

Queensland



**ELECTRICITY
AMENDMENT BILL (No. 3)
1997**

Queensland



**ELECTRICITY AMENDMENT BILL
(No. 3) 1997**

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1997

A BILL

FOR

An Act to amend the *Electricity Act 1994* and for other purposes

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Electricity Amendment Act (No. 3) 1997*.

4

Commencement

5

Clause **2.** This Act commences on a day to be fixed by proclamation.

6

PART 2—AMENDMENT OF ELECTRICITY ACT 1994

7

Act amended in pt 2

8

Clause **3.** This part amends the *Electricity Act 1994*.

9

Amendment of s 3 (Objects of Act)

10

Clause **4.** Section 3—

11

insert—

12

‘(d) establish a competitive electricity market in line with the national electricity industry reform process.’.

13

14

Insertion of new s 7

15

Clause **5.** After section 6—

16

insert—

17

Electricity Amendment (No. 3)

	‘Regional system control	1
	7. For the Queensland system, “regional system control” is—	2
	(a) maintaining the operation and performance of the transmission grid; and	3 4
	(b) controlling switching of transmission elements and access to them for maintenance, inspection and testing; and	5 6
	(c) controlling switching of parts of the supply network relevant to the integrity of the Queensland system; and	7 8
	(d) carrying out other functions prescribed by regulation.’.	9
	 Insertion of new s 23A	 10
Clause	6. After section 23—	11
	<i>insert—</i>	12
	‘Regulations concerning contestability declaration	13
	23A.(1) A regulation under section 23(2) declaring a customer to be a contestable customer may provide—	14 15
	(a) that the declaration takes effect on the day on which the regulation commences or on another stated day; or	16 17
	(b) for the effects of the customer being declared to be a contestable customer.	18 19
	<i>Examples of effects that may be provided for—</i>	20
	• the specification of a contract, class of contract or type of contract as a customer connection contract or as a customer sale contract	21 22
	• the continuation of the customer’s customer sale contract	23
	• the continuation of a customer connection contract that applies to the customer’s premises	24 25
	• the change in status of the customer’s customer sale contract, for example, from a standard customer sale contract to a negotiated customer sale contract	26 27 28
	• the change in status of the customer connection contract that applies to the customer’s premises, for example, from a standard customer connection contract to a negotiated customer connection contract	29 30 31 32

Electricity Amendment (No. 3)

- the amendment of the customer’s customer sale contract 1
- the amendment of the customer connection contract that applies to
the customer’s premises 2
3
- the ending of the customer’s customer sale contract 4
- the ending of the customer connection contract that applies to the
customer’s premises 5
6
- anything necessary or convenient to help or give effect to a
regulation under section 23(2). 7
8

‘(2) The ending of a customer sale contract or a customer connection
contract under a regulation made under section 23(2) does not give rise to a
claim for compensation by a party to the contract because of the ending the
contract. 9
10
11
12

‘(3) However, subsection (2) does not affect a right of a party that
accrued before the ending of the contract.’. 13
14

Amendment of s 26 (Generation authorities) 15

Clause 7. Section 26(1)(b)(i), ‘pool’— 16
omit, insert— 17
‘spot market’. 18

Amendment of s 27 (Conditions of generation authority) 19

Clause 8.(1) Section 27(b)(iv) to (vi)— 20
renumber as section 27(b)(v) to (vii). 21
(2) Section 27(b)(iii)— 22
omit, insert— 23
‘(iii) if the entity is connected to the Queensland system—the
National Electricity (Queensland) Law, the Market Code and
directions given to it under this Act, the National Electricity
(Queensland) Law or the Market Code; and 24
25
26
27
(iv) conduct rules made by the QCA; and’. 28

Electricity Amendment (No. 3)

	Amendment of s 31 (Conditions of transmission authority)	1
Clause	9.(1) Section 31(a)(iii) to (v)—	2
	<i>renumber</i> as section 31(a)(iv) to (vi).	3
	(2) Section 31(a)(ii)—	4
	<i>omit, insert</i> —	5
	(ii) if the entity is a code participant—the National Electricity (Queensland) Law, the Market Code and directions given to it under this Act, the National Electricity (Queensland) Law or the Market Code; and	6 7 8 9
	(iii) conduct rules made by the QCA; and’.	10
	Amendment of s 32 (Additional condition to allow connection to grid by complying persons)	11 12
Clause	10. Section 32(1), ‘nondiscriminatory’—	13
	<i>omit, insert</i> —	14
	‘fair and reasonable’.	15
	Replacement of s 33 (Additional condition not to engage in electricity trading)	16 17
Clause	11. Section 33—	18
	<i>omit, insert</i> —	19
	‘Additional condition not to buy and sell electricity	20
	‘33.(1) It is also a condition of a transmission authority that the transmission entity must not buy or sell electricity directly or indirectly.	21 22
	‘(2) Subsection (1) does not apply to generating, buying or selling electricity—	23 24
	(a) necessary to operate the transmission entity’s transmission grid or for a purpose associated with the planning, design, construction, maintenance or operation of the transmission grid; or	25 26 27 28
	(b) for the entity’s administrative purposes; or	29

Electricity Amendment (No. 3)

(c) by the QETC for the performance of its function as the Queensland System Operator. 1
2

‘(3) Subsection (2)(c) expires on the commencement of the *Electricity—National Scheme (Queensland) Act 1997*.’ 3
4

Replacement of s 35 (Additional condition to provide network services) 5
6

Clause 12. Section 35— 7

omit, insert— 8

‘Additional condition to provide network services 9

‘35. It is also a condition of a transmission authority that the transmission entity must provide, as far as technically and economically practicable for the transmission entity, network services on fair and reasonable terms, for persons authorised to connect supply of electricity to the transmission grid or take electricity from the grid.’ 10
11
12
13
14

Insertion of new s 36A 15

Clause 13. After section 36— 16

insert— 17

‘Responsibility for regional system control 18

‘36A.(1) A transmission entity is responsible for regional system control of its transmission grid. 19
20

‘(2) However, a transmission entity is subject to directions given to it under the National Electricity (Queensland) Law or the Market Code.’ 21
22

Replacement of ss 40 and 40AA 23

Clause 14. Sections 40 and 40AA— 24

omit, insert— 25

‘Connection and supply of electricity in distribution area 26

‘40.(1) The following persons may apply to a distribution entity for the provision of customer connection services to premises within the entity’s 27
28

Electricity Amendment (No. 3)

distribution area—	1
(a) a customer who owns or occupies the premises;	2
(b) a retail entity.	3
‘(2) A distribution entity to which an application is made has an obligation to provide to the applicant the customer connection services to the premises.	4 5 6
‘(3) However, the obligation does not apply if another provision of this Act or a regulation—	7 8
(a) states that the obligation does not apply; or	9
(b) authorises the disconnection of premises from, or refusal to connect or reconnect premises to, a supply network.	10 11
‘(4) The applicant and the distribution entity are taken to have entered into a contract on the terms of the distribution entity’s standard customer connection contract, in effect from time to time, for the provision of the services to the premises if—	12 13 14 15
(a) the distribution entity provides the customer connection services applied for to the premises; and	16 17
(b) the applicant does not enter into a negotiated customer connection contract for the customer connection services applied for.	18 19
‘(5) However, the terms of the contract only include the terms of the distribution entity’s standard customer connection contract, in effect from time to time, that apply to the customer.	20 21 22
‘(6) The contract takes effect as a deed.	23
‘(7) The contract is taken to end if the applicant and the distribution entity enter into a negotiated customer connection contract for the provision of the customer connection services applied for.	24 25 26
‘(8) Each of the parties to a standard customer connection contract is taken to have agreed to comply with the provisions of the contract, in effect from time to time, as far as the provisions apply to each party.	27 28 29
‘Supply if no customer connection contract	30
‘40AA.(1) This section applies if—	31

Electricity Amendment (No. 3)

(a) premises are connected to a distribution entity’s supply network; 1
and 2

(b) there is no customer connection contract in effect, or taken to be 3
in effect, for the provision of customer connection services to the 4
premises. 5

‘(2) For premises of a contestable customer, the customer and the host 6
distribution entity are taken to have entered into a contract on the terms of 7
the host distribution entity’s standard customer connection contract, in effect 8
from time to time, for the provision of the customer connection services to 9
the premises. 10

‘(3) For premises of a non-contestable customer, the host retail entity and 11
the host distribution entity are taken to have entered into a contract on the 12
terms of the host distribution entity’s standard customer connection 13
contract, in effect from time to time for the provision of the customer 14
connection services to the premises. 15

‘(4) However, the terms of a contract under subsection (2) or (3) only 16
include the terms of the host distribution entity’s standard customer 17
connection contract, in effect from time to time, that apply to the customer. 18

‘(5) A contract under subsection (2) or (3)— 19

(a) takes effect as a deed; and 20

(b) does not prevent the customer giving a dispute notice under the 21
Queensland Competition Authority Act 1997, section 112;¹ and 22

(c) is taken to end if there is a customer connection contract entered 23
into, or taken to be entered into, for the provision of customer 24
connection services to the premises. 25

‘(6) Each of the parties to a standard customer connection contract is 26
taken to have agreed to comply with the provisions of the contract, in effect 27
from time to time, as far as the provisions apply to each party. 28

‘(7) In this section— 29

“**host distribution entity**”, for premises, means the distribution entity to 30
whose supply network the premises are connected. 31

¹ *Queensland Competition Authority Act 1997*, section 112 (Giving dispute notice)

Electricity Amendment (No. 3)

“host retail entity”, for premises, means the retail entity in whose retail area the premises are located.’. 1
2

Amendment of s 40A (Standard customer connection contract) 3

Clause **15.(1)** Section 40A(1), words after ‘provide’— 4
omit, insert— 5
‘customer connection services to customers.’. 6
(2) Section 40A(2)(c) and (d)— 7
omit. 8

Replacement of s 40B (Approval of first standard customer connection contract by regulator) 9
10

Clause **16.** Section 40B— 11
omit, insert— 12
‘Approval of standard customer connection contract by regulator 13
‘40B. A distribution entity’s standard customer connection contract must 14
be approved by the regulator and does not take effect until it is approved. 15

‘Amendment of standard customer connection contract 16

‘40BA.(1) A distribution entity may only amend its standard customer connection contract if the regulator approves. 17
18
‘(2) An approval may— 19
(a) be given on conditions; or 20
(b) state when the amendment takes effect; or 21
(c) require the entity to give notice to customers of the amendment in a stated way before the amendment takes effect. 22
23
‘(3) If a standard customer connection contract is amended, the standard customer connection contract as amended becomes the standard customer connection contract.’. 24
25
26

*Electricity Amendment (No. 3)***Amendment of s 40D (Connection and supply on nondiscriminatory terms)**

		1
		2
Clause	17.(1) Section 40D(1), ‘nondiscriminatory’—	3
	<i>omit, insert—</i>	4
	‘fair and reasonable’.	5
	(2) Section 40D(2)—	6
	<i>omit.</i>	7
	(3) Section 40D(3), ‘discrimination’—	8
	<i>omit, insert—</i>	9
	‘fair and reasonable’.	10
	(4) Section 40D(3)—	11
	<i>renumber</i> as section 40D(2).	12

Amendment of s 40E (Limitation on obligation to connect and supply)

		13
Clause	18.(1) Section 40E(h)—	14
	<i>omit.</i>	15
	(2) Section 40E(i) and (j)—	16
	<i>renumber</i> as section 40E(h) and (i).	17
	(3) Section 40E—	18
	<i>insert—</i>	19
	‘ (2) Subsection (1)(c) does not apply if the customer pays an amount to the entity for works necessary to prevent the connection or supply from unreasonably interfering with the connection or supply of electricity by the entity to other customers.’	20 21 22 23
	‘ (3) The entity must give the customer an opportunity to pay the amount.’.	24 25

Amendment of s 40H (Contracting out of s 40E, 40G or 97)

		26
Clause	19.(1) Section 40H, heading ‘40G or 97’—	27

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	<i>omit, insert—</i>	1
	‘40G(a) or (b), 96 or 97’.	2
	(2) Section 40H(1), ‘40G or 97’—	3
	<i>omit, insert—</i>	4
	‘40G(a) or (b), 96 or 97’.	5
	Amendment of s 42 (Conditions of distribution authority)	6
Clause	20.(1) Section 42(a)(ii) to (iv)—	7
	<i>renumber</i> as section 42(a)(iii) to (v).	8
	(2) Section 42(a)(i)—	9
	<i>omit, insert—</i>	10
	(i) if the entity is a code participant—the National Electricity (Queensland) Law, the Market Code and directions given to it under this Act, the National Electricity (Queensland) Law or the Market Code; and	11 12 13 14
	(ii) conduct rules made by the QCA; and’.	15
	Amendment of s 43 (Additional condition to allow connection to supply network by complying persons)	16 17
Clause	21.(1) Section 43(1), after ‘practicable’—	18
	<i>insert—</i>	19
	‘for the distribution entity’.	20
	(2) Section 43(1), ‘nondiscriminatory’—	21
	<i>omit, insert—</i>	22
	‘fair and reasonable’.	23
	(3) Section 43(3)(a)—	24
	<i>omit, insert—</i>	25
	(a) the distribution entity’s current obligations and its expected future obligations; and’.	26 27

Electricity Amendment (No. 3)

	Amendment of s 44 (Additional condition to provide network services)	1
		2
Clause	22. Section 44, ‘nondiscriminatory’—	3
	<i>omit, insert—</i>	4
	‘fair and reasonable’.	5
	Insertion of new s 45A	6
Clause	23. After section 45—	7
	<i>insert—</i>	8
	‘Responsibility for network control	9
	‘ 45A.(1) A distribution entity is responsible for network control of its supply network.	10
		11
	‘ (2) However, a distribution entity is subject to directions given to it under the National Electricity (Queensland) Law or the Market Code.’.	12
		13
	Replacement of ss 47–49	14
Clause	24. Sections 47 to 49—	15
	<i>omit, insert—</i>	16
	‘Retail authorities	17
	‘ 47. A “ retail authority ” authorises its holder to provide customer retail services under the terms of the authority.	18
		19
	‘Retail area of retail entity	20
	‘ 48. If a retail authority states a retail area, the retail entity—	21
	(a) has an obligation to provide to non-contestable customers, customer retail services to premises that they own or occupy within the area as required under this Act; and	22
		23
		24
	(b) may provide to contestable customers, customer retail services to premises that they own or occupy anywhere in the State.	25
		26

Electricity Amendment (No. 3)

‘Where retail authority does not state a retail area	1
‘48A. If a retail authority does not state a retail area, the retail entity may provide to contestable customers, customer retail services to premises that they own or occupy anywhere in the State.	2 3 4
‘Applying for customer retail services	5
‘48B. An application may be made to a retail entity by a customer who owns or occupies premises for the provision of customer retail services to the premises.	6 7 8
‘Obligation to provide customer retail services to non-contestable customers	9 10
‘49.(1) This section applies if a non-contestable customer makes an application under section 48B to a retail entity with a retail area in relation to premises within the retail entity’s retail area.	11 12 13
‘(2) A retail entity to which an application is made has an obligation to provide to the non-contestable customer the customer retail services to the premises.	14 15 16
‘(3) However, the obligation does not apply if another provision of this Act or a regulation—	17 18
(a) states that the obligation does not apply; or	19
(b) authorises refusal to provide customer retail services.	20
‘(4) While the customer is a non-contestable customer, the customer and the entity are taken to have entered into a contract on the terms of the retail entity’s standard customer sale contract, in effect from time to time for the provision of the customer retail services if—	21 22 23 24
(a) the retail entity provides the customer retail services applied for the premises pursuant to the application; and	25 26
(b) the non-contestable customer does not enter into a negotiated customer sale contract for the customer retail services applied for.	27 28
‘(5) However, the terms of the contract only include the terms of the retail entity’s standard customer sale contract, in effect from time to time, that apply to the non-contestable customer.	29 30 31

Electricity Amendment (No. 3)

-
- ‘(6) The contract takes effect as a deed. 1
- ‘(7) A contract is taken to end if the customer and the retail entity enter 2
into a negotiated customer sale contract for the provision of the services 3
applied for. 4
- ‘(8) Each party to a standard customer sale contract is taken to have 5
agreed to comply with the provisions of the contract, in effect from time to 6
time, so far as the provisions apply to each party. 7
- ‘Sale if no customer sale contract 8**
- ‘49A.(1) This section applies if— 9
- (a) premises are connected to a supply network; and 10
 - (b) there is no customer sale contract in effect or taken to be in effect 11
for the provision of customer retail services to the premises. 12
- ‘(2) For the premises of a non-contestable customer, the customer and 13
the host retail entity are taken to have entered into a contract on the terms of 14
the host retail entity’s standard customer sale contract, in effect from time to 15
time, for the provision of the following services to the premises— 16
- (a) the sale of electricity to the premises; 17
 - (b) if there is no customer connection contract in effect or taken to be 18
in effect for the provision of customer connection services to the 19
premises, providing for— 20
 - (i) the connection of the premises to a supply network to allow 21
the supply of electricity from the supply network to the 22
premises; and 23
 - (ii) the supply of electricity from the supply network to the 24
premises. 25
- ‘(3) For premises of a contestable customer, the customer and the host 26
retail entity are taken to have entered into a contract on the terms of the host 27
retail entity’s standard customer sale contract, in effect from time to time, 28
for the sale of electricity to the customer’s premises. 29
- ‘(4) However, the terms of the contract only include the terms of the host 30
retail entity’s standard customer sale contract, in effect for the time being, 31
that apply to the customer. 32

Electricity Amendment (No. 3)

- ‘(5) A contract under subsection (2) or (3)— 1
- (a) takes effect as a deed; and 2
- (b) is taken to end if the customer and the host retail entity enter into, 3
or are taken to be entered into a customer sale contract for the 4
provision of customer retail services to the premises. 5
- ‘(6) Each of the parties to a standard customer sale contract is taken to 6
have agreed to comply with the provisions of the contract, in effect for the 7
time being, so far as those provisions apply to each party. 8
- ‘(7) In this section— 9
- “host retail entity”**, for premises, means— 10
- (a) the retail entity in whose area the premises are located; and 11
- (b) if there is no such retail entity—the retail entity or entities 12
prescribed by regulation.’. 13

Amendment of s 50 (Standard customer sale contract) 14

- Clause **25.(1)** Section 50(1)— 15
- omit, insert—* 16
- ‘(1) A retail entity must prepare a standard customer sale contract to 17
establish the terms on which it is to provide customer retail services to 18
non-contestable customers under section 49 and to contestable customers 19
under section 49A(3).’ 20
- (2) Section 50(2)(c) and (d)— 21
- omit.* 22

**Replacement of s 51 (Approval of first standard customer sale 23
contract by regulator) 24**

- Clause **26.** Section 51— 25
- omit, insert—* 26
- ‘Approval of standard customer sale contract by regulator 27**
- ‘51.** A retail entity’s standard customer sale contract must be approved 28
by the regulator and does not take effect until it is approved. 29

Electricity Amendment (No. 3)

	‘Amendment of standard customer sale contract	1
	‘51A.(1) A retail entity may only amend its standard customer sale contract if the regulator approves.	2 3
	‘(2) An approval may—	4
	(a) be given on conditions; or	5
	(b) state when the amendment takes effect; or	6
	(c) require the entity to give notice to customers of the amendment in a stated way before the amendment takes effect.	7 8
	‘(3) If a standard customer sale contract is amended, the standard customer sale contract as amended becomes the standard customer sale contract.’.	9 10 11
	 Replacement of s 52 (Customer sale contracts outside standard form)	12
Clause	27.(1) Section 52—	13
	<i>omit, insert—</i>	14
	‘Customer sale contracts outside standard form	15
	‘52.(1) Despite sections 49A and 50, a contestable customer and a retail entity may contract on terms different from the terms of the retail entity’s standard customer sale contract.	16 17 18
	‘(2) A contract under subsection (1) must not be inconsistent with this Act and is unenforceable to the extent that it is.	19 20
	 ‘Regulation may allow contract outside standard form	21
	‘52A.(1) A non-contestable customer and a retail entity must not contract on terms different from the terms of the retail entity’s standard customer sale contract, unless a regulation provides that they can contract on different terms.	22 23 24 25
	‘(2) However, a contract permitted by a regulation must not be inconsistent with this Act and is unenforceable to the extent that it is.	26 27
	‘(3) Without limiting subsection (1), a regulation may provide for the following matters—	28 29

Electricity Amendment (No. 3)

- | | | |
|--|---|---|
| | (a) the non-contestable customer or class of non-contestable customers who may contract on different terms; | 1 |
| | | 2 |
| | (b) when a non-contestable customer or class of non-contestable customer may contract on different terms.’. | 3 |
| | | 4 |

	Amendment of s 55A (Electricity must be sold on nondiscriminatory terms)	5
		6

- | | | |
|--------|---|----------------------------|
| Clause | 28.(1) Section 55A, heading, ‘nondiscriminatory’—
<i>omit, insert—</i>
‘fair and reasonable’. | 7
8
9 |
| | (2) Section 55A(1) and (2)—
<i>omit, insert—</i>
‘(1) A retail entity must provide the customer retail services to a non-contestable customer for an electrical installation or premises within its retail area on fair and reasonable terms.’. | 10
11
12
13
14 |
| | (3) Section 55A(3), ‘discrimination’—
<i>omit, insert—</i>
‘fair and reasonable’. | 15
16
17 |
| | (4) Section 55A(3)—
<i>renumber as section 55A(2).</i> | 18
19 |

	Amendment of s 55B (Contracting out of s 53, 55 or 97A)	20
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- | | | |
|--------|---|----------------|
| Clause | 29.(1) Section 55B, heading, ‘or 97A’—
<i>omit, insert—</i>
‘, 96 or 97’. | 21
22
23 |
| | (2) Section 55B(1), ‘or 97A’—
<i>omit, insert—</i>
‘, 96 or 97’. | 24
25
26 |

Electricity Amendment (No. 3)

	Amendment of s 55D (Conditions of retail authority)	1
Clause	30.(1) Section 55D(d) to (f)—	2
	<i>renumber</i> as section 55D(e) to (g).	3
	(2) Section 55D(c)—	4
	<i>omit, insert</i> —	5
	‘(c) if the retail entity is a code participant—the entity must comply with—	6
	(i) the National Electricity (Queensland) Law; and	7
	(ii) the Market Code; and	8
	(iii) directions given to it under this Act, the National Electricity (Queensland) Law or the Market Code;	9
	(d) the retail entity must comply with conduct rules made by the QCA;’.	10
		11
		12
		13
	Amendment of s 60 (Conditions of special approval)	14
Clause	31.(1) Section 60, from ‘A’ to ‘is subject’—	15
	<i>omit, insert</i> —	16
	‘(1) A special approval is subject’.	17
	(2) Section 60(a)(ii)—	18
	<i>omit, insert</i> —	19
	‘(ii) if connected to the Queensland system or a code participant—the National Electricity (Queensland) Law, the Market Code and directions given to it under this Act, the National Electricity (Queensland) Law or the Market Code; and’.	20
		21
		22
		23
		24
	(2) Section 60—	25
	<i>insert</i> —	26
	‘(2) A special approval may be subject to the condition that the holder must comply with the conduct rules made by the QCA.	27
		28
	‘(3) In this section—	29

Electricity Amendment (No. 3)

“special approval” means a special approval given under a regulation or by the regulator.’. 1
2

Amendment of s 63 (Functions) 3

Clause **32.(1)** Section 63(d)— 4

omit, insert— 5

‘(d) to help settle certain disputes between electricity entities and between electricity entities and other persons; and’. 6
7

(2) Section 63— 8

insert— 9

‘**(2)** In performing the regulator’s functions, the regulator must consider the objects of the Act.’. 10
11

Insertion of new ch 2, pt 8A 12

Clause **33.** After chapter 2, part 8— 13

insert— 14

‘PART 8A—ELECTRICITY INDUSTRY 15**OMBUDSMAN** 16*‘Division 1—General* 17**‘Electricity industry ombudsman and Office** 18

‘**64A.(1)** There is to be an electricity industry ombudsman. 19

‘**(2)** An office called the Office of the Electricity Industry Ombudsman (the “**Office**”) is established. 20
21

‘**(3)** The Office consists of the ombudsman and the staff of the Office. 22

‘Control of Office 23

‘**64B.(1)** The ombudsman is to control the Office. 24

Electricity Amendment (No. 3)

‘(2) Subsection (1) does not prevent the attachment of the Office to a department to ensure the Office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently.

1
2
3

‘Functions of Office

4

‘64C. The functions of the Office are to help the ombudsman perform the ombudsman’s functions.

5
6

‘Division 2—Appointment of electricity industry ombudsman

7

‘Appointment

8

‘64D.(1) The electricity industry ombudsman is to be appointed by the Governor in Council.

9
10

‘(2) Subject to sections 64F and 64G, the ombudsman holds office for a term stated in the appointment of no more than 5 years.

11
12

‘(3) The Minister must notify the appointment by gazette notice.

13

‘(4) The appointment takes effect—

14

(a) on a day stated in the notice; or

15

(b) if no day is stated in the notice—on the day the notice is gazetted.

16

‘(5) The ombudsman is to be appointed under this Act, and not under the *Public Service Act 1996*.

17
18

‘Terms of appointment

19

‘64E.(1) The electricity industry ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.

20
21

‘(2) The ombudsman holds office on the terms not provided for by this Act that are decided by the Governor in Council.

22
23

‘Resignation

24

‘64F. The electricity industry ombudsman may resign by signed notice given to the Minister.

25
26

Electricity Amendment (No. 3)

‘Termination of appointment	1
‘64G. The Governor in Council may terminate the appointment of the electricity industry ombudsman if the ombudsman—	2 3
(a) is found guilty of an indictable offence; or	4
(b) becomes incapable of performing the duties of the ombudsman because of physical or mental incapacity; or	5 6
(c) becomes a bankrupt or takes advantage of the laws in effect relating to bankruptcy; or	7 8
(d) is guilty of misconduct of a kind that could warrant dismissal from the public service if the ombudsman were an officer of the public service.	9 10 11
‘Preservation of rights	12
‘64H.(1) This section applies if an officer of the public service is appointed as the electricity industry ombudsman.	13 14
‘(2) The person keeps all rights accrued or accruing to the person as an officer of the public service, as if service as the ombudsman were a continuation of service as an officer of the public service.	15 16 17
‘(3) At the end of the person’s term of office or on resignation—	18
(a) the person has the right to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as the ombudsman; and	19 20 21 22
(b) the person’s service as the ombudsman is taken to be service of a like nature in the public service for deciding the person’s rights as an officer of the public service.	23 24 25
<i>‘Division 3—Ombudsman’s functions and powers</i>	26
‘Functions	27
‘64I.(1) The ombudsman must perform the following functions if they are stated as functions or roles of the ombudsman in a customer connection	28 29

Electricity Amendment (No. 3)

contract or customer sale contract—	1
(a) to investigate complaints by customers about the performance by distribution entities and retail entities of their obligations under a contract;	2 3 4
(b) to resolve disputes, between distribution entities and customers, and retail entities and customers, about the performance of obligations under a contract.	5 6 7
‘(2) The ombudsman may also—	8
(a) for complaint handling procedures prepared by distribution and retail entities—approve the procedures prepared by entities; and	9 10
(b) perform another function prescribed by regulation.	11
‘Powers	12
‘64J.(1) Without limiting the powers the ombudsman has as an individual, the ombudsman may do anything else necessary or convenient to be done for, or in connection with, the performance of the ombudsman’s functions.	13 14 15 16
‘(2) The ombudsman may exercise the ombudsman’s powers inside and outside the State.	17 18
‘Ombudsman not subject to direction about investigations	19
‘64K. The electricity industry ombudsman is not subject to direction by anyone about—	20 21
(a) the way the ombudsman investigates complaints or resolves disputes; or	22 23
(b) orders made concerning a dispute referred to the ombudsman; or	24
(c) the priority given to investigations or the resolution of disputes.	25

Electricity Amendment (No. 3)

‘Division 4—Staff of Office

‘Staff

‘64L. The staff of the Office of the Electricity Industry Ombudsman are to be employed under the *Public Service Act 1996*.

‘Alternative staffing arrangements

‘64M. The ombudsman may arrange with the chief executive of a government agency for the services of staff, or for facilities, of the agency to be made available to the ombudsman.

‘Delegation

‘64N.(1) The ombudsman may delegate to an appropriately qualified member of the Office’s staff the power to hear a dispute referred to the ombudsman.

‘(2) In subsection (1)—

“appropriately qualified” includes having the qualifications, experience or standing to exercise the power.

Example of standing—

A person’s classification level in the public service.

‘Division 5—Funding and reporting

‘Funding of Office

‘64O.(1) The Office is to be funded in the way prescribed by regulation.

‘(2) Without limiting subsection (1), the Office may be funded by electricity entities, by—

(a) a levy on the entities; or

(b) payment of an amount payable as a condition of an entity’s authority; or

Electricity Amendment (No. 3)

- (c) payment of an amount payable on the issue of an entity's authority by the regulator. 1
2

'Annual report by ombudsman 3

'64P.(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the electricity industry ombudsman must prepare and give to the Minister a written report about the operations of the Office during the year. 4
5
6
7

'(2) Without limiting subsection (1), the ombudsman must include in the report— 8
9

(a) a description of the following matters for the year— 10

(i) complaints received by the ombudsman; 11

(ii) complaints by customers investigated by the ombudsman; 12

(iii) the disputes referred to the ombudsman; 13

(iv) the orders of the ombudsman; 14

(v) the matters referred by the ombudsman to the regulator; and 15

(b) details of other functions performed by the ombudsman or officers of the ombudsman during the year. 16
17

'(3) A description may include statistics. 18

'(4) The report must not be prepared in a way that discloses confidential information. 19
20

'Minister must lay report before Legislative Assembly 21

'64Q.(1) The Minister must lay a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it. 22
23

'(2) If, at the time the Minister would otherwise be required to lay a copy of the report before the Legislative Assembly, the Legislative Assembly is not in session or not actually sitting, the Minister must give a copy of the report to the clerk of the Parliament. 24
25
26
27

'(3) The clerk must lay a copy of the report before the Legislative Assembly on its next sitting day. 28
29

Electricity Amendment (No. 3)

‘(4) For the purposes of its printing and publication, a report that is given to the clerk under subsection (2) is taken to have been laid before the Legislative Assembly, and to have been ordered to be printed by the Legislative Assembly, when it is given to the clerk.

1
2
3
4*‘Division 6—Miscellaneous*

5

‘Application of certain Acts

6

‘64R. The Office of the Electricity Industry Ombudsman is—

7

- (a) a unit of public administration under the *Criminal Justice Act 1989*; and
- (b) an agency under the *Equal Opportunity in Public Employment Act 1992*; and
- (c) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (d) a public authority under the *Libraries and Archives Act 1988*.

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13
14**Replacement of ch 4, pt 2 (Market and system arrangements and pricing)**15
16

Clause 34. Chapter 4, part 2—
omit, insert—

17
18**‘PART 2—PRICING AND SERVICE QUALITY STANDARDS**19
20**‘Minister may decide retail price for non-contestable customers**

21

‘90.(1) The Minister may decide, in the way the Minister thinks fit, the prices, or the methodology to fix the prices, that a retail entity may charge to provide—

22
23
24

- (a) customer retail services to non-contestable customers; or
- (b) other goods and services prescribed by regulation to non-contestable customers.

25
26
27

Electricity Amendment (No. 3)

‘(2) The Minister must, in making a decision consider the objects of the Act and the standards about quality of service.	1 2
‘(3) The Minister must notify the prices or the methodology by gazette notice.	3 4
‘(4) The prices or the methodology take effect—	5
(a) on a day stated in the notice; or	6
(b) if no day is stated in the notice—on the day the notice is gazetted.	7
‘Retail entity must comply with prices or methodology	8
‘91. A retail entity must charge the prices, or prices fixed under the methodology, notified under section 90.	9 10
Maximum penalty—500 penalty units.	11
‘Standards about quality of service	12
‘92.(1) A regulation may prescribe standards about the quality of service that must be provided—	13 14
(a) to non-contestable customers by retail entities; and	15
(b) to customers by transmission and distribution entities.	16
‘(2) The QCA must monitor, investigate and report on compliance with the standards.	17 18
‘(3) The way the QCA monitors, investigates and reports on compliance with the standards must be prescribed by regulation.	19 20
‘(4) A transmission, distribution or retail entity must not contravene a standard applying to the entity.	21 22
Maximum penalty—100 penalty units.’	23
Replacement of ss 96–97A	24
Clause 35. Sections 96 to 97A—	25
<i>omit, insert—</i>	26

‘Limitation of liability of electricity entities and special approval holders	1 2
‘96.(1) An electricity entity or special approval holder is not liable for damages to a person for a partial or total failure to supply or sell electricity or perform an obligation under a contract concerning the supply or sale of electricity, unless the failure is due to—	3 4 5 6
(a) anything done or omitted to be done by the electricity entity or special approval holder in bad faith; or	7 8
(b) the negligence of the electricity entity.	9
‘(2) This section does not apply to the extent to which liability is otherwise agreed by the parties to a contract.	10 11
‘(3) This section expires on the commencement of the <i>Electricity—National Scheme (Queensland) Act 1997</i> .	12 13
‘(4) In subsection (1)—	14
“contract” includes an arrangement that has the effect of a contract.	15
‘Limitation of liability of electricity entities and special approval holders that are not code participants	16 17
‘97.(1) An electricity entity or special approval holder that is not a code participant is not liable for damages to a person for a partial or total failure to supply or sell electricity or perform an obligation under a contract in relation to the supply or sale of electricity, unless the failure is due to—	18 19 20 21
(a) anything done or omitted to be done by the electricity entity or special approval holder in bad faith; or	22 23
(b) the negligence of the electricity entity or special approval holder.	24
‘(2) This section does not apply to the extent to which liability is otherwise agreed by the parties to a contract.	25 26
‘(3) This section commences on the commencement of the <i>Electricity—National Scheme (Queensland) Act 1997</i> .	27 28
‘(4) In subsection (1)—	29
“contract” includes an arrangement that has the effect of a contract.	30

	‘Limitation of liability for National Electricity (Queensland) Law	1
	‘97A.(1) The words ‘supply electricity’ in section 78 of the National Electricity (Queensland) Law are taken to include the sale of electricity and the performance of an obligation in a contract for the supply and sale of electricity.	2 3 4 5
	‘(2) In subsection (1)—	6
	“contract” includes an arrangement that has the effect of a contract.’.	7
	 Amendment of s 116 (Authority to acquire land)	8
Clause	36. Section 116—	9
	<i>insert—</i>	10
	‘(1A) The Minister must consider the objects of the Act when authorising an electricity entity under subsection (1).’.	11 12
	 Amendment of s 117 (Resolution of certain disputes between electricity entities or between electricity entities and public entities)	13 14
Clause	37. Section 117—	15
	<i>insert—</i>	16
	‘(1A) However, this section does not apply to disputes that are regulated by the QCA or under the Market Code.’.	17 18
	 Amendment of s 119 (Regulator’s role in disputes between electricity entity and customers or occupiers)	19 20
Clause	38.(1) Section 119(1)(a)—	21
	<i>omit, insert—</i>	22
	‘(a) an electricity entity and a customer about the performance of a function or exercise of a power under this Act other than a dispute that may be referred to the electricity industry ombudsman under this Act; or’.	23 24 25 26
	(2) Section 119—	27
	<i>insert—</i>	28

Electricity Amendment (No. 3)

	‘(7) A regulation may prescribe a person other than the regulator to settle a dispute mentioned in subsection (1).	1 2
	‘(8) The regulation may prescribe another way of settling the dispute.’	3
	Insertion of new ch 5, pts 1A and 1B	4
Clause	39. Chapter 5, after part 1—	5
	<i>insert—</i>	6
	‘PART 1A—QUEENSLAND COMPETITION AUTHORITY	7 8
	<i>‘Division 1—Definitions</i>	9
	‘Definitions for pt 1A	10
	‘120A. In this part—	11
	“authority” includes a special approval.	12
	“electricity entity” includes a special approval holder.	13
	‘References to person involved in a contravention	14
	‘120B. In this part, a reference to a person involved in a contravention is a reference to a person who—	15 16
	(a) has aided, abetted, counselled or procured the contravention; or	17
	(b) has induced the contravention, whether through threats, promises or in another way; or	18 19
	(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or	20 21
	(d) has conspired with others to effect the contravention.	22

Electricity Amendment (No. 3)

<i>‘Division 2—Conduct rules</i>	1
‘QCA may prepare proposed conduct rules	2
‘120C.(1) The QCA may prepare proposed conduct rules.	3
‘(2) The proposed rules may state—	4
(a) the electricity entities or types or classes of entity to which the proposed rules are to apply; and	5 6
(b) the way market conduct is to be regulated to promote the efficient and equitable operation of the electricity market.	7 8
‘(3) The matters the rules may deal with include the following—	9
(a) curtailing interference with customers seeking to change retail entity;	10 11
(b) assigning responsibility amongst distribution entities, retail entities and customers, so that customers can change retailer quickly and at minimum cost;	12 13 14
(c) the charges that may be levied by a distribution or retail entity on customers changing retailer;	15 16
(d) ensuring the advice distribution or retail entities give to customers to induce customers to change or not change retailer is accurate;	17 18
(e) ensuring a retail entity with contestable and non-contestable customers does not assign costs from one to the other to the detriment of non-contestable customers.	19 20 21
‘Public notice of proposed conduct rules	22
‘120D.(1) The QCA must give public notice of the proposed conduct rules.	23 24
‘(2) The notice must—	25
(a) state that the QCA has prepared proposed conduct rules; and	26
(b) state the electricity entities to which the proposed rules are to apply; and	27 28
(c) be published in a newspaper circulating generally in the State; and	29

Electricity Amendment (No. 3)

-
- (d) state that the proposed rules may be inspected, and copies purchased, at the QCA's office between times stated in the notice; and
 - (e) state the cost of a copy of the proposed rules; and
 - (f) invite submissions from any interested person; and
 - (g) state a day, not earlier than 28 days from publication of the notice, by which submissions may be made to the QCA about the proposed rules.

'Submissions on proposed conduct rules

'120E.(1) A person may, no later than the last day for the making of submissions, make a submission to the QCA about the proposed conduct rules.

'(2) A submission must—

- (a) be in writing and signed by or for each person making the submission; and
- (b) state—
 - (i) the name and address of each person making the submission; and
 - (ii) the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (c) be given to the QCA.

'Changing proposed conduct rules

'120F. The QCA must consider all submissions properly made to it and may change the proposed conduct rules after considering the submissions.

'Adopting and notifying conduct rules

'120G.(1) The proposed conduct rules, with or without change, become the conduct rules once adopted by the QCA by resolution after consideration of the submissions and notified by gazette notice.

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‘(2) The conduct rules take effect—	1
(a) on a day stated in the notice; or	2
(b) if no day is stated in the notice—on the day the notice is gazetted.	3
‘Conduct rules must not be contravened	4
‘120H. An electricity entity must not contravene a provision of the	5
conduct rules that applies to the entity.	6
‘Conduct rules to be open for inspection	7
‘120I.(1) The QCA must keep a copy of the conduct rules available for	8
inspection at its office at all times during which it is open for transaction of	9
public business.	10
‘(2) The QCA must, on payment by a person of the reasonable fee fixed	11
by the QCA, give a copy of the rules to the person.	12
‘Amending conduct rules	13
‘120J. The QCA may, at any time, prepare a proposed amendment of	14
the conduct rules.	15
‘Public notice of proposed amendment	16
‘120K.(1) The QCA must give public notice of the proposed	17
amendment of the conduct rules.	18
‘(2) The notice must—	19
(a) state that the QCA has adopted a proposed amendment of the	20
conduct rules for the site; and	21
(b) state the electricity entities affected by the amendment; and	22
(c) state the nature of the proposed amendment; and	23
(d) be published in a newspaper circulating generally in the State; and	24
(e) state that the proposed amendment may be inspected, and copies	25
purchased, at the QCA’s office between times stated in the notice;	26

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and	1
(f) state the cost of a copy of the proposed amendment; and	2
(g) invite submissions from any interested person; and	3
(h) state a day, not earlier than 14 days from publication of the notice, by which submissions may be made to the QCA about the proposed amendment.	4 5 6
‘Submissions on proposed amendment	7
‘120L.(1) A person may, on or before the last day for the making of submissions, make a submission to the QCA about a proposed amendment of the conduct rules.	8 9 10
‘(2) A submission must—	11
(a) be in writing and signed by or for each person making the submission; and	12 13
(b) state—	14
(i) the name and address of each person making the submission; and	15 16
(ii) the grounds of the submission and the facts and circumstances relied on in support of the grounds; and	17 18
(c) be given to the QCA.	19
‘Changing proposed amendment	20
‘120M. The QCA must consider all submissions properly made to it and may change the proposed amendment of the conduct rules after considering the submissions.	21 22 23
‘Adopting amendment	24
‘120N.(1) The proposed amendment of the conduct rules, with or without change, becomes an amendment of the conduct rules once it is adopted by the QCA by resolution after consideration of the submissions and notified by gazette notice.	25 26 27 28

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‘(2) The amendment of the conduct rules takes effect—	1
(a) on a day stated in the notice; or	2
(b) if no day is stated in the notice—on the day the notice is gazetted.	3
<i>‘Division 3—Enforcing conduct rules</i>	4
‘ Conduct notices	5
‘120O.(1) If the QCA is satisfied an electricity entity has contravened the	6
conduct rules, it may make a written notice (a “ conduct notice ”) stating	7
that the entity has contravened, or is contravening, the conduct rules.	8
‘(2) A conduct notice must give particulars of the contravention stated in	9
the notice.	10
‘ Conduct notice to be given to electricity entity	11
‘120P. As soon as practicable after making a conduct notice, the QCA	12
must give a copy of the notice to the electricity entity concerned.	13
‘ Duration of conduct notice	14
‘120Q.(1) A conduct notice comes into effect—	15
(a) when it is made; or	16
(b) if the notice states a later time—at the later time.	17
‘(2) A conduct notice ends—	18
(a) on the day stated in the notice; or	19
(b) if the notice is cancelled before that day—when it is cancelled.	20
‘(3) The day stated in the notice must not be more than 1 year from when	21
the notice comes into effect.	22
‘(4) If a conduct notice ends, this division does not prevent the QCA	23
from making a fresh conduct notice about the same matter as the expired	24
notice.	25

*Electricity Amendment (No. 3)***‘QCA to act promptly**

‘120R.(1) This section applies if the QCA has reason to suspect an electricity entity has contravened, or is contravening, the conduct rules.

‘(2) The QCA must act promptly in deciding whether to issue a conduct notice in relation to the contravention.

‘(3) A failure to comply with subsection (1) does not effect the validity of a conduct notice.

‘Register of conduct notices

‘120S.(1) The QCA must keep a register of conduct notices.

‘(2) The register must include particulars of all conduct notices, including expired conduct notices.

‘Penalty for breach of conduct rules

‘120T.(1) This section applies if, on the application of the QCA, the Supreme Court is satisfied a person has—

- (a) contravened the conduct rules; or
- (b) attempted to contravene the conduct rules; or
- (c) been involved in a contravention of the conduct rules.

‘(2) The court may order the person to pay an amount to the State as a penalty of not more than—

- (a) for an individual—\$100 000; or
- (b) for a corporation—\$500 000.

‘(3) In fixing a penalty, the court must consider the following—

- (a) the nature and extent of—
 - (i) the contravention; and
 - (ii) loss or damage suffered because of the contravention;
- (b) the circumstances in which the contravention took place;

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- (c) whether the person has previously been found by the court in proceedings under this Act to have engaged in any similar conduct. 1
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‘How order enforced’ 4

‘120U. If the Supreme Court orders payment of an amount under section 120T(2), the State may enforce the order as a judgment of the court for a debt of that amount. 5
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‘Injunctions’ 8

‘120V.(1) The Supreme Court may, on the application of the QCA or any other person, grant an injunction if satisfied a person has engaged or is proposing to engage, in conduct that constitutes, or would constitute the following— 9
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- (a) a contravention of the conduct rules; 13
(b) attempting to contravene the conduct rules; 14
(c) aiding, abetting, counselling or procuring a person to contravene the conduct rules; 15
16
(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene the conduct rules; 17
18
(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the conduct rules; 19
20
(f) conspiring with others to contravene the conduct rules. 21

‘(2) An injunction may be granted on conditions. 22

‘(3) The court may also grant an injunction by consent of all parties to the application, whether or not the court is satisfied a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1). 23
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‘(4) The court may grant an interim injunction pending its decision on the application. 26
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‘(5) The court must not require anyone, as a condition of granting an interim injunction, to give an undertaking as to damages. 28
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‘(6) The court may amend an injunction or interim injunction. 30

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- ‘(7) An injunction or interim injunction restraining a person from engaging in conduct may be granted whether or not—
- (a) it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) the person has previously engaged in conduct of that kind; and
 - (c) there is an imminent danger of substantial damage to another person if the person engages in conduct of that kind.
- ‘(8) An injunction or interim injunction requiring a person to do an act or thing may be granted whether or not—
- (a) it appears to the court that the person intends to fail again, or to continue to fail, to do that act or thing; and
 - (b) the person has previously failed to do that act or thing; and
 - (c) there is an imminent danger of substantial damage to another person if the person does not do that act or thing.
- ‘Actions for damages—breach of conduct rules**
- ‘**120W.(1)** A person who suffers loss or damage because of another person’s conduct that contravened the conduct rules may recover the amount of the loss or damage by action in the Supreme Court against—
- (a) the other person; or
 - (b) another person involved in the contravention.
- ‘(2) The action may only be brought within 3 years from when the loss or damage was suffered.
- ‘Other orders—compensation for breach of conduct rules**
- ‘**120X.(1)** This section applies if, in a proceeding under this division concerning a contravention of the conduct rules, the Supreme Court makes a finding that—
- (a) a party to the proceeding (the “**injured party**”) has suffered, or is likely to suffer, loss or damage; and

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- (b) the loss or damage, or likely loss or damage, was caused by the alleged conduct of another party to the proceeding (the “**contravener**”) who engaged in the contravention.

‘(2) The court may, on the application of the injured party, make orders it thinks appropriate against—

- (a) the contravener; or
(b) another person involved in the contravention.

‘(3) Before making an order, the court must be satisfied the order will—

- (a) compensate the injured party, in whole or in part, for the loss or damage; or
(b) prevent or reduce the loss or damage.

‘(4) The court may make an order whether or not it grants an injunction or makes another order under this division.

‘(5) This section does not limit the court’s power to grant an injunction under this division.

‘(6) The court’s powers under this section concerning a contract do not affect any powers that any other court may have concerning the contract in proceedings in that other court concerning the contract.

Examples of orders the court may make under subsection (2)—

1. An order declaring the whole or part of a contract or collateral agreement between the injured party and the contravener, or between the injured party and another person involved in the contravention—

- (a) to be void; or
(b) to have been void from a stated day.

2. An order amending a contract or arrangement mentioned in example 1 in a way the court thinks appropriate and declaring the contract or arrangement to have had effect, as so amended, from a stated day.

3. An order refusing to enforce the whole or part of a contract or collateral arrangement mentioned in example 1.

4. An order directing the contravener or another person involved in the contravention to—

- (a) refund an amount or return property to the injured party; or

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- (b) pay the injured party the amount of the loss or damage; or 1
- (c) at their own expense, supply stated goods or services to the injured party. 2

‘Finding of fact to be evidence in proceedings 3

‘120Y.(1) This section applies if a finding of any fact is made by a court 4
in proceedings under section 120T or 120V, in which a person has been 5
found to have contravened, or to have been involved in a contravention of, 6
the conduct rules. 7

‘(2) The finding is evidence of the fact in— 8

- (a) a proceeding under section 120W against the person; or 9
- (b) an application under section 120X for an order against the person. 10

‘(3) The finding may be proved by producing a document under the seal 11
of the court from which the finding appears. 12

‘Conduct by directors, servants or agents 13

‘120Z.(1) This section applies to a proceeding under this division. 14

‘(2) If the proceeding concerns alleged conduct engaged in by a person to 15
which the conduct rules apply and it is necessary to prove the person’s state 16
of mind, it is enough to prove that— 17

- (a) a director, servant or agent (a **“representative”**) of a corporation 18
that engaged in the conduct, acting within the scope of the 19
representative’s actual or apparent authority, had the state of 20
mind; or 21
- (b) a servant or agent of a person who engaged in the conduct, acting 22
within the scope of the servant’s or agent’s actual or apparent 23
authority, had the state of mind. 24

‘(3) Conduct engaged in for a corporation by the following persons is 25
taken to have been engaged in by the corporation— 26

- (a) a representative of the corporation, acting within the scope of the 27
representative’s actual or apparent authority; or 28
- (b) another person at the direction, or with the consent or agreement, 29
of a representative of the corporation, if the giving of the 30

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direction, consent or agreement was within the scope of the
representative's actual or apparent authority.

'(4) Conduct engaged in for a person (the "**principal**") by the following
persons is taken to have been engaged in by the principal—

(a) a servant or agent of the principal, acting within the scope of the
servant's or agent's actual or apparent authority; or

(b) another person at the direction or with the consent or agreement,
of a servant or agent of the principal, if the giving of the direction,
consent or agreement was within the scope of the servant's or
agent's actual or apparent authority.

'(5) In this section—

"**consent or agreement**" includes an implied consent or agreement.

"**state of mind**", of a person, includes—

(a) knowledge, intention, opinion, belief or purpose of the person;
and

(b) the person's reasons for the person's intention, opinion, belief or
purpose.

'When QCA must refer a matter to the regulator

'**120ZA.** If the Supreme Court decides that an electricity entity has
contravened the conduct rules, the QCA must refer the contravention to the
regulator.

'Action the regulator may take

'**120ZB.(1)** If a contravention of the conduct rules is referred to the
regulator by the QCA the regulator may take action under section 133(1).

'(2) To remove doubt, the regulator must not take any other action
concerning the contravention.

‘Division 4—Production of documents or information

1

‘Notice to produce documents or information

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‘120ZC.(1) This section applies if the QCA is conducting an investigation to find out whether an electricity entity is complying with—

3

4

(a) the conduct rules; or

5

(b) any prescribed standard under section 92 about the quality of service the entity must provide; or

6

7

(c) this Act.

8

‘(2) The QCA may, by written notice to the entity, require the entity to give the QCA the following things it believes, on reasonable grounds, are relevant to the investigation—

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10

11

(a) information within the entity’s knowledge or possession;

12

(b) documents in the entity’s custody, possession or power.

13

‘(3) The notice must state—

14

(a) the information or documents required; and

15

(b) a period in which it is to be given of no less than 7 days; and

16

(c) a reasonable place at which the documents or information are to be given.

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‘(4) The entity must not contravene the notice, unless it has a reasonable excuse.

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Maximum penalty—500 penalty units.

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‘(5) An electricity entity is not required to comply with the notice if the entity 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 a prosecution for an offence in the Supreme Court.

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‘(6) If the entity claims that complying with the notice may tend to incriminate the entity, the QCA or the entity may apply to the Supreme Court to decide the validity of the claim.

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**‘PART 1B—DISPUTES REFERRED TO
ELECTRICITY INDUSTRY OMBUDSMAN**

‘Division 1—Preliminary

‘Definitions for pt 1B

‘120ZD. In this part—

“dispute” means a dispute between—

- (a) a customer and an electricity entity about the performance of obligations under a customer connection contract or customer sale contract; or
- (b) a prescribed person and an electricity entity concerning another dispute referred to the electricity industry ombudsman under this Act.

“electricity entity” includes a special approval holder.

‘Application of part

‘120ZE.(1) This part applies to a dispute.

‘(2) Nothing in this part prevents a customer or prescribed person referring a dispute relating to more than 1 electricity entity.

‘(3) To remove doubt, it is declared that the jurisdictional limit of orders that may be made under section 120ZN is not increased because a dispute relates to more than 1 entity.

‘Exclusion of other jurisdictions

‘120ZF.(1) If a dispute has been referred for hearing by the electricity industry ombudsman, the following are not justiciable by a court or tribunal at the instigation of an electricity entity that is a party to the dispute—

- (a) the issue in dispute;
- (b) any issue that emerges in the course of the hearing.

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- ‘(2) However, subsection (1) does not apply if— 1
- (a) the proceeding before the court or tribunal was started before the 2
claim was referred to the ombudsman; or 3
 - (b) the claim before the ombudsman has been withdrawn or struck 4
out for want of jurisdiction; or 5
 - (c) the ombudsman decides that, because of the nature or complexity 6
of an issue, the dispute should not be heard by the ombudsman. 7

*‘Division 2—Referring and hearing disputes 8***‘How dispute is referred 9**

‘120ZG.(1) Subject to section 120ZH, a customer or prescribed person 10
may refer a dispute for hearing by the electricity industry ombudsman. 11

‘(2) To remove doubt, it is declared that an electricity entity may not refer 12
a dispute. 13

‘(3) A regulation may prescribe— 14

- (a) the way a dispute must be referred; and 15
- (b) the time within which a dispute must be referred; and 16
- (c) any filing fees to be paid. 17

**‘No reference if customer or prescribed person has started a 18
proceeding 19**

‘120ZH. A customer or prescribed person must not refer a dispute to the 20
electricity industry ombudsman if the customer or person has started an 21
action in a court or tribunal concerning any issue in dispute. 22

‘Disclosure of interests 23

‘120ZI.(1) The electricity industry ombudsman must not hear a dispute 24
if— 25

- (a) the ombudsman has a direct or indirect interest in a dispute; and 26

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(b) the interest could conflict with the appropriate performance of the ombudsman’s functions concerning the dispute.	1 2
‘(2) However, this section does not apply to the ombudsman if the interest consists only of the receipt of goods or services that—	3 4
(a) also are available to members of the public; and	5
(b) are made available on the same terms that apply to members of the public.	6 7
‘(3) If subsection (1) applies, the ombudsman must delegate the power to hear the dispute to an appropriately qualified member of the Office’s staff under section 64N.	8 9 10
‘Presentation of cases	11
‘120ZJ.(1) Each party to a dispute before the electricity industry ombudsman is to conduct their own case.	12 13
‘(2) A party may only be represented by an agent if the ombudsman agrees.	14 15
‘(3) A party must not be represented by a lawyer unless—	16
(a) the parties to the dispute agree; and	17
(b) the ombudsman is satisfied there is no disadvantage to a party to the dispute.	18 19
‘Taking of evidence	20
‘120ZK.(1) Evidence in a dispute must be taken by the electricity industry ombudsman in private.	21 22
‘(2) Evidence—	23
(a) may be given orally or in writing; and	24
(b) must be given on oath, or on affirmation or declaration instead of oath if permitted by law.	25 26
‘(3) The ombudsman may administer the oath or take or receive an affirmation or declaration.	27 28

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‘(4) The ombudsman is not bound by rules or practice about evidence and may take evidence in the way the ombudsman considers appropriate. 1
2

‘Procedure if party absent 3

‘120ZL.(1) If a party to a dispute does not attend on the day and time appointed to hear the dispute, the electricity industry ombudsman may proceed to hear and decide the dispute in the party’s absence. 4
5
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‘(2) If the ombudsman hears a dispute in the party’s absence, the ombudsman must postpone any order made for 7 days. 7
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‘(3) If, before the 7 day period ends, the absent party contacts the ombudsman and satisfies the ombudsman there was a good reason for the party’s absence, the ombudsman may order the dispute be reheard. 9
10
11

‘Power to require information from electricity entity 12

‘120ZM.(1) The following persons must give the electricity industry ombudsman the information the ombudsman reasonably requires to perform the ombudsman’s functions— 13
14
15

(a) a customer or a prescribed person who refers a dispute to the ombudsman; 16
17

(b) an electricity entity— 18

(i) that is a party to a dispute; or 19

(ii) about which a complaint has been made to the ombudsman. 20

‘(2) The information must be given within a reasonable time after the ombudsman asks for it. 21
22

‘(3) A person must not contravene a requirement under this section without reasonable excuse. 23
24

Maximum penalty—500 penalty units. 25

‘(4) It is a reasonable excuse for a person not to comply with a requirement if doing so might tend to incriminate the person. 26
27

<i>Division 3—Orders and enforcement</i>	1
‘Orders that can be made	2
‘120ZN.(1) The electricity industry ombudsman may make the following orders against an electricity entity that is a party to a dispute—	3 4
(a) an order that the electricity entity must pay an amount of no more than \$10 000;	5 6
(b) a non-monetary order the ombudsman considers appropriate against the electricity entity to remedy any issue in the dispute.	7 8
‘(2) The amount in relation to which the ombudsman has jurisdiction under subsection (1) may be increased by regulation to an amount of no more than \$20 000.	9 10 11
‘(3) The ombudsman must consider the objects of this Act when making an order.	12 13
‘(4) Despite subsection (1)(b), the ombudsman can not cancel, suspend or amend the authority of an electricity entity.	14 15
‘Costs	16
‘120ZO.(1) Costs must not be awarded by the electricity industry ombudsman to or against a party to a dispute.	17 18
‘(2) However, subsection (1) does not apply to any filing fee paid to refer a dispute to the ombudsman.	19 20
‘Copy of order to be given to parties	21
‘120ZP. The electricity industry ombudsman must give a copy of any order given concerning a dispute to the parties to the dispute.	22 23
‘Order final	24
‘120ZQ.(1) Subject to section 120ZR, an order made by the electricity industry ombudsman binds an electricity entity that is a party to the dispute.	25 26
‘(2) The entity may not apply for review of, or appeal against, the order.	27

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‘(3) However, the entity may apply for a review of the order under the <i>Judicial Review Act 1991</i> .	1 2
‘Customer or prescribed person to advise whether order accepted	3
‘120ZR.(1) A customer or prescribed person that is a party to a dispute must give written notice to the electricity industry ombudsman if the customer or person decides not to accept the ombudsman’s order against the electricity entity.	4 5 6 7
‘(2) The notice must be given within 21 days.	8
‘(3) If the notice is not given within 21 days the customer or prescribed person is taken to have accepted the order and the order binds the customer or person.	9 10 11
‘(4) A customer or prescribed person may not apply for a review of or appeal against the order if it is binding on the customer or person.	12 13
‘(5) However, the customer or prescribed person may apply for a review of the order under the <i>Judicial Review Act 1991</i> .	14 15
‘When order takes effect	16
‘120ZS. An order by the electricity industry ombudsman takes effect—	17
(a) when the order is made; or	18
(b) if the order states a later day or event for the order to take effect—on the later day or event.	19 20
‘Failure to comply with order	21
‘120ZT. An electricity entity must comply with an order of the electricity industry ombudsman.	22 23
‘Referral of matter to the regulator	24
‘120ZU. If an electricity entity contravenes an order of the electricity industry ombudsman, the ombudsman must refer the matter to the regulator.	25 26 27

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‘Action the regulator may take	1
‘120ZV. If a matter is referred to the regulator by the electricity industry ombudsman, the regulator may take action under section 133(1).	2 3
‘How order enforced	4
‘120ZW.(1) If the electricity industry ombudsman orders an amount to be paid to a customer or prescribed person, the customer or person may enforce the order by filing the order in the Magistrates Court.	5 6 7
‘(2) Once the order is filed, it is taken to be a judgment of the Magistrates Court.	8 9
<i>‘Division 4—Regulations</i>	
	10
‘Regulation about disputes and enforcement of orders	11
‘120ZX.(1) A regulation may provide for any matter necessary or convenient to help or give effect to dispute resolution by, and the enforcement of orders of, the electricity industry ombudsman.	12 13 14
‘(2) Without limiting subsection (1), a regulation may prescribe—	15
(a) the records to be kept by the ombudsman; and	16
(b) the reporting procedures to be followed by the ombudsman.’	17
Replacement of s 130 (Governor in Council may direct regulator to take over operation of operating works)	18 19
Clause 40. Section 130—	20
<i>omit, insert—</i>	21
‘Governor in Council may authorise regulator to take over operation of relevant operations	22 23
‘130.(1) This section applies if the regulator advises the Minister that the regulator is satisfied, on reasonable grounds, that—	24 25
(a) an electricity entity (the “defaulting entity”)—	26

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	(i) has contravened this Act; or	1
	(ii) has contravened a condition of its authority; or	2
	(iii) if the defaulting entity is a code participant—	3
	(A) has had its registration as a code participant cancelled or suspended; or	4 5
	(B) is the subject of a direction given by NEMMCO or an order made by NECA or the National Electricity Tribunal; or	6 7 8
	(iv) has had its authority cancelled, amended or suspended; or	9
	(v) is insolvent or is likely to become insolvent; or	10
	(vi) is not, or is no longer, a suitable person to hold an authority of the type it holds; and	11 12
	(b) to ensure customers receive an adequate, reliable and secure supply of electricity, it is necessary for the regulator to take over the operation of the whole or part of the defaulting entity’s operating works and business (the “ relevant operations ”).	13 14 15 16
	‘(2) If this section applies, the Governor in Council may by gazette notice, authorise the regulator to take over the operation of the relevant operations for the time the regulator considers necessary to ensure customers receive an adequate, reliable and secure supply of electricity.	17 18 19 20
	‘(3) The authority may provide for any matter for which it is necessary or convenient to help the regulator take over the operation of the relevant operations.	21 22 23
	‘(4) The Governor in Council must notify the making of an authorisation under subsection (2) by gazette notice within 14 days.	24 25
	‘(5) Failure to notify under subsection (4) does not invalidate the authorisation.’.	26 27
	Amendment of s 131 (Effect of regulator taking over operation of operating works)	28 29
Clause	41.(1) Section 131, heading, ‘operating works’—	30
	<i>omit, insert—</i>	31

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‘relevant operations’.	1
(2) Section 131(1)—	2
<i>omit, insert—</i>	3
‘(1) On the regulator taking over the operation of a defaulting entity’s relevant operations, the relevant operations may be operated by the person (the “operator”) appointed by the regulator.’.	4
	5
	6
(3) Section 131(3)(b) to (d)—	7
<i>omit, insert—</i>	8
(b) must comply with any conditions imposed and directions given by the regulator; and	9
	10
(c) must comply with provisions of this Act about the operation of the relevant operations; and	11
	12
(d) may enter—	13
(i) the site of relevant operations; and	14
(ii) other property necessary for the efficient operation of the relevant operations (including necessary access to the relevant operations and other property).’.	15
	16
	17
(4) Section 131(4) and (5)—	18
<i>omit, insert—</i>	19
‘(4) The operator may do all things necessary or convenient to ensure the relevant operations continue to operate as required by the regulator.	20
	21
<i>Examples of things that the operator may do—</i>	22
(a) employ, or continuing to employ, employees at the relevant operations; and	23
	24
(b) enter into contracts for the supply of fuel and the provision of customer connection services and customer retail services.	25
	26
‘(5) The defaulting entity and other persons in possession or occupancy of property concerning the operation of the relevant operations must give the operator access to the property necessary to enter to enable the efficient operation of the relevant operations.	27
	28
	29
	30
Maximum penalty—500 penalty units or 6 months imprisonment.’.	31

Electricity Amendment (No. 3)

	(5) Section 131(6), ‘operating works’—	1
	<i>omit, insert</i> —	2
	‘relevant operations’.	3
	(6) Section 131(8) and (9)—	4
	<i>omit, insert</i> —	5
	‘(8) The owner of the relevant operations and the defaulting entity are liable for the cost of the operation of the relevant operations by the operator.	6
	‘(9) The person who would, apart from this section, have the right to the proceeds from the operation of the relevant operations has the right to receive the income received by the operator from operating the relevant operations less all costs (including operating fees approved by the regulator) properly included in operating the relevant operations.’.	7
		8
		9
		10
		11
		12
	(7) Section 131(10), ‘operating works’—	13
	<i>omit, insert</i> —	14
	‘relevant operations’.	15
	(8) Section 131—	16
	<i>insert</i> —	17
	‘(11) For this section—	18
	(a) an electricity entity is solvent if the entity is able to pay all of the entity’s debts, as and when they become due and payable; and	19
	(b) an electricity entity that is not solvent is insolvent.’.	20
		21
	Insertion of new ch 5, pt 3A	22
Clause	42. After chapter 5, part 3—	23
	<i>insert</i> —	24
	‘PART 3A—RETAILER OF LAST RESORT	25
	‘Retailer of last resort scheme	26
	‘131A.(1) A regulation may provide for—	27

Electricity Amendment (No. 3)

-
- (a) the establishment of a scheme to be known as the ‘retailer of last resort scheme’; and 1
2
- (b) the compulsory participation by electricity entities in the scheme. 3
- ‘(2) The primary objects of the scheme are to provide for— 4
- (a) the management of the effects of a retail entity not being able to provide customer retail services to its customers (“**defaulting retailer**”); and 5
6
7
- (b) the protection of customers of a defaulting retailer from interruption in the supply and sale of electricity to them. 8
9
- ‘(3) Without limiting subsections (1) and (2), a regulation may make provision about any of the following matters— 10
11
- (a) other objects of the scheme; 12
- (b) the circumstances in which the scheme will operate; 13
- (c) the electricity entities required to participate in the scheme; 14
- (d) the customers or class of customers to benefit from the scheme; 15
- (e) establishing a regulated default customer sale contract or a regulated default customer connection contract (either of which may include different terms for different classes of customer); 16
17
18
- (f) providing for the effects of a declaration that the scheme applies to a defaulting retailer and its affected customers, including, for example, the following— 19
20
21
- (i) the charter of the scheme (including the duration of the scheme and other matters concerning its administration); 22
23
- (ii) ending the defaulting retailer’s customer sale contracts with its affected customers; 24
25
- (iii) ending the defaulting retailer’s customer connection contract for its affected customers’ premises; 26
27
- (iv) a regulated default customer sale contract taken to be entered into between each of the affected customers and the retailer of last resort; 28
29
30
- (v) a regulated default customer connection contract taken to be entered into between the retailer of last resort and a 31
32

Electricity Amendment (No. 3)

	distribution entity or entities for the premises of each affected customer;	1 2
(g)	the functions and the powers of the regulator concerning the scheme, including—	3 4
(i)	establishing the charter of the scheme for a particular defaulting retailer and its affected customers;	5 6
(ii)	declaring the scheme applies to a particular defaulting retail entity and to particular customers or class of customers;	7 8
(iii)	appointing the electricity entity or entities who is or are to be the retailer of last resort (including procedures to be followed in making the appointment);	9 10 11
(iv)	supervising and giving directions to the retailer of last resort concerning the administration of a scheme;	12 13
(h)	imposing conditions in relevant authorities to give effect to the matters in this section;	14 15
(i)	anything necessary or convenient to help or give effect to the provisions of this part.’.	16 17
	Replacement of s 133 (Types of disciplinary action)	18
Clause	43. Section 133—	19
	<i>omit, insert—</i>	20
	‘Types of disciplinary action	21
	‘133.(1) The regulator may take the following disciplinary action against an electricity entity—	22 23
	(a) for a generation entity or transmission entity—cancel, suspend or amend its authority;	24 25
	(b) for a distribution entity—cancel, suspend or amend its authority for its distribution area or part of its distribution area;	26 27
	(c) for a retail entity—cancel, suspend or amend its authority.	28
	‘(2) The regulator may only take disciplinary action against an electricity entity for a contravention of the conduct rules if the contravention has been referred to the regulator by the QCA.	29 30 31

Electricity Amendment (No. 3)

-
- ‘(3) The regulator is limited to the disciplinary action under subsection (1) in relation to a contravention of the conduct rules. 1
2
- ‘(4) If the ground for taking disciplinary action is that the electricity entity 3
has contravened this Act or a condition of its authority, the regulator may 4
impose a penalty of not more than 1 333 penalty units for each 5
contravention. 6
- ‘(5) If the ground for taking disciplinary action is that the electricity entity 7
has contravened a condition of its authority by holding a prohibited interest, 8
in addition to the penalty under subsection (4), the regulator may decide that 9
1 or more of the interests that gave rise to the contravention must be 10
disposed of. 11
- ‘(6) The regulator may make a decision under subsection (5) based on 12
the information that the regulator considers sufficient in the circumstances. 13
- ‘(7) If the regulator makes a decision under subsection (5), the regulator 14
must give written notice of the decision to— 15
- (a) the electricity entity that has contravened a condition of its 16
authority by holding a prohibited interest (the “**offending** 17
electricity entity”); or 18
 - (b) if the offending electricity entity does not hold the prohibited 19
interest—to the person who holds the interest the subject of the 20
decision. 21
- ‘(8) The notice must require the offending electricity entity or the other 22
person to dispose of the interest the subject of the decision within a stated 23
time of not less than 90 days. 24
- ‘(9) For subsection (8), the interest must not be disposed of to a person, 25
if the disposal would result in a contravention of a condition of the 26
offending electricity entity’s authority. 27
- ‘(10) A decision of the regulator under subsection (5) takes effect when 28
written notice is given to the offending electricity entity or the other person. 29
- ‘(11) If the offending electricity entity or person is given a notice 30
requiring disposal of an interest and the person or entity does not comply 31
with the notice within the time stated in the notice, the interest the subject of 32
the decision is forfeited to the State, free from any mortgage, charge, lien, 33
pledge, restriction or other encumbrance. 34

Electricity Amendment (No. 3)

-
- ‘(12) The regulator must sell any forfeited interest under subsection (11). 1
- ‘(13) An amount from the sale of a forfeited interest, after deduction of 2
reasonable costs of forfeiture and sale, must be paid to the person from 3
whom the interest was forfeited. 4
- ‘(14) The regulator may, by written notice to the offending electricity 5
entity or other person, amend or cancel a decision made by the regulator 6
under subsection (5) with effect from the day of the decision or some other 7
day fixed by the regulator. 8
- ‘(15) The regulator may take action under this section even though the 9
regulator issued, contrary to this Act, an authority that gave rise to the 10
contravention of a condition of the offending electricity entity’s authority by 11
its holding a prohibited interest. 12
- ‘(16) The regulator may take the action stated in subsection (17) if the 13
regulator— 14
- (a) makes a decision under subsection (5) and the ground for making 15
the decision is that a person (the “offender”) has a prohibited 16
interest, because the person is in a position to exercise control 17
over a person, entity or authority or thing; or 18
 - (b) forms the opinion that the offender has a prohibited interest of the 19
kind contemplated by schedule 2, section 3B(b)(iii). 20
- ‘(17) For subsection (16), the regulator may, by written notice served on 21
the offender, decide that the offender must do 1 or more of the following to 22
the extent necessary to prevent there being a prohibited interest within a 23
stated reasonable time of less than 90 days— 24
- (a) stop exercising control over the person, entity or authority; 25
 - (b) end any relevant agreement, arrangement, understanding or 26
undertaking; 27
 - (c) take, or refrain from taking, any other action stated in the notice. 28
- ‘(18) Subsections (6), (10), (14) and (15) apply to a decision made by 29
the regulator under subsection (16). 30
- ‘(19) If an electricity entity fails to pay a penalty under this section within 31
the time allowed by the regulator, the regulator may take further action for 32
the contravention for which the penalty was imposed. 33

Electricity Amendment (No. 3)

	‘(20) A reference in this section to amending an authority includes a reference to amending its conditions.	1 2
	‘(21) In this section—	3
	“ authority ”, (other than in subsections (1) and (20)), includes a special approval.	4 5
	“ electricity entity ”, (other than in subsections (1) and (20)), includes a special approval holder.	6 7
	“ interest ” includes the following—	8
	(a) a legal or equitable interest in shares, stock, units or voting rights;	9
	(b) a legal or equitable right to acquire shares, stock, units or voting rights;	10 11
	(c) a right to decide the way in which a vote or other interest attaching to shares, stock, units or voting rights will be exercised;	12 13
	(d) a right under an agreement, an arrangement, a contract, a deed an understanding or an undertaking;	14 15
	(e) other rights or interests capable of conveyance, transfer, sale, disposal or assignment;	16 17
	(f) another interest prescribed by regulation.’.	18
	Omission of s 133A (Disciplinary action under the Market Code)	19
Clause	44. Section 133A— <i>omit.</i>	20 21
	Amendment of s 134 (Procedure for disciplinary action)	22
Clause	45. Section 134(1)(e), ‘28 days’— <i>omit, insert—</i> ‘7 days’.	23 24 25

Electricity Amendment (No. 3)

	Amendment of s 166 (Connection to transmission grid or supply network to comply with conditions for connection)	1
		2
Clause	46. Section 166(2), after ‘entity’—	3
	<i>insert—</i>	4
	‘or special approval holder’.	5
	Insertion of new s 179A	6
Clause	47. After section 179—	7
	<i>insert—</i>	8
	‘Publication about application for generation authority	9
	‘179A.(1) Before issuing a generation authority the regulator must publish a notice in a daily newspaper generally circulating in the State—	10
		11
	(a) stating that an application for an authority has been made to the regulator by the person stated in the notice; and	12
		13
	(b) inviting interested persons to make submissions to the regulator about the application within the period and in the manner stated in the notice.	14
		15
		16
	‘(2) The regulator must consider the submissions made before issuing an authority.’.	17
		18
	Amendment of s 180 (Consideration of application for generation authority)	19
		20
Clause	48. Section 180(7)—	21
	<i>omit, insert—</i>	22
	‘(7) In deciding whether to issue the authority, the regulator must not consider matters prescribed by regulation.’.	23
		24
	Insertion of new s 183A	25
Clause	49. After section 183—	26
	<i>insert—</i>	27

*Electricity Amendment (No. 3)***‘Amendment of generation authorities and conditions by notice to generation entity**

‘183A.(1) The regulator may amend a generation authority or the conditions of a generation authority by notice under subsection (2) given to the holder of the authority.

‘(2) The regulator may amend a generation authority or the conditions of a generation authority by a notice only if—

(a) the regulator is satisfied the amendment is—

(i) necessary having regard to the objects of this Act; or

(ii) necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry, or reforms concerning the Queensland electricity supply industry; or

(b) the regulator has given the holder of the authority an opportunity to make representations on the matter.

‘(3) This section does not affect the power to amend under sections 182 and 183.’.

Insertion of new s 188A

Clause **50.** After section 188—

insert—

‘Publication about application for transmission authority

‘188A.(1) Before issuing a transmission authority the regulator must publish a notice in a daily newspaper generally circulating in the State—

(a) stating that an application for an authority has been made to the regulator by the person stated in the notice; and

(b) inviting interested persons to make submissions to the regulator about the application within the period and in the manner stated in the notice.

‘(2) The regulator must consider the submissions made before issuing an authority.’.

	Amendment of s 189 (Consideration of application for authority)	1
Clause	51. Section 189(6)—	2
	<i>omit, insert—</i>	3
	‘(6) In deciding whether to issue the authority, the regulator must not consider the matters prescribed by regulation.’.	4 5
	Insertion of new s 192A	6
Clause	52. After section 192—	7
	<i>insert—</i>	8
	‘Amendment of transmission authorities and conditions by notice to transmission entity	9 10
	‘ 192A.(1) The regulator may amend a transmission authority or the conditions of a transmission authority by notice under subsection (2) given to the holder of the authority.	11 12 13
	‘(2) The regulator may amend a transmission authority or the conditions of a transmission authority by a notice only if—	14 15
	(a) the regulator is satisfied the amendment is—	16
	(i) necessary having regard to the objects of this Act; or	17
	(ii) necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry or reforms in relation to the Queensland electricity supply industry; or	18 19 20 21
	(b) the regulator has given the holder of the authority an opportunity to make representations on the matter.	22 23
	‘(3) This section does not affect the power to amend under sections 191 and 192.’.	24 25
	Insertion of new s 195A	26
Clause	53. After section 195—	27
	<i>insert—</i>	28

Electricity Amendment (No. 3)

	‘Distribution authorities for same distribution area	1
	‘195A. The regulator may issue 2 or more distribution authorities for the same distribution area.’.	2 3
	Insertion of new 196A	4
Clause	54. After section 196—	5
	<i>insert—</i>	6
	‘Publication about application for distribution authority	7
	‘196A.(1) Before issuing a distribution authority the regulator must publish a notice in a daily newspaper generally circulating in the State—	8 9
	(a) stating that an application for an authority has been made to the regulator by the person stated in the notice; and	10 11
	(b) inviting interested persons to make submissions to the regulator about the application within the period and in the manner stated in the notice.	12 13 14
	‘(2) The regulator must consider the submissions made before issuing an authority.’.	15 16
	Amendment of s 197 (Consideration of application for authority)	17
Clause	55. Section 197(7)—	18
	<i>omit, insert—</i>	19
	‘(7) In deciding whether to issue the authority, the regulator must not consider matters prescribed by regulation.’.	20 21
	Insertion of new s 200A	22
Clause	56. After section 200—	23
	<i>insert—</i>	24
	‘Amendment of distribution authorities and conditions by notice to distribution entity	25 26
	‘200A.(1) The regulator may amend a distribution authority or the	27

Electricity Amendment (No. 3)

conditions of a distribution authority by notice under subsection (2) given to the holder of the authority. 1
2

‘(2) The regulator may amend a distribution authority or the conditions of a distribution authority by a notice only if— 3
4

(a) the regulator is satisfied the amendment is— 5

(i) necessary having regard to the objects of this Act; or 6

(ii) necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry or reforms concerning the Queensland electricity supply industry; or 7
8
9
10

(b) the regulator has given the holder of the authority an opportunity to make representations on the matter. 11
12

‘(3) This section does not affect the power to amend under sections 199 and 200.’. 13
14

Amendment of s 203 (Issue of retail authorities) 15

Clause 57. Section 203— 16

insert— 17

‘(3) If the authority states a retail area, the authority may state when the right to the retail area ends. 18
19

‘(4) The regulator must not issue more than 1 retail authority with a retail area for the same retail area.’. 20
21

Amendment of s 204 (Application for authority) 22

Clause 58. Section 204(1)(b)— 23

omit, insert— 24

‘(b) if the application relates to the sale of electricity to non-contestable customers—state the proposed retail area; and’. 25
26

Electricity Amendment (No. 3)

	Insertion of new s 204A	1
Clause	59. After section 204—	2
	<i>insert—</i>	3
	‘Publication about application for retail authority	4
	‘204A.(1) Before issuing a retail authority the regulator must publish a	5
	notice in a daily newspaper generally circulating in the State—	6
	(a) stating that an application for an authority has been made to the	7
	regulator by the person stated in the notice; and	8
	(b) inviting interested persons to make submissions to the regulator	9
	about in relation to the application within the period and in the	10
	manner stated in the notice.	11
	‘(2) The regulator must consider the submissions made before issuing an	12
	authority.’.	13
	Amendment of s 205 (Consideration of application for authority)	14
Clause	60.(1) Section 205(3)(a) to (f)—	15
	<i>renumber</i> as section 205(3)(b) to (g).	16
	(2) Section 205(3)—	17
	<i>insert—</i>	18
	‘(a) subject to subsection (4), the financial capacity of the applicant;	19
	and’.	20
	(3) Section 205(4) to (6)—	21
	<i>renumber</i> as section 205(5) to (7).	22
	(4) Section 205—	23
	<i>insert—</i>	24
	‘(4) The regulator does not have to consider the matter in	25
	subsection (3)(a) if—	26
	(a) the applicant’s authority will be subject to a condition requiring	27
	compliance with the Market Code; and	28

Electricity Amendment (No. 3)

(b) the Market Code contains prudential requirements applying to the activities to be authorised.’

(4) Section 205(7)—

omit, insert—

‘(8) In deciding whether to issue the authority, the regulator must not consider matters prescribed by regulation.’

Insertion of new s 207AB

Clause 61. After section 207A—

insert—

‘Amendment of retail authorities and conditions by notice to retail entity

‘**207AB.(1)** The regulator may amend a retail authority or the conditions of a retail authority by notice under subsection (2) given to the holder of the authority.

‘(2) The regulator may amend a retail authority or the conditions of a retail authority by a notice only if—

(a) the regulator is satisfied the amendment is—

(i) necessary having regard to the objects of this Act; or

(ii) necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry or reforms about the Queensland electricity supply industry; or

(b) the regulator has given the holder of the authority an opportunity to make representations on the matter.

‘(3) This section does not affect the power to amend under sections 207 and 207A.’

Insertion of new s 207D

Clause 62. After section 207C—

insert—

‘Recognition of interstate retail authority equivalents

‘207D.(1) A person may apply for the issue of a retail authority if the person holds an equivalent authority or licence issued under the law of another State.

‘(2) The application must—

- (a) be made to the regulator in the form approved by the regulator; and
- (b) be accompanied by the fees prescribed under a regulation including any fee for investigating whether an authority or licence should be issued.

‘(3) If asked in writing by the regulator, the applicant must give the further relevant information or evidence the regulator requires to decide the application.

‘(4) The regulator may dispense with any of the requirements of this part in relation to the application for or issue of a retail authority applied for under this section.

‘(5) The applicant may not apply for a review of, or appeal against, the decision of the regulator.

‘(6) To remove doubt, subsection (5) also precludes an application for review under the *Judicial Review Act 1991*.’.

Insertion of new ss 211A–211C

Clause **63.** After section 211—

insert—

‘Amendment of special approval

‘211A. The regulator may, with a special approval holder’s agreement, amend its special approval.

‘Amendment of conditions stated in special approval

‘211B. The regulator may, with a special approval holder’s agreement, amend the conditions stated in its special approval.

*Electricity Amendment (No. 3)***‘Amendment of special approval and conditions by notice to holder of special approval**

‘**211C.(1)** The regulator may amend a special approval or the conditions of a special approval by notice under subsection (2) given to the holder of the special approval.

‘**(2)** The regulator may amend a special approval or the conditions of a special approval by a notice only if—

(a) the regulator is satisfied the amendment is—

(i) necessary having regard to the objects of this Act; or

(ii) necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry or reforms concerning the Queensland electricity supply industry; or

(b) the regulator has given the holder of the special approval an opportunity to make representations on the matter.’

Insertion of new s 240A

Clause **64.** After section 240—

insert—

‘Executive officers must ensure corporation complies with Act

‘**240A.(1)** The executive officers of a corporation must ensure the corporation complies with this Act.

‘**(2)** If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the maximum penalty for the contravention of the provision by an individual.

‘**(3)** Evidence that a corporation has been convicted of an offence against a provision of this Act is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the provision.

Electricity Amendment (No. 3)

‘(4) However, it is a defence for an executive officer to prove— 1

(a) if the officer was in a position to influence the conduct of the 2
corporation in relation to the offence—that the officer took 3
reasonable steps to ensure the corporation complied with the 4
provision; or 5

(b) the officer was not in a position to influence the conduct of the 6
corporation in relation to the offence. 7

‘(5) In this section— 8

“**executive officer**”, of a corporation, means a person who is concerned 9
with, or takes part in, the corporation’s management, whether or not 10
the person is a director or the person’s position is given the name of 11
executive officer.’. 12

Insertion of new s 251A 13

Clause **65.** After section 251— 14
insert— 15

‘Evidentiary effect of conduct notice 16

‘**251A.(1)** A document purporting to be a certified copy of a conduct 17
notice is evidence— 18

(a) that the notice was made under section 120O; and 19

(b) of the contravention or other matters stated in it; and 20

(c) that the notice has been given to the entity stated in it under 21
section 120P. 22

‘(2) In subsection (1)— 23

“**certified copy**” means a copy with a certificate purporting to be signed by 24
a member of the QCA stating the copy is a true copy of the document 25
it purports to be.’. 26

Amendment of s 254 (Protection from liability) 27

Clause **66.(1)** Section 254(1)(c) to (e)— 28
renumber as section 254(1)(f) to (h). 29

Electricity Amendment (No. 3)

	(2) Section 254(1)—	1
	<i>insert—</i>	2
	‘(c) the electricity industry ombudsman and employees in the Office of the Electricity Industry Ombudsman; and	3
		4
	(d) members and employees of the QCA; and	5
	(e) an operator under section 131 and employees of an operator; and’.	6
		7
	Replacement of s 257 (State electricity entities are constructing authorities)	8
		9
Clause	67. Sections 257—	10
	<i>omit, insert—</i>	11
	‘Transmission and distribution entities are constructing authorities	12
	‘ 257.(1) Despite chapter 4, part 5, ² each State electricity entity that is a transmission entity or a distribution entity is a constructing authority under the <i>Acquisition of Land Act 1967</i> .	13
		14
		15
	‘(2) This section expires 5 years after its commencement.’.	16
	Omission of ss 258 and 259	17
Clause	68. Sections 258 and 259—	18
	<i>omit.</i>	19
	Replacement of s 260 (State electricity entities to take part in industry superannuation scheme)	20
		21
Clause	69. Section 260—	22
	‘State electricity entities to take part in regulated superannuation scheme)	23
		24
	‘ 260. Each State electricity entity must take part in a regulated	25

² Chapter 4 (Electricity industry operations), part 5 (Entry onto and acquisition of land)

	superannuation scheme under the <i>Superannuation Industry (Supervision) Act 1993</i> (Cwlth).	1 2
	Omission of s 261 (Declaration of approved industry superannuation scheme)	3 4
Clause	70. Section 261— <i>omit.</i>	5 6
	Replacement of s 264 (Regulations about matters in sch 2)	7
Clause	71. Section 264— <i>omit, insert—</i>	8 9
	‘Regulation about matters in sch 2	10
	‘264.(1) A regulation may make provision about the matters mentioned in schedule 2, including for example—	11 12
	(a) regulating persons and things in relation to the matters; and	13
	(b) imposing conditions in an authority or special approval prohibiting electricity entities or special approval holders from having a prohibited interest in 1 or more of the following—	14 15 16
	(i) a prescribed authority;	17
	(ii) a prescribed entity;	18
	(iii) a prescribed person;	19
	(iv) a prescribed thing; and	20
	(c) the functions, entitlements, obligations and powers of persons in relation to the matters.	21 22
	‘(2) A regulation under subsection (1)(b) may make different provision for different electricity entities or special approval holders.’.	23 24
	Amendment of ch 14, pt 2 (Transitional provisions for Electricity Amendment Act 1997 and Electricity Amendment Act (No. 2) 1997	25 26
Clause	72. Chapter 14, part 2, heading—	27

omit, insert—

**‘PART 2—TRANSITIONAL PROVISIONS FOR
ELECTRICITY AMENDMENT ACT 1997,
ELECTRICITY AMENDMENT ACT (No. 2) 1997 AND
ELECTRICITY AMENDMENT ACT (No. 3) 1997’.**

Amendment of s 291 (Generation authorities for new generation entities)

Clause **73.** Section 291(3)(b), ‘pool’—

omit, insert—

‘spot market’.

Amendment of s 299 (Directions to State electricity entities)

Clause **74.** Section 299(3)—

omit, insert—

‘(3) The Ministers may give a direction only if they are satisfied it is necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry, reforms concerning the Queensland electricity supply industry or to ensure a financially viable Queensland electricity supply industry.’.

Amendment of s 300 (Minister may give exemptions from holding an authority or being authorised to sell)

Clause **75.** Section 300(4), ‘1 year’—

omit, insert—

‘2 years’.

Amendment of s 300A (Notifying exemption under s 300)

Clause **76.(1)** Section 300A(2)—

omit.

Electricity Amendment (No. 3)

- (2) Section 300A(3) and (4)— 1
renumber as section 300A(2) and (3). 2

Replacement of ss 300B and 301 3

- Clause 77. Sections 300B and 301— 4
omit, insert— 5

‘Amending or cancelling exemption under s 300 6

‘300B.(1) The Minister may amend or cancel an exemption under 7
 section 300. 8

‘(2) If an exemption is amended or cancelled, the Minister must notify 9
 the making of the amendment or the cancellation by gazette notice within 10
 14 days. 11

‘(3) An amendment or cancellation takes effect— 12

(a) on a day stated in the notice; or 13

(b) if no day is stated in the notice—on the day the notice is gazetted. 14

‘(4) Failure to notify under subsection (2) does not invalidate the 15
 amendment or cancellation. 16

‘(5) This section expires when section 300 expires. 17

‘Minister’s powers about transmission and distribution pricing 18

‘301.(1) The Minister may decide, in the way the Minister thinks fit, the 19
 prices, or a methodology to fix the prices that— 20

(a) a transmission entity may charge for connection to a transmission 21
 grid; or 22

(b) a transmission entity may charge for network services; or 23

(c) a distribution entity may charge to provide customer connection 24
 services; or 25

(d) a transmission or distribution entity may charge to provide other 26
 goods and services prescribed by regulation. 27

Electricity Amendment (No. 3)

‘(2) Without limiting subsection (1), a methodology to fix prices may include a methodology for fixing a maximum revenue that a transmission or distribution entity may earn. 1
2
3

‘(3) The Minister must, in making a decision, consider the objects of the Act and the standards about quality of service. 4
5

‘(4) The Minister must notify the prices, or methodology to fix the prices, by gazette notice. 6
7

‘(5) The prices or methodology to fix the prices notified take effect— 8

(a) on a day stated in the notice; or 9

(b) if no day is stated in the notice—on the day the notice is gazetted. 10

‘(6) A transmission or distribution entity must charge the prices, or prices fixed under the methodology, notified under this section. 11
12

Maximum penalty—500 penalty units. 13

‘(7) A decision by the Minister under this section has effect despite the *Queensland Competition Authority Act 1997*. 14
15

‘(8) This section expires 3 years after the commencement.’. 16

Amendment of s 302 (QTSC State electricity entity for limited purposes) 17
18

Clause **78.** Section 302(1), ‘only’— 19
omit. 20

Omission of ss 302A and 302B 21

Clause **79.** Sections 302A and 302B— 22
omit. 23

Amendment of s 303 (Transitional regulations) 24

Clause **80.(1)** Section 303(1)(a)— 25
omit, insert— 26

Electricity Amendment (No. 3)

‘(a) it is necessary or convenient to help or give effect to the objects of the Act, the restructuring of the Queensland electricity supply industry, reforms concerning the Queensland electricity supply industry, or to ensure a financially viable Queensland electricity supply industry; or’.

(2) Section 303(3) ‘1 year’— 6

omit, insert— 7

‘2 years’.

Amendment of sch 1 (Appeals against administrative decisions) 9

Clause **81.(1)** Schedule 1, after ‘130(2)’ and the entry opposite— 10

insert— 11

‘133(5) Decision that an electricity entity has a prohibited interest that must be disposed of Supreme’.

(2) Schedule 1, ‘27(b)(v)’ and the entry opposite— 12

omit, insert— 13

‘27(b)(vii) Stating of conditions in generation authority Supreme’.

(3) Schedule 1, ‘55D(e)’ and the entry opposite— 14

omit, insert— 15

‘55D(g) Stating of conditions in retail authority Supreme’.

(4) Schedule 1, ‘60(a)(iii)’ and the entry opposite— 16

omit, insert— 17

‘60(a)(v) Stating of conditions in special approval District’.

Amendment of sch 2 (Subject matter for regulations) 18

Clause **82.** Schedule 2— 19

insert— 20

Electricity Amendment (No. 3)

‘Conditions of authorities and approvals	1
‘3A. Imposing conditions in an authority or a special approval prohibiting the holder of the authority or special approval from having a prohibited interest in 1 or more or the following—	2 3 4
(a) a prescribed authority;	5
(b) a prescribed entity;	6
(c) a prescribed person;	7
(d) a prescribed thing.	8
‘Prescribed things and prohibited interests	9
‘3B. Making provision about any of the following matters—	10
(a) the specifying of—	11
(i) a prescribed authority;	12
(ii) a prescribed entity;	13
(iii) a prescribed person;	14
(b) the specifying of a “prohibited interest” by reference to 1 or more of the following—	15 16
(i) the holding of an authority;	17
(ii) the holding of an interest, either directly or indirectly, in an authority;	18 19
(iii) the exercise of control, either directly or indirectly, over an authority, entity or person;	20 21
(iv) the entitlement to a stated number or percentage of shares, stock, votes or other interests, either directly or indirectly, in an entity or person;	22 23 24
(v) the entitlement to a stated value or percentage of value of shares, stock, votes or other interests, either directly or indirectly, in an entity or person;	25 26 27
(vi) the entitlement to a stated amount or percentage of generation capacity;	28 29

Electricity Amendment (No. 3)

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- | | |
|--|----------------------|
| (vii) another thing prescribed by regulation; | 1 |
| (c) what constitutes an entitlement to shares, stock, votes or other interests, either directly or indirectly, in an entity or person; | 2
3 |
| (d) what constitutes an entitlement to generation capacity; | 4 |
| (e) that certain shares, stock, votes or interests, or particular classes of shares, votes or other interests are, or in some circumstances are, to be disregarded for the prescribed purposes; | 5
6
7 |
| (f) that particular generation capacity or particular amounts, percentages or types of generation capacity are, or in some circumstances are, to be disregarded for prescribed purposes; | 8
9
10 |
| (g) that certain transactions, agreements, arrangements, understandings, undertakings or practices or particular types of them are, or in some circumstances are, to be disregarded for the prescribed purposes; | 11
12
13
14 |
| (h) when a person is, or is taken to be, in a position to exercise control in relation to— | 15
16 |
| (i) a person; | 17 |
| (ii) an entity; | 18 |
| (iii) an authority; | 19 |
| (iv) a thing; | 20 |
| (i) when a person is not, or is taken not to be, in a position to exercise control in relation to— | 21
22 |
| (i) a person; | 23 |
| (ii) an entity; | 24 |
| (iii) an authority; | 25 |
| (iv) a thing; | 26 |
| (j) the method of calculating the number, percentage or value of shares, stock, votes or other interests, directly and indirectly, in an entity or person; | 27
28
29 |
| (k) the method of calculating the amount or percentage of generation capacity; | 30
31 |

Electricity Amendment (No. 3)

- (l) the tracing of interests through a series of entities or persons; 1
- (m) the extraterritorial application of a regulation and the application of 2
a regulation to partnerships, unincorporated joint ventures, 3
companies limited by guarantee, trusts, superannuation funds and 4
other vehicles; 5
- (n) anything necessary or convenient to help or give effect to a 6
regulation.’. 7

Amendment of sch 5 (Dictionary) 8

Clause **83.(1)** Schedule 5, definitions **“code participant”**, **“customer 9
connection contract”**, **“customer sale contract”**, **“electricity entity”**, 10
“Market Code”, **“pool”**, **“power system”**, **“sell”**, **“system control”**, and 11
“system control entity”— 12

omit. 13

(2) Schedule 5— 14

insert— 15

‘ **“code participant”** has the meaning given in the National Electricity 16
(Queensland) Law. 17

“conduct notice” see section 120O(1). 18

“conduct rules” means— 19

(a) the conduct rules made by the QCA under chapter 5, part 1A; and 20

(b) any amendment of the conduct rules. 21

“customer connection contract” means a contract under which a 22
distribution entity agrees to provide customer connection services to a 23
customer’s premises. 24

“customer connection services”, for premises, means— 25

(a) the connection of the premises to a supply network to allow the 26
supply of electricity from the supply network to the premises; and 27

(b) the supply of electricity from the supply network to the premises. 28

“customer retail services”, for premises, means— 29

(a) the sale of electricity to the premises; or 30

Electricity Amendment (No. 3)

- (b) the sale of electricity to the premises and providing for— 1
- (i) the connection of the premises to a supply network to allow 2
the supply of electricity from the supply network to the 3
premises; and 4
- (ii) the supply of electricity from the supply network to the 5
premises. 6
- “customer sale contract”** means a contract under which a retail entity 7
agrees to provide customer retail services to a customer’s premises. 8
- “dispute”**, for chapter 5, part 1B, see section 120ZD. 9
- “electricity entity”** means— 10
- (a) in general—see section 22(1); and 11
- (b) for chapter 5, part 1A—see also section 120A; and 12
- (c) for chapter 5, part 1B—see also section 120ZE. 13
- “Market Code”** means— 14
- (a) the Code of Conduct called the National Electricity Code under 15
the National Electricity Law applied as a law of Queensland; and 16
- (b) any amendment of the Code. 17
- “National Electricity (Queensland) Law”** has the meaning given in the 18
Electricity—National Scheme (Queensland) Act 1997. 19
- “National Electricity Tribunal”** has the meaning given in the National 20
Electricity (Queensland) Law. 21
- “NECA”** has the meaning given in the National Electricity (Queensland) 22
Law. 23
- “NEMMCO”** has the meaning given in the National Electricity 24
(Queensland) Law. 25
- “Office”** see section 64A(2). 26
- “prohibited interest”** means— 27
- (a) a prescribed interest that an electricity entity must not hold in a 28
prescribed authority, a prescribed entity, a prescribed person or a 29
prescribed thing under section 264; or 30
- (b) a prohibited interest under schedule 2, section 3A. 31

“QCA” means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*. 1
2

“sell” includes— 3

(a) sell by wholesale, retail or auction; and 4

(b) agree, attempt or offer to sell; and 5

(c) possess, expose or advertise for sale; and 6

(d) cause or permit to be sold; and 7

(e) give away or swap. 8

“spot market” has the meaning given in the Market Code.’. 9

PART 3—AMENDMENT OF GLADSTONE POWER STATION AGREEMENT ACT 1993 10 11

Act amended in pt 3 12

Clause **84.** This part amends the *Gladstone Power Station Agreement Act 1993*. 13

Amendment of s 13 (Issue of licence) 14

Clause **85.** Section 13(3), after ‘61’— 15

insert— 16

‘, 211C’. 17

**PART 4—AMENDMENT OF QUEENSLAND
COMPETITION AUTHORITY ACT 1997**

	Act amended in pt 4	3
Clause	86. This part amends the <i>Queensland Competition Authority Act 1997</i> .	4
	Amendment of s 10 (Authority’s functions)	5
Clause	87. Section 10(g), after ‘disputes’— <i>insert—</i> ‘or, if asked by the parties to access agreements, to arbitrate to resolve disputes under the agreements’.	6 7 8 9
	Omission of s 62 (Further information to support application)	10
Clause	88. Section 62— <i>omit.</i>	11 12
	Insertion of new pt 4, div 6	13
Clause	89. Part 4, after section 69— <i>insert—</i> <i>‘Division 6—Investigations about accreditation</i>	14 15 16
	‘Power of authority to conduct investigation	17
	‘69A.(1) For deciding whether to grant, or refuse to grant, accreditation for a government agency by which an application has been made, the authority may conduct an investigation about the agency.	18 19 20
	‘(2) The authority may conduct the investigation whether the application was made before or after this section commences.	21 22

*Electricity Amendment (No. 3)***‘Notice of investigation**

‘69B.(1) Before starting an investigation under this division, the authority must give reasonable notice of the investigation to—

- (a) the government agency; and
- (b) the responsible Minister for the government agency; and
- (c) any other person the authority considers appropriate.

‘(2) The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) state the subject matter of the investigation; and
- (c) invite the person to whom the notice is given to make written, or, if the authority approves, oral, submissions to the authority within a reasonable time stated in the notice; and
- (d) state the authority’s address.

‘Matters to be considered by authority for investigation

‘69C.(1) In conducting an investigation under this division, the authority must consider the following matters—

- (a) the need to ensure compliance with the principle of competitive neutrality;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any government policies or guidelines about the application of the principle of competitive neutrality;
- (e) any directions about the application of the principle of competitive neutrality given to the government agency by the government;
- (f) any arrangements between the government and the government agency about a competitive disadvantage suffered by the agency because of the government ownership or control of the agency;
- (g) any laws about the application of the principle of competitive neutrality;

Electricity Amendment (No. 3)

-
- (h) any legislation or government policies concerning ecologically sustainable development; 1
2
- (i) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers; 3
4
5
- (j) any legislation or government policies concerning occupational health and safety or industrial relations; 6
7
- (k) economic and regional development issues, including employment and investment growth; 8
9
- (l) the interests of consumers or any class of consumers. 10

‘(2) However, in deciding whether to grant an accreditation for the government agency, the authority must not accept that any competitive advantage enjoyed by the agency solely because of the government ownership or control of the agency is justified because of the existence of a competitive disadvantage suffered by the agency because of the government ownership or control of the agency. 11
12
13
14
15
16

‘(3) Subsection (1) does not limit the matters the authority may consider in conducting an investigation. 17
18

‘Procedures for investigations 19

‘69D. Part 6³ applies to an investigation under this division.’. 20

Amendment of s 130 (Purpose and contents of codes) 21

Clause **90.** Section 130(3)— 22

insert— 23

‘(ca) arrangements for the transfer of all or part of the interest of a user of the service under an access agreement;’ 24
25

³ Part 6 (Investigations by authority)

	Amendment of s 137 (Contents of undertakings)	1
Clause	91.(1) Section 137(2)—	2
	<i>insert—</i>	3
	‘(ba)information to be given to the authority;’.	4
	(2) Section 137(2)—	5
	<i>insert—</i>	6
	‘(da)arrangements for the transfer of all or part of the interest of a user of the service under an access agreement;’.	7 8
	(3) Section 137(2)—	9
	<i>insert—</i>	10
	‘(ea)arrangements to be made by the owner to separate the owner’s operations concerning the service from other operations of the owner concerning another commercial activity;’.	11 12 13
	Insertion of new s 158A—	14
Clause	92. Part 5, division 8—	15
	<i>insert—</i>	16
	‘Orders to enforce approved undertaking	17
	‘158A.(1) The authority or another person may apply to the court for an order under this section concerning an approved undertaking.	18 19
	‘(2) An application may be made only if—	20
	(a) the applicant considers the responsible person for the undertaking has breached a term of the undertaking; and	21 22
	(b) the applicant considers—	23
	(i) for an application made by the authority—a person’s interests have been adversely affected by the breach; or	24 25
	(ii) for an application made by someone else—the applicant’s interests have been adversely affected by the breach.	26 27
	‘(3) If the court is satisfied the responsible person has breached a term of the undertaking, the court may make all or any of the following orders—	28 29

Electricity Amendment (No. 3)

- (a) an order directing the responsible person to comply with the term; 1
- (b) an order directing the responsible person to compensate anyone 2
who has suffered loss or damage because of the breach; 3
- (c) another order the court considers appropriate. 4
- ‘(4) However, the court may make an order only if it is satisfied— 5
- (a) for an application made by the authority—a person’s interests 6
have been adversely affected by the breach; or 7
- (b) for an application made by someone else—the applicant’s 8
interests have been adversely affected by the breach.’. 9

Amendment of s 171 (Application of part) 10

- Clause **93.(1)** Section 171— 11
- insert—* 12
- ‘(ba)an investigation for part 4, division 6;’. 13
- (2)** Section 171(c), ‘subdivision 2’— 14
- omit, insert—* 15
- ‘subdivision 3’. 16
- (3)** Section 171(d), ‘subdivision 4’— 17
- omit, insert—* 18
- ‘subdivision 5’. 19

Amendment of s 187 (Confidential information) 20

- Clause **94.** Section 187(3)— 21
- insert—* 22
- ‘(e) an entity that performs similar functions to the authority under a 23
law of the Commonwealth, another State or a foreign country.’. 24

	Amendment of s 227 (Superannuation for former public service officers)	1
		2
Clause	95.(1) Section 227(1)(b) and (c)—	3
	<i>omit, insert—</i>	4
	‘(b) immediately before being so employed, the person was—	5
	(i) a public service officer; and	6
	(ii) a member of the superannuation scheme.’	7
	(2) Section 227(2)—	8
	<i>omit, insert—</i>	9
	‘ (2) The person—	10
	(a) continues to be a member of the superannuation scheme; and	11
	(b) for paragraph (a), is taken to be eligible for membership of the	12
	scheme under the <i>Superannuation (State Public Sector) Act</i>	13
	1990.’	14
	(3) Section 227(3), ‘subsequently’—	15
	<i>omit.</i>	16
	(4) Section 227(3), ‘fund or scheme’—	17
	<i>omit, insert—</i>	18
	‘scheme’.	19
	(5) Section 227(3)(a), ‘contributor to the superannuation fund or’—	20
	<i>omit.</i>	21
	(6) Section 227(4), definition “ superannuation fund ”—	22
	<i>omit.</i>	23
	Amendment of s 237 (Protection from liability of member or employee)	24
		25
Clause	96. Section 237(1), ‘honestly and without negligence’—	26
	<i>omit, insert—</i>	27
	‘in good faith’.	28

Electricity Amendment (No. 3)

	Amendment of s 239 (Confidential information)	1
Clause	97. Section 239(2)—	2
	<i>insert—</i>	3
	‘(c) an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country.’.	4 5
	Amendment of s 240 (Secrecy)	6
Clause	98. Section 240(2)—	7
	<i>omit, insert—</i>	8
	‘(a) the information is divulged or communicated to an entity that performs similar functions to the authority under a law of the Commonwealth, another State or a foreign country; or’.	9 10 11
	Amendment of schedule (Dictionary)	12
Clause	99.(1) Schedule, definition “ register ”—	13
	<i>insert—</i>	14
	• the register of conduct notices under the <i>Electricity Act 1994</i> , section 120S. ⁴ .	15 16
	(2) Schedule, definition “ related body corporate ”—	17
	<i>omit, insert—</i>	18
	‘ “related body corporate” , of another body corporate, means—	19
	(a) a body corporate that is related to the other body corporate under the Corporations Law, section 50; ⁵ or	20 21

⁴ Section 120S (Register of conduct notices)

⁵ Corporations Law, section 50—

Related bodies corporate

50. Where a body corporate is:

- (a) a holding company of another body corporate;
 - (b) a subsidiary of another body corporate; or
 - (c) a subsidiary of a holding company of another body corporate;
- the first-mentioned body and the other body are related to each other.

Electricity Amendment (No. 3)

- (b) another entity that is a subsidiary of the other body corporate under the *Government Owned Corporations Act 1993*, section 3.⁶.

**PART 5—AMENDMENT OF PUBLIC SERVICE ACT
1996**

Act amended in pt 5

Clause **100.** This part amends the *Public Service Act 1996*.

Amendment of s 109 (Who is a “term appointee”)

Clause **101.(1)** Section 109(3)(g) to (i)—

renumber as section 109(3)(h) to (j).

(2) Section 109(3)—

insert—

‘(g) the electricity industry ombudsman appointed under the *Electricity Act 1994*.’.

⁶ *Government Owned Corporations Act 1993*, section 3—

“**subsidiary**” has the meaning given by the Corporations Law, and includes—

- (a) for a GOC or candidate GOC—a government entity declared by regulation to be a subsidiary of the GOC or candidate GOC; and
- (b) for a candidate GOC associate—a GOC Act entity declared by regulation to be a subsidiary of the associate.