

ELECTRICITY AMENDMENT BILL

(No. 2) 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The objective of the Bill is to amend the *Electricity Act 1994* (“Act”) to—

- enable the establishment of an interim competitive wholesale electricity market in Queensland; and
- facilitate the use of electricity infrastructure for telecommunications and ancillary services purposes.

Reasons for the objectives and how they will be achieved

Establishment of an interim competitive wholesale electricity market in Queensland

On 17 December 1996, the Government announced its strategy to reform the Queensland electricity supply industry. The key elements of the strategy are, in order of implementation:

- establishing effective competition in the industry by restructuring the industry to create—
 - three independent generation corporations out of the Government owned generation corporation (AUSTA Electric), and
 - three new separate retail corporations while retaining the seven existing regional electricity corporations as distributors;
- an interim competitive electricity market commencing in the last

quarter of 1997 as a precursor to full participation in the National Electricity Market following interconnection with New South Wales; and

- giving customers choice in the company from whom they buy electricity, starting with large electricity customers (users of more than 40 Gwh a year) from January 1998.

The objective of the reforms is lower electricity prices so as to increase Queensland's economic competitiveness and attractiveness as a site for industry development and provide opportunities for employment growth in the State. The reforms will also enable Queensland to adopt the National Electricity Market (NEM) arrangements that are scheduled to commence in this State, and in New South Wales, the Australian Capital Territory, Victoria and South Australia, on 29 March 1998.

The industry was restructured on 1 July 1997. The second stage of the reforms, the interim market, is scheduled to commence in the last quarter of 1997. Further minimal amendments to the Act are required to enable the interim market arrangements to be implemented.

The Electricity Amendment Bill (No. 2) 1997 ("Bill") provides for the minimal amendments that are needed to the Act. The interim wholesale market issues addressed in the Bill are:

- regulation of wholesale selling of electricity;
- a wholesale market operator;
- a wholesale Market Code; and
- compliance with, and enforcement of, the Market Code.

Regulation of wholesale selling of electricity

Selling of electricity is currently prohibited unless a person holds a retail authority. While generators are currently exempted from this prohibition, in the interim wholesale market generators will need a clear power to sell electricity.

The Bill provides that a person can sell electricity if the person holds either a retail authority, a generation authority or is otherwise authorised. The holder of a generation authority will be able to sell electricity either according to the provisions of the Market Code or as otherwise authorised under the Act.

Wholesale market operator

The Queensland Electricity Transmission Corporation (QETC) is appointed as the Queensland System Operator (QSO) to administer the interim wholesale market. To ensure that QETC's transmission arm does not seek to influence its QSO arm to administer the market in a way that benefits the transmission arm (for example, QETC could seek to maximise its return on its transmission assets by directing that particular transmission wires be used instead of others, possibly forcing higher prices for other market participants), the Bill requires QETC to perform its QSO functions in a way that is separate from its other functions.

Market Code

As noted above, the Bill provides for and supports a Market Code. To facilitate the industry's transition to the NEM arrangements (currently scheduled for 29 March 1998), the Market Code comprises the National Electricity Code (including derogations designed to suit Queensland's circumstances before and after interconnection with New South Wales) and particular changes needed for the interim market.

Given that the interim wholesale market is to use the State based arrangements for a relatively short time, the Bill and Market Code do not establish complex administrative arrangements such as those set up in the *National Electricity Law* and National Electricity Code. Consequently, the Bill provides that the Minister may make and amend the Market Code and enables persons to be appointed by regulation to undertake Market Code administration tasks, such as dispute resolution and advising the Minister on amendments to the Market Code.

Compliance with and enforcement of the Market Code

As noted above, the Bill does not set up complex new administrative arrangements. Instead, it provides the QSO with certain powers to act against code participants (ie, generators, transmitters, distributors and retailers and other wholesale purchasers) who breach the Market Code. This action includes suspending an entity from participation in the wholesale market. In addition, the Bill provides that the Regulator may also take action against a code participant who breaches the Market Code.

Use of electricity infrastructure for telecommunications purposes

The Government is keen to harness its capacity to encourage investment

through the use of State-owned infrastructure to the information technology and telecommunications industry, which is one of the fastest growing sectors of the economy. The Bill therefore provides that a transmission or distribution entity, or a person authorised by the entity, may use an easement, licence or consent (such as a wayleave agreement) that was taken for electricity purposes for telecommunications purposes. (It should be noted that the provision expressly states that it does not enable a transmission or distribution entity to compulsorily acquire an easement primarily for telecommunications purposes).

Access for telecommunications providers to the easements will facilitate the widespread provision of high quality broadband telecommunications in Queensland and reduce the cost of provision of land-based services to rural and remote areas. It will therefore encourage the development throughout Queensland of industry and business that uses information technology and telecommunications, which are key factors in future economic growth. Improved telecommunications and information services will give small to medium rural enterprises access to the wider markets and specialist knowledge now available to the wider community in urban centres.

The improved telecommunications and information services enabled by the amendments will allow rural communities to broaden their range of social and cultural relations. This is particularly important for schools and public libraries.

Use by the electricity industry of its infrastructure for telecommunications purposes will improve its ability to obtain additional returns on existing assets. An ability for the industry to share capital investment costs is likely to increase the viability of some rural electricity infrastructure projects.

Administrative cost to Government of implementation

It is expected that the Bill will not impose any significant additional costs on the Government.

Consistency with Fundamental Legislative Principles

Interim competitive wholesale electricity market

It may be argued that the proposed legislative arrangements to support the Market Code do not have sufficient regard to the institution of

Parliament as, while the Market Code is given force and support by legislation, it is made and amended without reference to Parliament. However, the Code is not a statutory instrument. It is an arrangement between code administrators and code participants supported by legislation. It should be noted that this arrangement is the model used for the NEM, which Parliament endorsed when it enacted the *Electricity—National Scheme (Queensland) Act 1997*.

The Bill limits the liability of QSO, which will administer the interim wholesale market, so that it is not civilly liable in damages to any person for things done, or omitted to be done, in good faith in the exercise of its powers and the performance of its functions as QSO. This, too, is the model for the NEM and was developed through an intensive inter-jurisdictional policy development and negotiation process.

The limitation is wide; in particular, it excludes negligence. However, the QSO's administration of the market and direction of the power system are non-commercial, public benefit functions funded by cost recovery from code participants. The functions involve:

- facilitating a market that is designed to produce lower energy prices and a better allocation of resources across energy intensive parts of the economy; and
- maintaining power system security and reliability.

Given that it has a public benefit role, the QSO is not adequately capitalised to cover liability for negligence. It is therefore important to note that the ring-fence between QETC's QSO function and its transmission function will not alter the whole corporation's liability for the QSO's actions. A person who successfully sued QSO for negligence could be paid damages out of QETC's transmission assets. A successful lawsuit could force QSO to increase participant fees, or Powerlink to increase transmission use of system charges or suffer lower returns. All of these outcomes, except the last, would lead to higher customer prices. None of the outcomes is considered to be in the public interest.

Use of electricity infrastructure for telecommunications purposes

The provisions of the Bill that facilitate the cable roll out conflict with the fundamental legislative principles that legislation should not impose obligations retrospectively and should not provide for the acquisition of rights over property without fair compensation. The Bill does these things

by providing that existing easements, taken by electricity entities for electricity purposes only, are able to be used for telecommunications purposes and without reference to the landowners or any compensation to them. However, objections to the provisions need to be balanced against the benefits that have been outlined above.

Consultation

The Departments of Premier and Cabinet, Economic Development and Trade, Local Government and Planning, Mines and Energy and Treasury were consulted on the development of the Bill. In addition, Government Owned Corporations participating in the electricity industry were consulted during drafting.

NOTES ON PROVISIONS

Clause 1 sets out the short title for the Bill.

Clause 2 provides for the commencement of the Act on a day to be fixed by proclamation.

Clause 3 provides that the Act amends the *Electricity Act 1994*.

Clause 4 omits section 7 (System control).

Clause 5 amends section 18 (Application of Act to government entities) by inserting in subsection 18(2)(e), after ‘(Gladstone power station provisions)’, ‘and section 287A (Gladstone power station arrangements).’

Clause 6 amends section 26 (Generation authorities) by omitting section 26(1) and inserting a new subsection (1) providing that a “generation authority” authorises its holder to connect the generation plant stated in the authority to the transmission grid or supply network stated in the authority and to sell electricity: if stated in the authority or otherwise authorised under the Act—through the pool in accordance with the Market Code; or as stated in the authority or otherwise authorised under the Act.

Clause 7 amends section 27 (Conditions of generation authority) by omitting subsection (b)(ii) and inserting new subsections (b)(ii) and (iii)

providing that a generation authority must comply with: if the entity is a code participant—the Market Code; and if the entity is connected to the Queensland system—directions given to it by the Queensland System Operator under the Act or the Market Code. Subsections (b)(iii) to (v) are also renumbered as (b)(iv) to (vi).

Clause 8 amends section 31 (Conditions of transmission authority) by omitting subsection (a)(ii) and replacing it with a new subsection (a)(ii) which provides that a transmission entity must comply with: if the entity is a code participant—the Market Code and directions given to it by the Queensland System Operator under the Act or the Market Code.

Clause 9 amends section 42 (Conditions of distribution authority) by omitting section 42(a)(i) and inserting a new subsection (a)(i) providing that a distribution entity must comply with: if the entity is a code participant—the Market Code and directions given to it by the Queensland System Operator under the Act or the Market Code.

Clause 10 amends section 55D (Conditions of retail authority) by inserting a new sub-section (c) providing that if the retail entity is a code participant—the entity must comply with the Market Code; and directions given to it by the Queensland System Operator under the Act or the Market Code. Also sub-sections (c) to (e) are renumbered as (d) to (f).

Clause 11 amends section 60 (Conditions of special approval) by inserting new subsections (a)(i) and (ii) providing that a special approval holder must comply with: if the holder is a code participant—the Market Code and if connected to the Queensland system—directions given to it by the Queensland System Operator under the Act or the Market Code. The section also renumbers subsections (a)(i) to (iii) as (a)(iii) to (v).

Clause 12 amends section 87 (Connection of generation plant to transmission grid or supply network only if authorised) by inserting “or the Market Code” after “this Act” in subsection (2).

Clause 13 amends section 88 (Prohibition on operating transmission grid unless authorised) by inserting “or the Market Code” after “this Act” in subsection (2).

Clause 14 amends section 88A (Prohibition on operating supply network unless authorised) by inserting “or the Market Code” after “this Act” in section 88A.

Clause 15 amends section 89 (Restriction on sale of electricity) by

omitting subsection (1) and inserting a new subsection (1) providing a person must not sell electricity except in accordance with a generation authority or a retail authority held by the person or any other authorisation to sell electricity under the Act. A maximum penalty of 5,000 penalty units is provided for. Also, subsection (2) is amended by inserting “or the Market Code” after “this Act”.

Clause 16 amends the heading to chapter 4 part 2 by replacing the words “MARKET, SETTLEMENTS, SYSTEM CONTROL AND PRICING” with “MARKET AND SYSTEM ARRANGEMENTS AND PRICING”.

Clause 17 omits sections 90 to 92 and inserts 17 new sections as follows:

A new division 1 is inserted and named “*Queensland System Operator*”.

Section 90 (Appointment of system operator) is a new provision providing for the appointment of Queensland Electricity Transmission Corporation Limited as the Queensland System Operator.

Section 91 is a new provision providing that the Queensland System Operator must administer the wholesale market for electricity and seek to maintain the security and reliability of the Queensland system in accordance with the Market Code and the provision provides further for the performance of other ancillary functions.

Section 92 (Separation of functions of Queensland System Operator) is a new provision providing that the Queensland System Operator must perform its functions as system operator separate from its other functions in any other capacity. A regulation may prescribe the way in which this separation is to occur.

Section 92A (Responsibility for network control) is a new provision providing that a distribution entity is responsible for network control of its supply network but that it is subject to directions given to it by the Queensland System Operator under section 92B.

Section 92B (Queensland System Operator may give directions) is a new provision giving the Queensland System Operator power to direct code participants and other persons in relation to things to be observed and action taken to ensure the reliability of supply of electricity in the Queensland system, to ensure the security of the Queensland system, to maintain the voltage or reactive flow of power through the Queensland system, in the interest of public safety or to give effect or to assist in giving effect to a

direction given or action taken by the Queensland System Operator. The new provision provides that a direction may (without limitation) require a code participant or other person to switch off, reconnect or re-route the output of generating plant; to call equipment into service; to take equipment out of service; to begin operation or maintain, increase or reduce active or reactive power output; to shut down or vary operation; to shed or restore customer load; to disconnect a code participants facilities, works or electrical installations from a transmission grid or a supply network or do anything necessary or desirable in relation to these matters.

Section 92C (Code participant or other person must comply with direction) is a new provision providing that a code participant or other person must comply with a direction given to it by the Queensland System Operator under section 92B. A maximum penalty of 1,333 penalty units is provided for.

Section 92D (Action that may be taken for failure to comply with direction or for a breach of the Market Code) is a new provision that enables the Queensland System Operator to take certain stated action if a code participant or other person fails to comply with a direction given to it by the Queensland System Operator under section 92B or a code participant breaches a provision of the Market Code. The Queensland System Operator may do anything or authorise a person to do anything mentioned in section 92B(2) or take any action the Queensland System Operator may take under the Act, the Market Code or a regulation. Specifically, the Queensland System Operator may suspend the registration of a person for a stated period or until stated conditions are satisfied or suspend other stated rights of the code participant under the Market Code for a stated period or until stated conditions are satisfied. To remove any doubt action taken under this section is an addition to other action that may be taken by the Queensland System Operator against a code participant or other person.

A new division 2 is inserted and named “*Queensland Interim Market Code*”.

Section 92E (Limitation of liability of Queensland System Operator) is a new provision that provides the Queensland System Operator is not civilly liable to a person for anything done or omitted to be done in good faith by it in the exercise of its powers and the performance of its functions in its capacity as Queensland System Operator. However, the QSO may agree with a person to vary or exclude the operation of this limitation. This section is intended to exclude liability in tort. For the purpose of this section

“Queensland System Operator” includes agents appointed by the Queensland System Operator and person authorised by the Queensland System Operator under the section 92D(2).

Section 92F (Approval of Queensland Interim Market Code) is a new provision that empowers the Minister to approve a Code of conduct called the Queensland Interim Market Code for the administration of the pool. Approval of the Code is to be notified by Gazette notice. The approval takes effect on a day stated in the notice or if no day is stated in the notice—on the day the notice is given.

Section 92G (Amendment of Market Code) is a new provision that empowers the Minister to amend the Market Code by written notice. The amendment takes effect on a day stated in the Minister’s written notice and if a time is stated for the day, at the stated time on the day. After amendment the Market Code as amended becomes the Market Code. The Minister must notify the amendment and when it took effect by Gazette notice within 7 days.

Section 92H (Market Code to be open for inspection) is a new provision providing that the regulator must keep a copy of the Market Code available for inspection at the office of the regulator at all times at which the regulator’s office is open for the transaction of business. The regulator must give a copy of the Market Code to a person on payment of an amount the regulator considers to be reasonable and that is no more than the reasonable costs for providing the copies.

Section 92I (Registration with Queensland System Operator) is a new provision providing for two subsections. The first subsection provides that a person must not engage in the activity of owning, controlling or operating generating plant that supplies electricity to the Queensland system or a transmission grid or supply network forming part of the Queensland system unless the person is registered by the Queensland System Operator under the Market Code as a code participant for the activity or is otherwise exempt under the Market Code from the requirement to be registered as a code participant for the activity. A maximum penalty of 1,333 penalty units is provide for. New subsection (2) provides that a person must not purchase electricity from a person administering a market for the wholesale trade of electricity unless the person administering the market is the Queensland System Operator, and the purchaser is registered by the Queensland System Operator under the Market Code as a code participant for the purchase, or is otherwise exempt under the Market Code from the

requirement to be registered in relation to the purchase. A maximum penalty of 1,333 penalty units is provided for.

Section 92J (Queensland System Operator to operate market) provides that a person other than the Queensland System Operator must not engage in the activity of administering or operating a market for wholesale trade in electricity. A maximum penalty of 1,333 penalty units is provided for.

Section 92K (Proceedings in relation to the Market Code) is a new provision providing that a person may bring proceedings against a code participant for an alleged contravention of the Market Code only if the alleged contravention is of a kind that under the Market Code or the Act is recognised as a contravention that gives rise to an obligation or a liability of the code participant to the person. A person may not in any proceedings rely on an alleged contravention of the Market Code by another person unless the person and the other person are code participants. The new provision does not affect the right of a person to bring proceedings in relation to a matter or thing or seek relief or remedy if the cause of action arises or the relief or remedy is sought on grounds that do not rely on the Market Code or prevent the use of the Market Code as evidence in any proceedings of standards of conduct, practices, procedures or rules that apply in the electricity industry.

Section 92L (Recovery of amounts payable under the Market Code) is a new provision providing that if an amount paid under the Market Code by one code participant to another remains unpaid for 28 days it may be recovered as a civil debt in a court of competent jurisdiction.

Section 92M (Limitation of liability of other persons) is a new provision providing that a member of the code change panel, dispute resolution panel and reliability panel established under the Market Code is not civilly liable to a code participant or any other person as a consequence of an act or omission which is done in good faith as a member of the panel.

Section 92N (Regulation making power about market and system arrangements) enables regulations to be made about market and system arrangements including for example about procedures for registration with the Queensland System Operator and the appointment of persons to exercise power and perform functions under the Market Code.

A new division 3 is inserted after new section 92N and named “*Pricing*”.

Clause 18 amends section 93 (Powers (including reserve powers) about electricity pricing) by omitting the words “the regulations” from subsection (1)(b) and inserting the words “this Act”.

Clause 19 inserts section 116B (Easements to include telecommunications services). This new provision enables easements held by a transmission or distribution entity for electricity purposes to be used for the entity or another person permitted by the entity for providing a carriage service or a content service (ie, for a telecommunications service) as a secondary purpose.

Clause 20 amends section 133 (Types of disciplinary action) by omitting “400” and inserting “1,333” in subsection (2). In subsection (3) the words “supply entity or authorised supplier” are omitted and replaced with “generation entity or retail entity”. Also in subsection (3) the words “or the Market Code” are inserted after “this Act”.

Clause 21 inserts after section 133 (Types of disciplinary action) new section 133A (Disciplinary action under the Market Code). This new provision provides for three subsections. Subsection (1) provides that if a code participant or other person fails to comply with the direction given to it by the Queensland System Operator under section 92D or a code participant fails to comply with a provision of the Market Code, the regulator may make one or more of the orders mentioned in subsection (2). Subsection (2) provides that the regulator may order the code participant or other person to stop, within a stated time, the act, activity or practice that is the non-compliance with the direction or failure to comply with the Market Code; or take the action or adopt the practice the regulator requires for remedying or preventing a re-occurrence of the non-compliance with the direction of failure to comply with the Market Code or implement a stated program for compliance with the Market Code or the directions. Subsection (3) provides that to remove doubt, action taken by the regulator under this section does not affect any other action that may be taken in relation to the matters mentioned in subsection (1).

Clause 22 amends section 178 (Issue of generation authorities) by omitting subsection (2)(c) and inserting two new sub-sections (2)(c) and (d) providing that a generation authority must state whether the person is authorised to sell electricity and if so the basis of the authorisation and the term of the authority.

Clause 23 amends section 179 (Application for generation authority) by

inserting a new subsection (b)(iii) providing that an application for a generation authority must state whether the applicant intends to sell electricity and if so the basis on which the applicant intends to sell.

Clause 24 amends section 285 (Licenses under section 138 of the repealed Act) by omitting the words “supply entity or authorised supplier” and inserting the words “distribution entity or retail entity”.

Clause 25 inserts a new provision (Gladstone Power Station arrangements) providing that a regulation may limit the power of the QSO to do anything or to give a code participant a direction requiring it to do anything that is inconsistent with the obligations of the QSO or the code participant under a transaction document (within the meaning of the *Gladstone Power Station Agreement Act 1993*).

Clause 26 amends the heading to chapter 14 part 2 by inserting after “1997” the words “AND ELECTRICITY AMENDMENT ACT (NO. 2) 1997.”

Clause 27 amends section 291 (Generation authorities for new generation entities) by omitting subsection 3(b) and inserting new subsections (3)(b) and (c) providing that each new generation corporation is authorised to sell electricity through the pool in accordance with the Market Code or as otherwise approved by the Minister and to perform other functions approved by the Minister.

Clause 28 amends section 295 (Expiry of State authorised supplier authorities) by omitting “1966” in subsections (f) and (g) and replacing them with “1996”.

Clause 29 amends section 298 (Dispensing with formal requirements for the issue of interim authority) by omitting in the heading to section 298 “interim” and in subsection (1) omitting “interim”.

Clause 30 amends section 300 (Minister may give exemptions from holding a retail authority) by in the heading omitting “a retail authority” and inserting “an authority or being authorised to sell”. Subsection (1) is omitted and replaced with a new subsection (1) providing the Minister may exempt a person or class of persons from section 89 (1).

Clause 31 inserts new sections 300A and 300B.

Section 300A (Notifying exemption under section 300) is a new provision providing that the Minister must notify the making of an exemption under section 300 by Gazette notice within 14 days. The notice

must state any conditions. The section expires when section 300 expires.

Sections 300B (Amending or cancelling the exemption under section 300) is a new provision empowering the Minister to amend or cancel an exemption under section 300. The Minister must give notice of an amendment or cancellation to the holder of the exemption within 7 days and publish a copy of the notice in the Gazette within 14 days. An amendment or cancellation takes effect on a day stated in the notice or if no day is stated in the notice on the day when the notice is given. The new provision expires when section 300 expires.

Clause 32 inserts new sections 302A to 302C after section 302.

Section 302A (Interim registration under section 92I) is a new provision that enables the Minister to give to code participant's interim registration under section 92I in relation to the persons activity. If the Minister grants interim registration he must notify the grant by Gazette notice within 14 days. The notice must state any conditions on which the grant is given. If a person is granted interim registration then a person is taken to be registered until the first to occur of registration by the Queensland System Operator under section 92I or 1 January 1998.

Section 302B (Amending or cancelling grant under section 302A) empowers the Minister to amend or cancel a grant under section 302A. The Minister must give notice of the amendment or cancellation to the holder of the grant within 7 days and publish a copy of the notice in the Gazette within 14 days. An amendment or cancellation takes effect on the day stated in the notice or if no date is stated in the notice—on the date the notice is given.

Section 302C (Market Code replaces Queensland Grid Code) provides the Market Code replaces the Queensland Grid Code to the extent that the Market Code covers or applies to matters included in the Grid Code.

Clause 33 amends schedule 1 (Appeals against administrative decisions) by omitting “134” and the entry opposite it and inserting “134—Disciplinary action taken against electricity entity—Supreme”.

Clause 34 amends schedule 5 (Dictionary) by inserting new definitions.

Clause 35 provides that the schedule amends the Act mentioned in it (*Gladstone Power Station Agreement Act 1993*).

