



Queensland

# **Energy and Water Legislation Amendment Act 2013**

**Act No. 42 of 2013**





Queensland

# Energy and Water Legislation Amendment Act 2013

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Queensland

## **Energy and Water Legislation Amendment Act 2013**

**Act No. 42 of 2013**

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**An Act to amend the Electricity Act 1994, the Energy and Water Ombudsman Act 2006 and the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 for particular purposes and to repeal the Clean Energy Act 2008**

**[Assented to 23 September 2013]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Energy and Water Legislation Amendment Act 2013*.

### **2 Commencement**

- (1) Part 4 commences on 1 January 2014.
- (2) The following provisions commence on 1 July 2014—
  - (a) section 4;
  - (b) section 34, to the extent it inserts part 15, division 3;
  - (c) sections 36 and 37;
  - (d) part 3.

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

### **3 Act amended**

This part amends the *Electricity Act 1994*.

### **4 Amendment of s 117 (Resolution of certain disputes between electricity entities or between electricity entities and public entities)**

Section 117(1A), from ‘or to disputes’—



*omit, insert—*

or to a dispute about what is a chargeable amount under section 309.

**5 Amendment of s 135AA (How main purposes are achieved)**

Section 135AA(3)(c), ‘2019’—

*omit, insert—*

2013

**6 Amendment of s 135AL (Who may apply for accreditation)**

Section 135AL(1), after ‘may’—

*insert—*

, before 1 October 2013,

**7 Amendment of s 135AR (Term of accreditation)**

Section 135AR(3), ‘31 December 2020’—

*omit, insert—*

30 June 2014

**8 Amendment of s 135AT (Right to create, mortgage and transfer GEC)**

(1) Section 135AT(1)(a)(ii), ‘31 December 2019’—

*omit, insert—*

30 April 2014

(2) Section 135AT(1)(b), ‘31 December 2020’—

*omit, insert—*

24 June 2014

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**9 Amendment of s 135B (Periodic GEC reviews)**

Section 135B(1)—

*insert—*

*Note—*

Electricity generated after 31 December 2013 can not be eligible gas-fired electricity—see section 135CA(1A).

**10 Amendment of s 135BE (Annual fee and return)**

Section 135BE—

*insert—*

(1A) However, an accredited generator whose accreditation continues in force after 31 December 2013 is not required to give the regulator an annual fee for 2014.

**11 Amendment of s 135BK (Applying for transfer)**

Section 135BK(1), after ‘may’—

*insert—*

, before 1 January 2014,

**12 Amendment of s 135BP (Applying for amendment)**

Section 135BP(1), after ‘may’—

*insert—*

, before 1 January 2014,

**13 Amendment of s 135CA (Operation of div 1)**

Section 135CA—

*insert—*

- 
- (1A) Electricity generated by an accredited power station after 31 December 2013 can not be eligible gas-fired electricity.

**14 Amendment of s 135DG (Time limitation on creation right)**

Section 135DG—

*insert—*

- (2) However, subject to section 135DNA, a GEC can not be created after 30 April 2014.

**15 Insertion of new ch 5A, pt 4, div 1A**

Chapter 5A, part 4—

*insert—*

**Division 1A Creation of GECs in particular circumstances**

**135DNA Regulator may approve creation of GECs by particular accredited generators**

- (1) This section applies if, before 3 June 2014, an accredited generator who is a liable person for the 2013 liable year discovers that it—
- (a) has not surrendered the required number of GECs to meet the generator's annual GEC liability for the 2013 liable year (the **2013 GEC liability**); and
  - (b) does not own a sufficient number of GECs that it can surrender before 1 July 2014 to meet the liability.
- (2) Despite section 135AT(1)(a)(ii), the generator may, with the regulator's approval, create and register the number of GECs sufficient to meet the generator's 2013 GEC liability.

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- (3) The generator may, before 3 June 2014, apply in writing to the regulator for approval to create and register GECs for meeting its 2013 GEC liability.
- (4) The regulator must, before 10 June 2014—
  - (a) decide whether to grant or refuse the application; and
  - (b) give the generator notice of the regulator’s decision.

**16 Replacement of s 135DS (Automatic expiry)**

Section 135DS—

*omit, insert—*

**135DS Expiry**

A GEC expires at the end of the earlier of the following days—

- (a) the last day of the second year after the GEC’s vintage year;
- (b) 30 June 2014.

*Examples—*

- 1 A GEC registered on 1 May 2011 (2011 vintage) expires on 31 December 2013.
- 2 A GEC registered on 1 January 2013 expires on 30 June 2014.

**17 Amendment of s 135DU (Conditions for transfer)**

Section 135DU(1), after ‘may’—

*insert—*

, before 24 June 2014,

**18 Amendment of 135EP (Liability)**

Section 135EP(1), after ‘2005’—

*insert—*

to 2013

**19 Amendment of s 135ET (How and when liability must be met)**

Section 135ET(1), after ‘2005’—

*insert—*

to 2013

**20 Amendment of s 135FA (Shortfall charge)**

Section 135FA(1)(h), ‘to 2019’—

*omit, insert—*

and 2013

**21 Amendment of s 135FD (Self-assessment report)**

Section 135FD(1), after ‘2006’—

*insert—*

to 2014

**22 Amendment of s 135GJ (Making application)**

Section 135GJ(1), after ‘may’—

*insert—*

, before 1 October 2013,

**23 Amendment of s 135GO (Amendment of applicant’s supply schedule)**

Section 135GO(1), after ‘may’—

*insert—*

, before 1 January 2014,

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**24 Amendment of s 135GS (Making application)**

Section 135GS(1), after ‘may’—

*insert—*

, before 1 October 2013,

**25 Amendment of s 135H (Making application)**

Section 135H(1), after ‘may’—

*insert—*

, before 1 October 2013,

**26 Amendment of s 135HF (Annual fee and exemption compliance report)**

Section 135HF—

*insert—*

(2A) To remove any doubt, it is declared that an annual fee is not payable under this section for 2014.

**27 Amendment of s 135HH (Applying for amendment)**

Section 135HH(1), ‘in the approved form, apply’—

*omit, insert—*

before 1 January 2014, apply in the approved form

**28 Amendment of s 135I (Applying for registration)**

Section 135I(1), ‘in the approved form, apply’—

*omit, insert—*

before 1 January 2014, apply in the approved form

**29 Amendment of s 135IB (Term of registration)**

Section 135IB(3), ‘31 December 2020’—

*omit, insert—*

30 June 2014

**30 Amendment of s 135IC (Annual fee for particular scheme participants)**

Section 135IC—

*insert—*

- (3) However, the scheme participant is not required to pay an annual fee under this section for 2014.

**31 Insertion of new s 135JUA**

After section 135JU—

*insert—*

**135JUA No compensation etc.**

No amount, whether by way of compensation, reimbursement or otherwise, is payable by the State to any person for or in connection with the enactment, amendment, operation, expiry or repeal of this chapter.

**32 Amendment of s 135JW (Expiry)**

Section 135JW, ‘31 December 2020’—

*omit, insert—*

30 June 2014

**33 Omission of s 135JX (Saving of operation of chapter)**

Section 135JX—

*omit.*

**34 Insertion of new ch 14, pt 15**

Chapter 14—

[s 34]

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*insert—*

**Part 15**                      **Transitional provisions  
for Energy and Water  
Legislation  
Amendment Act 2013**

**Division 1**                **Repeal of Clean Energy  
Act 2008**

**336 Repeal**

The Clean Energy Act 2008, No. 33 is repealed.

**Division 2**                **Transitional provisions for  
repeal of Clean Energy Act  
2008**

**337 Definitions for div 2**

In this division—

*commencement* means the commencement of this section.

*repealed Act* means the repealed *Clean Energy Act 2008*, as in force immediately before its repeal.

**338 Existing applications**

- (1) This section applies if—
- (a) an application was made before the commencement under a provision of the repealed Act; and
  - (b) the application has not, at the commencement, been finally dealt with.



- (2) The application is of no effect and is taken never to have been made.

### **339 Offence proceedings**

- (1) This section applies to a proceeding for an offence against the repealed Act that was started before the commencement but has not been finally decided at the commencement.
- (2) The proceeding ends and no further step may be taken in relation to it.

### **340 No offence proceeding to be started after commencement**

A proceeding for an offence against the repealed Act can not be started from the commencement.

### **341 Existing entitlement to apply for internal review**

- (1) This section applies if, immediately before the commencement, a person—
  - (a) was entitled to apply under section 28 of the repealed Act for an internal review of a decision (the *decision*) of the regulator; and
  - (b) has not applied.
- (2) The person can not apply for an internal review of the regulator's decision.

### **342 Existing proceedings for external review**

- (1) This section applies if—
  - (a) before the commencement, a proceeding was started in QCAT for review of a review decision; and

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- (b) at the commencement, QCAT has not finally decided the proceeding.
- (2) The proceeding ends and no further step may be taken in relation to it.
- (3) However, QCAT may make an order under the QCAT Act about the costs incurred for the proceeding before the commencement.

### **343 Existing entitlement to apply for external review**

- (1) This section applies if, immediately before the commencement, a person—
  - (a) was entitled under section 31 of the repealed Act to apply to QCAT for a review of a review decision; and
  - (b) has not applied.
- (2) The person can not apply to QCAT for a review of the review decision.

## **Division 3            Transitional provisions for expiry of chapter 5A**

### **344 Definitions for div 3**

In this division—

*expiry* means the expiry of chapter 5A under former section 135JW.

*former*, in relation to a provision of this Act, means the provision as in force immediately before the expiry.

*pre-expiry matter* means any of the following matters occurring or arising under former chapter 5A before the expiry—

- (a) the giving of, or the obligation to give, an annual fee or an annual return to the regulator;
- (b) the assessment or meeting of a liable persons's annual GEC liability for a liable year;
- (c) the giving of, or the obligation to give, a self-assessment report to the regulator;
- (d) the identification of the liable person for a liable load;
- (e) an application for a liable load exemption;
- (f) an application to amend a liable load exemption;
- (g) the payment of fees for, or costs arising from, an application made under former chapter 5A;
- (h) anything done or not done under former chapter 5A relating to a matter mentioned in paragraphs (a) to (g).

### **345 Words have meaning given by former chapter 5A**

Words defined in former chapter 5A and used in this division have the same meanings as they had under the former chapter.

### **346 No compensation etc.**

No amount, whether by way of compensation, reimbursement or otherwise, is payable by the State to any person for or in connection with the enactment, amendment, operation, expiry or repeal of former chapter 5A.

### **347 Saving provision for pre-expiry matters**

- (1) A former provision mentioned in subsection (2) continues to apply as if the provision had not expired for rights, privileges, liabilities and obligations that would have been acquired, accrued, imposed or incurred on or after the expiry relating to a pre-expiry matter.
- (2) For subsection (1), the former provisions are as follows—
  - (a) former chapter 5A, other than former section 135FO;
  - (b) former schedule 1, part 2;
  - (c) former chapter 6 of the *Electricity Regulation 2006*;
  - (d) former schedule 7, part 2 of the *Electricity Regulation 2006*.
- (3) Subsection (1) is subject to sections 348 and 349.
- (4) Without limiting subsection (1), a provision of former chapter 5A providing for an offence continues to apply for anything done or not done on or after the expiry relating to a pre-expiry matter.

### **348 GECs have no value after expiry**

To remove any doubt, it is declared that—

- (a) a GEC in force immediately before the expiry—
  - (i) expires on the expiry; and
  - (ii) has no value and is of no effect; and
- (b) a GEC created but not registered immediately before the expiry—
  - (i) can not be registered; and

- (ii) has no value and is of no effect; and
- (c) a transfer of a GEC that has been started but has not, immediately before the commencement, taken effect, can not be completed.

### **349 Liability of particular persons for civil penalty**

- (1) This section applies if—
  - (a) before the expiry, a person (the *applicant*) made an application (the *review application*) under chapter 10 for—
    - (i) an internal review of a relevant decision of the regulator; or
    - (ii) an external review by QCAT of a decision made under section 218 relating to a relevant decision of the regulator; and
  - (b) at the expiry, the review application has not been finally dealt with.
- (2) The review application must be decided or otherwise dealt with under chapter 10.
- (3) For the purposes of subsection (2)—
  - (a) this Act as in force immediately before the expiry continues to apply; and
  - (b) if the applicant is unsuccessful in the review application, the applicant is liable for the civil penalty under former section 135EY.
- (4) However, the regulator may, if the regulator considers it reasonable to do so, impose a civil penalty of an amount less than the amount of the civil penalty calculated under former section 135F.
- (5) In this section—

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*relevant decision*, of the regulator, means a decision of the regulator mentioned in former schedule 1, part 2, division 2.

### **350 Monitoring**

For monitoring whether an auditable person complied, before the expiry, with a matter relevant to former chapter 5A—

- (a) a person may apply under former section 135IH to the regulator for appointment as an approved auditor; and
- (b) the regulator may, under former section 135IF, appoint a person as an approved auditor; and
- (c) an appointment of a person as an approved auditor under former section 135IF in force immediately before the expiry continues in force until it is ended under former chapter 5A; and
- (d) the regulator may, under former section 135IP, require an auditable person to commission an approved auditor to carry out an audit; and
- (e) the regulator may, under former section 135IT, commission an approved auditor to carry out an audit; and
- (f) former section 135BC, former chapter 5A, part 7 and part 8, divisions 4 and 5, and former chapter 6, part 2 of the *Electricity Regulation 2006*, continue to apply in relation to—
  - (i) approved auditors; and
  - (ii) auditable persons; and
  - (iii) the regulator.

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**35 Amendment of sch 1 (Review of administrative decisions)**

- (1) Schedule 1, part 2—

*insert—*

**Division 1 Decisions under chapter  
5A, parts 2 and 3**

- (2) Schedule 1, part 2, before entry for section 135DJ(1)—

*insert—*

**Division 2 Decisions under chapter  
5A, parts 4 to 6**

- (3) Schedule 1, part 2, before entry for section 135IH(3)—

*insert—*

**Division 3 Decisions under chapter  
5A, parts 7 and 8**

**36 Amendment of sch 1 (Review of administrative decisions)**

- (1) Schedule 1, part 2—

*omit.*

- (2) Schedule 1, part 3,—

*renumber* as schedule 1, part 2.

**37 Amendment of sch 5 (Dictionary)**

Schedule 5, definitions *accreditation, accredited generator, accredited generator register, accredited power station, amended assessment, ancillary matters, annual GEC liability, annual loss factor, annual QUF, applicant, application, approved auditor, approved form, assessment, auditable person, audit notice, auxiliary load, baseline, baseline customer, baseline loss factor, baseline QUF, baseline year, civil penalty, complete suspension,*

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*compromise assessment, dedicated line, default assessment, direct method, direct supply arrangement, economic operator, electricity load, eligible electricity guidelines, eligible fuel, eligible gas-fired electricity, eligible renewable electricity, end user, exempted load, GEC, GEC register, GEC review, GEC surrender direction, general method, interested person, liable load, liable load exemption, liable load exemption register, liable person, liable year, limited suspension, major grid, measurement method, nameplate capacity, non-liable load, notice, official, penalty imposition day, power station, prescribed percentage, prescribed renewable energy source, proponent, reassessment, recognised program, referrer, registered owner, registration, retailer, scheme participant, scheme participant register, self-assessment report, significant project, small grid, special conditions, standard accreditation conditions, State development exemption, substantive traceable link, surrender application, transmission zone, valid and vintage year—*

*omit.*

## **Part 3    Amendment of Energy and Water Ombudsman Act 2006**

### **38            Act amended**

This part amends the *Energy and Water Ombudsman Act 2006*.

### **39            Amendment of s 19 (Restrictions on disputes relating to energy entities that can be referred)**

Section 19(a)—

*omit.*



**40 Insertion of new pt 13**

After section 112—

*insert—*

**Part 13 Transitional provision  
for Energy and Water  
Legislation  
Amendment Act 2013**

**113 Particular disputes relating to energy entities  
can not be referred**

- (1) This section applies if—
  - (a) before the commencement, a dispute mentioned in section 18(1) exists; and
  - (b) at the commencement, the dispute has not been resolved.
- (2) Section 19(a), as in force immediately before the commencement, continues to apply to the dispute.
- (3) In this section—

***commencement*** means the commencement of this section.

## **Part 4**

# **Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

### **41 Act amended**

This part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

### **42 Amendment of s 5 (Who are a distributor-retailer's *participating local governments*)**

Section 5(1)(a), after 'Sunshine Coast Regional Council'—  
*insert—*

, Noosa Shire Council

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Authorised by the Parliamentary Counsel