

Electricity and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the *Electricity and Other Legislation Amendment Bill 2016* (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to facilitate the implementation of the merger of the electricity distribution businesses of Energex Limited (Energex) and Ergon Energy Corporation Limited (Ergon) under a Parent Company (Parent Co). A separate energy services business will be established under Parent Co.

In December 2015, the Queensland Government, delivering on an election promise, announced its intention to merge Energex and Ergon into a single business. The merger is to be implemented on 1 July 2016 with the objective of improving network efficiencies.

Energex and Ergon both hold the status of GOCs under the *Government Owned Corporations Act 1993* (GOC Act). Following the implementation of the merger, the current GOC declarations applying to Energex and Ergon will be revoked, and the shares in Energex and Ergon will be transferred from the shareholding Ministers to Parent Co. As a result, Energex and Ergon will become subsidiaries of Parent Co and Parent Co will be a GOC. This will occur pursuant to a separate regulation to be made under the GOC Act.

The establishment of Parent Co, and the transfer of the shares in Energex and Ergon will create the opportunity to bring together the corporate and administrative functions of both Energex and Ergon, with the operational functions of the electricity distribution businesses continuing to be undertaken by Energex and Ergon.

Part 2 of the Bill relates to amendment of *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

The objectives of this part of the Bill are to:

1. Amend Part 7A of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and other Matters) Act 1984* (JLOM Act) to modernise provisions currently applying to the Island Industries Board.
2. Remove the current geographic limitations on the operations of the statutory body and change the name of the body to reflect this change.

3. Amend provisions relating to Board governance, membership, operations and administration, to modernise these provisions and to more readily facilitate operations of the statutory body, given potential changes to its operations as a result of the removal of the geographical limitations.

Current trends in the retail industry have resulted in increasing pressures upon smaller operators, such as the Island Industries Board, resulting in declining terms of trade, escalating costs and pricing pressures. These are exacerbated by the remoteness of the area serviced and the limited incomes of many of its customers, who are dependent upon this organisation for food security.

For a number of years, various options for the future of this entity and for that of the Government-owned and operated Retail Stores, have been investigated, but the risks to communities (including risks to food security); possible future costs to Government attendant upon other organisational models; and the unattractiveness of remote and rural areas to more commercial operators, have mitigated against the development of an alternative viable model.

Consequently, the current approach, which strengthens governance; provides the opportunity for enhanced Ministerial oversight; strengthens administrative arrangements; and enhances the organisation's ability to respond to commercial opportunities which may emerge outside its current area of operations, has been identified as the most appropriate way by which to address current pressures and mitigate risks and possible future costs to Government.

Achievement of policy objectives

To achieve the policy objectives, the Bill will make consequential amendments to various Acts to ensure that Energex and Ergon remain subject to the same level of regulation following the merger. The consequential amendments are necessary as Energex and Ergon are currently GOCs. However, post merger they will not be GOCs and instead will be GOC subsidiaries. The amendments ensure that any regulations that applied to Energex and Ergon when they were GOCs, will continue to apply to Energex and Ergon once they are no longer GOCs.

Further minor and clarifying general amendments are also required to be made to the GOC Act to facilitate the merger.

In relation to the amendments to the JLOM Act, Bill will achieve its objective of strengthening governance of the organisation by establishing a board of management with a clearly specified role and by providing for the Minister to request reports and also to give written directions to the organisation on the performance of its functions (with appropriate safeguards).

The Bill will further strengthen governance arrangements of the corporate body by clearly specifying its functions and powers and the role of the board of management. This distinction results in a number of consequential changes to the legislation contained in this Bill to ensure that these provisions are linked to the functions and powers of the organisation or to the role and responsibilities of the board of management.

The Bill will also achieve its objective of removing geographic limitations on the body's operations by removing current provisions limiting it to the Torres Strait and Northern Peninsula areas, enabling it to conduct business outside its current operational area, should this be dictated by sound business planning.

As a result of the removal of these limitations, the name of the organisation is changed to Community Enterprise Queensland. This results in many minor changes to legislative provisions in this Bill to reflect this change of name.

The Bill will strengthen internal governance and administration by specifying the role of the chief executive officer and the conditions disqualifying him or her from appointment as well those applying to conduct in the role.

The Bill will facilitate ethical conduct on the part of the chief executive officer and staff members by provisions relating to management of conflicts of interest.

The Bill clarifies the priorities for the entity in applying its operating surplus and assets, with priority upon making adequate provision for future capital expenditure and repairs and replacement of assets, and for ensuring adherence to a pricing policy to ensure access to food, drinks and household items essential for a healthy life at a fair price; for providing support for initiatives relating to community wellbeing, health and safety; and for providing support for other programs as directed by the Minister.

To ensure continuity of the organisation's operations, transitional provisions will provide for a seamless transition to the new organisational entity.

Alternative ways of achieving policy objectives

The consequential amendments ensure the intended policy is achieved and to provide greater certainty, as far as practicable, in relation to the applicable regulatory regimes for Energex and Ergon. The consequential amendments cannot be effected by subordinate legislation or through administrative means.

The policy objectives underpinning the Bill can only be achieved by legislative amendment to the JLOM Act.

Estimated cost for government implementation

The implementation costs of the merger of Energex and Ergon have been factored into the savings.

Implementation costs in relation to the JLOM Act amendments will be borne by Community Enterprise Queensland. No substantial Government costs are anticipated as a result of the proposed amendments.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

A Bill should only authorise the amendment of an Act by another Act – *Legislative Standards Act 1992, section 4(4)(c)*

Clause 39 infringes the fundamental legislative principle which provides that a Bill should only authorise the amendment of an Act by another Act. New section 157A refers to a schedule of Acts which are to be amended to specifically apply to Energex and Ergon. It also provides that a regulation may provide for the amendment of additional Acts or Regulations in relation to their application to Parent Co, Energex, Ergon and other entities of the Parent Co corporate group.

Energex and Ergon carry out an essential service to the community. It is therefore crucial that their day to day business operations are not impacted by the restructure. The power to make a regulation to add to the list in the Bill is very limited. It will only apply to Acts which are necessary for the businesses to continue to operate as at present and to entities within the Parent Co corporate group. The flexibility provided by the regulation is necessary given that the precise functions and structure of Parent Co group entities are yet to be finalised. If this regulation making power is proposed to be used, the relevant department would be consulted to ensure that the amendment fits within the policy of the relevant provision.

The Bill should not breach the fundamental legislative principle of potentially affecting the rights and liberties of third parties without providing them with an opportunity to express a view – *Legislative Standards Act section 4(3)*.

Clause 41 raises a fundamental legislative principle of potentially affecting the rights and liberties of third parties without providing them with an opportunity to express a view. Clause 41 of the Bill inserts a new section 162A into the GOC Act which relates to the repeal of an entity as a GOC. The section protects the entity from liability where a regulation repealing the declaration of the entity as a GOC is passed. Clause 41 is necessary to ensure that the State can undertake restructures within the GOC sector, including through interposing a new parent company between GOCs and their shareholding Ministers, without interfering with the entities' existing contractual rights and obligations. The provision is limited in its application to the repeal of an entity as a GOC.

Legislation should be consistent with the principles of natural justice - *Legislative Standards Act 1992 section 4 (3) (b)*.

Clause 21 sections 60RB, 60RC and 60S of the Bill potentially breach the principle of natural justice that a decision should not be made that will deprive a person of some right, interest or legitimate expectation of a benefit without the person being given an adequate opportunity to be heard by the decision-maker.

This arises because Clause 32 section 98 (transitional provision) provides that the chief executive officer, immediately before the commencement of the legislative changes contained in the Bill, continues as chief executive officer.

- Section 60RB provides for disqualification from becoming or continuing as a chief executive officer as a result of a conviction for an indictable offence; insolvency under administration; disqualification from managing corporations under Part 2D.6 of the Corporations Act or conviction of an offence against the current Act.

- Section 60RC prohibits the chief executive officer from engaging in other paid employment or actively taking part in the activities of a business or in the management of a corporation carrying on business, without the board's prior written approval.
- Section 60S provides for disclosure of conflicts of interest to the board and may be subject to a direction from the board to resolve the conflict.

As the chief executive officer's original appointment was not subject to the provisions noted above, there is a potential for these provisions to deprive him of the expectation and right of continuing employment under his current contract.

The above issues are those which it would be necessary for a board to consider in making an appointment to the chief executive officer position of an organisation with a multi-million dollar turnover. It has been confirmed that they will not adversely affect the incumbent, as they are currently managed administratively. It is considered, however, that these provisions will apply additional stringency to any future appointment to this position.

Legislation should have sufficient regard to the rights and liberties of individuals, including by—

- making rights and liberties, or obligations, dependent on administrative power only if the administrative power is sufficiently defined and subject to appropriate review; and
- having sufficient regard to Aboriginal tradition and Island custom. *Legislative Standards Act 1992* sections 4(2)(a); (3)(a) and (3)(j)

The Act continues the current Island Industry Board under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* as Community Enterprise Queensland. The amendments in clause 26 include the insertion of new section 60VB into the Act, which gives the Minister power to give the board of management of Community Enterprise Queensland directions about the performance of its functions.

These provisions have been included because this organisation has a vital role in ensuring food security for some the poorest and most remote areas of Queensland. The majority of the population in these locations is of Aboriginal or Torres Strait Islander people. It is vitally important that it conduct its business in an appropriate and financially prudent way.

Currently, there is limited scope for the Minister to intervene in the governance or in the performance of functions of the organisation (with the exception of the drastic step of dismissing the board and appointing an administrator). This is not considered sufficient given the responsibility of the Minister for maintaining overview of its operations and results. Although this organisation is currently in a financially secure state, this has not always been so, requiring large injections of government funding in the past to maintain its operations.

The proposed provision requires that the Minister consult with the board prior to giving a direction; that the Minister be satisfied that any direction so given is in the public interest; that any direction be published in the annual report and also in a publicly accessible way as soon as practicable after receiving the direction. These requirements are intended to ensure that any directions are informed by the views of the board and also are on the public record.

Legislation should have sufficient regard to the rights and liberties of individuals, including by having sufficient regard to Aboriginal tradition and Island custom. *Legislative Standards Act 1992* sections 4 (2)(a); (3)(a) and (3)(j)

Clause 30 section 60Z imposes a duty on employees to disclose and, if so directed, to resolve conflicts of interest. In relation to employees, actual or potential conflicts are required to be disclosed to the chief executive officer who may give directions about resolving the conflict

Although employees were not previously subject to legislative requirements relating to this issue, the nature of, geographic spread and cultural milieu for the operations of this organisation result in conflicts of interest being at risk of arising for employees at every level of this organisation. This provision is intended to provide a platform for Community Enterprise Queensland to develop and provide a training program to assist employees in recognising and managing conflicts of interest that arise.

Consultation

Community

Consultation was undertaken with Energex and Ergon on the implementation of the merger.

Specific consultation with the community regarding the Bill is not considered necessary, as the Bill provides for consequential amendments with the objective of ensuring that Energex and Ergon continue to be subject to the same level of regulation following the implementation of the merger.

Amendment of the *Aboriginal and Torres Strait Islander Communities (Justice Land and other Matters) Act 1984*

Consultation was conducted with the chairperson and chief executive officer of the Island Industries Board on possible changes for inclusion in this Bill.

Government

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel and Government agencies. Government agencies are supportive of the approach and policy direction of the Bill.

Consistency with legislation of other jurisdictions

The Bill 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

Clause 1 provides that, when the Bill is enacted, the Act may be cited as the *Electricity and Other Legislation Amendment Act 2016*.

Clause 2 provides that 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 provides that Part 2 amends the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

Clause 4 amends section 4 (Definitions) of the above Act by (1) omitting the definition *IIB* and (2) inserting definitions of: *board* meaning *the board of management of Community Enterprise Queensland*; *chief executive officer* meaning *an individual appointed by the board under 60R*; *Community Enterprise Queensland* meaning *the entity continued in existence under section 60A as Community Enterprise Queensland* and *IIB* meaning *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 amends section 57(1A) of the above Act by omitting the term *IIB* and inserting *Community Enterprise Queensland*. This is an historical provision that remains in this legislation but has no direct relevance to the current operations of this body corporate.

Clause 6 provides for the replacement of the name *Island Industries Board* in the Part 7A heading and inserts Division 1 providing for establishment, functions and powers of *Community Enterprise Queensland*. This name change is a consequence of the removal of the geographical limitations on the operations of the body corporate in Sections 60B and 60Y of the current Act.

Clause 7 omits sections 60A to 60D and inserts section 60A, which provides in section 60A(1) for the *IIB* to continue in existence as *Community Enterprise Queensland*, (2) as a body corporate able to sue and be sued in its name.

Section 60B provides for the functions of *Community Enterprise Queensland* as a socially beneficial enterprise, acting as a commercial enterprise for the convenience or benefit of residents in communities in which it operates; providing these communities with access to a range of food, drinks and household items essential for a healthy life at a fair price; and applying 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 in which it operates. Examples are provided of ways in which it might achieve improvements in general welfare of these residents.

Section 60C provides for *Community Enterprise Queensland*'s powers, including the powers to contract; deal with property; employ staff and appoint officers; appoint agents and attorneys; engage consultants; charge for, and place conditions on the supply of goods services or information; establish funds to ensure the efficient conduct of its enterprises and

other activities; carry on any business consistent with the performance of its functions and do anything else necessary or convenient to the performance of its functions.

Division 2 The board is inserted and section 60D provides that Community Enterprise Queensland has a board of management.

Section 60DA(1) specifies the role of the board as being responsible for the way in which Community Enterprise Queensland performs its functions and exercises its powers.

Section 60DA(2) provides further information relating to the responsibility in (1) by identifying the board's role in deciding strategies, operational, administrative and financial policies for Community Enterprise Queensland; ensuring its functions are performed and powers exercised properly, effectively and efficiently; ensuring the organisation acts under, and achieves objectives in, its policies; accounting to the Minister for the performance of Community Enterprise Queensland's functions and exercise of its powers and annually reviewing the performance of the chief executive officer.

Section 60DB provides for the appointment of 5 to 10 board members, requiring at least 1 member to be a consumer representative and specifying the requirements for board members to have commercial or management or other skills or experience relevant to the performance of Community Enterprise Queensland.

This section replaces former requirements for a panel of local representative to be nominated by the three local governments in the Torres Strait/Northern Peninsula area. There has been some dissatisfaction by the local governments with the requirements of this provision and a request from one of the local government representatives, currently a member of the board, that the membership provisions be reviewed.

Clause 8 amends section 60E by omitting 'IIB' and inserting the board.

Clause 9 amends section 60F heading by omitting 'IIB' and inserting the board. Omits section 60F (1) and inserts a new (1) requiring the board to appoint a board member to be its deputy chairperson. In section 60F (2) (b) and (c) omits 'an IIB' and inserts 'a board'

Clause 10 omits 'IIB' from section 60G and inserts the board.

Clause 11 omits 'IIB' from section 60H and inserts the board.

Clause 12 in section 60I(1) omits 'IIB' and inserts the board. In section 60I(1)(c) and (d) omits 'IIB's' and inserts the board's.

Clause 13 omits 'IIB' from section 60K and inserts the board.

Clause 14 in section 60L(1) omits 'IIB's' and inserts The board's. In section 60L(2) omits 'IIB' and inserts the board.

Clause 15 omits 'IIB' from section 60M and inserts the board.

Clause 16 in section 60N(1) omits 'IIB' and inserts the board. In section 60N(2) and (3) omits 'an IIB' and inserts a board.

Clause 17 amends sections 60O(1) and (5) by omitting 'an IIB' and inserting a board, amends section 60O(4) by omitting 'IIB' and inserting The board. Omits section 60O(6) and inserts new (6) with provision providing that a resolution, (even if not passed at a board meeting) is valid if it receives the written agreement of a majority of board members and a notice of the resolution is given in accordance with approved board procedures.

Clause 18 omits 'IIB must' from section 60P(1) and inserts The board must. Omits 'an IIB' from Section 60P(1)(b) and Section 60P(2) and inserts a board. Omits 'IIB' from Section 60P3 and inserts the board.

Clause 19 omits 'an IIB' from Section 60Q(1) and (2) and (6)(a) and inserts a board; omits 'IIB' from section Q(1)(a), (3), (4) and (5)(a) and inserts the board; and omits 'IIB's' from section 60Q(7) and inserts the board's.

Clause 20 inserts after Part 7A section 60Q a new Division heading – Division 3 Chief executive officer

Clause 21 omits old sections 60R and 60S and inserts:

New section 60R - Chief executive officer - which requires the position of chief executive officer; appointed by the board (subject to any direction given by the Minister), to be an employee of Community Enterprise Queensland and appointed under this legislation not under *the Public Service Act 2008*.

New section 60RA – Role of chief executive officer – states that the chief executive officer is responsible for managing the day to day operations of Community Enterprise Queensland; and is subject to a requirement that, in fulfilling these responsibilities, this officer is to act in accordance with the board's strategies and policies.

New section 60RB – Disqualification as chief executive officer – specifies the conditions under which a person may not become or continue in this position including; conviction for an indictable offence; insolvent under administration; disqualified from managing corporations under the Corporations Act and conviction of an offence under this Act.

New section 60RC – Chief executive officer not to engage in other paid employment – imposes a requirement upon the chief executive officer not to engage in paid employment outside the responsibilities of this role nor to actively participate in business activities or in management of a corporation in business, without the board's prior written approval.

New section 60S – Conflicts of interest – requires the chief executive officer to disclose any conflicts of interest to the board and empowers the board to direct the chief executive officer to resolve the conflict.

Clause 22 inserts new heading – Division 4 Miscellaneous before section 60T

Clause 23 omits 'IIB' in heading of section 60T and inserts Community Enterprise Queensland; omits 'IIB' from section 60T(1) and inserts Community Enterprise Queensland; and omits 'IIB's' from section 60T(2) and inserts Community Enterprise Queensland's.

Clause 24 in section 60U heading and section 60U(1) and 4(b) omits 'IIB's' and inserts Community Enterprise Queensland's. In section 60U(2) and (3) omits 'IIB' and inserts

Community Enterprise Queensland. In section 60U(5), (6) and (7) omits 'IIB's' and inserts the board's.

Clause 25 in section 60V omits 'IIB' and inserts Community Enterprise Queensland. In Section 60V omits 31 January and inserts 30 June.

Clause 26 inserts new sections.

New section 60VA - Board to report on functions, finances and operations – provides that the Minister may, by written notice, ask the board for a report on the performance of the functions of Community Enterprise Queensland or a matter relating to finances or operations and the board must comply with the request and give the report as required by the Minister.

New section 60VB – Minister's power to give directions to Board - empowers the Minister to give a written direction to the board (after consulting with the board) relating to the performance of the functions of Community Enterprise Queensland or the exercise of its powers, if the Minister is satisfied that the direction is necessary in the public interest. The board is required to comply with a direction so given; with the direction to be published by the board in a publicly accessible way and in Community Enterprise Queensland's next annual report.

Clause 27 in the heading of section 60W, omits 'IIB' and replaces with board. In sections 60W(1), (4) and (5), omits 'IIB' and inserts the board. In section 60W(2)(b) omits 'IIB' and inserts Community Enterprise Queensland. In section 60W(3) omits 'IIB's' and inserts Community Enterprise Queensland's.

Clause 28 omits section 60X - Applying profits of IIB.

Clause 29 omits section 60Y and inserts a new section 6Y Applying operating surplus and assets of Community Enterprise Queensland. This provision relates to the function of applying the operating surplus and assets of Community Enterprise Queensland in section 60B.

Section 60Y (2) provides the priorities to be taken into account when this application occurs, with priority given to ensuring provision for future capital expenditure and ongoing maintenance and capital replacement; adhering to any pricing policy for food, drinks and household items; providing support for community initiatives related to community well-being, health and safety and for other programs as directed by the Minister.

Section 60Y(3), (4) , (5), (6) and (7) specify additional requirements for application of an asset that is an operating business.

Section 60Y (4) provides the procedure for making an application for transfer of an existing business.

Section 60Y(5) provides for the matters to be taken into account by Community Enterprise Queensland in making a decision on these proposed arrangements, including the capacity and resources of the proponents and the impact that the transfer of the business is likely to have on the services provided to residents in other communities where Community Enterprise Queensland operates.

Section 60Y(6) requires the written approval of Minister and the Treasurer for any arrangement for the transfer of a business, including for the specific terms of the proposed transfer.

Section 60Y(7) Provides that if the Minister is the Treasurer, the approval need only be given by the Treasurer.

Section 60Y(8) Provides the dictionary for specific terms applied in this section.

Clause 30 inserts a new section 60Z – Conflicts of interests of employees, which imposes a duty on employees to disclose and, if so directed, to resolve conflicts of interest. In relation to employees, actual or potential conflicts are required to be disclosed to the chief executive officer who may give directions about resolving the conflicts.

Clause 31 omits ‘IIB’ from section 71(2)(o) and inserts the board; omits ‘IIB from section 71(2)(p) and inserts Community Enterprise Queensland; and omits ‘IIB’s’ from section 71(2)(q), (r), and (s) and inserts Community Enterprise Queensland’s.

Clause 32 inserts a new Part 12 – Transitional provisions for Electricity and other Legislation Amendment Act 2016.

Inserts section 93, providing a definition for this section for ‘remaining term’ as meaning the period remaining of the term of a person’s appointment as a member or chairperson of IIB immediately before the commencement of these provisions.

Inserts section 94 stating that from the commencement of these provisions a reference in an Act or document to IIB to be taken as a reference to Community Enterprise Queensland.

Inserts section 95 which provides, despite section 60DB, for current members of the IIB to continue as members of the board of management for the remaining terms of their original appointments, on the same conditions as in effect immediately before the commencement, with no compensation payable to a member because of this section.

Inserts section 96 which provides for the current chairperson of IIB to continue as chairperson of the board, as if appointed under Section 60E for the remaining term of the person’s appointment as chairperson.

Inserts section 97 which provides for the deputy chairperson of the IIB to continue as deputy chairperson of the board under section 60F.

Inserts section 98 which provides for the chief executive officer of IIB to continue in this role as if appointed under section 60R.

Inserts section 99 which provides for the submission of the 2017 annual report (required under section 60V) to include the period 1 February 2016 to 30 June 2017.

Part 3 Amendment of Electricity Act 1994

Clause 33 provides that this part amends the *Electricity Act 1994*.

Clause 34(1) amends section 259A(1) of the *Electricity Act 1994*. Section 256 of the *Electricity Act* provides that the *Judicial Review Act 1991* does not apply to a decision of a State electricity entity made in carrying out its commercial activities or community service obligations. Section 259A(1) provides that a regulation may declare certain entities to be a State electricity entity for the purposes of section 256 of the *Electricity Act*. However, the test set out in this provision is very narrow and would not apply to Parent Co. This clause amends section 259A(1) to enable Parent Co to benefit from the exemption under the *Judicial Review Act*. This is consistent with the current framework applying to GOCs, in which community service obligations and commercial activities of GOCs are exempt from the *Judicial Review Act*.

Clause 34(2) amends section 259A(2) of the *Electricity Act*. Chapter 8 of the *Electricity Regulation 2006* contains general employment provisions relating to the government owned electricity industry and applies to employees of a 'State electricity entity'. Parent Co will not be a 'State electricity entity'. As Parent Co will be engaging employees, clause 259A(2) is amended to apply Chapter 8 to Parent Co. Section 259A(2) enables a subsidiary of a GOC to be declared a State electricity entity. This clause also amends section 259A(2) to enable Parent Co to be declared a State electricity entity for the purposes of the employment provisions.

Clause 35 replaces Chapter 14, part 2 heading.

Clause 36 amends section 299 of the *Electricity Act*. This section requires a 'State electricity entity' to comply with a direction given to it by its responsible Ministers. This section will not apply to Parent Co. Accordingly, this clause expands the section to apply to a 'related group entity' of a State electricity entity. This clause also relocates section 299 to Chapter 12, part 1 of the *Electricity Act*.

Clause 37 amends the dictionary in schedule 5 to include a definition for 'related group entity'. This definition incorporates the definition of 'subsidiary' as used in the *GOC Act*, which includes declared subsidiaries.

Part 4 Amendment of Government Owned Corporations Act 1993

Clause 38 provides that this part amends the *Government Owned Corporations Act 1993* (GOC Act).

Clause 39 inserts new section 157A.

Section 157A(1) provides that this section applies if the declaration of Energex and Ergon as GOCs under section 5 is repealed.

Section 157A(2) provides that particular provisions will continue to apply to Energex and Ergon after their GOC status has been repealed.

Section 157A(3) amends section 156 of the *GOC Act* to ensure that the *Crime and Corruption Act 2001* continues to apply to Energex and Ergon post merger. It also amends section 157 of the *GOC Act* to ensure that the exemption in the *Ombudsman Act 2001* for GOCs continues to apply to Energex and Ergon post merger.

Section 157A(4) provides that each provision of an Act or regulation mentioned in Schedule 5 applies as if a reference to 'GOC' in that provision includes a reference to Energex or Ergon.

Section 157A(5) provides that the *Duties Act 2001*, section 390 applies as if a reference to 'government entity' in that section excludes Energex and Ergon.

Section 157A(6) provides that 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 government entity in a stated provision of a law.

Section 157A(7) provides that if a regulation prescribes matters under section 157A(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.

Section 157A(8) includes a definition of Energex, Ergon, related group entity and State electricity entity.

Clause 40 amends section 161 of the GOC Act.

Section 161(1)(b) makes it clear that the State's shares in Energex and Ergon may be transferred from the State to Parent Co.

Section 161(1)(da) provides a regulation may provide whether, for an instrument that applies or is taken to apply to a GOC subsidiary, a reference to a shareholding Minister is taken to be a reference to a shareholding Minister of the parent company of the GOC subsidiary. The purpose of this provision is to ensure that where there is an internal restructure of a GOC pursuant to section 161 of the GOC Act, any obligations/rights owed to the shareholding Minister by a GOC, may continue to be owed to the shareholding Minister by that entity when the GOC becomes a GOC subsidiary.

Section 161(1)(da) to (f) is to be renumbered as section 161(1)(e) to (g).

Section 161(2)(aa) provides that a regulation under section 161(1) may make provision about accounting treatment in relation to a matter mention in subsection (1).

Section 161(2)(ab) provides that a regulation under 161(1)(b) may provide for anything necessary or incidental to the transfer of the asset or liability, including that the transferee may become a party to any instrument in substitution for the transferor.

Section 161(2)(aa) to (b) is to be renumbered as section 161(2)(a) to (d).

Section 161(3) defines parent company.

Clause 41 inserts section 162A which provides that if a regulation repeals the declaration of an entity as a GOC, the repeal of the declaration does not make the entity liable for a civil wrong or contravention of law or for a breach of contract. This section ensures that the State can undertake restructures within the GOC sector, including through interposing a new parent

company between a GOC and its shareholding Ministers, without interfering with the entity's existing contractual rights and obligations.

Clause 42 inserts new Schedule 5. This Schedule lists the Acts, regulations and sections to which the new section 157A(2) applies. Where a provision in the Act or regulation, as listed in the schedule, refers to a GOC, that provision is to be read as including a reference to Energex and Ergon. This ensures that Energex and Ergon continue to be subject to the same regulatory framework when they cease to be GOCs.

Part 5 Amendment of Judicial Review Act 1991

Clause 43 provides that this part amends the *Judicial Review Act 1991*.

Clause 44 amends section 18A to provide that the Judicial Review Act does not apply to a decision of a 'State electricity entity' within the meaning of the Electricity Act to the extent provided for by section 256 of the Electricity Act. When section 18A of the Judicial Review Act was first inserted, it only applied to a 'decision of a GOC' mentioned in Schedule 6, being a port authority and QIC. When the Electricity Act was passed, section 256 of the Electricity Act provided that the Judicial Review Act 'does not apply to a State electricity entity'. However, the Electricity Act only amended the Judicial Review Act by inserting 'State electricity entity' into Schedule 6 of the Judicial Review Act. It did not make a corresponding amendment to section 18A of the Judicial Review Act to extend its scope beyond 'a decision of a GOC' in respect of 'State electricity entities'. Accordingly, this gives rise to a potential inconsistency between section 18A of the Judicial Review Act and section 256 of the Electricity Act. The purpose of this clause is to remove this inconsistency to enable section 18A of the Judicial Review Act to apply to State electricity entities that are not GOCs.

Clause 45 amends schedule 6 by removing reference to 'State electricity entities' from the list of GOCs that the Judicial Review Act does not apply to.