

ELECTRICITY AMENDMENT BILL 2000

EXPLANATORY NOTES

SHORT TITLE

The Bill may be cited as the *Electricity Amendment Bill 2000*.

POLICY OBJECTIVES

The main objectives of the Bill are:

1. To provide for the establishment of an arbitration process, which will authorise independent energy arbitrators to hear disputes between electricity entities and customers, determine matters in dispute and make orders against electricity entities accordingly;
2. To authorise the Minister to appoint independent energy arbitrators for this purpose; and
3. To provide a statutory basis for the establishment of advisory committees such as regional electricity councils.

RATIONALE FOR THE BILL

The Minister for Mines and Energy has decided that a trial of a dispute resolution process to protect electricity consumers' rights in the form of a Consumer Protection Office within the Department of Mines and Energy is to be undertaken and evaluated. To allow for the trial to be undertaken, the automatic commencement on 5 December 1999 of the uncommenced Electricity Industry Ombudsman legislation in the *Electricity Amendment Act (No.3) 1997* was postponed to 5 December 2000. The postponement of this legislation was included in the *Electricity and Gas Legislation Amendment Act 1999*. However, before the trial of this alternative dispute resolution process can commence, a legislative basis is required for the proposed appointment, functions and powers of independent energy arbitrators. Accordingly, the Bill provides a statutory basis for these matters.

Seven regional electricity councils have been established by the Minister for Mines and Energy under the prerogative power of the Crown.

Whilst the *Electricity Act 1994* provides for the establishment of advisory committees for the administration of the Act, it does not specifically provide for the establishment of advisory committees such as regional electricity councils. It would be preferable for regional electricity councils to have a legislative basis. Accordingly, the Bill provides a statutory basis for the establishment of such advisory committees.

WAYS IN WHICH THE OBJECTIVES ARE TO BE ACHIEVED

The objectives will be achieved by amending the *Electricity Act 1994* to provide for the required statutory powers.

In relation to independent energy arbitrators, the Bill provides for the appointment of arbitrators with powers to hear and determine the matter in dispute and make, against the electricity entity concerned, a monetary order of up to \$10,000 or a non-monetary order to remedy any issue in dispute.

Under the existing provisions of the *Electricity Act 1994*, the regulator (the Director-General, Department of Mines and Energy) is empowered to provide a mediation role in disputes between electricity entities and customers or others affected by the electricity entities' operations, but does not possess the authority to make decisions in relation to such disputes.

The Bill provides for the regulator's existing role to be extended such that, in the event that a dispute cannot be resolved through mediation, the regulator, and only the regulator, can refer the matter to an independent arbitrator who will have the power to make decisions and orders in relation to matters in dispute. The Bill provides that the Minister for Mines and Energy is empowered to appoint a panel of independent arbitrators for this purpose.

Section 63(1)(d) of the *Electricity Act 1994* provides that the regulator's functions are, inter alia, to assist the settlement of disputes between electricity entities and between electricity entities and others. Section 64(1) provides that the regulator may delegate a power of the regulator to an officer of the department, an authorised person or an employee of an electricity entity if satisfied the person has the expertise and experience necessary to exercise properly the power. It is proposed that the Regulator's extended functions in relation to consumer protection and dispute resolution will be carried out by delegates in a discrete and clearly identifiable consumer protection group, which is to be established in the Department of Mines and Energy.

This process ensures that electricity customers and other affected parties have an accessible and effective means of having complaints and disputes with electricity entities investigated and determined by an independent third party.

ALTERNATIVE WAYS OF ACHIEVING THE POLICY OBJECTIVES

The objectives can only be achieved through amendments to legislation.

ADMINISTRATIVE COST TO GOVERNMENT

There are no financial implications for the Government associated with the proposed legislative amendments.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

Proposed new section 120ZZE provides that each party to a dispute must conduct their own case. Subsection (3) provides that a party must not be represented by a lawyer, unless the parties to the dispute agree and the energy arbitrator is satisfied that there is no disadvantage to a party to the dispute because of any legal representation. Whilst subsection (3) may appear to restrict an individual's rights to legal representation, it ensures that consumers are not disadvantaged in the event that they are unable to afford legal representation.

Whilst proposed new section 289 which continues in existence regional electricity councils that have been established by the Minister, may appear to be retrospective, it merely provides a legislative basis for an existing administrative arrangement.

CONSULTATION

The following organisations were consulted in relation to the proposed legislation:

- Brisbane Consumers' Association
- Queensland Council of Social Services
- Financial Counsellors Association of Queensland Inc

- Energex
- Ergon
- NorthPower

The following government agencies have been consulted:

- Department of Employment Training and Industrial Relations (Employment Task Force)
- Department of Primary Industries (Office of Rural Communities)
- Department of State Development (Business Regulation Reform Unit)
- Department of Equity and Fair Trading (Office of Fair Trading)
- Queensland Treasury (including National Competition Policy Unit)
- Department of the Premier and Cabinet (Policy Co-ordination Division)
- Department of Justice and Attorney-General (Crown Law)
- Office of the Queensland Parliamentary Counsel

PURPOSE AND INTENDED OPERATION OF EACH CLAUSE

CLAUSE 1—Short Title

Provides that the short title of the Amendment Act is the *Electricity Amendment Act 2000*.

CLAUSE 2—Act amended

Provides that the Amendment Act will amend the *Electricity Act 1994*.

CLAUSE 3—Amendment of s 40D (Connection and supply on nondiscriminatory terms)

In previous amendments to the Act, the concept of “non-discriminatory” was replaced with “fair and reasonable”. This clause updates the heading of section 40D to make it consistent with previous amendments.

CLAUSE 4—Amendment of s 63 (Functions)

Provides for an additional function of the regulator. This function is not limited to the performance of obligations under customer connection contracts and customer sale contracts, and recognises that not all disputes are necessarily within connection and sale contracts.

CLAUSE 5—Insertion of new s 64AA

New section 64AA (Funding for dispute resolution and complaint investigation functions)

Provides a means to obtain funding for the dispute resolution and complaint investigation functions through the application of a levy on electricity entities, which operate in Queensland, including interstate and private operators.

CLAUSE 6—insertion of new ch 2, pt 8B

Provides that a new part entitled “PART 8B—ENERGY ARBITRATORS” which contains the following new divisions and sections is inserted.

Division 1—Appointment

New section 64S (Appointment of panel of energy arbitrators)

Subsection 1 provides that the Minister may appoint no more than seven independent energy arbitrators (in locations across Queensland) to deal with disputes to which section 119 of the *Electricity Act 1994* applies.

Subsection 2 provides that the independent energy arbitrators must either be graded members of the Institute of Arbitrators and Mediators, Australia, or must possess the qualifications and experience which are considered by the Minister to be appropriate to carry out the functions of an energy arbitrator in dispute resolution processes.

Section 119 of the Act is contained in **Chapter 5—Industry Regulation, Part 1—Regulator** and specifies the role of the regulator in disputes between electricity entity and customers or occupiers; that section applies to disputes between

- an electricity entity and a customer about the performance of a function or exercise of a power under the Act other than a dispute

that may be referred to the electricity industry ombudsman under the Act; or

- an electricity entity and an occupier of land onto which the entity enters or proposes to enter, or permits someone else to enter, under the Act.

Section 119 of the Act is amended by the Bill (Clause 9 refers).

New section 64T (Duration of appointment)

Provides that each energy arbitrator is to be appointed for a term of not more than two years.

New section 64U (Remuneration)

Provides that an energy arbitrator is to be paid the remuneration and allowances approved by the Governor in Council and must be paid from levies paid to the chief executive by electricity entities. The fees of the arbitrator will be determined by the Minister for Mines and Energy. The fees will be determined at the beginning of the two year appointment of the energy arbitrators, and will be subject to Consumer Price Index adjustments after twelve months.

New section 64V (Resignation)

Provides that an energy arbitrator may resign by submitting a signed notice of resignation to the Minister for Mines and Energy.

New section 64W (Termination of Appointment)

Provides that if the Minister reasonably believes that the energy arbitrator is not satisfactorily performing the functions of an energy arbitrator, then the Minister may, by giving written notice to the energy arbitrator, terminate the appointment of the energy arbitrator.

Division 2—Functions and powers

New section 64X (Functions)

Provides that an energy arbitrator's function is to arbitrate in disputes referred to the energy arbitrator under new section 120ZZB which relates specifically to how disputes are referred, that is:

- only the regulator may refer a dispute to an energy arbitrator;

- the regulator may make the referral only if the party to the dispute, other than the electricity entity, has agreed to the referral;
- the referral must be written;
- the regulator must not refer a dispute to an energy arbitrator if the regulator knows a party to the dispute has started an action in a court or tribunal concerning any issue in the dispute.

New section 64Y (Powers)

Provides that an energy arbitrator may do anything necessary or convenient to be done for, or in connection with, the performance of the energy arbitrator's functions.

CLAUSE 7—Amendment of s 69 (Electricity officer's identity card)

Provides that an Electricity Officer's identity card must display the person's usual signature (to reflect different methods of preparing cards such as electronic scanning).

CLAUSE 8—Amendment of s 74 (Authorised person's identity card)

Provides that an Authorised Person's identity card must display the person's usual signature (to reflect different methods of preparing cards such as electronic scanning).

CLAUSE 9—Amendment of s 119 (Regulator's role in disputes between electricity entity and customers or occupiers)

New subsection (1A) provides that section 119 of the *Electricity Act 1994* does not apply to:

- (a) a dispute to which section 117 applies; that is disputes arising under part 4 (Works) between an electricity entity and a public entity, and disputes arising under the Act between electricity entities are exempted;
- (b) disputes that are regulated by, or may be dealt with under the *Queensland Competition Authority Act 1997*, or the *Electricity-National Scheme (Queensland) Act 1997*.

This clause also modifies section 119(2) and (3) by omitting provisions which grant the right of a party to a dispute to ask the regulator to settle the dispute by mediation, and the role of the regulator to decide the action that a party must take before the regulator will try to settle the dispute by mediation.

Modified subsection (2) provides that a party to a dispute may refer the dispute to the regulator.

Modified subsection (3) provides that the referral must be in the approved form—this will ensure that issues are correctly identified and isolated, and that appropriate records and details are collected.

New subsection (3A)(a) provides that the regulator may decline to act in the referred dispute at the discretion of the regulator, for example if the dispute is outside the jurisdiction of the regulator, or is obviously of a frivolous or vexatious nature.

New subsection (3A)(b) provides that the regulator may attempt to settle the dispute by mediation. The mediation process would normally be undertaken by delegated officers employed by the Department of Mines and Energy.

New subsection (3A)(c) provides that the regulator may refer the dispute to an independent energy arbitrator provided that the regulator reasonably believes that the dispute can not be settled by mediation.

New subsection (3B) provides that this does not apply to a dispute that arose more than one year before the commencement of new section 120ZZB.

The one year time period limits the retrospection of the arbitration phase of dispute resolution, but does not limit the existing functions and powers of the regulator to act in a dispute, subject to subsection (3A).

New subsection (3C) provides the regulator with the authority to supply written instructions to the parties to a dispute regarding the procedures which are to be followed by the parties to attempt resolution of the dispute, and any other action which should be undertaken by the parties prior to the regulator attempting to resolve the dispute, either through mediation or through referral to an energy arbitrator.

CLAUSE 10—Insertion of new ch 5, pt 1C

Provides that a new part entitled “**PART IC—DISPUTES REFERRED TO ENERGY ARBITRATOR**” which contains the following new divisions and sections is inserted.

Division 1—Preliminary

New section 120ZY (Application of pt 1C)

Provides that Part 1C applies to a dispute to which section 119 applies.

New section 120ZZ (Excluded Commercial Arbitration Act 1990)

Excludes the *Commercial Arbitration Act 1990* from disputes to which this part applies. It is envisaged that the dispute resolution process enshrined under the Bill will negate the need for arbitration to be performed under the auspices of the *Commercial Arbitration Act 1990*.

New section 120ZZA (Exclusion of other jurisdictions)

Subsection (1) restricts the powers of a court or tribunal, at the instigation of an electricity entity, to rule on (a) an issue in dispute, or (b) any issue that emerges in the course of arbitration.

Subsection (2) qualifies the application of subsection (1) to not apply if: (a) the proceeding before the court or tribunal had commenced prior to the dispute being referred to the energy arbitrator; or (b) the referral to the energy arbitrator was withdrawn or struck out for want of jurisdiction, or (c) if the energy arbitrator decides that the dispute should not be heard by the energy arbitrator, because of the nature or complexity of the issue in dispute.

Division 2—Referring and arbitrating disputes**New section 120ZZB (How dispute is referred)**

Subsection (1) provides that only the regulator may refer a dispute to an energy arbitrator.

This is to ensure that all other appropriate avenues of dispute resolution are explored prior to engaging the arbitration process, and as a means of monitoring and controlling the administration of the arbitration phase of the dispute resolution process.

Subsection (2) provides that the regulator may refer the matter to the arbitrator, only with the agreement of the party to the dispute, other than the electricity entity.

Subsection (3) provides that the referral must be in written form to ensure clarity and focus of the dispute.

Subsection (4) restricts the regulator from referring a dispute to an arbitrator if the regulator knows that any issue of the dispute has been

referred to a court or tribunal by a party to the dispute.

New section 120ZZC (Giving notice of referral to parties to dispute)

Provides that the regulator must provide parties to a dispute written notice of such referral, if the dispute is being referred to an energy arbitrator.

New section 120ZZD (Disclosure of interests)

Subsection (1) restricts the arbitration of an energy arbitrator if (a) the energy arbitrator has a direct or indirect interest in the dispute, and (b) the interest could conflict with the appropriate performance of the energy arbitrator's functions concerning the dispute.

Subsection (2) provides an exemption to section 120ZZD if the interest to the energy arbitrator consists only of the receipt of services, or information about electricity supply, that (a) are also available to members of the public, and (b) are made available on the same terms that apply to members of the public.

Subsection (3) determines that if subsection (1) applies, then the energy arbitrator must advise the regulator of the potential conflict of interest.

Subsection (4) provides that if the regulator receives advice through the application of subsection (3), then the regulator must refer the dispute to another energy arbitrator.

New section 120ZZE (Presentation of cases)

Subsection (1) provides that each party to a dispute before the energy arbitrator must conduct their own case. This process is designed to restrict the potential costs of legal representation, which may disadvantage some parties to a dispute.

Subsection (2) allows representation of a party by an agent only with the agreement of the energy arbitrator.

Subsection (3) restricts legal representation by parties to a dispute unless (a) all parties to the dispute agree, and (b) the energy arbitrator is satisfied that there is no disadvantage to a party to the dispute because of any legal representation.

New section 120ZZF (Conduct of Arbitration)

Subsection (1) provides that the energy arbitrator may take evidence in the dispute in the way and manner that the energy arbitrator considers appropriate.

Subsection (2) provides that the energy arbitrator may conduct the arbitration in the way the energy arbitrator considers appropriate, is not bound by the rules of evidence and may inform himself or herself in the way the energy arbitrator considers appropriate.

Subsection (3) provides that the energy arbitrator may consider and rely on evidence taken and collected by the regulator in the course of the regulator attempting to resolve the dispute, but without limiting the intent of subsection (2).

New section 120ZZG (Power to require information from electricity entity)

Subsection (1) provides that parties to a dispute are obliged to give the energy arbitrator all of the information that the energy arbitrator reasonably requires to perform the functions of the energy arbitrator.

Subsection (2) provides that any information requested must be provided to the energy arbitrator within a reasonable time.

Subsection (3) provides that a person must not contravene a requirement under this section without a reasonable excuse. The maximum penalty that can be incurred for such contravention is set at 500 penalty units.

Subsection (4) includes incrimination of a person as a reasonable excuse to not complying with a requirement under section 120ZZG.

Division 3—Orders and enforcement

New section 120ZZH (Orders that can be made)

Subsection (1) provides that the energy arbitrator may make certain orders and determinations against an electricity entity that is a party to a dispute, including (a) an order that the electricity entity must pay to another party to the dispute an amount of no more than \$10 000 or (b) a non-monetary order which the energy arbitrator considers to be appropriate against the electricity entity to remedy any issue in the dispute.

Subsection (2) prescribes that when making an order to resolve a dispute, the energy arbitrator must consider (a) the objects of the Act and (b) the rights and obligations of the parties under the Act, and including rights and obligations of the parties under any contract between the parties.

Subsection (3) provides that despite subsection (1)(b) allowing a

non-monetary order to be made by the energy arbitrator to remedy any issue in the dispute, the energy arbitrator can not cancel, suspend or amend the authority of an electricity entity.

New section 120ZZI (No Costs)

Provides that costs must not be awarded by the energy arbitrator to or against a party to the dispute.

New section 120ZZJ (Copy of order to be given to parties)

Provides that a copy of any order given concerning the dispute must be given by the energy arbitrator to the parties to the dispute.

New section 120ZZK (Order final)

Subsection (1) provides that an order made by the energy arbitrator binds an electricity entity that is a party to the dispute, but subject to the provisions of new section 120ZZL.

Subsection (2) provides that the electricity entity may not apply for a review of, or appeal against, the order determined by the energy arbitrator, other than under the *Judicial Review Act 1991*.

New section 120ZZL (Party, other than electricity entity, to advise whether order accepted)

Subsection (1) provides that a party to a dispute, other than the electricity entity, must notify the energy arbitrator by written notice if the party decides not to accept the energy arbitrator's order against the electricity entity.

Subsection (2) provides that such written notice must be given to the energy arbitrator within 21 days of the party receiving the order.

Subsection (3) provides that if such notice is not given to the energy arbitrator within 21 days, then the party is taken to have accepted the order and the order then binds the party.

Subsection (4) provides that the party may not apply for a review of or appeal against the order if it is binding on the party, other than under the *Judicial Review Act 1991*.

New section 120ZZM (When order takes effect)

Provides that an order made by the energy arbitrator takes effect: (a) when the order is made; or (b) in the event that the order states a later day or event for the order to take effect, then the order is to take effect on the later day or event.

New section 120ZZN (Failure to comply with order)

Subsection (1) provides that an electricity entity must comply with an order of the energy arbitrator.

Subsection (2) provides that if an electricity entity contravenes an order of the energy arbitrator, then the other party to the dispute may refer the matter to the regulator.

Subsection (3) states that if the matter is referred to the regulator by the other party, then the regulator may take action against the electricity entity under section 133(1). This section provides that the regulator may take disciplinary action against an electricity entity to (a) for a generation entity or transmission entity—cancel, suspend or amend its authority, (b) for a distribution entity—cancel, suspend or amend its authority for its distribution area or part of its distribution area, and (c) for a retail entity—cancel, suspend or amend its authority.

New section 120ZZO (How order enforced)

Subsection (1) provides that if the energy arbitrator orders an electricity entity to pay an amount to a person, the person may enforce the order by filing the order in the Magistrates Court.

Subsection (2) provides that once that order is filed, then it is taken to be a judgement of the Magistrates Court.

New section 120ZZP (Energy arbitrator’s report to regulator)

Provides that the energy arbitrator must give the regulator (a) a written report on the outcome of the arbitration and (b) a copy of any order made by the energy arbitrator in the arbitration.

CLAUSE 11—Amendment of s 253 (Advisory committees)

Provides for the establishment of advisory committees such as regional electricity councils. Existing section 253 only provides for the establishment of advisory committees for the administration of the Act.

New subsection (3A) provides that without limiting the provisions in subsections (2) or (3) (that is, an advisory committee established under the regulation has the functions stated in the regulation, and an advisory committee established by the Minister has the functions stated by the Minister), then an advisory committee’s function may be to give information and advice on matters impacting on communities in a particular region to (a) the Minister, (b) the department and (c) distribution entities or retail entities.

Examples of such matters may include, but not necessarily be restricted to, the service levels provided by electricity entities, the reliability of electricity supply, environmental concerns, major electricity infrastructure projects, and proposed changes to the local electricity network.

CLAUSE 12—Insertion of new ch 14, pt 2

Provides that a new part entitled “**PART 2—TRANSITIONAL PROVISIONS FOR ELECTRICITY AMENDMENT ACT 2000**” which contains the following new section is inserted.

New section 289 (Continuation of existing regional electricity councils)

Subsection (1) provides that section 289 applies to a regional electricity council (a) established by the Minister to provide information about regional electricity issues and requirements to the State and electricity retailers, and (b) a regional electricity council which is in existence before the commencement of the *Electricity Amendment Act 2000*.

Subsection (2) confirms that a regional electricity council continues in existence as if it had been established as an advisory committee under section 253 (as amended by the Bill) with the function of giving information and advice on matters impacting on the region for which it was established.

CLAUSE 13—Amendment of sch 5 (Dictionary)

Amends Schedule 5 by inserting definitions for the terms “energy arbitrator” and “reasonably believes”.

The term “energy arbitrator” is used in new section 64S (**Appointment of panel of energy arbitrators**) inserted by clause 6 of the Bill.

The term “reasonably believes” is used in new section 64W (**Termination of appointment**) inserted by clause 6 of the Bill.

