generally—the last business day in April; or
 - (b) if the regulator has, by notice to all accredited generators given before the day mentioned in paragraph (a), fixed a later day—the later day.

‘135BF Obligation to keep documents used to make annual return

‘An accredited generator must, unless the generator has a reasonable excuse, keep all documents the generator uses to make each electricity generation return given under section 135BE for 5 years after the giving of the return.

‘135BG Conditions imposed under a regulation

‘An accredited generator must comply with any conditions of accreditation prescribed under a regulation.

‘135BH Amounts payable under chapter or accreditation

‘An accredited generator must pay the regulator all amounts that this chapter or the accreditation requires the accredited generator to pay the regulator.

‘135BI Accreditation conditions must not be contravened

‘An accredited generator must comply with the conditions of the accreditation.

Maximum penalty—500 penalty units.

‘Division 4 Dealings with accreditation**‘Subdivision 1 Transfers****‘135BJ Transfer only by application**

- ‘(1) An accreditation may be transferred only under this subdivision.
- ‘(2) A purported transfer of an accreditation not made under this subdivision is of no effect.

‘135BK Applying for transfer

- ‘(1) An accredited generator may apply to the regulator to transfer the accreditation.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) be made by the accredited generator and the proposed transferee; and
 - (c) state reasons for the proposed transfer; and
 - (d) if the accredited generator is not the economic operator of the accredited power station—be accompanied by a written nomination of the proposed transferee by the economic operator; and
 - (e) if the proposed transferee is, or proposes to become, the economic operator of the accredited power station—be accompanied by evidence that the transferee is, or will become, the economic operator; and
 - (f) be accompanied by the fee prescribed under a regulation.

‘135BL Deciding transfer application

- ‘(1) The regulator must decide whether to make or refuse to make the transfer.

- ‘(2) If the regulator decides to refuse to make the transfer, the regulator must, as soon as practicable, give the applicants an information notice about the decision.
- ‘(3) The regulator may impose conditions on giving the approval.

‘Subdivision 2 Surrenders

‘135BM Applying to surrender

- ‘(1) An accredited generator may apply to surrender the accreditation.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) state reasons for the proposed surrender; and
 - (c) be accompanied by the fee prescribed under a regulation.

‘135BN Deciding surrender application

- ‘(1) The regulator must decide whether to approve or refuse the surrender.
- ‘(2) The regulator may impose conditions on giving the approval.

Example of a possible condition—

 - a requirement that the regulator be given a final electricity generation return
- ‘(3) If the regulator decides to refuse the surrender or impose a condition on the surrender, the regulator must, as soon as practicable, give the applicant an information notice about the decision.
- ‘(4) Subsection (3) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

‘135BO Effect of surrender

- ‘(1) This section applies if the surrender of an accreditation is approved and all conditions of the approval have been complied with.
- ‘(2) The accreditation ceases to have effect.
- ‘(3) If, immediately before this section applies, the former accredited generator was the registered owner of a GEC, the former accredited generator is taken to be registered under part 6 as a scheme participant immediately after this section applies.

‘Division 5 Amendment, cancellation and suspension of accreditation**‘Subdivision 1 Amendment by application****‘135BP Applying for amendment**

- ‘(1) An accredited generator may apply to the regulator to amend the accreditation in a stated way, other than to—
 - (a) amend a condition imposed under division 3; or
 - (b) add another power station to the accreditation.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) state reasons for the proposed amendment; and
 - (c) be accompanied by the fee prescribed under a regulation.

‘135BQ Deciding application

- ‘(1) The regulator must decide to make or refuse to make the amendment.
- ‘(2) If the decision is to make the amendment, the regulator must, as soon as practicable, make the amendment to the accreditation and give the applicant notice of the decision.

- ‘(3) If the decision is to refuse to make the amendment, the regulator, must, as soon as practicable, give the applicant an information notice about the decision.

‘Subdivision 2 Amendment by regulator without proposed action notice

‘135BR Amendments for which proposed action notice not required

‘The regulator may amend an accreditation at any time by giving the accredited generator notice of the amendment and recording particulars of the amendment in the register if the amendment—

- (a) is to correct a clerical or formal error; or
- (b) does not significantly affect the interests of the accredited generator or anyone else and the accredited generator has, in writing, agreed to the amendment.

‘Subdivision 3 Other amendments, cancellation and suspension

‘135BS Partial suspension for non-payment of annual fee

- ‘(1) This section applies if an accredited generator does not pay an annual fee as required under section 135BE.
- ‘(2) While the annual fee remains unpaid, the accreditation is suspended.
- ‘(3) If the annual fee is paid, the suspension ends.
- ‘(4) The suspension is a complete suspension of the right to create GECs.
- ‘(5) Also, until the suspension ends, the accredited generator can not—
 - (a) transfer any GECs; or
 - (b) accept the transfer of any GECs.

- ‘(6) The suspension does not—
- (a) affect the accredited generator’s ownership of any GEC the generator owned immediately before the suspension;²⁴ or
 - (b) prevent the accredited generator from making a surrender application for a GEC mentioned in paragraph (a).
- ‘(7) This section does not limit the regulator’s powers under section 135BT.

‘135BT Regulator’s power to amend, cancel or suspend

- ‘(1) The regulator may, if the conditions under section 135BU have been met, amend or cancel an accreditation or suspend an accredited generator’s right, under section 135AT(1)(a),²⁵ to create GECs.
- ‘(2) The suspension must be one of the following types—
- (a) a suspension that has the effect that, until it ends, the accredited generator can not create any GECs for eligible gas-fired electricity generated by the accredited power station during the period of the suspension (a *complete suspension* of the right to create GECs);
 - (b) a suspension that does not affect the right to, after the suspension ends, create GECs for eligible gas-fired electricity generated by the accredited power station during the period of the suspension, subject to section 135DG (a *limited suspension* of the right to create GECs).²⁶
- ‘(3) A complete or limited suspension of the right to create GECs does not—

24 See sections 135DN (Ownership of GEC on registration) and 135DW (Ownership of GEC on transfer).

25 Section 135AT (Right to create, mortgage and transfer GECs)

26 Section 135DG (Time limitation on creation right)

- (a) affect the accredited generator's ownership of any GEC the generator owned immediately before the suspension;²⁷ or
 - (b) prevent the accredited generator from—
 - (i) making a surrender application for a GEC mentioned in paragraph (a); or
 - (ii) transferring a GEC mentioned in paragraph (a); or
 - (iii) accepting a transfer of a GEC.
- ‘(4) A complete or limited suspension is subject to any suspension under section 135BS.

‘135BU Conditions for other amendments and for cancellation or suspension by regulator

- ‘(1) For section 135BT(1), the conditions are that—
- (a) the regulator considers the amendment, cancellation or suspension necessary or desirable; and
 - (b) an event mentioned in subsection (2) has happened; and
 - (c) the procedure under sections 135BV to 135BY is followed.
- ‘(2) For subsection (1)(b), an event is that the accredited generator—
- (a) obtained the accreditation because of a materially false or misleading declaration or representation, made orally or in writing; or
 - (b) has not complied with a provision of this chapter or a condition of the accreditation; or
 - (c) has not complied with a provision of the *Trade Practices Act 1974* (Cwlth), part IV,²⁸ in relation to the accreditation or the creation or transfer of GECs; or
 - (d) has created GECs under the accreditation and—

27 See sections 135DN (Ownership of GEC on registration) and 135DW (Ownership of GEC on transfer).

28 *Trade Practices Act 1974* (Cwlth), part IV (Restrictive trade practices)

- (i) the generator is not the economic operator of the accredited power station; and
- (ii) either—
 - (A) the generator has not been nominated by the economic operator; or
 - (B) any nomination of the generator by the economic operator has been withdrawn.²⁹

‘135BV Notice of proposed action

- ‘(1) The regulator must give the accredited generator notice stating each of the following—
 - (a) the action (the *proposed action*) the regulator proposes to take under this division;
 - (b) the grounds for the proposed action;
 - (c) the facts and circumstances that are the basis for the grounds;
 - (d) if the proposed action is to amend—the proposed amendment;
 - (e) if the proposed action is to suspend—
 - (i) the proposed suspension period; and
 - (ii) whether the proposed suspension is a complete or limited suspension of the right to create GECs;
 - (f) that the accredited generator may make, within a stated period, written submissions to show why the proposed action should not be taken.
- ‘(2) The stated period must end at least 20 business days after the notice is given.

‘135BW Considering submissions

- ‘(1) The regulator must consider any written submission made under section 135BV(1)(f) by the accredited generator within the period stated in the notice.

²⁹ See section 135AS (Withdrawal of nomination to be accredited generator).

- ‘(2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the accredited generator notice of the decision.

‘135BX Decision on proposed action

- ‘(1) If, after complying with section 135BW, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—
- (a) if the proposed action was to amend—make the amendment; or
 - (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
 - (c) if the proposed action was to cancel—
 - (i) cancel the accreditation; or
 - (ii) suspend it for a stated period.
- ‘(2) If the regulator decides to suspend the accreditation under subsection (1)(c)(ii), the regulator must decide whether it is a complete or limited suspension.

‘135BY Notice and taking of effect of proposed action decision

- ‘(1) The regulator must, as soon as practicable after making a decision under section 135BX, give the accredited generator an information notice about the decision.
- ‘(2) The decision takes effect on the later of the following—
- (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.
- ‘(3) However, if the decision was to amend, cancel or suspend because of a conviction, the amendment, cancellation or suspension—
- (a) does not take effect until—
 - (i) the period to appeal against the conviction ends;
 - and

- (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
- (b) has no effect if the conviction is quashed on appeal.

‘135BZ Effect of cancellation

- ‘(1) This section applies if an accreditation is cancelled.
- ‘(2) The accreditation ceases to have effect.
- ‘(3) If, immediately before the cancellation, the former accredited generator was the registered owner of a GEC, the former accredited generator is taken to be registered under part 6 as a scheme participant immediately after the cancellation.

‘135C Final return on cancellation

‘If the accreditation is cancelled, the former accredited generator must, as soon as practicable, give the regulator an annual electricity generation return under section 135BE(1)(a) for the period from the end of the last year to the day the cancellation took effect.

Maximum penalty—100 penalty units.

‘Part 3 Eligible gas-fired electricity**‘Division 1 Working out eligible gas-fired electricity****‘Subdivision 1 Preliminary****‘135CA Operation of div 1**

- ‘(1) This part provides for what is the eligible gas-fired electricity generated by an accredited power station.

- ‘(2) If the power station has more than 1 baseline customer, the eligible gas-fired electricity must be worked out separately for each of the customers who have a baseline other than 0.
- ‘(3) For applying subsection (2), a reference in this division to the power station is taken to be a reference to the power station to the extent it supplies gas-fired electricity to each of its customers.

‘Subdivision 2 Power stations with nameplate capacity of more than 500 kW

‘135CB Application of sdiv 2

‘This subdivision applies if the power station’s nameplate capacity is more than 500 kW.

‘135CC General method

‘Subject to sections 135CD to 135CF, the eligible gas-fired electricity is worked out using the following formula (the *general method*)—

$$EE = (SO\ Gen \times \%EF \times QUF \times LF) - BL$$

where—

EE is the eligible gas-fired electricity, measured in MWh.

SO Gen is electricity sent out from the power station, less electricity imported into the power station, measured in MWh.

%EF is the proportion of electricity generated from an eligible fuel.

QUF is the power station’s annual QUF.

LF is the power station’s annual loss factor.

BL is the baseline for the baseline customer of the power station.

‘135CD Alternate methods for direct supply arrangement

- ‘(1) This section applies if a power station sends out electricity to someone else under a direct supply arrangement.
- ‘(2) The accredited generator for the power station, or an applicant for the accreditation, may apply in writing to the regulator for approval to use direct method A or direct method B to work out the eligible gas-fired electricity to the extent it is sent out under the arrangement.
- ‘(3) The regulator must decide—
- (a) whether to grant or refuse the approval; and
 - (b) if the regulator decides to grant the approval—whether direct method A or direct method B must be used for the working out.
- ‘(4) If the regulator grants the approval, the direct method as decided by the regulator must be used to work out the eligible gas-fired electricity to the extent it is sent out under the direct supply arrangement.
- ‘(5) If the regulator decides to refuse to grant the approval, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

- ‘(6) In this section—

direct method A means using the formula—

$$EE = (ED \times \%EF \times QUF) - BL$$

direct method B means using the formula—

$$EE = (ED \times \%EF \times QUF \times LF) - BL$$

EE means the eligible gas-fired electricity, measured in MWh.

ED means the electricity delivered to the person mentioned in subsection (1), less electricity imported into the power station multiplied by any relevant annual loss factor decided by the regulator, measured in MWh.

%EF means the proportion of electricity generated from an eligible fuel.

QUF means the power station's annual QUF.

BL means the baseline for the baseline customer of the power station.

LF means any annual loss factor the regulator decides for the power station.

'135CE Adjustment for general method if a direct method used

- '(1) This section applies if—
 - (a) the regulator has approved the use of a direct method for a direct supply arrangement; and
 - (b) electricity is sent out from the power station other than under the arrangement.
- '(2) The eligible gas-fired electricity sent out from the power station other than under the arrangement must be worked out under the general method.
- '(3) However, in applying the general method, all amounts of electricity used in the application of the direct method must be deducted from the electricity sent out from the power station.

'135CF Directions for working out eligible gas-fired electricity

- '(1) The regulator may give an accredited generator written directions about how to work out any factor used to work out the eligible gas-fired electricity under this subdivision.
- '(2) In working out the factor, the direction must be complied with.³⁰
- '(3) The directions must be accompanied by or include an information notice about the decision to give the directions.
- '(4) Subsection (3) does not apply if the accredited generator has agreed to the working out as required under the direction.

'Subdivision 3 Power stations with nameplate capacity of 500 kW or less

30 See also section 135AX (Compliance with directions by regulator).

‘135CG Application of sdiv 3

‘This subdivision applies if the power station’s nameplate capacity is 500 kW or less.

‘135CH Power to prescribe method

‘If the baseline for all baseline customers of the power station is 0, a regulation may prescribe what is the eligible gas-fired electricity.

‘135CI Obtaining approval to use method for working out

- ‘(1) This section applies only if the eligible gas-fired electricity is not prescribed.
- ‘(2) The accredited generator for the power station, or an applicant for the accreditation, may apply in writing to the regulator for approval to use a proposed method to work out the eligible gas-fired electricity.
- ‘(3) The proposed method may involve—
 - (a) the use of averages or estimates; or
 - (b) the application of annual or baseline loss factors or QUFs for the power station.
- ‘(4) The regulator must decide whether to grant or refuse the approval.
- ‘(5) The regulator may grant the approval only if satisfied the proposed method is generally consistent with the approach of the general method or, to the extent the proposed method relates to a direct supply arrangement, a direct method.
- ‘(6) If the regulator grants the approval the proposed method must be used to work out the eligible gas-fired electricity.
- ‘(7) If the regulator decides to refuse to grant the approval, the regulator must, as soon as practicable, give the applicant an information notice about the decision.

‘135CJ Methods that otherwise apply

‘If the eligible gas-fired electricity is not prescribed and no method is approved under section 135CI for the power station, the eligible gas-fired electricity is worked out under subdivision 2 as if the power station’s nameplate capacity is more than 500 kW.

‘Division 2 Eligible electricity guidelines**‘135CK Guidelines**

‘The regulator may issue guidelines (*eligible electricity guidelines*) about the data that must be used under division 1 to work out eligible gas-fired electricity.³¹

‘135CL Publication of guidelines

- ‘(1) The regulator must give each accredited generator to whom the eligible electricity guidelines apply a copy of the guidelines.
- ‘(2) The guidelines do not take effect for an accredited generator to whom they apply until the later of the following days—
 - (a) their day of effect, as stated in the guidelines;
 - (b) the day the accredited generator’s accreditation takes effect.

‘Division 3 Queensland usage factors**‘135CM Annual QUFs**

- ‘(1) Subject to section 135CP, the regulator must, for each financial year during which a power station is accredited, fix an estimated proportion of electricity sent out from the power

31 For the effect of the guidelines for the generators, see sections 135DP (Defence to proceeding for improper creation of GEC) and 135EK(2) (Decision on proposed action).

station that will be used during that year for the State's electricity load and not the electricity load of any other State.

- '(2) The estimated proportion is the power station's *annual QUF*.
- '(3) The annual QUF must be fixed by gazette notice.
- '(4) Until the notice is gazetted, the last annual QUF fixed for the power station continues to apply.

'135CN Baseline QUFs

- '(1) Subject to section 135CP, the regulator must, for each accredited power station, fix the proportion of electricity sent out from the power station that was, during the baseline year, used for the State's electricity load and not the electricity load of any other State.
- '(2) However, subsection (1) does not apply if, under section 135DA,³² the power station's baseline is 0 for all of its baseline customers.
- '(3) The proportion is the power station's *baseline QUF*.
- '(4) The baseline QUF must be fixed by gazette notice.
- '(5) In fixing the baseline QUF, the regulator must consider relevant data for the baseline year for the power station.

'135CO Transmission zones

- '(1) A regulation may, for the purpose of fixing annual or baseline QUFs, prescribe areas based on electricity grid areas in which incoming and outgoing electricity is predominately transported by high voltage transmission lines that are heavily loaded compared with their capacity.
- '(2) An area prescribed under subsection (1) is called a *transmission zone*.
- '(3) The area may be all of any State or include part of any State.

32 Section 135DA (Baseline for other customers)

‘135CP Power stations connected to national grid within same transmission zone

- ‘(1) The same annual QUF must be fixed for each power station that—
 - (a) supplies electricity into the same transmission grid or supply network within the same transmission zone; and
 - (b) is directly or indirectly connected to the national grid.
- ‘(2) The same baseline QUF must be fixed for each power station that—
 - (a) has the same baseline year; and
 - (b) supplies electricity into the same transmission grid or supply network within the same transmission zone; and
 - (c) is directly or indirectly connected to the national grid.
- ‘(3) In fixing the annual and baseline QUF, the regulator must consider each of the following matters—
 - (a) the electricity generated within the transmission zone;
 - (b) the electricity imported into the transmission zone;
 - (c) electricity sent out of the transmission zone and the relevant annual or baseline QUFs of the transmission zones to which it is initially sent out;
 - (d) the electricity load and losses within the transmission zone;
 - (e) whether end users in the transmission zone are located in the State or another State.
- ‘(4) In considering the matters for fixing the annual QUF, the regulator must use estimates or forecasts of relevant data for the next financial year.
- ‘(5) However, the regulator may use data for the previous financial year if—
 - (a) the estimates or forecasts are not available to the regulator; or
 - (b) the regulator considers the estimates or forecasts are inconsistent with the basis on which the transmission zone was prescribed.

‘135CQ QUFs may be differential as to time

‘In fixing an annual or baseline QUF, the regulator may fix a different proportion for different periods.

‘Division 4 Loss factors**‘135CR Annual loss factor**

- ‘(1) Subject to section 135AO(2),³³ the regulator must, for each financial year during which a power station is accredited, fix a factor that represents the power station’s estimated contribution during that year to electricity losses in the transmission grid or supply network through which it supplies electricity.
- ‘(2) The factor is the power station’s *annual loss factor*.
- ‘(3) The annual loss factor for a particular financial year—
 - (a) must be fixed by an information notice given to the accredited generator; and
 - (b) takes effect on the day of effect stated in the notice, or if it states no day of effect, the day the notice is given.
- ‘(4) Until the annual loss factor for a particular financial year takes effect, the last annual loss factor fixed for the power station continues to apply for that year.

‘135CS Baseline loss factor

- ‘(1) The regulator must, for each accredited power station, fix a factor that represents the power station’s contribution, during its baseline year, to electricity losses in the transmission grid or supply network through which it supplies electricity.
- ‘(2) However, subsection (1) does not apply if—
 - (a) under section 135DA,³⁴ the baseline is 0; or

33 Section 135AO (Provisions for deciding ancillary matters for power station)

34 Section 135DA (Baseline for other customers)

- (b) under section 135AO(2),³⁵ the regulator need not work out the baseline loss factor.
- ‘(3) The factor is the power station’s *baseline loss factor*.
- ‘(4) The baseline loss factor —
 - (a) must be fixed by an information notice given to the accredited generator; and
 - (b) takes effect on the day of effect stated in the notice, or if it states no day of effect, the day the notice is given.

‘135CT Provisions for working out loss factors

- ‘(1) If the overall effect of a power station’s supply to a transmission grid or supply network is to reduce electricity losses in the grid, its annual or baseline loss factor may be fixed as 1 or more than 1.
- ‘(2) In fixing an annual or baseline loss factor for a power station the regulator may apply a relevant loss factor decided under the Market Code.
- ‘(3) If a power station supplies electricity through a transmission grid and a supply network, its annual or baseline loss factor may consist of different components for each grid or network.

‘135CU Publication of loss factors

‘If the regulator fixes a loss factor under this division, the regulator must, as soon as practicable, publish the loss factor by gazette notice.

35 Section 135AO (Provisions for deciding ancillary matters for power station)

‘Division 5 Baselines for baseline customers

‘Subdivision 1 Introduction

‘135CV What is a power station’s *baseline* for a baseline customer

- ‘(1) An accredited power station’s *baseline*, for a baseline customer of the power station, is the figure as provided for under this division, that, as at 24 May 2000, represented the power station’s annual generation of electricity from eligible fuels delivered to the customer.
- ‘(2) The figure must be in MWh.

‘135CW Purpose of baseline

‘The purpose of the baseline is to ensure only new or additional gas-fired electricity generated after 24 May 2000 can be used to create GECs.

‘Subdivision 2 Baseline for existing baseline customers

‘135CX Application of sdiv 2

- ‘(1) This subdivision applies for working out the baseline for a baseline customer of an accredited power station, or of a power station the subject of an application for accreditation, to whom the power station supplies electricity generated from eligible fuels under an arrangement that was in force on 24 May 2000.
- ‘(2) However, the baseline worked out under this subdivision is subject to subdivision 4.³⁶

36 Subdivision 4 (Changes to baseline)

‘135CY General method for working out baseline

- ‘(1) This section applies subject to section 135CZ.
- ‘(2) The regulator must work out an amount (the *sent out amount*) that fairly represents the amount of electricity the power station generated from eligible fuels and sent the customer during the following period—
- (a) generally—the 1999–2000 financial year;
 - (b) if the power station was commissioned or first started to generate electricity from eligible fuels during the 1999–2000 financial year—its first 12 months of commercial operation.
- ‘(3) However, if the regulator considers the period does not represent the power station’s typical annual generation for the customer as at 24 May 2000, the regulator may fix the sent out amount by—
- (a) reference to another 12 month period that the regulator considers is more representative of its typical annual generation as at 24 May 2000; or
 - (b) extrapolating the average monthly generation from a part of the period that the regulator considers is more representative of its typical annual generation as at 24 May 2000.
- ‘(4) The baseline for the customer is worked out using the following formula—

$$BL = SO\ Gen \times \%EF \times QUF^B \times LF^B$$

where—

BL is the baseline for the baseline customer.

SO Gen is the electricity sent out from the power station, less electricity imported into the power station, measured in MWh in the baseline year.

% EF is the proportion of electricity generated from an eligible fuel in the baseline year.

QUF^B is the power station’s baseline QUF.

LF^B is the power station’s baseline loss factor.

- ‘(5) For subsection (2)(b), a power station was commissioned—
- (a) when, under the relevant contract to build the power station, it reached a stage by which the building of the station was, in a practical sense, complete; or
 - (b) if there was no stage as mentioned in paragraph (a)—4 months after the power station first sent out electricity.

‘135CZ Alternate method for direct supply arrangement

- ‘(1) This section applies if—
- (a) the supply to the customer is under a direct supply arrangement; and
 - (b) the accredited generator for the power station, or an applicant for the accreditation, has agreed with the regulator to work out the customer’s baseline on the basis of electricity delivered to the customer.
- ‘(2) The regulator must work out an amount (the *delivered amount*) that fairly represents the amount of electricity the power station generated from eligible fuels and delivered to the customer during the period mentioned in section 135CY(2).
- ‘(3) However, if the regulator considers the period does not represent the power station’s typical annual delivered amount for the customer as at 24 May 2000, the regulator may fix the delivered amount by—
- (a) reference to another 12 month period that the regulator considers is more representative of its typical annual delivery as at 24 May 2000; or
 - (b) extrapolating the average monthly generation from a part of the period that the regulator considers is more representative of its typical annual delivery as at 24 May 2000.
- ‘(4) The baseline for the customer is worked out using the following formula—

- (a) if the regulator has fixed a baseline loss factor for the power station—

$$\mathbf{BL} = \mathbf{ED} \times \% \mathbf{EF} \times \mathbf{QUF}^B \times \mathbf{LF}^B$$

- (b) if the regulator has not fixed a baseline loss factor for the power station—

$$\mathbf{BL} = \mathbf{ED} \times \% \mathbf{EF} \times \mathbf{QUF}^B$$

- ‘(5) In this section—

BL means the baseline for the baseline customer.

ED means the electricity delivered to the customer, less electricity imported into the power station multiplied by any relevant baseline loss factor decided by the regulator, measured in MWh, in the baseline year.

% EF means the proportion of electricity generated from an eligible fuel in the baseline year.

LF^B means the power station’s baseline loss factor.

QUF^B means the power station’s baseline QUF.

‘135D Information notice about decision

‘The regulator must give the customer an information notice about the baseline worked out under this subdivision.

‘Subdivision 3 Baseline for other baseline customers

‘135DA Baseline for other customers

- ‘(1) This section applies if an accredited power station, or a power station the subject of an application for accreditation, sends electricity generated from eligible fuels to a person who was not a baseline customer of the power station on 24 May 2000.
- ‘(2) Subject to subdivision 4, the baseline for the customer is 0.

‘Subdivision 4 Changes to baseline

‘135DB Cessation of supply

- ‘(1) If a baseline customer of an accredited power station ceases to be a customer of the station, the power station ceases to have a baseline for the customer.
- ‘(2) The power station’s baselines for its other baseline customers do not change.

‘135DC Adjustment for customer transfer to another accredited power station

- ‘(1) This section applies if—
 - (a) a baseline customer ceases to be a customer of an accredited power station (the *first power station*); and
 - (b) within 12 months of the cessation, the customer becomes a customer of another accredited power station under a direct supply arrangement that provides for the supply of electricity generated from eligible fuels (the *second station*).
- ‘(2) The second station has a separate baseline for the customer.
- ‘(3) The amount of the separate baseline is the amount of the first station’s baseline for the customer immediately before the customer ceased to be a customer of the first station.

‘135DD Adjustment for other customer transfers

‘If—

- (a) a baseline customer (the *former customer*) ceases to be a customer of an accredited power station; and
- (b) within 12 months of the cessation, the customer becomes a customer of another customer (the *other customer*) of the power station, other than NEMMCO;

the baseline for the other customer increases by the amount of the power station’s baseline for the former customer immediately before the former customer ceased to be a customer of the power station.

‘Part 4 GECs

‘Division 1 Creation and registration of GECs

‘135DE Electricity required to create GEC

‘A GEC may be created for each whole MWh of eligible gas-fired electricity, other than auxiliary load for a power station.³⁷

‘135DF Prohibition on creation if certificate created under corresponding law

‘Despite section 135DE, a GEC can not be created for eligible gas-fired electricity if any of the following certificates has been created in relation to the generation of the electricity—

- (a) an abatement certificate under the *Electricity Supply Act 1995* (NSW), part 8A;³⁸
- (b) a certificate (however called) under a law of the Commonwealth or another State the purposes of which include the promotion of the reduction of greenhouse gases.

‘135DG Time limitation on creation right

‘A GEC may be created only if the month in which the electricity was generated was no more than 12 months before the month in which the GEC is created.

‘135DH How a GEC is created

- ‘(1) A GEC is created—
 - (a) either—

³⁷ See also section 135AT (Right to create, mortgage and transfer GECs).

³⁸ *Electricity Supply Act 1995* (NSW), part 8A (Reduction of greenhouse gas emissions)

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- (i) by paying the regulator the fee prescribed under a regulation to decide whether the GEC was validly created; or
 - (ii) if, under section 135DL, the regulator decides to make the decision required under section 135DJ, without payment of the prescribed fee;³⁹ and
- (b) by electronically noting in the GEC register, in the way approved by the regulator, the creation of the GEC.
- ‘(2) The approved way must require the giving of the following information—
- (a) an accreditation code for the accredited generator and power station;
 - (b) the amount of eligible gas-fired electricity generated for which the GEC was created;
 - (c) the period within which the eligible gas-fired electricity was generated.

‘135DI When GEC takes effect

‘A GEC takes effect and continues to be in force only if it has been registered by the regulator.

‘135DJ Deciding on validity and registration

- ‘(1) The regulator must, as soon as practicable after a GEC is created, decide whether it was validly created.
- ‘(2) In deciding whether it is practicable for the regulator to make the decision, regard must be had to any need to seek, under section 135IZ,⁴⁰ information and whether any information sought under the section has been given.
- ‘(3) In making the decision the regulator may have regard to any relevant eligible electricity guidelines.

39 Sections 135DL (Power to register GEC without prescribed fee) and 135DJ (Deciding on validity and registration)

40 Section 135IZ (Additional information or inspection may be required)

- ‘(4) If the regulator decides the GEC was validly created, the regulator must, as soon as practicable—
- (a) register the GEC in the GEC register by complying with section 135JG;⁴¹ and
 - (b) give the accredited generator who created it a notice stating—
 - (i) that the GEC has been registered; and
 - (ii) the information about the GEC that, under section 135JG, the regulator must record in the GEC register.
- ‘(5) If the regulator decides the GEC was not validly created, the regulator must, as soon as practicable give the accredited generator an information notice about the decision.⁴²

‘135DK Automatic registration

- ‘(1) The regulator may establish a system under which the following are done or made automatically by electronic means—
- (a) the decision under section 135DJ about whether a GEC was validly created;
 - (b) if the decision is that the GEC was validly created—the steps under section 135DJ(4).
- ‘(2) However, the use of the automated system may allow a decision that the GEC was validly created only if the information noted under section 135DH on its face shows that the requirements under this chapter for the creation of a GEC have been met.
- ‘(3) For chapter 10 and schedule 1,⁴³ a decision made under the automated system is taken to be a decision of the regulator under section 135DJ.

41 Section 135JG (Required information for GEC register)

42 See also section 135JJ(1) (General provisions for register keeping).

43 Chapter 10 (Review of and appeals against decisions) and schedule 1 (Appeals against administrative decisions)

‘135DL Power to register GEC without prescribed fee

- ‘(1) The regulator may decide whether a GEC was validly created even if the prescribed fee under section 135DH(1)(a)(i) has not been paid.
- ‘(2) If the regulator makes a decision under subsection (1), the regulator may recover the amount of the prescribed fee as a debt.

‘135DM Effect of registration

‘If a GEC is registered, it is, other than for the following provisions, taken to have been validly created—

- (a) part 2, division 3;
- (b) divisions 2, 3 and 5.⁴⁴

‘135DN Ownership of GEC on registration

- ‘(1) If a GEC is registered, the accredited generator that created it becomes its registered owner.
- ‘(2) The ownership is subject to—
 - (a) a mortgage of the GEC created by the accredited generator or to which the accredited generator is a party; and
 - (b) a transfer or surrender of the GEC made under division 4.
- ‘(3) This section is subject to sections 135DO(4), 135DW and division 5.⁴⁵

44 Part 2, division 3 (Standard accreditation conditions)

Divisions 2 (Improper creation or receipt of GECs), 3 (Term of GECs) and 5 (Amendment, cancellation and suspension of GECs)

45 Sections 135DO (Offence of improper creation of GEC) and 135DW (Ownership of GEC on transfer) and division 5 (Amendment, cancellation and suspension of GECs)

‘Division 2 Improper creation or receipt of GECs

‘135DO Offence of improper creation of GEC

‘(1) A person must not create, or purport to create, a GEC if the person—

- (a) is not an accredited generator; or
- (b) knows that the creation or purported creation of the GEC is not, or would not be, valid.

Maximum penalty—750 penalty units or 6 months imprisonment.

‘(2) A person must not, unless the person has a reasonable excuse—

- (a) create a GEC if the creation of the GEC is not valid; or
- (b) purport to create a GEC the creation of which would not be valid.

Maximum penalty—500 penalty units.

‘(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).⁴⁶

‘(4) In a proceeding for an offence against this section, the fact that the GEC has been registered must be disregarded.

‘135DP Defence to proceeding for improper creation of GEC

‘It is a defence in a proceeding against a person for a failure to comply with section 135DO(1)(b) or (2) for the person to prove that, to the extent they are relevant, the person complied with the eligible electricity guidelines.

⁴⁶ See also section 240A (Executive officers must ensure corporation complies with Act).

‘135DQ Direction to accredited generator to surrender GECs

- ‘(1) This section applies if an accredited generator has not complied with section 135AY or 135BA and, to the extent they are relevant, the generator did not comply with the eligible electricity guidelines.⁴⁷
- ‘(2) The regulator may give the accredited generator a notice (a *GEC surrender direction*) directing the generator to—
- (a) make a surrender application for the number of GECs equivalent to the number of invalidly created GECs; and
 - (b) if the accredited generator does not own enough GECs to make the application—acquire, by creation or transfer under part 4, enough GECs to do so.
- ‘(3) The notice must be accompanied by or include an information notice about the decision to make the direction.
- ‘(4) The accredited generator must comply with the direction.
Maximum penalty—500 penalty units.
- ‘(5) The giving of the direction does not limit the regulator’s powers under part 2, division 5 or division 5 of this part.⁴⁸

‘135DR Improper receipt of invalidly created GEC

- ‘(1) A person must not give the regulator a notice accepting the transfer of a GEC if the person knows the GEC was not validly created.
Maximum penalty—500 penalty units.
- ‘(2) A person must not give the regulator a notice accepting the transfer of a GEC if the person ought reasonably to have known that the GEC was not validly created.
Maximum penalty—300 penalty units.
- ‘(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence

47 Sections 135AY (Condition not to improperly create GECs) and 135BA (Obligation to take action because of improper creation of GECs or GEC review)

48 Part 2, division 5 (Amendment, cancellation and suspension of accreditation) and division 5 (Amendment, cancellation and suspension of GECs)

charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).⁴⁹

- ‘(4) In a proceeding for an offence against this section, the fact that the GEC has been registered must be disregarded.

‘Division 3 Term of GECs

‘135DS Automatic expiry

‘A GEC expires at the end of the second year after its vintage year.

Example—

A GEC registered on 1 May 2006 (2006 vintage) expires at the end of 2008.

‘135DT Surrender and cancellation

- ‘(1) A registered GEC ceases to be in force if it is surrendered under division 4, subdivision 3, or cancelled under division 5.
- ‘(2) A registered GEC has no force during any period in which it is suspended under division 5.

‘Division 4 Dealings with GECs

‘Subdivision 1 Transfers

‘135DU Conditions for transfer

- ‘(1) The registered owner of a GEC may transfer the GEC only if—
- (a) it is in force; and
 - (b) the transferee is a scheme participant; and

⁴⁹ See also section 240A (Executive officers must ensure corporation complies with Act).

- (c) section 135BS(4) or 135ID(4)⁵⁰ does not prevent the registered owner from transferring the GEC.
- ‘(2) A purported transfer of a GEC that does not comply with subsection (1) is of no effect.

‘135DV Notice and taking effect of transfer

- ‘(1) A person who transfers a GEC must immediately give the regulator notice (a *transfer notice*) of the transfer.
- ‘(2) The transfer notice must—
 - (a) state the names of the transferor and transferee; and
 - (b) identify the GEC; and
 - (c) be accompanied by the fee prescribed under a regulation.
- ‘(3) The transfer does not take effect until—
 - (a) the transfer notice has been given; and
 - (b) the transferee has given the regulator notice stating that the transferee accepts the transfer.⁵¹

‘135DW Ownership of GEC on transfer

- ‘(1) When the transfer of a GEC takes effect, the transferee becomes its registered owner.⁵²
- ‘(2) Subsection (1) applies even if the person who created, or purported to create the GEC, was not entitled to create it under this chapter.
- ‘(3) The ownership—
 - (a) is taken to be absolute and free of any other legal or equitable interest, or purported legal or equitable interest, in the GEC; but

50 Section 135BS and 135ID (Partial suspension for non-payment of annual fee)

51 See however section 135DR (Improper receipt of invalidly created GEC).

For the requirement to record the transfer in the GEC register, see section 135JJ (General provisions for register keeping).

52 See also section 135JJ(3) and (4) (General provisions for register keeping).

- (b) is subject to—
 - (i) a mortgage of the GEC created by the transferee or to which the transferee is a party; and
 - (ii) an equity arising from the act of the registered owner; and
 - (iii) a transfer or surrender of the GEC made under this division.
- ‘(4) Subsection (3)(a) applies—
 - (a) even if the transferee had actual or constructive notice of the interest or purported interest; and
 - (b) whether or not valuable consideration has been given for the transfer.
- ‘(5) Subsections (1) to (3) do not apply if there has been fraud by the transferee in relation to the transfer or the registration.
- ‘(6) This section applies subject to division 5.⁵³

‘135DX Market operating rules and arrangements

‘A regulation may—

- (a) make rules for the operation of services or systems that relate to the selling and buying of GECs; or
- (b) provide for arrangements that apply to persons who provide or use the services or systems; or
- (c) impose stated terms on the arrangements; or
- (d) provide for the legal effect or enforcement of the terms, including, for example by dispute resolution, arbitration or court proceedings.

53 Division 5 (Amendment, cancellation and suspension of GECs)

‘Subdivision 2 Mortgages

‘135DY Mortgage of GEC

‘The registered owner of a GEC may mortgage it without the approval of, or notice to, the regulator.

‘135DZ Notice of intention to exercise powers under mortgage

- ‘(1) This section applies if a registered owner of a GEC has mortgaged it and the owner has defaulted under the mortgage.
- ‘(2) The mortgagee may exercise its powers under the mortgage only if the mortgagee has given the regulator notice of the mortgagee’s intention to exercise powers under the mortgage that relate to the GEC.
- ‘(3) Any purported exercise of a power under the mortgage relating to the GEC that does not comply with subsection (2) is of no effect.

‘135E Consequence of exercising powers under mortgage

‘If a mortgagee under a mortgage over a GEC exercises any power under the mortgage relating to the GEC, this chapter applies to the mortgagee as if the mortgagee were the registered owner of the GEC.

‘Subdivision 3 Surrenders

‘135EA Surrender only by approval

‘A GEC is surrendered only if an application to surrender the GEC has been made under this subdivision and the regulator has accepted the surrender.

‘135EB Who may apply for surrender

- ‘(1) The owner of a GEC may apply to surrender it.

- ‘(2) The accredited generator who creates a GEC may, when the generator creates the GEC, apply to surrender it.⁵⁴

‘135EC Making surrender application

- ‘(1) The application must be made by—
- (a) paying the regulator the fee prescribed under a regulation to decide whether to accept the surrender; and
 - (b) electronically noting in the GEC register, in the way approved by the regulator, an application to surrender the GEC.
- ‘(2) The application must state the purpose of the proposed surrender.

Examples—

- to meet all or part of the 13% liability
- to comply with section 135BA(2)(c)⁵⁵
- to comply with a GEC surrender direction

‘135ED Power to accept application without prescribed fee

- ‘(1) Despite section 135EC, the regulator may decide to accept the application and decide it even if the application is not accompanied by the prescribed fee required under the section.
- ‘(2) If the regulator decides the application under subsection (1), the regulator may recover the amount of the prescribed fee as a debt.

‘135EE Deciding surrender application

- ‘(1) The regulator may accept the surrender only if the GEC is in force or was in force when the surrender application was made.⁵⁶

54 See section 135DH (How a GEC is created).

55 Section 135BA (Obligation to take action because of improper creation of GECs or GEC review)

56 See section 135DI (When GEC takes effect).

- ‘(2) Subsection (3) applies if—
 - (a) the purpose of the application is a purpose mentioned in the examples for section 135EC; and
 - (b) the regulator considers the applicant has applied to surrender too many GECs to achieve that purpose.
- ‘(3) The regulator may accept the proposed surrender to the extent needed to achieve the purpose and—
 - (a) refuse to accept the rest of the proposed surrender; or
 - (b) defer the deciding of the rest of the application for an appropriate period.
- ‘(4) If the regulator decides not to accept all or part of the surrender the regulator must, as soon as practicable, give the applicant an information notice about the decision.

‘Division 5 Amendment, cancellation and suspension of GECs

‘Subdivision 1 Preliminary

‘135EF Application of div 5

- ‘(1) This division applies if—
 - (a) a GEC is registered; and
 - (b) because of information the regulator receives after the registration of the GEC, the regulator reasonably believes it was not validly created; and
 - (c) either—
 - (i) the registered owner of the GEC is the accredited generator that created it; or
 - (ii) if someone else is the registered owner—the regulator reasonably believes that, before the person became the registered owner, the person knew or ought reasonably to have known that the GEC was not validly created.

- ‘(2) Also, if an accredited generator has not complied with a GEC surrender direction, this division applies for each GEC of which the generator is the registered owner up to the number of GECs that the direction required the generator to apply to surrender.
- ‘(3) This division also applies if the registered owner of a GEC gives the regulator notice asking the regulator to cancel the GEC.

‘Subdivision 2 Immediate suspension

‘135EG Immediate suspension

- ‘(1) The regulator may, by notice to the registered owner, immediately suspend the GEC if the regulator reasonably suspects the owner may attempt to transfer the GEC.
- ‘(2) The notice must—
 - (a) identify the GEC; and
 - (b) state each of the following—
 - (i) that the GEC is suspended immediately;
 - (ii) that the regulator believes the GEC was not validly created;
 - (iii) the facts and circumstances forming the basis for the belief;
 - (iv) the suspension period;
 - (v) that the registered owner may make written submissions to the regulator to show why the suspension should end; and
 - (c) include, or be accompanied by, an information notice about the decisions to give the notice and to fix the suspension period.
- ‘(3) The suspension period must not be more than 40 business days.
- ‘(4) The suspension has effect immediately after the registered owner is given the suspension notice.

- ‘(5) This section does not limit the power to suspend under subdivision 3.
- ‘(6) Section 216⁵⁷ does not apply to a decision under this section.

‘Subdivision 3 Amendment, cancellation or suspension (other than immediate suspension)

‘135EH Power to amend, cancel or suspend

- ‘(1) If the registered owner of the GEC has given the regulator notice asking the regulator to cancel the GEC, the regulator may cancel it.
- ‘(2) Otherwise, the regulator may amend, cancel or suspend the GEC only by following the procedure under this subdivision.
- ‘(3) To remove any doubt, it is declared that if the accredited generator has not complied with a GEC surrender direction, the cancellation may be made for any GEC.
- ‘(4) However, the regulator may cancel a GEC with a different vintage year to the relevant vintage year only if the generator has no GECs of the relevant vintage year other than GECs that the regulator proposes to cancel under this subdivision.
- ‘(5) In this section—
relevant vintage year means the vintage year for the GECs that the direction required the generator to apply to surrender.

‘135EI Notice of proposed action

- ‘(1) The regulator must give the registered owner notice stating each of the following—
 - (a) the action (the *proposed action*) the regulator proposes to take under this division;
 - (b) that the regulator believes the GEC was not validly created;

- (c) the facts and circumstances forming the basis for the belief;
 - (d) if the proposed action is to amend—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the registered owner may make, within a stated period, written submissions to show why the proposed action should not be taken.
- ‘(2) The stated period must end at least 20 business days after the notice is given.

‘135EJ Considering submissions

- ‘(1) The regulator must consider any written submission made under section 135EI(1)(f) by the registered owner within the period stated in the notice.
- ‘(2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give the registered owner notice of the decision.

‘135EK Decision on proposed action

- ‘(1) If, after complying with section 135EJ, the regulator still believes the GEC was not validly created, the regulator may decide to—
- (a) if the proposed action was to amend—make the amendment; or
 - (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
 - (c) if the proposed action was to cancel—
 - (i) cancel the GEC; or
 - (ii) suspend it for a stated period.
- ‘(2) However, the regulator can not take the proposed action if the regulator is satisfied that, to the extent they are relevant, the

person who created the GEC complied with the eligible electricity guidelines.

- ‘(3) Section 216⁵⁸ does not apply to a decision to suspend under this section.

‘135EL Notice and taking of effect of proposed action decision

- ‘(1) The regulator must, as soon as practicable after making a decision under section 135EK, give the registered owner an information notice about the decision.
- ‘(2) The decision takes effect on the later of the following—
- (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.
- ‘(3) However, if the decision was to amend or cancel because of a conviction, the amendment or cancellation—
- (a) does not take effect until—
 - (i) the period to appeal against the conviction ends; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
 - (b) has no effect if the conviction is quashed on appeal.
- ‘(4) Also, if the decision was to suspend because of a conviction, the suspension ends if the conviction is quashed on appeal.

‘Part 5 13% liability

‘Division 1 Preliminary

‘135EM Simplified explanation of pt 5

- ‘(1) Sections 135EP and 135ET impose an annual liability (the **13% liability**) on particular persons who sell or use electricity loads to surrender GECs to the regulator.
- ‘(2) The liability only applies to—
 - (a) particular persons who have a relationship with a major grid; or
 - (b) an accredited generator for a power station connected to a small grid.
- ‘(3) The liability only attaches to 1 person, the **liable person**, as provided for in section 135ES and division 5.⁵⁹
- ‘(4) The liability under subsection (2)(a) applies to all electricity loads, other than any of the following loads—
 - (a) a load for which, under division 5, there is no liable person;
 - (b) a load (an **exempted load**) the subject of a liable load exemption;⁶⁰
 - (c) a load that, under division 7, is not a liable load (a **non-liable load**).
- ‘(5) An electricity load to which the liability applies as mentioned in subsection (4) is called a **liable load**.
- ‘(6) The relevant year to which the 13% liability attaches is the **liable year** for that liability.

59 Section 135ES (Liable persons) and division 5 (Liable persons in relation to major grids)

60 See division 6 (Exempted loads).

‘Division 2 The 13% liability**‘Subdivision 1 Imposition of 13% liability in
relation to major grids****‘135EN Application of sdiv 1**

‘This subdivision applies, subject to section 135EM(4), to a liable person for a liable load, other than an accredited generator for a power station connected to a small grid.

‘135EO Liable person

‘Division 5 provides for who is the liable person for the liable load.

‘135EP Liability

- ‘(1) The liable person has, for each year from 2005, an annual liability to the regulator that equates to—
- (a) for the person’s liable loads generated from eligible fuels supplied under a direct supply arrangement that was in force on 24 May 2000—13% of the total of the liable loads, in MWh, above the baseline fixed for the customer to whom the load is supplied; and
 - (b) for the person’s other liable loads—13% of the total of the liable loads, in MWh.
- ‘(2) For subsection (1), if 13% of the total liable loads is a number of MWhs that ends in a fraction, the number is taken to be the whole number of MWhs, disregarding the fraction.

‘135EQ How and when liability must be met

- ‘(1) The 13% liability must be met by surrendering, under part 4, division 4, subdivision 3, the number (the *required number*)

of GECs that equates to 13% of the person's liable load for the liable year.⁶¹

- '(2) The surrenders must be made on or before the final surrender day for the next year after the liable year.
- '(3) However, the 13% liability is taken to be complied with if—
 - (a) the liable person has, on or before the final surrender day made a surrender application for GECs; and
 - (b) should the surrenders be accepted, the required number of GECs are surrendered.
- '(4) In this section—

final surrender day means—

 - (a) generally—the last business day in April; or
 - (b) if the regulator has, by notice given to the liable person, fixed a day between the last business day in April and the next penalty imposition day—that fixed day.

'Subdivision 2 Imposition of 13% liability in relation to small grids

'135ER Application of sdiv 2

'This subdivision applies for a power station connected to a small grid.

'135ES Liable person

'If there is an accredited generator for the power station and the generator creates GECs, the generator is the liable person.

'135ET How and when liability must be met

- '(1) The liable person has, for each year from 2005, an annual liability to the regulator to surrender, under part 4, division 4, subdivision 3, the number of GECs that equates to 13% of the

61 See however section 135FO (Credit to future 13% liability for over surrender).

GECs created by the person and registered during the liable year.⁶²

- ‘(2) The surrenders must be made on or before the final surrender day for the next year after the liable year.
- ‘(3) However, the 13% liability is taken to be complied with if—
 - (a) the liable person has, on or before the final surrender day made a surrender application for GECs; and
 - (b) should the surrenders be accepted, the required number of GECs are surrendered.
- ‘(4) In this section—
 - final surrender day* means—
 - (a) generally—the last business day in April; or
 - (b) if the regulator has, by notice given to the liable person, fixed a day between the last business day in April and the next penalty imposition day—that fixed day.

‘Subdivision 3 **General provisions for 13% liability**

‘135EU GECs that can not be used to meet 13% liability

‘In deciding whether the 13% liability has been met for a liable year the surrender of a GEC must be disregarded if the surrender is—

- (a) to comply with section 135BA;⁶³ or
- (b) under a GEC surrender direction.

‘135EV Liability not subject to condition of GEC ownership

‘To remove any doubt, it is declared that the 13% liability applies to a liable person even if the person does not own any GECs or does not own enough GECs to meet the liability.

62 See however section 135FO (Credit to future 13% liability for over surrender).

63 Section 135BA (Obligation to take action because of improper creation of GECs or GEC review)

‘135EW Obligation to keep documents relating to 13% liability

- ‘(1) The liable person must, unless the person has a reasonable excuse, keep during the relevant period all documents that will allow the person’s 13% liability for a liable year to be worked out.

Maximum penalty—200 penalty units.

- ‘(2) In this section—

relevant period means the period that ends 5 years after the giving of a self-assessment report for the 13% liability.

‘Division 3 Civil penalty for not meeting 13% liability**‘135EX Application of div 3**

‘This division applies if a liable person does not meet the 13% liability for any liable year.

‘135EY Imposition of civil penalty for not meeting 13% liability

- ‘(1) Subject to section 135EZ, the liable person must, on the later of the following days, pay the regulator a civil penalty—
- (a) the next 30 June after the 13% liability was not met;
 - (b) if the regulator has, by notice given to the liable person before the next 30 June, fixed a later day—the later day.
- ‘(2) The day mentioned in subsection (1) is the *penalty imposition day* for the 13% liability.
- ‘(3) If the liable person meets the 13% liability before the penalty imposition day, the obligation to pay the civil penalty ends.
- ‘(4) If the liable person does not meet the 13% liability before the penalty imposition day, the obligation to pay the penalty applies whether or not the liable person later meets the liability.
- ‘(5) However, if the penalty is paid the 13% liability for the liable year ends.

- ‘(6) Subsection (5) is subject to any assessment, under division 4,⁶⁴ that increases the amount of the penalty or the 13% liability.

‘135EZ Exemption to allow for meter data revisions or adjustments

‘Despite the liable person not having met all of the 13% liability for a particular liable year before the penalty imposition day for the 13% liability, the obligation to pay the civil penalty ends if—

- (a) the person has given the regulator a self-assessment report for that year; and
- (b) the person gives the regulator evidence that the failure to meet the 13% liability was because of meter data revisions or adjustments that were not available to the person when the report was given; and
- (c) before the penalty imposition day the person met the 13% liability other than to the extent it relates to the revisions or adjustments; and
- (d) the person meets all of the 13% liability on or before the next final surrender day under—
 - (i) if division 2, subdivision 1 applies—section 135EQ; or
 - (ii) if division 2, subdivision 2 applies—section 135ET.⁶⁵

‘135F Amount of civil penalty

‘The amount of the civil penalty is worked out using the following formula—

$$P = (13\% LL - GECs\ surrendered) \times SC$$

64 Division 4 (Assessments)

65 Division 2, subdivisions 1 (Imposition of 13% liability in relation to major grids) and 2 (Imposition of 13% liability in relation to small grids)

Sections 135EQ and 135ET (How and when liability must be met)

where—

P is the amount of the penalty.

13%LL is 13% of the liable load, in MWh, for which the 13% liability was imposed.

GECs surrendered is the total number of—

- (a) GECs surrendered to meet the 13% liability for the liable year; and
- (b) GECs the subject of a surrender application under section 135EQ(3) or 135ET(3).⁶⁶

SC is the amount of the shortfall charge for the liable year, as fixed under section 135FA.

‘135FA Shortfall charge

- ‘(1) For section 135F, the amount of the shortfall charge is the following—
 - (a) for 2005—\$11;
 - (b) for 2006—\$11, CPI indexed;
 - (c) for 2007—the shortfall charge for 2006, CPI indexed;
 - (d) for 2008—the shortfall charge for 2007, CPI indexed;
 - (e) for 2009—the shortfall charge for 2008, CPI indexed;
 - (f) for 2010—the shortfall charge for 2009, CPI indexed;
 - (g) for 2011—the shortfall charge for 2010, CPI indexed;
 - (h) for 2012 to 2019—the shortfall charge for 2011.
- ‘(2) However, if the amount provided for under subsection (1) is an amount that is or includes a fraction of a dollar, the amount is taken to be the amount that is the nearest 5c, rounded up.
- ‘(3) In this section—

CPI means—

 - (a) the all groups index for Brisbane published by the Australian Bureau of Statistics; or

66 Section 135EQ or 135ET (How and when liability must be met)

- (b) if the index ceases to be published, another similar index prescribed under a regulation.

CPI indexed, for a stated year, means the addition of an amount that equates to the percentage increase in the CPI from the December quarter for the previous year and the December quarter for the stated year.

‘135FB Interest on unpaid civil penalty

- ‘(1) The liable person must pay interest on an amount owing for the civil penalty unpaid from time to time.
- ‘(2) Interest accrues daily at the rate of 10% a year on the unpaid amount on and from the day after it is owing until it is paid in full.
- ‘(3) The regulator may waive payment of the interest.
- ‘(4) The liability to pay the amount waived is extinguished.

‘135FC Recovery of unpaid civil penalty and interest

- ‘(1) If the liable person does not pay an amount owing under this division, the State may recover the amount from the person as a debt.
- ‘(2) Despite the *Limitation of Actions Act 1974*, section 10(5),⁶⁷ the proceeding may be started within 6 years after the penalty imposition day for the relevant 13% liability.

‘Division 4 Assessments

‘Subdivision 1 Self-assessment

‘135FD Self-assessment report

- ‘(1) Each liable person must, on or before the report day in each year from 2006, give the regulator a report (a *self-assessment*

⁶⁷ *Limitation of Actions Act 1974*, section 10 (Actions of contract and tort and certain other actions)

report) that complies with subsection (2) about the person's 13% liability for the previous year.

Maximum penalty—200 penalty units.

- '(2) The report must—
- (a) be in the approved form; and
 - (b) for an accredited generator for a power station connected to a small grid—state how many registered GECs the person created during the previous year; and
 - (c) for a liable person other than an accredited generator for a power station connected to a small grid—give all information needed to work out the person's liable load for the previous year, including, for example, any electricity loads the person claims were exempt or non-liable loads; and
 - (d) the liable person's 13% liability for the previous year, as worked out by the person; and
 - (e) state how many GECs the person has surrendered to meet the 13% liability.⁶⁸
- '(3) In this section—
- report day** means—
- (a) generally—the last business day in April; or
 - (b) if the regulator has, by notice given to the liable person before the day mentioned in paragraph (a), fixed a later day—the later day.

'135FE Derivative use immunity for self-assessment report

- '(1) It is not a defence to a proceeding for an offence against section 135FD(1) that the giving of the report or information it contains might tend to incriminate the liable person.
- '(2) However, if the liable person is an individual evidence of, or evidence directly or indirectly derived from, the report or information it contains that might tend to incriminate the

68 See also section 135JS (Additional information about reports and other matters).

liable person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding—

- (a) for an offence for which the falsity or misleading nature of the answer is relevant; or
- (b) to recover an amount under section 135FC.⁶⁹

‘135FF Obligation to keep documents used to make self-assessment report

‘If a liable person gives the regulator a self-assessment report, the person must, unless the person has a reasonable excuse, keep all documents the person used to make the report for 5 years after the giving of the report.

Maximum penalty—200 penalty units.

‘Subdivision 2 Assessments by regulator

‘135FG Purpose of sdiv 2

- ‘(1) This subdivision gives the regulator power to make assessments of the 13% liability and any civil penalty for not meeting it.
- ‘(2) Subdivision 4 provides for the evidentiary effect of the assessments in proceedings relating to the liability or the penalty.

‘135FH Default assessment

- ‘(1) If a liable person has not given the regulator a self-assessment report as required under section 135FD, the regulator may make an assessment (a *default assessment*) for the following that the regulator reasonably believes is outstanding—
 - (a) the 13% liability for the year for which the report ought to have been given;

⁶⁹ Section 135FC (Recovery of unpaid civil penalty and interest)

- (b) if the penalty imposition day for the 13% liability has passed—the civil penalty for not meeting the 13% liability.
- ‘(2) A default assessment must state—
- (a) the amount of the 13% liability or civil penalty; and
 - (b) when, under section 135EY, the civil penalty became payable; and
 - (c) any interest payable, under section 135FB, on the civil penalty.⁷⁰

‘135FI Reassessment

‘If the regulator is not satisfied about the accuracy or completeness of a self-assessment report the regulator may make an assessment (a *reassessment*) for the following that the regulator reasonably believes is outstanding—

- (a) the 13% liability for the year for which the report was given;
- (b) if the penalty imposition day for the 13% liability has passed—the civil penalty for not meeting the 13% liability.

‘135FJ Compromise assessment

- ‘(1) This section applies if, because of a complexity or uncertainty or for another reason, it is difficult or impracticable for the liable person or the regulator to properly work out the amount of the liable person’s 13% liability for any year.
- ‘(2) The regulator may, under a written agreement with the liable person, make an assessment (a *compromise assessment*) of the 13% liability.
- ‘(3) A compromise assessment must also state—

⁷⁰ Sections 135EY (Imposition of civil penalty for not meeting 13% liability) and 135FB (Interest on unpaid civil penalty)

- (a) if the penalty imposition day for the 13% liability has passed—the amount of the civil penalty for not meeting the 13% liability; and
 - (b) when, under section 135EY, the civil penalty became payable; and
 - (c) any interest payable, under section 135FB, on the civil penalty.
- ‘(4) Nothing in this part requires the regulator to make a compromise assessment for a liable person.

‘135FK Amended assessment

- ‘(1) The regulator may amend a default assessment, reassessment or compromise assessment in any way the regulator considers is reasonably necessary to correct the relevant 13% liability or civil penalty.
- ‘(2) An amendment under subsection (1) is called an ***amended assessment***.
- ‘(3) An amended assessment must state—
- (a) the 13% liability or the amount of the civil penalty; and
 - (b) for the civil penalty—
 - (i) when, under section 135EY, it became payable; and
 - (ii) any interest payable on it under section 135FB.
- ‘(4) However, a compromise assessment may be amended only—
- (a) with the written agreement of the relevant liable person; or
 - (b) if the regulator reasonably believes the compromise was agreed to by the regulator because of fraud or a false or misleading statement; or
 - (c) if, when the compromise was made, the regulator was unaware of information material to the making of the compromise.

‘135FL Assessments made on available relevant information

‘The regulator may make an assessment on the available information the regulator considers relevant.

‘135FM Notice of assessment and when it takes effect

- ‘(1) As soon as practicable after making an assessment, the regulator must give the relevant liable person notice of the assessment.
- ‘(2) The assessment takes effect on the later of the following—
 - (a) the day the notice is given;
 - (b) a later day of effect stated in the notice.
- ‘(3) If the assessment is an assessment other than a compromise assessment, the notice must include or be accompanied by an information notice about the decision to make the assessment.

‘135FN Time for assessment by regulator

‘An assessment by the regulator may be made only within 5 years after the final surrender day under section 135EQ or 135ET for the relevant 13% liability.⁷¹

‘Subdivision 3 Credits and refunds**‘135FO Credit to future 13% liability for over surrender**

- ‘(1) This section applies if—
 - (a) under an amended assessment, compromise assessment or reassessment, a liable person’s 13% liability for a year is decreased; and
 - (b) the liable person has, for that year, surrendered more than the number of GECs that the assessment states was required to meet the liability.

71 Section 135EQ or 135ET (How and when liability must be met)

- ‘(2) The amount of the over surrender is taken to have been made for the next year or years for which the liable person must meet the 13% liability.
- ‘(3) Subsection (2) is subject to section 135DS.⁷²

‘135FP Regulator to refund overpaid civil penalty and interest

- ‘(1) An entitlement to a refund of an amount paid for the civil penalty and interest on the penalty arises if, under an amended assessment, compromise assessment or reassessment, a liable person’s liability for the civil penalty is decreased.
- ‘(2) The regulator must refund the overpaid amount.
- ‘(3) The liable person is not entitled to—
 - (a) a refund of any civil penalty or interest on the penalty paid, or purportedly paid, other than under this section; or
 - (b) interest on the overpaid amount.

‘Subdivision 4 Evidentiary provisions for assessments

‘135FQ Evidentiary provisions

- ‘(1) This section applies to any proceeding under or in relation to this chapter.
- ‘(2) Production of a document signed by the regulator purporting to be a copy of an assessment by the regulator—
 - (a) is conclusive evidence of the proper making of the assessment; and
 - (b) for a proceeding on an appeal against a decision to make the assessment, is evidence that the amount and all particulars of the assessment are correct; and
 - (c) for another proceeding, is conclusive evidence—

72 Section 135DS (Automatic expiry)

- (i) of the 13% liability and any civil penalty and interest on the penalty as stated in the assessment; and
 - (ii) that all particulars of the assessment are correct.
- ‘(3) The validity of an assessment by the regulator is not affected merely because a provision of this chapter has not been complied with.

‘Division 5 Liable persons in relation to major grids

‘Subdivision 1 Liability hierarchy

‘135FR Operation of sdiv 1

- ‘(1) This subdivision provides for who is the liable person for a liable load other than in relation to a power station connected to a small grid.⁷³
- ‘(2) The general principle of this subdivision is—
- (a) that the liable person is—
 - (i) any relevant retailer for the load; or
 - (ii) if there is no relevant retailer for the load—the relevant special approval holder for the load; or
 - (iii) if there is no relevant retailer or relevant special approval holder for the load—any other person who, in effect, acts as a retailer in relation to the load; but
 - (b) the person mentioned in paragraph (a) is not the liable person for the load if—
 - (i) the person sells the load to NEMMCO; or
 - (ii) NEMMCO later acquires the load.

⁷³ For who is the liable person in relation to a power station connected to a small grid, see division 2, subdivision 2 (Imposition of 13% liability in relation to small grids).

- ‘(3) If no liable person is provided for the load, the 13% liability does not apply to anyone.

‘135FS Retailer

- ‘(1) If the liable load is electricity generated or used at premises with a substantive traceable link to a major grid and a retailer sells the electricity to any of the following in the State, the retailer is the liable person for the load—
- (a) a customer of the retailer, other than another retailer;
 - (b) an on-supplier;
 - (c) a special approval holder.
- ‘(2) However—
- (a) the retailer is not the liable person for the load if—
 - (i) the retailer sells the load to NEMMCO; or
 - (ii) NEMMCO later acquires the load; and
 - (b) the retailer ceases to be the liable person for the load if it is sold later by another retailer.

‘135FT Special approval holder

- ‘(1) A special approval holder is a liable person for the liable load if—
- (a) the liable load is electricity generated or used at premises with a substantive traceable link to a major grid; and
 - (b) the power station that generated the electricity—
 - (i) can not be identified; or
 - (ii) has a nameplate capacity of more than 5 MW and an annual generation output of more than 100 MWh; and
 - (c) no retailer is the liable person for the load; and
 - (d) the special approval holder sells the electricity to any of the following in the State—
 - (i) a customer of the special approval holder;

- (ii) an on-supplier;
 - (iii) another special approval holder; and
 - (e) the load has not previously been sold by another special approval holder.
- ‘(2) The special approval holder continues to be the liable person for the load even though another special approval holder later sells it to someone else.
- ‘(3) Despite subsections (1) and (2), the special approval holder is not the liable person for the load if—
- (a) the special approval holder sells the load to NEMMCO; or
 - (b) NEMMCO later acquires the load.

‘135FU Specific circumstance generator

- ‘(1) This section applies if—
- (a) a power station has a substantive traceable link to a major grid; and
 - (b) the liable load is electricity sold directly from the power station to an end user in the State; and
 - (c) the power station has—
 - (i) a nameplate capacity of more than 5 MW; and
 - (ii) an annual generation output of more than 100 MWh; and
 - (d) a dedicated line is used for the supply; and
 - (e) no retailer or special approval holder is the liable person for the load.
- ‘(2) The person who sells the electricity to the end user is the liable person for the load.

‘135FV Substantial on-site generator

‘If—

- (a) the liable load is electricity—

- (i) generated in the State; and
 - (ii) generated or used at premises with a substantive traceable link to a major grid; and
- (b) the power station at which the electricity is generated has—
- (i) a nameplate capacity of more than 5 MW; and
 - (ii) an annual generation output of more than 100 MWh; and
- (c) the person who generated the electricity (the *generator*) also uses it in the State; and
- (d) no retailer or special approval holder is the liable person for the load;

the generator is the liable person for the load.

‘135FW Wholesale purchaser from spot market

‘If—

- (a) the liable load is, under the Market Code, electricity bought directly from NEMMCO by someone (the *purchaser*) for their own use; and
- (b) the premises at which the electricity is used has a substantive traceable link to a major grid; and
- (c) no retailer or special approval holder is the liable person for the load;

the purchaser is the liable person for the load.

‘Subdivision 2 Resolving disputes about who is the liable person

‘135FX Application of sdiv 2

‘This subdivision applies if a dispute exists about who is the liable person for a liable load and the regulator is not a party to the dispute.

‘135FY Referral to regulator

- ‘(1) Any party to the dispute (the *referrer*) may refer it to the regulator to decide who is the liable person.
- ‘(2) The referral must—
 - (a) be written; and
 - (b) include submissions about who the referrer believes is the liable person; and
 - (c) state the grounds for the belief; and
 - (d) include all documents or information the referrer has that will allow the regulator to resolve the dispute.

‘135FZ Submissions by other affected parties

‘Before deciding who is the liable person the regulator must—

- (a) give each party to the dispute other than the referrer a copy of the referral; and
- (b) invite each other party to make written submissions about the dispute; and
- (c) give the referrer a reasonable opportunity to give the regulator a written response to the submissions; and
- (d) consider the referral, submissions and response.

‘135G Regulator’s power to require documents or information

- ‘(1) The regulator may, by notice, require a party to the dispute to give the regulator a stated document or information the regulator reasonably requires to decide who is the liable person.
- ‘(2) The notice must be accompanied by, or include, an information notice about the decision to make the requirement.
- ‘(3) The document or information must be given within a reasonable period after giving the notice, unless the party has a reasonable excuse.

Maximum penalty—100 penalty units.

- ‘(4) It is not a reasonable excuse not to give the document or information because it is confidential or because the party has agreed with another party or someone else not to give it to anyone else.

‘135GA Regulator may require confidentiality to be observed

- ‘(1) A person who gives the regulator information, or produces a document, may ask the regulator to keep the information or the contents of the document confidential.
- ‘(2) After considering representations from the parties to the dispute, the regulator may impose conditions limiting access to, or disclosure of, the information or document.

Example of a condition that may be imposed—

a condition that the parties, or a stated party, may use the information or document only for the mediation

- ‘(3) A person to whom a condition under subsection (2) applies must comply with the condition.

Maximum penalty for subsection (3)—200 penalty units.

‘135GB Regulator may require mediation

‘Before deciding who is the liable person the regulator may require the parties to the dispute to undergo mediation of a stated type.

‘135GC Criteria for decision

‘The matters the regulator must consider in deciding who is the liable person include each of the following—

- (a) each relevant agreement between the parties;
- (b) the purpose of each relevant agreement;

- (c) the ability of any party to the dispute to pass on the cost of meeting the 13% liability;⁷⁴
- (d) the main purposes of this chapter;⁷⁵
- (e) the general principle of subdivision 1.⁷⁶

‘135GD Exclusion of other jurisdictions

- ‘(1) If the dispute has been referred to the regulator, the following matters are not justiciable by a court or tribunal at the instigation of a party to the dispute—
 - (a) an issue in the dispute;
 - (b) any issue that arises in the course of the regulator’s deciding of the dispute.
- ‘(2) However, subsection (1) does not apply if the proceeding before the court or tribunal was started before the dispute was referred to the regulator.

‘135GE Notice of decision

‘After deciding who is the liable person, the regulator must give each party to the dispute an information notice about the decision.

‘135GF Decision binds parties to the dispute

‘The regulator’s decision about who is the liable person binds each party to the dispute.

74 See section 309 (Existing electricity supply contracts).

75 See section 135A (Main purposes of ch 5A).

76 See section 135FR (Operation of sdiv 1).

‘Division 6 Exempted loads

‘Subdivision 1 Preliminary

‘135GG Who is an *interested person* for an electricity load

- ‘(1) An *interested person* for an electricity load is—
 - (a) each person who is, or may become, the liable person for the load; and
 - (b) the person who generates or uses the load.
- ‘(2) Also, if a business or enterprise is, or is part of a significant project, the proponent of the project is an *interested person* for electricity loads supplied to the business or enterprise.

‘135GH Who obtains the benefit of liable load exemption

- ‘(1) If a liable load exemption is granted, the person who applied for it has the benefit of the exemption and is taken to be registered under part 6 as a scheme participant.
- ‘(2) Another person who is a scheme participant and an interested person for the load may also claim the benefit of the exemption.

‘Subdivision 2 State development exemption

‘135GI Application and operation of sdiv 2

- ‘(1) This subdivision applies if a business or enterprise is, or is part of any of the following projects (a *significant project*)—
 - (a) a project that, under the *State Development and Public Works Organisation Act 1971*, part 4,⁷⁷ has been declared to be a significant project;

⁷⁷ *State Development and Public Works Organisation Act 1971*, part 4 (Environmental coordination)

- (b) another project that the regulator decides provides, or will provide, substantial strategic and economic benefits to the State.
- ‘(2) In making the decision, the regulator may consider any matter mentioned in the *State Development and Public Works Organisation Act 1971*, section 27.
- ‘(3) This subdivision gives the regulator power to grant a liable load exemption for the proportion of all electricity loads supplied, or proposed to be supplied, to the business or enterprise that is not eligible gas-fired electricity if the total of the loads is, or will be, more than 750 GWh a year.
- ‘(4) A liable load exemption granted under this division is a *State development exemption*.

‘135GJ Making application

- ‘(1) Any interested person for any of the loads may apply for the exemption.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) identify each of the following—
 - (i) the business or enterprise;
 - (ii) each relevant premises;
 - (iii) the electricity loads;
 - (iv) the proponent of the significant project; and
 - (c) state each of the following—
 - (i) the applicant’s estimate of the proportion of the electricity supply or proposed supply that is not eligible gas-fired electricity;
 - (ii) each interested person for the electricity loads;
 - (iii) if the supply started before the 3 years before the making of the application—details of the electricity consumption of the business or enterprise during the 3 years;

- (iv) if the supply started during the 3 years before the making of the application—details of the electricity consumption of the business or enterprise from when the supply started to the making of the application; and
- (d) be accompanied by each of the following—
 - (i) evidence that the business or enterprise is, or will be, part of the significant project;
 - (ii) evidence that the supply or proposed supply is, or will be—
 - (A) more than 750 GWh a year; and
 - (B) carried out as part of the same business or enterprise;
 - (iii) if the supply has not started or has not exceeded 750 GWh a year—
 - (A) the parts of any environmental impact statement for the project, as made under another Act, that are relevant to the business or enterprise; and
 - (B) a schedule by the applicant for bringing the supply over 750 GWh a year;
 - (iv) the fee prescribed under a regulation.

‘135GK Notice to other interested persons

‘The applicant must give any other interested person for any of the electricity loads—

- (a) a copy of the application; and
- (b) a notice stating that the interested person may make, within 20 business days after the person is given the notice, written submissions to the regulator about the application.

‘135GL Deciding application

- ‘(1) The regulator must decide whether to grant or refuse the application.

- ‘(2) However, if section 135GK applies, the regulator—
- (a) must not make the decision until the applicant has complied with that section; and
 - (b) must consider any written submissions made under that section.
- ‘(3) Also, the regulator may grant the application only if satisfied of each of the following—
- (a) the business or enterprise is, or is part of, a significant project;
 - (b) the total of the electricity loads supplied, or proposed to be supplied, to the business or enterprise is, or will be—
 - (i) more than 750 GWh a year; and
 - (ii) carried out as part of the same business or enterprise;
 - (c) if the total of the supply is currently 750 GWh a year or less—that the period to bring it over 750 GWh a year will not be more than 4 years from when the business or enterprise first consumes or consumed electricity for production;
 - (d) all of the business or enterprise is carried out in the same locality;
 - (e) the supply or proposed supply does, or will, include a proportion of electricity that is not eligible gas-fired electricity.

‘135GM Steps after deciding application

- ‘(1) If the regulator decides to grant the application, the regulator must—
- (a) decide the extent to which the liable load exemption is granted; and
 - (b) decide the term of the exemption; and
 - (c) give the applicant a certificate in the approved form about the exemption; and

- (d) give each interested person for any of the electricity loads a copy of the certificate.
- ‘(2) The term of the exemption—
- (a) must not be more than 15 years; and
 - (b) may start at any day not before 1 January 2005; and
 - (c) is subject to any cancellation or suspension under subdivision 8.
- ‘(3) If the regulator makes any of the following decisions, the regulator must give the applicant and each interested person an information notice about the decision—
- (a) a decision to refuse the application;
 - (b) a decision about the extent to which the liable load exemption is granted, other than an extent to which the applicant has agreed.

‘135GN Condition for proposed supply

- ‘(1) This section applies if the State development exemption is granted and, when it is granted, the total of the electricity loads supplied to the business or enterprise is 750 GWh a year or less.
- ‘(2) It is a condition of the exemption that the supply must comply with—
- (a) the schedule that accompanied the application for the exemption; or
 - (b) if, under section 135GO, the schedule has been amended—the amended schedule.
- ‘(3) If the schedule or amended schedule is complied with, the condition under section 135GP applies.

‘135GO Amendment of applicant’s supply schedule

- ‘(1) If the State development exemption is granted, the proponent of the significant project may apply in writing to the regulator to amend either of the following (the *earlier schedule*)—

- (a) the schedule that accompanied the application for the exemption;
 - (b) the schedule that accompanied the application for the exemption, as previously amended under this section.
- ‘(2) If there is any other interested person for any of the exempted loads—
- (a) the applicant must give the interested person—
 - (i) a copy of the application; and
 - (ii) a notice stating that the interested person may make, within 20 business days after the person is given the notice, written submissions to the regulator about the application; and
 - (b) the regulator—
 - (i) must not decide the application until the applicant has complied with paragraph (a); and
 - (ii) must consider any written submissions made under that paragraph.
- ‘(3) The regulator may amend the earlier schedule only if satisfied—
- (a) the earlier schedule was given to the regulator in good faith; and
 - (b) the period to bring the electricity loads supplied to the relevant business or enterprise to more than 750 GWh a year has not been, and will not be, more than 4 years from when the business or enterprise first consumes or consumed electricity for production; and
 - (c) either—
 - (i) the proponent has made all reasonable attempts to comply with the earlier schedule; or
 - (ii) any inability to comply with the earlier schedule was caused by a circumstance or event beyond the proponent’s control that the proponent took all reasonable steps to avoid; or

(iii) a material change in circumstances for the significant project has unavoidably caused a need to amend the earlier schedule.

‘(4) If the regulator decides to refuse the application, the regulator must, as soon as practicable, give the applicant and any other interested person for any of the exempted loads of whom the regulator is aware an information notice about the decision.

‘135GP Condition for continuity of supply

‘(1) This section applies if the application is granted and, when it is granted, the total of the electricity loads supplied to the business or enterprise is more than 750 GWh a year.

‘(2) It is a condition of the State development exemption that the supply must not be reduced to 750 GWh a year or less unless the reduction was caused by—

- (a) energy efficiency initiatives and the production of the business or enterprise has not declined; or
- (b) an unavoidable act of nature; or
- (c) a circumstance or event that—
 - (i) was beyond the control of the proponent of the significant project; and
 - (ii) the proponent took all reasonable steps to avoid.

Example of an event—

an emergency water prohibition or reduction under the *Water Act 2000*, section 22⁷⁸

‘135GQ Reporting condition

‘(1) It is a condition of the exemption that if an interested person for the exempted load becomes aware of the happening of an event as follows, the interested person must give the regulator notice of the event as soon as practicable—

- (a) the supply falls to 750 GWh a year or less;

⁷⁸ *Water Act 2000*, section 22 (Limiting or prohibiting taking, or interfering with, water during emergencies)

- (b) another material change in the circumstances under which the exemption was granted.
- ‘(2) The notice must also state the reasons for the happening of the event.⁷⁹

‘Subdivision 3 Renewable energy exemption

‘135GR Operation of sdiv 3

- ‘(1) This subdivision gives the regulator power to grant a liable load exemption for an electricity load supplied by an on-site generator or under a direct supply arrangement under which a power station supplies electricity to an end user in the State using a dedicated line to the extent the electricity is generated from a renewable energy source—
- (a) of a type prescribed under a regulation (a *prescribed renewable energy source*); or
 - (b) recognised under a law or program prescribed under a regulation about renewable energy (a *recognised program*).
- ‘(2) An electricity load mentioned in subsection (1) is called *eligible renewable electricity*.
- ‘(3) Sections 135GV(2) and 135GW⁸⁰ adjust the extent mentioned in subsection (1) to allow for minor supplementation of electricity generation from fuels that are not a prescribed renewable energy source or under a recognised program.

‘135GS Making application

- ‘(1) Any interested person for the load may apply for the exemption.
- ‘(2) The application must—
- (a) be in the approved form; and

⁷⁹ See also section 135JS (Additional information about reports and other matters).

⁸⁰ Sections 135GV (Steps after deciding application) and 135GW (Ineligible fuel allowance)

- (b) identify the electricity load; and
- (c) be accompanied by evidence—
 - (i) that the electricity is supplied by an on-site generator or of the direct supply arrangement; and
 - (ii) that the electricity load is generated from a prescribed renewable energy source or under a recognised program; and
- (d) include information that will allow the regulator to decide the extent to which the electricity is eligible renewable electricity; and
- (e) be accompanied by the fee prescribed under a regulation.

‘135GT Notice to other interested persons

‘The applicant must give any other interested person for the electricity load—

- (a) a copy of the application; and
- (b) a notice stating that the interested person may make, within 20 business days after the person is given the notice, written submissions to the regulator about the application.

‘135GU Deciding application

- ‘(1) The regulator must decide whether to grant or refuse the application.
- ‘(2) However, if section 135GT applies, the regulator—
 - (a) must not make the decision until the applicant has complied with that section; and
 - (b) must consider any written submissions made under that section.
- ‘(3) Also, the regulator may grant the application only if satisfied the electricity is—
 - (a) supplied by an on-site generator or under a direct supply arrangement using a dedicated line; and

- (b) generated—
 - (i) from a prescribed renewable energy source; or
 - (ii) under a recognised program.

‘135GV Steps after deciding application

- ‘(1) If the regulator decides to grant the application, the regulator must—
 - (a) decide the extent to which the electricity is eligible renewable electricity; and
 - (b) decide the term of the exemption; and
 - (c) give the applicant a certificate in the approved form about the exemption; and
 - (d) give each interested person for the load a copy of the certificate.
- ‘(2) If—
 - (a) apart from this subsection, the regulator would have decided that the electricity is 90% or more eligible renewable electricity; and
 - (b) all of the electricity is supplied by an on-site generator or under a direct supply arrangement;the regulator must decide that 100% of the electricity is eligible renewable electricity.
- ‘(3) The term of the exemption—
 - (a) must not be more than 15 years; and
 - (b) may start at any day not before 1 January 2005; and
 - (c) is subject to any cancellation or suspension under subdivision 8.
- ‘(4) If the regulator makes any of the following decisions, the regulator must give the applicant and each interested person an information notice about the decision—
 - (a) a decision to refuse the application;

- (b) a decision about the extent to which the electricity is eligible renewable electricity, other than an extent to which the applicant has agreed.

‘135GW Ineligible fuel allowance

‘If—

- (a) under section 135GV, the regulator has decided an extent to which the electricity is eligible renewable electricity; and
- (b) the extent is less than 90%;

the percentage is adjusted by an allowance of 1.112.

Example—

The decided extent is 80%. The adjusted percentage is 89% (0.80 x 1.112).

‘135GX General conditions of exemption

‘It is a condition of the exemption that the electricity load the subject of the exemption must continue to be—

- (a) supplied by an on-site generator or under a direct supply arrangement; and
- (b) generated from a prescribed renewable energy source or under a recognised program.

‘135GY Reporting condition

‘It is a condition of the exemption that, if an interested person for the exempted load becomes aware of the happening of an event as follows the interested person must give the regulator notice of the event as soon as practicable—

- (a) the electricity load the subject of the exemption ceases to be—
 - (i) supplied by an on-site generator or under a direct supply arrangement; or
 - (ii) generated from a prescribed renewable energy source or under a recognised program;

- (b) a change in the energy source for the electricity that is relevant to the extent of eligible renewable electricity decided by the regulator.⁸¹

‘Subdivision 4 Power station auxiliary load exemption

‘135GZ Operation of sdiv 4

‘This subdivision gives the regulator power to grant a liable load exemption for an electricity load used for an auxiliary load for a power station.

‘135H Making application

- ‘(1) Any interested person for the load may apply for the exemption.
- ‘(2) The application must—
- (a) be in the approved form; and
 - (b) identify the power station and the electricity load; and
 - (c) state each person who is an interested person for the load; and
 - (d) include information that will allow the regulator to decide the extent to which the electricity is an auxiliary load; and
 - (e) be accompanied by—
 - (i) evidence that the load is an auxiliary load for the power station; and
 - (ii) the fee prescribed under a regulation.

‘135HA Notice to other interested persons

‘The applicant must give any other interested person for the electricity load—

81 See also section 135JS (Additional information about reports and other matters).

- (a) a copy of the application; and
- (b) a notice stating that the interested person may make, within 20 business days after the person is given the notice, written submissions to the regulator about the application.

‘135HB Deciding application

- ‘(1) The regulator must decide whether to grant or refuse the application.
- ‘(2) However, if section 135HA applies, the regulator—
 - (a) must not make the decision until the applicant has complied with that section; and
 - (b) must consider any written submissions made under that section.
- ‘(3) The regulator may grant the application only if satisfied the electricity load is an auxiliary load for the power station.

‘135HC Steps after deciding application

- ‘(1) If the regulator decides to grant the application, the regulator must—
 - (a) decide the extent to which the liable load exemption is granted; and
 - (b) decide the term of the exemption; and
 - (c) give the applicant a certificate in the approved form about the exemption; and
 - (d) give each interested person for the auxiliary load a copy of the certificate.
- ‘(2) The term of the exemption—
 - (a) must not be more than 15 years; and
 - (b) may start at any day after 31 December 2004; and
 - (c) is subject to any cancellation or suspension under subdivision 8.

- ‘(3) If the regulator decides to refuse the application or grant the exemption for a load less than the load sought in the application, the regulator must give the applicant and each interested person an information notice about the decision.

‘135HD General condition of exemption

‘It is a condition of the exemption that the electricity load the subject of the exemption must continue to be an auxiliary load.

‘135HE Reporting condition

‘It is a condition of the exemption that if an interested person for the exempted load becomes aware of a material change in the circumstances under which the exemption was granted, the interested person must give the regulator notice of the event as soon as practicable.⁸²

‘Subdivision 5 General conditions of liable load exemptions

‘135HF Annual fee and exemption compliance report

- ‘(1) It is a condition of each liable load exemption that each interested person for the exempted load must, on or before the relevant day in each year during which the exemption is in force (the *current year*), ensure the regulator is given the following for the previous year—
- (a) an exemption compliance report for the last year, in the approved form;
 - (b) the annual fee prescribed for the current year, as prescribed under a regulation.
- ‘(2) However, if there is more than 1 interested person for the load, only 1 exemption compliance report and only 1 annual fee need be given by them jointly.

82 See also section 135JS (Additional information about reports and other matters).

‘(3) In this section—

relevant day means—

- (a) generally—the last business day in April; or
- (b) if the regulator has, by notice given to each of the interested persons, fixed a later day—the later day.

‘135HG Obligation to keep documents relating to exemption

‘(1) It is a condition of each liable load exemption that each interested person for the exempted load must ensure documents relevant to the exemption and compliance with its conditions are kept by an interested person for the exempted load for at least the required period.

‘(2) Each interested person for the exempted load must comply with the condition unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(3) In this section—

required period means 5 years from the giving of the exemption compliance report under section 135HF to which the documents relate.

‘Subdivision 6 Amending liable load exemption by application

‘135HH Applying for amendment

‘(1) An interested person for an exempted load may, in the approved form, apply to the regulator to amend the exemption in a stated way, other than to change a condition imposed under this division.

‘(2) The application must be accompanied by the fee prescribed under a regulation.

‘135HI Notice to other interested persons

‘The applicant must give any other interested person for the exempted load—

- (a) a copy of the application; and
- (b) a notice stating that the interested person may make, within 20 business days after the person is given the notice, written submissions to the regulator about the application.

‘135HJ Deciding application

- ‘(1) The regulator must decide to make or refuse to make the amendment.
- ‘(2) However, if section 135HI applies, the regulator—
 - (a) must not make the decision until the applicant has complied with that section; and
 - (b) must consider any written submissions made under that section.
- ‘(3) If the decision is to make the amendment, the regulator must, as soon as practicable—
 - (a) give the applicant an amended certificate of exemption that reflects the amendment; and
 - (b) give any interested person a copy of the amended certificate.
- ‘(4) If the decision is to refuse to make the amendment, the regulator, must, as soon as practicable, give the applicant and any interested person an information notice about the decision.

‘Subdivision 7 Amendment of liable load exemption by regulator without proposed action notice

‘135HK Amendments for which proposed action notice not required

- ‘(1) The regulator may amend a liable load exemption at any time by taking the action mentioned in subsection (2) if the amendment—

- (a) is to correct a clerical or formal error; or
 - (b) does not significantly affect the interests of any interested person for the relevant exempted load and each interested person has, in writing, agreed to the amendment.
- ‘(2) For subsection (1), the action is giving each interested person for the load an amended certificate of exemption that reflects the amendment.

‘Subdivision 8 Other amendments, cancellation and suspension of liable load exemption

‘135HL Conditions for other amendments, cancellation or suspension

- ‘(1) The regulator may amend, cancel or suspend a liable load exemption if—
- (a) the regulator considers it necessary or desirable; and
 - (b) an event mentioned in subsection (2) has happened; and
 - (c) the procedure under sections 135HM to 135HP is followed.
- ‘(2) For subsection (1)(b), the event is that—
- (a) the exemption was obtained because of a materially false or misleading declaration or representation, made orally or in writing; or
 - (b) a condition of the exemption has not been complied with; or
 - (c) there has been a material change in the circumstances under which the exemption was granted.

‘135HM Notice of proposed action

- ‘(1) The regulator must give each interested person for the relevant exempted load of whom the regulator is aware, notice stating each of the following—

- (a) the action (the *proposed action*) the regulator proposes to take under this division;
 - (b) the grounds for the proposed action;
 - (c) the facts and circumstances that are the basis for the grounds;
 - (d) if the proposed action is to amend—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the interested person may make, within a stated period, written submissions to show why the proposed action should not be taken.
- ‘(2) The stated period must end at least 20 business days after the notice is given.

‘135HN Considering submissions

- ‘(1) The regulator must consider any written submission made under section 135HM(1)(f) within the period stated in the notice.
- ‘(2) If the regulator at any time decides not to take the proposed action, the regulator must, as soon as practicable, give each interested person of whom the regulator is aware notice of the decision.

‘135HO Decision on proposed action

‘If, after complying with section 135HN, the regulator still believes a ground exists to take the proposed action, the regulator may decide to—

- (a) if the proposed action was to amend—make the amendment; or
- (b) if the proposed action was to suspend for a stated period—suspend for no longer than the proposed suspension period; or
- (c) if the proposed action was to cancel—

- (i) cancel the exemption; or
- (ii) suspend it for a stated period.

‘135HP Notice and taking of effect of proposed action decision

- ‘(1) The regulator must, as soon as practicable after making a decision under section 135HO, give each interested person for the relevant exempted load of whom the regulator is aware, an information notice about the decision.
- ‘(2) Subject to subdivision 9, the decision takes effect on the later of the following—
 - (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.

‘Subdivision 9 Consequences of particular cancellations

‘135HQ Liable load exemption obtained because of false or misleading declaration or representation

‘If—

- (a) a liable load exemption is cancelled; and
- (b) a ground for the cancellation is that the exemption was obtained because of a materially false or misleading declaration or representation;

the cancelled exemption is, other than for section 135FD,⁸³ taken never to have had any effect.

‘135HR Cancellation of State development exemption for contravention of condition for proposed supply

- ‘(1) This section applies if—
 - (a) a State development exemption is cancelled; and

- (b) a ground for the cancellation is that the condition under section 135GN has been not been complied with.⁸⁴
- ‘(2) The liable load exemption is, other than for section 135FD, taken never to have had any effect.
- ‘(3) Despite any other provision of this part, the user of the relevant electricity load is taken to have always been the liable person for the liable loads that were, other than for subsections (1) or (2), the subject of the cancelled liable load exemption.
- ‘(4) Subsection (3) does not affect who, after the cancellation, is the liable person for the liable loads.

‘135HS Consequence of cancellation of State development exemption for contravention of condition for continuity of supply

- ‘(1) This section applies if—
- (a) a State development exemption is cancelled; and
- (b) a ground for the cancellation is that the condition under section 135GP⁸⁵ has not been complied with.
- ‘(2) The cancelled exemption is, other than for section 135FD, taken never to have had any effect from the beginning of the year in which the failure to comply happened.
- ‘(3) Despite any other provision of this part, the user of the relevant electricity load is taken to have always been the liable person for the liable loads that were, other than for subsections (1) and (2), the subject of the cancelled liable load exemption for the year in which the failure to comply happened.
- ‘(4) Subsection (3) does not affect who, for any later year, is the liable person for the liable loads.

84 Section 135GN (Condition for proposed supply)

85 Section 135GP (Condition for continuity of supply)

‘135HT Consequence of cancellation of other exemptions for contravention of general condition

‘If—

- (a) a liable load exemption granted under subdivision 3 or 4⁸⁶ is cancelled; and
- (b) a ground for the cancellation is that the condition under section 135GX or 135HD has not been complied with;⁸⁷

the cancelled exemption is, other than for section 135FD, taken never to have had any effect after the failure to comply happened.

‘Division 7 Non-liable loads

‘135HU Emergency stand-by plant

‘(1) Electricity generated by emergency stand-by plant is a non-liable load if—

- (a) the generation happened during an emergency; or
- (b) an electricity restriction regulation or emergency rationing order applies to the person generating the electricity and the purpose of the generation was to supplement electricity supply limited under the regulation or order.

‘(2) In this section—

emergency stand-by plant means generation plant that—

- (a) supplements the supply (the ***normal supply***) of electricity from another generation plant or a major grid; and
- (b) does not generate electricity as part of the normal operating cycle of the other plant or supply from the grid; and

86 Subdivisions 3 (Renewable energy exemption) and 4 (Power station auxiliary load exemption)

87 Section 135GX (General condition of exemption) or 135HD (General condition of exemption)

- (c) only generates electricity—
 - (i) while all or part of the normal supply has failed; or
 - (ii) for start-up proving tests.

‘135HV Immaterial loads

‘If, other than for this section, the total of all liable loads for which a person would be the liable person is 100 MWh or less in a year the loads are non-liable loads.

‘135HW Electricity sold under special remote area arrangement

‘An electricity load is a non-liable load if it is sold under special approval number 6/98 to the property called ‘Naryilco Pastoral Station’.

‘135HX Electricity sold under retailer of last resort scheme or similar scheme

- ‘(1) An electricity load is a non-liable load if it is sold to a customer under a retailer of last resort scheme made under section 131A.
- ‘(2) If—
 - (a) under a provision of a regulation, a retailer (the *host retailer*) is taken to have entered into a customer sale contract with a customer because of the suspension of another retailer from trading under the Market Code; and
 - (b) under the contract, the host retailer sells an electricity load to the customer;

the electricity load is a non-liable load.⁸⁸

88 See the regulation, section 70 (Statutory customer sale contract).

‘135HY Electricity sold under s 49A(3) contract

- ‘(1) This section applies if, under section 49A(3), a contestable customer and a host retail entity are taken to have entered into a contract and the contract is not, under section 49A(5), taken to have ended.
- ‘(2) An electricity load sold under the contract is a non-liaible load if it is supplied within 3 months after the contract is taken to have been made under section 49A(1) and (3).

‘135HZ Electricity sold or supplied to Boyne Island Smelter

- ‘(1) An electricity load is a non-liaible load if it is directly or indirectly sold or supplied to the smelter as defined under the State agreement.
- ‘(2) Subsection (1) ceases to apply if clause 12⁸⁹ of the State agreement ceases to be in force.
- ‘(3) In this section—

State agreement means the State agreement as defined under the *Gladstone Power Station Agreement Act 1993*.

‘Part 6 Scheme participants**‘135I Applying for registration**

- ‘(1) Any person may, in the approved form, apply to the regulator to be registered as a scheme participant.
- ‘(2) The application must state—
 - (a) whether the applicant is an interested or a liaible person for an electricity load; and
 - (b) if the application states that the applicant is not an interested or a liaible person—
 - (i) the applicant’s primary business; and

89 Clause 12 (No State electricity taxes) of the State agreement

- (ii) the applicant's reasons for seeking the registration.
- '(3) The application must be accompanied by the fee prescribed under a regulation.

'135IA Right to registration

'If the regulator is satisfied the application complies with section 135I, the regulator must, by complying with section 135JH,⁹⁰ register the person as a scheme participant in the scheme participant register.⁹¹

'135IB Term of registration

- '(1) Registration as a scheme participant takes effect on the day of effect as stated in the scheme participant register, or if the register states no day of effect, the day the participant is registered.
- '(2) The day of effect may be any day after 31 December 2004.
- '(3) Subject to suspension under section 135ID, the registration continues in force until 31 December 2020, unless it is sooner surrendered under section 135IE.

'135IC Annual fee for particular scheme participants

- '(1) This section applies to a scheme participant, other than—
 - (a) an accredited generator; or
 - (b) a person who, under section 135GH(1), is taken to be registered under part 6 as a scheme participant.⁹²
- '(2) The scheme participant must, on or before the last business day in April in each year, pay the regulator the annual fee for that year, as prescribed under a regulation.

90 Section 135JH (Required information for scheme participant register)

91 For the rights of scheme participants to own, mortgage or transfer GECs, see part 4, division 4, subdivisions 1 (Transfers) and 2 (Mortgages).

92 Section 135GH (Who obtains the benefit of liable load exemption)

‘135ID Partial suspension for non-payment of annual fee

- ‘(1) This section applies if a scheme participant does not comply with section 135IC.
- ‘(2) While the scheme participant continues not to comply with section 135IC, the participant’s registration as a scheme participant is suspended.
- ‘(3) The suspension ends if the failure to comply ends.
- ‘(4) The effect of the suspension is that until it ends the scheme participant can not—
 - (a) transfer any GECs; or
 - (b) accept the transfer of any GECs.
- ‘(5) The suspension does not—
 - (a) affect the scheme participant’s ownership of any GEC the participant owned immediately before the suspension;⁹³ or
 - (b) prevent the scheme participant from making a surrender application for a GEC mentioned in paragraph (a).

‘135IE Surrender of registration

- ‘(1) A scheme participant, other than an accredited generator, may by notice to the regulator, surrender the participant’s registration as a scheme participant.
- ‘(2) However—
 - (a) the notice can not be given if the scheme participant is the registered owner of a GEC; and
 - (b) if the scheme participant owes the regulator an amount for an annual or other fee under this chapter, the participant may give the notice only if it is accompanied by payment of the amount.

93 See sections 135DN (Ownership of GEC on registration) and 135DW (Ownership of GEC on transfer).

‘Part 7 Monitoring

‘Division 1 Approved auditors

‘135IF Appointment and qualifications

- ‘(1) The regulator may, by instrument, appoint a person, whether or not the person is an officer of the department, as an approved auditor.
- ‘(2) However, the regulator may appoint a person as an approved auditor only if—
 - (a) the person makes application for appointment in the way prescribed under a regulation; and
 - (b) either—
 - (i) the regulator is satisfied the person is qualified for appointment because the person has the necessary expertise or experience to carry out an audit under this part; or
 - (ii) the person has satisfactorily finished training approved by the regulator.
- ‘(3) Also, the regulator may appoint a corporation as an approved auditor only if satisfied it has employees or officers who are approved auditors and who are appropriate to carry out audits under this part for the corporation.

‘135IG Appointment conditions and limit on powers

- ‘(1) An approved auditor holds office on any conditions stated in—
 - (a) the auditor’s instrument of appointment; or
 - (b) a signed notice given to the auditor; or
 - (c) a regulation.⁹⁴

94 See also section 135IV (Who may carry out audit).

- ‘(2) Without limiting subsection (1), the instrument of appointment, a signed notice given to the approved auditor or a regulation may impose a condition that—
- (a) the approved auditor must hold, and continue to hold another stated office; and
 - (b) if the approved auditor ceases to hold the other office the auditor’s appointment ceases.
- ‘(3) The instrument of appointment, a signed notice given to the auditor or a regulation may limit the auditor’s powers or functions under this Act.
- ‘(4) In this section—
- signed notice* means a notice signed by the regulator.

‘135IH Applying for and obtaining appointment as an approved auditor

- ‘(1) A person may apply to the regulator for appointment under section 135IF as an approved auditor.
- ‘(2) The application must be—
- (a) in the approved form; and
 - (b) accompanied by—
 - (i) evidence that the applicant is qualified as mentioned in section 135IF(2)(b)(i) or has satisfactorily finished training as mentioned in section 135IF(2)(b)(ii); and
 - (ii) the fee prescribed under a regulation.
- ‘(3) The regulator must decide whether to grant or refuse the application.
- ‘(4) If the regulator decides to grant the application, the regulator must issue the approved auditor’s instrument of appointment as soon as practicable.
- ‘(5) If the regulator makes any of the following decisions, the regulator must, as soon as practicable, give the applicant an information notice about the decision—
- (a) a decision to refuse the application;

- (b) a decision under section 135IG(1)(a) or (b) to impose a condition on the applicant's instrument of appointment as an approved auditor.
- '(6) However, subsection (5)(b) does not apply for a condition that is the same, or is to the same effect, as a condition agreed to or requested by the applicant.

'135II Issue of identity card

- '(1) The regulator must issue an identity card to each approved auditor.
- '(2) The identity card must—
 - (a) contain a recent photo of the auditor; and
 - (b) contain a copy of the auditor's signature; and
 - (c) identify the person as an approved auditor under this Act; and
 - (d) state an expiry date for the card.
- '(3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.

'135IJ Production or display of identity card

- '(1) In exercising a power or performing a function under this Act in relation to a person, an approved auditor must produce the auditor's identity card for the person's inspection if asked by the person.
- '(2) However, if it is not practicable to comply with subsection (1), the auditor must produce the identity card for the person's inspection at the first reasonable opportunity.

'135IK When approved auditor ceases to hold office

- '(1) An approved auditor ceases to hold office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the auditor ceases to hold office;

- (c) the auditor's resignation takes effect.
- '(2) Subsection (1) does not limit the ways an approved auditor may cease to hold office.
- '(3) In this section—
condition of office means a condition on which the auditor holds office.

'135IL Revocation of approved auditor's appointment

- '(1) The regulator may revoke a person's appointment as an approved auditor's only if—
 - (a) either—
 - (i) the person obtained the appointment because of a materially false or misleading declaration or representation, made orally or in writing; or
 - (ii) the person has not complied with a provision of this chapter or a condition of the appointment; or
 - (iii) the person is a corporation and it does not have employees or officers who are approved auditors and who are appropriate to carry out audits under this part for the corporation; and
 - (b) subsections (2) to (4) have been complied with.
- '(2) The regulator must give the person notice stating—
 - (a) that the regulator proposes to revoke the appointment; and
 - (b) the grounds for the proposed revocation; and
 - (c) that the person may make, within a stated period, written submissions to show why the appointment should not be revoked.
- '(3) The stated period must end at least 20 business days after the notice is given.
- '(4) The regulator must, before deciding whether to revoke the appointment, consider any written submission made under subsection (2)(c) by the person within the stated period.

- ‘(5) If the regulator at any time decides not to revoke the appointment, the regulator must, as soon as practicable, give the person notice of the decision.
- ‘(6) The regulator must, as soon as practicable after deciding to revoke the appointment, give the person an information notice about the decision.
- ‘(7) A decision to revoke the appointment takes effect on the later of the following—
 - (a) the day the information notice is given;
 - (b) a later day of effect stated in the notice.
- ‘(8) However, if the decision was to revoke because of a conviction, the revocation—
 - (a) does not take effect until—
 - (i) the period to appeal against the conviction ends; and
 - (ii) if an appeal is made against the conviction—the appeal is finally decided or is otherwise ended; and
 - (b) has no effect if the conviction is quashed on appeal.

‘135IM Resignation

‘An approved auditor may resign by signed notice given to the regulator.

‘135IN Return of identity card

‘A person who ceases to be an approved auditor must return the person’s identity card to the regulator within 20 business days after ceasing to be an approved auditor, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘Division 2 Required audits

‘135IO Who is an *auditable person*

‘Each of the following is an *auditable person*—

- (a) an accredited generator;
- (b) a liable person;
- (c) a person the regulator reasonably suspects may be a liable person;
- (d) an interested person for an exempted load;
- (e) a person who has made an application under this chapter that has not been decided.

‘135IP Regulator may require audit

‘(1) The regulator may, by written notice that complies with section 135IQ (an *audit notice*) require an auditable person to commission an approved auditor to—

- (a) carry out an audit by an approved auditor about a stated matter relevant to this chapter; and

Example of a stated matter—

GEC creation by the accredited generator

- (b) give the regulator within a stated reasonable period a report about the audit that contains the information prescribed under a regulation and any other information required in the audit notice.⁹⁵

‘(2) For subsection (1), the regulator may, to monitor compliance with this chapter, give an audit notice on a random or another basis not directly connected with the auditable person.

‘135IQ Required contents for audit notice

‘(1) An audit notice must state—

⁹⁵ See also section 135JS (Additional information about reports and other matters).

- (a) the name of the person who must commission the audit; and
 - (b) each matter for which the audit is required; and
 - (c) that the person must—
 - (i) commission an approved auditor to carry out an audit about each of the matters; and
 - (ii) give the regulator a report by the auditor about the audit within a stated reasonable period.
- ‘(2) Also, an audit notice must be accompanied by or include an information notice about the decision to give the notice and to fix the stated period.

‘135IR Failure to comply with audit notice

‘A person to whom an audit notice has been given must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘135IS Costs of complying with audit notice

‘A person to whom an audit notice has been given must pay any costs incurred by the person in relation to complying with the notice.

‘Division 3 Audits by regulator

‘135IT Regulator may carry out audit

- ‘(1) The regulator may decide to commission an approved auditor to—
- (a) carry out an audit about a stated matter concerning an auditable person; and
 - (b) give the regulator within a stated reasonable period a report about the audit that contains the information prescribed under a regulation and any other information required in the audit notice.

- ‘(2) The regulator may, to monitor compliance with this chapter, make a decision under subsection (1) on a random or another basis not directly connected with the auditable person.
- ‘(3) If the regulator makes a decision under subsection (1), the regulator must give the auditable person an information notice about the decision.
- ‘(4) The regulator must, within 10 business days after receiving the report, give the auditable person a copy.

‘135IU Regulator’s costs of audit or report

- ‘(1) This section applies if the regulator has incurred costs in commissioning an audit under section 135IT, including, for example, the approved auditor’s costs of carrying out the audit or giving the regulator a report about the audit.
- ‘(2) The auditable person must pay the amount of the costs if—
 - (a) the costs were properly and reasonably incurred; and
 - (b) the regulator has by notice asked the party to pay the amount.
- ‘(3) The regulator may recover the amount as a debt.

‘Division 4 General provisions for audits

‘135IV Who may carry out audit

‘A person must not carry out, or purport to carry out, an audit under this part unless—

- (a) the person is an approved auditor; and
- (b) the conditions of the person’s appointment as an approved auditor do not prevent the person from carrying out the audit; and
- (c) the person complies with the conditions.⁹⁶

Maximum penalty—200 penalty units.

⁹⁶ For conditions of appointment, see section 135IG (Appointment conditions and limit on powers).

‘135IW False or misleading statement in audit report

- ‘(1) An approved auditor must not give the regulator a report about an audit that contains a statement that the auditor knows is false or misleading in a material particular.

Maximum penalty—300 penalty units.

- ‘(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

‘Part 8 Miscellaneous provisions**‘Division 1 Additional provisions for applications****‘135IX Meaning of *application* and *applicant* for div 1**

‘In this division—

- (a) the *applicant*, for the creation of a GEC that the regulator must make a decision about under section 135DJ,⁹⁷ means the accredited generator who created the GEC; and
- (b) an *application* includes the creation of a GEC that the regulator must make a decision about under section 135DJ.

‘135IY Substantial compliance with application requirements may be accepted

‘If—

- (a) a person has made, or purported to make, an application under this chapter; and

97 Section 135DJ (Deciding of validity and registration)

- (b) the requirements under this chapter for making the application have not been complied with; and
- (c) the regulator is reasonably satisfied the information provided in or with the application is enough to allow the regulator to decide the application in the way required under this chapter;

the regulator may decide to allow the application to proceed as if it did comply with the requirements.

‘135IZ Additional information or inspection may be required

- ‘(1) This section applies if the regulator is deciding, or is required to decide, an application under this chapter.
- ‘(2) The regulator may, by notice, require the applicant to—
 - (a) give the regulator within a stated reasonable period—
 - (i) additional information about, or a document relevant to, the application; or
 - (ii) a statutory declaration or independent evidence of a stated type verifying any information included in the application or any additional information required under subparagraph (i); and

Example of independent evidence—

a chemical analysis, by a chemist independent of the applicant, of gases the applicant claims are eligible fuel
 - (b) allow a stated person authorised by the regulator to, at any reasonable time, inspect any power station or other premises relating to the application.
- ‘(3) If the applicant does not comply with the notice, the regulator may refuse the application.
- ‘(4) The applicant must pay any costs incurred in complying with the notice.

‘135J Regulator’s costs of inspection

- ‘(1) This section applies if the regulator has incurred costs—
 - (a) in the carrying out of an inspection mentioned in section 135IZ(2)(b); or

- (b) in obtaining a report about the inspection.
- ‘(2) The applicant to whom the notice under that section was given must pay the amount of the costs if—
- (a) the costs were properly and reasonably incurred; and
- (b) the regulator has by notice asked the applicant to pay the amount.
- ‘(3) The regulator may recover the amount as a debt.
- ‘(4) Subsection (3) applies whether or not the regulator decides to grant the application.

‘Division 2 Measurement of electricity

‘135JA Regulator’s power to decide measurement method

- ‘(1) The regulator may, under section 135JB, decide a method for working out—
- (a) the amount of an electricity load, including a liable electricity load; or
- (b) the amount of electricity sent out from a power station or delivered to an end user; or
- (c) an amount incidental to a matter mentioned in paragraph (a) or (b).
- ‘(2) In making a decision under subsection (1), the regulator may fix—
- (a) if the electricity is metered—
- (i) its approved measurement points; and
- (ii) measurement arrangements for the meter; or
- Examples of measurement arrangements—*
- requirements for meter’s tolerance for error
 - required intervals to test the meter
- (b) if the electricity is unmetered—a methodology to estimate the amount.
- ‘(3) For subsection (2)(a)—

- (a) if the electricity is metered at periods that the regulator does not consider appropriate, the regulator may decide a method that, in part, uses estimates based on previous meter readings; and
- (b) different measurement arrangements may be approved for different measurement points; and
- (c) if the regulator is satisfied arrangements for an approved measurement point comply with any relevant requirements under the Market Code, the regulator must approve the arrangements as the measurement arrangements for the measurement point.

‘135JB Procedure for deciding measurement method

- ‘(1) Before making the decision, the regulator must—
 - (a) give any person of which the regulator is aware who will, under section 135JC, be required to use the method—
 - (i) notice of the proposed decision; and
 - (ii) a reasonable opportunity to make written submissions about the proposed decision; and
 - (b) consider any submissions made under paragraph (a)(ii).
- ‘(2) If the person has not agreed to the decision, the notice must include, or be accompanied by, an information notice about the decision.

‘135JC Decided method must be applied

- ‘(1) If—
 - (a) for the purposes of this chapter, it is necessary to measure electricity; and
 - (b) the regulator has, under section 135JA, decided a method for measuring the electricity;only the decided method may be used to make the measurement.

- ‘(2) If the regulator reasonably believes an accredited generator or an interested person⁹⁸ for an electricity load is not complying with the decided method, the regulator may give the generator or person a written direction stating—
- (a) the decided method; and
 - (b) how the regulator believes the generator or person is not complying with the decided method; and
 - (c) that the generator or person is directed to comply with the decided method.
- ‘(3) The accredited generator or interested person must comply with the direction.⁹⁹

Maximum penalty—200 penalty units.

‘135JD Obligation to notify regulator of change in circumstances for decided measurement method

‘If—

- (a) the regulator has, under section 135JA, decided a method for measuring an amount of electricity; and
- (b) a person who has been given an information notice about the decision becomes aware of a change in circumstances that may affect the appropriateness of the method;

the person must, as soon as practicable, give the regulator notice of the change.

Maximum penalty—60 penalty units.

‘Division 3 Registers

‘135JE Registers

- ‘(1) The regulator must keep the following registers—

98 See section 135GG (Who is an *interested person* for an electricity load).

99 For an accredited generator, see also section 135AX (Compliance with directions by regulator).

- (a) a register of accredited generators (the *accredited generator register*);
 - (b) a register of GECs (the *GEC register*);
 - (c) a register of scheme participants (the *scheme participant register*);
 - (d) a register of liable load exemptions (the *liable load exemption register*).
- ‘(2) The regulator may also keep other registers relating to this chapter that the regulator considers appropriate, including, for example, registers about undecided applications under this chapter.

‘135JF Required information for accredited generator register

‘The regulator must in the accredited generator register include the following information about each accredited generator—

- (a) the generator’s name and accreditation code;
- (b) the name of the accredited power station;
- (c) the power station’s accreditation code;
- (d) the name of the economic operator of the power station.

‘135JG Required information for GEC register

- ‘(1) The regulator must, for each GEC that is in force,¹⁰⁰ record the following information in the GEC register—
- (a) its registered owner;
 - (b) the day or period the relevant electricity was generated;
 - (c) its vintage year and the month in that year in which the GEC was registered;
 - (d) when, under section 135DS,¹⁰¹ the GEC automatically expires;

¹⁰⁰ For when a GEC is in force see part 4, divisions 3 (Term of GECs) and 5 (Amendment, cancellation and suspension of GECs).

¹⁰¹ Section 135DS (Automatic expiry)

- (e) the accreditation code of the power station that generated the relevant eligible gas-fired electricity.
- ‘(2) If, under section 135DJ,¹⁰² the regulator decides a GEC was not validly created, the regulator may remove its notation from the GEC register.
- ‘(3) Sections 135DI, 135DN and 135DW provide for the effect of registration.¹⁰³

‘135JH Required information for scheme participant register

‘The regulator must record in the scheme participant register—

- (a) the name of each scheme participant; and
- (b) a unique scheme code for each scheme participant.

‘135JI Required information for liable load exemption register

‘The regulator must in the liable load exemption register include the following for each liable load exemption—

- (a) the name and the scheme code of—
 - (i) the person who applied for the exemption; and
 - (ii) each interested person for the exempted load of whom the regulator is aware;
- (b) the type of liable load exemption;
- (c) the name of the relevant project or premises.

‘135JJ General provisions for register keeping

- ‘(1) If an accreditation, GEC, liable load exemption or a scheme participant’s registration is cancelled, suspended or surrendered the regulator must, as soon as practicable, record in the appropriate register—

102 Section 135DJ (Deciding of validity and registration)

103 Sections 135DI (When GEC takes effect), 135DN (Ownership of GEC on registration) and 135DW (Ownership of GEC on transfer)

See also section 135JT (General evidentiary aids for ch 5A).

- (a) the cancellation, suspension or surrender, and when it took effect; and
 - (b) for a suspension—when the suspension started, and if it is for a period, when the period is to end.
- ‘(2) The regulator may include in a register other information relevant to this chapter if it is not exempt matter under the *Freedom of Information Act 1992*.
- ‘(3) If under this chapter there is a transfer or other change relating to information kept in a register the regulator must—
- (a) amend the register to reflect the change; and
 - (b) record in the register when the information was amended.
- ‘(4) For subsection (3), the change is made on the later of the following—
- (a) if the change requires approval under this chapter—when it was approved;
 - (b) when it takes effect.
- ‘(5) In this section—
- cancellation*, of a GEC, does not include a decision under section 135DJ¹⁰⁴ that the GEC was not validly created.

‘135JK Access to registers

- ‘(1) The regulator must keep a register open for inspection by the public during office hours on business days.
- ‘(2) Subsection (1) may be complied with by placing a link to the register on the department’s web site on the internet.¹⁰⁵

104 See also part 4, division 5 (Amendment, cancellation and suspension of GECs).

105 At the commencement of this section, the department’s web site on the internet could be located at <www.energy.qld.gov.au>.

‘Division 4 General offences for ch 5A¹⁰⁶**‘135JL Who is an *official***

‘In this division, an *official* is any of the following—

- (a) the regulator;
- (b) an approved auditor;
- (c) an inspection officer;
- (d) a public service officer performing functions under this Act.

‘135JM Confidentiality of particular information

‘(1) This section applies if a person gives any of the following information that is not a type that may or must be recorded in a register under this chapter—

- (a) information for an application made under this chapter;
- (b) information in response to a requirement under this chapter.

‘(2) If an official acquires the information in the official’s capacity as an official, the official must not disclose it to any one else, unless the disclosure is—

- (a) made with the person’s consent; or
- (b) to another person carrying out functions under this Act; or
- (c) expressly permitted or required under the *Freedom of Information Act 1992* or another Act; or
- (d) under a direction, order or requirement made in a proceeding.

Maximum penalty—100 penalty units.

‘(3) To remove any doubt, it is declared that subsection (2) continues to apply to the official even if the person ceases to be an official.

106 For other relevant offences, see chapter 11, part 1 (Offences).

‘135JN False or misleading statement

‘(1) A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

‘(2) In a proceeding for an offence against this section, it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

‘135JO False or misleading document

‘(1) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

‘(2) A person must not make an entry in a document required or permitted to be made or kept under this chapter knowing the entry to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

‘(3) In a proceeding for an offence against this section, it is enough for a charge to state that the information or entry was, without specifying which, ‘false or misleading’.

‘135JP Obstructing approved auditor

‘(1) A person must not obstruct an approved auditor in the exercise of a power under this chapter, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(2) If a person has obstructed an approved auditor and the auditor decides to proceed with the exercise of the power, the auditor must warn the person that—

(a) it is an offence to obstruct the auditor unless the person has a reasonable excuse; and

(b) the auditor considers the person’s conduct an obstruction; and

- (c) if the person continues to obstruct the auditor, the auditor may ask a police officer to help the auditor exercise the power.

‘(3) In this section—

obstruct includes hinder and attempt to obstruct.

‘135JQ Impersonating approved auditor

‘A person must not pretend to be an approved auditor.

Maximum penalty—80 penalty units.

‘135JR Notice of change from small grid to major grid

‘If a small grid becomes a major grid, the person who operates the grid must, within 20 business days, give the regulator notice of the change.

Maximum penalty—200 penalty units.

‘Division 5 Other miscellaneous provisions

‘135JS Additional information about reports and other matters

‘(1) This section applies if—

- (a) a person is required under this chapter to give the regulator a notice or copy of a document, a report or information (the *advice*); and
- (b) the person gives the advice.

‘(2) The regulator may, by notice, require the person to give, within the reasonable time stated in the notice, written information about the matter for which the advice was given.

‘(3) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—30 penalty units.

‘135JT General evidentiary aids for ch 5A

- ‘(1) A certificate purporting to be signed by the regulator stating any of the following matters is, in the absence of evidence to the contrary, evidence of the matter—
- (a) a stated document is any of the following things made, given, or issued under this chapter—
 - (i) an accreditation;
 - (ii) the eligible electricity guidelines;
 - (iii) a certificate for a liable load exemption;
 - (iv) an appointment as an approved auditor;
 - (v) a measurement method decided under section 135JA;¹⁰⁷
 - (vi) an approval under this chapter;
 - (vii) a register under this chapter;
 - (b) a stated document is a copy of a thing mentioned in paragraph (a);
 - (c) on a stated day, or during a stated period, an accreditation, GEC, registration as a scheme participant, liable load exemption or appointment as an approved auditor—
 - (i) was, or was not, in force; or
 - (ii) was, or was not, subject to a stated condition; or
 - (iii) was, or was not, cancelled;
 - (d) on a stated day, a stated requirement was made of a stated person.
- ‘(2) This section does not limit section 135FQ or 248.¹⁰⁸

107 Section 135JA (Regulator’s power to decide measurement method)

108 Section 135FQ (Evidentiary provisions) or 248 (Evidentiary certificates by regulator)

‘135JU Obligation of State to indemnify particular information-givers

- ‘(1) This section applies if—
- (a) at the request of the regulator, a relevant entity gives the regulator a document or information; and
 - (b) the document or information was given for the purpose of fixing a QUF or the loss factor for a power station; and
 - (c) the entity or anyone else incurs a cost, damage or loss because of the giving of the information or document.

- ‘(2) If—
- (a) in a proceeding, the entity is found to be civilly liable for the cost, damage or loss; and
 - (b) the information was given honestly and without negligence;

the State must indemnify the entity for the liability.

- ‘(3) In this section—
- civil liability* includes liability for the payment of costs ordered to be paid in a proceeding.

relevant entity means—

- (a) NEMMCO; or
- (b) a distribution entity; or
- (c) a transmission entity.

‘135JV Approved forms

‘The regulator may approve forms for use under this chapter.

‘Part 9 Expiry of chapter

‘135JW Expiry

‘This chapter expires on 31 December 2020.

‘135JX Saving of operation of chapter

‘This chapter is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.¹⁰⁹’.

13 Insertion of new ss 140A and 140B

Chapter 6, part 1—

insert—

‘140A Entry to place to carry out remedial work

- ‘(1) Subject to subsections (2) to (4), an electricity officer for an electricity entity may enter a place to fix damage or harm to the place caused by, or in connection with, works or an electrical installation of the entity.
- ‘(2) The entry may be made only if it is made at a reasonable time and—
 - (a) any occupier of the place to be entered has consented to the entry; or
 - (b) the entity has given any occupier of the place to be entered at least 7 days written notice of the proposed entry.
- ‘(3) The notice must state—
 - (a) the time or times or period of the proposed entry; and
 - (b) the purpose of the proposed entry; and

109 *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

(c) that the proposed entry is, at the time or times or during the period, permitted under this Act without the occupier's consent.

'(4) This section does not authorise entry to a residence.

'140B Entry to place to carry out urgent remedial work

'(1) Subject to subsections (3), (4) and (6), an electricity officer for an electricity entity may enter a place to fix damage or harm to the place caused by, or in connection with, works or an electrical installation of the entity if the entity is satisfied, on reasonable grounds—

(a) the damage or harm is, or is likely to be, serious; and

(b) the need to fix the damage or harm is urgent.

'(2) The power under subsection (1) may be exercised—

(a) at any time; and

(b) without the consent of, or notice to, the occupier of the place to be entered.

'(3) However, if the occupier is present at the place, before entering the place, the officer must do, or make a reasonable attempt to do, the following things—

(a) identify himself or herself to the occupier, in the way stated in section 70;¹¹⁰

(b) tell the occupier the purpose of the entry;

(c) seek the consent of the occupier to the entry;

(d) tell the occupier the officer is permitted under this Act to enter the place without the occupier's consent.

'(4) Also, if the occupier is not present at the place, the officer must take reasonable steps to advise the occupier of the officer's intention to enter the place.

110 Section 70 (Production or display of electricity officer's identity card)

- ‘(5) Subsections (3) and (4) do not require the officer to take a step that the officer reasonably believes may frustrate or otherwise hinder the fixing of the damage or harm.
- ‘(6) This section does not authorise entry to a residence.’.

14 Insertion of new s 141A

Chapter 6, part 3—

insert—

‘141A Duty to avoid damage

‘In exercising a power under this chapter, an electricity officer must take all reasonable steps to ensure the officer causes as little inconvenience, and does as little damage as is practicable.

Example of a reasonable step—

For an entry to a place, under section 140A, complying with any reasonable requirement of the owner or occupier of the place about fixing the damage or harm.’.

15 Amendment of s 152A (Power to enter place)

Section 152A(1)—

insert—

- ‘(d) the purpose of the entry is to help an approved auditor carry out an audit commissioned under section 135IT¹¹¹ and the occupier of the place is a person to whom the audit relates.’.

16 Amendment of s 152G (General powers after entering place)

- (1) Section 152G(3), words before paragraph (a)—

omit, insert—

- ‘(3) The inspection officer may, for a prescribed purpose—’.
- (2) Section 152G—

111 Section 135IT (Regulator may carry out audit)

insert—

‘(8) In this section—

prescribed purpose means—

- (a) for monitoring and enforcing compliance with this Act; or
- (b) if the purpose of the entry was to help an approved auditor carry out an audit commissioned under section 135IT¹¹² and the occupier of the place is a person to whom the audit relates—for the carrying out of the audit.’.

16A Amendment of s 259A (Regulation may declare a State electricity entity)

Section 259A—

insert—

‘(2) A regulation may also declare an entity that is a subsidiary of a GOC but is not a State electricity entity to be a State electricity entity for—

- (a) awards, or a stated award, under the *Industrial Relations Act 1999*; or
- (b) employment conditions, or stated employment conditions, of its employees.¹¹³’.

17 Insertion of new ch 14, pt 7

Chapter 14—

insert—

112 Section 135IT (Regulator may carry out audit)

113 For employment conditions of State electricity entities, see chapter 7 (Employment in government owned electricity industry) of the regulation.

‘Part 7

Transitional provisions for Electricity Amendment Act 2004

‘309 Existing electricity supply contracts

- ‘(1) This section applies if—
- (a) immediately before 1 January 2003, a contract was in force for the sale of electricity from a liable person to a contestable customer; and
 - (b) under chapter 5A, the 13% liability is imposed on the liable person for electricity sold under the contract.
- ‘(2) However, this section does not apply, or ceases to apply, if a review opportunity arose or arises for the contract on or after 1 January 2003.
- ‘(3) The liable person may, by notice to the customer, charge the customer all or any of the following (*chargeable amounts*)—
- (a) the amount of the liable person’s reasonable costs incurred in meeting or managing the 13% liability for electricity sold under the contract; and

Examples of reasonable costs that may be incurred in meeting the liability—

- the cost of working out the relevant liable load
- the cost of acquiring GECs to surrender to meet the liability
- any fee paid to surrender the GECs
- an appropriate proportion of the costs of giving the relevant self-assessment report
- if the liable person is an accredited generator—an appropriate proportion of the relevant annual fee
- if the liable person is not an accredited generator—an appropriate proportion of the fee to apply to become a scheme participant and the relevant annual fee

Example of a reasonable cost that may be incurred in managing the liability—

- the cost of setting up an internal information technology system to manage the liability

- (b) an amount equivalent to the amount of any civil penalty paid to meet the 13% liability and any reasonable costs of paying the civil penalty.¹¹⁴
- ‘(4) The notice must state the amount of each chargeable amount charged to the customer separately from any other amount charged for the sale of the electricity.
- ‘(5) If the customer does not pay a chargeable amount charged to the customer within a reasonable period after receiving the notice, the liable person may recover the chargeable amount from the customer as a debt.
- ‘(6) In deciding what is a reasonable period for subsection (5), regard must be had to the provisions of the contract.
- ‘(7) Subsections (3) to (6)—
 - (a) apply despite any other provision of this Act; but
 - (b) do not apply for a particular chargeable amount if the contract, by express words, provides for who is liable to pay that amount.
- ‘(8) In this section—

review opportunity, for a contract, means an opportunity for the liable person, acting either alone or with the agreement of 1 or more of the other parties to the contract—

 - (a) to change how much the customer must pay for electricity sold under the contract; or
 - (b) to carry out a general review, renegotiation or alteration of how much the customer must pay for electricity sold under the contract.’.

18 Amendment of sch 1 (Appeals against administrative decisions)

- (1) Schedule 1, part 2—

renumber as schedule 1, part 3.
- (2) Schedule 1—

¹¹⁴ See section 135EY(4) (Imposition of civil penalty for not meeting 13% liability).

insert—

‘Part 2 Decisions under chapter 5A

Section	Description of decision	Court
135AN(1)	Refusal of accreditation application	District
135AN(4)(a)	Imposition of accreditation condition, other than a condition mentioned in section 135AQ(3).	District
135AN(4)(b)	Deciding of ancillary matter, other than an ancillary matter mentioned in section 135AQ(3).	District
135BL(1)	Refusal to transfer accreditation	District
135BN(1)	Refusal to accept surrender of accreditation	District
135BQ(1)	Refusal to amend accreditation	District
135BX	Decision to take proposed action in relation to accreditation	District
135CD(3)	Refusal to approve a direct method to work out eligible gas-fired electricity.	District
135CF(1)	Decision to give directions about how to work out factor used to work out eligible gas-fired electricity.	District
135CI(4)	Refusal to approve method to work out eligible gas-fired electricity.	District
135CR(1)	Fixing of annual loss factor.	District
135CS(1)	Fixing of baseline loss factor.	District
135CY or 135CZ	Fixing of baseline for baseline customer of accredited power station	District
135DJ(1)	Decision that GEC was not validly created.	District
135DQ	Decision to give GEC surrender direction.	District
135EE	Refusal to accept surrender of GEC	District

Section	Description of decision	Court
135EG(1)	Decision to immediately suspend GEC	District
135EG(2)	Fixing of suspension period for GEC	District
135EK(1)	Decision to take proposed action in relation to GEC	District
135FH	Decision to make default assessment	District
135FI	Decision to make reassessment	District
135FK	Decision to make amended assessment	District
135FY	Decision about who is the liable person for liable load	District
135G(1)	Decision to require party to dispute to give stated document or information	District
135GL	Refusal of application for State development exemption application	District
135GM(1)	Decision about extent to which liable load exemption is granted, other than an extent to which the applicant has agreed	District
135GO	Refusal of application to amend schedule for State development exemption	District
135GU	Refusal of liable load exemption application under part 5, division 6, subdivision 3	District
135GV(1)	Decision about extent to which liable load exemption is granted, other than an extent to which the applicant has agreed	District
135HB	Refusal of liable load exemption application under part 5, division 6, subdivision 4	District
135HC(1)	Decision to grant liable load exemption application under part 5, division 6, subdivision 4 for a load less than the load sought in the application	District
135HJ	Refusal to amend liable load exemption	District

Section	Description of decision	Court
135HO	Decision to take proposed action in relation to liable load exemption.	District
135IH(3)	Refusal of application for approval as an auditor	District
135IG(1)(a) and 135IH	Imposition of condition on instrument of appointment as an approved auditor, other than a condition mentioned in section 135IH(6)	District
135IL(1)	Revocation of approved auditor's appointment.	District
135IP(1)	Decision to give audit notice	District
135IT(1)	Decision to carry out audit	District
135JA	Decision about method for working out amount of electricity load or amount of electricity sent out from a power station or delivered to an end user.	District'

19 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

'13% liability see section 135EM(1).

accreditation see section 135AK.

accredited generator see section 135AK.

accredited generator register see section 135JE(1)(a).

accredited power station see section 135AK.

amended assessment see section 135FK(2).

ancillary matters, for a power station, see section 135AM(2).

annual loss factor, for a power station, see section 135CR(2).

annual QUF, for a power station, see section 135CM(2).

applicant, for chapter 5A, part 8, division 1, see section 135IX(a).

application, for chapter 5A, part 8, division 1, see section 135IX(b).

approved auditor see section 135AK.

approved form, for chapter 5A, see section 135AK.

assessment, by the regulator, see section 135AK.

auditable person see section 135IO.

audit notice see section 135IP(1).

auxiliary load, for a power station, see section 135AE.

baseline, for an accredited power station, see section 135CV(1).

baseline customer, of a power station, see section 135AJ.

baseline loss factor, for a power station, see section 135CS(3).

baseline QUF, for a power station, see section 135CN(3).

baseline year, for a power station, see section 135AK.

civil penalty means the civil penalty imposed under section 135EY.

complete suspension, of the right to create GECs, see section 135BT(2)(a).

compromise assessment see section 135FJ(2).

damage or harm includes likely damage or harm.

dedicated line see section 135AK.

default assessment see section 135FH(1).

direct method see section 135AK.

direct supply arrangement see section 135AH.

economic operator, of a power station, see section 135AC.

electricity load see section 135AI.

eligible electricity guidelines see section 135CK.

eligible fuel see section 135AD.

eligible gas-fired electricity see section 135AA(3)(a).

eligible renewable electricity see section 135GR(2).

end user, of electricity, see section 135AK.

exempted load see section 135EM(4)(b).

fix, damage or harm, includes—

(a) minimising the damage or harm; and

(b) if the damage or harm has not yet happened—preventing it from being caused.

GEC see section 135AA(3)(a).

GEC register see section 135JE(1)(b).

GEC review see section 135B(1).

GEC surrender direction see section 135DQ(2).

general method see section 135CC.

information notice, for chapter 5A, see section 135AK.

interested person, for an electricity load, see section 135GG.

liable load see section 135EM(5).

liable load exemption see section 135AK.

liable load exemption register see section 135JE(1)(d).

liable person see section 135EM(3).

liable year for the 13% liability, see section 135EM(6).

limited suspension see section 135BT(2)(b).

major grid see section 135AF(1).

measurement method, for a power station, see section 135AM(3).

nameplate capacity, for a power station, see section 135AB(4).

non-liable load see section 135EM(4)(c).

notice, for chapter 5A, see section 135AK.

official, for chapter 5A, part 8, division 4, see section 135JL.

penalty imposition day, for the 13% liability, see section 135EY(2).

power station see section 135AB.

prescribed renewable energy source see section 135GR(1)(a).

proponent, for a significant project, see section 135AK.

reassessment see section 135FI.

recognised program see section 135GR(1)(b).

referrer see section 135FY(1).

registered owner, of a GEC, see section 135AK.

registration, for a GEC, see section 135AK.

residence means a structure or a part of a structure where a person resides.

retailer see section 135AK.

scheme participant see section 135AA(4).

scheme participant register see section 135JE(1)(c).

self-assessment report see section 135FD.

significant project see section 135GI(1).

small grid see section 135AF(2).

special conditions, for accreditation, see section 135AN(4)(a).

standard accreditation conditions see section 135AU(2).

State development exemption see section 135GI(4).

substantive traceable link, to a major grid, see section 135AG.

surrender application, for a GEC, see section 135AK.

transmission zone see section 135CO(2).

valid, for the creation or purported creation of a GEC, see section 135AK.

vintage year, for a GEC, see section 135AK.’.

