

Queensland

Electricity and Other Legislation Amendment Bill 2016

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2016

A Bill

for

An Act to amend the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, the *Electricity Act 1994*, the *Government Owned Corporations Act 1993* and the *Judicial Review Act 1991* for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

Clause 1 Short title

This Act may be cited as the *Electricity and Other Legislation Amendment Act 2016*.

Clause 2 Commencement

Part 2 commences on a date to be fixed by proclamation.

Part 2 Amendment of Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Clause 3 Act amended

This part amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 4 Amendment of s 4 (Definitions)

(1) Section 4, definition *IIB*—

omit.

(2) Section 4—

insert—

board means the board of management of Community Enterprise Queensland.

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chief executive officer means the individual appointed by the board as chief executive officer under section 60R.

Community Enterprise Queensland means the entity continued in existence under section 60A(1) as Community Enterprise Queensland.

IIB means the Island Industries Board under this Act as in force immediately before the commencement of the *Electricity and Other Legislation Amendment Act 2016*, part 2.

Clause 5 Amendment of s 57 (Deposit of savings with banker)

Section 57(1A), 'IIB'—

omit, insert—

Community Enterprise Queensland

Clause 6 Replacement of pt 7A hdg (Island Industries Board)

Part 7A, heading—

omit, insert—

Part 7A Community Enterprise Queensland

Division 1 Establishment, functions and powers of Community Enterprise Queensland

Clause 7 Replacement of ss 60A–60D

Sections 60A to 60D—

omit, insert—

60A Community Enterprise Queensland

(1) IIB is continued in existence as Community

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Enterprise Queensland.

(2) Community Enterprise Queensland—

(a) is a body corporate; and

(b) may sue and be sued in its corporate name.

60B Functions

Community Enterprise Queensland has the following functions—

(a) to act as a commercial enterprise for the general convenience or benefit of the residents of the communities in which Community Enterprise Queensland performs its functions;

(b) to provide the communities mentioned in paragraph (a) with access to a range of food, drinks and household items essential for a healthy life at a fair price;

(c) to apply its operating surplus or assets to promote, support and improve its services and the general welfare, including the knowledge and skills, of the Aboriginal and Torres Strait Islander residents of the communities mentioned in paragraph (a).

Examples of supporting residents—

- encouraging the development of trade, commerce and businesses in the communities
- supporting trade, commerce and businesses carried out by residents of the communities
- providing support for educational or health initiatives, local organisations and community programs or activities

60C Powers

Community Enterprise Queensland has all the

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powers of an individual and may, for example—

(a) enter into contracts; and

(b) acquire, hold, deal with and dispose of property; and

(c) employ staff; and

(d) appoint agents and attorneys; and

(e) engage consultants; and

(f) charge for, and place conditions on, the supply of goods, services or information it supplies; and

(g) establish funds to ensure the efficient conduct of its enterprises and other activities; and

(h) carry on any business consistent with the performance of its functions; and

(i) do anything else necessary or convenient to be done in the performance of its functions.

Division 2 The board

60D Establishment

Community Enterprise Queensland has a board of management.

60DA Role of board

(1) The board is responsible for the way Community Enterprise Queensland performs its functions and exercises its powers.

(2) The board's role includes—

(a) deciding Community Enterprise Queensland's strategies for performing its

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functions and deciding the operational, administrative and financial policies under which Community Enterprise Queensland is to operate; and

(b) ensuring Community Enterprise Queensland performs its functions and exercises its powers effectively and efficiently; and

(c) ensuring Community Enterprise Queensland acts under, and achieves the objectives in, the policies mentioned in paragraph (a); and

(d) accounting to the Minister about the performance of Community Enterprise Queensland's functions and the exercise of its powers; and

(e) reviewing annually the performance of the chief executive officer.

60DB Appointment of members

(1) The board consists of at least 5, but not more than 10, members appointed by the Governor in Council.

(2) At least 1 member of the board must be a consumer representative.

(3) A person is qualified to be nominated by the Minister for appointment as a member of the board only if the person—

(a) has—

(i) commercial or management skills and experience; or

(ii) other skills and experience relevant to the performance of Community Enterprise Queensland's functions; and

(b) is not disqualified under this division from being a member.

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(4) In this section—

consumer representative means a person who the Minister considers represents the consumers of services provided by Community Enterprise Queensland.

Clause 8 Amendment of s 60E (Chairperson of IIB)

Section 60E, 'IIB'—

omit, insert—

the board

Clause 9 Amendment of s 60F (Deputy chairperson of IIB)

(1) Section 60F, heading, 'IIB'—

omit, insert—

the board

(2) Section 60F(1)—

omit, insert—

(1) The board must appoint a member of the board to be its deputy chairperson.

(3) Section 60F(2)(b) and (c), 'an IIB'—

omit, insert—

a board

Clause 10 Amendment of s 60G (Term of appointment)

Section 60G, 'IIB'—

omit, insert—

the board

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Clause 11 Amendment of s 60H (Disqualification from membership)

Section 60H, 'IIB'—

omit, insert—

the board

Clause 12 Amendment of s 60I (Vacation of office)

(1) Section 60I(1), 'IIB'—

omit, insert—

the board

(2) Section 60I(1)(c) and (d), 'IIB's'—

omit, insert—

the board's

Clause 13 Amendment of s 60K (Conduct of business)

Section 60K, 'IIB'—

omit, insert—

the board

Clause 14 Amendment of s 60L (Times and places of meetings)

(1) Section 60L(1), 'IIB's'—

omit, insert—

The board's

(2) Section 60L(2), 'IIB'—

omit, insert—

the board

Clause 15 Amendment of s 60M (Quorum)

Section 60M, 'IIB'—

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omit, insert—

the board

Clause 16 Amendment of s 60N (Presiding at meetings)

(1) Section 60N(1), 'IIB'—

omit, insert—

the board

(2) Section 60N(2) and (3), 'an IIB'—

omit, insert—

a board

Clause 17 Amendment of s 60O (Conduct of meetings)

(1) Section 60O(1) and (5), 'an IIB'—

omit, insert—

a board

(2) Section 60O(4), 'IIB'—

omit, insert—

The board

(3) Section 60O(6)—

omit, insert—

(6) A resolution is validly made by the board even if it is not passed at a board meeting if—

(a) a majority of the board members gives written agreement to the resolution; and

(b) notice of the resolution is given under procedures approved by the board.

Clause 18 Amendment of s 60P (Minutes)

(1) Section 60P(1), 'IIB must'—

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omit, insert—

The board must

(2) Section 60P(1)(b) and (2), 'an IIB'—

omit, insert—

a board

(3) Section 60P(3), 'IIB'—

omit, insert—

the board

Clause 19 Amendment of s 60Q (Disclosure of interests)

(1) Section 60Q(1), (2) and (6)(a), 'an IIB'—

omit, insert—

a board

(2) Section 60Q(1)(a), (3), (4) and (5)(a), 'IIB'—

omit, insert—

the board

(3) Section 60Q(7), 'IIB's'—

omit, insert—

the board's

Clause 20 Insertion of new pt 7A, div 3 hdg

Part 7A, after section 60Q—

insert—

Division 3 Chief executive officer

Clause 21 Replacement of ss 60R and 60S

Sections 60R and 60S

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omit, insert—

60R Chief executive officer

(1) Community Enterprise Queensland must have a chief executive officer.

(2) Subject to any direction given by the Minister, the board is to appoint the chief executive officer.

(3) The chief executive officer—

(a) is an employee of Community Enterprise Queensland; and

(b) is appointed under this Act and not under the *Public Service Act 2008*.

60RA Role of chief executive officer

(1) The chief executive officer is responsible for managing the day-to-day operations of Community Enterprise Queensland.

(2) In carrying out the chief executive officer's responsibilities, the chief executive officer must act in accordance with the strategies and policies decided by the board under section 60DA(2)(a).

60RB Disqualification as chief executive officer

A person is disqualified from becoming, or continuing as, the chief executive officer if the person—

(a) has a conviction, other than a spent conviction, for an indictable offence; or

(b) is an insolvent under administration under the Corporations Act, section 9; or

(c) is disqualified from managing corporations under the Corporations Act, part 2D.6; or

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(d) has been, or is, convicted of an offence against this Act.

60RC Chief executive officer not to engage in other paid employment

The chief executive officer must not, without the board's prior written approval—

(a) engage in paid employment outside the responsibilities of the office of the chief executive officer; or

(b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

60S Conflicts of interest

(1) If the chief executive officer has an interest that conflicts, or may conflict, with the discharge of the officer's responsibilities, the officer—

(a) must disclose the nature of the interest and conflict to the board as soon as practicable after the relevant facts come to the officer's knowledge; and

(b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the board.

(2) The board may direct the chief executive officer to resolve a conflict or possible conflict between an interest of the officer and the officer's duties.

Clause 22 Insertion of new pt 7A, div 4 hdg

Part 7A, before section 60T—

insert—

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Division 4 Miscellaneous

Clause 23 Amendment of s 60T (IIB is statutory body)

(1) Section 60T, 'IIB'—

omit, insert—

Community Enterprise Queensland

(2) Section 60T(2), 'IIB's'—

omit, insert—

Community Enterprise Queensland's

Clause 24 Amendment of s 60U (Audit of IIB's accounts)

(1) Section 60U, heading, 'IIB's'—

omit, insert—

Community Enterprise Queensland's

(2) Section 60U(1) and (4)(b), 'IIB's'—

omit, insert—

Community Enterprise Queensland's

(3) Section 60U(2) and (3), 'IIB'—

omit, insert—

Community Enterprise Queensland

(4) Section 60U(5), (6) and (7), 'IIB's'—

omit, insert—

the board's

Clause 25 Amendment of s 60V (Annual report by IIB)

(1) Section 60V, 'IIB'—

omit, insert—

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(2) Section 60V, '31 January'—

omit, insert—

30 June

Clause 26 Insertion of new ss 60VA and 60VB

Part 7A, division 4, as inserted by this part—

insert—

60VA Board to report on functions, finances and operations

(1) The Minister may, by written notice, ask the board to give a report to the Minister about the performance of Community Enterprise Queensland's functions or a matter relating to its finances or operations.

(2) The board must—

(a) comply with a request made by the Minister under subsection (1); and

(b) give the report in the way, and at the time, required by the Minister.

60VB Minister's power to give directions to board

(1) The Minister may give the board a written direction about—

(a) the performance of Community Enterprise Queensland's functions or the exercise of its powers; or

(b) another matter relating to the performance of the board's role.

(2) The Minister may give the board a written direction under subsection (1) only if the Minister is satisfied it is necessary to give the direction in

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the public interest.

(3) The board must comply with the direction.

(4) Before giving a direction under subsection (1), the Minister must consult with the board.

(5) If the board is given a direction under subsection (1), the board must publish the direction—

(a) in a publicly accessible way as soon as practicable after receiving the direction; and

(b) in Community Enterprise Queensland's next annual report under section 60V.

Clause 27 Amendment of s 60W (Administrator may replace IIB members)

(1) Section 60W, heading, 'IIB'—

omit, insert—

board

(2) Section 60W(1), (4) and (5), 'IIB'—

omit, insert—

the board

(3) Section 60W(2)(b), 'IIB'—

omit, insert—

Community Enterprise Queensland

(4) Section 60W(3), 'IIB's'—

omit, insert—

Community Enterprise Queensland's

Clause 28 Omission of s 60X (Applying profits of IIB)

Section 60X—

omit.

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Clause 29 Replacement of s 60Y (Applying assets of IIB)

Section 60Y—

omit, insert—

60Y Applying operating surplus and assets of Community Enterprise Queensland

(1) This section applies in relation to Community Enterprise Queensland's function of applying its operating surplus and assets.

(2) In applying the operating surplus and assets, Community Enterprise Queensland must have regard to the following priorities—

(a) ensuring adequate provision is made for future capital expenditure, and ongoing maintenance and capital replacement expenses; and

(b) adhering to any pricing policy for food, drinks and household items; and

(c) providing support for initiatives relating to community wellbeing, health and safety; and

(d) providing support for other programs as directed by the Minister.

(3) Subsections (4) to (7) state additional requirements that apply for the application of an asset that is an operating business.

(4) Community Enterprise Queensland may, on the written request of the relevant local government representative, enter into arrangements with 1 or more residents, or an incorporated entity controlled by residents, to transfer to the residents or entity an operating business of Community Enterprise Queensland located at the place where the residents reside or the entity is located.

(5) In deciding whether to enter into the

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arrangements, Community Enterprise Queensland must have regard to—

(a) the resources, business capability and experience of the residents or incorporated entity; and

(b) the impact the arrangements for transfer is likely to have on the services Community Enterprise Queensland provides generally to residents of the communities in which Community Enterprise Queensland performs its functions.

(6) Community Enterprise Queensland must not enter into arrangements under subsection (4) unless the Minister and the Treasurer have, by written notice, approved—

(a) generally, the transfer of the business to the residents or entity; and

(b) the particular terms of the arrangements.

(7) For subsection (6), if the Minister is the Treasurer, the approvals need only be given by the Treasurer.

(8) In this section—

arrangements includes contracts and transactions.

pricing policy, for food, drinks and household items, means a policy, decided by the board under section 60DA(2), about the pricing of food, drinks and household items provided by Community Enterprise Queensland

relevant local government representative means a councillor for the division of the local government area in which the operating business is located.

Treasurer means the Minister administering the *Financial Accountability Act 2009*.

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Clause 30 Insertion of new s 60Z

Part 7A, division 4, as inserted by this part—

insert—

60Z Conflicts of interest of employees

(1) If an employee has an interest that conflicts or may conflict with the discharge of the employee's duties, the employee—

(a) must disclose the nature of the interest and conflict to the chief executive officer as soon as practicable after the relevant facts come to the employee's knowledge; and

(b) must not take action or further action relating to a matter that is, or may be, affected by the conflict unless authorised by the chief executive officer.

(2) The chief executive officer may direct the employee to resolve a conflict or possible conflict between an interest of the employee and the employee's duties.

(3) In this section—

employee means an employee of Community Enterprise Queensland other than the chief executive officer.

Clause 31 Amendment of s 71 (Regulation-making power)

(1) Section 71(2)(o), 'IIB'—

omit, insert—

the board

(2) Section 71(2)(p), 'IIB'—

omit, insert—

Community Enterprise Queensland

(3) Section 71(2)(q), (r) and (s), 'IIB's'—

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omit, insert—

Community Enterprise Queensland's

Clause 32 Insertion of new pt 12

After section 92—

insert—

Part 12 Transitional provisions for Electricity and Other Legislation Amendment Act 2016

93 Definition for part

In this part—

remaining term, of a person's appointment as a member or the chairperson of IIB, means the period remaining of the term of the person's appointment as a member or the chairperson immediately before the commencement.

94 References to IIB

From the commencement, a reference in an Act or document to IIB is taken to be a reference to Community Enterprise Queensland.

95 Members of IIB continue as board members

(1) This section applies to a person who, immediately before the commencement, holds an appointment as a member of IIB.

(2) On the commencement, the person—

(a) goes out of office as a member of IIB; and

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(b) is taken to be appointed as a member of the board.

(3) The term of the person's appointment as a member of the board is the remaining term of the person's appointment as a member of IIB.

(4) The person is appointed on the same conditions as the conditions of the person's appointment as a member of IIB in effect immediately before the commencement.

(5) This section applies despite section 60DB.

(6) No compensation is payable to a member because of this section.

96 Chairperson of IIB continues as chairperson of board

(1) The person who, immediately before the commencement, was the chairperson of IIB is taken to be appointed as the chairperson of the board under section 60E.

(2) The term of the person's appointment as chairperson of the board is the remaining term of the person's appointment as chairperson of IIB.

97 Deputy chairperson of IIB continues as deputy chairperson of board

The person who, immediately before the commencement, was the deputy chairperson of IIB is taken to be the deputy chairperson of the board under section 60F.

98 Chief executive officer of IIB continues as chief executive officer

The person who, immediately before the commencement, was the chief executive officer

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of IIB is taken to be the chief executive officer under section 60R.

99 Annual report

(1) Community Enterprise Queensland's full report under section 60V for the period ending 30 June 2017 must include a report of its operations for the period starting on 1 February 2016.

(2) This section applies despite section 60V.

Part 3 Amendment of Electricity Act 1994

Clause 33 Act amended

This part amends the *Electricity Act 1994*.

Clause 34 Amendment of s 259A (Regulation may declare a State electricity entity)

(1) Section 259A(1), from 'the business', first mention—

omit, insert—

the entity is a related group entity.

(2) Section 259A(2), before 'a subsidiary'—

insert—

a GOC or

Clause 35 Replacement of ch 14, pt 2 hdg (Transitional provisions for Electricity Amendment Act 1997, Electricity Amendment Act (No. 2) 1997 and Electricity Amendment Act (No. 3) 1997)

Chapter 14, part 2, heading—

omit, insert—

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Part 2 Transitional provision for Electricity Amendment Act (No. 2) 1997

Clause 36 Amendment, relocation and renumbering of s 299 (Directions to State electricity entities)

(1) Section 299, heading, after 'entities'—

insert—

and related group entities

(2) Section 299(1), after 'entity'—

insert—

or related group entity

(3) Section 299(4), after 'entity'—

insert—

or related group entity

(4) Section 299, as amended under this section—

relocate to chapter 12, part 1 and *renumber* as section 257.

Clause 37 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

related group entity means an entity that is—

(a) a related body corporate, of a State electricity entity, within the meaning of the Corporations Act, section 50; or

(b) a subsidiary of a GOC that is a related body corporate mentioned in paragraph (a).

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Part 4 Amendment of Government Owned Corporations Act 1993

Clause 38 Act amended

This part amends the *Government Owned Corporations Act 1993*.

Clause 39 Insertion of new s 157A

Chapter 4—

insert—

157AApplication of particular provisions

(1) This section applies if the declaration of Energex and Ergon Energy Corporation as GOCs under section 5 is repealed.

(2) The purpose of this section is to provide for the application of particular provisions in relation to Energex, Ergon Energy Corporation and related group entities after the repeal of the declaration.

(3) Sections 156 and 157 apply as if a reference in the sections to a GOC includes Energex and Ergon Energy Corporation.

(4) Each provision of an Act or regulation mentioned in schedule 5 applies as if a reference in the provision to a GOC or government owned corporation includes Energex and Ergon Energy Corporation.

(5) The *Duties Act 2001*, section 390 applies as if the reference in the section to a government entity does not include Energex and Ergon Energy Corporation.

(6) A regulation may prescribe that a stated related group entity is, or is not, included in a reference to a GOC, government owned corporation or

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government entity in a stated provision of a law.

(7) If a regulation prescribes matters under subsection (6), the stated provision of the law applies as if a reference in the provision to a GOC, government owned corporation or government entity includes, or does not include, the stated related group entity.

(8) In this section—

Energex means Energex Limited ACN 078 849 055.

Ergon Energy Corporation means Ergon Energy Corporation Limited ACN 087 646 062.

related group entity means an entity that is—

(a) a related body corporate, of a State electricity entity, within the meaning of the Corporations Act, section 50; or

(b) a subsidiary of a related body corporate mentioned in paragraph (a).

State electricity entity see the *Electricity Act 1994*, schedule 5.

Clause 40 Amendment of s 161 (Transfer of assets, liabilities etc. to GOC or GOC subsidiary)

(1) Section 161, heading, after 'to'—

insert—

or from

(2) Section 161(1)(b), 'else; and'—

omit, insert—

else, including the transfer of an asset or liability—

(i) from a GOC to another GOC, a GOC subsidiary or the State; or

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(ii) from a GOC subsidiary to a GOC, another GOC subsidiary or the State; or

(iii) from the State to a GOC or GOC subsidiary; and

(3) Section 161(1)—

insert—

(da) for an instrument that applies, or is taken to apply, to a GOC subsidiary—whether a reference in the instrument to a shareholding Minister is taken to be a reference to a shareholding Minister of the parent company of the GOC subsidiary;

(4) Section 161(1)(da) to (f)—

renumber as section 161(1)(e) to (g).

(5) Section 161(2), before paragraph (a)—

insert—

(aa) a regulation under subsection (1) may make provision about accounting treatment in relation to a matter mentioned in the subsection; and

(ab) a regulation under subsection (1)(b) may make provision about anything necessary or incidental to the transfer of the assets or liabilities, including by providing that the transferee becomes a party to any instrument in substitution for the transferor; and

(6) Section 161(2)(aa) to (b)—

renumber as section 161(2)(a) to (d).

(7) Section 161—

insert—

(3) In this section—

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parent company, of a GOC subsidiary, means the GOC for which the GOC subsidiary is a subsidiary under this Act.

Clause 41 Insertion of new s 162A

Chapter 4—

insert—

162A Effect of GOC repeal regulation on legal relationships

(1) This section applies if a regulation repeals the declaration of an entity as a GOC.

(2) The repeal of the declaration—

(a) does not make the entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; and

(b) does not make the entity breach any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; and

(c) is not taken to fulfil a condition that—

(i) allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or

(ii) allows a person to enforce an obligation contained in an instrument or requires a person to perform an obligation contained in an instrument; or

(iii) requires any money to be paid before its stated maturity; and

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(d) does not release a surety or other obligee, wholly or partly, from an obligation.

(3) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something because of the repeal, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.

(4) If, apart from this subsection, giving notice to a person would be necessary to do something because of the repeal, the notice is taken to have been given.

(5) This section applies despite anything in an instrument.

Clause 42 Insertion of new sch 5

After schedule 4—

insert—

Schedule 5 Application of provisions in relation to Energex or Ergon Energy Corporation

section 157A(4)

Act or regulation	Section
Anti-Discrimination Act 1991	section 106B(3), definition *government entity*
Building Act 1975	section 116(4), definition *government building*

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Act or regulation	**Section**
Criminal Code	section 469A(5), definition *government entity*
Duties Act 2001	schedule 6, definition *new right*
Economic Development Act 2012	sections 42B(c)(i), 52(1) and (2), and 58(2)(b)(i) schedule 1, definition *government entity*
Environmental Protection Regulation 2008	section 106(4), definition *State or local government entity*
Food Act 2006	section 3(2)
Land Regulation 2009	section 30(3), definition *government leasing entity* section 37C(c)
Land Valuation Act 2010	sections 53(3)(b) and 62(1)(b) schedule, definition *owner* schedule, definition *subdivide*
Neighbourhood Disputes (Dividing Fences and Trees) Act 2011	schedule, definition *government authority*
Public Sector Ethics Act 1994	schedule, definition *public sector entity*

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Act or regulation	Section
Public Interest Disclosure Act 2010	sections 6(2)(b) and 19 section 26, definition *public sector entity* section 43(3), definition *public sector entity* section 46(4), definition *public officer* section 57, definition *public sector entity* section 66(3), definition *proper authority* section 71(4), definition *public sector entity*
Queensland Building and Construction Commission Regulation 2003	schedule 1AA, section 8(2), definition *agency of the State*
Queensland Competition Authority Act 1997	schedule 2, definition *government agency*
Queensland Reconstruction Authority Act 2011	sections 65(b)(i) and 102(1) and (2) section 127(5), definition *relevant entity* schedule, definition *government entity*
Sustainable Planning Act 2009	schedule 3, definition *public sector entity*

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Part 5 Amendment of Judicial Review Act 1991

Clause 43 Act amended

This part amends the *Judicial Review Act 1991*.

Clause 44 Amendment of s 18A (Application of Act to GOCs and rail government entities)

(1) Section 18A, heading, 'and rail government entities'—

omit, insert—

, rail government entities and State electricity entities

(2) Section 18A—

insert—

(c) a decision of a State electricity entity within the meaning of the *Electricity Act 1994* to the extent provided under section 256 of that Act.

Clause 45 Amendment of sch 6 (Application of Act to GOCs)

Schedule 6, item 3—

omit.

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