Electricity Competition and Protection Legislation Amendment Bill 2014

Explanatory Notes

Short Title

The short title of the Bill is the *Electricity Competition and Protection Legislation Amendment Bill 2014*.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1 amend the *Electricity Act 1994* (the Electricity Act) to remove retail price regulation in south east Queensland (SEQ) and establish an effective market monitoring regime; and

2 remove or amend provisions of existing Queensland energy legislation to avoid duplication upon commencement of the National Energy Retail Law (Queensland) Bill 2014 and to ensure that the remaining provisions continue to operate effectively.

The Queensland Government announced its intention to increase competition in SEQ by replacing retail price controls with a more light-handed market monitoring approach, and apply the National Energy Retail Law as a law of Queensland following an Interdepartmental Committee review of the Electricity Sector in Queensland. The review arose out of long standing concerns about: the cost effectiveness of electricity supply; the viability, sustainability and competitiveness of the electricity sector; and the financial sustainability of arrangements for government.

Introducing market monitoring in SEQ and applying the National Energy Retail Law forms part of a wide ranging suite of reforms announced by the Queensland Government in response to the review. Underpinning the reforms are three strategies:

- Strategy 1 is to stop building unnecessary infrastructure and improve the efficiency of network businesses.
- Strategy 2 is to maximise the benefits of competition while protecting customers.
- Strategy 3 is more effective government.

The measures in this Bill support Strategies 2 and 3.

Market monitoring
The Bill will make amendments to the Electricity Act to remove retail electricity price controls in SEQ and establish an appropriate regulatory framework for monitoring the SEQ retail electricity market.

Consequential amendments
The Bill will make amendments to the Electricity Act, Gas Supply Act 2003 and other legislation to ensure that the remaining consumer protections in these Acts continue to operate effectively. Amendments to remove duplication and align terminology with the National Energy Retail Law (Queensland) Bill 2014 are intended to reduce the regulatory burden and increase efficiency for energy businesses, and contribute to more effective government.

Achievement of policy objectives

Market monitoring
The Bill will achieve its objective of introducing market monitoring in SEQ by amending the Electricity Act to:

- remove the Ministerial power to decide regulated retail electricity prices for standard contract (non-market) customers in SEQ
- establish a limited reserve power to allow the Minister responsible for Energy to re-introduce price controls in SEQ should competition become ineffective and subject to an independent review
- allow the Minister responsible for Energy to direct the Queensland Competition Authority (QCA) to undertake a market monitoring function and publish an annual market comparison report.

Importantly, regulated retail electricity prices will continue to be set for standard contract customers outside SEQ (i.e. regional Queensland). The Minister responsible for Energy will retain the power under s 90(1) of the Electricity Act to decide the regulated prices, or the methodology for fixing the prices, that a retailer can charge standard contract customers outside SEQ.

The reserve power to reintroduce retail price regulation provides an additional safeguard for customers should competition in the SEQ retail electricity market become ineffective. However, the exercise of this power will only be triggered subject to an independent review of the SEQ market which concludes competition has become ineffective and recommends price controls be reinstated. Overall, the existence of a reserve re-regulation power should incentivise good market conduct by retailers and reassure consumers that their interests are being protected under the market monitoring regime.

The establishment of an effective market monitoring and reporting framework will allow government to monitor the operation of the SEQ retail electricity market in order to ensure customers have the opportunity to benefit from increased competition. The framework will also provide stakeholders, including customers, with market information, including price comparisons, to increase awareness and assist with their decision-making.

Consequential amendments
The Bill will achieve its objective of ensuring that the remaining consumer protections in existing Queensland energy legislation continue to operation effectively following the commencement of provisions in the National Energy Retail Law (Queensland) Bill 2014 by:

- amending the *Energy and Water Ombudsman Act 2006* to preserve existing rights of customers to access the Energy and Water Ombudsman for the purposes of settling billing and other disputes;
- amending the Electricity Act and the Gas Supply Act to include a new enforcement regime to ensure retailers continue to enter into and comply with community service agreements with the Queensland Government in relation to the delivery of Queensland Government concessions and rebates. This is needed because the government will no longer be able to suspend or take other action in relation to a retailer's retail authority in order to encourage compliance; and
- amending the Electricity Act to include a new enforcement regime to ensure retailers continue to be required to pass on benefits of the Queensland Government's solar bonus scheme to qualifying customers. This is needed because the government will no longer be able to suspend or take other action in relation to a retailer's retail authority in order to encourage compliance.

The Bill will achieve its objective of removing duplication and aligning terminology with the National Energy Retail Law (Queensland) Bill 2014 to reduce the regulatory burden and increase efficiency for energy businesses by amending the Electricity Act, the Gas Supply Act, the Energy and Water Ombudsman Act, the *Electrical Safety Act 2002* and the *Queensland Competition Authority Act 2003.* These amendments will remove many of the provisions dealing with retail energy matters and customer connection services. On commencement of the National Energy Retail Law (Queensland) Bill 2014, the majority of matters relating to customer retail services and customer connection services will be dealt with under the National Energy Retail Law (Queensland).

The National Energy Retail Law is an applied law arrangement, whereby a harmonised legislative framework is applied by participating jurisdictions to improve the efficiency of retailers operating across state borders. The framework deals with retail authorisations, the terms and conditions of selling energy to small customers, and the terms and conditions of providing customer connection services (including disconnection and reconnection).

The Bill will achieve its objective of removing duplication with the National Energy Retail Law (Queensland) Bill 2014 to support more effective government by transferring responsibility for some energy regulatory matters. Under provisions contained in the National Energy Retail Law (Queensland) Bill 2014, the Australian Energy Regulator will assume many of the other energy-specific responsibilities currently undertaken by the QCA (with the exception of retail pricing) and retailer authorisation functions undertaken by the Queensland Department of Energy and Water Supply.

Alternative ways of achieving policy objectives

Market monitoring
No alternative ways of achieving the policy objectives have been identified.

Consequential amendments
No alternative ways of achieving the policy objectives have been identified.

Estimated costs for government implementation

Market monitoring
There is no material cost to the Queensland Government in relation to the implementation of the retail price regulation amendments in the Bill.

Under a market monitoring regime, the Queensland Government will no longer be responsible for setting regulated prices (usually undertaken via Ministerial delegation to the QCA). Instead, government (principally via the QCA) will monitor developments in the SEQ retail electricity market and in particular, the product offers and prices set by retailers. The monitoring and reporting framework is not expected to impose any significant costs on government and any additional administrative costs will be funded from existing resources.

Consequential amendments
There is no material cost to the Queensland Government in relation to the implementation of the consequential amendments in the Bill. At present, compliance and rule making functions are largely undertaken by the QCA, which recovers its costs from industry. The retail authorisation functions of the Chief Executive of the Department of Energy and Water Supply are similarly recovered from industry through annual license fees. As these functions will be largely discontinued, the cost to government for implementation is expected to be neutral.

Consistency with fundamental legislative principles

This Bill has been examined for compliance with the fundamental legislative principles, outlined in section 4 the *Legislative Standards Act 1992* (LSA), and potential breaches of the fundamental legislative principles were identified. These are addressed as follows.

Legislation should have sufficient regard to the rights and liberties of individuals—LSA section 4(2)(a)

Clause 28 Replacement of s 55DA (Additional condition about community services agreements) and Clause 130 Amendment of s 175A (Additional condition about community services agreements)

Clauses 28 and 130 of the proposed Bill amend existing provisions of the Electricity Act and the Gas Supply Act obliging (respectively) an electricity retailer and a gas retailer to enter into an agreement with the State to provide community services. This may potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals.

The community services comprise the retailer delivering to customers concessions or rebates funded by the Queensland Government.

The effect of amendments is to change the existing obligation to enter into an agreement with the State from a condition of an electricity or gas retail authority to a direct obligation on an electricity or gas retailer. This is necessary because retailer authorities will no longer be issued under either the Electricity Act or the Gas Supply Act. Retailers have been consulted on the proposed obligation and support the continuation of the obligation.

Legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons—LSA section 4(3)(2)

Clause 28 Replacement of s 55DA (Additional condition about community services agreements) and Clause 130 Amendment of s 175A (Additional condition about community services agreements)

The amendments to the Electricity Act and the Gas Supply Act made by clauses 28 and 130 of the proposed Bill give the Minister a broad discretion to decide the terms of a community services agreement, where the State and a retailer fail to agree on terms. This may be a potential breach of the fundamental legislative principle that administrative power be delegated only in appropriate cases and to appropriate persons.

In the provisions as they currently exist, this is a fall-back mechanism to ensure that a retailer cannot avoid a duty to pass on Queensland Government concessions or rebates to qualifying customers. The amendments continue this mechanism in the form of a direct regulatory obligation rather than a condition of a retail authority. Merely altering the way in which Queensland energy legislation places duties on energy retailers does not lessen the importance of ensuring that such duties will apply to all retailers.

Clause 139 [Amendment of s 228 (Fixing of prices for standard contracts or for on-supply)]

Clause 139 of the Bill amends an existing provision of the Gas Supply Act that allows the Minister to fix either the price, or a methodology to fix the price, that (i) a retailer can charge a customer on a standard retail contract for (or relating to) the sale of processed natural gas or (ii) that an on-supplier can charge a customer for the sale of processed natural gas. This power, if exercised, would deprive a retailer or on-supplier of the ability to set its own charges.

The gas price-fixing power is a consumer protection of long standing, appearing in current and repealed Queensland gas legislation. The current powers have not been exercised since 1 July 2007 but are retained as reserve powers in the interests of consumer protection in the event that competition is not effective. The powers to fix on-supply pricing have never been exercised.

The clause 139 amendments update the terminology used in the section in relation to the retailer price-fixing power to reflect the terminology of the National Energy Retail Law (proposed to be applied by the National Energy Retail Law (Queensland) Bill). The reserve power in relation to retailers is otherwise unaffected.

The amendment also removes the power to fix on-supply pricing. This aligns with pricing-related conditions that the Australian Energy Regulator may place on on-suppliers (to be known as 'exempt sellers') under the National Energy Retail Law (Queensland).

Consultation

Market monitoring

The Queensland Government sought input from a broad range of stakeholders on its proposed approach to implementing market monitoring in SEQ, including the desired customer protection and engagement pre-conditions. In response to the 30 year electricity strategy discussion paper, over 1,300 survey responses and 140 written submissions were received from stakeholders including retailers, distributors, unions, industry organisations, consumer groups and individual consumers. There were subsequent meetings and targeted workshops with industry and small customer advocacy groups. Consultation was invaluable in shaping the government's approach to implementing pre-conditions for market monitoring.

Consequential amendments

The consequential amendments in the Bill are a necessary consequence of provisions included in the National Energy Retail Law (Queensland) Bill, which seeks to apply the National Energy Retail Law with a number of state-specific modifications in Queensland.

Throughout its development, the National Energy Retail Law legislative package has been the subject of a number of public consultations, including:

- five reports by Allens Arthur Robinson (AAR) in 2006 and 2007 proposing the outline of the framework and a policy response from the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) in 2008
- a draft national Retailer of Last Resort Scheme developed by NERA Economic Consulting and AAR in 2008
- a consultation Regulatory Impact Statement in 2008
- consultation by the MCE SCO on draft policy frameworks for new connections to electricity and gas networks in 2009
- two exposure drafts of the legislative package, in 2009.

At a State level, consultation activities have included:

- targeted consultation with key retailers, distributors and consumer representatives about application of the National Energy Retail Law through the Interdepartmental Committee on Electricity Sector Reform in 2012 and early 2013
- public consultation about application of the National Energy Retail Law through the 30 year electricity strategy discussion paper and targeted workshops with retailers, distributors and consumer and business representatives in late 2013 and early 2014
- targeted consultation and a workshop with key stakeholders, including retailers, distributors, consumer and business representatives, and dispute resolution agencies from the Minister's Consumer and Industry Reference Group in 2014.

Stakeholders participating in these consultation exercises include energy retailers and distributors, consumer representatives, regulators and bodies such as the Energy and Water Ombudsman Queensland. Broad consultation shaped many aspects of the National Energy Retail Law and the proposed approach to applying the law in Queensland set out in the National Energy Retail Law (Queensland) Bill 2014.

Consistency with legislation of other jurisdictions

Market monitoring
The market monitoring amendments are specific to the State of Queensland and not uniform with or complementary to legislation of the Commonwealth or another state. Even so, jurisdictions including Victoria and South Australia have adopted similar market monitoring reforms and removed price regulation from their retail electricity markets. Their approach to market monitoring is generally consistent with the Queensland approach. In addition, New South Wales has announced the removal of retail price regulation, effective 1 July 2014.

Consequential amendments
The National Energy Retail Law has been applied by New South Wales, South Australia, Tasmania and the Australian Capital Territory, all of which have preserved obligations in their existing jurisdictional energy legislation on retailers and distribution businesses to comply with energy ombudsman arrangements, enter into and comply with community services agreements and comply with solar bonus feed in tariff arrangements. The proposed Queensland mechanisms are broadly consistent with equivalent arrangements of other jurisdictions.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 states that, when enacted, the Bill will be cited as the *Electricity Competition and Protection Legislation Amendment Act 2014.*

2 Commencement

Clause 2 states that the Bill is intended to commence on a day fixed by proclamation.

Part 2 Amendment of Electrical Safety Act 2002

The proposed amendments to the *Electrical Safety Act 2002* in Part 2 of the Bill are necessary changes to reflect that under the National Energy Retail Law (Queensland) Bill, the National Energy Retail Law (Queensland) – or NERL (Qld) – will be the legislation under which retail authorisations are issued and administered. Consequential terminology changes are also provided.

3 Act amended

Clause 3 states that Part 2 amends the *Electrical Safety Act 2002*.

4 Replacement of pt 11A, div 8

Clause 4 inserts a new heading for division 8 and amends section 153 (Provision of information by retail entity) by replacing each reference to a retail authority under the *Electricity Act 1994* with a reference to a holder of a retail authorisation for electricity under the NERL (Qld).

5 Amendment of sch 2 (Dictionary)

Clause 5 inserts new or amended terms in the Dictionary for consistency with the NERL (Qld).

Part 3 Amendment of Electricity Act 1994

Part 3 of the Bill includes extensive amendments to the *Electricity Act 1994* to

- remove retail price regulation in SEQ
- establish an effective market monitoring regime
- remove provisions relating to: retail authorities; special approvals for the sale of electricity; the sale of electricity by on-suppliers to receivers; and the sale and supply of electricity to customers by retailers and distributors that would otherwise duplicate or be inconsistent with those proposed to be contained in the NERL (Qld)
- adjust terminology for consistency with the NERL (Qld)

- ensure that remaining customer protections continue to operate effectively and can be enforced.

6 Act amended

Clause 6 states that Part 3 amends the *Electricity Act 1994* (Electricity Act).

7 Amendment of s 18A (Declaration for Commonwealth Act)

Clause 7 amends section 18 by removing 'retail authority' from a list of authorities under the Electricity Act that are not personal property under the *Personal Property Securities Act 2009* (Cwth). This reflects that retail authorities will no longer be available under the Electricity Act.

8 Amendment of s 20 (Definitions for div 1)

Clause 8 amends section 20 to omit definitions for chapter 6 part 1 division 6 of the Electricity Act that are made redundant by omission of the provisions in which they were used. The clause also amends definitions 'on-supplier' and 'receiver' to remove reference to the sale of electricity, which is covered by the NERL (Qld).

9 Amendment of s 20A (Exemptions for on-suppliers)

Clause 9 replaces section 20A, which provides for when an on-supplier is exempted from sections 88A and 89 of the Act, to remove the reference to section 89, which is being omitted, and to subdivisions of chapter 1 part 6 division 1 that are being omitted.

An 'on-supplier' under the Electricity Act is a person who is the owner or occupier of premises, or has the right to use premises, and who supplies, or supplies and sells, electricity for use in the premises. Selling electricity to a person for use in premises will a matter for the NERL (Qld), so provisions relating to this will no longer be required in the Electricity Act. Specifically, an on-supplier as a seller of electricity will become an 'exempt seller' under the NERL (Qld).

Under the NERL (Qld), the Australian Energy Regulator has the power to issue an authorisation to an exempt seller and may impose conditions on that seller. An exempt seller may fall into one of three broad categories of exemption – individual exemption, deemed exemption or registered exemption. The latter two are class exemptions. It is expected that existing on-suppliers will transition into the NERL (Qld) under class exemption arrangements, so will not be required to apply for individual exemptions in order to continue to sell electricity to receivers.

Chapter 1 part 6 division 1 of the Electricity Act is being amended by removing references to selling electricity from certain definitions (e.g. 'on-supplier') and provisions and by omitting other definitions and provisions solely concerned with selling electricity.

10 Omission of ch 1, pt 6, div 1, sdivs 3 and 4

Clause 10 omits subdivisions 3 and 4 (sections 20B to 20G) of chapter 1 part 6 division 1, which provides for on-supply arrangements and preliminary disclosure requirements about common area charges. Selling electricity under on-supply arrangements becomes a matter for the NERL (Qld), and on-suppliers will become exempt sellers and be subject to the

conditions of their exemption. The conditions for the sale of electricity under a class exemption will be contained in the Australian Energy Regulator's exempt seller guidelines.

11 Amendment of s 20H (Individual metering option)

Clause 11 amends section 20H, which provides that a receiver may have a meter installed at their own expense to measure their electricity consumption, to remove references to the sale of electricity. The amendment will not remove the ability of a receiver to have a meter installed, but is needed to reflect that selling electricity under on-supply arrangements becomes a matter for the NERL (Qld).

12 Omission of s 20J (Maximum charge for metered supply)

Clause 12 omits section 20J which provides for the maximum charges for electricity supplied and sold by an on-supplier to a receiver and measured by a meter. Selling electricity under on-supply arrangements becomes a matter for the NERL (Qld) and on-suppliers will become exempt sellers and be subject to the conditions of their exemption. For exemptions covering the sale of energy to 'small customers', there are typically conditions imposed in respect of the maximum rate the exempt seller may charge, which are equivalent to those contained under existing section 20J. A modification is proposed to be included in regulations to be developed under the National Energy Retail Law (Queensland) Bill to preserve existing arrangements for exempt sellers who sell to 'large customers' in regional Queensland to ensure they are not charged more than the notified price.

13 Omission of ch 1, pt 6, div 1, sdiv 6 (Disclosure requirements for common area consumption charges)

Clause 13 omits subdivision 6 (sections 20K to 20N) of chapter 1 part 6 division 1, which provides for disclosure requirements in instances when an on-supplier can charge common area consumption charges under an on-supply agreement. Selling electricity under on-supply arrangements becomes a matter for the NERL (Qld), and on-suppliers will become exempt sellers and be subject to the conditions of their exemption. The conditions for the sale of electricity under a class exemption will be contained in the Australian Energy Regulator's exempt seller guidelines.

14 Amendment of s 20O (National Electricity Rules exemption required)

Clause 14 amends subsection 20O(b), which provides that an on-supplier who supplies electricity via a network solely located within the on-supplier's premises must be exempt from the requirement to be registered as a network service provider under the National Electricity Rules, by omitting reference to the sale of electricity. Selling electricity under on-supply arrangements becomes a matter for the NERL (Qld). The amendment does not affect the right of an on-supplier to be exempt from the requirement to register as a network service provider.

15 Amendment of s 20Q (Exemptions for rail government entities, railway managers and their related bodies corporate)

Clause 15 amends section 20Q, which provides that rail government entities, railway managers and their related bodies corporate are exempt from sections 88A and 89 of the Act in relation to the sale and supply of electricity associated with railway operations. The amendment omits references to the sale of electricity and to section 88A which deals with the

sale of electricity. It does not affect the exemption for these entities in relation to the supply of electricity. The ability of these entities to sell electricity without an authorisation will be preserved as part of Queensland modifications to the NERL(Qld) contained in the National Energy Retail Law (Queensland) Bill.

16 Amendment of s 22 (Electricity entities)

Clause 16 amends section 22 to omit subsection 22(2)(d), which refers to retail entities. The effect of this is that 'retail entities' (or retailers, as they will be known in the amended Act) will not generally be 'electricity entities' for the purposes of the Electricity Act. This is necessary because many of the Act's provisions using 'electricity entity' are provisions that should not apply in respect of retailers.

Electricity retail activities will be authorised under the NERL (Qld) and generally be a matter for the NERL (Qld). Where it is convenient to define a retailer as an 'electricity entity' for the purposes of one or more provisions of the Act, it is done by a separate amendment in this Bill.

17 Amendment of s 23 (Customers and their types)

Clause 17 amends section 23, which sets out who is and is not a customer under the Electricity Act and also defines the types of customer. The basic terms 'customer' and 'small customer' are redefined for consistency with the NERL (Qld). One consequence of this is that all residential customers will be, by definition, 'small customers'. This is a change from the current Electricity Act arrangements, under which residential customers and business customers are considered small or large based on the same consumption threshold. Customers consuming 100 megawatt hours per year or less are small customers and all other customers are large customers. The NERL (Qld) uses the same consumption threshold, 100 megawatt hours per year, but only business customers consuming over that threshold are large customers. Clause 17 also omits terms made redundant by the omission or amendment of retail-related provisions using them (e.g. 'market customer, 'non-market customer').

18 Amendment of s 26 (Generation authorities)

Clause 18 amends subsection 26(1) to omit reference to the sale of electricity from the activities a generation authority authorises its holder to do. As a consequence of amendments in this Bill that remove the general prohibition in section 89 against the sale of electricity without an authority to do so, the need to give specific authority to a generation entity to sell is no longer required. Under clause 18 of the National Energy Retail Law (Queensland) Bill, the holder of a generation authority will be transitioned into the NERL (Qld) framework as an exempt seller and will continue to be able to sell electricity to premises.

19 Omission of ch 2, pt 5, divs 2 and 3

Clause 19 omits divisions 2 and 3 (sections 40 to 40DF) of chapter 2 part 5, which provide for matters in relation to standard and negotiated connection contracts. The NERL (Qld) includes a comprehensive framework for the supply of electricity to customers under standard and negotiated connection contracts. These provisions will be complemented by a new connections framework in Part 5A of the National Electricity Rules, dealing with new physical connections to the distribution network. Under the National Energy Retail Law

(Queensland) Bill, Part 5A of the National Electricity Rules will commence at the same time as the NERL (Qld).

20 Omission of ch 2, pt 5, div 4, hdg (General provisions about customer connection services)

Clause 20 omits the heading of division 4 because the matters described are covered by the NERL (Qld), and inserts a new heading, 'Customers' premises outside of distribution area', reflecting the content of sole provision remaining in division 4.

21 Omission of ss 40E and 40H

Clause 21 omits sections 40E and 40H, which provide for circumstances when the connection obligation between a customer and a distributor does not apply and that parties to a negotiated connection contract may agree to vary or exclude the operation of certain sections, as these matters will be covered by the NERL (Qld) and Part 5A of the National Electricity Rules.

22 Amendment of s 42 (Conditions of distribution authority)

Clause 22 amends section 42 to include in the conditions of a distribution authority the requirement for the distribution entity to comply with the NERL (Qld), the National Energy Retail Rules and directions given to it under those instruments. The National Energy Retail Rules are rules that will be made under and come into effect on commencement of the NERL (Qld). The NERL (Qld) and the National Energy Retail Rules contain obligations on distributors in relation to the provision of customer connection services (including disconnection and reconnection).

23 Amendment of s 44A (Additional condition to allow credit for electricity produced by small photovoltaic generators)

Clause 23 amends section 44A by replacing 'small customer' with a new term 'qualifying customer'. This is because the term 'small customer' will, on commencement of the NERL (Qld), take that term's meaning under the NERL (Qld). Under the NERL (Qld), small customers include all residential customers. However, under the Electricity Act, only residential customers at premises consuming less than 100 megawatt hours per year are small customers.

Retaining 'small customer' in this section would therefore represent an unsought policy change in respect of which customers are part of the Solar Bonus Scheme. For this reason, 'qualifying customer' is defined in a way to continue the effect the existing Electricity Act definition of small customer. The clause also replaces reference to a 'retail entity' with reference to a 'retailer', which is defined in terms of the NERL (Qld).

24 Replacement of ch 2, pt 6, hdg (Retail entities and their authorities)

Clause 24 amends the heading of chapter 2 part 6 to 'Retailers' and inserts a note stating that retailers are generally dealt with by the NERL (Qld). This change is needed because the framework for retail authorities (including issuing authorisations and placing conditions on holders of retail authorisations) will be included in the NERL (Qld). As a consequence, where obligations on retailers under the Electricity Act remain, it will be in their capacity as retailers in general (i.e. a direct obligation), rather than as a condition of an authority.

25 Omission of ss 46–48B

Clause 25 omits sections 46 to 48B which define 'retail entity' and 'retail authority' and provide for matters in relation to retail authorities. This is because retail authorisations will transition to the NERL (Qld). The definition of 'retailer', which is the main term used in this chapter now, will be included in the dictionary under amendments made in this Bill. The new definition states that a retailer is the holder of a retail authorisation under the NERL (Qld).

26 Omission of ch 2, pt 6, divs 2 and 3 and div 4, hdg

Clause 26 omits divisions 2 and 3 (sections 48C to 55C) of chapter 2 part 6, which provide for matters in relation to applying and obtaining customer retail services including retail contracts. This is because these matters will be contained in the NERL (Qld). The NERL (Qld) and National Energy Retail Rules to be made under the NERL (Qld) establish a comprehensive customer protection framework for the provision of customer retail services to small customers, including application for services, model terms and conditions for standard retail contracts, and minimum terms and conditions for negotiated connection contracts. Modifications contained in the National Energy Retail Law (Queensland) Bill contain additional protections for large customers in regional Queensland.

The clause also omits the heading for Division 4 'Conditions of retail authorities', because retailers will no longer hold retail authorities under the Electricity Act, but rather the NERL (Qld).

27 Omission of s 55D (Conditions of retail authority)

Clause 27 omits section 55D which provides for the conditions a retail authority. This is because the conditions that the holder of a retail authorisation must comply with will be contained in the NERL (Qld).

28 Replacement of s 55DA (Additional condition about community services agreement)

Clause 28 replaces existing section 55DA to impose a direct obligation on retailers to enter into an agreement with the State for the provision of community services (for example, the pensioner rebate) in place of an existing retail authority condition to the same effect.

Specifically, a retailer must not provide 'customer retail services' (sell electricity to a customer at the customer's premises) unless the retailer and the State have entered into an agreement for the retailer to provide community services for at least five years. The community services to be provided are those agreed between the retailer and the State or, if the retailer and the State fail to reach agreement, the community services decided by the Minister.

If a retailer provides customer retail services without entering into an agreement or, having entered into an agreement, fails comply with that agreement, compliance and enforcement action may be taken under new part 5 of chapter 5.

While the amended provision will have the same effect as existing section 55DA, it is expected that all retailers will need to enter into new agreements with the State under the

amended provision to become effective on commencement. This is because existing agreements reflect current arrangements, including the existence of regulated prices for SEQ customers. As regulated prices for SEQ will be removed on commencement, the agreements will need to be updated to reflect this and to ensure that eligible customers continue to receive support. The terminology in existing agreements will also need to be updated to reflect amendments contained in this Bill and in the National Energy Retail Law (Queensland) Bill.

29 Amendment of s 55DB (Additional condition about electricity produced by small photovoltaic generators)

Clause 29 amends section 55DB which provides for retailers' obligations in relation to small customers with small photovoltaic generators, by imposing a direct obligation on retailers in place of the existing retail authority condition. The amendments also reflect changes to related section 44A in respect of replacing references to small customers with 'qualifying customers'. New enforcement provisions for this section are contained in this Bill, as compliance can no longer be regulated as a condition of a retailer's retail authority, given that retail authorisations will now be regulated under the NERL (Qld).

30 Omission of ss 55DC and 55E

Clause 30 omits sections 55DC and 55E which impose conditions on retail authority holders in relation to credit support, compliance with protocols, standards and codes and restrictions on Ergon Energy and its subsidiary's retail activities.

This is because retailers will no longer hold retail authorities under the Electricity Act. These matters will mainly be dealt with under the NERL (Qld) and under credit support provisions in the National Electricity Rules that will come into force on commencement of the NERL (Qld).

31 Amendment of s 55GA (Additional condition about inclusion of carbon and renewable energy target cost estimates in residential customer accounts)

Clause 31 amends section 55GA by replacing the term 'retail entity', which will no longer be used in the Act, with 'retailer'. The definition of retailer will be included in the dictionary of the amended Act as the holder of a retail authorisation under the NERL (Qld).

Because retailers will be authorised under NERL (Qld) and there will no longer be retail authorities issued under the Electricity Act, clause 31 also recasts section 55GA as a direct obligation on a retailer rather than a condition of a retail authority. The obligation under the section to include a statement in residential customer accounts will be included in regulations to be made under the National Energy Retail Law (Queensland) Bill, which will modify the operation of the National Energy Retail Rules relating to information that retailers must include on bills to residential customers.

32 Omission of s 55G (Restriction on Ergon Energy and its subsidiaries)

Clause 32 omits this provision, which places restrictions on Ergon Energy and its subsidiary's retail activities. These requirements will be included in Queensland modifications to the NERL (Qld), as provided for in the Schedule to the National Energy Retail Law (Queensland) Bill 2014.

33 Amendment of s 55H (Negotiation of coordination agreement)

Clause 33 amends section 55H by replacing a reference to a 'retail entity' with a reference to a 'retailer', which is defined in terms of the NERL (Qld).

34 Amendment of s 55I (Standard coordination agreement)

Clause 34 amends section 55I by replacing references to a 'retail entity' with reference to a retailer under the NERL (Qld) and otherwise rewording as necessary.

35 Amendment of s 56 (Purpose of special approvals)

Clause 35 amends section 56, which sets out the purpose of special approvals, to omit reference to activities normally authorised by a retail authority. This is because retail authorisations and exemptions from holding retail authorisations where a person wishes to sell electricity to premises, will become a matter for the NERL (Qld).

All existing special approval holders with authorisations relating to the sale of electricity to premises (with the exception of Origin Energy in relation to special approval no SA02/11) will be transitioned to the NERL (Qld) as exempt sellers under the National Energy Retail Law (Queensland) Bill 2014, Part 5.

The sale of electricity to customers by Origin Energy under special approval no SA02/11 will instead be authorised under Origin Energy's retail authorisation, subject to special provisions around the provision of customer retail services to certain large customers contained in modifications to the National Energy Retail Law in the Schedule to the National Energy Retail Law (Queensland) Bill and designed to broadly continue existing obligations under special approval no SA02/11. The sale of electricity, other than to premises, will no longer be prohibited, as section 89 of the Electricity Act will be removed by other provisions in this Bill.

36 Amendment of s 58 (Special approvals)

Clause 36 amends section 58 to omit reference to a retail authority in the things a special approval authorises its holder to do, as retail activities will no longer by authorised under the Electricity Act.

All existing special approval holders with authorisations relating to the sale of electricity to premises (with the exception of Origin Energy in relation to special approval no SA02/11) will be transitioned to the NERL (Qld) as exempt sellers under the National Energy Retail Law (Queensland) Bill 2014, Part 5. The sale of energy (other than to premises) will no longer be prohibited.

37 Amendment of s 59 (Authorisation given by special approval)

Clause 37 amends section 59 to omit reference to a retail authority in the things the holder of a special approval is authorised to do, as retail activities will no longer by authorised under the Electricity Act. Otherwise, special approval under the Electricity Act will continue.

All existing special approval holders with authorisations relating to the sale of electricity to premises (with the exception of Origin Energy in relation to special approval no SA02/11) will be transitioned to the NERL (Qld) as exempt sellers under the National Energy Retail

Law (Queensland) Bill 2014, Part 5. The sale of energy (other than to premises) will no longer be prohibited.

38 Amendment of s 60 (Conditions of special approval)

Clause 38 amends section 60, which places conditions on special approvals under the Act. This is to reflect the amendment to section 61B below.

39 Amendment of s 61B (Additional condition for electricity produced by photovoltaic generators)

Clause 39 amends subsection 61B, which imposes a condition on special approval holders prescribed under regulation to comply with section 55DB. Section 55DB contains obligations about the provision of services to small customers with photovoltaic generators. The clause omits the obligation for prescribed special approval holders to comply with section 55DB.

Special approvals will no longer authorise the sale of electricity, which will be authorised under the NERL (Qld). The obligation will nevertheless continue in respect of the only special approval holder to which it currently applies (Origin Energy), because that entity will become a retailer under the NERL (Qld) and be subject to the direct obligation under amended section 55DB.

40 Insertion of new s 64A

Clause 40 inserts new section 64A which provides that, for part 9 (Electricity officers), the term 'electricity entity' includes a retailer. Although retailers will no longer be electricity entities for the broader purposes of the Act, new section 64A will ensure retailers may continue to have properly appointed 'electricity officers' for the exercise of existing powers relevant to retail activities.

41 Amendment of s 66 (Limitation of electricity officer's powers)

Clause 41 amends section 66 to omit reference to 'retail area'. The effect of this amendment is that an electricity officer appointed by a retailer under new section 64A will still be able to exercise powers in a place where the retailer sells electricity, but not more generally in the retailer's 'retail area'. This is because the concept of an 'area retail authority' in existing section 26 of this Act (and consequently the concept of a 'retail area') will be removed. Retail authorisations will be transitioned to the NERL (Qld).

42 Omission of s 89 (Restriction on sale of electricity)

Clause 42 omits section 89, which provides a person must not sell electricity unless authorised under the Electricity Act. The sale of electricity to premises is covered by the NERL (Qld). The sale of energy (other than to premises) will no longer be prohibited as sufficient protections in relation to the sale of electricity (for example, into the grid) already exist through other avenues (including restrictions on connection to the grid and National Electricity Law (Queensland) rules about market participation. Retaining a restriction on the sale of electricity other than to premises is unnecessary.

43 Replacement of ch 4, pt 2 heading (Pricing) and insertion of new ch 4, pt 2, div 1 heading

Clause 43 amends the heading of chapter 4, part 2 to 'Part 2 Market operation' and provides for the insertion of the heading 'Division 1 Preliminary' after the heading for chapter 4, part 2. This amendment reflects the broadening of the scope of chapter 4, part 2 beyond pricing.

44 Amendment of section 89A (Definitions for pt 2)

Clause 44 amends section 89A to insert a definition: 'designated retail market area'. This has the effect of defining the geographical area of Queensland to which the price determination provisions under chapter 4, part 2, division 2, will not apply under section 89E.

The designated retail market area is defined as 'an area described by regulation or, if no area is prescribed, the distribution area described in the schedule to the distribution authority numbered D07/98.' The reference to this particular distribution authority has the effect of defining the area as Energex's distribution area (also referred to as south east Queensland (SEQ)). Allowing the designated retail market area to also be described by regulation allows flexibility to amend or expand the area, if desired, through the making of a regulation.

This clause facilitates the removal of retail price regulation for small customers in SEQ. The relevant Minister retains the power under the Act to decide the regulated retail electricity prices (a price determination), or the methodology for setting the prices, for standard contract customers outside SEQ (i.e. regional Queensland).

45 Insertion of new ch 4, pt 2, div 2. div 3, hdg and s 89E

Clause 45 provides for the insertion, after section 89A of chapter 4, part 2, division 1, of new division 2 'Market monitoring, reporting and review in designated retail market areas' and new division 3 'Price Determination'.

<u>New division 2 ('Market monitoring, reporting and review in designated retail market areas)</u>

<u>Section 89B (Market monitoring direction and report)</u>

This clause inserts a new section 89B which gives effect to market monitoring by providing the relevant Minister with the power to direct the QCA to monitor and report on the operation of the designated retail market areas (e.g. SEQ). This includes but is not limited to the standing offer and market offer prices available to customers in SEQ, variations in those prices and any pricing trends. The Minister may also direct the QCA to report on any other relevant information the Minister requires.

Under new subsection 89B(2)(c), the Minister's written direction to the QCA must state when the report must be published on the QCA's website. Publication of the report is intended to ensure transparency in the QCA's market monitoring function and to provide publically available information on the status of the designated retail market area for industry and consumers.

Section 89C (Obtaining information to comply with direction)

This clause inserts a new section 89C, which provides the QCA with the power to obtain the information from a retailer in the designated retail market area that it requires in order to monitor the market and prepare a report under section 89B(1). This provision is necessary to ensure the QCA has access to the information it needs in order to undertake meaningful, evidence-based analysis required in the preparation of the market monitoring report for the Minister.

Retailers who do not comply with this section face a maximum penalty (100 penalty units) equal to that faced by retailers who fail to comply with a request for information for a price determination under section 90(A). However, the information required to be produced under section 89C has to be the type of information a retailer could be reasonably expected to have or be able to obtain.

Section 89D (Competition review)

This clause inserts a new section 89D which provides that the relevant Minister may direct an 'appropriate entity' (i.e. the QCA or another entity considered appropriate by the Minister) to conduct a review of the designated retail market area and provide advice as to whether the Minister should keep, remove or reintroduce price controls in that area. This provision will also allow the Minister to request a comprehensive investigation of the state of competition in the SEQ retail electricity market and to consider alternative strategies for improving the effectiveness of competition before reintroducing price controls.

New division 3 (Price Determination)

Section 89E (Non-application to sales in designated retail market area)

This clause provides for the insertion of the heading 'Division 3 Price determination' before section 90 of chapter 4, part 2 and for the insertion of a new section 89E, which dis-applies the price determination process for the designated retail market areas. This will have the effect of exempting the Energex distribution area (i.e. SEQ) from price determinations for regulated retail electricity prices. The relevant Minister retains the existing power under the Act to determine regulated retail electricity prices (a *price determination*), or the methodology for setting the prices, for customers outside SEQ (i.e. regional Queensland).

46 Amendment of s 90 (Deciding prices for non-market customers)

Clause 46 amends section 90 by replacing 'non-market customer' and 'retail entity' with (new terms) 'standard contract customer' and 'retailer' respectively, for consistency with the NERL (Qld). It also amends the section to make it clear that a new tariff may be added to the tariff schedule at any time during a tariff year.

47 Amendment of s 90A (Obtaining information for price determination)

Clause 47 amends section 90A by replacing the term 'retail entity' with 'retailer'. This is to apply consistent terminology with the NERL (Qld). It does not otherwise vary the power to obtain information.

48 Amendment of s 91 (Retail entities charging for GST)

Clause 48 amends section 91 by replacing 'retail entity' and 'non-market customer' with 'retailer' and (new term) 'standard contract customer' respectively. This is to apply consistent terminology with the NERL (Qld). It does not otherwise vary requirements around charging for GST.

49 Amendment of s 91A (Retail entity must comply with notification or direction)

Clause 49 amends section 91A by replacing 'retail entity' and 'non-market customer' with 'retailer' and 'standard contract customer' respectively. This is to apply consistent terminology with the NERL (Qld). It does not otherwise vary requirements on retailers to comply with a notification or direction.

50 Insertion of new ch 4, pt 2, div 4

Clause 50 provides for the insertion of a new chapter 4, part 2, division 4 heading 'Division 4 Reintroduction of price determination' after section 91AA of chapter 4, part 2. The clause also provides for the insertion of a new section 91B containing a reserve power for the relevant Minister to re-introduce price regulation in the designated retail market area.

Retaining an ability to re-introduce price controls could present some risk to the market by generating a degree of regulatory uncertainty for retailers. To mitigate this, the provision ensures the Minister's power to re-regulate will only be exercised subject to specific criteria being met, as outlined in section 91B(1). The power to re-regulate under section 91B(2) is intended to incentivise good market conduct by retailers and reassure consumers that their interests will be protected under the market monitoring regime.

51 Amendment of s97 (Limitation of liability of electricity entities and special approval holders that are not Registered Participants)

Clause 51 amends section 97 to remove the terminology relating to the sale of electricity. This is because the NERL (Qld) will deal with matters relating to the sale of electricity.

52 Amendment of s 116 (Authority to acquire land)

Clause 52 amends subsection 116(3A)(b) by replacing the reference to Ergon Energy with a reference to 'Ergon Energy Distribution'. This reflects the amended definition of Ergon Energy Corporation Limited in schedule 5 (Dictionary). It does not impact on the power conferred under the section.

53 Omission of s 118 (Financially responsible retail entity may recover amount for electricity consumed by person occupying premises)

Clause 53 omits section 118, which provides that a financially responsible retail entity may recover debts owing for electricity. This matter will be provided for under the NERL (Qld).

54 Amendment of s 120 (Regulator's powers to require information from electricity entities)

Clause 54 amends section 120 to specify that retailers, in addition to electricity entities, are required to provide the regulator with information reasonably required by the regulator. The effect of this amendment is to preserve existing powers of the regulator to require information from retailers. The amendment to specify that the provision applies to retailers in addition to electricity entities is a necessary consequence of amendments in this Bill to existing section 22, which remove retailers from the general classification of being an electricity entity.

55 Amendment of s 120AA (Regulator's powers concerning audit of compliance with Act etc.)

Clause 55 amends section 120AA to apply this section to retailers (as well as to electricity entities and special approval holders), because retailers will no longer be electricity entities. The effect of this amendment is to preserve existing powers of the regulator in relation to retailers. The amendment to specify that the provision applies to retailers in addition to electricity entities is a necessary consequence of amendments in this Bill to existing section 22, which remove retailers from the general classification of being an electricity entity.

56 Amendment of s 120AB (Responsibility for cost of audit)

Clause 56 amends section 120AB to apply this section to retailers (as well as to electricity entities and special approval holders), because retailers will no longer be electricity entities. The effect of this amendment is to preserve existing obligations.

57 Amendment of s 120AC (Independent auditor may require reasonable help or information)

Clause 57 amends section 120AC to apply this section to retailers (as well as to electricity entities and special approval holders), because retailers will no longer be electricity entities. The effect of this amendment is to preserve existing powers.

58 Amendment of s 120AD (Audit report and submissions on report)

Clause 58 amends section 120AD to apply this section to retailers (as well as to electricity entities and special approval holders), because retailers will no longer be electricity entities. The effect of this amendment is to preserve existing obligations.

59 Amendment of s 120AE (Disclosure of information)

Clause 59 amends section 120AE to apply this section to retailers (as well as to electricity entities and special approval holders), because retailers will no longer be electricity entities. The effect of this amendment is to preserve existing requirements.

60 Replacement of ch 5, pt 1A, hdg (Industry codes)

Clause 60 amends the heading for chapter 5 part 1A to read 'Distribution network codes' instead of 'Industry codes'. The amendments to Part 1A reflect the reduced subject matter that codes will be able to address. Much of the subject matter in the existing Electricity Industry Code relates to the terms and conditions of customer retail contracts (standard retail contracts and negotiated retail contracts) and customer connection services. The power to regulate the existing subject matter will largely move to the National Energy Retail Rules

made under the NERL (Qld). Given the extent of changes, a new code will be made under the amendments contained in this Part.

While some of the remaining subject matter for the code will still affect retailers, the new code will predominantly relate to distribution entities, and as such, will be known as a 'distribution network code', rather than an 'industry code'.

61 Amendment of ch 5, pt 1A, div 2, hdg (Initial industry codes)

Clause 61 amends the heading of part 1A division 2 to read 'Making of distribution network codes'. This reflects the proposed new name for the code.

62 Amendment of s 120B (Making of initial industry codes by Minister)

Clause 62 replaces the reference in the section heading to 'industry codes' with 'distribution network codes' and does similar in the body of the section.

The effect of the amended section 120B is that the Minister may make an initial distribution network code to apply to electricity entities or to retailers (which will not generally be electricity entities for the broader purposes of the Act) or both. It is intended that the Minister will make an initial distribution network code under section 120B on commencement of the Bill. The initial distribution network code will contain those provisions that currently exist in the Electricity Industry Code and which will not otherwise be dealt with under the NERL (Qld), the National Energy Retail Rules or the National Electricity Rules.

63 Replacement of s 120C (Specific matters for which code may provide)

Clause 63 substantially replaces the contents of section 120C to reflect that retail activities will generally be a matter for the NERL (Qld) rather than the Electricity Act or codes made under that Act. Distribution network codes will principally concern the activities of distribution network operators, but may contain provisions concerning retailers.

64 Amendment of ch 5, pt 1A, div 3, hdg (QCA industry codes)

Clause 64 amends the heading of part 1A division 3 to read 'QCA distribution network codes', because the Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes'.

65 Amendment of ch 5, pt 1A, div 4, hdg (Review of industry codes and related matters)

Clause 65 amends the heading of part 1A division 4 to read 'Review of industry codes and related matters', because the Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes'.

66 Amendment of chapter 5, pt 1A, div 5, hdg (Amending Industry codes)

Clause 66 amends the heading of part 1A division 5 to read 'Amending distribution network codes', because the Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes'.

67 Amendment of chapter 5, pt 1A, div 6, hdg (Enforcing Industry codes)

Clause 67 amends the heading of part 1A division 6 to read 'Enforcing distribution network codes', because the Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes'.

68 Amendment of s 120Z (Injunctions)

Clause 68 amends a minor error in section 120Z and includes new terminology to ensure that the provision continues to apply to retailers.

69 Amendment of s 120ZL (Relationship with Fair Trading Act 1989)

Clause 69 amends section 120ZL by omitting a reference to section 120ZM (to be omitted — see immediately below) and replacing the words 'an industry code' with 'distribution network code', because the Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes'.

70 Omission of s 120ZM (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)

Clause 70 omits section 120ZM because it deals with interactions between retail contracts, the Australian Consumer Law as applied in Queensland and industry codes. Interactions between retail contracts and the Australian Consumer Law will be a matter for the NERL (Qld).

71 Omission of ch 5, pts 1B and 3A

Clause 71 omits part 1B (Credit support guidelines) and part 3A (Retailer of last resort) of chapter 5. Chapter 6B of the National Electricity Rules will deal with retailers' credit support obligations to distributors, and the Australian Energy Regulator will implement a national retailer of last resort scheme under powers provided in part 6 of the NERL (Qld).

72 Amendment of s 132 (Grounds for disciplinary action)

Clause 72 amends section 132 to include references to the *Electrical Safety Act 2002* and the *Energy and Water Ombudsman Act 2006*, the effect of which is to make clear that contravention of these Acts is grounds for the regulator to take disciplinary action against an electricity entity.

Clause 72 also omits subsection 132(1)(f), which refers to a 'retail entity' in relation to grounds for which disciplinary action may be taken by the regulator under the Electricity Act. The term 'retail entity' will no longer be used in the amended Act (it is replaced by 'retailer'). More importantly, the disciplinary actions envisaged in this section are based on an entity being authorised under the Electricity Act. This will not be so in the case of retailers, since retailers will be authorised under the NERL (Qld). New provisions inserted in the Act by this Bill deal separately with the matter of enforcing retailer compliance.

73 Amendment of s 133 (Types of disciplinary action)

Clause 73 amends section 133, which provides for the types of disciplinary action that may be taken by the regulator against electricity entities. Subsection 133(1)(c), which refers to 'retail entities', is omitted because the term 'retail entity' will no longer be used in the

amended Act and because new provisions inserted in the Act by this Bill deal separately with enforcing retailer compliance.

Clause 73 also amends subsections 133(2) and (4) by replacing references to 'an industry code' with 'a network code', since the amended Electricity Act will authorise the making of 'distribution network codes' rather than 'industry codes' and corrects a cross-referencing in subsection 133(21).

74 Insertion of new ch 5, pt 5

Clause 74 inserts a new part into Chapter 5 'Enforcing sections 55DA(1) and 55DB(1) against retailers'. This sets out a compliance and enforcement framework for retailers in relation to a number of new obligations in the Act. Monitoring and enforcement of retailer compliance with a number of provisions in the Electricity Act are currently based on a retailer's authority to sell electricity to premises. Non-compliance with the following conditions of a retail authority can result in disciplinary action under sections 132 and 133 of the Act:

- s.55DA – retailer must enter into community services agreement and comply with agreement (worth approximately $136 million for 2013-14)
- s.55DB – retailer must reduce amount payable by qualifying customer for electricity supplied to the small customer (for solar bonus scheme) and report on compliance (worth an estimated $250 million for 2014-15).

Disciplinary action can include the cancellation, suspension or amendment of the retailer's retail authority (ss 133(1)(c)) or the imposition of a civil penalty of not more than 1333 penalty units for each contravention (ss 133(3)).

As arrangements for retail authorisations will move to the NERL (Qld), the central premise to take disciplinary action for retail activities can no longer apply in broad terms. Similarly, the potential cancellation, suspension or amendment of the retailer's retail authority is no longer a disincentive for non-compliance as it is no longer in the control of the Queensland regulator.

New Part 5 therefore provide for alternative compliance and enforcement provisions for these provisions. The policy is to provide an effective incentive on retailers to continue to comply with these obligations, notwithstanding that the Queensland regulator may no longer cancel, suspend or amend a retailer's retail authority for non-compliance. The provisions are based on the existing compliance and enforcement powers of the QCA in relation to industry codes.

The new Part 5 has three divisions, dealing with Contravention Notices (Division 1), Proceedings (Division 2) and Production of documents or information (Division 3).

New section 135AA (Application of div 2) provides that Part 5 is to be applied in circumstances where the regulator suspects that a retailer has contravened or is contravening section 55DA(1) or 55DB(1). The regulator can only enforce contraventions that are, or are likely to be, material contraventions of sections 55DA(1) or 55DB(1). This materiality requirement aims to ensure that trivial contraventions are not pursued.

The new section 135AB (Criteria for deciding material contravention) provides that in assessing whether a contravention is material, regard must be had to, but is not limited to, the objects of the Act set out under Part 2. These include the object of ensuring that the interests of customers are protected.

The new section 135AC (Warning notice may be given) allows the regulator to give a retailer a notice to warn that the regulator proposes to give the retailer a notice about the contravention of sections 55DA(1) or 55DB(1). A warning notice can only be given within 2 years after the day on which the contravention happened. The introduction of a warning notice mechanism provides greater opportunity for consultation between the regulator and allegedly breaching retailers. A warning notice will provide an avenue for potential breaches to be remedied before the issue of a contravention notice, working towards effective resolution of complaints.

The new section 135AD (Requirements for warning notice) sets out the information that must be contained in a warning notice, including the particulars of the contravention and the fact that the regulator proposes to issue a contravention notice unless the retailer takes certain steps and provides the regulator with a conduct assurance that similar future contraventions will be avoided. A period of at least 20 business days must be given before a contravention notice will be issued, except in cases where the regulator considers urgent action to be required, and allows the retailer to make submissions to show why the proposed contravention notice should not be given. This time period and the opportunity to make submissions aims to: provide structure and clarity; to encourage consultation between regulator and allegedly contravening retailer; and to encourage the rectification of contraventions. The warning notice may also state the steps the regulator reasonably believes are necessary to remedy the contravention or avoid its future recurrence or avoid the likely contravention.

The new section 135AE (Considering submissions on warning notice) requires the regulator to consider submissions made under subsection 135AD(1)(d) by retailers in relation to why the proposed contravention notice should not be given. This aims to afford due process to allegedly contravening retailer and to encourage consultation between the retailer and the regulator. The regulator must provide notice to the retailer as soon as practicable after deciding not to give a proposed contravention notice.

The new section 135AF (Giving of contravention notice) allows the regulator to give a proposed contravention notice if the retailer has not complied with a warning notice. If the retailer has taken steps reasonably necessary to remedy the contravention but has not given a required conduct assurance, a contravention notice can still be given on the basis that the retailer is deemed to be still involved in an activity that could result in a material contravention of sections 55DA(1) or 55DB(1). The contravention notice must state that the retailer has or is contravening sections 55DA(1) or 55DB(1) in a material way and give particulars of the contravention.

The new section 135AG (Duration of contravention notice) provides that a contravention notice comes into effect when it is made or the later time specified in the contravention notice and ends on the day stated in the notice or, if cancelled before that day, on the day of cancellation.

The new division 2 (Proceedings) has four sections.

The new section 135AH (Proceeding for civil penalty order) provides that if, on the application of the regulator, the Supreme Court is satisfied that a retailer has contravened, attempted to contravene or been involved in the material contravention of sections 55DA(1) or 55DB(1), then the Supreme Court may order the retailer to pay an amount to the State as a civil penalty of no more than $100,000 for an individual and $500,000 for a corporation.

In fixing the penalty the Court must consider the nature and extent of the contravention or loss or damage suffered because of a contravention, the circumstances in which the contravention took place and whether the retailer has previously been found to have engaged in similar conduct under this Act. A retailer is involved in a contravention if it has aided, abetted, counselled or procured the contravention, has induced the contravention, has been in any way, directly or indirectly, knowingly concerned in or party to the contravention or has conspired with others to effect the contravention.

The new section 135AI (How order enforced) provides that if the Supreme Court orders payment of an amount under section 135AG(2) in relation to a contravention of sections 55DA(1) or 55DB(1), the State may enforce the order as a judgment of the court for a debt of that amount.

The new section 135AJ (Injunctions) provides that the Supreme Court may, on the application of the retailer, grant an injunction if satisfied that a retailer has been involved or is likely to be involved in a contravention of sections 55DA(1) or 55DB(1). The injunction may be granted on conditions. The court may grant an interim injunction but must not require anyone as a condition of granting the interim injunction to give an undertaking as to damages. The court may amend an injunction or interim injunction.

The new section 135AK (Conduct by directors, servant or agents) attributes the conduct and state of mind of the directors, servants and agents of a retailer to the retailer in specified circumstances.

The new division 3 (Production of documents or information) has one section.

The new section 135AL (Notice to produce documents or information) applies if the regulator is conducting an investigation to find out whether a retailer is complying with a sections 55DA(1) or 55DB(1). The regulator may require, by written notice, a retailer to provide it with information or documents relevant to an investigation to find out whether a retailer is complying with sections 55DA(1) or 55DB(1). The notice must state the information or documents required, a period of no less than 7 days in which the documents or information are to be given and a reasonable place at which the documents or information are to be given. A penalty of a maximum of 500 penalty units will apply to contravention of the notice without reasonable excuse.

A retailer is not required to comply with the notice if it claims, on the ground of self-incrimination, a privilege the entity would be entitled to claim against giving the information were the entity a witness in the Supreme Court in a prosecution for an offence. If a retailer claims that complying with the notice may tend to incriminate it, the regulator or the retailer may make an application in the Supreme Court to decide the validity of the claim.

75 Amendment of s 137 (Entry to read meters etc.)

Clause 75 amends section 137 to provide that, for the purposes of this section, an electricity entity includes a retailer. This will preserve the existing powers of entry of an electricity officer appointed by a retailer for the purposes of reading meters.

76 Amendment of s 138 (Disconnection of supply if entry refused)

Clause 76 amends section 138 to provide that, for the purposes of this section, an electricity entity includes a retailer. This will preserve the existing powers of retailers to authorise disconnection of supply if entry to read meters is refused.

77 Amendment of ss 139 (Entry to disconnect)

Clause 77 amends section 139 to provide that, for the purposes of this section, an electricity entity includes a retailer. This will preserve existing powers of entry for electricity officers of retailers to disconnect supply if disconnection is authorised under section 138.

78 Amendment of s 143 (Compensation)

Clause 78 amends section 143 to ensure that, for the purposes of this section, electricity officers of retailers who exercise powers of entry under sections 137 and 139 continue to be subject to obligations under Part 3. Part 3 includes a duty to avoid damage, give notice of damage and provides for compensation.

79 Amendment of s 178 (Issue of generation authorities)

Clause 79 amends section 178 to omit subsection 178(2)(c). The effect of this subsection is to remove the ability of generation authorities to authorise the sale of electricity. This is because authorisations for the sale of electricity to premises will become a matter for the NERL (Qld). The sale of electricity other than to premises will no longer be restricted under the Electricity Act as a result of amendments in this Bill that remove section 89.

80 Amendment of s 179 (Application for generation authority)

Clause 80 amends section 179 to omit subsection 179(1)(b)(iii) which refers to the sale of electricity, because the sale of electricity is a matter for the NERL (Qld).

81 Omission of ch 9, pt 4 (Retail authorities)

Clause 81 omits part 4 of chapter 9, comprising sections 203 to 207D. The sections provide entirely for matters in relation to the issue of retail authorities under the Electricity Act. Retailers will be authorised under part 5 of the NERL (Qld).

82 Amendment of s 210 (Consideration of application for special approval)

Clause 82 amends sections 210 by omitting the reference to subsections 205(2) to (8), which deal with retail authority matters, and amends the definition of 'relevant authority' in subsection 210(3) by excluding the reference to a retail authority. The effect of this subsection is to remove considerations that relate to the sale of electricity when the regulator assesses an application for a special approval. This is because special approvals will no longer be able to authorise the sale of electricity. Responsibility for assessing the suitability of applicants for the sale of electricity to premises will transfer to the Australian Energy Regulator under the NERL (Qld). The sale of electricity other than to premises will no longer be restricted under the Electricity Act as a result of amendments in this Bill that remove section 89

83 Amendment of s 214 (Who may apply for internal review etc.)

Clause 83 amends section 214 by omitting references to the QCA being the internal reviewer for decisions under existing sections 40B (a decision by a distribution entity to refuse a connection services application) or 48G (a decision by a retailer not to provide customer retail services to a customer) in relation to an application by a large customer or a street lighting customer. Section 40B is proposed to be removed under amendments made under this Act as large customer and street lighting customer connection services will be dealt with under the NERL (Qld) and the National Electricity Rules. Section 48G will similarly be removed, as retail services obligations for the majority of large customers and street lighting customers to whom it applies (non-market customers) will become directly regulated under modifications made to the National Energy Retail Law contained in the Schedule to the National Energy Retail Law (Queensland) Bill. The QCA will not have a review role under the NERL (Qld). Non-compliance with regulatory obligations under the NERL (Qld) will instead be monitored by the Australian Energy Regulator (for connection services) and a nominated regulator under regulations that will need to be made under the National Energy Retail Law (Queensland) Bill (for customer retail services to large customers, including State and local government street lighting customers).

84 Amendment of s 215 (Applying for internal review)

Clause 84 amends section 215 by replacing 'reviewer' with 'regulator'. This is necessary because of the amendment of section 214 (see above) that omits the QCA as an internal reviewer for certain decisions. The only 'reviewer' remaining under the amended section 214 will be the regulator.

85 Amendment of s 216 (Stay of operation of decision etc.)

Clause 85 amends section 216 by replacing the 'reviewer' with 'regulator. This is necessary because of the amendment of section 214 that omits the QCA as an internal reviewer for certain decisions.

86 Amendment of s 218 (Decision on reconsideration)

Clause 86 amends section 218 by replacing 'reviewer' with 'regulator'. This is necessary because of the amendment of section 214 that omits the QCA as an internal reviewer for certain decisions.

87 Amendment of s 219 (Who may apply for external review)

Clause 87 amends section 219 by replacing 'reviewer' with 'regulator'. This is necessary because of the amendment of section 214 that omits the QCA as an internal reviewer for certain decisions.

88 Amendment of s 220 (Application of QCAT Act notice requirement)

Clause 88 amends section 220 by replacing 'reviewer' with 'regulator'. This is necessary because of the amendment of section 214 that omits the QCA as an internal reviewer for certain decisions.

89 Amendment of s 226B (Avoidance of multiple penalties)

Clause 89 amends section 226B to correct a minor, existing error in cross-referencing. The existing section provides that where a civil penalty proceeding under section 244A is taken and the conduct or substantially the same conduct constitutes a contravention of two or more 'industry code' provisions (which will be amended in the schedule to mean distribution network code), a civil penalty must not be imposed more than once for that conduct. However, section 244A does not exist and the reference should be to section 226A. The amendment corrects this error.

90 Amendment of s 240A (Executive officer may be taken to have committed offence)

Clause 90 amends section 240A by omitting from definition 'deemed executive liability provision' a reference to section 89, as that section is proposed to be omitted by provisions in this Bill.

91 Amendment of s 253AA (Direction by Minister to give information or advice)

Clause 91 amends section 253AA by providing that the QCA need only publish information or advice provided to the Minister in accordance with a direction made under this section if the Minister directs the QCA to publish that information or advice. This is because requiring publication in all instances may not be necessary or appropriate.

92 Amendment of s 253 (Advisory committees)

Clause 92 amends section 253 by omitting 'or retail entities' from subsection 254(4)(c) and replacing it with 'retailers'. This is to reflect consistent terminology with the NERL (Qld).

93 Amendment of s 254B (Registers QCA must keep)

Clause 93 amends section 254B by omitting subsections 254B(a) and (b), which reference terms of a retail entity's standard large customer retail contract and industry codes respectively, and replacing these with new subsection (a), which references 'distribution network codes'. The effect of the clause is that the QCA will not need to keep a register of the terms of standard large customer retail contracts or industry codes, but will need to keep a register of distribution network codes. Under amendments proposed in this Bill and in the National Energy Retail Law (Queensland) Bill, standard large customer retail contracts will only exist for an 'assigned retailer' (intended to be Ergon Energy Queensland) and Origin Energy (in relation to existing 'large customers' to whom it currently provides services under

the terms of its special approval SA02/11). All other standard large customer retail contracts will become regular contracts, with no requirements around publication.
The National Energy Retail Law (Queensland) Bill provides for Ergon Energy Queensland and Origin Energy to publish their standard large customer retail contracts under the NERL (Qld) on their respective websites.

Proposed amendments in this Bill will replace 'industry codes' with 'distribution network codes'. As a consequence, the QCA will be required to keep a register of 'distribution network codes', rather than industry codes.

94 Insertion of new ch 14, pt 16

Clause 94 inserts new part 16 (Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014), comprising new sections 344 to 352.

Section 344 defines 'commencement' as it relates to part 16, as the commencement of the section.

Section 345 provides that, if a generation authority immediately before commencement authorised the sale of electricity, on commencement it is taken to have been amended to remove the authorisation for the sale of electricity. The ability of existing generation authority holders to sell electricity to premises will be transitioned into the NERL (Qld) under the National Energy Retail Law (Queensland) Bill, Part 5.

Section 346 applies to customers who were taken to have entered into a standard connection contract or who entered into a negotiated connection contract before commencement but whose premises have not been connected to the network. It provides that stated provisions of the Electricity Act and *Electricity Regulation 2006* will continue to apply to the construction of the connection, rather than the National Electricity Rules. The effect of this provision is that for new connections underway on commencement of the Bill, the existing arrangements will continue to apply until the connection is constructed. Once constructed, the arrangements between the distributor and the customer (e.g. re ongoing supply) will be regulated by the NERL (Qld).

Section 347 clarifies that undecided retail authority applications will lapse on commencement, and notes that the person may be able to apply for a retail authorisation under the NERL (Qld).

Section 348 clarifies that retail authorities current immediately before commencement will cease to have effect on commencement, and notes that from commencement the retail sale of electricity will be regulated under the NERL (Qld). When the NERL (Qld) commences, all holders of retailer authorisations for electricity under the NERL (Qld) will be retailers for Queensland.

Section 349 applies to special approvals current immediately before commencement. Those authorising only the sale of electricity or provision of customer retail services will cease to have effect on commencement. Those authorising the sale of electricity or provision of customer retail services in addition to other activities will, on commencement, be taken to have been amended to remove the authorisation for the sale of electricity or provision of

customer retail services. The ability of existing special approval holders to sell electricity to premises will be transitioned into the NERL (Qld) under the National Energy Retail Law (Queensland) Bill, Part 5.

Section 350 provides that the provisions of the Electricity Act regarding making or amending industry codes will continue to apply after commencement of a code or amendment that has been made by the QCA, but not given to the Minister, before commencement.

Section 351 provides that if, before commencement, the QCA had commenced an action specified in the section, the QCA may continue to take the action as if the Electricity Act had not been amended.

Section 352 provides that, after commencement, the regulator may continue with disciplinary actions against electricity entities under chapter 5 part 4 that in are progress immediately before commencement, unless the actions relate to cancelling, suspending or amending a retail authority. This is because retail authorities will cease to have effect at commencement.

95 Amendment of sch 1 (Review of administrative decisions)

Clause 95 amends schedule 1 by omitting entries relating to decisions made under stated sections of the Act that will themselves be omitted at commencement.

96 Amendment of sch 2 (Subject matter for regulations)

Clause 96 amends schedule 2 by omitting references to certain matters concerning the conditions for the sale and supply of electricity. On commencement, these matters will become regulated under other laws or rules (principally the NERL (Qld) and the National Energy Retail Rules as applied in Queensland).

97 Amendment of sch 5 (Dictionary)

Clause 97 amends the dictionary in schedule 5 by omitting definitions made redundant by the omission at commencement of provisions using the defined terms. It also inserts new or amended definitions for terms to be used in provisions that are amended or inserted at commencement. The clause also amends schedule 5 to insert a definition of 'designated retail market area' which refers the reader to section 89A (which provides definitions for chapter 4 part 2).

Part 4 Amendment of Energy and Water Ombudsman Act 2006

The proposed amendments to the *Energy and Water Ombudsman Act 2006* in Part 4 of the Bill include necessary changes to

- preserve the existing rights of customers of the Maranoa Regional Council and the Western Downs Regional Council to continue to access the Energy and Water Ombudsman for dispute resolution in relation to the sale and supply of gas, notwithstanding that the two Councils will become 'exempt sellers', rather than retailers under the NERL (Qld)

- extend the jurisdiction of the ombudsman to consider disputes in relation to customer connection services for small customers under Chapter 5A of the National Electricity Rules and Part 21 of the National Gas Rules, which will commence at the same time as the NERL (Qld)
- make consequential terminology changes to reflect the terminology used in the NERL (Qld) and under amendments to the Electricity Act and the Gas Supply Act made in this Bill.

98 Act amended

Clause 98 states that part 4 amends the *Energy and Water Ombudsman Act 2006*.

99 Replacement of s 5 (What is an energy Act)

Clause 99 replaces existing section 5 to expand the definition of an energy Act from the Electricity Act and the Gas Supply Act to also include the National Electricity (Queensland) Law, the National Gas (Queensland) Law and the National Energy Retail Law (Qld), as well as the application Acts for these laws. The effect of this provision is to enable the Energy and Water Ombudsman to consider disputes between small customers and an energy entity in relation to provisions under any of these Acts.

The inclusion of the National Energy (Queensland) Law and the National Gas (Queensland) Law is intended to relate specifically to disputes under Chapter 5A of the National Electricity Rules and Part 21 of the National Gas Rules relating to the process for new customer connections to a distribution network. The inclusion of application Acts for these laws as well as the National Energy Retail Law (Queensland) Bill will ensure that modifications made under the application Acts for connection services provided by 'nominated distributors' will also come within the jurisdiction of the Energy and Water Ombudsman.

100 Amendment of s 6 (Who is a small customer (energy))

Clause 100 amends section 6 with effect that a 'small customer (energy)' is defined as a person who is a small customer under the expanded definition of an energy Act (in clause 99 above) or is an 'exempt customer' under the NERL (Qld) where a condition is imposed on the 'exempt seller' under the NERL (Qld) to comply with the Energy and Water Ombudsman Queensland Act. Every jurisdiction participating in the national energy retail scheme has some form of energy ombudsman scheme providing a free dispute resolution scheme for small energy (electricity and gas) customers.
Dispute resolution provisions and other provisions of the National Energy Retail Law in practice embody a policy that small energy customers should have access to a free dispute resolution scheme.

Clause 100 will ensure that small customers who are 'exempt customers' (not customers of a retailer) of certain exempt sellers will have the same access to Queensland energy ombudsman dispute resolution services as small customers of a retailer. Specifically, it will ensure small exempt customers of Maranoa Regional Council and Western Downs Regional Council will continue to have access to the dispute resolution services of the Energy and Water Ombudsman. This addresses the fact that Maranoa Regional Council and Western Downs Regional Council, both of which currently hold a retail authority under the Gas Supply Act, will become exempt sellers when the NERL (Qld) commences. It will be a

condition of the Councils' exemption under the NERL (Qld) that the Councils comply with the Energy and Water Ombudsman Act, to the extent it applies to the Councils.

Clause 100 also amends and updates how section 6 clarifies that 'street lighting customers' are large customers by replacing a reference to the Electricity Act definition of 'street lighting customer' with a reference to the NERL (Qld) definition.

101 Amendment of s 7 (What is an energy entity)

Clause 101 amends the definition of 'energy entity' by omitting reference to the provision of 'customer retail services' as an activity for a special approval holder. This reflects that special approval holders will no longer be authorised (under amendments to the Electricity Act in this Bill) to carry out electricity retail activities.

102 Amendment of s 19 (Restrictions on disputes relating to energy entities that can be referred)

Clause 102 amends section 19 with effect that the Energy and Water Ombudsman is no longer prevented from dealing with small customer disputes that may be dealt with under the National Electricity (Queensland) Law or the National Gas (Queensland) Law. This reflects policy that the Australian Energy Regulator, as regulator under those laws, will have powers to terminate certain small customer disputes on the basis that they would be handled more efficiently under an energy ombudsman scheme.

103 Amendment of s 46 (Failure by relevant entity to comply with accepted order or compliance directions)

Clause 103 amends section 46 to remove an explicit power of the energy Act regulator to take action against a retailer or distributor for failing to comply with a compliance direction given for an accepted order by the Energy and Water Ombudsman:

(a) for the Electricity Act – under section 133; and
(b) for the Gas Supply Act – under section 57 or chapter 6, part 1A (for a distributor) or section 181 or chapter 6, part 1A (for a retailer).

Under amendments to the Electricity Act, the powers of the regulator under section 133 will not apply to retailers (though will apply to distributors). Amendments to the Gas Supply Act remove the powers of the regulator in relation to section 181 and chapter 6, part 1A (though the powers to take action under section 57 are not disturbed).

The amendment reflects that the relevant regulator for noncompliance action will be, in most instances of dispute, the Australian Energy Regulator under the NERL (Qld), given the NERL (Qld) will comprehensively deal with the sale and supply of energy to customers. Under section 86 of the NERL (Qld), retailers and distributors must comply with the requirements of the Energy and Water Ombudsman Scheme. This would include compliance orders made by the Ombudsman.

Where a matter concerns non-compliance with remaining protections made under the Electricity Act or Gas Supply Act, the Ombudsman will still be able to refer non-compliance of a retailer or distributor to the regulator under those Acts. In that instance, action may still

be taken against a distributor under section 133 of the Electricity Act, or section 57 or chapter 6, part 1A of the Gas Supply Act. It is not necessary for the Energy and Water Ombudsman Act to expressly state this. The regulator may also take action against a retailer under new enforcement provisions relating to the remaining consumer protections in the Act.

104 Amendment of s 64 (Scheme participation—energy entities)

Clause 104 amends a defined term relating to retailers ('customer retail services') and permits exempt sellers to become scheme participants. This reflects that the activity of energy retailing will be regulated under the NERL (Qld) at commencement, and that two gas retailers (both of which are scheme participants, being the Maranoa Regional Council and the Western Downs Regional Council) will become exempt sellers at commencement.

105 Amendment of s 67 (Amount of participation fee—energy entity)

Clause 105 amends section 67 by providing for scheme participation fees for exempt sellers. It also changes the way in which scheme participation fees for distributors and retailers are to be assessed. These changes are consequential to amendments made by this Bill to the definition of 'energy Acts' under section 5.

106 Insertion of new pt 13

Clause 106 inserts part 13 (*Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014*), comprising new section 103. Section 103 is a transitional measure relating to other amendments of the Energy and Water Ombudsman Queensland Act. It provides that retailers or exempt sellers that were scheme participants immediately before commencement will continue to be scheme participants upon commencement. This ensures that the duty of these entities to pay scheme participation fees under section 64 will continue on commencement.

107 Amendment of schedule (Dictionary)

Clause 107 amends the dictionary by amending existing definitions to reflect the change in 'energy Acts' at commencement and inserting new definitions needed for use in new provisions also inserted at commencement.

Part 5 Amendment of Gas Supply Act 2003

Part 5 of the Bill includes extensive amendments to the Gas Supply Act to

- remove provisions relating to: retail authorities; special approvals for the sale of gas; and the sale and supply of gas to customers by retailers and distributors that would otherwise duplicate or be inconsistent with those proposed to be contained in the NERL (Qld)
- adjust terminology for consistency with the NERL (Qld)
- ensure that remaining customer protections continue to operate effectively and can be enforced.

108 Act amended

Clause 108 states that part 5 amends the *Gas Supply Act 2003*.

109 Amendment of s 3 (Main purposes of Act)

Clause 109 redefines the main purposes of the Act. In particular, the effect of the clause is to:

- remove the purpose of the Act under existing section 3(1)(a) to implement the franchising and licensing principles under clauses 13 and 14 of the national gas agreement as this purpose has been achieved and is now redundant, with much of the subject matter now regulated under the National Gas (Queensland) Law. The national gas agreement refers to the 'Natural Gas Pipelines Access Agreement' relating to third party access to natural gas pipeline systems entered into by the Commonwealth and all of the States on 7 November 1997. Clauses 13 of the agreement related to the phase out or reform of franchising agreements by 1 September 2001. Clause 14 of the agreement related to the phase out of reform of licensing agreements incompatible with licensing principles or the Gas Pipeline Access Law by 1 September 2001
- retain the purpose of the Act in relation to promoting the efficient and economical supply of processed natural gas (existing section 3(1)(b))
- amend the existing purpose of protecting customers in reticulated processed natural gas markets (existing section 3(c)) by regulating the distribution and retail services for reticulated processed natural gas and providing for the making of industry codes (existing section 3(2)). As the sale of processed natural gas will be transitioned from the Act to the NERL (Qld), this main purpose is amended to provide that the Act is intended to ensure the interests of customers are protected by regulating the distribution services for reticulated processed natural gas, and by providing for the making of relevant distribution network codes (which will replace industry codes under amendments contained in this Bill).

110 Amendment of s 4 (Gas-related matters to which Act does not apply)

Clause 110 amends section 4 by updating a reference in the Editor's note under subsection 4(2) to other laws about access to a distribution pipeline or system. The updated removes reference to the Gas Pipeline Access Law and the Trade Practices Act, which no longer exist, and includes a reference to the Australian Consumer Law (Queensland) as this law has replaced the Trade Practices Act. The clause also amends subsection 4(3) to remove a reference to provisions of the Gas Supply Act (i.e. Chapter 2, Part 6) that have already been removed.

111 Replacement of s 5A (Declaration for Commonwealth Act)

Clause 111 amends section 5A by removing 'retail authority' from the authorities under the Gas Supply Act that are not personal property under the *Personal Property Securities Act 2009* (Cwth). This reflects that retail authorities will no longer be available under the Gas Supply Act.

112 Amendment of s 16 (Who is a customer)

Clause 112 amends section 16 to redefine who customers are for the purposes of the Act. In particular, it assigns the meaning of 'small customer' to that term's meaning under the NERL (Qld). The effect of the amendment is to expand the meaning of small customer to include all residential customers, irrespective of consumption volume (as is provided for under the NERL (Qld). Small customer is also taken to include a person who is sold energy by an exempt seller and who would, if they were sold energy by a retailer, would be a small

customer under the NERL (Qld): - that is, they would be a residential customer or they consume energy under the threshold provided for under section 6 of the NERL (Qld).

The amendment also defines 'excluded customer' directly (namely, as a customer in either of the Maranoa or Western Downs Regional Council distribution areas) rather than by reference to a regulation.

113 Omission of ss 17 and 20

Clause 113 omits section 17 (Types of customers) and section 20 (What are customer retail services). Section 17 is omitted as a consequence of the amendment of section 16: the definitions from section 17 that are retained in amended form are now in amended section 16. Section 20 is omitted because it defines 'customer retail services'. As a consequence of regulation in relation to customer retail services being dealt with under the NERL (Qld), the term 'customer retail services' will no longer appear in the Gas Supply Act.

114 Replacement of s 21 (What is a distribution authority)

Clause 114 amends section 21 to provide that a distribution authority authorises its holder to transport processed natural gas through a distribution pipeline or system within a stated area or provide customer retail services in the area. This differs from the existing provision by providing that the authority relates to a stated area (termed 'distribution area').

Currently, section 23 provides that a distribution authority may be either:

- a 'point to point distribution authority' – this authorises the distributor to transport processed natural gas through a distribution pipeline from one stated point to another to provide customer connection and retail services to a stated customer.
- an 'area distribution authority' – this authorises the distributor to transport processed natural gas using a distribution system within a 'distribution area' to premises within the area.

Under clause 115 immediately below, it is proposed that section 23 be omitted. Combined with the amendments to section 21, the effect will be that there is only one type of distribution authority, which will be an 'area distribution authority' in substance but not in name. The 'point to point distribution authority' will not continue. It owes its existence to transitional considerations based on the fact that the preceding gas legislation authorised single pipelines as well as the 'gas franchises' (rights to construct and operate reticulation systems) that became the first area distribution and area retail authorities. Because some such pipeline authorisations were for transport and sale of gas, the point to point distribution authority is unusual in that it also authorises sale ('customer retail services'). Other than in the transitional period, only one point to point distribution authority has been issued: in respect of a small liquefied petroleum gas pipeline under a suburban road. The Gas Supply Act formerly regulated the supply and sale of reticulated liquefied petroleum gas. No point to point distribution authority has ever been issued in respect of natural gas.

115 Omission of s 23 (Types of distribution authority and their distributors)

Clause 115 omits section 23 as a consequence of the policy mentioned immediately above. Omission of this section means that the concept of the point-to-point distribution authority will not continue.

116 Omission of ch 1, pt 3, div 2, sdiv 7 (Retail authorities and retailers)

Clause 116 omits chapter 1 part 3 division 2 subdivision 7. Subdivision 7 contains three provision relating to retail authorities and use of the term 'retailer'. Provisions relating to retail authorities will no longer be required, as responsibility for retail authorisations will be transitioned into the NERL (Qld). This Bill will insert a new definition for 'retailer' in the Gas Supply Act dictionary and under this new definition: 'retailer' will in general mean a retailer under the NERL (Qld) (i.e. the holder of a NERL (Qld) retailer authorisation) for gas.

117 Amendment of s 28 (Requirements for application)

Clause 117 amends section 28 by omitting references dependent on there being more than one type of distribution authority. These references will not be required as the concept of the point-to-point distribution authority will not continue under amendments made to sections 21 and 23 under this Bill.

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

Clause 118 amends section 29 with effect that it no longer references point-to-point distribution authorities. This reference will not be required as the concept of the point-to-point distribution authority will not continue under amendments made to sections 21 and 23 under this Bill.

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

Clause 119 amends section 37 to reflect that all distribution authorities will have a distribution area, and there will be no point-to-point distribution authorities, as provided for under amendments made to sections 21 and 23 under this Bill.

120 Amendment of s 43 (Restriction for area distributors)

Clause 120 amends section 43 to replace the words 'the area distributor' with 'the distributor', because all distributors under the amended Act will have a distribution area. This is a consequential amendment resulting from the removal of the concept of point-to-point distribution authorities under amendments made to sections 21 and 23 of the Act under this Bill.

121 Amendment of s 48 (Contingency practices and procedures)

Clause 121 amends section 48 so that obligations in subsection (3) to (5) (which relate to the distributor's telephone number to report emergencies, leakages, outages, faults and difficulties and planned interruptions) will not apply in respect of distributors that are subject to the NERL (Qld). This is because similar requirements are applied to distributors under the NERL (Qld).

122 Amendment of s 60 (Notice of proposed action)

Clause 122 omits subsection 60(3), which references a retail authority the subject of an immediate suspension. There will not be any retail authorities under the Gas Supply Act.

123 Replacement of s 102 (Application of pt 3)

Clause 123 replaces existing section 102 and provides that part 3 only applies to a distributor in relation to gas infrastructure that is not a distribution system under the NERL (Qld). The effect of this is that, on and from commencement, provisions in chapter 2 part 3 (Customer Connection Services) will apply only to distributors in respect of distribution networks or distribution pipelines that are neither covered pipelines under the National Gas Law nor the subject of a nomination of a distributor under NERL (Qld), section 12. The regulation of all other distribution networks and pipelines for customer connection services will transition to the NERL (Qld).

124 Amendment of s 108 (Commencement of customer connection services)

Clause 124 amends section 108 to inserting a new subsection dealing specifically with the charges a distributor might request for establishing a new customer connection to its network.

This is necessary because distributors in respect of networks subject to part 3 cannot rely on connection charging arrangements provided for in the National Gas Rules (which will not apply) or on modifications of those rules as set out in a local instrument (regulation) nominating them as distributors for the purpose of the National Gas Law. Part 3 will apply to distributors only in respect of uncovered (not economically regulated) networks that have not been nominated. The intent of the new subsection is to oblige these distributors to take future revenue caused by a new connection into account when proposing a connection charge for that connection.

125 Amendment of s 109C (Provision for large customers)

Clause 125 amends section 109C by inserting a definition for 'large customer'. This preserves the existing definition of large customers under the Gas Supply Act, but due to other amendments to the Gas Supply Act in this Bill, the term 'large customer' will only be used in this provision of the Act and no other. Accordingly, the definition has been relocated to this section.

126 Amendment of s 125 (Operation of pt 4)

Clause 126 omits subsection (2) of section 125. Subsection 125(2) provides that the obligations for the provision of customer connection services to small customers under Part 4 are taken to be the terms of each connection contract between a distributor or retailer and a small customer. However, as the terms of connection contracts will be dealt with under the National Energy Retail Rules and NERL (Qld), the obligations under Part 4 will instead become direct obligations on distributors. Part 4 concerns meter and control apparatus requirements which are not contained in the terms of connection contracts under the NERL (Qld).

127 Replacement of ch 3, pt 1, hdg (Retail authorities)

Clause 127 changes the heading of Chapter 3, part 1 from 'Retail authorities' to 'Retailers and particular exempt sellers'. The particular exempt sellers that are dealt with under this part will be the Maranoa Regional Council and the Western Downs Regional Council. These Regional Councils will continue to be obliged to comply with section 175A in relation to community services agreements.

128 Omission of ch 3, pt 1, div 1 (Applying for and obtaining retail authority)

Clause 128 omits Chapter 3, part 1, division 1. This division sets out arrangements for how a person may apply for a retail authority, the process to decide an application and the term of a retail authority. This division will not be required as the process for applying for retail authorisations and assessment of applications will transition to the NERL (Qld).

129 Omission of ch 3, div 2, hdg and ss 159–175

Clause 129 omits the heading of chapter 3 division 2 'Applying for and obtaining customer connection services' and also omits sections 159 to 175. Sections 159 to 175 imposed conditions on retail authorities. As responsibility for retail authorisations will transfer to the Australian Energy Regulator under the NERL (Qld), the subject matter of these sections will generally be provided for under the NERL (Qld). For example, the existing restriction under section 169 on retailers from providing customer retail services to an excluded customer's premises are contained in modifications to the National Energy Retail Law under the Schedule to the National Energy Retail Law (Queensland) Bill.

130 Amendment of s 175A (Additional condition about community services agreement)

Clause 130 replaces existing section 175A to impose a direct obligation on retailers to enter into an agreement with the State for the provision of community services (for example, the pensioner rebate) in place of an existing retail authority condition to the same effect. Specifically, a retailer must not provide 'customer retail services' (sell gas to a customer at the customer's premises) unless the retailer and the State have entered into an agreement for the retailer to provide community services for at least five years.

The community services to be provided are those agreed between the retailer and the State or, if the retailer and the State fail to reach agreement, the community services decided by the Minister. If a retailer provides customer retail services without entering into an agreement or, having entered into an agreement, fails to comply with that agreement, compliance and enforcement action may be taken under new part 1B of chapter 6. The community services obligation currently applying to the Maranoa Regional Council and the Western Downs Regional Council as gas retailers is continued by stating that each of the Councils will be treated as a retailer under this provision if they are taken to hold an individual seller exemption under the NERL (Qld).

131 Omission of ch 3, pt 1, divs 3 and 4 and pt 2

Clause 131 omits Chapter 3, part 1, divisions 3 and 4 (which provided for procedures concerning the amendment, cancellation and suspension of retail authorities) and chapter 3 part 2 (which provided for matters in relation customer retail services, including retail contracts). This is because the regulation of retail authorisations and customer retail services, including customer retail contracts, will move to the NERL (Qld).

132 Amendment of ch 3, pt 3, hdg (On-supply)

Clause 132 omits the Editor's note to the heading. The Editor's note refers to a provision that is proposed to be removed by this Bill (i.e. section 288 - Unlawfully selling reticulated processed natural gas) because the regulation of selling reticulated processed natural gas to premises will move to the NERL (Qld).

Part 3, Chapter 3 generally concerns on-supply arrangements.

An 'on-supplier' under the Gas Supply Act is a person who is the owner or occupier of premises, or has the right to use premises, and who supplies, by reticulation, processed natural gas for use in the premises. Selling gas to a person for use in premises will a matter for the NERL (Qld). The amendments in this Bill to Part 3, Chapter 3 reflect this by removing provisions relating to the sale of gas as they this will no longer be required in the Gas Supply Act. Specifically, an on-supplier as a seller of gas will become an 'exempt seller' under the NERL (Qld).

Under the NERL (Qld), the Australian Energy Regulator has the power to issue an authorisation to an exempt seller and may impose conditions on that seller. An exempt seller may fall into one of three broad categories of exemption – individual exemption, deemed exemption or registered exemption. The latter two are class exemptions. It is expected that existing on-suppliers will transition into the NERL (Qld) under class exemption arrangements, so will not be required to apply for individual exemptions in order to continue to sell gas to on-supply premises. The conditions for the sale of electricity under a class exemption will be contained in the Australian Energy Regulator's exempt seller guidelines.

133 Omission of ch 3, pt 3, div 1, hdg (Preliminary)

Clause 133 omits the division heading.

134 Omission of ss 214 and 215

Clause 134 omits sections 214 and 215, which deal with matters concerning the sale of gas in on-supply situations. Regulation for the sale of gas in on-supply situations to a customer's premises will transition to the exempt seller regime to be established under the NERL (Qld). On-suppliers, as sellers of gas, will become exempt sellers.

135 Omission of ch3, pt 3, divs 2 and 4 and div 4, hdg

Clause 135 omits divisions 2 and 3 of chapter 3 part 3 (On-supply) and the heading of division 4. These concern the sale of gas in on-supply premises, which will be subject to the exempt seller regime established under the NERL (Qld).

136 Amendment of s 222 (Individual metering option)

Clause 136 amends section 222 to remove reference to the sale of gas. The right of receivers to have a meter installed at their own expense is preserved.

137 Amendment of s 223 (Compensation for installation damage)

Clause 137 amends section 223 to update a cross-reference to a provision in section 222, as the numbering in section 222 is affected by the amendment immediately above.

138 Omission of ch 3, pt 3, div 5 (Disclosure requirements for common area consumption charges)

Clause 138 omits Division 5 of Chapter 3, Part 3. Division 5 is entirely concerned with the sale of gas in on-supply premises, which will be subject to the exempt seller regime established under the NERL (Qld).

139 Amendment of s 228 (Fixing of prices for standard contracts or for on-supply)

Clause 139 amends section 228, which provides a head of power for the Minister to fix either the price, or a methodology to fix the price, that (i) a retailer can charge a customer on a standard retail contract for (or relating to) the sale of processed natural gas or (ii) that an on-supplier can charge a customer for the sale of processed natural gas.

The amendments update the terminology used in the section in relation to the retailer price-fixing power to reflect the terminology of the NERL (Qld). The reserve power in relation to retailers is otherwise unaffected

The clause also omits references to fixing on-supply prices, which will be dealt with in the exempt seller regime established under the NERL (Qld).

140 Amendment of s 228A (Restrictions on the first exercise of price fixing power)

Clause 140 amends section 228A by changing the term ‘area retailer’ to ‘retailer’. The effect of the amendment is that the Minister would need to advise each retailer of the reasons for the Minister’s decision if the Minister decided to exercise the price-fixing power under section 228. As each retailer would be affected by such a decision, each retailer should also receive a copy of the reasons.

141 Amendment of s 229 (Review of notified prices)

Clause 143 amends section 229 by omitting reference to on-supply. The Minister’s price-fixing powers under section 228 will not extend on-supply pricing under amendments made to that section in this Bill.

142 Amendment of s 231(Requirement to comply with notified prices)

Clause 144 amends section 231 to omit references to retail-related concepts that are not continuing under the Act, but will move to the NERL (Qld). The general obligation on retailers to comply with a notified price, if one is determined, remains.

The clause also removes the requirement for on-suppliers to comply with a notified price. This is a consequential amendment resulting from changes to section 228 in this Bill, which removes the power for the Minister to set notified prices for on-supply. On-supply pricing may be dealt with in the exempt seller regime established under the NERL (Qld).

143 Amendment of s 232 (Additional consequences of failure to comply with notified prices)

Clause 143 amends section 232 by omitting all references concerning on-supply. Section 232 currently sets out additional consequences if a retailer or on-supplier does not comply with a notified price determination. The amendment to remove the reference to on-supply is consequential to other amendments to sections 228 and 231 that remove the power of the Minister to set a notified price for on-supply and the obligation on an on-supplier to comply with the notified price.

144 Amendment of s 233 (Directions for prices notification)

Clause 144 amends section 233 by omitting references to on-supply as the Minister will no longer have the ability to set a notified price for on-supply under amendments to section 228. An amendment is also made to an example of 'stated information' that the Minister may direct a retailer to provide, in order to remove a retail-related concept (i.e. customer retail services) that will not continue under the Gas Supply Act, and replace it with the term 'sale of processed natural gas'.

145 Amendment of s 234 (Requirement to comply with direction for prices notification)

Clause 145 amends section 234 by omitting a reference concerning on-supply. Section 234 concerns a direction given to a retailer or on-supplier under section 233. The amendment is consequential from the amendment to section 233 above, which removes the ability of the Minister to give a direction to an on-supplier for stated information.

146 Amendment of s 241

Clause 146 amends section 241 by replacing references to retail authorities with references to retailer authorisation under the NERL (Qld), which reflects that the sale of gas will be authorised under the NERL (Qld). There is no substantive change to the section.

147 Replacement of s 247 (Notice of intention to stop processed natural gas transport or customer connection or retail services)

Clause 147 amends section 247 by replacing certain terminology in the heading and body of the section with terminology that is consistent with other changes to the Gas Supply Act and the transfer of responsibility for most retail regulation to the NERL (Qld). There is no substantive change to the section.

148 Omission of ch 4, pt 4 (Retailer of last resort scheme)

Clause 148 omits Chapter 4, Part 4 which provides in relation to a retailer of last resort scheme. The establishment and regulation of a retailer of last resort scheme will be dealt with in the NERL (Qld).

149 Amendment of s 257 (Direction overrides contracts)

Clause 149 amends section 257 by omitting the term 'retail contract' and relying on the existing, generic reference to a contract relating to the sale of gas. 'Retail contract' is not continuing as a defined term in the Act as the regulation of retail contracts will be dealt with in the NERL (Qld).

150 Replacement of ch 5A, hdg and pt 1, hdg

Clause 150 changes the headings of Chapter 5A and chapter 5A, part 1 by changing 'industry codes' to 'distribution network codes'. Code made under the amended Gas Supply Act will go by this name.

The amendments to Chapter 5A reflect the reduced future subject matter that codes will be able to address. Much of the subject matter in the existing Gas Industry Code relates to the terms and conditions of customer retail contracts. This subject matter will largely be dealt with in the National Energy Retail Rules made under the NERL (Qld). Given the extent of changes, a new code will be made under the amendments contained in this Part.

Unlike the corresponding changes to the Electricity Act, none of the remaining subject matter for the code will affect retailers. For example, gas industry codes do not need to provide for distributor - retailer interactions, since these are a matter for gas access arrangements, gas haulage contracts or gas retail market procedures.

151 Amendment of s 270A (Making of initial industry codes by Minister)

Clause 151 omits a reference to 'retailers' from section 270A. For gas, distribution network codes will not cover retailer-related matters or retailers. The existing retailer-related content of the current Gas Industry Code is comprehensively dealt with by provisions of the NERL (Qld) and the National Energy Retail Rules. Unlike the electricity equivalent, gas industry codes do not need to provide for distributor - retailer interactions, since these are a matter for gas access arrangements, gas haulage contracts or gas retail market procedures.

152 Replacement of s 270B (Specific matters for which code may provide)

Clause 152 omits references to 'customer retail services' and 'retail entities'. Distribution network codes will not cover retailer-related matters or retailers. The existing retailer-related content of the current Gas Industry Code will be comprehensively dealt with by provisions of the NERL (Qld) and the National Energy Retail Rules.

153 Insertion of new s 270BA

Clause 153 inserts a new section 270BA. Section 270BA sets out the type of consultation the Minister must before making a distribution network code, except where a code is urgently needed or will not be materially detrimental to anyone's interests. This will align requirements around the making of distribution network codes with corresponding processes in the Electricity Act.

154 Replacement of ch 5A, pt 2, hdg (QCA industry codes)

Clause 154 omits industry codes in the heading in favour of distribution network codes.

155 Amendment of ch 5A, pt 3, hdg (Review of industry codes and related matters)

Clause 155 omits industry codes in the heading in favour of distribution network codes.

156 Amendment of ch 5A, pt 4, hdg (Amending industry codes)

Clause 156 omits industry codes in the heading in favour of distribution network codes.

157 Amendment of ch 5A, pt 5, hdg (Enforcing industry codes)

Clause 157 omits industry codes in the heading in favour of distribution network codes.

158 Amendment of s 270ZD (How regulator deals with referral)

Clause 158 amends section 270D to reflect that retailers will not be the subject of a referral because distribution network codes will not apply to retailers.

159 Amendment of s 270ZJA (Relationship with Fair Trading Act 1989)

Clause 159 amends section 270ZJA by omitting a reference to section 270ZJB, as that section will be omitted (see below).

160 Omission of s 270ZJB (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)

Clause 160 omits section 270ZJB. Section 270ZJB states when a retail contract will be taken to comply with the Australian Consumer Law (Queensland). As retail contracts will become a matter for the NERL (Qld), this provision will no longer be required.

161 Amendment of s 270ZK (Application of pt 1A)

Clause 161 amends section 270ZK to omit references to retailers and to chapter 3, part 1, division 3 – the effect of this is that retailers will no longer be subject to compliance action and the imposition of a civil penalty under this Part for either (i) a material contravention of a code, or (ii) contravention of a compliance direction under the Energy and Water Ombudsman Act. As retailers will no longer be subject to code requirements under other amendments, enforcement action for material contravention of a code will no longer be required. Given most retail regulation that would be the subject of Ombudsman consideration will be dealt with under the NERL (Qld) (and instances of noncompliance referred to the Australian Energy Regulator), rather than the Gas Supply Act, it is unlikely that a referral to the energy Regulator for this Act will be made.

The clause also replaces the term ‘industry code’ with ‘distribution network code’ to reflect changes to terminology in this Bill.

162 Amendment of s 270ZL (Regulator may impose civil penalty)

Clause 162 omits a reference to a retailer in section 270ZL, so that the section will state that the regulator may impose a civil penalty on a distributor (rather than a distributor or retailer) for no more than the monetary value of 1333 penalty units. This is a consequential amendment from changes made to section 270ZK above, which remove powers of the regulator in relation to retailers, as these will be dealt with under the NERL (Qld).

163 Amendment of s 270ZM (Information notice about and taking effect of decision)

Clause 163 omits a reference to a retailer. Section 270ZM relates to the provision of an information notice if a regulator decides to impose a civil penalty under section 270ZL. This

is a consequential amendment resulting from the removal of the power for the regulator to impose a civil penalty under section 270ZL.

164 Insertion of new ch 6, pt 1B

Clause 164 inserts a new part 1B into Chapter 6 'Enforcing section 175A against retailers'. This sets out a compliance and enforcement framework for retailers in relation to section 175A (Additional condition about community services agreement).

Enforcement of retailer compliance with provisions of the Gas Supply Act is currently based on a retailer's authority to sell gas to premises. Under section chapter 3 part 1 division 3 subdivisions 3 to 5, the regulator may cancel, suspend or amend a retailer's retail authority. Additionally, under section 270ZL, the regulator may impose on a retailer a civil penalty of not more than 1333 penalty units. Because arrangements for retail authorisations will move from the Gas Supply Act to the NERL (Qld), the regulator will no longer be able to cancel, suspend or amend a retailer's retail authority. A major disincentive for retailer non-compliance will be lost.

As a consequence, new Part 1B will provide for an alternative civil penalty compliance and enforcement framework to come into force when the NERL (Qld) commences. The purpose is to have an effective framework to apply in respect of an existing condition of retail authority that will be continued as a direct obligation on a retailer when the NERL (Qld) commences.

Existing section 175A obliges retailers to enter into and comply with an agreement with the State to provide community services for at least five years and comply with services and conditions decided by the Minister, if no agreement is reached. Retailers are currently obliged to deliver the Reticulated Natural Gas Rebate, the budgeted amount for which is $2.3 million for financial year 2013–14.

Since the regulator on behalf of the State will no longer be able to cancel, suspend or amend a retailer's retail authority for non-compliance, a disincentive for non-compliance is needed. The new part is based on existing compliance and enforcement powers of the QCA in relation to material contraventions of an industry code, though note these will be removed in relation to retailers as the code will no longer regulate retailer behaviours.

The new Part 1B has three divisions, dealing with Contravention Notices (Division 1), Proceedings (Division 2) and Production of documents or information (Division 3).

New section 271A (Application of part) provides that the part is to be applied in circumstances where the regulator suspects that a retailer has contravened or is contravening section 175A. The regulator can only enforce contraventions that are, or are likely to be, material contraventions of section 175A. This materiality requirement aims to ensure that trivial contraventions are not pursued.

The new section 271AA (Criteria for deciding material contravention) provides that in assessing whether a contravention is material, regard must be had to, but is not limited to, the objects of the Act set out under Part 2. These include the object of ensuring that the interests of customers are protected.

The new section 271AB (Warning notice may be given) allows the regulator to give a retailer a warning notice warning that the regulator proposes to give the retailer a warning notice about the contravention of section 175A. A warning notice can only be given within 2 years after the day on which the contravention happened. The introduction of a warning notice mechanism provides an opportunity for consultation between the regulator and an allegedly breaching retailer. A warning notice will provide an avenue for potential breaches to be remedied before the issue of a contravention notice, working towards effective resolution of complaints.

The new section 271AC (Requirements for warning notice) sets out the information that must be contained in a warning notice, including the particulars of the contravention and the fact that the regulator proposes to issue a contravention notice unless the retailer takes certain steps and provides the regulator with a conduct assurance that similar future contraventions will be avoided.

A period of at least 20 business days must be given before a contravention notice will be issued, except in cases where the regulator considers urgent action to be required, and allows the retailer to make submissions to show why the proposed contravention notice should not be given. This time period and the opportunity to make submissions aims to: provide structure and clarity; encourage consultation between regulator and allegedly contravening retailer; and encourage the rectification of contraventions. The warning notice may also state the steps the regulator reasonably believes are necessary to remedy the contravention or avoid its future recurrence.

The new section 271AD (Considering submissions on warning notice) requires the regulator to consider submissions made under section 271AC(1)(d) by retailers in relation to why the proposed contravention notice should not be given. This aims to afford due process to allegedly contravening retailer and to encourage consultation between the retailer and the regulator. The regulator must provide notice to the retailer as soon as practicable after deciding not to give a proposed contravention notice.

The new section 271AE (Giving of contravention notice) allows the regulator to give a proposed contravention notice if the retailer has not complied with a warning notice. If the retailer has taken steps reasonably necessary to remedy the contravention but has not given a required conduct assurance, a contravention notice can still be given on the basis that the retailer is deemed to be still involved in an activity that could result in a material contravention of section 175A. The contravention notice must state that the retailer has, is, or is likely to, contravene section 175A in a material way and give particulars of the contravention.

The new section 271AF (Duration of contravention notice) provides that a contravention notice comes into effect when it is made or the later time specified in the contravention notice and ends on the day stated in the notice or, if cancelled before that day, on the day of cancellation.

The new division 2 (Proceedings) has four sections.

The new section 271AG (Proceeding for civil penalty order) provides that if, on the application of the regulator, the Supreme Court is satisfied that a retailer has contravened, attempted to contravene or been involved in the material contravention of section 175A, then the Supreme Court may order the retailer to pay an amount to the State as a civil penalty of no more than $100,000 for an individual and $500,000 for a corporation. In fixing the penalty the Court must consider the nature and extent of the contravention or loss or damage suffered because of a contravention, the circumstances in which the contravention took place and whether the retailer has previously been found to have engaged in similar conduct under this Act. A retailer is involved in a contravention if it has aided, abetted, counselled or procured the contravention, has induced the contravention, has been in any way, directly or indirectly, knowingly concerned in or party to the contravention or has conspired with others to effect the contravention.

The new section 271AH (How order enforced) provides that if the Supreme Court orders payment of an amount under section 271AG(2) in relation to a contravention of section 175A, the State may enforce the order as a judgment of the court for a debt of that amount.

The new section 271AJ (Injunctions) provides that the Supreme Court may, on the application of the retailer, grant an injunction if satisfied that a retailer has been involved or is likely to be involved in a contravention of section 175A. The injunction may be granted on conditions. The court may grant an interim injunction but must not require anyone as a condition of granting the interim injunction to give an undertaking as to damages.
The court may amend an injunction or interim injunction.

The new section 271AK (Conduct by directors, servant or agents) attributes the conduct and state of mind of the directors, servants and agents of a retailer to the retailer in specified circumstances.

The new division 3 (Production of documents or information) has one section.

The new section 270AL (Notice to produce documents or information) applies if the regulator is conducting an investigation to find out whether a retailer is complying with a section 175A. The regulator may require, by written notice, a retailer to provide it with information or documents relevant to an investigation to find out whether a retailer is complying with section 175A. The notice must state the information or documents required, a period of no less than 7 days in which the documents or information are to be given and a reasonable place at which the documents or information are to be given. A penalty of a maximum of 500 penalty units will apply to contravention of the notice without reasonable excuse.

A retailer is not required to comply with the notice if it claims, on the ground of self-incrimination, a privilege the entity would be entitled to claim against giving the information were the entity a witness in the Supreme Court in a prosecution for an offence. If a retailer claims that complying with the notice may tend to incriminate it, the regulator or the retailer may make an application in the Supreme Court to decide the validity of the claim.

165 Omission of s 288 (Unlawful selling reticulated processed natural gas)

Clause 165 omits section 288, which is a general prohibition in relation to selling natural gas. This is replaced by section 88 of the NERL (Qld), which prohibits the selling of energy (electricity and natural gas) to a person for premises unless the seller is a retailer or an exempt seller. The sale of gas other than to premises is adequately regulated under other legislation, particularly the National Gas (Queensland) Law.

166 Amendment of ch 6, pt 4, hdg (General remedies)

Clause 166 replaces the Editor's note from the heading to remove a cross reference to a section that it being removed, namely section 221 which relates to the consequences of not complying with a number of on-supply provisions relating to the sale of gas.

167 Omission of s 302 (Additional consequences of unlawfully selling reticulated processed natural gas)

Clause 167 omits section 302. Section 302 concerns the consequences of a person breaching the general prohibition under section 288 against selling reticulated processed natural gas without authorisation. As section 288 will be removed under amendments above, this provision will no longer be required.

168 Amendment of s 303 (Recovery of unlawful profits)

Clause 168 amends section 303 by removing the term retailer from the provision. Section 303 is an empowering provision that states clearly that the State may recover the amount of any profits made unlawfully by a distributor or a retailer for an offence against the Gas Supply Act.

The offence provisions in the Gas Supply Act are included in Part 2 of Chapter 6 and include: unlawfully operating a distribution pipeline (s286); unlawfully tampering with gas infrastructure (s287); unlawfully selling reticulated processed natural gas (s288); unlawfully taking processed natural gas or LPG (s289); providing gas retail market services (s289A); and making an entry in a document required to be kept under the Act, knowing the entry to be false or misleading in a particular respect (s290). Under amendments made in this Bill, the section 288 offence relating to unlawful sale will be removed. Otherwise, as retail regulation will become a matter for the NERL (Qld), this provision is no longer appropriate.

The removal of a positive conferral of the power of the State to recover an amount for unlawful profits against a retailer under this provision is not intended to affect the power of the State to take action against a retailer for unlawful profit in circumstances where the State has suffered a loss.

169 Amendment of s 307 (Other evidentiary aids)

Clause 169 amends section 307 by removing references to a retail authority in paragraph (a)(iii). The effect of this provision is that a certificate purporting to be signed by the regulator in relation to a retail authority will not be evidence of the matter. This is because retail authorities will not continue under the Gas Supply Act. Retailer authorisations will be issued under the NERL (Qld).

170 Amendment of s 307A (Evidentiary effect of code contravention notice)

Clause 170 amends 307A by removing references to a retailer. The effect of this provision is that a document purporting to be a certified copy of a code contravention notice will not be evidence that the notice has been given to the retailer stated in the notice. This is because retailers will no longer be subject to code provisions and as such will not receive code contravention notices.

171 Amendment of s 308 (Register of authorities)

Clause 171 amends subsection 308(a), which provides that the regulator must keep a register of authorities, to remove the reference to a retail authority. This is because retail authorities will not continue under the Gas Supply Act, but will be made under the NERL (Qld), with the Australian Energy Regulator responsible for keeping records of retail authorisations.

172 Amendment of s 309 (Keeping of register of authorities)

Clause 172 amends section 309, which concerns information that must be included in the regulator's register of authorities. The amendments remove information relating to a retail authority, because retail authorities will no longer need to be kept in the register as a consequence of amendments made to section 308 above.

173 Amendment of s 310A (Registers QCA must keep)

Clause 173 amends section 310A to reflect that industry codes will be replaced by distribution network codes and that QCA will not be required to keep a register of retailer's standard terms. Regulation of retail contracts will be dealt with in the NERL (Qld).

174 Amendment of s 316 (Limitation of liability of distributors and retailers)

Clause 174 changes the heading and content of section 316. Section 316 limits the liability of distributors and retailers due to a partial or total failure to supply processed natural gas or due to the supply of defective reticulated processed natural gas.

The effect of the section is that the limitation on liability will not apply to retailers, or to distributors in respect of distribution system operations subject to the NERL (Qld). The section only applies to distributors in relation to distribution systems to which the NERL (Qld) will not apply.

For retailers and distributors under the NERL (Qld), corresponding limitations on liability for retailers and distributors for any partial or total failure to supply energy will be provided under section 316 of the NERL (Qld).

175 Insertion of new ch 7, pt 3

Clause 175 inserts a new Chapter 7, part 3, (Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014) comprising new sections 335 to 341.

Section 335 defines the term 'commencement' for the part.

Section 336 provides that if, before commencement, the regulator is considering whether to cancel or suspend a distribution authority and particular provision of the Act will not apply to

that authority after commencement, then the Act in force before commencement will continue to apply in respect of cancellation or suspension of that authority.

Section 337 applies if a distributor and customer have entered into a connection contract before commencement, and the customer's premises are not connected to the distributor's distribution system at commencement. It provides that sections 108 and 109, as applying to the construction of a new connection, will continue to apply to the construction of the connection.

Section 338 provides that undecided retail authority applications lapse on commencement.

Section 339 clarifies that retail authorities current immediately before commencement will cease to have effect at commencement. Holders of retailer authorisations under the NERL (Qld) for gas will become retailers for Queensland. This will include the current gas retailers except for Maranoa Regional Council and Western Downs Regional Council, which will become exempt sellers under the NERL (Qld). Council) will hold retail authorisations under the NERL (Qld) on commencement.

Section 340 provides that if, before commencement, the QCA has any outstanding matters in relation to warning and code contravention notices, proceedings for a civil penalty order, matters referred to the regulator, audits or notices to produce documents of information, the Act continues to apply to the matter.

Section 341 provides that if, before commencement, the regulator has not decided whether to impose a civil penalty on a distributor or retailer in relation to a contravention of an industry code, a compliance direction under the Energy and Water Ombudsman Act, or non-compliance with a condition of their authority in relation to the Energy and Water Ombudsman Act, the Gas Supply Act continues to apply to the matter.

176 Amendment of sch 1 (Decisions subject to internal review)

Clause 176 amends schedule 1 by omitting entries relating to decisions made under stated sections of the Act that will themselves be omitted at commencement.

177 Amendment of sch 2 (Dictionary)

Clause 177 amends the dictionary in schedule 2 by omitting definitions made redundant by the omission, at commencement, of provisions using the defined terms. It also inserts new or amended definitions for terms to be used in provisions that are likewise amended or inserted at commencement.

Part 6 Amendment of Queensland Competition Authority Act 2003

178 Act Amended

Clause 178 provides that part 6 amends the *Queensland Competition Authority Act 2003*.

179 Amendment of s 10 (Authority's functions)

Clause 179 amends section 10, which sets out the functions of the QCA, in line with amendments to the Electricity Act and Gas Supply Act made by this Bill. Specifically, it replaces QCA's powers to make and enforce 'industry codes' with powers to make and enforce 'distribution network codes', as that is how codes under the Electricity Act and Gas Supply Act will be known.

The clause also removes QCA's power to make credit support guidelines under the Electricity Act, as this will be dealt with under new rules in the National Electricity Rules that come into force when the NERL (Qld) commences.

180 Amendment of s 227A (Keeping registers)

Clause 180 amends section 227A to remove the requirement to keep registers in relation to industry codes. The QCA will no longer have responsibility for industry codes under the NERL (Qld).

Part 7 Amendment of Retail Shop Leases Act 1994

181 Act amended

Clause 181 provides that part 7 amends the *Retail Shop Leases Act 1994*.

182 Omission of s 37A (Lessor's recovery of electricity charges)

Clause 182 omits section 37A from the Retail Shop Leases Act, as it duplicates the obligations that lessors who sell energy to premises have under the NERL (Qld).

Part 8 Acts amended

183 Acts amended

Clause 183 states that schedule 1 amends the Acts mentioned in the schedule.

SCHEDULE 1 MINOR AMENDMENTS

Electricity Act 1994

Item 1

This clause omits the words 'an industry' from the stated provisions in favour of the words 'a distribution network'. These are minor amendments that need to be made as a consequence of 'distribution network' codes replacing 'industry codes'.

Item 2

This clause omits the word 'industry' from the stated provisions in favour of the words 'distribution network'. These are minor amendments that need to be made as a consequence of 'distribution network codes' replacing 'industry codes'.

Item 3

This clause omits the words 'initial industry code' from the stated provision in favour of the words 'initial distribution network code'. This minor amendment needs to be made as a consequence of 'distribution network codes' replacing 'industry codes'.

Item 4

This clause inserts the words 'or retailer's' after the word 'entity's' in the stated provisions. These are minor amendments that need to be made as a consequence of a retailer no longer being treated as an electricity entity, which means that express mention must be made of retailers in those provisions.

Item 5

This clause inserts the words 'or retailer' after the word 'entity' in the stated provisions. These are minor amendments that need to be made as a consequence of a retailer no longer being treated as an electricity entity, which means that express mention must be made of retailers in those provisions.

Item 6

This clause omits the word 'and' from the stated paragraphs in section 120Z in favour of the word 'or'. These minor amendments correct an error in the provision.

Item 7

This clause inserts the words 'or retailers' after the word 'entities' in the stated provision. This is a minor amendment that needs to be made as a consequence of a retailer no longer being treated as an electricity entity, which means that express mention must be made of a retailer in this provision.

Gas Supply Act 2003

Item 1

This clause omits the word 'industry' from the stated provisions in favour of the words 'distribution network'. These are minor amendments that need to be made as a consequence of 'distribution network codes' replacing 'industry codes'.

Item 2

This clause omits the words 'an industry' from the stated provisions in favour of the words 'a distribution network'. These are minor amendments that need to be made as a consequence of 'distribution network codes' replacing 'industry codes'.

Item 3

This clause omits the words 'initial industry code' from the stated provision in favour of the words 'initial distribution network code'. This minor amendment needs to be made as a consequence of 'distribution network codes' replacing 'industry codes'.

Item 4

This clause omits the words ‘or retailer’ from the stated provisions. This minor amendment needs to be made because ‘distribution network codes’, which replace ‘industry codes’, will not provide for retailer-related matters.

Item 5

This clause omits the word ‘and’ from the stated paragraphs in section 270Y in favour of the word ‘or’. These minor amendments correct an error in the provision.

Item 6

This clause omits the words ‘or retailer’s’ from the stated provisions. This minor amendment needs to be made because ‘distribution network codes’, which replace ’industry codes’, will not provide for retailer-related matters.