

ELECTRICITY AMENDMENT BILL (NO. 3) 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

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

- establish regulatory arrangements appropriate for a competitive electricity market;
- make the Act consistent with the application of the *National Electricity Law* (“NEL”);
- make the Act consistent with the principles of National Competition Policy (“NCP”); and

amend the *Queensland Competition Authority Act 1997* (“QCA Act”)to:

- facilitate the electricity market reforms,
- provide for some operational issues, and
- clarify certain investigatory powers.

Most of the amendments to the QCA Act address minor issues that have come to light in the first three months of the QCA’s operations.

Reasons for the objectives and how they will be achieved

Establishment of regulatory arrangements appropriate for the competitive electricity market

Regulation of the electricity market is required to protect customers and to promote effective competition between the participants in the market. The main issues for regulation of the industry are:

- pricing;

- authorisation (ie, licensing) arrangements;
- service quality;
- consumer protection; and
- control of market power.

Pricing

There are two fields of pricing regulation: network pricing and retail pricing.

Network Pricing

Transmission and distribution are natural monopolies. Consequently, to ensure the effective implementation of the competitive market it will be necessary to regulate the pricing of transmission and distribution services. It should be noted that effective regulation of these services is central to fixing stable competitive retail prices. The Bill (section 301) provides the Minister with the power to fix network prices for a period of three years.

Retail Pricing

Retail competition will be introduced through a customer threshold reduction strategy. While the largest customers will become contestable from January 1998, competition for the smaller customers will be introduced at a later date. Accordingly, the incumbent Government owned retailers will continue to have a non-contestable customer base after January 1998.

Regulation must therefore ensure that non-contestable customers are not charged excessive prices by retail franchise holders. Central to this goal is the setting of a price path so that customers' prices do not increase in real terms. The Bill (section 90) provides for this price path to be set by the Minister.

Authorisation Arrangements

The Act requires all generators, transmitters, distributors and retailers to

hold authorities issued by the regulator to operate in the industry. The Department of Mines and Energy retains responsibility for issuing authorities and monitoring and enforcing compliance with their conditions. However, the Queensland Competition Authority (“QCA”) will, indirectly, have an enforcement role through administering conduct rules to prevent anti-competitive conduct (see below): compliance with these rules will be a condition of holding an authority.

A key element to establishing effective retail competition that benefits consumers is a large number of retail entrants. To facilitate this, the Bill provides for holders of retail licences issued in other States to sell electricity in this State, provided that such persons abide by the other regulatory conditions applying here.

It should be noted that Queensland’s recognition of inter-State licences is not conditional upon other jurisdictions recognising Queensland issued authorities. However, continuing recognition of inter-State licences will depend on the Government retaining confidence in the rigour of an inter-State licensing regime.

Service Quality

Standards

There is a need to ensure that the introduction of competition does not lead to a lowering of service standards (for example, without regulation, retailers with non-contestable customers could reduce the quality of service to those customers to focus on their contestable customers). To ensure that this does not happen, service standards must be carefully defined and administered as part of the regulatory framework.

It is considered that, because of the importance of maintaining and, in fact, enhancing service standards within the industry, the Minister for Mines and Energy should have responsibility for setting service standards through subordinate legislation. Development of service standards, however, will occur in consultation with the QCA, as the economic regulator, to guard against over-investment in network assets which would then be reflected in final prices to customers. The QCA will be able to require distributors and retailers to provide reports on a range of indicators which could then be published.

Electricity Industry Ombudsman

Responsibility for investigating customers' complaints and handling disputes between customers and service providers is to lie with an independent Electricity Industry Ombudsman who may direct entities to rectify problems and to pay customers money to remedy problems. The Bill provides for the appointment of the Ombudsman and provides him with appropriate powers and the standing to maintain his independence.

Customer Protection

The Act requires distributors and retailers to prepare standard customer contracts for the provision of their services and then submit them to the regulator for approval. These contracts, the key terms of which will be set by regulation under the Act, will be critical to protecting customers following the commencement of the market.

Matters to be covered in standard customer sale contracts (that is, retailers' contracts) are service definition, billing and flexible payment arrangements, disconnection, dispute resolution, privacy and connection. Matters to be covered in standard customer connection contracts (ie, distributors' contracts) are the obligation to connect, charging arrangements, dispute resolution, withholding of supply, and customers with special needs.

Ongoing responsibility for the terms to be set in the contracts will reside with the Minister for Mines and Energy. Responsibility for approving, monitoring and enforcing the contracts will be retained by the regulator in the Department of Mines and Energy.

Regulating Market Power

Without regulation, market incumbents may be able to prevent new entities entering the market and competing with them. Where an incumbent is able to do this, the incumbent can be said to have market power. Unless appropriate regulation is implemented, the exercise of market power is likely to damage the effectiveness of the reforms and prevent Queensland customers benefitting by lower prices. The major factors to be addressed in controlling market power are:

- anti-competitive conduct by retailers;

- relationships between distributors and affiliated retailers in which distributors provide advantages to the affiliated retailers relative to competing retailers; and
- relationships between retailers and generators.

Anti-competitive Conduct by Retailers

From the start of contestability, the incumbent retailers will continue to have large numbers of non-contestable customers. Given this, without regulation these retailers may seek to pass excessive costs onto their non-contestable customers so that they can offer better deals to contestable customers. This would give the incumbent retailers a significant advantage over potential new retail entrants in the competition for contestable customers.

The initial retail price path to be set by the Minister should largely overcome this problem. However, some practices are not caught by the price path. Incumbent retailers may adjust their spending patterns during the term of the price path with a view to securing a more favourable price review in the future. The incumbents may also still adopt anti-competitive practices to discourage newly contestable customers switching to another retailer.

Relationships between Distributors and Retailers

While distribution and retail in Queensland are now undertaken by separate legal entities, the shares in the retail corporations are owned by the distributors. This link could enable the distributors to provide the retailers they own with substantial advantages over the retailers' new competitors (noting that retailers will be arranging network services on behalf of most of their customers). The development of effective retail competition requires regulation to be implemented that prevents such anti-competitive behaviour.

Relationships between Generators and Retailers

Problems arise out of links between generators and retailers where the generators or retailers have market power. The restructuring of the generation sector means that no generator will have significant long term

market power. However, retailers with non-contestable customers will be in a very different position in terms of market share.

Given the above, links between generators and retailers with a non-contestable customer base in Queensland should be prohibited. If this is not done, generators could seek to pass excessive costs through to non-contestable customers to offset the cost of better financial contract deals for contestable customers. However, links between generators and retailers will be permitted where the generator does not acquire access to a non-contestable customer base. In the latter case, the generation and retail operations will be required to be ring-fenced as a condition of the relevant authorities.

Regulatory Measures

To prevent this behaviour, conduct rules will be made, administered, and amended by the QCA. The conduct rules will be enforced by the QCA through the Supreme Court, which will have to determine whether an electricity entity has contravened a conduct rule. The Court may impose a penalty of up to \$500,000 on a corporation and up to \$100,000 on an individual. Upon the Court finding that an entity has contravened a conduct rule, the Regulator may take action in relation the entity's authority.

In addition, a regulation may provide that it is a condition of an electricity entity's authority that it not acquire particular types of interests other electricity entities that would give it market power which it could then abuse to the detriment of customers and competition.

Consistency of the Act with the Application of the National Electricity Law (NEL)

Parliament enacted the *Electricity-National Scheme (Queensland) Act 1997* on 22 May 1997 to provide for the application in Queensland of the NEL. This was the first legislative step in moving to the NEL's application. The final relevant legislative step is to make amendments to the Act that are consequential to applying the NEL in Queensland.

The Bill provides for the necessary consequential amendments. The significant changes are as follows:

- the definition in the Act of "Market Code" is amended from the

Queensland Interim Market Code to the National Electricity Code (the definition is needed for the provisions dealing with electricity entities' authorities);

- provisions of the Act dealing with conditions of electricity entities' authorities need to refer to compliance with the NEL;
- provisions of the Act dealing with the Queensland System Operator (QSO) are to be repealed. Under the NEM the QSO's role will be performed by the National Electricity Market Management Company which is owned by the governments of Queensland and the other participating jurisdictions; and
- current sections 96, 97 and 97A of the Act, which limit the liability of electricity entities, are to be repealed to ensure the application of section 78 of the NEL. New sections are to be inserted in the Act to provide for consistency with the NEL's liability regime in the lead up to the NEM and for those entities which will not be market participants.

Consistency with the principles of National Competition Policy (NCP)

In accordance with its NCP commitments, the State must review legislation that restricts competition in terms of the Competition Principles Agreement. Several provisions of the Act were identified as being contrary to NCP principles. A number of these provisions involved discretionary powers, which could potentially be exercised in a discriminatory way. The Bill addresses this issue by ensuring that discretionary powers are exercised having regard to the objects of the Act which are expanded to include the establishment of a competitive electricity market in line with the national electricity reform process.

A further provision (section 257 of the Act) makes State electricity entities constructing authorities for the purposes of the *Acquisition of Land Act 1967* thereby conferring a benefit not shared by other electricity entities, which have to seek Ministerial approval to compulsorily acquire land under section 116 of the Act. This provision is not consistent with competition principles, in particular competitive neutrality.

However, Powerlink Queensland, and potentially the Government owned distribution entities, might be subjected to significant delays in progressing new infrastructure developments that are important to the

State's economic development and security of electricity supply if they are required to comply with the section 116 process. The Bill therefore retains the special provision for the natural monopoly transmission and distribution entities of the Government owned electricity industry for a period of five years.

Amendments to the Queensland Competition Authority Act 1997 (QCA Act)

(a) Facilitation of electricity market reforms

To facilitate the reforms to the electricity industry provided for in the Bill by the amendment of the *Electricity Act 1994*, a consequential amendment to the QCA Act of the definition of "related body corporate" is required to ensure that certain third party access sections (relating to preventing or hindering access) apply to the new electricity industry arrangements.

(b) Operational issues

Certain amendments to the QCA Act deal with operational issues about: the liability of members of the QCA; liaison with other regulators (inter-State and Queensland); and superannuation arrangements.

(c) Clarification of authority's investigatory powers

Certain amendments to the QCA Act relate to the QCA's investigation powers and matters to be considered for competitive neutrality accreditations. Under Part 4, the authority may investigate a competitive neutrality complaint and an application for competitive neutrality accreditation. As both investigations are essentially addressing the same question, it is appropriate to ensure that the authority uses the same investigatory powers and considers the same range of matters for each.

(d) Clarification of third party access issues

New provisions are to be included in the QCA Act to permit the QCA and parties negotiating third party access to a facility to use the courts to enforce access undertakings. In addition, amendments are to be made to clarify the matters which an access code or access undertaking may address and to permit the QCA to be appointed as an arbitrator under an access agreement.

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

Several provisions of the Bill provide for regulatory issues to be addressed by way of subordinate legislation. It may be argued that these provisions do not have sufficient regard to the institution of Parliament. However, these powers will cover matters which will require flexibility in implementation if the smooth introduction of the complex market reforms is to continue. In particular, flexibility is required to ensure that the interests of customers are protected and that they are able to obtain maximum benefit from the introduction of competition.

There may be objection to the QCA's proposed capacity to make and amend conduct rules for the regulation of market behaviour. However, it is considered that it would be inappropriate for Government to set the conduct rules for the industry's market behaviour because of the conflict that would arise through the Government's ownership of most of the industry. The Bill provides a clear statement of the types of matters that the conduct rules are to cover: these are essentially customer protection matters. Further, the rules will be detailed, apply to either specified bodies or behaviours, or both, and will require swift implementation and, where necessary, amendment to prevent the abuse of market power by market participants at the expense of consumers and the delivery of significant benefits to the State's economy.

Importantly, it should be noted that the QCA itself cannot impose penalties for the contravention of a conduct rule—the QCA will have to pursue enforcement of the conduct rules through action in the Supreme Court.

Questions may arise about amendments to the QCA Act to address an issue about the liability of members and staff of the QCA for negligence. Essentially, the amendment will remove liability for negligent acts performed in good faith. This reverses the current position where members and staff are liable for negligent acts. The Committee may argue that this change breaches fundamental legislative principles by conferring immunity from proceeding or prosecution without adequate justification. However, this amendment will bring the liability arrangements into line with the Corporations Law and the position of members of many other statutory

authorities. It will also accord with the position for similar regulators in NSW and Victoria.

Consultation

The Departments of Premier and Cabinet, Treasury, Economic Development and Trade, and Mines and Energy, and the Office of the Public Service, the Office of Consumer Affairs and the Office of Rural Communities were consulted on the development of the Bill. In addition, representative Government Owned Corporations participating in the electricity industry were consulted during drafting.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

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.

PART 2—AMENDMENT OF *ELECTRICITY ACT 1994*

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

Clause 4 amends section 3 (Objects of Act) by inserting a new sub-section (d) providing that one of the objects of the *Electricity Act 1994* is to establish a competitive electricity market in line with the national electricity industry reform process.

Clause 5 inserts a new section 6 (Regional system control) providing that regional system control is maintaining the operation and performance of the transmission grid; controlling switching of transmission elements and access to them for maintenance, inspection and testing; controlling switching of parts of the supply network relevant to the integrity of the Queensland system; and other functions prescribed by regulation.

Clause 6 inserts a new section 23A (Regulation under section 23 about arrangements concerning declaration contestability) providing that a regulation under section 23, declaring a customer to be a contestable customer, may provide that the declaration takes effect on a day on which the regulation commences or another day specified in the regulation and make provision about the consequences of the customer being declared to be a contestable customer. The ending of a customer sale contract or a customer connection contract under a regulation under section 23(2) does not give rise to any claim for compensation by the parties to the terminated contract arising from the ending. However, nothing affects accrued rights between the parties to the terminated contract before ending.

Clause 7 amends section 26 (Generation Authorities) by omitting “pool” in section 26(1)(b) and inserting “spot market”.

Clause 8 amends section 27 (Conditions of generation authority) in the following way. By renumbering section 27(b)(iv) to (vi) as 27(b)(v) to (vii) by omitting section 27(b)(iii) and inserting two new sub-sections. A new section 27(b)(iii) providing that if a generation entity is connected to the Queensland system—it must comply with the National Electricity (Queensland) Law, the Market Code and directions given to it under the Electricity Act, the National Electricity (Queensland) Law or the Market Code. New section 27(b)(iv) provides that an electricity entity must comply with conduct rules made by the Queensland Competition Authority.

Clause 9 amends section 31 (Conditions of transmission authority) by omitting section 31(a)(ii) and inserting two new sub-sections. New sub-section 31(a)(ii) provides that if a transmission entity is a code participant it must comply with the National Electricity (Queensland) Law, the Market Code and directions given to it under the Electricity Act, the National Electricity (Queensland) Law or the Market Code. New section 31(a)(ia) provides that a transmission entity must comply with conduct rules made by the Queensland Competition Authority.

Clause 10 amends section 32 (Additional condition to allow connection to grid by complying persons) by omitting “nondiscriminatory” and

replacing it with “fair and reasonable”.

Clause 11 replaces section 33 (Additional condition not to engage in electricity trading) and replaces it with a new section 33 (Additional condition not to buy and sell electricity) which provides that it is a condition of a transmission authority that the transmission entity must not buy or sell electricity directly or indirectly but that this condition does not apply to generating, buying or selling electricity necessary to operate the transmission entities transmission grid or for purposes associated with the planning, design, construction, maintenance or operation of the transmission grid; for the administrative purposes of the entity or by QETC in relation to the performance of its functions as Queensland System Operator. New section 33(2)(c) expires on the commencement of the *Electricity—National Scheme (Queensland) Act 1997*.

Clause 12 replaces section 35 (Additional condition to provide network services) and inserts a new section 35 (Additional condition to provide network services) providing that it is a condition of a transmission authority that the transmission entity must provide, as far as technically and economically practicable for the transmission entity, network services on fair and reasonable terms, for persons authorised to connect and supply electricity to the transmission grid or take electricity from the grid.

Clause 13 inserts a new section 36A(Responsibility for regional system control) providing that a transmission entity is responsible for regional system control of its transmission grid and that the entity is subject to directions given to it under the National Electricity (Queensland) Law or the Market Code.

Clause 14 replaces sections 40 and 40AA and inserts two new sections.

Section 40 (Connection and supply of electricity in distribution area) is a new provision providing for specified persons to apply to a distribution entity for the provision of customer connection services to premises within the distribution entity’s distribution area. The specified persons are a customer who owns or occupies premises or a retail entity. A distribution entity to which an application is made has an obligation to provide to the applicant customer connection services to premises except where the Electricity Act or a regulation states that the obligation does not apply or authorises the disconnection of premises from or refusal to connect or reconnect premises to a supply network. If a distribution entity provides the customer connection services pursuant to an application then the customer of if the

application is made by a retail entity, the retail entity, is taken to have entered into a contract with the distribution entity for the provision of customer connection services to the premises on the terms of the distribution entities standard customer connection contract. This contracting mechanism does not apply if the customer or the retail entity enter into a negotiated customer connection contract for the provision of the customer connection services. Each of the parties to a customer connection contract is taken to have agreed to observe and perform the provision of the contract so far as the provisions apply to each party. The contract takes effect as a deed.

Section 40AA (Supply in absence of customer connection contract) provides that this section applies if premises are connected to a distribution entity supply network and there is no customer connection contract in effect or taken to be in effect for the provision of customer connection services to the premises. For premises of a contestable customer, the customer and the host distribution entity will be taken to have entered into a contract on the terms of the host distribution entity's standard customer connection contract. For the premises of non-contestable customers, the host retailer and the host distribution entity will be taken to have entered into a contract on the terms of the host distribution entity's standard customer connection contract. These contracts take effect as a deed, do not prevent the customer giving a notice under section 112 of the *Queensland Competition Authority Act 1997* and end when a customer enters into a customer connection contract. The host distribution entity is, for premises, the distribution entity to whose supply network the premises are connected. The host retail entity is, for premises, the retail entity in whose area the premises are located.

Clause 15 amends section 40A (Standard customer connection contract) by omitting section 40A(2)(c) and (d).

Clause 16 replaces section 40B (Approval of first standard customer connection contract by a regulator) and inserts a new section 40B (Approval of standard customer connection contract by regulator) providing that a distribution entity's standard customer contract must be approved by the regulator and does not take effect until it is approved. Also a new section 40BA (Amendments of standard customer connection contract) is inserted providing the distribution entity may amend its standard customer connection contract only if the regulator approves. An approval may be

given on conditions, may state when the amendment takes effect and may require the entity to give notice to customers of the amendment in a way stated before the amendment takes effect. An amended contracts becomes the standard customer connection contract.

Clause 17 amends section 40D (Connection and supply on nondiscriminatory terms) in the following way. In sections 40D(1) and (2) the word “discrimination” is omitted and replaced with “fair and reasonable”.

Clause 18 amends section 40E (Limitation on obligation to connect and supply) in the following way. By omitting section 40E(h). By renumbering section 40E(i) and (j) as 40E(h) and (i). By inserting a new section 40E(2) providing that section 40E(1)(c) does not apply if the customer pays an amount to the distribution entity for works so that the connection or supply does not unreasonably interfere with the connection or supply of electricity by the distribution entity to other customers and also inserts a new section 40E(3) providing that a distribution entity must give the customer an opportunity to pay the amount.

Clause 19 amends section 40H (Contracting out of s40E, 40G or 97) by omitting in the heading and in subsection (1) “40G or 97” and inserting “40G(a) or (b), 96 or 97”.

Clause 20 amends section 42 (Conditions of distribution authority) by omitting section 42(a)(i) and inserts new sub-sections 42(a)(i) and (ii) providing that it is a condition of a distribution authority that if the entity is a code participant it must comply with the National Electricity (Queensland) Law, the Market Code and directions given to it under the Electricity Act, the National Electricity (Queensland) Law or the Market Code and also must comply with conduct rules made by the Queensland Competition Authority.

Clause 21 amends section 43 (Additional condition to allow connection to supply network by complying person) in the following way. In section 43(1) after “practicable” inserting “for the distribution entity” and omitting “nondiscriminatory” and replacing it with “fair and reasonable”. Omitting section 43(3)(a) and replacing it with a new subsection providing that the distribution entity’s current obligations and its expected future obligations.

Clause 22 amends section 44 (Additional condition to provide network services) by omitting “nondiscriminatory” and replacing it with “fair and reasonable”.

Clause 23 inserts a new section 45A (Responsibility for network control) providing that a distribution entity is responsible for network control of its supply network subject to directions given to it under the National Electricity (Queensland) Law or the Market Code.

Clause 24 replaces sections 47 to 49 with new sections 47, 48, 48A, 48B, 49 and 49A.

New Section 47 (Retail authority) provides that a retail authority authorises its holder to provide customer retail services under the terms of the authority.

New Section 48 (Area of retail entity) provides that if a retail authority states a retail area then the retail entity has an obligation to provide to non-contestable customers, customer retail services to premises that they own or occupy within the area as required under the *Electricity Act 1994* and may provide to contestable customers, customer retail services to premises that they own or occupy anywhere in the State.

New Section 48A (Where retail authority does not state a retail area) provides that if a retail authority does not state a retail area then the retail entity may provide to contestable customers, customer retail services to premises that they own or occupy anywhere in the State.

New Section 48B (Applying for customer retail services) provides that an application can be made to a retail entity by a customer who owns or occupies premises for the provision of customer retail services to the premises.

New Section 49 (Obligation to provide customer retail services to non-contestable customers) applies if a non-contestable customer makes an application under section 48B to a retail entity with a retail area in relation to premises within the retail entity's retail area. A retail entity to which an application is made has an obligation to provide to the non-contestable customer the customer retail services to the premises. The obligation does not apply where the *Electricity Act 1994* or a regulation states that the obligation does not apply or authorises refusal to provide customer retail services. While the customer is a non-contestable customer the customer and the retail entity are taken to have entered into a contract on the terms of the retail entity's standard customer connection contract. The contract takes effect as a deed and the contract ends if the customer and the retail entity enter into a negotiated customer connection contract.

New Section 49A (Sale if no customer sale contract) provides that this section applies if premises are connected to a supply network and there is no customer sale contract in effect or taken to be in effect for the provision of customer retail services to the premises. For premises of a contestable customer, the customer and the host retail entity will be taken to have entered into a contract on the terms of the host retail entity's standard customer sale contract for the sale of electricity to the premises. For the premises of non-contestable customers, the customer and the host retail entity will be taken to have entered into a contract on the terms of the host retail entity's standard customer sale contract for the sale of electricity, and if there is no customer connection contract, for the providing of customer connection services. These contracts take effect as a deed, and end when a customer enters into a customer sale contract. The host retail entity is, for premises, the retail entity in whose area the premises are located and if there is no such retail entity, a retail entity prescribed by regulation.

Clause 25 amends section 50 (Standard customer sale contract) by omitting section 50(1) and inserting a new section 50(1) providing that a retail entity must prepare a standard customer sale contract to establish the terms on which it is to provide customer retail services to non-contestable customers under section 49 and to contestable customers under section 49A(3). It also omits section 50(2)(c) and (d).

Clause 26 replaces section 51 (Approval of first standard customer sale contract by regulator) and inserts a new section 51 (Approval of standard customer sale contract by regulator) which provides that a retail entity's standard customer sale contract must be approved by the regulator and does not take effect until it is approved. It also inserts a new section 51A (Amendments of standard customer sale contract) providing that a retail entity may only amend its standard customer sale contract if the regulator approves. An approval may be given on conditions, must state when the amendment takes effect and may require the entity to give notice to customers of the amendment.

Clause 27 replaces section 52 (Customer sale contract outside standard form) with a new section 52 and 52A. New section 52 provides that a contestable customer and a retail entity may contract on terms different to the retail entity's standard customer sale contract. New section 52A provides that a non-contestable customer and a retail entity must not contract on terms different to the retail entity's standard customer sale

contract, unless allowed to do so under a regulation.

Clause 28 amends section 55A (Electricity must be sold on nondiscriminatory terms) in the following way. In the heading omit “nondiscriminatory” and replace it with “fair and reasonable”. In sections 55A(1) and (2) omit “nondiscriminatory” and replace it with “fair and reasonable”.

Clause 29 amends section 55B (Contracting out of s53, 55 or 97A) by omitting in the heading and in subsection (1) “or 97A” and replacing “,96 or 97”.

Clause 30 amends section 55D (Conditions of retail authority) by renumbering section 55D(d) to (f) as section 55D(e) to (g). Section 55D(c) is omitted and new sections 55D(c) and (d) are inserted providing that if the retail entity is a code participant it must comply with the National Electricity (Queensland) Law, the Market Code and directions given to it under the Electricity Act, the National Electricity (Queensland) Law of the Market Code and also the retail entity must comply with conduct rules made by the Queensland Competition Authority.

Clause 31 amendment of section 60 (Conditions of special approval) by omitting section 60(a)(ii) and inserting a new section 60(a)(ii) providing that if connected to the Queensland System or a code participant—the special approval holder must comply with the National Electricity (Queensland) Law, the Market Code and directions given to it under the Electricity Act, the National Electricity (Queensland) Law or the Market Code. A new section 60(2) is inserted providing that a special approval may be subject to the condition that the customer must comply with the conduct rules made by the Queensland Competition Authority.

Clause 32 amends section 63 (Functions) by omitting section 63(d) and inserting a new section 63(d) providing that one of the functions of the regulator is to assist in the settlement of disputes between electricity entities. A new section 63(2) is inserted providing that the regulator must have regard to the objects of the Act in exercising the regulator’s functions under section 63(1).

Clause 33 inserts a new part 8A of Chapter 2 providing for the Electricity Industry Ombudsman.

New Division 1 (General) contains new sections 64A, 64B and 64C.

New section 64A provides for there to be an electricity industry

ombudsman and for the establishment of the office of the Electricity Industry Ombudsman that the “office” means the Office of the Electricity Ombudsman.

New section 64B provides that the ombudsman is to control the Office.

New section 64C provides that the functions of the Office are to help the electricity industry ombudsman to perform the ombudsman’s functions.

New division 2 (Appointment of electricity industry ombudsman) inserts new sections 64D to 64H

New section 64D provides for the Governor in Council to appoint the electricity industry ombudsman, for the ombudsman to hold office for a term (no longer than five years) and for the appointment to be notified by gazette notice.

New section 64E provides that the electricity industry ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.

New section 64F provides that the ombudsman may resign by signed notice to the Minister.

New section 64G provides for the circumstances when the Governor in Council may terminate the appointment of the electricity industry ombudsman.

New section 64H provides for the preservation of employment rights if an officer of the public service is appointed as the electricity industry ombudsman.

New Division 3 (Functions and powers of electricity industry ombudsman) contains new sections 64I, 64J and 64K.

New section 64I provides that electricity industry ombudsman is to perform the following functions if they are set out as functions or roles of the ombudsman in a customer connection contract or a customer sale contract—to investigate complaints by customers about the performance by distribution entities and retail entities of their obligations under a contract and to resolve disputes between distribution entities and customers, and retail entities and customers, about the performance of obligations under a contract. The ombudsman may also—for complaint handling procedure, approve

them and perform any other function prescribed by regulation.

New section 64J provides that the electricity industry ombudsman has the powers of an individual and to do anything else necessary or convenient to be done for, or in connection with, the performance of the ombudsman's functions. The functions may be exercised inside or outside of Queensland.

New section 64K provides that the electricity industry ombudsman is not subject to directions about the performance of its functions.

New Division 4 (Staff of Office) contains new sections 64L, 64M and 64N.

New section 64L provides that the staff of the Electricity Industry Ombudsman are to be employed under the *Public Service Act 1996*.

New section 64M provides that the electricity industry ombudsman may arrange with the chief executive of a government agency for the service of staff and facilities.

New section 64N provides that the electricity industry ombudsman may delegate to appropriately train the ombudsman's staff the power to hear disputes.

New Division 5 (Funding, reporting and miscellaneous) contains new sections 64P, 64O and 64Q.

New section 64O provides for the Office to be funded in a way prescribed by regulation.

New section 64P provides for the electricity industry ombudsman to prepare and submit an annual report to the Minister.

New section 64Q provides that the Minister is to lay a copy of the report in the Legislative Assembly within 14 days of the Minister receiving it.

New division 6 (Miscellaneous) inserts new section 64R.

New section 64R provides for the application of certain Acts to the Office of the Electricity Industry Ombudsman.

Clause 34 replaces Part 2 of Chapter 4 (Market and system arrangements and pricing) and inserts a new Part 2 (Pricing and Service Quality Standards).

New Section 90 enables the Minister to decide the prices or the methodology to determine prices that a retail entity may charge to provide customer retail services and other goods and services to non-contestable customers. The Minister must have regard to objects of the Act in making a price determination. Price determination must be gazetted.

New Section 91 (Retail entity must comply with prices of methodology) provides that a retail entity must charge the prices, or in accordance with the methodology to determine prices, notified under section 90.

New Section 92 (Minister may prepare standards about quality of service) provides that a regulation may prescribe standards about the quality of service that must be provided to customers by transmission, distribution and retail entities. The Queensland Competition Authority must monitor and investigate compliance with the standards. Transmission, distribution and retail entities must comply with standards applicable to them.

Clause 35 replaces sections 96 to 97A and inserts new sections 96, 97, 97A.

New Section 96 (Limitation of liability of electricity entities and special approval holders) provides a limitation of liability in favour of electricity entities and special approval holders. The section expires on the commencement of the *Electricity—National Scheme (Queensland) Act 1997*.

New Section 97 (Limitation of liability of electricity entities and special approval holders that are not code participants) provides a limitation of liability in favour of electricity entities and special approval holders that are not code participants. The section commences on the commencement of the *Electricity—National Scheme (Queensland) Act 1997*.

New Section 97A (Limitation of liability for National Electricity (Queensland) Law) provides that the words “supply entity” in section 78 of the National Electricity (Queensland) Law are taken to include the sale of electricity and of the performance of an obligation in contract for the supply and sale of electricity.

Clause 36 amends section 116 (Authority to acquire land) by inserting a

new section 166(1A) which provides that the Minister must have regard to the objects of the Act authorising an electricity entity under section 116(1).

Clause 37 amends section 117 (Resolution of certain disputes between electricity entities or between electricity entities and public entities) by inserting a new section 117(1A) providing that the section does not apply to disputes that are regulated by the Queensland Competition Authority or under the Market Code.

Clause 38 amends section 119 (Regulators role in disputes between electricity entity and customers or occupiers) by omitting section 119(1) and inserts a new section 119(1) providing that section 119 applies to disputes between an electricity entity and an occupier of land. It also inserts new section 119(7) and (8) providing that a regulation may prescribe a person other than a regulator to settle a dispute in section 119(1) and also that the regulation may prescribe another way of settling the dispute.

Clause 39 inserts new parts A and 1A and 1B of Chapter 5.

New Part 1A—provides for matters in relation to the Queensland Competition Authority.

New division 1 (Definitions) inserts new sections 120A and 120B which provide for definitions for the part and for references to persons involved in a contravention.

New division 2 (conduct rules) inserts new sections 120C to 120N.

New section 120C provides that the Queensland Competition Authority may prepare proposed conduct rules.

New section 120D provides that the Queensland Competition Authority must give public notice of proposed conduct rules.

New section 120E provides that a person may make a submission in relation to a proposed conduct rule.

New section 120F provides that the Queensland Competition Authority must consider all properly made submissions and may amend a proposed conduct rule after considering the submission.

New section 120G provides for the adoption of the proposed conduct rules by the Queensland Competition Authority by resolution after consideration of the submissions.

New section 120H provides that an electricity entity must comply with

conduct rules.

New section 120I provides that the Queensland Competition Authority must keep the conduct rules open for inspection and, on payment of a reasonable fee, give a copy of the conduct rules to a person.

New section 120J provides that the Queensland Competition Authority may prepare a proposed amendment of a conduct rule.

New section 120K provides that the Queensland Competition Authority must give public notice of the proposed amendment of the conduct rules.

New section 120L provides that a person may make a submission in relation to a an amendment of a proposed conduct rule.

New section 120M provides that the Queensland Competition Authority must consider all properly made submissions and may amend a proposed amendment of a conduct rule after considering the submission.

New section 120N provides for the adoption of an amendment of a proposed conduct rules by the Queensland Competition Authority by resolution after consideration of the submissions.

New division 2 (enforcement of conduct rules) inserts new sections 120O to 120ZB.

New section 120O provides for the issue by the Queensland Competition Authority of a conduct notice.

New section 120P provides that as soon as practicable after the issue of a conduct notice, the Queensland Competition Authority must give a copy of the conduct notice to the electricity entity concerned.

New section 120Q provides for the duration of a conduct notice.

New section 120R provides that the Queensland Competition Authority must act expeditiously in issuing a conduct notice if it has grounds to do so.

New section 120S provides for matters in relation to the keeping, by the Queensland Competition Authority, of a register of conduct rules.

New section 120T provides for penalties for breach of conduct rules to be determined by the Supreme Court.

New section 120U provides that the State may institute proceedings in the Supreme Court to recover as a debt pecuniary penalties under section 120T.

New section 120V gives the Supreme Court jurisdiction to grant an injunction.

New section 120W gives a statutory right to claim damages to persons who suffer a loss or damage by the conduct of another that was done in contravention of a conduct rule.

New section 120X makes provision for other orders by the Supreme Court where it finds in a proceeding about a contravention of the conduct rules that a party to the proceeding has suffered, or is likely to suffer, loss or damage and the loss or damage was caused by another party to the proceeding who contravened the conduct rule.

New section 120Y provides for a finding of fact to be evidence in proceedings under section 120W and an application under section 120X.

New section 120Z provides for the conduct of directors, servants or agents to be the conduct of the body corporate for whom they act.

New section 120ZA provides when the Queensland Competition Authority must refer matters to the regulator.

New section 120ZB provides for the action that the regulator may take.

New division 3 (production of information or documents) inserts a new section 120ZC that makes provision for the production of documents and information.

New Part 1B—provides for matters in relation to the Electricity Ombudsman and it inserts new sections 120ZD to 120ZW.

New section 120ZD provides for definitions for this Part of “dispute” and “electricity entity”.

New section 120ZE provides that this part applies to disputes between electricity entities and customers.

New section 120ZF makes provision for the exclusion of other jurisdictions.

New section 120ZG provides for how a dispute is to be referred to the electricity industry ombudsman.

New section 120ZH makes provision in relation to where a customer or prescribed person has started proceedings in a court or tribunal.

New section 120ZI makes provision for the disclosure of interests.

New section 120ZJ makes provision in relation to representation of cases.

New section 120ZK makes provision in relation to the taking of evidence of the Electricity Ombudsman.

New section 120ZL makes provision in relation to procedures if a party to a dispute is absent

New section 120ZM makes provision in relation to the electricity industry ombudsman's power to require information from the electricity entities and customers who refer a dispute to the Ombudsman.

New section 120ZN makes provision in relation to the orders of the electricity industry ombudsman.

New section 120ZO makes provision in relation to the awarding of costs to or against a party to a dispute.

New section 120ZP provides that the Ombudsman must give a copy of the any order concerning a dispute to the parties to the dispute.

New section 120ZQ makes provision for final orders.

New section 120ZR makes provision for the acceptance or rejection by a customer of an order of the ombudsman.

New section 120ZS makes provision for when an order takes effect.

New section 120ZT requires an electricity entity to comply with order of the electricity industry ombudsman.

New section 120ZU provides for the referral to the regulator of non-compliance with an order of the electricity ombudsman.

New section 120ZV states that if a matter is referred to the regulator, the regulator may take action under section 133 (types of disciplinary action)

New section 120ZW provides for how an order of the electricity industry ombudsman is enforced.

New section 120ZX provides for a regulation making provision about

disputes and enforcement of orders.

Clause 40 replaces section 130 (Governor in Council may direct regulator to take over operation of operating works) and insert a new section 130 (Governor in Council may direct regulator to take over operation of relevant works) providing for the appointment of the regulator to take over the operation of relevant works in certain circumstances.

Clause 41 amends section 131 (Effect of regulator taking over the operation of operating works) and it provides for the regulator to appoint a person to take over the operations of relevant operating works.

Clause 42 inserts a new Part 3A of Chapter 5 making provision of a retail of last resort and it inserts new sections 131A.

New section 131A provides that a regulation may provide for the establishment of a scheme to be known as the “retailer of last resort scheme” and for the compulsory participation by electricity entities in the scheme. The primary objects of the retailer of last resort scheme are to provide for the consequences of a retail entity not being able to provide customer retail services to its customers and the protection of customers of a defaulting retail entity from interruption and the supply and sale of electricity to them. The section enables the regulation to be made about matters in relation to the scheme.

Clause 43 amends section 133 (Types of disciplinary action) by omitting section 133 and inserting a new section 133 providing for the types of disciplinary action that the regulator may take. The regulator may cancel, suspend or amend authorities. The section provides that the regulator may only take this action against the electricity entity for a contravention of the conduct rules if the contravention has been referred to the regulator by the Queensland Competition Authority and that for a contravention of conduct rules the regulators disciplinary action is limited to suspension of amendment of an authority. The regulator may require an electricity entity that has a prohibited interest to dispose of the interest that gave rise to the contravention. Failure to comply with the notice results in the interest being forfeited to the State and the regulator is given the power to sell the interest. Any money realised on the sale of a forfeit interest, after deduction of reasonable costs of forfeit of sale, is to be paid to the person from whom the interest was forfeited.

Clause 44 omits section 133A (Disciplinary action under the market code).

Clause 45 amends section 134 (Procedure for disciplinary action) by omitting (7 days) in section 134(1)(e) and inserts (28 days).

Clause 46 amends section 166 (Connection to transmission grid or supply network to comply with conditions for connection) by inserting in section 166(2) the words “or special approval holder” after “entity”.

Clause 47 amends inserts a new section 179A making provision for the publication of a notice about an application for a generation authority.

Clause 48 amends section 180 (Consideration of application for generation authority) by omitting section 180(7) and inserting a new section 180(7) providing that in deciding whether to issue a generation authority the regulator must not consider matters prescribed by regulation.

Clause 49 inserts new section 183A to enable the regulator to amend generation authorities and conditions by giving notice to the generation entity and having regard to the objects of the Act.

Clause 50 amends inserts a new section 188A making provision for the publication of a notice about an application for a transmission authority.

Clause 51 amends section 189 (Consideration of application for authority) by omitting section 189(6).

Clause 52 inserts a new section 192A enabling the regulator to amend transmission authorities and conditions by notice of the transmission entity and having regard to the objects of the Act.

Clause 53 inserts a new section 195A (Distribution authorities for the same distribution area) providing that the regulator may issue two or more distribution authorities for the same distribution areas.

Clause 54 amends inserts a new section 196A making provision for the publication of a notice about an application for a distribution authority.

Clause 55 amends section 197 (Consideration of application for authority) by omitting section 197(7) and inserting a new 197(7) providing that in deciding whether to issue a distribution authority the regulator must not consider matters prescribed by regulation.

Clause 56 inserts a new section 200A enabling the regulator to amend distribution authorities and conditions by notice to the distribution entity and having regard to the Act.

Clause 57 amends section 203 (Issue of retail authorities) by inserting a

new subsection (3) providing that if an authority states a retail area, the authority may state when the right to the retail area ends.

Clause 58 amends section 204 (Application for authority) by omitting section 204(1)(b) and inserts a new section 204(1)(b) providing that if the application relates to the sale of electricity to non-contestable customers—state the proposed retail area.

Clause 59 amends inserts a new section 204A making provision for the publication of a notice about an application for a retail authority.

Clause 60 amends section 205 (Consideration of application for authority) by inserting a new section 205(3)(a) requiring the financial capacity of the applicant to be considered subject to new section 305(3)(a), and renumbers existing sections 305(3)(a) to (f) to section 305(3)(b) to (g). A new section 305(3A) is also inserted providing that the regulator does not have to consider the financial capacity of the applicant if the applicant's authority will be subject to a condition requiring compliance with the market code and the market code contains credential requirements applying to the activities to be authorised. Also section 205(7) is omitted and a new section 205(7) is inserted providing that in deciding whether to issue a retail authority the retailer must not consider matters prescribed by regulation.

Clause 61 inserts a new section 207AB enabling the regulator to amend retail authorities and conditions by notice to the retail entity and having regard to the objects of the Act.

Clause 62 inserts a new section 207D to enable the recognition of interstate retail authorities issued or a law of another state.

Clause 63 inserts new section 211A to 211C.

New Section 211A (Amendment of special approval) enables the regulator, with a special approval holders agreement, to amend a special approval.

New Section 211B (Amendment of conditions stated and special approvals) enables a regulator, with a special approval holders agreement, to amend the conditions stated in a special approval.

New Section 211C (Amendment of special approval and conditions by notice to the holder of the special approval) enables a regulator to amend a special approval and conditions by notice of the holder of the special approval and having regard to the objects of the Act.

Clause 64 inserts a new section 240A providing for executive officers of a corporation to ensure the corporation complies with the Electricity Act.

Clause 65 inserts a new section 251A in relation to the evidentiary effect of a conduct notice.

Clause 66 amends section 254 (Protection from liability) by extending protection from liability to the electricity ombudsman and its employees; the members or employees of the Queensland Competition Authority and an operator and its employees under section 131.

Clause 67 omits section 257 and inserts a new section 257 (Transmission entities and distribution entities are constructing authorities) providing that transmission entities and distribution entities are constructing authorities under the *Acquisition of Land Act 1967*. The section expires five years after the commencement.

Clause 68 omits sections 258 and 259.

Clause 69 replaces section 260 with a new section 260 requiring State electricity entities to take part in regulated superannuation scheme.

Clause 70 omits section 261 (Declaration of approved industry superannuation scheme).

Clause 71 replaces section 264 (Regulation about matters in sch 2) and replaces it with a new section 264 which provides for matters in relation to which regulations may be made.

Clause 72 amends Chapter 14 Transitional provisions for *Electricity Amendment Act 1997* and *Electricity Amendment Act (No. 2) 1997* by amending the heading for Part 2 to read “Part 2—Transitional provisions for *Electricity Amendment Act 1997*, *Electricity Amendment Act (No. 2) 1997* and *Electricity Amendment Act (No. 3) 1997*.”

Clause 73 amends section 291 (Generation Authorities for new Generation Entities) by omitting “pool” in section 291(3)(b) and replacing it with “spot market”.

Clause 74 amends section 299 (Directions to State electricity entities) by omitting subsection (3) and inserting a new subsection (3) enabling the Ministers to give a direction only if they are satisfied that it is necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry, reforms concerning the Queensland electricity supply industry or to ensure a financially viable

Queensland electricity supply industry.

Clause 75 amends section 300 (Minister may give exemptions from holding an authority or being authorised to sell) by omitting in section 300(4) “one year” and replacing with “two years”.

Clause 76 amends section 300(A) (Notifying exemption under section 300) by omitting section 300A(2) and renumbering sections 300A(3) and (4) as 300A(2) and (3).

Clause 77 replaces section 300B and section 301 and inserts a new section 300B enabling the Minister to amend or cancel an exemption under section 300 and inserts a new section 301 giving the Minister power to determine power or determine prices or a methodology to determine prices the transmission entity may charge for connection to a transmission grid and that the distribution entities may charge to provide customer connection services.

Clause 78 amends section 302 (QTSC State Electricity Entity for limited purposes) by omitting the end of section 302(1) the word “only”.

Clause 79 omits section 302A and 302B.

Clause 80 amends section 303 (Transitional regulations) by omitting subsection (1)(a) and inserting a new subsection (1)(a) enabling a regulation to be made if it is necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry, reforms concerning the Queensland electricity supply industry or to ensure a financially viable Queensland electricity supply industry. Also, in section 303(3) “one year” is omitted and replaced with “two years”.

Clause 81 amendment of schedule 1 appeals against administrative decisions by including new provisions.

Clause 82 amends schedule 2 (subject matter of regulations) by inserting new clauses 3A and 3B allowing for the imposition of conditions in authorities to prohibit the holding of prohibited interests.

Clause 83 amends Schedule 5 (Dictionary) by deleting definitions and inserting new definitions.

PART 3—AMENDMENT OF *GLADSTONE POWER*

STATION AGREEMENT ACT 1993

Clauses 84 and 85 provide for an amendment to the *Gladstone Power Station Agreement Act 1993*, so that section 211C (Amendment of special approval and conditions by notice to holder of special approval) of the *Electricity Act 1994* does not to the Gladstone Power Station licence.

***PART 4—AMENDMENT OF QUEENSLAND
COMPETITION AUTHORITY ACT 1997***

Clause 86 provides that the Part amends the *Queensland Competition Authority Act 1997*.

Clause 87 amends section 10 (Authority's functions) to permit the authority to act as an arbitrator if so appointed by parties to an access agreement.

Clause 88- section 62 is omitted.

Clause 89 inserts new section 69A which provides that the authority may conduct an investigation investigation about an agency which has applied for accreditation. The powers of the authority in relation accreditation investigations may be utilised with respect to applications for accreditation made either before or after the commencement of the clause.

This clause also inserts new section 69B which provides the procedure for the notification of certain parties of an investigation by the authority and provides the requirements that must be included in the notice of an investigation.

Also inserted by this clause is new section 69C which requires the authority, when conducting an investigation, to have regard to the matters listed therein (although it may consider any other matters it considers relevant).

However, in deciding whether the government agency should be accredited, the authority is not to accept that any competitive advantage enjoyed by the government agency because of government ownership

or control is justified because of a competitive disadvantage suffered by the agency because of that government ownership or control.

Clause 89 also inserts new section 69D which provides that the provisions of Part 6 of the Act (Investigations by authority) apply to an investigation of an accreditation.

Clause 90 amends sub-section 130(3) to provide that access codes may address arrangements for the transfer all or part of an interest of a user to another person under an access agreement.

Clause 91 amends section 137 to permit access undertakings to address arrangements for the transfer of all or part of an interest of a user to another person under an access agreement. It also provides for access undertakings to address arrangements to be made by the owner of a facility for the separation of the owner's operations relating to the service from other operations of the owner.

Clause 92 inserts new section 158A which provides for a person or the authority to apply to the court for an order in relation to an approved access undertaking. If the court is satisfied that a breach of the undertaking has occurred then it may make certain orders to enforce the undertaking or for compensation for breach.

However, a person or the authority may only make an application to the court if they or (in the case of an application by the authority) a person's interests have been adversely affected.

Clause 93 amends section 171 to provide for the application of the part to investigations for competitive neutrality accreditations under Part 4, Division 5.

Clause 94 amends sub-section 187 (3) to enable the authority to liaise effectively with other regulators without breach of confidentiality obligations.

Clause 95 amends section 227 to clarify the position of former public servants employed by the QCA with respect to the transfer of their superannuation entitlements.

Clause 96 -amends section 237 to limit the liability of members and staff of the QCA for acts of negligence. Members and staff will not now be liable for negligent acts which have been performed in good faith. This will bring the QCA into line with similar regulators in other states and in Queensland.

Clause 97 amends section 239 to enable the authority to liaise effectively with other regulators without breach of confidentiality obligations.

Clause 98- amends section 240 to enable the QCA to liaise effectively with other regulators without breaching confidentiality obligations.

Clause 99 amends the definition of “related body corporate” in the dictionary in the Schedule to include a subsidiary of a body corporate under the *Government Owned Corporations Act 1993*.

PART 5 - AMENDMENT OF THE *PUBLIC SERVICE ACT 1996*

Clauses 100 amends section 109 of the *Public Service Act. 1996* to list the electricity industry ombudsman as a term appointee who is not liable for dismissal under section 110 of the *Public Service Act 1996*.

