



Queensland

Queensland Competition Authority Amendment Bill 2005



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A Bill

for

**An Act to amend the *Queensland Competition Authority Act*
1997**

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	The Parliament of Queensland enacts—	1
Clause 1	Short title	2
	This Act may be cited as the <i>Queensland Competition Authority Amendment Act 2005</i> .	3 4
Clause 2	Commencement	5
	This Act commences on a day to be fixed by proclamation.	6
Clause 3	Act amended	7
	This Act amends the <i>Queensland Competition Authority Act 1997</i> .	8 9
Clause 4	Amendment of s 10 (Authority’s functions)	10
	Section 10—	11
	<i>insert—</i>	12
	‘(1a) if directed by the Ministers—to monitor compliance by a government agency, or conduct arbitration hearings for resolving disputes about a government agency’s compliance, with a code of conduct the agency has agreed to abide by; and’.	13 14 15 16 17
Clause 5	Amendment of s 75 (Application of Act to authority for purposes of giving notices)	18 19
	(1) Section 75, heading, after ‘notices’—	20
	<i>insert—</i>	21
	‘to owner’.	22
	(2) Section 75(1) and (2)(b), ‘part’—	23
	<i>omit, insert—</i>	24
	‘Act’.	25

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Clause 6	Insertion of new s 75A	1
	Before part 5, division 2—	2
	<i>insert—</i>	3
‘75A	Application of Act to authority for purposes of giving notices to operator	4 5
	‘(1) If this Act requires or permits a notice to be given to the operator of a facility or service by the authority and there is more than 1 operator of the facility or service, the notice may be given to—	6 7 8 9
	(a) if there is a nominated operator for the facility or service—the nominated operator; or	10 11
	(b) if the authority has requested notification of a nominated operator for the facility or service but there is no nominated operator—any one of the operators.	12 13 14
	‘(2) An operator is the nominated operator, for a facility or service for which there is more than 1 operator, only if a written notice has been given to the authority in relation to the operator (the <i>nominee</i>) and the notice contains—	15 16 17 18
	(a) the nominee’s name and address for receiving notices; and	19 20
	(b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and	21 22 23
	(c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.	24 25 26
	‘(3) For subsection (1)(b), the authority may request notification of a nominated operator, for a facility or service for which there is more than 1 operator, by giving a notice to each operator whose name and address is known to the authority asking that a written notice be given to the authority containing—	27 28 29 30 31 32
	(a) the name, and address for receiving notices, of 1 operator (also the <i>nominee</i>); and	33 34

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- (b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and
- (c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.’.

Clause 7	Amendment of s 79 (Making recommendation)	7
	Section 79(6)—	8
	<i>omit.</i>	9
Clause 8	Amendment of s 85 (Notice of decision)	10
	(1) Section 85(2)(c)—	11
	<i>renumber</i> as section 85(2)(d).	12
	(2) Section 85(2)—	13
	<i>insert</i> —	14
	‘(c) if the owner and operator of the service are different entities, and the applicant for the request about the declaration of the service is not the operator of the service—give the designated material for the decision to the operator of the service; and’.	15 16 17 18 19
Clause 9	Amendment of s 93 (Notice of decision)	20
	(1) Section 93(2)(b)—	21
	<i>renumber</i> as section 93(2)(c).	22
	(2) Section 93(2)—	23
	<i>insert</i> —	24
	‘(b) if the owner and operator of the service are different entities—the operator of the service; and’.	25 26

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Clause 10	Amendment of s 119 (Restrictions affecting making of access determination)	1 2
	(1) Section 119(5)(a), after ‘owner’—	3
	<i>insert—</i>	4
	‘or operator’.	5
	(2) Section 119(5)(b)—	6
	<i>insert—</i>	7
	‘(iii) if the owner and operator of the facility are	8
	different entities—the legitimate business interests	9
	of the operator of the facility are also protected;	10
	and’.	11
Clause 11	Amendment of s 130 (Purpose and contents of codes)	12
	Section 130(3)(c)—	13
	<i>omit, insert—</i>	14
	‘(c) arrangements to be made by the owner or operator of a	15
	declared service to separate the owner’s, or operator’s,	16
	operations relating to the service from other operations	17
	of the owner or operator relating to another commercial	18
	activity;’.	19
Clause 12	Amendment of s 133 (Requirement of owner to give draft access undertaking)	20 21
	Section 133, after ‘owner’—	22
	<i>insert—</i>	23
	‘or operator’.	24
Clause 13	Insertion of new ss 133A and 133B	25
	After section 133—	26
	<i>insert—</i>	27

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'133A	Criteria for choosing entity to give draft access undertaking	1 2
'(1)	This section applies if the owner and operator of a declared service are different entities.	3 4
'(2)	In deciding which of the entities to give an initial undertaking notice to, the authority may have regard to the following—	5 6
(a)	the terms of any contract about the service to which the entities are parties;	7 8
(b)	the extent to which each entity is able to provide access to the service;	9 10
(c)	the extent to which each entity is able to give effect to an access undertaking for the service;	11 12
(d)	any written representations made to it by the entities.	13
'133B	Requirement to give information or document	14
'(1)	The authority may by written notice given to an entity mentioned in section 133A(1) require the entity to give the authority, within a reasonable time of at least 14 days stated in the notice, information or a document the authority reasonably requires to have proper regard to the criteria mentioned in section 133A(2).	15 16 17 18 19 20
'(2)	The entity must comply with the requirement within the time stated in the notice, unless the entity has a reasonable excuse.	21 22
	Maximum penalty—500 penalty units or 6 months imprisonment.'	23 24
Clause 14	Amendment of s 134 (Consideration and approval of draft access undertaking by authority)	25 26
	Section 134, after 'owner'—	27
	<i>insert—</i>	28
	'or operator'.	29

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Clause 15	Amendment of s 135 (Preparation and approval of draft access undertaking by authority)	1 2
	Section 135, after ‘owner’—	3
	<i>insert</i> —	4
	‘or operator’.	5
Clause 16	Amendment of s 136 (Submission and approval of voluntary draft access undertaking)	6 7
	Section 136, after ‘owner’—	8
	<i>insert</i> —	9
	‘or operator’.	10
Clause 17	Amendment of s 137 (Contents of access undertakings)	11
	(1) Section 137(2), after ‘owner’—	12
	<i>insert</i> —	13
	‘or operator’.	14
	(2) Section 137(2)(ea), after ‘owner’s’—	15
	<i>insert</i> —	16
	‘, or operator’s,’.	17
Clause 18	Amendment of s 138 (Factors affecting approval of draft access undertaking)	18 19
	(1) Section 138, after ‘owner’—	20
	<i>insert</i> —	21
	‘or operator’.	22
	(2) Section 138(2), before ‘the following’—	23
	<i>insert</i> —	24
	‘each of’.	25
	(3) Section 138(2)(b) to (d)—	26
	<i>renumber</i> as section 138(2)(c) to (e).	27

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- (4) Section 138(2)— 1
insert— 2
 ‘(b) if the owner and operator of the service are different 3
 entities—the legitimate business interests of the 4
 operator of the service are protected;’. 5

**Clause 19 Amendment of s 139 (Requirement of owner to give draft 6
 amending access undertaking) 7**

- (1) Section 139, heading, ‘owner’— 8
omit, insert— 9
 ‘responsible person’. 10
 (2) Section 139(1), ‘for’— 11
omit, insert— 12
 ‘who gave’. 13

**Clause 20 Amendment of s 142 (Submission and approval of 14
 voluntary draft amending access undertaking) 15**

- (1) Section 142(1), ‘for’— 16
omit, insert— 17
 ‘who gave’. 18
 (2) Section 142(4), definition *responsible person for an approved 19
 access undertaking*— 20
omit, insert— 21
 ‘*responsible person who gave an approved access 22
 undertaking* includes a person who gave the access 23
 undertaking because the person expects to be the owner or 24
 operator of the service to which the access undertaking 25
 relates.’. 26

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Clause 21	Amendment of s 143 (Factors affecting approval of draft amending access undertaking)	1 2
	Section 143(2), ‘138(2)(a) to (d)’—	3
	<i>omit, insert—</i>	4
	‘138(2)’.	5
Clause 22	Amendment of s 144 (Application of subdivision)	6
	Section 144(c), after ‘owner’—	7
	<i>insert—</i>	8
	‘or operator’.	9
Clause 23	Amendment of s 146 (Notice of investigation)	10
	Section 146(1)(a), ‘of the service’—	11
	<i>omit, insert—</i>	12
	‘or operator of the service, or the responsible person’.	13
Clause 24	Amendment of s 158A (Orders to enforce approved access undertaking)	14 15
	Section 158A(2)(a), ‘the responsible’—	16
	<i>omit, insert—</i>	17
	‘a responsible’.	18
Clause 25	Amendment of ss 159–161	19
	Sections 159 to 161, ‘responsible operator’—	20
	<i>omit, insert—</i>	21
	‘access provider’.	22

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Clause 26	Amendment of s 162 (Responsible operator must keep books and records under manual)	1 2
	(1) Section 162, heading, ‘Responsible operator’—	3
	<i>omit, insert—</i>	4
	‘Access provider’.	5
	(2) Section 162, ‘responsible operator’—	6
	<i>omit, insert—</i>	7
	‘access provider’.	8
 Clause 27	 Amendment of s 163 (Responsible operator to keep separate accounting records)	 9 10
	(1) Section 163, heading, ‘Responsible operator’—	11
	<i>omit, insert—</i>	12
	‘Access provider’.	13
	(2) Section 163, ‘responsible operator’—	14
	<i>omit, insert—</i>	15
	‘access provider’.	16
	(3) Section 163(4)(b), ‘responsible operator’s’—	17
	<i>omit, insert—</i>	18
	‘access provider’s’.	19
 Clause 28	 Amendment of s 176 (Notice of hearings)	 20
	Section 176(3)(c), after ‘owner’—	21
	<i>insert—</i>	22
	‘or operator’.	23
 Clause 29	 Amendment of s 187 (Confidential information)	 24
	Section 187(3)—	25
	<i>insert—</i>	26

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- ‘(f) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator’s function mentioned in section 63(1)(e) of that Act; or
1
2
3
- (g) the chief executive of the department administering the *Transport Infrastructure Act 1994*, to facilitate the exercise of that chief executive’s powers mentioned in chapter 7, part 3, division 4¹ of that Act; or
4
5
6
7
- (h) the regulator under the *Water Act 2000*, to facilitate the performance of the regulator’s function mentioned in section 515(1)(c) of that Act.’
8
9
10

Clause 30 Amendment of s 188A (Consolidation of arbitration of access and water supply disputes) 11
12

Section 188A(a), after ‘owner’— 13

insert— 14

‘or operator’. 15

Clause 31 Amendment of s 239 (Confidential information) 16

Section 239(2)— 17

insert— 18

- ‘(d) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator’s function mentioned in section 63(1)(e) of that Act; or
19
20
21
- (e) the chief executive of the department administering the *Transport Infrastructure Act 1994*, to facilitate the exercise of that chief executive’s powers mentioned in chapter 7, part 3, division 4² of that Act; or
22
23
24
25

1 *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters), part 3 (Accreditation), division 4 (Disputes about or under agreements for access to rail transport infrastructure that relate to rail safety)

2 *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters), part 3 (Accreditation), division 4 (Disputes about or under agreements for access to rail transport infrastructure that relate to rail safety)

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- (f) the regulator under the *Water Act 2000*, to facilitate the performance of the regulator's function mentioned in section 515(1)(c) of that Act.' 1
2
3

Clause 32	Amendment of schedule (Dictionary)	4
	(1) Schedule, definitions <i>mediation conference</i> and <i>responsible operator</i> —	5
	<i>omit.</i>	6
	<i>omit.</i>	7
	(2) Schedule—	8
	<i>insert</i> —	9
	<i>'mediation conference</i> —	10
	(a) for the mediation of an access dispute for part 5, division 5, subdivision 2A—see section 115A(2); or	11
	(b) for the mediation of a water supply dispute for part 5A, division 4, subdivision 3—see section 170ZW(2). ³ .	12
	(b) for the mediation of a water supply dispute for part 5A, division 4, subdivision 3—see section 170ZW(2). ³ .	13
	(b) for the mediation of a water supply dispute for part 5A, division 4, subdivision 3—see section 170ZW(2). ³ .	14
	(3) Schedule, definition <i>access undertaking</i> , after 'owner'—	15
	<i>insert</i> —	16
	'or operator'.	17
	(4) Schedule, definition <i>responsible person</i> , paragraph (a), after 'owner'—	18
	<i>insert</i> —	19
	<i>insert</i> —	20
	'or operator'.	21

3 Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 2A (Mediation of access disputes)
Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 3 (Mediation of water supply disputes)