

Energy and Water Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the *Energy and Water Legislation Amendment Bill 2013*.

Policy objectives and the reasons for them

The objectives of the *Energy and Water Legislation Amendment Bill 2013* are to:

1. amend the *Electricity Act 1994* to cease the Queensland Gas Scheme (the Gas Scheme) as at 31 December 2013 and make consequential amendments to the *Energy and Water Ombudsman Act 2006*;
2. repeal the *Clean Energy Act 2008* to cease the Smart Energy Savings Program (SESP) immediately; and
3. amend the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to add Noosa Shire Council to the list of participating councils for the Northern SEQ Distributor-Retailer Authority from 1 January 2014.

The Queensland government announced its decision to close the Gas Scheme and the SESP on 8 March 2013 to cut red tape from the State's energy sector.

Queensland Gas Scheme

In 2012, the Queensland government decided to cease the Gas Scheme and the SESP. The aim is to reduce the administrative burden and complexity for government and private industry, decrease pressure on electricity costs to consumers and remove programs duplicated by the Commonwealth government's carbon pricing mechanism (CPM).

To achieve its objectives, the *Energy and Water Legislation Amendment Bill 2013* will cease the Gas Scheme, make consequential amendments and provide transitional provisions to allow for the administrative closure of the Scheme.

Smart Energy Savings Program

The SESP was intended to encourage firms to understand their energy use and identify and implement cost-effective energy management strategies. However, in the current policy and regulatory context, there are sufficient drivers for businesses to undertake energy management activities. The *Energy and Water Legislation Amendment Bill 2013* will cease all requirements under the SESP.

Transfer of water and sewerage services for Noosa Shire Council

The deamalgamation of Noosa from the Sunshine Coast Regional Council will take effect on 1 January 2014. Unitywater, the Northern SEQ Distributor-Retailer Authority, will continue to provide the Noosa area with water and sewerage services. In order for this to occur the *Energy and Water Legislation Amendment Bill 2013* will add the new Noosa Shire Council to the list of participating councils for Unitywater from 1 January 2014. Currently Unitywater comprises the Sunshine Coast Regional Council and the Moreton Bay Regional Council.

Achievement of policy objectives

The *Energy and Water Legislation Amendment Bill 2013* supports the government's policy of cutting red tape and regulation by amending the *Electricity Act 1994* and the *Energy and Water Ombudsman Act 2006*, and repealing the *Clean Energy Act 2008*. The repeal of the *Clean Energy Act 2008* and transitional provisions and legislative amendments to the *Electricity Act 1994* and the *Energy and Water Ombudsman Act 2006*, proposed in this Bill meet the government's commitment to reduce red tape impacts on business and the community.

To achieve its objectives, the *Energy and Water Legislation Amendment Bill 2013* will:

- cease the Gas Scheme's operation on 31 December 2013 by amending the *Electricity Act 2006* and making consequential amendments to the *Energy and Water Ombudsman Act 2006*. Transitional provisions have been included to ensure:
 - Gas Scheme participants continue to comply with their Scheme obligations for the 2013 liable year; and
 - the government can continue to carry out its monitoring and enforcement powers under the Gas Scheme for the 2013 liable year.
- cease the SESP on assent of the Bill by repealing the *Clean Energy Act 2008*. Transitional provisions have been included to ensure that all active proceedings and reviews cease following assent of the Bill.
- facilitate the transfer of water and sewerage services to the new Noosa Shire Council by making it a participant in Unitywater upon deamalgamation on 1 January 2014.

Queensland Gas Scheme

The proposed amendments to the *Electricity Act 1994* clarify that 2013 will be the final liable year for the Gas Scheme. Further, the proposed amendments expressly state that no annual fees will be charged for the 2014 calendar year.

The Gas Scheme will operate with normal administration procedures for the 2013 liable year, with appropriate monitoring and enforcement powers remaining in place until 30 June 2014. This will ensure Gas Scheme participants comply with their legislative commitments for the 2013 liable year.

Part (pt) 3 of the *Energy and Water Legislation Amendment Bill 2013* amends section 19(a) by removing reference to chapter 5A of the *Electricity Act 1994*.

Pt 9 of the *Electricity Act 1994* will be amended to include transitional provisions to allow for the expiry of the Gas Scheme.

The Gas Scheme will expire on 30 June 2014. Beyond this date, all relevant registrations, accreditations and exemptions will expire. Similarly, all unexpired Gas Electricity Certificates (GECs) will expire on 30 June 2014. The amendments make it clear that GECs hold no value beyond 30 June 2014.

The continued application of the Gas Scheme in its present form, combined with the effect of the CPM, in relation to the use of gas-fired electricity generation, would result in an unnecessary duplication of costs to Queensland's electricity providers, which would likely be passed on to consumers. Consistent with the platform of red tape reduction the government decided to cease the Gas Scheme and amend its enabling legislation, the *Electricity Act 2006*.

Smart Energy Savings Program

Consistent with the platform of red tape reduction, the government decided to cease the SESP and repeal its enabling legislation, the *Clean Energy Act 2008*.

Transfer of water and sewerage services for Noosa Shire Council

The proposed amendment to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* enables the new Noosa Shire Council to become a participating local government in the retail-distribution business Unitywater, which will then be able to continue to supply water and sewerage services to the area.

Alternative ways of achieving policy objectives

Amendments to the *Electricity Act 1994*

Queensland Gas Scheme

There are no alternative ways to implement the government's decision to cease the Gas Scheme.

Repeal of the *Clean Energy Act 2008*

Smart Energy Savings Program

There are no alternative ways to implement the government's decision to cease the SESP. Legislative amendment and repeal of the *Clean Energy Act 2008* is the only means to effect the cessation of the SESP.

Amendment to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

Transfer of water and sewerage services for Noosa Shire Council

There are no other simple ways to ensure Unitywater continues to provide the Noosa Shire Council area with services.

Estimated cost for government implementation

Queensland Gas Scheme

The State government will incur no additional cost to close the Gas Scheme. Any costs associated with the administrative closure of the Scheme will be funded through existing resources. Cessation of the Gas Scheme will remove the costs associated with compliance for government, making resources available for other government business.

Smart Energy Savings Program

Cessation of the SESP will remove the costs associated with SESP compliance for government, making resources available for other government business.

Transfer of water and sewerage services for Noosa Shire Council

There is minimal cost to government for the implementation of this proposal and no cost following transfer.

Consistency with fundamental legislative principles

One possible fundamental legislative principle (FLP) issue has been identified regarding the insertion of new section 135JUA into the *Electricity Act 1994* which states that no compensation will be provided to Gas Scheme participants affected by the Scheme's closure.

The government has undertaken a number of actions to mitigate the possible negative effects of the provision precluding compensation.

These government actions include:

- giving participants sufficient actual and legislative notice of the Gas Scheme's closure;
- assisting Gas Scheme participants regarding the necessary changes in their business practices throughout the "transition" period to 30 June 2014;
- consulting with Gas Scheme participants following the Ministerial announcement that the Scheme will cease at 31 December 2013 and during the legislative drafting stage; and
- industry has been "on notice" since 2007 that the Gas Scheme would be either substantially amended or ceased upon the introduction of a Commonwealth scheme imposing a price or tax on carbon emissions.

In relation to the repeal of the *Clean Energy Act 2008* and the amendment of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *Energy and Water Legislation Amendment Bill 2013* is generally consistent with FLPs.

Consultation

Queensland Gas Scheme

The announcement of the cessation of the Gas Scheme and SESP was made on 8 March 2013. The proposed transitional provisions and legislative and consequential amendments were made available for public consultation via an exposure draft of the *Energy and Water Legislation Amendment Bill 2013* along with a summary of proposed legislative changes.

Smart Energy Savings Program

No consultation was undertaken to cease the SESP. Advice was circulated to SESP participants in July 2012 that the program was undergoing review and that participants' obligations would not be enforced during this period. Not one submission was received by the Department of Energy and Water Supply seeking the continuation of the SESP following the circulation of this advice.

Transfer of water and sewerage services for Noosa Shire Council

This is a minor consequential amendment to facilitate the voluntary deamalgamation of Noosa from the Sunshine Coast Regional Council with regard to the continued provision of water and sewerage services by the existing provider. Unitywater has been consulted on the process to achieve the transition.

Consistency with legislation of other jurisdictions

Not applicable. The *Energy and Water Legislation Amendment Bill 2013* is specific to the State of Queensland, and is not uniform with, or complementary to, legislation of the Commonwealth or another state.

Notes On Provisions

Part 1 Preliminary

Short title

Clause 1 establishes the short title of the Act as the *Energy and Water Legislation Amendment Act 2013*.

Commencement

Clause 2 states that pt 4 commences on 1 January 2014 and that sections 4, 34 (other than to the extent it inserts pt 15, divisions 1 and 2); 36 and 37, and pt 3 of the Act are intended to commence on 1 July 2014. All other sections commence on assent.

Part 2 Amendment of Electricity Act 1994

Act amended

Clause 3 provides that pt 2 amends the *Electricity Act 1994*.

Amendment of section 117 (Resolution of certain disputes between electricity entities or between electricity entities and public entities)

Clause 4 amends section 117 to insert wording ‘or to a dispute about what is a chargeable amount under section 309’ in section 117(1A) to clarify that section 117 does not apply to disputes that are regulated by the Queensland Competition Authority or under the National Electricity Rules or to a dispute about what is a chargeable amount under section 309.

Amendment of section 135AA (How main purposes are achieved)

Clause 5 amends section 135AA by omitting ‘2019’ from section 135AA (3) (c) and inserting ‘2013’ to clarify that the final liable year of the Gas Scheme is 2013.

Amendment of section 135AL (Who may apply for accreditation)

Clause 6 amends section 135AL by inserting ‘before 1 October 2013’ in section 135AL(1) to clarify that applications to become an accredited generator received after 30 September 2013 will not be considered. This amendment has been made to allow for the administrative closure of the Gas Scheme.

Amendment of section 135AR (Term of accreditation)

Clause 7 amends section 135AR by omitting ‘31 December 2020’ from section 135AR and inserting ‘30 June 2014’. To allow for the administrative closure of the Gas Scheme, accreditation will continue to be in force until 30 June 2014.

Amendment of section 135AT (Right to create, mortgage and transfer GEC)

Clause 8 (1) amends section 135AT by omitting '31 December 2019' from section 135AT(1)(a)(ii) and inserting '30 April 2014' to provide clarity to accredited generators that GECs cannot be created after 30 April 2014.

Clause 8 (2) amends section 135AT by omitting '31 December 2020' from section 135AT(1)(b) and inserting '24 June 2014' to provide clarity that accredited generators cannot mortgage or transfer GECs for which they have ownership of after 24 June 2014.

Amendment of section 135B (Periodic GEC reviews)

Clause 9 amends section 135B by inserting a note in section 135B(1) to ensure accredited generators are aware that electricity generated after midnight 31 December 2013 will not be eligible gas-fired electricity for GEC creation.

Amendment of section 135BE (Annual fee and return)

Clause 10 amends section 135BE by inserting a new section 135BE(1A) to clarify that accredited generators will not be required to pay an annual fee for 2014 despite their accreditation continuing to be in force until 30 June 2014.

Amendment of section 135BK (Applying for transfer)

Clause 11 amends section 135BK by inserting 'before 1 January 2014' in section 135BK(1) to clarify that accredited generators cannot apply to the regulator to transfer accreditation after 31 December 2013, to allow for the administrative closure of the Gas Scheme.

Amendment of section 135BP (Applying for amendment)

Clause 12 amends section 135BP by inserting 'before 1 January 2014' in section 135BP(1) to clarify that any applications by an accredited generator to the regulator to amend the accreditation must occur before 1 January 2014.

Amendment of section 135CA (Operation of division 1)

Clause 13 amends section 135CA by inserting a new section 135CA(1A) to provide clarity that electricity generated from 1 January 2014 will not be eligible gas-fired electricity.

Amendment of section 135DG (Time limitation on creation right)

Clause 14 amends section 135DG by inserting a new section 135DG(2) to provide clarity that a GEC can only be created after 30 April 2014 with the regulator's approval under section 135DNA.

Division 1A Creation of GECs in particular circumstances

Insertion of new chapter 5A, pt 4, division 1A

135DNA Regulator may approve creation of GECs by particular accredited generators

Clause 15 inserts new chapter 5A, pt 4, division 1A, section 135DNA to allow accredited generators with eligible electricity to create GECs to meet their 2013 GEC liability if they have not surrendered the required number before 3 June 2014. Applications to the regulator will need to be in writing and given to the regulator before 3 June 2014. The regulator must, before 10 June 2014, decide whether to grant or refuse the application and give the generator notice of the decision.

Replacement of section 135DS (Automatic expiry)

Clause 16 replaces the old section 135DS Automatic Expiry with the new section 135DS expiry to provide clarification that a GEC expires either on the last day of the second year after the year the GEC was created or on 30 June 2014 whichever is the earlier date.

Amendment of section 135DU (Conditions for transfer)

Clause 17 amends section 135DU by inserting 'before 24 June 2014' to provide clarity to registered owners of GECs that they can only transfer GECs up to 24 June 2014.

Amendment of 135EP (Liability)

Clause 18 amends section 135EP and inserts 'to 2013' in section 135EP(1) to clarify that 2013 will be the final year that a liable person has an annual liability to the regulator.

Amendment of section 135ET (How and when liability must be met)

Clause 19 amends section 135ET by inserting 'to 2013' in section 135ET(1) to clarify that the final year that a liable person has an annual liability is 2013.

Amendment of section 135FA (Shortfall charge)

Clause 20 amends section 135FA(1)(h) by omitting '2019' and inserting '2013' to provide clarity that 2013 will be the last liable year of the Gas Scheme and therefore the last year that the shortfall charge can be charged or will be relevant.

Amendment of section 135FD (Self-assessment report)

Clause 21 amends section 135FD(1) by inserting 'to 2014' to provide clarity to a liable person that 2014 will be the last year they are required to give the regulator a self-assessment report.

Amendment of section 135GJ (Making application)

Clause 22 amends section 135GJ(1) by inserting ‘before 1 October 2013’ to clarify that applications by interested persons for a State development exemption received after 30 September 2013 will not be considered. This amendment has been made to allow for the administrative closure of the Gas Scheme.

Amendment of section 135GO (Amendment of applicant’s supply schedule)

Clause 23 amends section 135GO(1) by inserting ‘before 1 January 2014’ to clarify that if a State development exemption holder wishes to amend its supply schedule, this must occur in writing to the regulator before 1 January 2014.

Amendment of section 135GS (Making application)

Clause 24 amends section 135GS(1) by inserting ‘before 1 October 2013’ to clarify that applications for renewable energy exemptions received after 30 September 2013 will not be considered.

Amendment of section 135H (Making application)

Clause 25 amends section 135H(1) by inserting ‘before 1 October 2013’ to clarify that applications for a liable load exemption by interested persons for an electricity load (used for an auxiliary load for a power station) received after 30 September 2013 will not be considered.

Amendment of section 135HF (Annual fee and exemption compliance report)

Clause 26 amends section 135HF by inserting new section 135HF(2A) to clarify that Gas Scheme participants are not required to pay an annual fee for 2014.

Amendment of section 135HH (Applying for amendment)

Clause 27 amends section 135HH(1) by omitting ‘may, in the approved form, apply’ and inserting ‘may, before 1 January 2014, apply in the approved form’ to clarify that applications to amend a liable load exemption by interested persons with an exempt load received after 31 December 2013 will not be considered.

Amendment of section 135I (Applying for registration)

Clause 28 amends section 135I(1) by omitting ‘may, in the approved form, apply’ and inserting ‘may, before 1 January 2014, apply in the approved form’ to clarify that applications to the regulator to be registered as a Gas Scheme participant received after 31 December 2013 will not be considered.

Amendment of section 135IB (Term of registration)

Clause 29 amends section 135IB(3) by omitting ‘31 December 2020’ and inserting ‘30 June 2014’ to ensure Gas Scheme participants are aware that registration as a scheme participant will continue until 30 June 2014 to allow for the administrative closure of the Scheme.

Amendment of section 135IC (Annual fee for particular scheme participants)

Clause 30 amends section 135IC by inserting section 135IC(3) to clarify that scheme participants are not required to pay an annual fee for 2014.

Insertion of new section 135JUA (No compensation etc.)

Clause 31 inserts a new section 135JUA to make it clear to scheme participants that no compensation is payable by the state in relation to the closure of the Scheme.

Amendment of section 135JW (Expiry)

Clause 32 amends section 135JW by omitting ‘31 December 2020’ and inserting ‘30 June 2014’ to provide clarity that chapter 5A expires on 30 June 2014.

Omission of section 135JX (Saving of operation of chapter)

Clause 33 omits section 135JX.

Insertion of new chapter 14, pt 15

Clause 34 inserts new chapter 14, pt 15 Transitional provisions for the *Energy and Water Legislation Amendment Bill 2013*.

Part 15 Transitional provisions for Energy and Water Legislation Amendment Act 2013

Division 1 Repeal of Clean Energy Act 2008

New section 336 - Repeal

New Section 336 repeals the *Clean Energy Act 2008*.

Division 2 Transitional provisions for repeal of Clean Energy Act 2008

New section 337 (Definition for division 2)

New section 337 provides definitions for the new Division 2 Transitional provisions for repeal of the *Clean Energy Act 2008*.

New section 338 (Existing applications)

New section 338 ends any further action proceeding on an existing application from assent of the *Energy and Water Legislation Amendment Bill 2013*.

New section 339 (Offence proceedings)

New section 339 provides and determines that if existing offence proceedings are not finalised by assent of the *Energy and Water Legislation Amendment Bill 2013*, the proceedings end from that date.

New section 340 (No offence proceeding to be started after commencement)

New section 340 provides that no new offence proceedings will be started under the repealed Act after assent of the *Energy and Water Legislation Amendment Bill 2013*.

New section 341 (Existing entitlement to apply for internal review)

New section 341 provides that no applications for an internal review under section 28 of the repealed Act will be considered after assent of the *Energy and Water Legislation Amendment Bill 2013*.

New section 342 (Existing proceedings for external review)

New section 342 provides that if an external review proceeding had been started in the Queensland Civil and Administrative Tribunal (QCAT) prior to assent of the *Energy and Water Legislation Amendment Bill 2013*, but had not been finalised, it ends on that date and no further action is taken, although QCAT can make an order about the costs incurred up to assent of the Bill.

New section 343 (Existing entitlement to apply for external review)

New section 343 provides that a person entitled to apply to QCAT for an external review under section 31 of the repealed Act, who had not done so before assent of the *Energy and Water Legislation Amendment Bill 2013*, cannot apply after that date.

Division 3 Transitional provisions for expiry of chapter 5A

New section 344 (Definitions for division 3)

New section 344 provides definitions for the new division 3 Transitional provisions for the expiry of chapter 5A.

New section 345 (Words have meaning given by former chapter 5A)

New section 345 provides that words defined in the former chapter 5A and used in division 3 of the *Energy and Water Legislation Amendment Bill 2013* have the same meaning as they had under the former chapter.

New section 346 (No compensation etc.)

New section 346 provides clarity to scheme participants that no compensation is payable by the state in relation to the closure of the Scheme.

New section 347 (Saving provision for pre-expiry matters)

New section 347 provides that all rights, privileges, liabilities and obligations imposed under the former chapter 5A and the former schedule 1, pt 2, including offences, continue to apply to a pre expiry matter after expiry.

New section 348 (GECs have no value after expiry)

New section 348 has been provided to remove any doubt that all GECs will expire on 30 June 2014 and will have no value and will be of no effect.

New section 349 (Liability of particular persons for civil penalty)

New Section 349 provides for a person who makes a review application under chapter 10 on any civil liability assessment of the regulator. If the person is unsuccessful in the review application, the person is still liable for the civil penalty under the former section 135EY.

New section 350 (Monitoring)

New Section 350 provides for the monitoring of an auditable person with a matter relevant to the former chapter 5A.

Amendment of schedule 1 (Review of administrative decisions)

Clause 35(1) amends schedule 1, pt 2 by inserting heading ‘Division 1, Decisions under chapter 5A’, pts 2 and 3’.

Clause 35(2) amends schedule 1, pt 2 by inserting ‘Division 2, Decisions under chapter 5A, pts 4 to 6’ before entry for section 135DJ(1).

Clause 35(3) amends schedule 1, pt 2, by inserting ‘Division 3, Decisions under chapter 5A, pts 7 and 8’ before entry for section 135IH(3).

Amendment of schedule 1 (Review of administrative decisions)

Clause 36 amends schedule 1, pt 2 to provide clarity that there will be no review of administrative decisions following the closure of the Gas Scheme.

Amendment of schedule 5 (Dictionary)

Clause 37 amends the dictionary by omitting certain definitions as a result of the expiry of chapter 5A.

Part 3 Amendment of Energy and Water Ombudsman Act 2006

Acts amended

Clause 38 provides that pt 3 amends the *Energy and Water Ombudsman Act 2006*.

Clause 39 provides that pt 3 amends section 19(a) by removing reference to chapter 5A of the *Electricity Act 1994*.

Part 13 Transitional provision for Energy and Water Legislation Amendment Act 2013

Clause 40 inserts new pt 13 ‘Transitional provision for *Energy and Water Legislation Amendment Act 2013*’ after section 112.

New section 113 provides for the continuing prohibition of referrals for dispute under chapter 5A of the *Electricity Act 1994*.

Part 4 Amendments of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Acts amended

Clause 41 provides that pt 4 amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Amendment of section 5 (Who are a distributor-retailer’s *participating local governments*)

Clause 42 amends section 5 by adding ‘Noosa Shire Council’ to the list of participating local governments for the Northern SEQ Distributor-Retailer Authority.