

Electricity Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Electricity Amendment Bill 2004*.

Policy Objectives

The objectives of the *Electricity Amendment Bill 2004* are –

13% Gas Scheme amendments

- to reduce the growth in greenhouse gases associated with electricity use in the State; and
- to contribute to the diversification of the State's energy mix towards the greater use of gas in electricity generation; and
- to encourage the development of new gas sources and gas infrastructure to meet the State's future energy requirements.

Energy Consumer Protection Office (ECPO) amendments

- to make a number of minor amendments to refine the operations of Energy Consumer Protection Office (ECPO) including amendments to limit access to the dispute resolution service to domestic and small business customers, implement provisions to address frivolous or vexatious disputes, and make other minor administrative changes.

Statutory authorities and powers amendments

- to clarify the statutory authorities of electricity transmission and distribution entities to transmit or supply electricity; and
- to provide electricity entities with additional powers of entry in relation to their operating works.

Government Owned Corporations (GOCs) employment conditions amendments

- to provide for the preservation of current employment conditions and entitlements of employees transferring from electricity GOCs to certain subsidiary companies.

Reasons for the Policy Objectives

13% Gas Scheme amendments

Currently, approximately 88% of the electricity generated and used in Queensland is produced from coal. The overwhelming dominance of coal in electricity generation reflects the competitive advantage coal-fired generators have relative to generators which produce electricity using more expensive fuels such as gas and renewables. This competitive advantage reflects, in part, market failure in the sense that the market does not factor environmental impacts into the cost structures of generators, with coal-fired plant producing significantly higher greenhouse gas emissions than gas-fired plant.

Electricity generation in Queensland accounted for approximately 26 percent of Queensland's total net emissions in 1999¹, with emissions forecast to increase significantly over the next decade as demand for electricity grows. Thus, the need to provide competitively priced energy, while meeting acceptable environmental standards, will be a major long-term challenge for the Queensland energy sector.

While the Commonwealth Government has decided not to ratify the Kyoto Protocol on the basis that it believes it is not in Australia's national interests, pressure to address emissions continues to mount. A failure to address the growth in emissions evident in Queensland's electricity generation sector could put Queensland in a vulnerable position if international or national requirements to reduce greenhouse gas emissions were introduced. As a result, the energy sector is a priority for the Queensland Government in developing programs designed to limit the growth in emissions of greenhouse gases.

In addition, the Queensland 13% Gas Scheme (the Scheme) is designed to provide benefits through the development of new gas sources and gas infrastructure such as pipelines. The increased availability of gas and

¹ This estimate is based on the 1999 (the latest) greenhouse inventory for Queensland.

potentially more competitive gas prices will also improve the attractiveness of Queensland for projects requiring gas supplies or proponents looking to access gas-fired electricity to reduce their potential exposure to greenhouse abatement measures. Without an initiative to support the development of new gas sources and infrastructure, existing and potential investors in Queensland will have limited access to competitively priced gas.

ECPO amendments

ECPO proposes five non controversial amendments to the *Electricity Act 1994*.

The first amendment proposes ECPO only make its industry funded dispute resolution services available to those customers who consume less than 200,000 kilowatts (kWh) of electricity per annum. It is reasonable for the industry funded dispute resolution scheme of ECPO to be reserved for smaller consumers, particularly franchise customers. The scheme is at present a “no cost” service to the consumer. Where larger contestable consumers are in dispute with their energy supplier, normal contractual dispute resolution procedures should apply. An industry funded dispute resolution service does not appear to be appropriate in these commercial disputes. Customers who use more electricity than the threshold, who are on negotiated contracts, including negotiated dispute resolution provisions, with their energy supplier will be precluded from accessing the free dispute resolution process

The second amendment proposes that if the recommended 200,000 kWh per annum consumption threshold is imposed, to remove the requirement for retailers who only supply those customers who use more than 200,000 kWh of electricity per annum, from contributing to the funding of the ECPO scheme. Currently retailers without a retail area are required under the *Electricity Act 1994* to contribute a fixed \$5,000 per annum membership fee towards the funding of complaint investigations and settlement of disputes.

Very few contestable customers have sought the services of ECPO over the past 18 months. Contestable customers in Queensland are currently large customers whose annual consumption usage is above the proposed threshold of 200,000 kWh per annum. It is deemed very unlikely a contestable customer who has a negotiated contract with its energy supplier would access the services of ECPO. There are currently 15 retailers without a retail area paying \$5,000 each for membership of the ECPO scheme. This exemption will only have a marginal financial impact on ECPO revenue. Several retailers have complained that it is unfair to

impose a \$5,000 fee for a service that realistically would not be accessed by customers of that retailer

The third amendment is to establish provisions which enable the Regulator to refuse to forward frivolous or vexatious disputes to an independent energy mediator or independent energy arbitrator for determination. This amendment will enable the Regulator to determine if a dispute is frivolous or vexatious which is consistent with dispute resolution procedures in other jurisdictions. The amendment will also reduce the administrative and cost burden of such claims.

The fourth amendment is to omit the requirements of the Regulator to provide the contact details of the independent energy mediator or independent energy arbitrator to the parties in dispute, to ensure no perceived bias or undue influence if parties contact the mediator or arbitrator prior to a hearing.

The fifth amendment is to require the customer to provide written notice of the non-acceptance of an order provided by an independent energy arbitrator, to the Regulator. Currently, the Regulator only receives notification of an appeal when advised by the arbitrator. As arbitrators are independent persons appointed from panels, there is the possibility an arbitrator may not be available or contactable within the 21 day period after a hearing due to work or personal commitments. Therefore there is a potential risk the Regulator will be unaware a customer has provided written notice to the arbitrator within the required timelines.

Statutory authorities and powers amendments

The proposed amendment to clarify the statutory authorities of transmission and distribution entities arose as a result of an electricity entity's involvement in court proceedings. It became apparent there was a need to clarify the statutory authorities given by the *Electricity Act 1994* to transmission and distribution entities to operate electricity transmission and distribution lines. Transmission and distribution entities have clear statutory obligations to transmit and supply electricity, and also have authority to operate their transmission and supply networks. However, there is no explicit authority to transmit or supply electricity over land on which the network is built. Accordingly, it is proposed to clarify the issue by inserting in the *Electricity Act 1994* a provision which expressly authorises transmission and distribution entities to transmit or supply electricity through transmission or distribution lines which have been built on land acquired by the entity or over which the entity holds an easement or other agreement in relation to the transmission or distribution line.

The proposed amendment to enhance the powers of entry for electricity entities arose as a result of the recognition that there was no clear power in the *Electricity Act 1994* which allows an electricity entity to enter land to make good any damage or harm caused to the land by the entity's works or operations. It is therefore proposed to provide electricity entities with a specific power to enter land to carry out remedial work where the land has been damaged as a result of the entity's works.

GOC employment conditions amendments

Concerns regarding the preservation of conditions and entitlements for employees transferring from GOCs to subsidiary companies were raised following the formation of Service Essentials Pty Ltd (SEPL), a subsidiary company of ENERGEX Limited and Ergon Energy Corporation Limited, to provide shared services to those GOCs.

Section 259A of the *Electricity Act 1994* currently provides for a GOC, a subsidiary of GOC or a government company to be declared by the *Electricity Regulation 1994* to be a "State electricity entity" for certain purposes. It is proposed that this section be amended to ensure that a subsidiary of an electricity GOC may be declared by the *Electricity Regulation 1994* to be a "State electricity entity" for the other purposes, specifically: coverage by relevant awards of the Queensland Industrial Relations Commission; and application of government owned electricity entity conditions of employment contained in Chapter 7 of the *Electricity Regulation 1994*, e.g. long service leave, locality allowances etc.

How the Policy Objectives will be achieved

13% Gas Scheme amendments

The *Electricity Amendment Bill 2004* will put into place a legal framework for the Scheme, which is a key initiative of the *Queensland Energy Policy – A Cleaner Energy Strategy*. Under the Scheme, greenhouse gas emissions from electricity generated to support Queensland load will be significantly abated through mandating greater use of gas-fired generation - which has approximately half the greenhouse intensity of coal. It is estimated that the Scheme, will result in genuine abatement of approximately 19 million tonnes of greenhouse gas emissions over its 15 year life. In addition, the Townsville Power Station, which is significantly underpinned by the Scheme, is estimated to result in an additional 7.5 million tonnes of greenhouse gas abatement over the same period.

The Scheme will be certificate-based, similar in design to the Commonwealth's Mandatory Renewable Energy Target (MRET). It will

use a tradable financial instrument to provide incentives for the up-take of gas as a fuel source for electricity generation.

Under the Scheme, accredited generators of eligible gas-fired electricity will earn tradeable Gas Electricity Certificates (GECs). The additional income stream earned from the sale of GECs will assist gas-fired generators to compete with coal-fired plant in meeting Queensland's growing energy demand, resulting in greater diversification of the State's energy mix into the future. Importantly, a baseline will apply to eligible generation, ensuring that generators can only be rewarded for new or additional gas-fired electricity (above a 1999/2000 baseline), thereby facilitating new investment in gas-fired plant and maximising greenhouse gas savings.

The Scheme identifies various liable persons who will be subject to the 13% liability. These liable persons (such as electricity retailers) will have an obligation to surrender GECs equal to 13% of their liable electricity load to the regulator each year. The liability essentially creates a market for the GECs produced by accredited generators. Liable persons who fail to surrender the required number of GECs to acquit their annual liability will be required to pay a non-compliance penalty (characterised as a civil penalty) per GEC shortfall.

As a general rule, liabilities will only apply to transactions that have some link to a major electricity grid, which currently include the East Coast grid and the Mount Isa - Mica Creek grid. This will ensure that electricity supply to remote areas, which is already costly, will not be subject to the costs of meeting the 13% liability. The exception to this is the liability imposed on 'small grid' generators who choose to participate in the Scheme to create GECs. Subject to this exception, the exclusion of the relatively small electricity loads delivered on small grids will also reduce the complexity and hence the costs of administering the Scheme, while having a negligible impact in terms of the environmental benefits delivered by the Scheme.

On the heels of MRET's success, a market based mechanism was chosen to achieve the policy objectives. The market based approach is considered more efficient than other methods, such as a direct subsidy, because the level of the subsidy provided to gas-fired generators is tied to the market. The value of GECs will be determined by the interaction of accredited generators, traders and liable persons, with the price being subject to negotiation and adjustments reflecting the demand and supply mix. The benefit of the market based approach is that the price of GECs should settle around the level required to allow enough gas-fired generation to enter the

market to meet the 13% target. Further, under this option the most efficient generators will tend to supply GECs ahead of less efficient and higher cost gas-fired generators who will not be able to offer competitive GEC prices.

The non-compliance penalty will ensure there is an incentive for liable persons to surrender GECs each year, while at the same time effectively setting a ceiling on GEC prices. The level of the penalty was chosen after substantial analysis of the likely additional price per Megawatt hour (MWh) required to enable new efficient gas-fired generators to compete with coal-fired plant.

ECPO amendments

The amendments to the *Electricity Act 1994* will provide that ECPO only makes its dispute resolution services available to those customers who consume less than 200,000 kWh per annum (equates to an electricity bill of approximately \$20,000 per annum). The retailers who only supply customers above this threshold (i.e. contestable customers) will not be required to contribute to the funding of the ECPO scheme.

The amendments will also establish provisions which enable the regulator to refuse to forward frivolous or vexatious disputes to an independent energy mediator or independent energy arbitrator for determination. In addition, the regulator will not be required to provide the contact details of the energy mediator or arbitrator to the parties in dispute; and the customer will be required to provide written notice of the non-acceptance of an order made by an independent energy arbitrator to the regulator only and the ECPO will advise other parties to the dispute.

Statutory authorities and powers amendments

The amendments proposed will essentially remedy deficiencies in the *Electricity Act 1994*. Transmission and distribution entities have clear statutory obligations to transmit and supply electricity, and also have authority to operate their transmission and supply networks. However, there is no explicit authority to transmit or supply electricity over land on which the network is built. Electricity entities already have powers of entry to undertake their operations and also have an obligation to minimise or make good any damage they cause. However, there is no clear power allowing an electricity entity to enter land to carry out remedial work where the land has been damaged by the entity's works.

GOC employment conditions amendments

The proposed amendments will provide a mechanism by which shared service subsidiary companies such as SEPL, can be given the status of

“State electricity entities” for the purposes of coverage of appropriate awards and employment conditions. This would ensure that the current employment conditions and entitlements of employees transferring from the electricity GOCs to these subsidiaries are preserved. A number of amendments to the *Electricity Regulation 1994* will also be required.

Estimated administrative costs to government for implementation

13% Gas Scheme amendments

Substantial consideration has been given to mechanisms that will minimise administrative costs for both participants and the regulator. This includes pursuing consistency with similar frameworks (such as the Commonwealth’s MRET) which are already known to industry, and linking into existing industry frameworks or processes such as the conventions of the National Electricity Market.

In addition, it is proposed that the Scheme will be administered with the assistance of a web-interactive GEC Registry allowing for electronic creation, validation, transfer and surrender of GECs. This should also assist in reducing staffing requirements and hence the operational costs of the Scheme.

The design, development, construction and operation of the interactive Registry is being outsourced through a competitive tender process as the required expertise does not exist within the Queensland public sector. The actual cost incurred for the design, development, construction and operation of the web-site will be subject to the outcome of the competitive tender process, noting that the cost will be a market based price.

A large portion, though not all of the costs associated with administering the Scheme, including staffing costs and the cost of developing and operating the web-site will be recovered through the charging of initial and recurring fees to participants in the Scheme. For example, a fee will be charged for accrediting generators and for the creation of a GEC.

ECPO amendments

Currently ECPO is fully funded by way of levies imposed by legislation on electricity entities. The annual operating cost of the office is approximately \$1.3 million. This amount is recouped from electricity entities via:

- a scheme membership fee;
- a fixed contribution fee based on the customer base of retailers;
- and

- user-pays fees that recover the cost of the scheme for disputes arising between customers and particular scheme members.

Although the amendment will ensure that retailers supplying only contestable customers will no longer need to contribute to funding ECPO, this will only have a marginal financial impact on ECPO revenue.

Statutory authorities and powers amendments

The proposed amendments will have no financial impacts.

GOC employment conditions amendments

The proposed amendments will have no financial impacts.

Consistency with fundamental legislative principles

13% Gas Scheme amendments

The *Electricity Amendment Bill 2004* has been drafted with due regard to fundamental legislative principles (FLPs), as defined in the *Legislative Standards Act 1992*. The Bill is largely consistent with the FLPs. However, there are some areas which may be considered inconsistent with the FLPs. These are discussed below.

Section 135CM - (*FLP issue – Effects on rights and liberties / administrative power subject to appropriate review - No right of review/ appeal on decision to fix annual QUF*): This section requires the Regulator to fix an annual Queensland Usage Factor (QUF) for an accredited generator. While key decisions throughout the Act are appealable, there is no ability to seek a review or appeal against this decision. Providing an appeal right in this instance would be extremely difficult as all power stations connected to the national grid and located in the same transmission zone will have the same annual QUF. This being the case, individual appeal rights would be impractical. In addition, the review and appeal processes of the *Electricity Act 1994* do not provide for a class action, nor do they provide a process for consideration of submissions by affected parties.

In accordance with section 24AA of the *Acts Interpretation Act 1954*, a right to make a decision includes a right to amend or repeal the decision. As such, the Regulator will have the ability to amend the decision if concerns are raised. It is fully intended that any concerns would be considered and consulted upon with other affected parties. In addition, accredited generators would have rights to appeal a decision under the *Judicial Review Act 1991* if there are concerns that the proper process as set out in the Act has not been followed.

Section 135CN - (*FLP issue – Effects on rights and liberties / administrative power subject to appropriate review - No right of review/ appeal on decision to fix baseline QUF*): For the reasons given in Section 135CM, no such right is provided for in relation to this decision.

Section 135DX - (*FLP issue – Matters appropriate to subordinate legislation - Regulation may impose market operating rules and arrangements*): This section is intended to cover ‘spot’ markets for trading GECs. While the general intent is to leave the market to the market, the ability to make a Regulation will give the Government the ability to introduce controls and performance standards if required. The form of such markets and the degree of regulation required cannot currently be predicted. The power to make such Regulation is required to give the Government the flexibility to respond quickly to any need for market rules that may arise in the future.

Section 135EG - (*FLP issue – Effects on rights and liberties – absence of proposed action notice and exclusion of right to stay of decision for immediate suspension of GEC*): The immediate suspension of a GEC is only to be allowed if the Regulator reasonably suspects that the holder may attempt to transfer the GEC. The reason behind the decision to immediately suspend a GEC is most likely to be a suspicion that the GEC has been improperly created and hence a desire to ensure the GEC cannot be transferred into the market. To provide a proposed action notice or stay of decision would defeat the purpose of this particular suspension. Further, while GEC purchasers who unknowingly buy improperly created GECs will not have the GECs taken from them, the entry of a significant number of improperly created GECs into the market has the potential to distort the GEC market. Accordingly, a mechanism must be available to ensure this can be minimised.

Section 135EK - (*FLP issue – Effects on rights and liberties - Exclusion of right to stay of decision for suspension of GEC resulting from proposed action notice*): As for section 135EG, the reason behind suspension of a GEC is in most cases likely to be a suspicion that the GEC has been improperly created and a desire to keep it out of the GEC market. A stay of decision in this case would expose market participants to the risk of being offered improperly created GECs.

Section 135FQ - (*FLP issue - Conclusive nature of assessment*): This section provides that an assessment under Chapter 5A is conclusive evidence of the proper making of the assessment. This is necessary to ensure that reviews and appeals of assessments are considered on their merits and not on whether the proper procedure has been followed.

Persons affected by assessments will still retain a right to seek a review/appeal of an assessment decision by the regulator.

Section 135IP - (*FLP issue – Effects on rights and liberties - Ability of Regulator to give audit notice for reasons not directly related to auditable person*): This section authorises the Regulator to give an audit notice on a random or other basis not directly connected to the auditable person. This is because the audit provisions are intended to be investigatory and monitoring in nature, in addition to underpinning enforcement of the Scheme. While a risk matrix or similar approach is likely to be the general tool underpinning audit selection, parties running similar Schemes have promoted the benefits of using the audit process for the education of participants who, at least initially, may struggle with the complexities of the Scheme. Further, the audit notice is to be accompanied by an information notice about the decision, including the reasons for the decision. In addition, the decision to give an audit notice is appealable, so this will safeguard against any oppressive exercise of the power.

Section 135IT - (*FLP issue – Effects on rights and liberties - Ability of Regulator to carry out audit for reasons not directly related to auditable person*): This section authorises the Regulator to make a decision to carry out an audit on a random or other basis not directly connected to the auditable person. This approach is considered reasonable, given the reasons set out in Section 135IP above.

Clause 17 (inserted Section 309) - (*FLP issue – Effects on rights and liberties - Ability to over-ride existing electricity supply contracts*): This clause enables liable persons to essentially over-ride contracts with contestable customers which were in force before 1 January 2003 and to pass-through the cost of complying with the Scheme.

Consultation with industry has revealed that there are likely to be a number of long-term electricity supply contracts in existence that were entered into before 1 January 2003 and which do not address the passing on of the costs associated with the Scheme.

To remedy this, the Act permits liable persons to pass on the reasonable costs incurred in meeting or managing the 13% liability where there was no review opportunity for the contract on or after 1 January 2003 (this date was chosen as the Final Position Paper outlining final design of the Scheme was released in September 2002). The reference to a review opportunity for the contract promotes negotiating chargeable amounts with the contestable customers rather than exercising legislative imposition. The clause also provides examples of reasonable costs that may be incurred in meeting or managing the liability. However, if the contract, by express

words, provides for who is liable for a particular chargeable amount, this clause does not apply.

The costs associated with the Scheme will be a new cost to business which would have been unforeseen by liable persons when the contracts were entered into. It is therefore considered appropriate that liable persons have the ability to pass on these costs to consumers rather than absorbing them. This will ensure that, as the community as a whole will benefit from the greenhouse gas reduction inherent in the Scheme, the cost of the Scheme will be shared by a large number of electricity consumers and hence, the community at large, rather than the costs being borne by only a small sector of the community.

ECPO amendments

The proposed amendment provides that ECPO will only make its dispute resolution services available to those customers who consume less than 200,000 kWh per annum. The clause reflects a policy decision that public benefit lies in this consumer protection measure being available to smaller (domestic and small business) consumers who may otherwise lack the financial or legal capacity to act effectively in their own interests. This is in line with similar consumer protection measure in the *Gas Supply Act 2003*, whereby Government has provided dispute resolution services to retail customers who consume less than 1 terajoule per year.

It is considered that limiting access to the dispute resolution service to smaller consumers is justifiable and is in the public interest. Larger customers will be directly contracted and disputation issues would be addressed in their negotiated contract with the relevant electricity entity.

Statutory authorities and powers amendments

Section 13 - (*FLP issue – effects on rights and liberties/natural justice*):
This clause contains:

- a provision which authorises an electricity entity to enter land with the occupier's consent or upon prior notice having been given to the occupier, to make good any damage caused to the land by the entity's works or operations (section 140A); and
- a further provision which authorises an electricity entity to enter land at any time and without prior notice or consent, to make good any serious damage caused to the land by the entity's works or operations in circumstances where the need to fix the damage is urgent (section 140B).

It is noted that sections 140A and 140B expressly do not authorise entry to a residence.

The provision which allows an electricity entity to enter land without consent or prior notice to carry out urgent remedial work can be justified on the basis that the power can only be exercised where reasonable grounds exist (i.e. the damage is serious and the need to fix the damage is urgent). Additionally, this provision still requires an entity to make a reasonable attempt to notify the affected occupier and seek their consent.

This provision can also be justified on the basis that the power to carry out urgent remedial work is beneficial to an affected occupier as it provides for a process to remedy, without any delay, serious damage to such occupier's land.

In addition, the power to enter land to carry out remedial work is qualified by the inclusion of a new provision (Clause 15) which requires the entity to minimise inconvenience and damage to the land. Also, if the power is exercised, the existing safeguards under section 142 (notice of any damage must be given by the electricity entity to the affected person) and section 143 (the right to claim compensation for damage) will apply.

GOC employment conditions amendments

There are no FLP issues.

Consultation

13% Gas Scheme amendments

Substantial consultation has been carried out throughout the development of the policies underpinning the Bill. Key documents released to date include:

- Consultation Paper September 2001
- Penalty Paper December 2001
- Final Position Paper September 2002

The decision to consult closely with key stakeholders throughout the policy development process has been crucial to ensuring the design of the Scheme is practical, and has resulted in broad support for the final design of the Scheme as communicated in the Final Position Paper.

The final phase of consultation took place over July 2004 with the release of the draft 13% Gas Scheme legislation for public comment. Key industry, community and government stakeholders were contacted directly and invited to forward submissions. Broader public involvement was sought via advertising in newspapers and on relevant websites.

The results of the consultation process were largely favourable, with only 13 submissions received within the timeline and many comments of a minor or technical nature. All submissions have been considered in the process of finalising the Bill.

ECPO amendments

Agencies consulted include ENERGEX Limited, Ergon Energy, the Department of Premier and Cabinet, the Department of Treasury and the Department of State Development. There is support for the proposed amendments.

Statutory authorities and powers amendments

Agencies consulted include Powerlink Queensland, ENERGEX Limited, Ergon Energy and the Department of Justice and Attorney-General. There is support for the proposed amendments.

GOC employment conditions amendments

Consultation was undertaken with all relevant energy unions. Ergon Energy and ENERGEX Limited have also been consulted. No objections have been raised by stakeholders and within Government.

Notes on Provisions

Short Title

Clause 1 sets out the short title of the Act as the *Electricity Amendment Act 2004*.

Commencement

Clause 2 provides that the Act will commence on a date to be fixed by proclamation.

Act amended

Clause 3 provides that the *Electricity Amendment Act 2004* amends the *Electricity Act 1994*.

Clause 4 amends section 64A(1)(b) of the *Electricity Act 1994* by omitting the requirement for retailers without a retail area who only supply customers whose consumption of electricity has been more than 200,000

kWh in any 12 month period to contribute an annual membership fee, contribution and user-pays fee for dispute resolution and complaint investigation services.

Clause 5 inserts new sections 113A and 113B which expressly authorise transmission and distribution entities to transmit or supply electricity through transmission or distribution lines which have been built on land acquired by the entity or over which the entity holds an easement or other agreement in relation to the transmission or distribution line.

Clause 6 amends section 114 to provide that subsection (2) of section 114 of the *Electricity Act 1994* (an electricity entity must compensate a person for damage to the person's property caused by the exercise of a power under Part 4 of that Act) is subject to sections 97 and 97A of that Act (limitation of liability of electricity entities).

Clause 7 amends section 117(1A) of the *Electricity Act 1994*, to the effect that disputes under chapter 5A are not to be dealt with under that section.

Section 8 amends section 119(2) of the *Electricity Act 1994*, to the effect that a dispute which involves a customer whose consumption of electricity has been more than 200,000 kWh in any 12 month period or a dispute relating to chapter 5A are not to be dealt with under that section.

This clause also amends section 119(8) to enable the regulator not to refer a dispute to an energy mediator or arbitrator, if the regulator considers the subject of the dispute is frivolous or vexatious.

Clause 9 amends section 120ZE(b) of the *Electricity Act 1994* by omitting the requirement of the regulator to provide contact details of an energy mediator to the parties in dispute.

Clause 10 amends section 120ZS(2)(b) of the *Electricity Act 1994* by omitting the requirement of the regulator to provide contact details of an energy arbitrator to the parties in dispute.

Clause 11 amends section 120ZZC(1) to provide that a party to a dispute must give written notice to the regulator within 21 days after receiving the energy arbitrator's order, if the party does not accept the arbitrator's order.

Clause 12 inserts new chapter 5A 13% Gas Scheme as follows:

Chapter 5A 13% gas scheme

Part 1 Introduction

Division 1 Purposes of chapter

Section 135A states the main purposes of chapter 5A.

Section 135AA broadly describes how the main purposes of the chapter are to be achieved.

Division 2 Definitions for ch 5A

Section 135AB provides a general definition of a power station for the purposes of chapter 5A. It also defines the nameplate capacity of a power station. While the ability to define a power station is relevant to the accreditation process, it is particularly relevant to the determination of what is auxiliary load for a power station. For instance, if a piece of equipment is not considered part of a power station, its electricity use could not be considered auxiliary load.

Section 135AC defines who is the economic operator of a power station and is relevant to who may apply for accreditation of a power station. The aim here is to target the party with responsibility for the financial decisions of the power station, such as when to run and under what terms contracts will be struck.

Section 135AD defines the eligible fuels for eligible gas-fired electricity.

Section 135AE defines the auxiliary load of a power station. Subsection (1) (c) is designed to clarify that auxiliary loads used during the commissioning period will be considered auxiliary if they are of a type mentioned in (a) or (b). Subsection (2) defines the auxiliary load of the power station if the electricity used within a power station is a pumping load for a pumped storage hydro power station.

Section 135AF defines what is a major grid and what is a small grid.

Section 135AG defines a “substantive traceable link” to a major grid for the purposes of part 5.

Section 135AH defines what a direct supply arrangement is. Apart from capturing arrangements involving a direct physical connection, it also allows electricity supplied via an overwhelmingly gas-fired grid to be considered a direct supply arrangement.

Section 135AI defines an electricity load.

Section 135AJ provides for who are the baseline customers of an accredited power station for the purposes of part 3, division 5 (Baselines for baseline customers). For the purposes of fixing baselines, electricity delivered to National Electricity Market Management Company (NEMMCO) is taken to be delivered to a single baseline customer, NEMMCO.

Section 135AK provides definitions for various terms used in chapter 5A.

Part 2 Accreditation

Part 2 establishes a regulatory framework for the accreditation of gas-fired power stations.

In general terms, accreditation under part 2 gives generators the right to create GECs for the electricity they generate:

- from eligible fuels;
- above a nominal 1999-2000 baseline (denoting ‘existing’ gas-fired generation);
- which supports electricity load in Queensland (determined by applying Queensland usage factors and loss factors).

Accredited generators also have rights to transfer and mortgage GECs.

Division 1 Applying for and obtaining accreditation

Section 135AL sets out the requirements regarding who may apply for accreditation of a power station or proposed power station. It clarifies that a single application for accreditation cannot relate to more than one power

station, but that a person may make more than one application for accreditation.

Section 135AM sets out the requirements for an application for accreditation of a power station or proposed power station.

Section 135AN states the procedure for deciding whether to grant or refuse an application for accreditation. It imposes an obligation on the regulator to grant the application only when satisfied of identified key requirements.

Sub-section (3) allows a decision to be deferred in order for a transmission zone to be prescribed and for subsequent fixing of relevant OUF's. Transmission zones relate to the fixing of the power station's QUF, which estimates the proportion of a power station's output delivered to Queensland. For some areas of the State that are not connected to the national grid and hence unable to export electricity out of Queensland, declaration of a transmission zone will not be necessary.

Section 135AO sets out some rules underpinning the deciding of some of the ancillary matters for a power station or proposed power station.

Sub-section (2) provides that the regulator need not apply loss factors to the calculation of eligible gas-fired electricity worked out under direct method A as detailed in section 135CD(6). This is because the direct method involves the use of a delivered amount of electricity and, depending on the location of the delivery meter, losses are likely to be accounted for in the meter reading. In addition, depending on the length of the electric line, losses between the delivered meter and the point of use may be negligible.

It should be noted that direct method B of 135CD(6) incorporates the application of a loss factor. This may occur, for example, if the configuration of the network or site has resulted in the delivery meter being situated a substantial distance from the point of use of the electricity. In this case, a loss factor would be required to ensure consistency with the general policy that GECs will be created for electricity that supports Queensland load, and not for electricity that is 'lost in transit'.

The regulator also has discretion to accept different measurement methods for a power station. For example, while some quantities relevant to the calculation of eligible gas-fired electricity may be metered, some internal loads may be unmetered and the regulator may be prepared to accept a measurement method using estimations or averages. However, the regulator must accept measurement arrangements if the regulator is satisfied that they comply with the requirements of the National Electricity Code. A key driver behind these arrangements is a wish to minimise compliance costs for participants.

Section 135AP allows the regulator to make a provisional decision to grant accreditation of a power station, subject to being satisfied of matters that the regulator was unable to decide upon considering the application.

This provision acknowledges that accreditation applications may relate to proposed power stations for which some information is not available. It will enable power station proponents to judge whether they would obtain full accreditation if they bring the project to fruition. This will enable them to consider any potential to earn an income from GECs when addressing project finance.

Section 135AQ sets out the steps the regulator must take when granting an accreditation and the matters that must be dealt with in the accreditation documents.

Section 135AR provides for the day of effect of an accreditation and the term of an accreditation.

Section 135AS provides that a change in the economic operator of a power station does not of itself affect an existing nomination of a person to be the accredited generator for a power station. A new economic operator would need to withdraw the nomination by notice to the regulator if they wanted to change the existing arrangements.

Division 2 Accredited generator's rights

Section 135AT sets out an accredited generator's rights to create, transfer and mortgage GECs.

Division 3 Standard accreditation conditions

Section 135AU addresses the main purpose of division 3. It clarifies that the conditions imposed by the division (the "standard accreditation conditions") apply in addition to any special conditions that may be stated in the accreditation, and that a standard accreditation condition prevails over a special condition, to the extent of any conflict or inconsistency between the two.

Section 135AV imposes a condition on accredited generators to give information relating to the working out of eligible gas-fired electricity, for which a GEC was created, immediately after its creation.

Section 135AW imposes a condition on accredited generators to keep documents relating to the working out of eligible gas-fired electricity and the creation of GECs for 5 years after the creation of the GEC.

Section 135AX imposes a condition that an accredited generator must comply with a GEC surrender direction or direction given by the regulator under clauses 135CF (Directions for working out eligible gas-fired electricity) and 135JC(2) (Decided method must be applied).

Section 135AY imposes a condition on accredited generators not to improperly create GECs. The creation of GECs must be done in accordance with the requirements of part 3 (Eligible gas-fired electricity) and part 4, division 1 (Creation and registration of GECs).

Section 135AZ sets out particular matters or events of which an accredited generator must notify the regulator. These are matters that may impact on their accreditation or on the calculation of eligible gas-fired electricity by the accredited generator.

Section 135B imposes a condition on accredited generators requiring them to periodically undertake a review of information the accredited generator has used to work out eligible gas-fired electricity for which GECs have been created.

The GEC review is designed to acknowledge that the meter data used to create GECs may be subject to minor revisions/corrections at a later date, and as such minor inaccuracies will be inherent in the creation process. The GEC review ensures the generator has an obligation to periodically identify inaccuracies and the implications of those inaccuracies, including what may technically be improperly created GECs.

Section 135BA imposes a condition on accredited generators to take certain actions if it is found that the generator has improperly created GECs or where a GEC review finds that information used to calculate eligible electricity was not accurate.

The provision is designed to acknowledge the minor inaccuracies that will be inherent in the creation process (due to the timing of meter data revisions) and gives the generator the opportunity to take action to voluntarily remedy what may technically be minor breaches of accreditation conditions. Subject to the potential 30-week lag in finalisation of data, the intent is that by the end of the calendar year the generator will have periodically adjusted their creations to ensure that they have not created more than one GEC for each MWh of eligible gas-fired electricity.

Section 135BB imposes a condition on accredited generators to keep documents relating to GEC reviews for a period of 5 years after the end of the year in which the review was carried out, unless they have a reasonable excuse.

Section 135BC imposes a condition on accredited generators requiring them to allow, after the giving of reasonable notice, access to the accredited power station by an identified official for the purpose of obtaining information relevant to the accreditation or to monitor compliance. The accredited generator must provide safe access for officials.

Section 135BD imposes a condition on accredited generators to give the regulator information relevant to the determination of the accredited power station's annual loss factor, if the generator is asked to do so.

Section 135BE imposes a condition on accredited generators to pay an annual fee and provide an annual electricity generation return for the previous year.

Section 135BF imposes an obligation on accredited generators to keep all documents the generator used to make each annual electricity generation return for a period of 5 years after giving the return, unless they have a reasonable excuse.

Section 135BG imposes a condition on accredited generators to comply with any conditions of accreditation prescribed under a regulation.

Section 135BH imposes a condition on accredited generators to pay all monies that the accreditation or the chapter requires them to pay.

Section 135BI provides that an accredited generator must not contravene a condition of the accreditation. It ensures contravention of a condition is an offence and prescribes a maximum penalty that may be applied if prosecution is pursued.

Division 4 Dealings with accreditation

Subdivision 1 Transfers

Section 135BJ provides that an accreditation may be transferred. Further, an accreditation may only be transferred if an application is made under the subdivision and a purported transfer not made under the subdivision has no validity.

Section 135BK sets out the requirements for an application to transfer an accreditation.

Section 135BL states the procedure for deciding whether to grant or refuse an application to transfer an accreditation. It authorises the regulator to impose conditions on giving the approval. For example, because of the date of effect of relevant contracts, the regulator may decide it is appropriate to impose an appropriate date of effect for the transfer.

Subdivision 2 Surrenders

Section 135BM provides that an accredited generator may apply to surrender an accreditation and sets out the relevant application requirements.

Section 135BN sets out the process for deciding whether to grant or refuse to grant an application to surrender an accreditation. It enables the regulator to impose conditions on giving the approval. For example, the regulator may accept the surrender subject to receiving an appropriate electricity generation return from the generator.

Section 135BO provides that if the surrender of an accreditation is approved and all conditions of the approval have been complied with, the accreditation ceases to have effect. It also provides that if an accredited generator holds GECs immediately prior to the surrender of the accreditation, after the surrender the accredited generator is taken to be only a scheme participant.

Division 5 Amendment, cancellation and suspension of accreditation

Subdivision 1 Amendment by application

Section 135BP provides that an accredited generator may apply to the regulator to amend an accreditation and sets out the relevant application requirements. It also identifies two amendments which may not be sought by an accredited generator - to amend a condition imposed under division 3 or to add another power station to the accreditation.

Section 135BQ sets out the process for deciding to grant or refuse an application to amend an accreditation.

Subdivision 2 Amendment by regulator without proposed action notice

Section 135BR sets out the circumstances under which the regulator may amend an accreditation without first issuing a proposed action notice.

Subdivision 3 Other amendments, cancellation and suspension

Section 135BS authorises the regulator to suspend the accreditation if an accredited generator does not pay an annual fee. The suspension ends, if the annual fee is paid. The clause also outlines the effect of a suspension of the accreditation for non-payment of the annual fee. This suspension does not limit the regulator's powers to amend, cancel or suspend an accreditation or to suspend an accredited generator's right to create GECs under 135BT and is regarded as a "complete suspension" defined in 135BT.

Section 135BT authorises the regulator to amend, cancel or suspend an accreditation or an accredited generator's right to create GECs, as long as the conditions under 135BU and the processes set out in subdivision 3 are complied with.

The section also outlines the effect of a suspension of an accredited generator's right to create GECs and identifies two different types of suspensions.

- (a) An accredited generator may be subject to a "complete suspension" of their right to create GECs. Under this type of suspension, the generator loses the right to ever create GECs for eligible gas-fired electricity generated during the suspension period.
- (b) An accredited generator may be subject to a "limited suspension" of their right to create GECs. Under this type of suspension, the generator is prohibited during the period of suspension from creating GECs for electricity generated during that period. However, the accredited generator may create GECs for eligible gas-fired electricity generated during the period once the suspension ends.

Section 135BU sets out the conditions upon which the regulator may commence proceedings to amend or cancel an accreditation or suspend an accredited generator's rights.

It enables the regulator to take action if the accredited generator is not the economic operator and either the accredited generator has not been nominated by the economic operator or their nomination has been

withdrawn. This is designed to ensure that unauthorised person cannot maintain an accreditation and create GECs. This may occur, for example, if a power station proponent obtains a provisional decision to grant an accreditation and the regulator is later obliged to grant an accreditation to them, however because of the contractual arrangements for the project it has turned out that the original project proponent is not the economic operator and has no nomination from them. In reality, the party would be encouraged to make arrangements with the economic operator prior to an accreditation being granted.

Section 135BV requires the regulator to give an accredited generator notice of a proposed amendment, cancellation or suspension. It sets out the information that must be provided in the notice and the minimum period within which the accredited generator must be invited to make submissions.

Section 135BW places an obligation on the regulator to consider any submissions made by an accredited generator in response to a proposed action notice. However, the regulator is only obliged to consider the submission if it is received within the period stated in the notice for lodgement of a submission.

Subsection (2) places an obligation on the regulator to advise the accredited generator if the regulator decides not to take the proposed action.

Section 135BX sets out the process where the regulator considers a submission by the accredited generator but still believes a ground exists for the proposed action. It provides that a decision to suspend may be no longer than the period of suspension stated in the proposed action notice. However, if the proposed action was to cancel the accreditation, the regulator has the flexibility to instead suspend for a stated period.

Section 135BY requires the regulator to give an information notice to the accredited generator about a decision to take a proposed action. It also provides for the date of effect of a decision, but if the action was proposed because of a conviction that the decision would have no affect until after any appeal against the conviction has been decided or otherwise ended.

Section 135BZ provides that a cancelled accreditation ceases to have effect. It also provides that if an accredited generator holds GECs immediately prior to the cancellation of the accreditation, after the cancellation the accredited generator is taken to be only a scheme participant.

Section 135C places an obligation on an accredited generator whose accreditation is cancelled to provide a final annual electricity generation return to the regulator.

Part 3 Eligible gas-fired electricity

Part 3 establishes the key formulas to be used by accredited generators when calculating their eligible gas-fired electricity. It also addresses some of the key factors applied in the formulas, including Queensland usage factors (QUFs), loss factors and baselines.

QUFs and loss factors are applied to the calculation of eligible gas-fired electricity for the purpose of estimating the proportion of a power station's output delivered to Queensland. This is because GECs can only be earned for electricity that supports Queensland load.

In addition, generators can only earn GECs for new or additional gas-fired electricity above their allocated baseline for each baseline customer (see section 135AJ). The baseline figure is based on gas-fired electricity sent out or delivered to the customer in the baseline year (nominally 1999-2000).

Subdivision 3 of division 1 provides alternative methods for calculating the eligible gas-fired electricity generated by small accredited power stations.

Division 1 Working out eligible gas-fired electricity

Subdivision 1 Preliminary

Section 135CA explains that the purpose of the division is to effectively define eligible gas-fired electricity. It clarifies that a power station with more than one baseline customer must calculate eligible gas-fired electricity separately for each of its baseline customers. However, practically this will only be necessary if these customers have a baseline other than zero.

Example:

A power station was commissioned prior to 24 May 2000 using 100% eligible fuels. For the 1999-2000 financial year the power station supplied 200,000MWh through the National Electricity Market (NEM) and

100,000MWh directly to end user A. By 2005, electricity supplied to the NEM has increased to 500,000MWh, while electricity supplied to end user A has dropped to 80,000MWh. In addition, the power station picks up a new customer, end user B, to whom they directly supply 50,000 MWh per annum.

The power station's identified baseline customers and their corresponding baselines denoting eligible gas-fired electricity supplied in the baseline year are:

NEMMCO	=	200,000MWh
End User A	=	100,000MWh
End User B	=	0

For simplicity, both a QUF and loss factor of 1 are used. The use of direct method A has been approved for electricity supplied to end user A and end user B because they are direct supply arrangements and losses between the delivery meter and the point of use are considered to be negligible.

The separate calculations are as follows.

For electricity supplied to NEMMCO, eligible gas-fired electricity is -

$$\begin{aligned}
 EE &= (SO\ Gen \times \%EF \times QUF \times LF) - BL \\
 EE &= (500,000 \times 100\% \times 1 \times 1) - 200,000 \\
 EE &= 300,000MWh \\
 &= 300,000\ GECs
 \end{aligned}$$

For electricity supplied to end user A, eligible gas-fired electricity is -

$$\begin{aligned}
 EE &= (ED \times \%EF \times QUF) - BL \\
 EE &= (80,000 \times 100\% \times 1) - 100,000 \\
 EE &= 0MWh \\
 &= 0\ GECs
 \end{aligned}$$

For electricity supplied to end user B, eligible gas-fired electricity is -

$$\begin{aligned}
 EE &= (ED \times \%EF \times QUF) - BL \\
 EE &= (50,000 \times 100\% \times 1) - 0 \\
 EE &= 50,000MWh \\
 &= 50,000\ GECs
 \end{aligned}$$

The total amount of eligible gas-fired electricity supplied by the power station in 2005 is 350,000MWh. The decreased consumption of electricity by end user A, does not affect the calculation of eligible gas-fired electricity for the power station's other baseline customers.

Subdivision 2 Power stations with nameplate capacity of more than 500 kW

Section 135CB states that the subdivision applies to power stations of more than 500kW nameplate capacity.

Section 135CC provides the primary formula to be used by power stations over 500kW nameplate capacity to work out eligible gas-fired electricity.

Section 135CD allows accredited generators or the applicant for accreditation to apply to the regulator to use a direct method to work out eligible gas-fired electricity in relation to electricity delivered under a direct supply arrangement. It provides two alternative formulas to be used in applying a direct method and places an obligation on the accredited generator to use a direct method where an approval has been granted.

Method B incorporates the application of a loss factor, while Method A does not. Method A is likely to be the more common formula applied. This is because the direct method involves the use of a delivered amount of electricity and, depending on the location of the delivery meter, losses are likely to be accounted for in the meter reading. In addition, whether losses are considered negligible or not will depend on the length of the electric line between the delivery meter and the point of use. Method B may be approved, for example, if the configuration of the network or site has resulted in the delivery meter being situated a substantial distance from the point of use of the electricity. In this case, a loss factor would be required to ensure consistency with the general policy that GECs will be created for electricity that supports Queensland load, and not for electricity that is 'lost in transit'.

Section 135CE provides that amounts of electricity for which a direct method has been approved must be deducted from the power station's electricity sent out before this figure is used in applying the general method.

Section 135CF authorises the regulator to give an accredited generator directions about how to work out any factor used to calculate their eligible gas-fired electricity. It essentially allows the regulator to give the generator directions regarding any subsidiary calculations required to arrive at the key figures for either the general method or direct method formulas.

Subdivision 3 Power stations with nameplate capacity of 500 kW or less

Section 135CG states that the subdivision applies to power stations with a nameplate capacity of 500kW or less.

Section 135CH allows for a regulation to prescribe the amount of eligible gas-fired electricity for a power station. However, a regulation may only be made if the power station's baseline for all of its baseline customers is 0.

While it is not intended to make a regulation at this time, it is possible that classes of small generators (for example, fuel cells or micro-turbines used in embedded applications) may emerge for which it would not be cost effective to create GECs unless a simplified method of calculating eligible gas-fired electricity were available. This section would enable deemed figures to be prescribed where practicable, similar to arrangements for small generators under the Commonwealth's MRET.

Section 135CI enables an accredited generator or an applicant for accreditation to apply to the regulator for approval to use a method based on averages or estimates to work out eligible gas-fired electricity. The ability to make such arrangements will enable small generators to avoid substantial compliance costs such as those that may be associated with installing and periodically testing metering equipment.

Section 135CJ requires that small generators use the methods set out in subdivision 2, if no eligible gas-fired electricity has been prescribed and no method has been approved under subdivision 3.

Division 2 Eligible electricity guidelines

Section 135CK authorises the regulator to issue guidelines about the data that may be used to work out eligible gas-fired electricity. Typically, the guidelines will set out requirements regarding the meter data that should be used to support the creation of GECs.

For example, a single guideline may be developed for NEM generators, while a non-NEM generator may have guidelines specific to their arrangements. For NEM generators, while meter data is received earlier, reliable corrected data is not received until approximately 20 days after generation. However, this corrected data is subject to two revisions, with the final revision occurring approximately 30 weeks after generation. Because of the potential for distortion of the GEC market it would not be

practical to ask generators to wait 30 weeks to create GECs. Accordingly, guidelines will identify which data sets should be used to support the initial creation of GECs and how subsequent revisions of data should be dealt with. The guidelines will aim to provide clarity for generators who receive a raft of data relating to their generation and to minimise the likely incidence of error in the data supporting the GEC creation process.

Section 135CL requires the regulator to give each accredited generator a copy of the guidelines applying to them. It also provides that the guidelines only take effect for a generator on the day of effect stated in the guidelines or the day the generator's accreditation takes effect, whichever is later.

Division 3 Queensland usage factors

Section 135CM requires the regulator to fix an annual QUF for each accredited generator for each financial year. The QUF is applied in the calculation of eligible gas-fired electricity and has the purpose of estimating the proportion of an accredited generator's sent out electricity delivered to Queensland consumers. While the intention is to gazette QUFs in advance of each new financial year, to cater for any delays in the availability of data supporting their calculation (supplied from outside sources), the last annual QUF will apply until the new one is gazetted.

Section 135CN requires the regulator to fix a baseline QUF to be applied in calculating an accredited generator's baseline (where the baseline is not zero). In general terms, the baseline represents the power station's generation of electricity from eligible fuels in the baseline year (nominally 1999-2000). The application of a baseline QUF ensures the baseline figure is adjusted to reflect the estimated proportion of electricity delivered to Queensland consumers in the baseline year. Given that the baseline relates to a single point in time, the baseline QUF will only need to be calculated once.

Section 135CO authorises the making of a regulation prescribing transmission zones for the fixing of both annual and baseline QUFs. Transmission zones will be based on areas of the electricity grid where incoming and outgoing electricity is predominantly transported by high voltage transmission lines that are heavily loaded compared with their capacity and as a result constrained. These are areas of the electricity grid/networks in effect created by the physical constraints of the system.

Section 135CP provides that the same QUF must be fixed for each power station supplying electricity into the same interconnected grid or supply network within the same transmission zone and which is connected to the national grid. For power stations requiring baseline QUFs, the baseline QUF will only be the same if the power stations have the same baseline year and they supply electricity into the same interconnected grid or supply network within the same transmission zone and which is connected to the national grid. The section also sets out the matters to be considered in fixing these QUFs.

This section will capture power stations connected to the national grid and hence with the potential to send electricity across state boundaries.

Section 135CQ allows the regulator to fix different QUFs for different periods. This will enable the substantially different interstate flows in the peak and off-peak periods of the day to be captured in the application of the QUF.

Division 4 Loss factors

Section 135CR provides that the regulator must fix an annual loss factor for each accredited power station for each financial year by information notice given to the accredited generator. The annual loss factor represents the power station's estimated contribution during that year to electricity losses in the transmission grid or supply network through which it supplies electricity. Until the day of effect of the annual loss factor, the last annual loss factor fixed for the power station continues to apply.

Section 135CS provides that the regulator must fix a power station's baseline loss factor. A power station's baseline loss factor is the power station's contribution, during its baseline year, to electricity losses in the transmission grid or supply network through which it supplies electricity. In certain cases mentioned in the clause a baseline loss factor need not be set. Given that the baseline relates to a single point in time, the baseline loss factor will only need to be fixed once.

Section 135CT sets out various guidelines for the regulator in fixing loss factors. Where a power station's supply to a transmission grid or supply network has the overall effect of reducing electricity losses in the grid, its annual loss factor or baseline loss factor may be fixed as 1 or more than 1. The regulator can apply loss factors fixed under the Market Code. The loss factors set under this Act may comprise different components. For

example, it may comprise a distribution network loss factor for the supply network and a transmission network loss factor for the transmission grid.

Section 135CU provides that loss factors set by the regulator must be published in the gazette.

Division 5 Baselines for baseline customers

Subdivision 1 Introduction

Section 135CV provides that a power station's baseline for a baseline customer is the figure provided for that, as at 24 May 2000, represented the power station's annual generation of electricity from eligible fuels delivered to the baseline customer.

Section 135CW provides that the purpose of the baseline is to ensure that only new or additional gas-fired electricity generated after 24 May 2000 can be used to create GECs.

Subdivision 2 Baseline for existing baseline customers

Section 135CX states the application of subdivision 2. Subdivision 2 enables the calculation of a baseline for a power station's baseline customer where the accredited power station supplied electricity under an arrangement that was in force on 24 May 2000. The baseline calculated under subdivision 2 can be changed under subdivision 4 (Changes to baseline).

Section 135CY sets out the general method for working out a power station's baseline for a baseline customer. The regulator must work out an amount that fairly represents the amount of electricity the power station generated from eligible fuels and sent to the customer during either the 1999 – 2000 financial year or the first 12 months of commercial operation of the power station. The latter period is only to be used if the power station was commissioned or first started to generate electricity from eligible fuels during the 1999 – 2000 financial year. However, if the regulator considers that neither of the periods mentioned represent the power station's typical annual generation for the baseline customer as at 24 May 2000 the regulator may fix the baseline for that baseline customer by reference to another 12 month period that the regulator considers is more representative of its typical annual generation as at 24 May 2000 or by extrapolating the average monthly generation from a part of the period the regulator considers is more representative of its typical annual generation

as at 24 May 2000. The figure obtained by applying the preceding calculations is then multiplied by the power station's baseline QUF and baseline loss factor (subject to subsection 2 of 135AO) to give the power station's baseline for the baseline customer. Subsection 5 provides for when a power station is considered to be "commissioned".

Section 135CZ provides for an alternate method to work out a power station's baseline for a baseline customer. The alternate method may be used if the supply to the customer is under a direct supply arrangement and the accredited generator for the power station, or an applicant for the accreditation, has agreed with the regulator to work out the customer's baseline on the basis of electricity delivered to the customer. The section provides that the regulator must work out the relevant amount delivered to the customer as opposed to the sent out amount that is referred to in the preceding clause.

Section 135D provides that the regulator must give the baseline customer an information notice about the baseline worked out under the preceding sections. This, in effect, sets out certain review and appeal rights and ensures awareness of the baseline for the purposes of section 135EP(1)(a).

Subdivision 3 Baseline for other baseline customers

Section 135DA provides that the baseline for a customer to whom an accredited power station sends electricity generated from eligible fuels and who was not a baseline customer of the power station on 24 May 2000, is zero.

Subdivision 4 Changes to baseline

Section 135DB provides that if a baseline customer ceases to be a customer of an accredited power station, the power station ceases to have a baseline for the customer. This does not affect the power station's baselines for other baseline customers.

Section 135DC provides for the transfer of a baseline of a baseline customer from one accredited power station to another where that customer ceases to be a customer of the first power station and within 12 months becomes a customer of the second accredited power station under a direct supply arrangement. This is designed to ensure that when a baseline customer transfer takes place, all arrangements for GEC creation in relation to that customer remain static.

Section 135DD provides that where a baseline customer ceases to be a customer of a power station and becomes a customer of another customer

of the power station where that other customer is not NEMMCO, then the other customer's baseline is increased by the amount of the power station's baseline for that former customer.

Part 4 GECs

Part 4 deals with Gas Electricity Certificates or "GECs". It provides for the term or life of a GEC and addresses the fundamental issues of creation and registration.

It also deals with the transfer, mortgaging, surrender, amendment, suspension and cancellation of GECs. Importantly, division 2 addresses offences for the improper creation or receipt of GECs.

Division 1 Creation and registration of GECs

Section 135DE provides that GECs can only be created for each whole MWh of eligible gas-fired electricity. However, eligible gas-fired electricity that supplies a power station's auxiliary load cannot be used to create GECs.

Section 135DF provides that if eligible gas-fired electricity is used to create a certificate under the New South Wales Greenhouse Gas Abatement Scheme (*Electricity Supply Act 1995* (NSW), part 8A) or a certificate under any other State or Federal greenhouse gas reduction scheme then a GEC cannot be created in respect of that electricity. For another example, refer to the Commonwealth MRET scheme.

Section 135DG provides that GECs must be created within 12 months of the month in which the eligible gas-fired electricity was generated.

Section 135DH provides for how a GEC is created.

Section 135DI provides that a GEC that has been created only takes effect and continues to be in force once it is registered by the regulator. Therefore there is a two step process with GECs, firstly creation and secondly registration after validation by the regulator.

Section 135DJ sets out the process the regulator follows in determining whether a GEC that has been created should be validated and registered.

Section 135DK allows the regulator to automate electronically the validation and registration process. A web-accessible GEC Registry will be established to register the creation, validation, transfer and surrender of GECs.

Section 135DL allows the regulator to register a GEC even if the prescribed fee has not been paid. The unpaid amount may be recovered by the regulator as a debt.

Section 135DM provides that, apart from the circumstances mentioned in that clause, a GEC that is registered is taken to be validly created.

Section 135DN provides for ownership of GECs on registration. Note that registered GECs are subject to mortgages created by the accredited generator.

Division 2 Improper creation or receipt of GECs

Section 135DO provides that only accredited generators can create GECs. All persons, including accredited generators, cannot create GECs if they know the GEC was not validly created. A lesser offence is provided in subsection 2.

Section 135DP provides that it is a defence to a proceeding for improper creation of GEC to establish that the person complied with the eligible electricity guidelines.

Section 135DQ provides that where GECs have been improperly created by an accredited generator that generator can be forced to surrender an equivalent number of validly created GECs.

Section 135DR provides that persons cannot give the regulator a notice accepting a transfer of improperly created GECs in the circumstances specified in that clause.

Division 3 Term of GECs

Section 135DS provides that GECs have a life span of up to but not more than 3 calendar years.

Section 135DT provides that GECs that are surrendered or cancelled cease to be in force. Suspended GECs have no force during the suspension period.

Division 4 Dealings with GECs

Subdivision 1 Transfers

Section 135DU provides that a GEC can only be transferred if it is in force. A transferee of a GEC must be a scheme participant. A transfer other than in compliance with subdivision 1 is not valid.

Section 135DV sets out the requirements for a valid transfer of a GEC. It imposes an obligation on the transferor to notify the regulator of a transfer in ownership of a GEC – for the purposes of enabling the updating of the GEC Registry. The regulator does not decide the transfer. However, for confirmation purposes, the regulator will only make the change once the transferee has notified of acceptance of the transfer. The transfer does not represent a trade, but simply ensures the Registry reflects the results of a trade that has occurred in the market.

Section 135DW provides that if a GEC is transferred the transferee becomes its registered owner. The section sets out the conditions on which a transferee becomes registered owner of the GEC. The transferee takes the GECs free from any legal or equitable interests but subject to a mortgage or equity to which transferee is a party. This is not the case if fraud is involved.

Section 135DX establishes the power to make regulations setting out market operating rules and arrangements if a spot market for GECs is established and the Government believes such regulations are warranted.

Subdivision 2 Mortgages

Section 135DY provides that a registered owner of a GEC may mortgage the GEC without the approval of, or notice to the regulator.

Section 135DZ provides that mortgagees intending to transfer GECs pursuant to the exercise of a power of sale must give notice to the regulator.

Section 135E provides that mortgagees exercising their powers in relation to a GEC, are subject to chapter 5A as if they were the registered owner of the GEC.

Subdivision 3 Surrenders

Section 135EA provides that a GEC can be surrendered only by complying with subdivision 3 and only if the regulator has accepted the surrender.

Section 135EB provides that surrender applications can only be made by the registered owner of a GEC or the accredited generator that created a GEC may apply to surrender it at the time of creation.

Section 135EC sets out the requirements for a surrender application.

Section 135ED gives the regulator the power to accept a surrender application where the prescribed fee has not been provided, but enables the later recovery of the fee as a debt.

Section 135EE sets out the process the regulator must follow in deciding surrender applications.

Division 5 Amendment, cancellation and suspension of GECs

Subdivision 1 Preliminary

Section 135EF states when division 5, part 4 applies. Division 5 deals with the amendment, cancellation and suspension of GECs. Note that it only applies if the GEC is of effect and the regulator reasonably believes that the GEC was not validly created. In addition, if the owner is not the creator of the GEC (that is the GEC has entered the market) this division only applies if the regulator reasonably believes the owner knew or ought to have known the GEC was not validly created. GECs only take effect if registered.

Subsection (2) provides that division 5 applies where an accredited generator has not complied with a GEC surrender direction. Subsection (3) provides that the division also applies if the registered owner of a GEC requests its cancellation.

Subdivision 2 Immediate suspension

Section 135EG provides for the immediate suspension of a GEC for no more than 40 business days if the regulator reasonably suspects that the owner may attempt to transfer the GEC. Immediate suspension takes effect immediately after the registered owner is given the suspension notice.

Subdivision 3 Amendment, cancellation or suspension (other than immediate suspension)

Section 135EH provides that the regulator may, by following the procedure under subdivision 3, amend, cancel or suspend (other than immediate suspension) the GEC. The regulator is not required to follow the procedures under the subdivision if the cancellation of the GEC was requested by its registered owner as specified in subsection (1).

Section 135EI provides that if the regulator intends to cancel, amend or suspend (other than immediate suspension) a GEC the regulator must give the registered owner a “proposed action” notice. It sets out the information that must be provided in the notice and the minimum period within which the registered owner must be invited to make submissions.

Section 135EJ provides that the regulator must consider any written submissions made within the period stated in the notice.

Section 135EK provides for the regulator making a decision on the proposed action. If the proposed action was to cancel the GEC, the regulator has the flexibility to instead suspend for a stated period.

Section 135EL provides for an obligation on the regulator to give the registered owner an information notice in relation to a decision to amend, cancel or suspend a GEC. It also provides for when a proposed action decision takes effect, but if the action was proposed because of a conviction that the decision would have no affect until after any appeal against a conviction has been decided or otherwise ended.

Part 5 13% liability

Part 5 imposes the 13% liability on identified liable persons. Liable persons must surrender to the regulator the number of GECs that, in general terms, equates to 13% of their identified liable electricity load for each year from 2005 to 2019. Division 3 deals with the related civil penalty.

While liable persons are required to self-assess their annual liability, division 4 deals with various types of assessments by the regulator. These are used, for example, where a party fails to submit a self-assessment or to check the accuracy of the self-assessments received.

Division 6 provides for various exemptions from the 13% liability, while division 7 identifies some non-liable electricity loads.

Division 1 Preliminary

Section 135EM simply explains the operation and effect of part 5. Part 5 imposes a liability to surrender GECs to the regulator. For the most part liable persons are persons who have a relationship with a major grid, with the liability imposed in respect of the sale or use of electricity loads. However, accredited generators connected to small grids will have a liability equal to 13% of the registered GECs created by them during the year. The major grid liability applies to all electricity loads with a number of exceptions. The exceptions are listed in section 135EM(4). The phrases “major grid” and “small grid” are defined in section 135AF. The phrase “electricity load” is defined in section 135AI.

Division 2 The 13% liability

Subdivision 1 Imposition of 13% liability in relation to major grids

Section 135EN states when subdivision 1 of division 2 of part 5 applies. Subdivision 1 imposes the 13% liability in respect of major grids. It does this by excluding from its operation accredited generators for power stations connected to a small grid.

Section 135EO states that division 5 provides for who is the liable person for the liable load.

Section 135EP creates an annual liability for the liable person from and including 1 January 2005. It applies to liable persons (see division 5 of part 5 as to who the liable person is) and has two limbs as follows.

- (a) If the load is supplied under a “direct supply arrangement”, the arrangement was in force on 24 May 2000 and the load was supplied through the generation of electricity from eligible fuels then the liable person’s liability is 13% of the total of the liable loads above the baseline fixed for the customer to whom the load is supplied. “Direct supply arrangement” is defined in section 135AH. The baseline is fixed under section 135D.
- (b) If the load is a liable load other than those covered by (a), the person’s liability is 13% of the total of those other liable loads.

Subsection (2) provides for the rounding down of the 13% liability to a whole number of MWh.

Section 135EQ specifies how and when the liability specified in the preceding clause must be met. The liability must be met by surrendering the number of eligible GECs that equates to the person's liability for the liable year. Applications to surrender the appropriate amount of GECs must be lodged electronically with the regulator by the last business day in April or a later day fixed by notice given to the liable person by the regulator. Therefore, the person's liability for the year 1 January 2005 to 31 December 2005 will be ascertainable subsequent to 31 December 2005. The liability must be ascertained and the liability acquitted by lodging electronic applications to surrender the required amount of GECs with the regulator by 28 April 2006 or the later date fixed by the regulator, as the case may be. Note the impact of section 135EU (GECs that can not be used to meet 13% liability) on the operation of this section 135EQ. Also see section 135FD which requires the lodgement of a self-assessment report about the person's 13% liability.

Subdivision 2 Imposition of 13% liability in relation to small grids

Section 135ER specifies that subdivision 2 of division 2 of part 5 applies for power stations connected to a small grid. Subdivision 2 imposes the 13% liability in relation to "small grids". "Small grid" is defined in section 135AF. Power station proponents who choose to become accredited under the Scheme in order to create GECs are the only liable persons located on small grids.

Section 135ES states who the liable person is in relation to small grids. The liable person is the accredited generator, if there is one, for the power station connected to the small grid but only if the generator creates GECs.

Section 135ET states what the liability is for the person who is the liable person as specified in the preceding clause. The liability is 13% of the GECs created and registered during the liable year. The intent is that the liability must be met by surrendering the number of GECs that equates to the persons liability for the year. Applications to surrender the appropriate amount of GECs must be lodged electronically with the regulator by the last business day in April or a later day fixed by notice given to the liable person by the regulator. Therefore, the person's liability for the year 1 January 2005 to 31 December 2005 will be ascertainable subsequent to 31 December 2005. The liability must be ascertained and the liability acquitted by lodging electronic applications to surrender the required

amount of GECs with the regulator by 28 April 2006 or the later date fixed by the regulator, as the case may be. Note the impact of section 135EU (GECs that can not be used to meet 13% liability) on the operation of this section 135ET. Also see section 135FD which requires the lodgement of a self-assessment report about the person's 13% liability.

Subdivision 3 General provisions for 13% liability

Section 135EU specifies what GECs can not be used to meet a liability and ensures that GECs surrendered to comply with section 135BA (Obligation to take action because of improper creation of GECs or GEC review) or a GEC surrender direction can not be counted towards the 13% liability.

Section 135EV specifies that the liability applies even if the liable person does not own any GECs or does not own enough GECs to meet the liability. The liability cannot be avoided by not purchasing or acquiring GECs.

Section 135EW imposes an obligation on the liable person to keep documents relating to the 13% liability, unless the person has a reasonable excuse.

Division 3 Civil penalty for not meeting 13% liability

Section 135EX provides that division 3 of part 5 applies if a liable person does not meet the 13% liability for any liable year. Division 3 provides for a civil penalty for not meeting the 13% liability. The assessment process under division 4 of part 5 sets out the procedure that is followed to ascertain whether the liability has been met.

Section 135EY imposes a civil penalty for not meeting the 13% liability and specifies the date by which that civil penalty must be paid ("penalty imposition day"). However, subsection 3 provides that if the liable person meets the 13% liability before the penalty imposition day, the obligation to pay the civil penalty ends. Subsection 4 provides that the obligation to pay the penalty can not be avoided if the liable person does not meet the 13% liability before the penalty imposition day. Whereas subsection 5 provides that payment of the penalty extinguishes the 13% liability for that particular year. Persons will not be required to pay the penalty and then still surrender GECs to meet the liability in respect of which the penalty was paid. The penalty amount to be paid may be increased after relevant assessment under division 4 is made.

Section 135EZ identifies a circumstance where the liable person will not be imposed with the civil penalty, despite failing to meet the 13% liability. This section applies if the liable person has given the regulator a relevant self-assessment report and provided the evidence that the failure to meet the 13% liability was because meter data revisions or adjustments were not available when the report was given. The liable person must also have met the 13% liability before the penalty imposition day except for the extent it relates to the revisions or adjustments.

For example, the National Electricity Market settlement process takes around 30 weeks, and a proportion of the meter data used to calculate the liable electricity load for a year (and hence the 13% liability) may not be final at the time when the self-assessment report is submitted.

The liable person will have to meet all of the outstanding liability relating to the revisions or adjustments by the next final surrender day, otherwise the penalty would be imposed.

Section 135F specifies how the penalty is calculated.

Section 135FA sets the shortfall charge. The shortfall charge is a component of the equation used to determine the penalty.

Section 135FB provides that interest is payable on the unpaid penalty. The regulator has the power to waive payment of the interest.

Section 135FC specifies how the unpaid civil penalty and interest is recovered.

Division 4 Assessments

Subdivision 1 Self-assessment

Section 135FD imposes an obligation on each liable person to self assess their 13% liability for the previous year. Subsection 2 broadly specifies the contents of the self-assessment report. The report must be given to the regulator by the date specified in subsection 3.

Section 135FE provides that a liable person who is an individual cannot put forward as a defence to an offence under section 135FD that the giving of the self-assessment report might tend to incriminate that person. However, the report cannot be used in evidence in any civil or criminal proceeding except a proceeding to recover unpaid civil penalty and interest for not meeting the 13% liability.

Section 135FF imposes on liable persons an obligation to retain documents used to compile the self-assessment report for a period of 5 years, unless the person has a reasonable excuse.

Subdivision 2 Assessments by regulator

Section 135FG states the purpose of subdivision 2, which gives the regulator power to make assessments of the 13% liability and any civil penalty for not meeting it.

Section 135FH gives the regulator the power to make a default assessment in respect of a liable person's liability or, if the penalty imposition day has passed, any civil penalty for not meeting the 13% liability if that person does not give to the regulator a self-assessment report.

Section 135FI gives the regulator the power to reassess a liable person's liability or, if the penalty imposition day has passed, any civil penalty for not meeting the 13% liability, where that person gives to the regulator a self-assessment report but the regulator is not satisfied with the accuracy or completeness of the report.

Section 135FJ gives the regulator the power to make a compromise assessment of the liable person's 13% liability or, if the penalty imposition day has passed, any civil penalty for not meeting the 13% liability. The power can be exercised where it is difficult or impracticable for the regulator or the liable person to properly work out the liable person's liability for any year.

Section 135FK sets out the circumstances in which the regulator can amend an assessment if there is a reasonable need to correct the relevant 13% liability or civil penalty.

Section 135FL states that the regulator may make an assessment on the available information the regulator considers relevant.

Section 135FM imposes an obligation on the regulator to give the liable person notice of the assessment and provides for the giving of an information notice to the liable person, except in the case of a compromise assessment. The giving of the information notice triggers review and appeal rights.

Section 135FN imposes a time limit on the regulator making an assessment. This applies to default assessments, reassessments, compromise assessments and amended assessments.

Subdivision 3 Credits and refunds

Section 135FO provides that if a person's liability is decreased as a result of an amended assessment, a compromise assessment or a reassessment, and that person has surrendered more GECs than the revised liability requires, the difference can be credited to that person's next year's or subsequent years liability. However, the ability to use the credit in future years is limited by sub-section (3) which ensures the limit on the life of the GEC still applies.

Section 135FP provides that if a person has paid a civil penalty and interest on the penalty and subsequently the amount of the liability on which that civil penalty was based is decreased, the regulator must refund the overpaid amount. The liable person however is not entitled to interest on the overpaid amount.

Subdivision 4 Evidentiary provisions for assessments

Section 135FQ specifies the evidentiary value of a document signed by the regulator purporting to be a copy of an assessment by the regulator. The validity of an assessment is not affected because a provision of this chapter has not been complied with.

Division 5 Liable persons in relation to major grids**Subdivision 1 Liability hierarchy**

Section 135FR provides for the operation of subdivision 1 of division 5. Division 5 determines the liability of persons in relation to major grids. Subdivision 1 provides for who is the liable person for a liable load other than in relation to a power station connected to a small grid.

- A] If there is a relevant retailer for the load, then that retailer is the liable person.
- B] If there is no relevant retailer for the load, but there is a relevant special approval holder for the load, that special approval holder is the liable person.
- C] If there is no relevant retailer or relevant special approval holder for the load then, any other person who in effect acts as a retailer for the load is the liable person.

However, if a person is caught by A] or B] or C] above, and that person sells the load to NEMMCO or if NEMMCO later acquires the load that person is not the liable person. For instance, if NEMMCO features in a supply chain, any person “upstream” of NEMMCO is not a liable person. For example, if a person operates a power station and has an arrangement whereby that person sells all the output of that power station to another person and that other person bids all that output into the National Electricity Market electricity pool, neither of those persons is a liable person for that load bid into the National Electricity Market (NEM). A relevant liable person that sells or uses the load “downstream” of the NEM would be liable for the load.

Generally, the person is not liable if the power station generating the electricity cannot be identified; or the power station has a nameplate capacity of 5MW or less; or the power station’s annual generation output is 100 MWh or less.

However, subsection 3 provides that if there is no liable person the 13% liability does not apply to anyone.

Section 135FS provides that in the circumstances specified in the Section the retailer is the liable person. The effect of subsection 1 (a) and 2 (b) is that the liability lies with the last retailer in the supply chain.

Section 135FT provides that in the circumstances specified in the Section the special approval holder is the liable person. The effect of subsection 1 (e) and subsection 2 is that the liability lies with the first special approval holder in the supply chain.

Section 135FU provides that in the circumstances specified in that section, a generator who sells electricity directly to an end user is the liable person for the load.

Section 135FV provides that in the circumstances specified in that section a person who both generates and uses the electricity (a “substantial on-site generator”) is the liable person for the load.

Section 135FW provides that in the circumstances specified in that section, the person who buys electricity directly from the National Electricity Market power pool for their own use, is the liable person for the load.

Subdivision 2 Resolving disputes about who is the liable person

Section 135FX states when subdivision 2 applies. Subdivision 2 provides for the resolving of disputes about who is the liable person. It applies if a

dispute exists about who is the liable person for a liable load to which the regulator is not a party.

Section 135FY states who can refer disputes to the regulator and the requirements the referral must meet.

Section 135FZ states the procedure for handling disputes.

Section 135G states the regulator's power to require documents and information from a party to the dispute.

Section 135GA states that the regulator may require confidentiality to be observed.

Section 135GB states that the regulator may require mediation.

Section 135GC states the matters that the regulator must consider when deciding who is the liable person.

Section 135GD provides that if such a dispute is referred to the regulator, other jurisdictions are excluded. However, this is not applicable if the proceeding before other jurisdictions was started before the dispute was referred to the regulator.

Section 135GE states the requirement to give an information notice to each party to the dispute once the dispute is decided.

Section 135GF provides that the regulator's decision about who is the liable person binds each party to the dispute (subject to review and appeal rights).

Division 6 Exempted Loads

Subdivision 1 Preliminary

Section 135GG provides who is an "interested person" for an electricity load. This definition is relevant when determining who can apply for an exemption and who can claim the benefit of an exemption. Chapter 5A, part 5, division 6 deals with exempted loads and commences with section 135GG.

The definition is also relevant to part 8, division 2 (Measurement of electricity).

Section 135GH states who obtains the benefit of a liable load exemption. The benefit can be obtained by more than one person. For example, a large industrial project may have an extremely large electricity load which may,

by necessity, be supplied from a number of different suppliers. Each of these suppliers is likely to be a liable person for a proportion of the load and each would be able to receive the benefit of the exemption.

Any party wishing to claim the benefit of an exemption must be a registered scheme participant. The applicant for the exemption automatically becomes a scheme participant.

Subdivision 2 State development exemption

Section 135GI provides for the definition of a “significant project” and states the requirements under which subdivision 2 gives the regulator power to grant a liable load exemption to a significant project (“State development exemption”).

Section 135GJ states who can apply for the exemption and states the requirements that an application must satisfy.

Section 135GK requires that the applicant for a liable load exemption give notice and a copy of the application to any other interested person.

Section 135GL sets out the procedure the regulator must follow in deciding an application for a liable load exemption. Note subsection 3 and the requirement that the regulator must be satisfied that the business or enterprise is a significant project. Consistent with the definition of a significant project in section 135GI(1), this can be satisfied in two alternative ways. Either, the regulator must be satisfied that the business or enterprise provides, or will provide, substantial strategic and economic benefits to the State or that it is or is part of a project that has been declared a significant project under the *State Development and Public Works Organisation Act 1971*.

The effect of subsection 3 (b)(ii) and (d) is to target a single business at a ‘single site’, notwithstanding that the business may be located on non-contiguous blocks in a common locality.

Section 135GM sets out the process the regulator must follow after deciding the application. If an application is refused or a decision about the extent to which the liable load exemption is granted (other than an extent agreed to) is made an information notice must be given to the applicant and each interested person. The decision of the regulator is subject to review and appeal.

Section 135GN states that if the exemption is granted at a time when the electricity load does not exceed 750 Gigawatt hours (GWh) a year, then it is a condition of the exemption that the supply must be ramped up to more

than 750GWh in accordance with the schedule provided by the applicant, or if the schedule has been amended – the amended schedule.

Section 135GO states that the proponent of the significant project may apply to the regulator to amend the supply schedule provided with the initial exemption application. The applicant must give a notice and copy of the application to each interested person. Subsection 3 sets out the requirements that the application must satisfy in order for the regulator to accept the amended schedule. If an application is refused, an information notice must be given to the applicant and each interested person.

Section 135GP provides that once supply has exceeded 750GWh or if supply is at more than 750GWh when the application is granted, then, it is a condition of the exemption that the supply must remain at more than 750GWh a year. However, the condition will not be breached if the supply falls to 750GWh or less if the reduction is within the ambit of section 135GP(2) (a) to (c).

Section 135GQ imposes an obligation on an interested person for an exempt load to notify the regulator if supply falls to 750GWh a year or less or there is a material change in the circumstances under which the exemption was granted if the interested person becomes aware of the happening of such event. This obligation is a condition of the exemption.

Subdivision 3 Renewable energy exemption

Section 135GR states the operation of subdivision 3 of division 6 of part 5. Subdivision 3 provides for a liable load exemption for an electricity load that is supplied from a renewable energy source. The regulator has the power to grant such an exemption where the following conditions are met:-

- A] A power station must supply an end user in Queensland.
- B] The supply must be under a direct supply arrangement by a dedicated line or by an on-site generator.
- C] The supply must be from a renewable energy source of a type prescribed under a regulation or, the supply must be from a renewable energy source recognised under a law or program prescribed under a regulation about renewable energy.

The exemption can be granted only to the extent of the load supplied as specified in C] above, subject to the ineligible fuel allowances provided under 135GV(2) and 135GW (Ineligible fuel allowance).

Section 135GS states who may apply for an exemption and the requirements that an application must fulfil.

Section 135GT requires notice and a copy of the application to be given to any other interested person.

Section 135GU sets out the process to be followed by the regulator in deciding an application. Subsection 3 imposes an obligation on the regulator to grant the application in the circumstances specified there.

Section 135GV sets out the procedure that must be followed after deciding an application.

Section 135GW makes an allowance for fuel that is ineligible as regards the renewable energy exemption. This allowance has been made as minor supplementation with other fuels can be common practice in the renewable energy industry, particularly where biomass is the fuel source of choice.

Section 135GX states the conditions that are conditions of the renewable energy exemption.

Section 135GY imposes a reporting condition on an interested person for the exempted load. It is a condition of the renewable energy exemption that if an interested person becomes aware of the events specified in the section, an interested person must give notice of the event to the regulator.

Subdivision 4 Power station auxiliary load exemption

Section 135GZ states that subdivision 4 of division 6 of part 5 gives the regulator the power to grant a liable load exemption for an electricity load used for an auxiliary load for a power station. “Auxiliary load” for a power station is defined in section 135AE.

Section 135H provides that any interested person for the auxiliary load may apply for the exemption and states the requirements that must be met in compiling an application.

Section 135HA requires that the applicant must give notice and a copy of the application to all other interested persons.

Section 135HB states the process the regulator must follow in deciding the application.

Section 135HC states the steps the regulator must follow after deciding the application. If the application is refused or the exemption given is less than that sought, the applicant and each interested person have rights of review and appeal.

Section 135HD imposes a condition that the electricity load that is the subject of the exemption must continue to be an auxiliary load.

Section 135HE imposes a reporting condition on an interested person for the exempted load. It is a condition of the auxiliary load exemption that if an interested person becomes aware of a material change in the circumstances under which the exemption was granted, an interested person must give notice of the event to the regulator.

Subdivision 5 General conditions of liable load exemptions

Section 135HF imposes a condition on each liable load exemption that the annual fee is to be paid by the due date each year and that an exemption compliance report in the approved form is to be lodged by the due date each year. While the obligation is placed on each interested person to ensure the condition is met, the requirement is for payment of only a single annual fee and lodgement of a single annual compliance report for the exemption.

Section 135HG imposes an obligation on each interested person for the exempted load to keep documents relating to the exemption and compliance with its conditions for at least the required period of 5 years from giving the exemption compliance report, unless the person has a reasonable excuse.

Subdivision 6 Amending liable load exemption by application

Section 135HH states that an interested person for an exempted load may apply to amend an exemption other than to change a condition imposed under division 6 of part 5.

Section 135HI requires that the applicant give notice and a copy of the application to other interested persons.

Section 135HJ states the process the regulator must follow in deciding the application. If the application is refused, the applicant and any interested person must be given an information notice about the decision.

Subdivision 7 Amendment of liable load exemption by regulator without proposed action notice

Section 135HK states when the regulator can amend a liable load exemption without following the process in sections 135HL to 135HP. That process requires the giving of a proposed action notice. Subsection 2 requires the regulator to give each interested person for the load an amended certificate of exemption.

Subdivision 8 Other amendments, cancellation and suspension of liable load exemption

Section 135HL states that if the events specified in subsection 2 have occurred, the regulator may amend, cancel or suspend a liable load exemption if the procedure under sections 135HM to 135HP is followed.

Section 135HM requires the regulator to give to each interested person a proposed action notice. The notice must meet the requirements in subsection 135HM(1)(a) to (f).

Section 135HN imposes an obligation on the regulator to consider written submissions received within the time allowed for submissions.

Section 135HO states the procedure leading to the regulator making a decision.

Section 135HP imposes an obligation on the regulator to give to each interested person an information notice about the decision. It also states when the decision takes effect.

Subdivision 9 Consequences of particular cancellations

Section 135HQ states that a liable load exemption that is cancelled, where a ground for the cancellation is that the exemption was obtained because of a materially false or misleading declaration or representation, is taken never to have had any effect other than for section 135FD (Self-assessment report).

Section 135HR states the consequences of cancellation of a State development exemption where the cancellation is made because the condition related to proposed supply under section 135GN has been contravened. The liable load exemption is taken never to have had any effect other than for section 135FD (Self-assessment report). Note the effect of subsection (3).

Section 135HS states the consequences of the cancellation of a State development exemption where the cancellation is made because the condition related to continuity of supply under section 135GP has been contravened. The cancelled exemption is taken never to have had any effect from the beginning of the year in which the failure to comply happened, other than for section 135FD (Self-assessment report). Note the effect of subsection (3).

Section 135HT provides for the consequences of the cancellation of renewable energy and auxiliary load exemptions for a contravention of a relevant general condition of the exemption. The cancelled exemption is

taken never to have had any effect after the failure to comply happened, other than for section 135FD (Self-assessment report).

Division 7 Non-liable loads

Section 135HU provides that electricity generated by emergency stand-by plant is a non-liable load if conditions in the section are met.

Section 135HV provides that if the total of all liable loads for which a person would be the liable person is 100MWh or less in a year the loads are non-liable loads.

Section 135HW provides that an electricity load is a non-liable load if it is sold and supplied under special approval number 6/98 to the property called “Naryilco Pastoral Station”.

Section 135HX provides that an electricity load is a non-liable load if it is sold to a customer under a retailer of last resort scheme or under a provision of a regulation where a host retailer is taken to have entered into a contract with a customer because of the suspension of another retailer from trading. In terms of the latter, if the conditions in subsection 2(a) and (b) are met the electricity load is a non-liable load.

Section 135HY states the circumstances in which electricity supplied under a section 49A(3) contract is a non-liable load.

Section 135HZ provides that electricity sold or supplied directly or indirectly to the Boyne Island smelter is a non-liable load, subject to the operation of section 12 of the State agreement under the *Gladstone Power Station Agreement Act 1993*. Section 12 essentially protects the Boyne Smelter load from ‘taxes, levies and imposts’.

Part 6 Scheme participants

Any person who wishes to participate in the Scheme must be a scheme participant.

Accredited generators are automatically scheme participants. However, other persons wishing to own GECs, such as liable persons or GEC traders, will need to obtain and maintain registration as a scheme participant under part 6. In addition, section 135GH provides that a person may only claim

the benefit of an exemption under part 5 if the person is a scheme participant. The applicant for the exemption automatically becomes a scheme participant (see 135GH(1)).

Section 135I provides for who can apply to be scheme participants and the requirements of the application. Note that accredited generators are automatically scheme participants by virtue of the operation of section 135AA(4). Any person may apply to be a scheme participant. The requirements the application must meet are set out in subsection 2.

Section 135IA provides that if an applicant meets the requirements in section 135I the regulator must, by complying with section 135JH (Required information for scheme participant register), register the person as a scheme participant in the scheme participant register.

Section 135IB sets out the term of a scheme participant's registration.

Section 135IC provides that all scheme participants apart from accredited generators and parties under 135GH(1) must pay the prescribed fee annually. Accredited generators and interested persons for exemptions are required to pay an annual fee under section 135BE and 135HF respectively.

Section 135ID provides for limited suspension for non-payment of the annual fee, under which rights to hold and surrender GECs are retained, while all transfer rights are suspended.

Section 135IE provides for when a scheme participant may apply to surrender its registration.

Part 7 Monitoring

Part 7 provides for an audit regime to underpin compliance monitoring and enforcement of chapter 5A.

There are two ways in which an audit can occur. The regulator may instruct an "auditable person" (see section 135IO) to commission an audit. Alternatively, the regulator may commission the audit of the auditable person. In each case, the audit must be conducted by an approved auditor appointed under division 1. Some aspects of the audits will be technical in nature, such as examination of metering equipment and meter testing arrangements.

Division 1 Approved auditors

Section 135IF provides for the appointment of auditors by the regulator. A person must apply to be an appointed auditor and the application must be done in the way prescribed under a regulation. Subsection 3 clarifies that a corporation may be an approved auditor but such appointment would involve identification of key qualified people within the corporation.

Section 135IG provides that the auditor's appointment is limited by the conditions of appointment and any regulation.

Section 135IH states the requirements the application to obtain appointment as an approved auditor must meet. It also imposes an obligation on the regulator to issue the approved auditor's instrument of appointment if the application is granted or give an information notice about the decision if the application is refused or a condition is imposed.

Section 135II provides for the issue of identity cards to each approved auditor.

Section 135IJ provides for the production and display of the auditor's identity card.

Section 135IK states when the approved auditor ceases to hold office.

Section 135IL provides that the regulator may revoke an auditor's appointment in the circumstances set out in subsection (1)(a) and states the procedure the regulator must follow in making the decision.

Section 135IM provides for the resignation of an approved auditor.

Section 135IN provides for the return of the approved auditor's identity card.

Division 2 Required audits

Section 135IO provides for who can be audited. Note that applicants can be audited. In essence this will entail the application being audited independently to establish for the regulator compliance with the Act. This will then aid the regulator in making a decision, for example, to accredit a generator.

Section 135IP states that the regulator can require an auditable person to commission an audit. The purpose of subsection 2 is to assist the regulator in ensuring compliance with the Act.

Section 135IQ states the required contents of an audit notice. In subsection 2 the requirement to provide an information notice about the decision to issue the audit notice gives way to review and appeal rights.

Section 135IR provides that failure to comply with the audit notice is an offence.

Section 135IS states that the costs of complying with the audit notice must be paid by the person being audited.

Division 3 Audits by regulator

Section 135IT provides that the regulator can commission audits. The difference between this section and section 135IP is that section 135IP requires the auditable person to commission the audit.

Section 135IU provides that the regulator's costs are payable by the auditable person if the conditions in subsection 2 are met.

Division 4 General provisions for audits

Section 135IV provides for who can carry out an audit.

Section 135IW provides that if an approved auditor makes a false or misleading statement in an audit report they commit an offence.

Part 8 Miscellaneous provisions

Division 1 Additional provisions for applications

Section 135IX provides that the meaning of "application" and "applicant" for the purposes of division 1 of part 8 of chapter 5A includes applicants and applications relating to the creation of a GEC.

Section 135IY provides that the regulator may accept an application if there is substantial compliance with the requirements of the chapter.

Section 135IZ provides the regulator with the power to require additional information from applicants or require an inspection of the applicant's premises relating to the application.

Section 135J provides that the regulator may recover the costs it incurs in making an inspection.

Division 2 Measurement of electricity

Section 135JA provides that the regulator can decide a method for working out the amount of an electricity load or the amount of electricity sent out from a power station or delivered to an end user or an amount incidental to a matter earlier mentioned. The regulator must follow the procedure outlined in section 135JB.

Division 2 is designed to cover all measurement requirements for chapter 5A, including the measurement of both liable loads (including exempt loads) and loads relevant to the calculation of eligible gas-fired electricity.

Measurement methods may include use of a meter or methodologies to estimate unmetered loads. Measurement arrangements are the required standards of operation for the meter such as the tolerance for error, intervals of measurement and meter testing requirements. In accordance with subsection 3(c), the regulator must accept measurement arrangements that comply with the Market Code.

Section 135JB states the procedure that the regulator must follow in deciding the measurement method.

Section 135JC states that if a method of measurement of electricity is decided by the regulator the decided method must be used to make the measurement.

Section 135JD imposes an obligation on the person to give notice to the regulator of a change in the circumstances that may affect the appropriateness of the method that has been decided to be used to measure the electricity.

Division 3 Registers

Section 135JE provides that the regulator must keep the registers specified in subsection 1. Subsection 2 allows the regulator to keep other registers. Another register for example, may be a register of applications under chapter 5A.

Section 135JF states the required information for the accredited generator register.

Section 135JG states the required information for the GEC register.

Section 135JH states the required information for the scheme participant register.

Section 135JI states the required information for the liable load exemption register.

Section 135JJ provides for the general obligations imposed on the regulator in relation to maintaining the various registers.

Section 135JK provides for public access to the registers during business hours.

Division 4 General offences for ch 5A

Section 135JL states who is an “official” for the purposes of division 4 of part 8 of chapter 5A.

Section 135JM imposes an obligation on officials to keep certain information confidential.

Section 135JN prohibits false or misleading statements to an official.

Section 135JO prohibits giving false or misleading documents to an official.

Section 135JP prohibits persons from obstructing approved auditors in the exercise of a power under chapter 5A, unless the person has a reasonable excuse.

Section 135JQ prohibits persons from pretending to be approved auditors.

Section 135JR provides that if a “small grid” changes to a “major grid” the person who operates the grid must give notice to the regulator. This notice

is required as liability may be measured differently between small and major grids.

Division 5 Other miscellaneous provisions

Section 135JS gives the regulator the power to require additional information about reports and other matters that a person is required to give to the regulator under chapter 5A.

Section 135JT provides for general evidentiary aids for chapter 5A. However, this section does not limit section 135FQ (Evidentiary provisions) or section 248 (Evidentiary certificates by regulator).

Section 135JU imposes an obligation on the State to indemnify certain entities who are found to be civilly liable in a proceeding in relation to information given to the regulator under circumstances specified in subsection 1.

Section 135JV provides that the regulator may approve forms for use under chapter 5A.

Part 9 Expiry of chapter 5A

Section 135JW provides that chapter 5A expires on 31 December 2020. While GECs can only be created for eligible electricity generated between 1 January 2005 and 31 December 2019 and the last liable year is 2019, the compliance dates for the 2019 year will fall in 2020.

Section 135JX states that chapter 5A is a law to which section 20A of the *Acts Interpretation Act 1954* applies (Repeal does not end saving, transitional or validating effect etc).

Clause 13 inserts the following new sections:

- new section 140A which allows an electricity officer for an electricity entity to enter a place to fix damage or harm to the place caused by works or an electrical installation of the entity. Entry may only be made if the affected occupier has consented to the entry, or the entity has given the affected occupier at least 7 days written notice.

- new section 140B which allows an electricity officer for an electricity entity to enter a place at any time and without consent or prior notice to fix serious damage or harm to the place caused by works or an electrical installation of the entity, where the need to fix the damage or harm is urgent. If the occupier is present, the electricity officer must make a reasonable attempt to tell the occupier the purpose of the entry and seek the occupier's consent. If the occupier is not present, the electricity officer must take reasonable steps to notify the occupier of the intention to enter.

These provisions expressly do not authorise entry to a residence.

Clause 14 inserts new section 141A which states that in exercising a power under chapter 6 (electricity officers' powers) of the *Electricity Act 1994*, an electricity officer must take all reasonable steps to ensure the officer causes as little inconvenience and damage as is practicable.

Clause 15 amends section 152A of the *Electricity Act 1994* and authorises an inspection officer under the Act to assist an approved auditor in gaining entry to a place to conduct an audit under chapter 5A.

Clause 16 amends section 152G of the *Electricity Act 1994* and ensures an inspection officer has appropriate powers to act after entering a place to assist an approved auditor in carrying out an audit under Chapter 5A.

Clause 16A amends section 259A of the *Electricity Act 1994* to allow certain subsidiaries of electricity GOCs to be declared by regulation as "State electricity entities" for the purposes of coverage by relevant awards under the *Industrial Relations Act 1999* and employment conditions or stated employment conditions of its employees.

Clause 17 inserts a new chapter 14, part 7 in the *Electricity Act 1994*. Section 309 of Chapter 14 Part 7 relates to contracts in force immediately before 1 January 2003 and gives liable persons the right to pass through to contestable customers any reasonable costs they incur in complying with the 13% Gas Scheme including an amount equivalent to any civil penalty paid and any reasonable costs of paying the civil penalty, subject to express words in the contract specifying who will bear the 13% costs. The cost passthrough must be reasonable and appropriate to the load that contestable customer is purchasing. The section does not apply, or ceases to apply if a review opportunity arose or arises for the contract on or after 1 January 2003. The intent here is to limit the application of the clause and to promote negotiated arrangements for passthrough of the costs as opposed to legislative passthrough.

Clause 18 amends part 2 in schedule 1 (Appeals against administrative decisions). Part 2 gives certain review and appeal rights to persons affected by the decisions specified in part 2.

Clause 19 amends schedule 5 of the *Electricity Act 1994* which is the dictionary.