

Electricity Amendment Bill (No. 2) 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Electricity Amendment Bill (No. 2) 2004*.

Policy Objectives

The objectives of the *Electricity Amendment Bill (No. 2) 2004* are:

- to provide a regulatory framework for the introduction of minimum service standards, a guaranteed service level (GSL) regime and enhanced performance monitoring and reporting arrangements for electricity distribution and retail entities (i.e. ENERGEX and Ergon Energy); and
- to clarify the electricity entities' existing powers in relation to vegetation management.

Reasons for the Bill

In March 2004, the Government commissioned an Independent Panel to undertake an *Electricity Distribution and Service Delivery* (EDSD) review of Queensland's electricity distribution system. This was in response to concerns expressed about the performance of the distribution networks during a series of storms and hot weather over the previous summer.

The EDSD review resulted in the Independent Panel directing a number of recommendations to the Government, the Queensland Competition Authority (QCA), ENERGEX and Ergon Energy in order to improve system reliability and consumer confidence in the electricity industry. In response to these recommendations, the Government prepared and publicly released a detailed action plan.

In the action plan, which is aimed at ensuring the future reliability of Queensland's electricity distribution networks, the Government committed to the delivery of a number of initiatives including:

- a requirement for ENERGEX and Ergon Energy to prepare and implement comprehensive summer preparedness plans which include increased vegetation management, targeted capital expenditure and more effective customer communications;
- a requirement for ENERGEX and Ergon Energy to prepare and implement annual network management plans which clearly outline the state of their distribution networks and the activities planned to improve them;
- new stringent licence conditions which detail mandatory minimum service standards for electricity supply that the distribution entities must deliver;
- a GSL regime where individual customers will receive rebates on their electricity accounts if ENERGEX and Ergon Energy fail to deliver defined service levels; and
- a comprehensive monitoring and reporting framework to provide for greater public accountability.

The existing legislative framework is not adequate to deliver on such initiatives. The proposed amendments in the Bill will remove legal uncertainties, improve clarity and provide the necessary legal structure to underpin the implementation of these initiatives.

The EDSD review also identified that minimising interference with the distribution network from trees and other vegetation was a significant factor in improving electricity supply reliability. Hence, there is a need to ensure that the electricity entities' existing powers for vegetation management are clear and certain.

Achieving the Policy Objectives

The proposed amendments in the *Electricity Amendment Bill (No. 2) 2004* will provide a regulatory framework for the introduction of minimum service standards, a GSL regime and enhanced performance monitoring and reporting arrangements for electricity distribution and retail entities (i.e. ENERGEX and Ergon Energy).

Under the proposed arrangements, the technical detail about the minimum service standards, GSLs and the form and content of the entities' management plans and reports to the Regulator will be detailed in an industry code to be made by the Regulator under the *Electricity Act 1994* (i.e. the Director-General of the Department of Energy), as part of the licensing regime which the Regulator administers.

To achieve this, the Bill includes a new head of power for the Regulator to make such a code. The Bill provides that the industry code made by the Regulator will only come into effect if approved by regulation.

Compliance with the industry code will be a condition of ENERGETX's and Ergon Energy's authorities (licences) issued by the Regulator, and compliance will be monitored and reported on by the Regulator.

To enhance the monitoring and reporting arrangements in relation to ENERGETX's and Ergon Energy's performance, the Bill provides for new powers for the Regulator to require or arrange audits of an electricity entity's compliance with its licence obligations, and of the reliability and quality of information provided by the entity to the Regulator.

Additionally, the Bill inserts new provisions in the *Electricity Act 1994* to allow for relevant information provided by ENERGETX or Ergon Energy to be exchanged between the Regulator under the *Electricity Act 1994* and QCA in its role as economic regulator of the distribution businesses under the National Electricity Code. These new information sharing provisions will avoid unnecessary duplication and also ensure that the Regulator and QCA have access to consistent information about the distribution businesses on which to base their respective, but related, regulatory processes and decisions.

To support the new regulatory framework discussed above, and particularly the new GSL regime, the Bill includes amendments which will create a direct contractual relationship between ENERGETX's and Ergon Energy's distribution businesses and their non-contestable customers. Under the current provisions of the *Electricity Act 1994*, the default contractual relationship is between the retail business (including on behalf of the distribution business) and the non-contestable customer. A direct contractual arrangement will ensure there are clear lines of accountability for delivery of the distribution businesses' obligations to their customers.

Also as a consequence of the new regulatory framework, the Bill repeals section 92 of the *Electricity Act 1994* which provides for minimum service standards to be set by regulation and to be monitored and reported on by QCA in a way prescribed by regulation. No regulation under section 92 has ever been made. The intent of the ESDS Review was that the Regulator should set, monitor and enforce these minimum standards as part of the licensing regime the Regulator administers under the *Electricity Act 1994*. Hence, the Bill removes section 92 and, as discussed above, provides instead for the Regulator to make, and a regulation to approve, a code to deal with these matters.

Finally, because of the importance of adequate vegetation management in ensuring the reliability of electricity supply, the Bill also seeks to clarify the electricity entities' existing powers in relation to vegetation management. While the entities already have broad powers of entry under the *Electricity Act 1994* to prevent interference or potential interference with their distribution networks, the Bill clarifies these powers by explicitly referring to removal of vegetation, and that the powers of entry include the entity being able to take onto the affected property any equipment or persons reasonably necessary to undertake vegetation management and other maintenance activities.

Estimated administrative costs to Government for implementation

The proposed new performance monitoring and reporting arrangements will have financial implications for the Department of Energy in view of the need for additional resources to perform these functions. A small number of additional full time equivalent positions, as well as additional technical consultancies and/or contractors will be needed for the Department to carry out these new performance monitoring responsibilities of the Regulator under the *Electricity Act 1994*.

Consistency with Fundamental Legislative Principles

The *Electricity Amendment Bill (No. 2) 2004* has been drafted with due regard to the Fundamental Legislative Principles (FLPs) as outlined in the *Legislative Standards Act 1992*. There are no known provisions that are inconsistent with the FLPs. However, some areas which may be perceived as being inconsistent with the FLPs are discussed below.

Clauses 4, 5 and 9 – (*FLP requiring sufficient regard for the rights and liberties of individuals*):

The Bill amends the existing 'deemed' contractual arrangements relating to non-contestable customers, by creating a direct contractual arrangement between distribution entities and their non-contestable customers in order to support the new GSL arrangements under the industry code. Under the current provisions, non-contestable customers are deemed to have a regulated standard customer contract, which provides for both customer retail services and customer connection services, with the host retailer. The host retailer is, in turn, deemed to have a 'back to back' standard connection contract with the distribution entity. Under the amended provisions, non-contestable customers will be deemed to have a regulated

standard customer sale contract with the host retailer and a regulated standard customer connection contract directly with the distribution entity.

The amendments will not adversely impact on customers but, rather, will ensure there are clear lines of accountability for delivery of the distribution entities' obligations to their customers. No changes are being made to the provisions dealing with contractual arrangements between contestable customers and retail entities and distribution entities, other than to introduce a newly defined term for a negotiated contract that provides for both customer retail services and customer connection services. This change, supported by the associated transitional provision, will not affect customers' existing negotiated contractual rights.

Clause 15 – (FLP requiring sufficient regard to the institution of Parliament):

The Regulator's power to make an industry code dealing with such matters as minimum service standards and GSLs may be perceived as a breach of the FLP. However, the Regulator's power will be fettered by Parliament's ability to disallow the regulation that approves the code. Furthermore, while the industry code to be made by the Regulator will be a technical document which would not easily lend itself to being included within a legislative instrument, proposed new section 64FB of the *Electricity Act 1994* requires the code to be tabled with the regulation that approves it.

Clause 15 – (FLP requiring sufficient regard for the rights and liberties of individuals):

It is proposed that under the GSL regime to be included in the industry code, non-contestable customers will receive a rebate on their electricity accounts if ENERGEX and Ergon Energy fail to deliver a defined level of service. It is important to note that the payment of a rebate under the code will not remove, or change in any way, a customer's existing legal rights to pursue compensation for loss or damage arising from any failure of the distributor in relation to the customer's electricity supply.

Clauses 23 to 25 – (FLP requiring sufficient regard for the rights and liberties of individuals):

The proposed amendments in relation to vegetation management do not seek to change ENERGEX's and Ergon Energy's existing powers of entry. Rather, the proposed amendments seek to clarify those existing powers by explicitly referring to removal of vegetation and making it clear the entities may take onto the affected property any persons or equipment reasonably necessary to undertake vegetation management and other maintenance activities. There is no change to the existing requirement for the entities

(other than where immediate entry is required to prevent fire or electrical shock) to gain consent from or give prior notice to the occupant before entering property.

Consultation

The following Government Departments were consulted on the development of the *Electricity Amendment Bill (No. 2) 2004*:

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Business Regulation Reform Unit, Department of State Development;
- Department of Local Government, Planning, Sport and Recreation;
- Department of Justice and Attorney-General;
- Department of Main Roads;
- Office of Rural Communities, Department of Communities;
- Electrical Safety Office, Department of Industrial Relations; and
- Department of Employment and Training.

Other agencies consulted include ENERGEX and Ergon Energy. There is support for the proposed amendments.

While there has been no specific public consultation with the community on the proposed legislative amendments, the proposed amendments arise directly from the EDSR Review which was a public process that attracted a large number of public submissions.

Notes on Provisions

Short title

Clause 1 sets out the short title of the Act as the *Electricity Amendment Act (No. 2) 2004*.

Commencement

Clause 2 provides that certain provisions of the Act will commence on assent, with the remainder (those relating to changes to the contractual arrangements between customers, distribution entities and retail entities) to commence on a date to be fixed by proclamation. The later commencement of the amendments relating to contractual arrangements will allow time for consequential amendments to the *Electricity Regulation 1994* to be made and the terms of the standard contracts to be included in the new industry code.

Act amended

Clause 3 provides that the *Electricity Amendment Act (No. 2) 2004*, and the schedule to it, amends the *Electricity Act 1994*.

Amendment of s 40 (Connection and supply of electricity in distribution area)

Clause 4 amends section 40 of the *Electricity Act 1994* (which deals with applications to a distribution entity for connection and supply of electricity to a customer's premises) to provide for a direct contractual arrangement between a non-contestable customer and the distribution entity. No changes are being made to the existing negotiated contractual arrangements for contestable customers, other than to reflect that a negotiated sale contract between a contestable customer and retailer which also provides for connection and supply will now be called a negotiated sale and connection contract.

Amendment of s 40AA (Supply if no customer connection contract)

Clause 5 amends section 40AA of the *Electricity Act 1994* (which deals with deemed contractual arrangements where premises are connected to a distribution entity's supply network but no connection contract is in place) to provide for a direct contractual arrangement between a non-contestable customer and the distribution entity. No changes are being made to the deemed contractual arrangements for contestable customers.

Replacement of ss 40A, 40B and 40BA

Clause 6 removes sections 40A, 40B and 40BA of the *Electricity Act 1994* (which deal with the process for preparation, approval and amendment of a

distribution entity's standard customer connection contract) and inserts a new section 40A (Terms of standard customer connection contract) to provide that the terms of a distribution entity's standard customer connection contract are the terms stated in an approved industry code.

Amendment of s 40G (Disconnection for failure to pay debts)

Clause 7 amends section 40G of the *Electricity Act 1994* to refer to negotiated sale and connection contracts, as a consequence of the introduction of this new term to describe a negotiated sale contract which provides for both sale of electricity and connection and supply.

Amendment of s 49 (Obligation to provide customer retail services to non-contestable customers)

Clause 8 amends section 49 of the *Electricity Act 1994* to make it clear that a non-contestable customer can only enter into a negotiated customer sale contract as permitted under section 52A of the *Electricity Act 1994*.

Amendment of s 49A (Sale if no customer sale contract)

Clause 9 amends section 49A of the *Electricity Act 1994* (which deals with the deemed contractual arrangement between a customer and the host retail entity where the customer's premises are connected to a supply network but no contract for the sale of electricity is in place) to provide that the deemed contract between a non-contestable customer and the host retail entity is for sale of electricity only. As a consequence of the amendments to section 40AA, the deemed contract for connection and supply of electricity to the customer's premises is now between the customer and the distribution entity. A consequential amendment arising from the newly defined negotiated sale and connection contract for contestable customers is also included.

Replacement of ss 50 and 51

Clause 10 removes sections 50 and 51 of the *Electricity Act 1994* (which deal with the process for preparation and approval of a retail entity's standard customer sale contract) and inserts a new section 50 (Terms of standard customer sale contract) to provide that the terms of a retail entity's standard customer sale contract are the terms stated in an approved industry code.

Omission of s 51A (Amendment of standard customer sale contract)

Clause 11 omits section 51A of the *Electricity Act 1994* (which deals with the process for amendment of a retail entity's standard customer sale contract) as new section 50 provides that the terms of a retail entity's standard customer sale contract are the terms stated in an approved industry code. Therefore, an amendment to the standard customer sale contract will now be achieved by amending the terms stated in the code.

Amendment of s 55B (Contracting out of s 53, 55, 96 or 97)

Clause 12 amends section 55B of the *Electricity Act 1994* to remove a redundant reference to section 96, and to include reference to the newly defined negotiated sale and connection contract for contestable customers.

Replacement of s 55C (Sale of electricity outside retail area)

Clause 13 replaces section 55C of the *Electricity Act 1994* to reflect that, as a consequence of the amendments to sections 40 and 40AA, a retail entity can only contract with a non-contestable customer for the sale of electricity to the customer's premises, and the contract for connection and supply of electricity to a non-contestable customer's premises is always between the customer and the relevant distribution entity.

Amendment of s 63 (Functions)

Clause 14 amends section 63 of the *Electricity Act 1994* by replacing subsection (1)(b) to specify that the Regulator's functions include making standards and codes for regulating the electricity industry. There is also a minor amendment to subsection (1)(a) to make it clear that the Regulator has an ongoing role in monitoring the suitability of electricity entities, and not just at the time the electricity authority application is assessed.

Insertion of new ch 2 pt 8 div 3

Clause 15 inserts in chapter 2, part 8 of the *Electricity Act 1994* a new division 3 (Industry codes) which includes the following new provisions about industry codes:

- Section 64FA (Making of codes) – provides power for the Regulator to make industry codes that apply to distribution entities, retail entities and/or special approval holders authorised to perform distribution or retail activities;

- Section 64FB (Approval of code) – provides a regulation may approve an industry code and a copy of the approved code must be tabled in Parliament with the approving regulation;
- Section 64FC (When approved code has effect) – provides an approved industry code has effect on the later of the date of gazettal of the regulation approving the code and the commencement date stated in the code;
- Section 64FD (Access to approved code) – provides the chief executive of the department must keep a copy of an approved industry code available for inspection, without charge, at the department’s head office and on the department’s website, and also must, on payment of any reasonable fee decided by the chief executive, provide a copy to a person upon request; and
- Section 64FE (Act prevails over approved code) – provides that if an approved industry code is inconsistent with the Act or regulation made under the Act, the Act or regulation prevails.

Amendment of ch 4, pt 2 (Pricing and service quality standards)

Clause 16 amends the heading of part 2 of chapter 4 of the *Electricity Act 1994* to remove a redundant reference to service quality standards, as a consequence of the omission of section 92 from this chapter (refer to clause 18).

Amendment of s 90 (Deciding retail prices for non-contestable customers)

Clause 17 amends section 90 of the *Electricity Act 1994* to remove a redundant reference to service quality standards, as a consequence of the omission of section 92 from this chapter (refer to clause 18).

Omission of s 92 (Standards about quality of service)

Clause 18 omits section 92 of the *Electricity Act 1994* which is obsolete as a consequence of the insertion of new section 64FA which provides a head of power for the Regulator to make industry codes to specify, amongst other things, minimum service standards for electricity supply to be met by distribution entities and the service levels to be provided by distribution entities and retail entities to customers. The Regulator, rather than QCA, will monitor and report on an entity’s compliance with the minimum

service standards and other licence obligations imposed on entities, as part of the licensing regime which the Regulator administers.

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

Clause 19 amends section 119 of the *Electricity Act 1994* to make it clear that the Regulator may act in disputes between electricity entities and customers in relation to the performance of an entity's obligations (for example, obligations contained in an industry code to be made under new section 64FA), and not just in relation to the performance of functions or the exercise of powers by an electricity entity.

Insertion of new ss 120AA to 120AE

Clause 20 inserts in the *Electricity Act 1994* the following new sections to provide the Regulator with new powers to require or arrange audits of an electricity entity's or special holder's compliance with the Act, industry codes or authority or special approval, and of the reliability and quality of information provided by the entity or holder to the Regulator:

- Section 120AA (Regulator's powers concerning audit of compliance with Act etc.) – provides that the Regulator may require an electricity entity or special approval holder to carry out an internal audit, or appoint an independent auditor, to carry out an audit of the entity's or holder's compliance with the Act, industry codes or authority or special approval issued under the Act, and the reliability and quality of information given by the entity or holder to the Regulator. Alternatively, the Regulator may itself appoint an independent auditor to carry out the audit;
- Section 120AB (Responsibility for cost of audit) – provides that the electricity entity or special approval holder is responsible for the cost of any audit the entity or holder carries out or arranges at the request of the Regulator. If the Regulator appoints an independent auditor, the entity or holder must reimburse the Regulator for the cost of the audit if required to do so by the Regulator;
- Section 120AC (Independent auditor may require reasonable help or information) – provides that an electricity entity or special approval holder must give an independent auditor appointed under section 120AA reasonable help to carry out the audit and information reasonably required by the auditor;

- Section 120AD (Audit report and submissions on report) – provides that an electricity entity or special approval holder required by the Regulator to carry out or arrange an audit must give a copy of the audit report to the Regulator. Also, if the Regulator arranges the audit, the Regulator must give the entity a copy of the draft audit report and the final audit report and provide the entity with an opportunity to make submissions to the Regulator on the draft and final audit report; and
- Section 120AE (Disclosure of information) – provides that the Regulator must disclose to QCA any written information provided to the Regulator by an electricity entity or special approval holder, if QCA requests the disclosure for the purpose of QCA performing its functions and the entity or holder consents, or is required, under the entity’s authority or the special approval, to consent to the disclosure.

Amendment of s 120ZC (Notice to produce documents or information)

Clause 21 amends section 120ZC of the *Electricity Act 1994* by removing reference to the QCA investigating compliance with service quality standards and the Act, because it is the role of the Regulator, rather than QCA, to monitor an electricity entity’s compliance with minimum service standards and other obligations placed on the entity through the licensing regime administered by the Regulator.

Insertion of new s 120ZCA

Clause 22 inserts in the *Electricity Act 1994* new section 120ZCA (Disclosure of information) which provides that QCA must disclose to the Regulator any written information provided to QCA by an electricity entity or special approval holder, if the Regulator requests the disclosure for the purpose of the Regulator performing its functions and the entity or holder consents or is required, under the entity’s authority or the special approval, to consent to the disclosure.

Amendment of s 140 (Entry to place to protect electricity entity’s works)

Clause 23 amends section 140 of the *Electricity Act 1994* by inserting a new subsection (1A) to make it clear that an electricity officer for an electricity entity may enter a place to remove vegetation that is interfering,

or has the potential to interfere, with the operation of an electric line or other works of the entity.

Amendment of s 141 (Entry to make works or electrical installations safe)

Clause 24 amends section 141 of the *Electricity Act 1994* by inserting a new subsection (2A) to make it clear that an electricity officer for an electricity entity may enter a place to remove vegetation that is affecting, or may affect, the safety of the entity's works or an electrical installation.

Insertion of new s 141B

Clause 25 inserts in the *Electricity Act 1994* new section 141B (Associated powers of entry) which provides that an electricity officer for an electricity entity may take onto a place any person, equipment and materials the officer reasonably requires for exercising a power of entry for maintenance and other operational activities, including vegetation management.

Amendment of sch 5 (Dictionary)

Clause 26 amends schedule 5 of the *Electricity Act 1994* by omitting the now redundant definition of 'service quality standard', and inserting new definitions and amending existing definitions to support the amendments to the sections of the *Electricity Act 1994* dealing with contractual arrangements for the provision of customer retail services and customer connection services.

Insertion of new ch 14, pt 8

Clause 27 inserts in chapter 14 of the *Electricity Act 1994* a new part 8 (Transitional provisions for Electricity Amendment Act (No. 2) 2004) which includes the following new sections dealing with transitional matters arising from the amendments that create a direct contractual arrangement between a non-contestable customer and the distribution entity, and the introduction of the newly defined negotiated customer sale and connection contract:

- Section 310 (Existing standard customer sale contracts) which provides that, on and from commencement of this section, a non-contestable customer is taken to have a standard customer sale contract with the retail entity in whose area the customer's premises are located, and a standard customer connection

contract with the distribution entity to whose supply network the customer's premises are connected;

- Section 311 (Existing negotiated customer sale contracts) which provides that, on and from commencement of this section, a negotiated customer sale contract that provides for both customer retail services and customer connection services is taken to be a negotiated customer sale and connection contract; and
- Section 312 (Existing standard customer connection contracts) which provides that, on and from commencement of this section, a standard customer connection contract between a distribution entity and retail entity for the provision of customer connection services to a non-contestable customer's premises, is terminated (given non-contestable customers will be deemed to have a standard customer connection contract directly with the distribution entity).

Schedule of minor amendments

The schedule makes a number of minor consequential and editorial amendments to various sections of the *Electricity Act 1994*, including the insertion of a new provision stating that a note in the text of the Act is part of the Act, removal of redundant cross-references, updates to cross-references as a consequence of renumbering and updates to headings.