



Queensland

# **Energy Assets (Restructuring and Disposal) Act 2006**

**Act No. 42 of 2006**





Queensland

# Energy Assets (Restructuring and Disposal) Act 2006

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Queensland

## **Energy Assets (Restructuring and Disposal) Act 2006**

### **Act No. 42 of 2006**

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**An Act to facilitate the disposal of particular energy businesses, including by facilitating the restructure or sale of energy entities, and for other purposes**

**[Assented to 13 October 2006]**

## The Parliament of Queensland enacts—

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Energy Assets (Restructuring and Disposal) Act 2006*.

#### 2 Purpose of Act

The purpose of this Act is to facilitate the disposal of particular gas and electricity businesses of energy entities, including by facilitating the restructure or sale of the entities.

#### 3 Extraterritorial application of Act

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

### Part 2 Interpretation

#### 4 Dictionary

The dictionary in the schedule defines particular words used in this Act.

#### 5 Meaning of *energy entity*

- (1) Each of the following is an *energy entity*—
  - (a) Energex;
  - (b) Ergon;



- (c) a company of which Energex or Ergon is the ultimate holding company;
  - (d) a company owned jointly by Energex and Ergon;
  - (e) a government company established for the project;
  - (f) a company that was an energy entity under paragraph (c), all of whose shares have been transferred to the State or to a government company mentioned in paragraph (e).
- (2) To remove any doubt, it is declared that a company is not an energy entity if it is not—
- (a) a company ultimately owned by the State; or
  - (b) a company of which Energex or Ergon is the ultimate holding company.

## **6 Meaning of *project***

- (1) The *project* is—
- (a) the taking of steps, including establishing companies, restructuring businesses, assets and liabilities of energy entities, disposing of energy entities and issuing and dealing with gas and electricity authorities—
    - (i) to facilitate the disposal of particular gas and electricity businesses of energy entities; and
    - (ii) for associated purposes relating to the continuing operation of energy entities; and
  - (b) the disposal of the gas and electricity businesses, including by the disposal of energy entities.
- (2) The project also includes the taking of steps to facilitate an arrangement between Ergon Energy and another entity, or between a sale entity and another entity, after the disposal of an electricity business or energy entity mentioned in subsection (1), for the other entity to assume an obligation to provide customer retail services to non-contestable customers in Ergon Energy's or the sale entity's retail area.

- (3) Words defined in the Electricity Act and used in subsection (2) have the same meanings as they have in the Electricity Act.

## **7 References to functions**

In this Act—

- (a) a reference to a function includes a power; and
- (b) a reference to performing a function includes exercising a power.

# **Part 3 Particular Ministerial powers and activities relating to the project**

## **8 Associated activities**

For the purpose of the project, the Minister may do any of the following—

- (a) examine a business, asset or liability of an energy entity, including a record relating to a business, asset or liability;
- (b) decide the most appropriate way of restructuring a business, asset or liability of an energy entity, including by deciding whether or not a business, asset or liability of an energy entity is to be transferred to another energy entity;
- (c) decide the most appropriate way of disposing of an energy entity or of a business, asset or liability of an energy entity;
- (d) anything else necessary or incidental to facilitate the disposal of an energy entity or of a business, asset or liability of an energy entity or the continuing operation of an energy entity.

## 9 Transfer notice

- (1) For the purpose of the project, the Minister may, by gazette notice (a *transfer notice*), do any of the following—
- (a) transfer shares in an energy entity to another energy entity or the State;
  - (b) transfer a business, asset or liability of an energy entity to another energy entity or the State;
  - (c) make provision about the consideration for shares or a business, asset or liability transferred under paragraph (a) or (b);
  - (d) grant a lease, easement or other right to an energy entity;
  - (e) vary or extinguish a lease, easement or other right held by an energy entity;
  - (f) provide whether and, if so, the extent to which an energy entity is the successor in law of another energy entity;
  - (g) make provision for a legal proceeding that is being, or may be, taken by or against an energy entity to be continued or taken by or against another energy entity;
  - (h) make provision about the application of instruments to an energy entity, including—
    - (i) whether an energy entity is a party to an instrument; and
    - (ii) whether an instrument is taken to have been given to, by or in favour of an energy entity; and
    - (iii) whether a reference to an entity in an instrument is a reference to an energy entity; and
    - (iv) whether, under an instrument, an amount is or may become payable to or by an energy entity or other property is, or may be, transferred to or by an energy entity;
  - (i) transfer or second an employee of an energy entity to another energy entity;
  - (j) make provision about the employees of an energy entity and their rights;
  - (k) make provision about the records of an energy entity;

- (1) make provision about an incidental, consequential or supplemental matter the Minister considers necessary or convenient for effectively carrying out the project.
- (2) A transfer notice may include conditions applying to something done under the notice.
- (3) If the Minister is satisfied it would be inappropriate for a particular matter to be stated in a transfer notice (for example, because of the size or nature of the matter), the Minister may provide for the matter by including a reference in the transfer notice to another document that is—
  - (a) signed by the Minister; and
  - (b) kept available, at a place stated in the transfer notice, for inspection by the persons to whom the matter relates.
- (4) The transfer of a liability of an energy entity under this section discharges the entity from the liability.
- (5) A transfer notice has effect despite any other law or instrument.
- (6) A transfer notice has effect on the day it is published in the gazette or a later day stated in it.
- (7) In this section—

*employee*, of an energy entity, does not include a director of the entity.

## **10 Limitation on power to second employees of an energy entity**

- (1) The secondment of an employee under a transfer notice must not, without the employee's consent, involve—
  - (a) a reduction in the employee's status; or
  - (b) any change in the employee's duties that would be unreasonable having regard to the employee's skills, abilities and experience.
- (2) An employee's status is not reduced for the purposes of subsection (1)(a) by—
  - (a) a reduction in the scope of the business operations for which the employee is responsible; or

(b) a reduction in the number of employees under the employee's supervision or management;

if the employee's functions in their general nature remain the same as, or similar to, the employee's functions before secondment.

## 11 Project direction

(1) The Minister may give a direction (a *project direction*) to an energy entity or its board requiring the entity or board to do something the Minister considers necessary or convenient for effectively carrying out the project.

(2) Without limiting subsection (1), a project direction may be about—

(a) forming a company for the purpose of transferring a business, asset or liability to the company; or

(b) winding up a company; or

(c) executing an instrument; or

(d) making a particular decision about disposing of shares in an energy entity other than Energex or Ergon; or

(e) making a particular decision for the purpose of returning the proceeds of the disposal of an energy entity, or of a gas or electricity business, to the State; or

*Example—*

a decision about a dividend or return of capital

(f) disclosing information.

(3) A project direction must be in writing, signed by the Minister.

(4) An energy entity must comply with a project direction given to it.

(5) An energy entity's board must—

(a) if a project direction is given to the board—comply with the direction; or

(b) if a project direction is given to the entity—take the action necessary to ensure the entity complies with the direction.

- (6) An energy entity's employees must help the entity or board to comply with a project direction given to the entity or board.

## **Part 4 Gas authorities**

### **Division 1 General**

#### **12 Definitions for pt 4**

In this part—

*authority* means a distribution authority or retail authority.

*Gas Act* means the *Gas Supply Act 2003*.

#### **13 Words have meanings given by Gas Act**

Words defined in the Gas Act and used in this part have the same meanings as they have in the Gas Act.

#### **14 Application of Gas Act**

The Gas Act applies to an authority issued under this part as if the authority had been issued under the Gas Act by the regulator.

#### **15 Performance of regulator's functions**

- (1) Divisions 2 and 3 provide for the Minister to perform particular functions of the regulator in relation to energy entities.
- (2) The Minister may perform the functions for the purpose of the project.
- (3) A thing done by the Minister under division 2 or 3 has effect as if it had been done by the regulator under the Gas Act.

- (4) This part does not limit the functions of the regulator or energy Minister under the Gas Act, including the regulator's functions relating to an authority issued under division 2 or 3.

*Example—*

An authority issued by the Minister under division 2 or 3 may be amended by the regulator under the Gas Act.

## **16 Review of decisions**

To remove any doubt, it is declared that a decision by the Minister under this part is not a decision that may be the subject of a review, stay or appeal under the Gas Act, chapter 6, part 1.

## **Division 2 Distribution authorities**

### **17 Issue of authority**

- (1) The Minister may issue a distribution authority to an energy entity.
- (2) The Minister may impose conditions on the authority the Minister considers appropriate.
- (3) The Minister may issue the authority for a stated term.
- (4) If the Minister does not decide a term for the authority, it continues in force unless cancelled or surrendered under the Gas Act, chapter 2, part 1 or this division.
- (5) Except so far as this division otherwise provides, the Gas Act, chapter 2, part 1, division 1 does not apply to the issue of the authority by the Minister.

### **18 Limitation on issuing authority**

The Minister may not issue to an energy entity a distribution authority to provide customer connection services relating to processed natural gas to be transported through a pipeline if the energy entity sells processed natural gas transported through a covered pipeline.

**19 Public notice of issue of authority**

- (1) As soon as practicable after issuing a distribution authority to an energy entity, the Minister must notify the regulator.
- (2) The regulator must publish a notice about the authority in a Statewide newspaper.
- (3) The Gas Act, section 37(3) applies to the notice as if the energy entity had applied for the authority.

**20 Amendment of authority**

- (1) This section applies to a distribution authority held by an energy entity.
- (2) The Minister may amend the authority at any time, by giving notice of the amendment to the energy entity, if the Minister considers the amendment necessary or desirable.
- (3) The Minister must immediately give notice of the amendment to the regulator.
- (4) The regulator must record particulars of the amendment in the register.
- (5) The Minister can not amend a condition of a distribution authority imposed under the Gas Act, chapter 2, part 1, division 2.
- (6) The Gas Act, chapter 2, part 1, division 3 does not apply to an amendment by the Minister.

**21 Cancellation of authority**

- (1) This section applies to a distribution authority held by an energy entity.
- (2) The Minister may cancel the authority at any time, by giving notice to the energy entity, if the Minister considers the cancellation necessary or desirable.
- (3) The Minister must immediately notify the regulator of the cancellation.
- (4) The regulator must record, in the register, the cancellation and when it took effect.



- (5) The Gas Act, chapter 2, part 1, division 3 does not apply to a cancellation by the Minister.

## **22 Transfer of authority**

- (1) This section applies to a distribution authority held by an energy entity.
- (2) The Minister may transfer the authority to another energy entity, at any time, by giving notice of the transfer to the energy entities.
- (3) The Minister must immediately give notice of the transfer to the regulator.
- (4) The regulator must record particulars of the transfer in the register.
- (5) The Gas Act, chapter 2, part 1, division 4, subdivision 2 does not apply to a transfer by the Minister.
- (6) This section applies despite the Gas Act, section 67.

## **23 Surrender of authority**

- (1) This section applies to a distribution authority held by an energy entity.
- (2) The energy entity may surrender the authority with the approval of the Minister.
- (3) Immediately after approving the surrender, the Minister must notify the regulator.
- (4) The regulator must record, in the register, the surrender and when it took effect.
- (5) The Gas Act, section 73 does not apply to the surrender of an authority with the approval of the Minister under this section.

## **Division 3 Retail authorities**

### **24 Issue of authority**

- (1) The Minister may issue a retail authority to an energy entity.

- (2) The Minister may impose conditions on the authority the Minister considers appropriate.
- (3) The Minister may issue the authority for a stated term.
- (4) If the Minister does not decide a term for the authority, it continues in force unless cancelled or surrendered under the Gas Act, chapter 3, part 1 or this division.
- (5) Except so far as this division otherwise provides, the Gas Act, chapter 3, part 1, division 1 does not apply to the issue of the authority by the Minister.

## **25 Limitation on issuing authority**

- (1) The Minister may not issue to an energy entity an area retail authority if the retail area for the proposed authority is or includes the retail area of an existing retail authority.
- (2) The Minister may not issue to an energy entity a retail authority to provide customer retail services relating to processed natural gas to be transported through a pipeline if the energy entity provides customer connection services relating to processed natural gas transported through a covered pipeline.

## **26 Public notice of issue of authority**

- (1) As soon as practicable after issuing a retail authority to an energy entity, the Minister must notify the regulator.
- (2) The regulator must publish a notice about the authority in a Statewide newspaper.
- (3) The Gas Act, section 157(3) applies to the notice as if the energy entity had applied for the authority.

## **27 Amendment of authority**

- (1) This section applies to a retail authority held by an energy entity.
- (2) The Minister may amend the authority at any time, by giving notice of the amendment to the energy entity, if the Minister considers the amendment necessary or desirable.

- (3) The Minister must immediately give notice of the amendment to the regulator.
- (4) The regulator must record particulars of the amendment in the register.
- (5) The Minister can not amend a condition of a retail authority imposed under the Gas Act, chapter 3, part 1, division 2.
- (6) The Gas Act, chapter 3, part 1, division 3 does not apply to an amendment by the Minister.

## **28 Cancellation of authority**

- (1) This section applies to a retail authority held by an energy entity.
- (2) The Minister may cancel the authority at any time, by giving notice to the energy entity, if the Minister considers the cancellation necessary or desirable.
- (3) The Minister must immediately notify the regulator of the cancellation.
- (4) The regulator must record, in the register, the cancellation and when it took effect.
- (5) The Gas Act, chapter 3, part 1, division 3 does not apply to a cancellation by the Minister.

## **29 Transfer of authority**

- (1) This section applies to a retail authority held by an energy entity.
- (2) The Minister may transfer the authority to another energy entity, at any time, by giving notice of the transfer to the energy entities.
- (3) The Minister must immediately give notice of the transfer to the regulator.
- (4) The regulator must record particulars of the transfer in the register.

- (5) The Gas Act, chapter 3, part 1, division 4, subdivision 2 does not apply to a transfer by the Minister.
- (6) This section applies despite the Gas Act, section 191.

### **30 Surrender of authority**

- (1) This section applies to a retail authority held by an energy entity.
- (2) The energy entity may surrender the authority with the approval of the Minister.
- (3) Immediately after approving the surrender, the Minister must notify the regulator.
- (4) The regulator must record, in the register, the surrender and when it took effect.
- (5) The Gas Act, section 197 does not apply to the surrender of an authority with the approval of the Minister under this section.

## **Division 4 Other matters**

### **31 Notified prices for customer retail services**

- (1) This section applies if—
  - (a) under a gazette notice in force under the Gas Act, section 228, notified prices apply to the provision of services that are, or relate to, customer retail services for protected customers by particular retailers (the *stated retailers*); and
  - (b) the stated retailers do not include a particular energy entity.
- (2) This section also applies if—
  - (a) under a gazette notice in force under the Gas Act, section 228, notified prices apply to the provision of services by a particular energy entity that are, or relate to, customer retail services for protected customers in a particular area (the *stated area*); and

- (b) the stated area no longer corresponds to the energy entity's retail area.
- (3) If subsection (1) applies, the Minister may, by gazette notice, apply the notified prices (the *applied prices*) to the energy entity in relation to its retail area.
- (4) If subsection (2) applies, the Minister may, by gazette notice, apply the notified prices (also the *applied prices*) to the energy entity's retail area.
- (5) For the Gas Act, sections 229 to 232,<sup>1</sup> the applied prices are taken to be notified prices.
- (6) The Minister's gazette notice applies to the energy entity even if the entity stops being an energy entity.
- (7) However, the Minister's gazette notice stops applying if the energy Minister issues a later gazette notice under the Gas Act, section 228, that applies to the energy entity or the entity after it stops being an energy entity.

## Part 5                      Electricity authorities

### Division 1                Preliminary

#### 32        Definitions for pt 5

In this part—

*acquiring entity* means a person who contracts with Ergon Energy or a sale entity, in relation to the provision of customer retail services by that person to non-contestable customers in Ergon Energy's or the sale entity's retail area, before the FRC day.

*authority* means a retail authority.

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<sup>1</sup> Gas Act, sections 229 (Review of notified prices), 230 (Public advertisement of notified prices), 231 (Requirement to comply with notified prices) and 232 (Additional consequences of failure to comply with notified prices)

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

**market customer**, of a retail entity, means a customer of the entity who has—

- (a) applied to the entity for the provision of customer retail services to the customer's premises; and
- (b) entered into a negotiated customer sale contract for the customer retail services.

**non-market customer**, of a retail entity, means a customer of the entity other than a market customer.

**premises**, of a customer, means premises owned or occupied by the customer.

**prescribed entity** means Ergon Energy, Sun Retail, an acquiring entity or a sale entity.

**sale entity** means a former energy entity, other than Ergon Energy or Sun Retail, that holds an authority.

**Sun Retail** means Sun Retail Pty Ltd ACN 078 848 549 as a former energy entity.

### **33 Words have meanings given by Electricity Act**

Words defined in the Electricity Act and used in this part have the same meanings as they have in the Electricity Act.

## **Division 2 Issue of authorities and other dealings**

### **34 Application of Electricity Act**

The Electricity Act applies to an authority issued under this division as if the authority had been issued under the Electricity Act by the regulator.

### **35 Performance of regulator's functions**

- (1) This division provides for the Minister to perform particular functions of the regulator in relation to energy entities or prescribed entities.

- (2) The Minister may perform the functions for the purpose of the project.
- (3) A thing done by the Minister under this division has effect as if it had been done by the regulator under the Electricity Act.
- (4) This division does not limit the functions of the regulator or energy Minister under the Electricity Act, including the regulator's functions relating to an authority issued under this division.

*Example—*

An authority issued by the Minister under this division may be amended by the regulator under the Electricity Act.

### **36 Review or appeal of decisions**

To remove any doubt, it is declared that a decision by the Minister under this division is not a decision that may be the subject of a review, stay or appeal under the Electricity Act, chapter 10.

### **37 Issue of authority**

- (1) The Minister may issue an authority to an energy entity or a prescribed entity.
- (2) The Minister may impose conditions on the authority the Minister considers appropriate.
- (3) The authority may state the term of the authority.
- (4) If the authority states a retail area, the authority may state when the right to the retail area starts and ends.
- (5) As soon as practicable after issuing the authority, the Minister must notify the regulator.
- (6) Except so far as this division otherwise provides, the Electricity Act, chapter 9, part 4, division 1 does not apply to the issue of the authority by the Minister.

### **38 Limitations on issuing authority**

- (1) The Minister must not issue an authority with a retail area if another authority with the same retail area is already in force.

- (2) The Minister must not issue an authority to a distribution entity.

### **39 Amendment or cancellation of authority**

- (1) This section applies to an authority held by an energy entity or a prescribed entity.
- (2) The Minister may, by giving a written notice to the energy entity or prescribed entity, take any of the following actions under this section—
  - (a) amend the authority or the conditions of the authority;
  - (b) cancel the authority.
- (3) The Minister may take the action if—
  - (a) for an authority held by an energy entity—the Minister considers the action necessary or desirable; or
  - (b) for an authority held by a prescribed entity—the prescribed entity agrees to the action.
- (4) As soon as practicable after taking the action, the Minister must notify the regulator.
- (5) The Electricity Act, chapter 5, part 4 and chapter 9, part 4, division 2 do not apply to the taking of the action by the Minister.

### **40 Surrender of authority**

- (1) An energy entity or prescribed entity that holds an authority may surrender the authority with the Minister's agreement.
- (2) As soon as practicable after agreeing to the surrender, the Minister must notify the regulator.
- (3) The Electricity Act, section 207C, does not apply to the surrender of an authority with the Minister's agreement under this section.



### **Division 3                    Matters associated with dealings with authorities**

#### **41        Existing standard contracts and meter readings**

- (1) This section applies if—
  - (a) an energy entity or a prescribed entity (the *first entity*) holds an authority that states a retail area; and
  - (b) under the Electricity Act, section 49, 49A or 310, or under this section, a customer is taken to have entered into a standard contract with the first entity for the provision of customer retail services to the customer's premises in the retail area (the *existing standard contract*); and
  - (c) on a day (the *transfer day*) before the FRC day—
    - (i) the first entity stops holding an authority stating a retail area that includes the customer's premises; and
    - (ii) another entity (the *second entity*) starts holding an authority stating a retail area that includes the customer's premises.
- (2) On the transfer day—
  - (a) the existing standard contract ends; and
  - (b) the customer is taken to have entered into a standard contract with the second entity for the provision of customer retail services to the customer's premises.
- (3) The ending of the existing standard contract does not affect rights or obligations that accrued under the contract before the transfer day.
- (4) The first entity must base the customer's bill, for electricity usage up to the end of the transfer day, on—
  - (a) an actual reading of the relevant meters at the customer's premises made during the transition period; or
  - (b) if, despite using its best endeavours, it is unable to obtain an actual reading made during the transition

period—an estimate, made during the transition period, of the customer's electricity usage up to the end of the transfer day.

- (5) For the purpose of a provision of an approved industry code about meter reading, an actual reading or estimate under subsection (4) is taken to be an actual reading of the relevant meters at the customer's premises at the end of the transfer day.
- (6) A decision made, or purportedly made, under subsection (4) is not a decision under this Act for section 50.<sup>2</sup>
- (7) In this section—

*standard contract*, in relation to an entity, means a contract on the terms of the entity's standard customer sale contract.

*transition period* means the period consisting of the 3 days before the transfer day, the transfer day, and the 3 days after the transfer day.

## **42 Amendment of provision of standard customer sales contract in approved industry code**

- (1) This section applies if—
  - (a) an approved industry code sets out a standard customer sale contract; and
  - (b) the Minister considers it necessary or convenient, for the purpose of a relevant dealing, to amend a provision of the standard customer sale contract about the parties to the contract (a *parties provision*) because of the operation of section 41.
- (2) The Minister, by gazette notice, may amend the parties provision.
- (3) Despite its amendment under this section, the approved industry code continues to be an approved industry code.
- (4) The amendment under this section does not affect the power to further amend or repeal the code under the Electricity Act.

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<sup>2</sup> Section 50 (Decisions not reviewable)

(5) In this section—

*relevant dealing* means a dealing under this part involving the issue, amendment, surrender or cancellation of an authority.

### **43 Notified prices for customer retail services**

(1) This section applies if—

(a) under a gazette notice in force under the Electricity Act, section 90, notified prices apply to the provision of customer retail services or other goods or services by particular retail entities (the *stated retail entities*); and

(b) the stated retail entities do not include a particular energy entity or prescribed entity.

(2) The Minister may, by gazette notice, apply the notified prices (the *applied prices*) to the energy entity or prescribed entity in relation to the entity's non-contestable customers.

(3) For the Electricity Act, sections 91 and 91A,<sup>3</sup> the applied prices are taken to be notified prices.

(4) The Minister's gazette notice applies to the energy entity even if the entity stops being an energy entity.

(5) However, the Minister's gazette notice stops applying to the energy entity or prescribed entity if the pricing entity issues a later gazette notice under the Electricity Act, section 90, that applies to the energy entity or prescribed entity.

(6) A reference in subsection (5) to the energy entity includes that entity if it stops being an energy entity.

## **Division 4 Operation of authorities and related matters**

### **44 Operation of authorities and related matters**

(1) This section applies in relation to a FRC entity if—

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<sup>3</sup> Electricity Act, sections 91 (Retail entities charging for GST) and 91A (Retail entity must comply with notification or direction)

- (a) immediately before the FRC day, the FRC entity provides customer retail services to the premises (the **relevant premises**) of non-market customers (the **relevant customers**) under an authority that states a retail area; and
  - (b) on the FRC day, the FRC entity holds an authority that does not state a retail area (the **continuing authority**).
- (2) From the FRC day, while the FRC entity holds the continuing authority—
  - (a) the continuing authority authorises the FRC entity to provide customer retail services to the relevant customers at the relevant premises; and
  - (b) the FRC entity has an obligation to provide customer retail services to the relevant customers at the relevant premises despite the FRC entity not holding an authority that states a retail area; and
  - (c) if another retail entity holds an authority that states a retail area that includes the relevant premises, the retail entity is not obliged to provide customer retail services to the relevant customers at the relevant premises.
- (3) Subsection (2) applies to the continuing authority subject to any amendment, cancellation or surrender of the continuing authority under the Electricity Act.
- (4) Subsection (5) applies if, immediately before the FRC day, a relevant customer was taken to have entered into a standard contract with the FRC entity for the provision of customer retail services to the customer's relevant premises under the Electricity Act, section 49 or 49A or under section 41(2) of this Act.<sup>4</sup>
- (5) From the FRC day, the relevant customer is taken to continue to have a standard contract with the FRC entity.
- (6) For subsection (5), the standard contract applies to the FRC entity and the relevant customer as if the FRC entity held an authority that states a retail area.

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<sup>4</sup> Section 41 (Existing standard contracts and meter readings)

- (7) Subsection (2) stops applying in relation to the relevant customer if the standard contract ends under its terms or under the Electricity Act.
- (8) For subsection (2)(b), if a provision of the Electricity Act or a regulation under that Act—
- (a) provides that a retail entity with an authority that states a retail area does not have the obligation mentioned in section 49(2) of that Act; or
  - (b) authorises a retail entity with an authority that states a retail area to refuse to provide customer retail services;
- that provision applies to the FRC entity, as if the FRC entity held an authority that states a retail area.
- (9) To remove any doubt, it is declared that the continuing authority is not an authority with a stated retail area.
- (10) In this section—

***FRC entity*** means Ergon Energy, an acquiring entity or a sale entity.

***standard contract***, in relation to a FRC entity, means a contract on the terms of the FRC entity's standard customer sale contract.

#### **45 Effect on customers**

To remove any doubt, it is declared that a customer's status as a non-market customer is not affected by section 44.

## **Part 6 Application of other laws and instruments**

#### **46 Act applies despite other laws and instruments**

A thing may be done under this Act despite any other law or instrument.

*Example—*

In accordance with a project direction given to its board, a GOC may form a company that will become a subsidiary without obtaining the approval that would otherwise be required under the *Government Owned Corporations Act 1993*, section 163.

**47 Excluded matter for Corporations Act**

Anything done by the Minister under this Act is an excluded matter for the Corporations Act, section 5F,<sup>5</sup> in relation to the Corporations Act, chapter 2D.<sup>6</sup>

**48 Non-liability for duty**

No duty under the *Duties Act 2001* is payable in relation to anything done under a transfer notice.

**49 Disposal of public records**

- (1) This section applies if—
  - (a) a thing is done under a transfer notice or project direction; and
  - (b) the thing is, or involves, a disposal of a public record under the *Public Records Act 2002*.
- (2) To remove any doubt, it is declared that, for the purpose of section 13 of that Act, the public record is disposed of under legal authority, justification or excuse.

**50 Decisions not reviewable**

- (1) A decision under this Act—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise

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5 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

6 Corporations Act, chapter 2D (Officers and employees)

(whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) In this section—

*decision* includes a decision or conduct leading up to or forming part of the process of making a decision.

## Part 7 Miscellaneous

### 51 FRC day

(1) A regulation may prescribe a day to be the *FRC day* for this Act.

*Note—*

FRC stands for full retail competition.

(2) The day must be a day on which a law about retail competition in the gas or electricity industry commences.

### 52 Time within which Minister may act

The Minister may not perform a function under part 3, 4 or 5 on or after the FRC day.

### 53 Notice to be given to regulator or energy Minister about notified prices

(1) As soon as practicable after publishing a gazette notice under section 31,<sup>7</sup> the Minister must notify the regulator under the Gas Act.

(2) As soon as practicable after publishing a gazette notice under section 43,<sup>8</sup> the Minister must notify the energy Minister.

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7 Section 31 (Notified prices for customer retail services)

8 Section 43 (Notified prices for customer retail services)

**54 Registering authority to note transfer**

- (1) The registrar of titles or other person required or authorised by law to register or record transactions affecting assets or liabilities—
  - (a) may, without formal application, register or record in the appropriate way the transfer of an asset or liability under a transfer notice; and
  - (b) must, on written application by a transferee entity, register or record in the appropriate way the transfer of an asset or liability under a transfer notice to the transferee entity.
- (2) A transaction, related to an asset or liability transferred to a transferee entity, entered into by the transferee entity in the relevant transferor entity's name or the name of a predecessor in title to the relevant transferor entity, if effected by an instrument otherwise in registrable form, must be registered even though the transferee entity has not been registered as proprietor of the asset or liability.
- (3) If an asset or liability is registered in the name of a transferor entity, the registrar of titles or other registering authority may register a dealing for a transaction about the asset or liability without being concerned to enquire whether it is, or is not, an asset or liability transferred under a transfer notice.
- (4) In this section—

*transferee entity* means the entity to which an asset or liability is transferred under a transfer notice.

*transferor entity* means the entity from which an asset or liability is transferred under a transfer notice.

**55 Confidentiality agreement with prospective purchasers**

- (1) A prospective purchaser may enter into a confidentiality agreement with the State for the purpose of obtaining access to information in the possession or control of an energy entity.
- (2) The agreement must state—
  - (a) the information to which access may be given; and



- (b) the employees or agents of the prospective purchaser to whom the access may be given; and
- (c) any conditions of the agreement.
- (3) Information mentioned in subsection (2)(a) may be identified by description including by a stated category.
- (4) The persons mentioned in subsection (2)(b) may be identified by name or by a stated class.
- (5) In this section—
  - (a) a reference to an agreement includes a deed; and
  - (b) a reference to entering into an agreement with the State includes executing a deed in favour of the State.
- (6) In this section—

*agent* includes a financier or insurer.

*prospective purchaser* means a person who has expressed to the State an interest in purchasing an energy entity or part or all of a gas or electricity business of an energy entity.

## **56 Disclosure and use of information for the project**

- (1) A person may disclose information in the possession or control of an energy entity, for the purpose of the project, to—
  - (a) a person involved in the project; or
  - (b) a person to whom the information may be given under a confidentiality agreement; or
  - (c) an energy entity, or employee or agent of an energy entity.
- (2) An energy entity or its board must comply with a request by the Minister for the disclosure of information under subsection (1) to a person.
- (3) A person may use information in the possession or control of an energy entity for the purpose of the project.
- (4) Also, to remove any doubt, it is declared that a person may disclose or use information in compliance with a transfer notice or project direction.

- (5) A person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use.
- (6) In this section—  
***confidentiality agreement*** means an agreement mentioned in section 55, whether entered into or executed before or after the commencement of this Act.

## **57 Effect on legal relationships**

- (1) Nothing done under this Act (including a thing done by, or in compliance with, a transfer notice or project direction)—
- (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) is taken to fulfil a condition that—
    - (i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
    - (ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iii) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this Act, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

### *Example—*

A contract entered into by an energy entity provides that the entity agrees not to transfer a particular asset without a particular person's

consent and that, if the consent is given, it may be subject to particular conditions.

If the asset is transferred to another energy entity under a transfer notice, the consent required under the contract is taken to have been given unconditionally.

- (3) If, apart from this subsection, giving notice to a person would be necessary to do something under this Act, the notice is taken to have been given.
- (4) In this section—  
*relevant entity* means—
  - (a) the State or an employee or agent of the State; or
  - (b) an energy entity or an employee or agent of an energy entity.

## **58 Preservation of rights of seconded employees**

- (1) This section applies if an employee of an energy entity (the *employer*) is seconded to another energy entity under a transfer notice.
- (2) The employee is taken to continue to be employed by the employer on the same terms and conditions as applied before the secondment, subject to any subsequent variation of those terms and conditions under any applicable law or contract.
- (3) The secondment does not—
  - (a) affect the employee's benefits, entitlements or remuneration; or
  - (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service; or
  - (d) constitute a retrenchment or redundancy.
- (4) The secondment continues, even if the other energy entity stops being an energy entity, until the secondment is ended by the employer or the employee's employment with the employer ends.
- (5) In this section—

*employee*, of an energy entity, does not include a director of the entity.

## 59 Preservation of rights of transferred employees

- (1) This section applies to the transfer of an employee of an energy entity to another energy entity as part of the project.
- (2) The transfer does not—
  - (a) affect the employee's benefits, entitlements or remuneration; or
  - (b) prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service; or
  - (d) constitute a retrenchment or redundancy; or
  - (e) entitle the employee to a payment or other benefit merely because he or she is no longer employed by the first energy entity.

- (3) In this section—

*employee*, of an energy entity, does not include a director of the entity.

## 60 Delegations

The Minister may delegate the Minister's functions under this Act, except section 9,<sup>9</sup> to the chief executive.

## 61 Evidentiary aids

- (1) This section applies to a proceeding under this Act.
- (2) A certificate signed by the Minister stating any of the following matters is conclusive evidence of the matter—
  - (a) that a stated thing was, or is being, done for the purpose of the project;

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9 Section 9 (Transfer notice)

- (b) that a stated person is, or was at a stated time, involved in the project;
  - (c) that a stated company was established for the project;
  - (d) that a stated direction given by the Minister related to the project.
- (3) A document certified by the Minister to be a copy of a project direction is conclusive evidence of the direction.

**62 Regulations**

The Governor in Council may make regulations under this Act.

**63 Transitional—amendment of regulation**

The amendment of the *Government Owned Corporations Regulation 2004* by this Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

**Part 8 Amendment of other laws****Division 1 Amendment of Community Ambulance Cover Act 2003****64 Act amended in div 1**

This division amends the *Community Ambulance Cover Act 2003*.

**65 Replacement of s 81 (Electricity retailer may engage contractor)**

Section 81—  
*omit, insert—*

**‘81 Authorised subcontractors to perform electricity retailer’s functions**

- ‘(1) An electricity retailer may enter into a contract with a person (the electricity retailer’s *authorised subcontractor*) under which the person agrees to perform some or all of the electricity retailer’s functions under this Act.
- ‘(2) An authorised subcontractor of an electricity retailer may enter into a contract with a person (also the electricity retailer’s *authorised subcontractor*) under which the person agrees to perform some or all of the electricity retailer’s functions that the authorised subcontractor has agreed to perform under another contract.

*Examples of authorised subcontractors—*

An electricity retailer enters into a contract with S1 under which S1 agrees to perform particular functions of the electricity retailer. S1 is an authorised subcontractor of the electricity retailer.

S1 enters into a contract with S2 under which S2 agrees to perform some of the functions that S1 agreed to perform under its contract with the electricity retailer. S2 is also an authorised subcontractor of the electricity retailer.

S2 enters into a contract with S3 under which S3 agrees to perform some of the functions of the electricity retailer that S2 agreed to perform under its contract with S1. S3 is also an authorised subcontractor of the electricity retailer.

- ‘(3) An electricity retailer or authorised subcontractor of an electricity retailer must not contract under subsection (1) or (2) without the written approval of the commissioner.
- ‘(4) However, a failure to comply with subsection (3) does not affect the validity of the contract or the status of a person as an authorised subcontractor of an electricity retailer.
- ‘(5) Despite any contract under subsection (1) or (2), an electricity retailer remains liable for the proper performance of the electricity retailer’s functions under this Act.
- ‘(6) An obligation or requirement applying to an electricity retailer under this Act also applies to an authorised subcontractor of the electricity retailer to the extent that the obligation or requirement relates to the performance of the electricity retailer’s functions that the authorised subcontractor is contracted to perform.

*Example—*

S1 is an authorised subcontractor of an electricity retailer. In the course of performing functions contracted to it under its contract, S1 holds information about the electricity retailer’s electricity customers. S1 must comply with a requirement of the commissioner to give the information to the commissioner.’.

## **Division 2                      Amendment of Electricity Act 1994**

### **66        Act amended in div 2**

This division amends the *Electricity Act 1994*.

### **67        Amendment of s 48 (Retail area of retail entity)**

Section 48—

*insert—*

- ‘(2) A retail area may consist of either or both of the following—
- (a) 1 or more discrete geographical areas;
  - (b) particular premises.
- ‘(3) A retail authority stating a retail area consisting of particular premises may describe the premises in the way the regulator considers appropriate including, for example, the street address or national metering identifier for the premises.’.

### **68        Amendment of s 64C (Contribution fee)**

Section 64C(3)(a), ‘Ergon Energy’—

*omit, insert—*

‘Ergon Energy Pty Ltd ACN 078 875 902’.

### **69        Amendment of sch 5 (Dictionary)**

Schedule 5—

*insert—*

‘*national metering identifier* means a NMI under the National Electricity Rules.’.

### **Division 3                      Amendment of Government Owned Corporations Act 1993**

#### **70      Act amended in div 3**

This division amends the *Government Owned Corporations Act 1993*.

#### **71      Amendment of s 145 (Application of Corporations Act to officers of company GOC)**

Section 145(1)(b), after ‘this Act’—  
*insert—*  
‘or another Act’.

#### **72      Amendment of s 146 (Application of Corporations Act to officers of GOC subsidiaries)**

Section 146(1)(b), after ‘this Act’—  
*insert—*  
‘or another Act’.

### **Division 4                      Amendment of Government Owned Corporations Regulation 2004**

#### **73      Regulation amended in div 4**

This division amends the *Government Owned Corporations Regulation 2004*.

#### **74      Omission of pts 5 and 6**

Parts 5 and 6—  
*omit.*



**75 Omission of schs 3 and 4**

Schedules 3 and 4—

*omit.*

## Schedule Dictionary

### section 4

*acquiring entity*, for part 5, see section 32.

*agent*, of an entity, includes a person engaged by the entity.

*asset* includes a right.

*authority*—

(a) for part 4—see section 12; or

(b) for part 5—see section 32.

*disposal* includes divestment.

*Electricity Act* see section 32.

*employee* includes officer.

*Energex* means Energex Limited ACN 078 849 055.

*energy entity* see section 5.

*energy Minister* means the Minister administering the Electricity Act or the Gas Act.

*Ergon* means Ergon Energy Corporation Limited ACN 087 646 062.

*Ergon Energy* means Ergon Energy Pty Ltd ACN 078 875 902 as a former energy entity.

*former energy entity* means an entity that is no longer an energy entity.

*FRC day* means the day prescribed under section 51.

*Gas Act* see section 12.

*government company* means a corporation incorporated under the Corporations Act all the stock or shares in the capital of which is or are beneficially owned by the State.

*information* includes a document.

*instrument* includes an oral agreement.

*market customer*, for part 5, see section 32.

## Schedule (continued)

*non-market customer*, for part 5, see section 32.

*officer* includes a director.

*person involved in the project* means an employee or agent of the State who is involved in carrying out the project in the course of the employment or agency.

*premises*, for part 5, see section 32.

*prescribed entity*, for part 5, see section 32.

*project* see section 6.

*project direction* see section 11(1).

*record* includes any document.

*right* includes power, privilege and immunity.

*sale entity* see section 32.

*Sun Retail*, for part 5, see section 32.

*transfer notice* see section 9(1).

*ultimate holding company* see the Corporations Act, section 9.