

Energy Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Energy Legislation Amendment Bill 2005*.

Policy Objectives

The objectives of the *Energy Legislation Amendment Bill 2005* are to:

- make a number of minor consequential amendments to the *Electricity Act 1994* and the *Electricity – National Scheme (Queensland) Act 1997* following the commencement of the new National Electricity Law and National Electricity Rules;
- extend section 112A of the *Electricity Act 1994*, which deals with the clearing of native vegetation for operating works of transmission entities, so it also applies to distribution entities;
- remove section 123 of the *Electricity Act 1994*, which provides for electricity restriction regulations to expire five years after they are made; and
- remove sections of the *Gas Supply Act 2003* which relate to greenfield gas distribution authorities and exclusive gas retail authorities, to ensure consistency with Australia's obligations under international trade agreements.

The Bill also includes some minor editorial amendments identified by the Department of Energy and the Office of the Queensland Parliamentary Counsel.

Reasons for the Bill

Amendments consequential to the commencement of the NEL and the Rules

The new National Electricity Law (NEL) and National Electricity Rules (the Rules) commenced in Queensland on 1 July 2005, resulting from work carried out as part of the Ministerial Council on Energy reform program.

As a result of the amendments made to the NEL and the commencement of the Rules, a number of minor consequential changes are required to be made to the *Electricity Act 1994* and the *Electricity – National Scheme (Queensland) Act 1997*.

The amendments contained in the Bill will remove superfluous definitions and update these Acts to achieve consistency with the terminology and structure of the new NEL and Rules.

Section 112A of the *Electricity Act 1994*

Section 112A of the *Electricity Act 1994* provides an exemption to transmission entities (such as Powerlink Queensland) building operating works on freehold land from the need to obtain specific native vegetation clearing approval under the *Vegetation Management Act 1999*, if the land has been designated by a Minister under the *Integrated Planning Act 1997* as land for community infrastructure.

The designation process established under the *Integrated Planning Act 1997* integrates the infrastructure and land use planning processes, in order to allow community infrastructure (which includes electricity operating works such as transmission and distribution lines) to be built more efficiently and effectively. The process for designating land for community infrastructure is a single integrated process which includes a public benefit test, assessment against local government planning schemes and State planning policies, consideration of environmental issues and extensive consultation with stakeholders.

When section 112A of the *Electricity Act 1994* was originally developed, distribution entities (such as ENERGEX and Ergon Energy) did not seek to designate land for community infrastructure for their operating works, largely because of the scale of their projects. However, ENERGEX and Ergon Energy are now using the community infrastructure designation process in the same way as Powerlink Queensland.

Currently, distribution entities are not able to utilise the exemption afforded to transmission entities under section 112A of the *Electricity Act 1994*. Therefore, in contrast to Powerlink Queensland, operational works carried

out by ENERGEX or Ergon Energy on designated freehold land which involve the clearing of native vegetation, generally require a separate permit from the Department of Natural Resources and Mines. This additional approval process can add significant time and cost to electricity infrastructure projects.

To streamline the processes for approval of any clearing of native vegetation necessary for electricity infrastructure projects, the Bill will extend the application of section 112A to the distribution entities. In conjunction with the extension of the exemption to the distribution entities, the Department of Natural Resources and Mines and each distribution entity are to enter into a memorandum of understanding (MOU) in relation to clearing of native vegetation. The MOUs will support the environmental considerations under the designation process by ensuring the purpose of the *Vegetation Management Act 1999* with respect to the conservation and management of remnant native vegetation is given due regard by the distribution entities in planning and building infrastructure.

The extension of the exemption under section 112A to include the distribution entities recognises that the community infrastructure designation process which entails consideration of environmental issues, together with the MOUs to be put in place between the Department of Natural Resources and Mines and the distribution entities, removes the need for a separate process for approval to clear native vegetation. It will also ensure that transmission and distribution entities, which use the same community infrastructure designation process for their operating works, are treated consistently.

Section 123 of the *Electricity Act 1994*

Section 123 of the *Electricity Act 1994* provides that electricity restriction regulations expire five years after the regulations are made. This section was originally established to ensure the electricity restrictions, such as those applying to customers connected to Ergon Energy's isolated supply networks in the Torres Strait and other remote locations, were periodically reviewed.

Since the enactment of section 123 of the *Electricity Act 1994*, general sunset provisions have been established in the *Statutory Instruments Act 1992* which provide that all regulations expire on 1 September, 10 years after the regulations were made.

This means that the electricity restriction regulations (which are a part of the *Electricity Regulation 1994*) are subject to two different sunset

provisions which creates unnecessary administrative issues and duplication of effort when reviewing the regulations.

Therefore, the Bill removes section 123 of the *Electricity Act 1994* so that electricity restriction regulations will be subject to only the general sunset provisions under the *Statutory Instruments Act 1992*.

Amendments to ensure consistency with Australia's trade obligations

In an analysis of Australia's commitments under international trade agreements, some inconsistencies between the *Gas Supply Act 2003* and Australia's trade commitments under the General Agreement on Trade in Services (GATS) and the Singapore-Australia Free Trade Agreement (SAFTA) were identified.

Section 23(5) and related provisions in Chapter 2, Part 1 of the *Gas Supply Act 2003* provide for the grant of an exclusive 'greenfield' distribution authority (or licence) to distribute gas in an area specified in the authority. A greenfield distribution authority provides the holder with an exclusive right, for a period of up to five years, to connect stated customers in the specified area without any threat of competition during that period. The greenfield distribution authority provisions were included in the *Gas Supply Act 2003* with the intention of supporting the development of new gas distribution infrastructure.

Consistent with the National Gas Pipeline Access Agreement 1997 to which Queensland is a party, the *Gas Supply Act 2003* provides that a greenfield distribution authority may only be granted if it is for the establishment of a new gas distribution network in an area where the gas market is not yet established and then only after a competitive selection process has been undertaken to select a preferred applicant. As such, the greenfield distribution authority provisions are very limited in their application.

Because of the exclusive right conferred by a greenfield distribution authority, these provisions are inconsistent with Australia's commitment under GATS and SAFTA to not introduce limitations on market access for transportation of fuels, including transportation of gas via a pipeline.

The *Gas Supply Act 2003* (in section 26 and related provisions in Chapter 3, Part 1) also provides for the grant of exclusive retail authorities which give the holder an exclusive right, for a period of up to five years, to provide retail services to stated contestable customers in a specified area.

Exclusive retail authorities were included in the *Gas Supply Act 2003* to operate in concert with the greenfield distribution authority provisions, again with the intention of supporting the development of new gas distribution networks in Queensland. Like the greenfield distribution authorities, their grant is subject to strict criteria consistent with the franchising principles in the National Gas Pipeline Access Agreement 1997 and, as such, they are very limited in application.

While Australia's obligations under GATS and SAFTA do not extend to retailing of gas to customers, if the provisions relating to greenfield distribution authorities are removed from the *Gas Supply Act 2003*, there is no reason to retain the provisions relating to exclusive retail authorities.

To avoid any inconsistency with Australia's international trade commitments, the Bill removes all provisions relating to greenfield distribution authorities and the complementary exclusive retail authorities.

Achieving the Policy Objectives

Amendments consequential to the commencement of the NEL and the Rules

The new NEL which replaced the original NEL, and the Rules which replaced the National Electricity Code, were drafted in the context of the nationally agreed electricity market reforms under the Ministerial Council on Energy reform program.

The amendments to the *Electricity Act 1994* and the *Electricity – National Scheme (Queensland) Act 1997* are not required to give any effect to the new NEL and the Rules in Queensland. The new NEL and the Rules commenced in Queensland on 1 July 2005, as part of the cooperative legislative scheme for the national electricity market.

The amendments in the Bill will simply remove superfluous definitions and update the *Electricity Act 1994* and the *Electricity – National Scheme (Queensland) Act 1997* to achieve consistency with the terminology and structure of the new NEL and the Rules. This includes recognising the newly created Australian Energy Market Commission and Australian Energy Regulator.

The amendments will ensure these two Acts are clear on how they apply and will remove the need to rely on transitional provisions and the *Acts Interpretation Act 1954*, as is the case during the interim period prior to the changes being made.

Section 112A of the *Electricity Act 1994*

The Bill amends section 112A of the *Electricity Act 1994* so that the existing exemption, given to transmission entities, from the need to obtain specific native vegetation clearing approval when building operating works on freehold land which has been designated for community infrastructure by a Minister under the *Integrated Planning Act 1997*, is also given to distribution entities.

It is important to note that the amendment to section 112A will not mean distribution entities can disregard the *Vegetation Management Act 1999* in relation to clearing native vegetation on land which has been designated for community infrastructure.

Rather, the amendment will streamline the processes for approval of any clearing of native vegetation necessary for electricity infrastructure projects. Specifically, the amendment recognises that the community infrastructure designation process which entails consideration of environmental issues, together with the MOUs to be put in place between the Department of Natural Resources and Mines and the distribution entities, means there is no need for a separate process for approval to clear native vegetation.

To allow sufficient time for the development of the MOUs, the amendment to section 112A of the *Electricity Act 1994* will not commence until 1 April 2006.

Section 123 of the *Electricity Act 1994*

The Bill removes section 123 of the *Electricity Act 1994* so that electricity restriction regulations (which are a part of the *Electricity Regulation 1994*) are not subject to two different sunset provisions but, rather, are subject to only the general sunset provisions under the *Statutory Instruments Act 1992*.

This means that the whole of the *Electricity Regulation 1994* (including the electricity restriction regulations) will be reviewed under the general 10 year sunset provisions for regulatory review established in the *Statutory Instruments Act 1992*. The amendment will streamline the regulatory review process and avoid confusion and duplication of effort.

The *Electricity Regulation 1994* (including the electricity restriction regulations) is currently under review, as it is due to expire on 1 September 2006 pursuant to the general sunset provisions in the *Statutory Instruments Act 1992*.

Amendments to ensure consistency with Australia's trade obligations

The Bill makes amendments which mean that no provision will be made for the grant of any greenfield distribution authorities or exclusive retail authorities. The amendments will remove all limitations on market access for distributors wishing to transport gas via a distribution pipeline, thus ensuring the *Gas Supply Act 2003* is not inconsistent with Australia's obligations under GATS and SAFTA.

The removal of these provisions will have no impact on existing arrangements as no company has applied for, or been granted, a greenfield distribution authority or exclusive retail authority to date. In practice, gas market participants have preferred to use commercial arrangements to support the expansion of their businesses.

The *Gas Supply Act 2003* will still provide for the grant of point-to-point distribution authorities, area distribution authorities, general retail authorities and area retail authorities, and no changes are being made to these types of authorities. As all existing gas distribution and retail operations are carried out under these remaining types of authorities, the amendments in the Bill will not impact on existing gas retail and distribution operations in Queensland.

Estimated administrative costs to Government for implementation

There will be no added administrative costs as a result of the proposed amendments.

Consistency with Fundamental Legislative Principles

The *Energy Legislation Amendment Bill 2005* 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, while the Bill itself does not infringe any FLPs, there is a potential issue with a related matter, namely the application of the NEL as a law in Queensland through a cooperative legislation scheme. This potentially raises an issue about the FLP which requires sufficient regard to the institution of Parliament.

As noted earlier, the amendments in the Bill are not required to give any effect to the new NEL and the Rules in Queensland. The new NEL and the Rules commenced in Queensland on 1 July 2005, as part of the cooperative

legislative scheme for the national electricity market. Specifically, the NEL is enacted by the South Australian Parliament and is applied as a law of Queensland by the *Electricity – National Scheme (Queensland) Act 1997*.

Any such national legislation, or amendment of it, raises an issue about having due regard for the institution of Parliament, as it places a constraint on the role of Parliament in scrutinising proposed legislation.

As the jurisdictions involved need to agree on legislation proposed to be applied nationally, agreements about the proposed legislation tend to be negotiated by the participating jurisdictions at an administrative level. Agreements about the proposed legislation can be difficult to uniformly implement unless the legislatures of each participating jurisdiction accept the proposals agreed to at the administrative level. This creates a tension between the effective collaboration among the jurisdictions involved in the development and application of legislation on a national basis, and the independent operation of the respective Parliaments.

In the case of the national scheme legislation underpinning the national electricity market, it is noted that any amendments to the NEL must first be agreed to by the Ministerial Council on Energy. Additionally, section 9 of the *Electricity – National Scheme (Queensland) Act 1997* requires any Act passed by the South Australian Parliament that amends the NEL to be tabled in the Queensland Legislative Assembly.

It is important that any constraints placed on Parliamentary scrutiny of national cooperative schemes be balanced against the advantages which derive from the State's participation in national legislation.

The *Electricity – National Scheme (Queensland) Act 1997* facilitates Queensland's participation in the national electricity market which has provided significant competitive, economic and strategic benefits, including improved opportunities for future investment in electricity infrastructure and reductions in wholesale electricity prices. A decision by Queensland to not participate in the national legislative regime would effectively preclude Queensland's participation in the national electricity market with its associated benefits.

Consultation

The following Government Departments were consulted on the development of the *Energy Legislation Amendment Bill 2005*:

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Department of Natural Resources and Mines;
- Department of Aboriginal and Torres Strait Islander Policy;
- Department of State Development, Trade and Innovation;
- Department of Justice and Attorney-General;
- Department of Local Government, Planning, Sport and Recreation;
- Environmental Protection Agency;
- Department of Communities; and
- Department of Employment and Training.

Other bodies consulted include the electricity distribution entities, ENERGEX and Ergon Energy, as well as all current holders of gas distribution and retail authorities.

There is general support for the proposed amendments.

Notes on Provisions

Part 1

Short title

Clause 1 sets out the short title of the Act as the *Energy Legislation Amendment Act 2005*.

Commencement

Clause 2 provides that section 4 of the *Energy Legislation Amendment Act 2005* will commence on 1 April 2006. This section amends section 112A of the *Electricity Act 1994* to extend the native vegetation clearing exemption which currently applies to transmission entities to also include distribution entities. The commencement date for this amendment is being delayed until 1 April 2006 in order to provide time for memoranda of understanding in relation to clearing of native vegetation to be established

between the Department of Natural Resources and Mines and the distribution entities.

The remainder of the *Energy Legislation Amendment Act 2005* will commence on assent.

Part 2—Amendment of Electricity Act 1994

Act amended in pt 2 and schedule

Clause 3 states that part 2 and the schedule of the *Energy Legislation Amendment Act 2005* amend the *Electricity Act 1994*.

Amendment of s 112A (Clearing native vegetation for operating works on freehold land)

Clause 4 amends section 112A of the *Electricity Act 1994* to extend the application of this section to distribution entities.

Omission of s 123 (Expiry of electricity restriction regulation)

Clause 5 omits section 123 of the *Electricity Act 1994* so that electricity restriction regulations will be subject to only the general 10 year sunset provisions under the *Statutory Instruments Act 1992*.

Amendment of sch 5 (Dictionary)

Clause 6 amends schedule 5 of the *Electricity Act 1994* by omitting the redundant definitions of ‘approved industry superannuation scheme’, ‘code participant’, ‘Market Code’, ‘National Electricity Tribunal’, ‘NECA’, and ‘Queensland System Operator’ and inserting new definitions of ‘Australian Energy Regulator’, ‘National Electricity Rules’, ‘Registered participant’ and ‘System Operator’. This clause also amends the existing definitions of ‘national grid’, ‘spot market’ and ‘trading arrangements’ to replace references to the Market Code with references to the National Electricity Rules.

Part 3—Amendment of Electricity – National Scheme (Queensland) Act 1997

Act amended in pt 3

Clause 7 states that part 3 of the *Energy Legislation Amendment Act 2005* amends the *Electricity – National Scheme (Queensland) Act 1997*.

Omission of preamble

Clause 8 omits the now redundant preamble to the *Electricity – National Scheme (Queensland) Act 1997*.

Amendment of s 8 (Interpretation of expressions in National Electricity (Queensland) Law and National Electricity (Queensland) Regulations)

Clause 9 amends section 8(1) of the *Electricity – National Scheme (Queensland) Act 1997* by omitting the now redundant definitions of ‘Supreme Court’ and ‘the jurisdiction’.

Amendment of s 9 (Attachment – National Electricity Law)

Clause 10 replaces section 9(4) of the *Electricity – National Scheme (Queensland) Act 1997* to make it clear that the whole of an Act passed by the Parliament of South Australia that amends the National Electricity Law, must be tabled in the Legislative Assembly by the Minister within 14 sitting days after it receives assent, and it is not just the amendments to the National Electricity Law that must be tabled.

Part 4—Amendment of Gas Supply Act 2003

Act amended in pt 4

Clause 11 states that part 4 of the *Energy Legislation Amendment Act 2005* amends the *Gas Supply Act 2003*.

Amendment of s 18 (Who is a *protected customer*)

Clause 12 amends section 18 of the *Gas Supply Act 2003* by omitting paragraph (b) to remove reference to customers who are the subject of a greenfield distribution authority or an exclusive retail authority, and renumbering paragraph (c).

Amendment of s 23 (Types of distribution authority and their distributors)

Clause 13 amends section 23 of the *Gas Supply Act 2003* by omitting subsection (5) which describes a ‘greenfield distribution authority’.

Amendment of s 26 (Types of retail authority and their retailers)

Clause 14 amends section 26 of the *Gas Supply Act 2003* by omitting subsections (4) and (5), which describe an ‘exclusive retail authority’ and an ‘exclusive retailer’, and renumbering the subsequent subsections.

Amendment of s 28 (Requirements for application)

Clause 15 amends section 28 of the *Gas Supply Act 2003* by omitting paragraph (c), which deals with the application requirements for a greenfield distribution authority, and renumbering the subsequent paragraphs.

Amendment of s 29 (Public notice by regulator and submissions)

Clause 16 amends section 29 of the *Gas Supply Act 2003* by omitting subsection (2)(a)(v), which deals with the notice requirements for an application for a greenfield distribution authority.

Omission of s 30 (Competitive tender process for greenfield distribution authority)

Clause 17 omits section 30 of the *Gas Supply Act 2003* as this section is only relevant to greenfield distribution authorities.

Amendment of s 31 (Deciding application)

Clause 18 amends section 31 of the *Gas Supply Act 2003* by omitting subsection (3), which deals with requirements specific to greenfield distribution authorities.

Omission of s 33 (Additional criteria for greenfield distribution authority application)

Clause 19 omits section 33 of the *Gas Supply Act 2003* as this section is only relevant to greenfield distribution authorities.

Amendment of s 34 (Term of Authority)

Clause 20 amends section 34 of the *Gas Supply Act 2003* by omitting references to greenfield distribution authorities in subsections (2) and (3), and renumbering subsection (4).

Amendment of s 37 (Issue and public notice of authority)

Clause 21 amends section 37 of the *Gas Supply Act 2003* by omitting subsection (3)(b)(iv), which deals with notice requirements for the grant of a greenfield distribution authority.

Omission of ss 44 and 45

Clause 22 omits section 44 (Exclusive rights must not be contravened) and section 45 (Additional condition for greenfield distribution authority) of the *Gas Supply Act 2003*, as these sections are relevant only to greenfield distribution authorities.

Amendment of s 52 (Amendments for which proposed action notice is not required)

Clause 23 amends section 52 of the *Gas Supply Act 2003* by omitting subsection (2), which is relevant only to greenfield distribution authorities.

Amendment of s 55 (Applying for amendment)

Clause 24 amends section 55 of the *Gas Supply Act 2003* by recasting subsection (1) to remove reference to greenfield distribution authorities.

Amendment of s 64 (Applying for renewal)

Clause 25 amends section 64 of the *Gas Supply Act 2003* to remove the reference to a greenfield distribution authority in subsection (1).

Amendment of s 102 (Application of pt 3)

Clause 26 amends section 102 of the *Gas Supply Act 2003* to remove the reference to a greenfield distribution authority.

Amendment of s 149 (Requirements for application)

Clause 27 amends section 149 of the *Gas Supply Act 2003* by recasting paragraph (b) and omitting paragraph (c) to remove the references to an exclusive retail authority, and renumbering paragraph (d).

Amendment of s 150 (Public notice by regulator and submissions)

Clause 28 amends section 150 of the *Gas Supply Act 2003* by omitting subsection (2)(a)(iv) which is specific to exclusive retail authorities, and renumbering subsections (2)(a)(v) and (vi).

Omission of s 153 (Additional criteria for exclusive retail authority application)

Clause 29 omits section 153 of the *Gas Supply Act 2003* as this section is relevant only to exclusive retail authorities.

Amendment of s 154 (Term of authority)

Clause 30 amends section 154 of the *Gas Supply Act 2003* by omitting subsection (2) which deals only with exclusive retail authorities, and recasting and renumbering subsections (3) and (4) to remove references to exclusive retail authorities.

Amendment of s 157 (Issue and public notice of authority)

Clause 31 amends section 157 of the *Gas Supply Act 2003* by omitting subsection (3)(b)(iii) which is specific to exclusive retail authorities, and renumbering subsection (3)(b)(iv).

Amendment of s 159 (operation of div 2)

Clause 32 amends section 159 of the *Gas Supply Act 2003* by omitting the reference in subsection (3) to section 170, as section 170 is omitted by clause 34.

Amendment of s 167 (General right of retailer)

Clause 33 amends section 167 of the *Gas Supply Act 2003* by omitting subsection (2) which is specific to exclusive retail authorities.

Omission of s 170 (Exclusive rights must not be contravened)

Clause 34 omits section 170 of the *Gas Supply Act 2003* as this section is relevant only to exclusive retail authorities.

Amendment of s 188 (Applying for renewal)

Clause 35 amends section 188 of the *Gas Supply Act 2003* by omitting subsections (1) and (2) which are relevant only to exclusive retail authorities, removing the reference to an exclusive retailer in subsection (3) and renumbering subsections (3) and (4).

Amendment of s 309 (Keeping of register)

Clause 36 makes consequential amendments to the numbering of section 309 of the *Gas Supply Act 2003*, to reflect the removal of provisions relating to greenfield distribution authorities and exclusive retail authorities.

Amendment of s 327 (New area distribution authorities – sch 3, pt 1)

Clause 37 amends section 327 of the *Gas Supply Act 2003* by omitting subsection (4) which is specific to greenfield distribution authorities.

Amendment of s 328 (New area retail authorities – sch 3, pt 2)

Clause 38 amends section 328 of the *Gas Supply Act 2003* by omitting subsection (4) which is specific to exclusive retail authorities.

Amendment of sch 4 (Dictionary)

Clause 39 amends schedule 4 of the *Gas Supply Act 2003* by omitting the definitions of ‘exclusive retail authority’, ‘exclusive retailer’ and ‘greenfield distribution authority’. The definitions of ‘general retail authority’ and ‘general retailer’ are also amended to update cross-references to sections which have been renumbered.

Schedule—Minor amendments of Electricity Act 1994

The schedule makes a number of minor consequential and editorial amendments to various sections of the *Electricity Act 1994*.

These amendments include updating the terminology to reflect the commencement of the new National Electricity Law and National Electricity Rules, such as replacing references to the ‘Market Code’ with the ‘National Electricity Rules’ and replacing references to ‘code participant’ with ‘Registered participant’. Other amendments include updates to cross-references as a consequence of renumbering, updates to a heading, replacing ‘or’ with ‘and’ in a number of sections for clarity, updates to the names of other Acts referred to, an update to the name of a superannuation scheme referred to and the inclusion of notes for clarity.