

I hereby certify that this PUBLIC BILL has finally passed the Legislative Assembly of Queensland.



Legislative Assembly Chamber,
Brisbane,

The Clerk of the Parliament.

M. Rios
26 September 20 14

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey

Government House,

Brisbane,

26 September 20 14



Queensland

No. 48 of 2014
A BILL for

An Act to make consequential and other amendments of the Electrical Safety Act 2002, the Electricity Act 1994, the Energy and Water Ombudsman Act 2006, the Gas Supply Act 2003, the Queensland Competition Authority Act 1997 and the Retail Shop Leases Act 1994 for the National Energy Retail Law (Queensland) Act 2014, and for other purposes



Queensland

Electricity Competition and Protection Legislation Amendment Bill 2014

Contents

		Page
Part 1	Preliminary	
1	Short title	12
2	Commencement	12
Part 2	Amendment of Electrical Safety Act 2002	
3	Act amended	12
4	Replacement of pt 11A, div 8	12
	Division 8 Retailer to give information	
	153 Provision of information by retailer	12
5	Amendment of sch 2 (Dictionary)	13
Part 3	Amendment of Electricity Act 1994	
6	Act amended	14
7	Amendment of s 18A (Declaration for Commonwealth Act)	14
8	Amendment of s 20 (Definitions for div 1)	14
9	Amendment of s 20A (Exemptions for on-suppliers)	15
10	Omission of ch 1, pt 6, div 1, sdivs 3 and 4	15
11	Amendment of s 20H (Individual metering option)	15
12	Omission of s 20J (Maximum charge for metered supply)	15
13	Omission of ch 1, pt 6, div 1, sdiv 6 (Disclosure requirements for common area consumption charges)	16
14	Amendment of s 20O (National Electricity Rules exemption required)	16
15	Amendment of s 20Q (Exemptions for rail government entities, railway managers and their related bodies corporate)	16
16	Amendment of s 22 (Electricity entities)	16
17	Amendment of s 23 (Customers and their types)	16
18	Amendment of s 26 (Generation authorities)	17
19	Omission of ch 2, pt 5, divs 2 and 3	17

Contents

20	Replacement of ch 2, pt 5, div 4, hdg (General provisions about customer connection services)	17
21	Omission of ss 40E and 40H	18
22	Amendment of s 42 (Conditions of distribution authority).	18
23	Amendment of s 44A (Additional condition to allow credit for electricity produced by small photovoltaic generators).	18
24	Replacement of ch 2, pt 6, hdg (Retail entities and their authorities)	19
25	Omission of ch 2, pt 6, div 1 (Preliminary)	19
26	Omission of ch 2, pt 6, divs 2 and 3 and div 4, hdg	19
27	Omission of s 55D (Conditions of retail authority)	19
28	Replacement of s 55DA (Additional condition about community services agreement).	19
	55DA Retailer must enter into community services agreement	20
29	Amendment of s 55DB (Additional condition about electricity produced by qualifying generator)	20
29A	Amendment of s 55DBA (Additional condition about electricity produced by small photovoltaic generator).	21
30	Omission of ss 55DC and 55E	21
31	Omission of s 55GA (Additional condition about inclusion of carbon and renewable energy target cost estimates in residential customer accounts)	22
32	Omission of s 55G (Restriction on Ergon Energy and its subsidiaries)	22
33	Amendment of s 55H (Negotiation of coordination agreement)	22
34	Amendment of s 55I (Standard coordination agreement)	22
35	Amendment of s 56 (Purpose of special approvals).	22
36	Amendment of s 58 (Special approvals).	23
37	Amendment of s 59 (Authorisation given by special approval).	23
38	Amendment of s 60 (Conditions of special approval).	23
39	Amendment of s 61B (Additional condition for electricity produced by photovoltaic generators)	23
40	Insertion of new s 64B	23
	64B Definition for pt 9	23
41	Amendment of s 66 (Limitation of electricity officer's powers)	24
42	Omission of s 89 (Restriction on sale of electricity)	24
43	Replacement ch 4, pt 2, hdg (Pricing)	24
44	Amendment of s 89A (Definitions for pt 2)	24
45	Insertion of new ch 4, pt 2, div 2, div 3, hdg and s 89E	25

	Division 2	Market monitoring, reporting and review in designated retail market areas	
	89B	Market monitoring direction and report	25
	89C	Obtaining information to comply with direction	26
	89D	Competition review	27
	89E	Non-application to sales in designated retail market area	28
46		Amendment of s 90 (Deciding prices for non-market customers)	28
47		Amendment of s 90A (Obtaining information for price determination)	29
48		Amendment of s 91 (Retail entities charging for GST)	29
49		Amendment of s 91A (Retail entity must comply with notification or direction)	30
50		Insertion of new ch 4, pt 2, div 4.	30
	Division 4	Reintroduction of price determination	
	91B	Reserve power of Minister to reintroduce price determination	31
50A		Amendment of s 92 (Definitions for pt 2A)	32
51		Amendment of s 97 (Limitation of liability of electricity entities and special approval holders that are not Registered participants) . .	33
52		Amendment of s 116 (Authority to acquire land)	33
53		Omission of s 118 (Financially responsible retail entity may recover amount for electricity consumed by person occupying premises)	33
54		Amendment of s 120 (Regulator's power to require information from electricity entities)	33
55		Amendment of s 120AA (Regulator's powers concerning audit of compliance with Act etc.)	34
56		Amendment of s 120AB (Responsibility for cost of audit)	34
57		Amendment of s 120AC (Independent auditor may require reasonable help or information)	34
58		Amendment of s 120AD (Audit report and submissions on report)	34
59		Amendment of s 120AE (Disclosure of information)	34
60		Replacement of ch 5, pt 1A, hdg (Industry codes)	35
61		Replacement of ch 5, pt 1A, div 2, hdg (Initial industry codes) . .	36
62		Amendment of s 120B (Making of initial industry codes by Minister)	36
63		Replacement of s 120C (Specific matters for which code may provide)	36
	120C	Specific matters for which code may provide	36
64		Replacement of ch 5, pt 1A, div 3, hdg (QCA industry codes) . . .	37

Contents

65	Amendment of ch 5, pt 1A, div 4, hdg (Review of industry codes and related matters)	37
66	Replacement of ch 5, pt 1A, div 5, hdg (Amending Industry codes)	37
67	Replacement of ch 5, pt 1A, div 6, hdg (Enforcing Industry codes)	37
68	Amendment of s 120Z (Injunctions)	38
69	Amendment of s 120ZL (Relationship with Fair Trading Act 1989)	38
70	Omission of s 120ZM (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)	38
71	Omission of ch 5, pts 1B and 3A	39
72	Amendment of s 132 (Grounds for disciplinary action)	39
73	Amendment of s 133 (Types of disciplinary action)	39
74	Insertion of new ch 5, pt 5	39
	Part 5 Enforcing sections 55DA(1), 55DB(1) and 55DBA(2) against retailers	
	Division 1 Contravention notices	
	135AA Application of pt 5.	40
	135AB Criteria for deciding material contravention	40
	135AC Warning notice may be given	40
	135AD Requirements for warning notice	41
	135AE Considering submissions on warning notice	42
	135AF Giving of contravention notice	42
	135AG Duration of contravention notice.	43
	Division 2 Proceedings	
	135AH Proceeding for civil penalty order.	43
	135AI How order enforced	45
	135AJ Injunctions	45
	135AK Conduct by directors, servants or agents.	46
	Division 3 Production of documents or information	
	135AL Notice to produce documents or information	47
75	Amendment of s 137 (Entry to read meters etc.)	49
76	Amendment of s 138 (Disconnection of supply if entry refused) .	49
77	Amendment of s 139 (Entry to disconnect supply).	49
78	Amendment of s 143 (Compensation)	49
79	Amendment of s 178 (Issue of generation authorities).	49
80	Amendment of s 179 (Application for generation authority)	50
81	Omission of ch 9, pt 4 (Retail authorities)	50

82	Amendment of s 210 (Consideration of application for special approval)	50
83	Amendment of s 214 (Who may apply for internal review etc.) . .	50
84	Amendment of s 215 (Applying for internal review)	50
85	Amendment of s 216 (Stay of operation of decision etc.)	51
86	Amendment of s 218 (Decision on reconsideration)	51
87	Amendment of s 219 (Who may apply for external review)	51
88	Amendment of s 220 (Application of QCAT Act notice requirement)	51
89	Amendment of s 226B (Avoidance of multiple penalties) . .	52
90	Amendment of s 240A (Executive officer may be taken to have committed offence)	52
91	Amendment of s 253AA (Direction by Minister to give information or advice)	52
92	Amendment of s 253 (Advisory committees)	52
93	Amendment of s 254B (Registers QCA must keep)	52
94	Insertion of new ch 14, pt 17	53
	Part 17 Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014	
	352 Generation authorities	53
	353 Customer connection services	53
	354 Undecided retail authority applications	54
	355 Existing retail authorities	54
	356 Special approvals	55
	357 QCA industry codes	55
	358 Continuation of actions by QCA	56
	359 Limited continuation of disciplinary action by regulator	57
95	Amendment of sch 1 (Review of administrative decisions)	57
96	Amendment of sch 2 (Subject matter for regulations)	57
97	Amendment of sch 5 (Dictionary)	58
Part 4	Amendment of Energy and Water Ombudsman Act 2006	
98	Act amended	61
99	Replacement of s 5 (What is an energy Act)	61
	5 What is an energy Act	61
100	Amendment of s 6 (Who is a small customer (energy))	61
101	Amendment of s 7 (What is an energy entity)	62

Contents

102	Amendment of s 19 (Restrictions on disputes relating to energy entities that can be referred)	62
103	Amendment of s 46 (Failure by relevant entity to comply with accepted order or compliance directions)	63
104	Amendment of s 64 (Scheme participation—energy entities) . . .	63
105	Amendment of s 67 (Amount of participation fee—energy entity)	63
106	Insertion of new pt 13.	64
	Part 13 Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014	
	113 Scheme participation by retailers and exempt sellers	65
107	Amendment of schedule (Dictionary)	65
Part 5	Amendment of Gas Supply Act 2003	
108	Act amended	66
109	Replacement of s 3 (Main purposes of Act)	67
	3 Main purposes of Act	67
110	Amendment of s 4 (Gas-related matters to which Act does not apply)	67
111	Replacement of s 5A (Declaration for Commonwealth Act)	68
	5A Declaration for Commonwealth Act	68
112	Amendment of s 16 (Who is a customer)	68
113	Omission of ss 17 and 20.	69
114	Replacement of s 21 (What is a distribution authority)	69
	21 What are a distribution authority and distribution area	69
115	Omission of s 23 (Types of distribution authority and their distributors)	69
116	Omission of ch 1, pt 3, div 2, sdiv 7 (Retail authorities and retailers)	70
117	Amendment of s 28 (Requirements for application)	70
118	Amendment of s 29 (Public notice by regulator and submissions)	70
119	Amendment of s 37 (Issue and public notice of authority)	70
120	Amendment of s 43 (Restriction for area distributors)	70
121	Amendment of s 48 (Contingency practices and procedures) . . .	71
122	Amendment of s 60 (Notice of proposed action)	71
123	Replacement of s 102 (Application of pt 3)	71
	102 Application of pt 3.	71
124	Amendment of s 108 (Commencement of customer connection services)	71
125	Amendment of s 109C (Provisions for large customers)	72

126	Amendment of s 125 (Operation of pt 4)	72
127	Replacement of ch 3, pt 1, hdg (Retail authorities)	72
128	Omission of ch 3, pt 1, div 1 (Applying for and obtaining retail authority)	72
129	Omission of ch 3, pt 1, div 2, hdg and ss 159–175	72
130	Amendment of s 175A (Additional condition about community services agreement)	72
131	Omission of ch 3, pt 1, divs 3 and 4 and pt 2	73
132	Amendment of ch 3, pt 3, hdg (On-supply)	73
133	Omission of ch 3, pt 3, div 1, hdg (Preliminary)	73
134	Omission of ss 214 and 215	74
135	Omission of ch 3, pt 3, divs 2 and 3 and div 4, hdg	74
136	Amendment of s 222 (Individual metering option)	74
137	Amendment of s 223 (Compensation for installation damage)	74
138	Omission of ch 3, pt 3, div 5 (Disclosure requirements for common area consumption charges)	75
139	Amendment of s 228 (Fixing of prices for standard contracts or for on-supply)	75
140	Amendment of s 228A (Restrictions on the first exercise of price fixing power)	76
141	Amendment of s 229 (Review of notified prices)	76
142	Amendment of s 231 (Requirement to comply with notified prices)	76
143	Amendment of s 232 (Additional consequences of failure to comply with notified prices)	76
144	Amendment of s 233 (Directions for prices notification)	77
145	Amendment of s 234 (Requirement to comply with direction for prices notification)	77
146	Amendment of s 241 (Limitation of industry participant's liability because of compliance with plan)	77
147	Replacement of s 247 (Notice of intention to stop processed natural gas transport or customer connection or retail services)	78
148	Omission of ch 4, pt 4 (Retailer of last resort scheme)	78
149	Amendment of s 257 (Direction overrides contracts)	78
150	Replacement of ch 5A, hdg and pt 1, hdg	79
151	Amendment of s 270A (Making of initial industry codes by Minister)	79
152	Replacement of s 270B (Specific matters for which code may provide)	79
	270B Specific matters for which code may provide	79
153	Insertion of new s 270BA	79

Contents

	270BA	Required consultation	80
154		Replacement of ch 5A, pt 2, hdg (QCA industry codes)	80
155		Amendment of ch 5A, pt 3, hdg (Review of industry codes and related matters)	80
156		Amendment of ch 5A, pt 4, hdg (Amending industry codes)	80
157		Amendment of ch 5A, pt 5, hdg (Enforcing industry codes)	81
158		Amendment of s 270ZD (How regulator deals with referral)	81
159		Amendment of s 270ZJA (Relationship with Fair Trading Act 1989)	81
160		Omission of s 270ZJB (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)	81
161		Amendment of s 270ZK (Application of pt 1A)	81
162		Amendment of s 270ZL (Regulator may impose civil penalty)	82
163		Amendment of s 270ZM (Information notice about and taking effect of decision)	82
164		Insertion of new ch 6, pt 1B	82
	Part 1B	Enforcing section 175A against retailers	
	Division 1	Contravention notices	
	Subdivision 1	Preliminary	
	271AA	Application of pt 1B	83
	271AB	Criteria for deciding material contravention	83
	Subdivision 2	Warning notices	
	271AC	Warning notice may be given	83
	271AD	Requirements for warning notice	84
	271AE	Considering submissions on warning notice	85
	Subdivision 3	Action after warning notice	
	271AF	Giving of contravention notice	85
	271AG	Duration of contravention notice	86
	Division 2	Proceedings	
	271AH	Proceeding for civil penalty order	86
	271AI	How order enforced	88
	271AJ	Injunctions	88
	271AK	Conduct by directors, servants or agents	89
	Division 3	Production of documents or information	
	271AL	Notice to produce documents or information	91
165		Omission of s 288 (Unlawful selling reticulated processed natural gas)	92

166	Amendment of ch 6, pt 4, hdg (General remedies)	92
167	Omission of s 302 (Additional consequences of unlawfully selling reticulated processed natural gas)	92
168	Amendment of s 303 (Recovery of unlawful profits).	92
169	Amendment of s 307 (Other evidentiary aids)	92
170	Amendment of s 307A (Evidentiary effect of code contravention notice)	93
171	Amendment of s 308 (Register of authorities)	93
172	Amendment of s 309 (Keeping of register of authorities).	93
173	Amendment of s 310A (Registers QCA must keep).	93
174	Amendment of s 316 (Limitation of liability of distributors and retailers)	93
175	Insertion of new ch 7, pt 3	94
	Part 3 Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014	
	335 Definition for pt 3	95
	336 Continuation of cancellation or suspension of distribution authorities	95
	337 Unfinished customer connection services	95
	338 Undecided retail authority applications.	96
	339 Existing retail authorities	96
	340 Continuation of actions by QCA	96
	341 Regulator may continue to impose civil penalties.	97
176	Amendment of sch 1 (Decisions subject to internal review).	98
177	Amendment of sch 2 (Dictionary).	98
Part 6	Amendment of Queensland Competition Authority Act 1997	
178	Act amended	100
179	Amendment of s 10 (Authority's functions).	100
180	Amendment of s 227A (Keeping registers).	100
Part 7	Amendment of Retail Shop Leases Act 1994	
181	Act amended	101
182	Omission of s 37A (Lessor's recovery of electricity charges).	101
Part 8	Acts amended	
183	Acts amended	101
Schedule 1	Minor amendments	102
	Electricity Act 1994.	102
	Gas Supply Act 2003	103

2014

A Bill

for

An Act to make consequential and other amendments of the *Electrical Safety Act 2002*, the *Electricity Act 1994*, the *Energy and Water Ombudsman Act 2006*, the *Gas Supply Act 2003*, the *Queensland Competition Authority Act 1997* and the *Retail Shop Leases Act 1994* for the *National Energy Retail Law (Queensland) Act 2014*, and for other purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Electricity Competition and Protection Legislation Amendment Act 2014*.

2 Commencement

This Act, other than section 31, commences on a day to be fixed by proclamation.

Part 2 Amendment of Electrical Safety Act 2002

3 Act amended

This part amends the *Electrical Safety Act 2002*.

4 Replacement of pt 11A, div 8

Part 11A, division 8—

omit, insert—

Division 8 Retailer to give information

153 Provision of information by retailer

- (1) A retailer must, in the way and at the times the regulator reasonably requires, give the regulator

information, prescribed by regulation, the retailer holds about—

- (a) premises located in Queensland to which the retailer provides customer retail services; and
 - (b) persons who are customers of the retailer and who own or occupy the premises mentioned in paragraph (a).
- (2) An official may use information given to the regulator by a retailer under subsection (1) only for administering and enforcing this Act.
- (3) In this section—

official means—

- (a) the regulator; or
- (b) an inspector.

5 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *retail premises*—

omit.

- (2) Schedule 2—

insert—

customer connection service has the meaning given by the NERL (Qld).

customer retail service has the meaning given by the NERL (Qld).

NERL (Qld) see the *National Energy Retail Law (Queensland) Act 2014*, section 3.

retailer means a retailer under the NERL (Qld) that sells electricity to a customer in Queensland.

retail premises, of a distribution entity, means premises that are the subject of both of the following—

omit.

9 Amendment of s 20A (Exemptions for on-suppliers)

Section 20A, from ‘3 to 7’—

omit, insert—

5 and 7, the on-supplier is exempted from section 88A.

10 Omission of ch 1, pt 6, div 1, sdivs 3 and 4

Chapter 1, part 6, division 1, subdivisions 3 and 4—

omit.

11 Amendment of s 20H (Individual metering option)

(1) Section 20H(1) and (2)—

omit, insert—

(1) A receiver may, at any time—

(a) elect, by written notice given to the relevant on-supplier, to have the receiver’s consumption of electricity supplied from the on-supplier measured by a meter; and

(b) have the meter installed, at the receiver’s expense.

(2) Section 20H(3) and (4)—

renumber as section 20H(2) and (3).

(3) Section 20H(3), as renumbered, ‘subsection (3)’—

omit, insert—

subsection (2)

12 Omission of s 20J (Maximum charge for metered supply)

Section 20J—

[s 13]

omit.

13 Omission of ch 1, pt 6, div 1, sdiv 6 (Disclosure requirements for common area consumption charges)

Chapter 1, part 6, division 1, subdivision 6—

omit.

14 Amendment of s 20O (National Electricity Rules exemption required)

Section 20O(b), ‘, or supplies and sells,’—

omit.

15 Amendment of s 20Q (Exemptions for rail government entities, railway managers and their related bodies corporate)

(1) Section 20Q(1), (2) and (4), from ‘sections 88A’ to ‘sale’—

omit, insert—

section 88A in relation to the supply

(2) Section 20Q(3)(a), ‘or sold’—

omit.

16 Amendment of s 22 (Electricity entities)

Section 22(2)(d)—

omit.

17 Amendment of s 23 (Customers and their types)

(1) Section 23(1)—

omit, insert—

(1) A *customer* is a person who is a customer under the NERL (Qld), section 5(1).

(2) Section 23(3) to (5)—

omit, insert—

(3) A **large customer** is a person who is a large customer under the NERL (Qld), section 5(3).

(4) A **small customer** is a person who is a small customer under the NERL (Qld), section 5(2).

(3) Section 23(6)—

renumber as section 23(5).

(4) Section 23(7) to (12)—

omit.

18 Amendment of s 26 (Generation authorities)

Section 26(1)—

omit, insert—

(1) A **generation authority** authorises its holder to connect the generating plant stated in the authority to the transmission grid or supply network stated in the authority.

19 Omission of ch 2, pt 5, divs 2 and 3

Chapter 2, part 5, divisions 2 and 3—

omit.

20 Replacement of ch 2, pt 5, div 4, hdg (General provisions about customer connection services)

Chapter 2, part 5, division 4, heading—

omit, insert—

omit, insert—
retailer

24 Replacement of ch 2, pt 6, hdg (Retail entities and their authorities)

Chapter 2, part 6, heading—

omit, insert—

Part 6 Retailers

Note—

For matters relating to retailers, generally, see the NERL (Qld).

25 Omission of ch 2, pt 6, div 1 (Preliminary)

Chapter 2, part 6, division 1—

omit.

26 Omission of ch 2, pt 6, divs 2 and 3 and div 4, hdg

Chapter 2, part 6, divisions 2 and 3 and division 4, heading—

omit.

27 Omission of s 55D (Conditions of retail authority)

Section 55D—

omit.

28 Replacement of s 55DA (Additional condition about community services agreement)

Section 55DA—

omit, insert—

[s 29]

55DA Retailer must enter into community services agreement

- (1) A retailer must not provide a customer retail service unless the retailer—
 - (a) enters into an agreement with the State to provide, for at least 5 years, the community services—
 - (i) agreed between the State and the retailer; or
 - (ii) failing agreement, as decided by the Minister; and

Examples of community services—

pensioner rebate and drought relief schemes for customer retail services

 - (b) complies with the agreement.
- (2) In making a decision under subsection (1)(a)(ii), the Minister must have regard to the retailer's reasonable administration costs and other risks in providing the community services.

29 Amendment of s 55DB (Additional condition about electricity produced by qualifying generator)

- (1) Section 55DB, heading—

omit, insert—

55DB Electricity produced by qualifying generator
- (2) Section 55DB(1), from 'It' to 'must—'—

omit, insert—

A retailer must—
- (3) Section 55DB(1), 'small customer'—

omit, insert—

qualifying customer
- (4) Section 55DB(1)(d), 'small customers'—

omit, insert—
qualifying customers

29A Amendment of s 55DBA (Additional condition about electricity produced by small photovoltaic generator)

- (1) Section 55DBA, heading, ‘Additional condition about electricity’—

omit, insert—

Electricity

- (2) Section 55DBA(1)(a), ‘prescribed retail entity’—

omit, insert—

prescribed retailer

- (3) Section 55DBA(1)(a) and (3), definition *feed-in tariff amount*, paragraph (a), ‘small customer’s’—

omit, insert—

qualifying customer’s

- (4) Section 55DBA(1)(b) and note, ‘small customer’—

omit, insert—

qualifying customer

- (5) Section 55DBA(2), from ‘It’ to ‘entity’—

omit, insert—

The prescribed retailer

30 Omission of ss 55DC and 55E

Sections 55DC and 55E—

omit.

[s 31]

31 Omission of s 55GA (Additional condition about inclusion of carbon and renewable energy target cost estimates in residential customer accounts)

Section 55GA—

omit.

32 Omission of s 55G (Restriction on Ergon Energy and its subsidiaries)

Section 55G—

omit.

33 Amendment of s 55H (Negotiation of coordination agreement)

Section 55H(1), ‘retail entity’—

omit, insert—

retailer

34 Amendment of s 55I (Standard coordination agreement)

(1) Section 55I(1)(a), ‘retail entity’—

omit, insert—

retailer

(2) Section 55I(2) and (3), ‘entities’—

omit, insert—

entity and retailer

35 Amendment of s 56 (Purpose of special approvals)

Section 56, ‘, distribution or retail’—

omit, insert—

or distribution

36 Amendment of s 58 (Special approvals)

Section 58, ‘, distribution entity or retail’—

omit, insert—

or distribution

37 Amendment of s 59 (Authorisation given by special approval)

Section 59(1), ‘, distribution or retail’—

omit, insert—

or distribution

38 Amendment of s 60 (Conditions of special approval)

Section 60(1)(a)(iii)—

omit, insert—

(iii) the condition stated in section 61 or 61B; and

39 Amendment of s 61B (Additional condition for electricity produced by photovoltaic generators)

Section 61B(2) and (3)—

omit, insert—

(2) It is a condition of the special approval that the holder must comply with section 44A.

40 Insertion of new s 64B

Chapter 2, part 9—

insert—

64B Definition for pt 9

In this part—

electricity entity includes a retailer.

[s 41]

41 Amendment of s 66 (Limitation of electricity officer's powers)

Section 66(c), 'its retail area or'—
omit.

42 Omission of s 89 (Restriction on sale of electricity)

Section 89—
omit.

43 Replacement ch 4, pt 2, hdg (Pricing)

Chapter 4, part 2, heading—
omit, insert—

Part 2 Market operation

Division 1 Preliminary

44 Amendment of s 89A (Definitions for pt 2)

Section 89A—
insert—

designated retail market area means—

- (a) an area prescribed by regulation; or
- (b) if no area is prescribed—the distribution area described in the schedule to the distribution authority numbered D07/98.

Editor's note—

At the commencement of this definition, the distribution authority was held by Energex.

45 Insertion of new ch 4, pt 2, div 2, div 3, hdg and s 89E

After section 89A—

insert—

**Division 2 Market monitoring,
reporting and review in
designated retail market
areas**

89B Market monitoring direction and report

- (1) The Minister may give QCA a written direction requiring QCA to monitor, and give a written report on, the operation of the retail electricity market in designated retail market areas.
- (2) The direction must state—
 - (a) the period (the *reporting period*) for which the report is to apply; and
 - (b) when the report is required to be given to the Minister; and
 - (c) that the report must be published on QCA's website and when it is required to be published.
- (3) Without limiting subsection (1), the direction may require QCA to monitor, and report on, the prices that retailers for designated retail market areas are charging for—
 - (a) the sale of electricity to their customers at premises in the areas; or
 - (b) charges or fees relating to the sale of electricity mentioned in paragraph (a).
- (4) Also, without limiting subsection (1), the direction may require the report to include—
 - (a) a comparison and assessment of—

[s 45]

- (i) retailers' standing offer prices and market offer prices that were available to customers at premises in designated retail market areas in the reporting period; and
 - (ii) variations to retailers' standing offer prices and market offer prices that were available to customers at premises in designated retail market areas in the reporting period; and
 - (b) information about any trends in relation to variations to retailers' standing offer prices and market offer prices available to customers at premises in designated retail market areas in the reporting or another stated period; and
 - (c) other relevant information the Minister requires.
- (5) QCA must comply with the direction.
- (6) In this section—
- market offer prices* has the meaning given by the NERL (Qld), section 2.
- standing offer prices* has the meaning given by the NERL (Qld), section 2.

89C Obtaining information to comply with direction

- (1) This section applies if QCA is given a direction under section 89B(1).
- (2) QCA may, by written notice given to a retailer for a designated retail market area, require the retailer to give QCA the relevant information QCA requires to comply with the direction.

- (3) The retailer must, within the reasonable period stated in the notice, comply with the notice unless, in the circumstances, the retailer could not reasonably have been expected to have, or to be able to obtain, the relevant information.

Maximum penalty for subsection (3)—100 penalty units.

89D Competition review

- (1) The Minister may give a written direction to an appropriate entity to—
- (a) conduct a review into the effectiveness of competition in a relevant market for the sale of electricity; and
 - (b) give a written advice about whether to keep, remove or reintroduce price controls on prices relating to the sale of electricity in the relevant market.
- (2) The direction must state—
- (a) the terms of reference of the review; and
 - (b) when the advice is required to be given to the Minister; and
 - (c) that the advice must be published on the appropriate entity's website or in another stated way; and
 - (d) when the advice is required to be published.
- (3) The appropriate entity must comply with the direction.
- (4) Subject to the direction, the appropriate entity may conduct the review in the way it considers appropriate.
- (5) In this section—
- appropriate entity* means—

[s 46]

- (a) QCA; or
- (b) another entity the Minister considers is an appropriate entity to conduct a review and give an advice under subsection (1).

relevant market means a market for the sale of electricity to all customers, or a class of customers, in a designated retail market area.

Division 3 Price determination

89E Non-application to sales in designated retail market area

- (1) This division does not apply to deciding the prices, or the methodology for fixing the prices, that a retailer for a designated retail market area may charge for—
 - (a) the sale of electricity to its standard contract customers at premises in the area; or
 - (b) charges or fees relating to the sale of electricity mentioned in paragraph (a).
- (2) This section applies subject to section 91B.

46 Amendment of s 90 (Deciding prices for non-market customers)

- (1) Section 90, ‘non-market’—
omit, insert—
standard contract
- (2) Section 90(1) and (4), ‘retail entity’—
omit, insert—
retailer
- (3) Section 90(3)(b), after ‘for the’—

insert—

current or

- (4) Section 90(3)(c) and (d)—

renumber as section 90(3)(d) and (e).

- (5) Section 90(3)—

insert—

(c) a tariff may be added to the tariff schedule at any time during a tariff year;

- (6) Section 90(7), definition *distribution non-network charges*, paragraph (a), ‘retail entity’—

omit, insert—

retailer

47 Amendment of s 90A (Obtaining information for price determination)

Section 90A, ‘retail entity’—

omit, insert—

retailer

48 Amendment of s 91 (Retail entities charging for GST)

- (1) Section 91, heading, ‘Retail entities’—

omit, insert—

Retailers

- (2) Section 91(1)(a), ‘retail entity’—

omit, insert—

retailer

- (3) Section 91, ‘the entity’—

omit, insert—

the retailer

[s 49]

- (4) Section 91, ‘non-market’—
omit, insert—
standard contract
- (5) Section 91(5), from ‘a standard’ to ‘contract,’—
omit, insert—
any of the following contracts under the NERL (Qld),
- (6) Section 91(5), ‘services.’—
omit, insert—
services—
- (a) a standard retail contract;
 - (b) a standard retail contract (card-operated meters);
 - (c) a large customer standard retail contract.

49 Amendment of s 91A (Retail entity must comply with notification or direction)

- (1) Section 91A, heading, ‘Retail entity’—
omit, insert—
Retailer
- (2) Section 91A, ‘retail entity’—
omit, insert—
retailer
- (3) Section 91A(2) and (5), ‘non-market’—
omit, insert—
standard contract

50 Insertion of new ch 4, pt 2, div 4

Chapter 4, part 2, after section 91AA—

insert—

Division 4 Reintroduction of price determination

91B Reserve power of Minister to reintroduce price determination

- (1) This section applies if—
 - (a) under section 89E, division 3 does not apply to deciding the prices, or the methodology for fixing the prices, that a retailer may charge in relation to the sale of electricity to particular customers; and
 - (b) either—
 - (i) the AEMC (the *reviewer*) conducts an MCE directed review into the effectiveness of competition in the market (the *relevant market*) to which the sale is relevant; or
 - (ii) an appropriate entity (also the *reviewer*) conducts a review under section 89D(1) into the effectiveness of competition in the relevant market; and
 - (c) as a result of the review, the reviewer—
 - (i) considers that competition in the relevant market is not effective; and
 - (ii) gives advice recommending the reintroduction of price controls on the sale of electricity in the relevant market.
- (2) The Minister may decide to make a price determination for the prices that the retailer may charge in relation to the sale of electricity to the customers.

[s 50A]

- (3) If the Minister decides to make a price determination under subsection (2), division 3, other than section 89E, applies for making the price determination.
- (4) In this section—
AEMC see the NERL (Qld), section 2.
MCE directed review see the NERL (Qld), section 2.

50A Amendment of s 92 (Definitions for pt 2A)

- (1) Section 92, definitions *prescribed retail entity* and *relevant small customer*—
omit.
- (2) Section 92—
insert—
local area retailer has the meaning given by the NERL (Qld).
prescribed retailer means a local area retailer other than a local area retailer for a designated retail market area.
relevant qualifying customer, of a prescribed retailer, means a qualifying customer if—
 - (a) the retailer provides customer retail services to the customer’s premises; and
 - (b) 1 small photovoltaic generator is connected at the customer’s premises to a supply network.
- (3) Section 92, definition *feed-in tariff*, ‘retail entity’—
omit, insert—
retailer
- (4) Section 92, definition *feed-in tariff*, ‘small customer’—

omit, insert—
qualifying customer

51 Amendment of s 97 (Limitation of liability of electricity entities and special approval holders that are not Registered participants)

(1) Section 97(1), ‘or sell’—

omit.

(2) Section 97(1), ‘or sale’—

omit.

52 Amendment of s 116 (Authority to acquire land)

Section 116(3A)(b)—

omit, insert—

(b) Ergon Energy Distribution;

53 Omission of s 118 (Financially responsible retail entity may recover amount for electricity consumed by person occupying premises)

Section 118—

omit.

54 Amendment of s 120 (Regulator’s power to require information from electricity entities)

(1) Section 120, heading, after ‘entities’—

insert—

or retailers

(2) Section 120, after ‘entity’—

insert—

or retailer

[s 55]

55 Amendment of s 120AA (Regulator’s powers concerning audit of compliance with Act etc.)

Section 120AA, after ‘entity’—

insert—

, retailer

56 Amendment of s 120AB (Responsibility for cost of audit)

Section 120AB, after ‘entity’—

insert—

, retailer

57 Amendment of s 120AC (Independent auditor may require reasonable help or information)

(1) Section 120AC, after ‘entity’—

insert—

, retailer

(2) Section 120AC(1)(a), examples, after ‘entity’s’—

insert—

, retailer’s

58 Amendment of s 120AD (Audit report and submissions on report)

Section 120AD, after ‘entity’—

insert—

, retailer

59 Amendment of s 120AE (Disclosure of information)

(1) Section 120AE(1), after ‘entity’—

insert—

, retailer

(2) Section 120AE(2)(b)—

insert—

(b) any of the following apply—

(i) the entity or holder—

(A) consents to the disclosure; or

(B) is required, under the entity's authority or holder's approval, to consent to the disclosure;

(ii) the retailer consents to the disclosure; or

(iii) subsection (3) applies in relation to the retailer.

(3) Section 120AE—

insert—

(3) This subsection applies if—

(a) the retailer gave the information to the regulator under section 55DB(1)(d); and

(b) either—

(i) QCA must, under section 120L, conduct a review of the Act that relates to the Queensland electricity market and involves small photovoltaic generators; or

(ii) QCA must, under section 253AA, give the Minister information or advice that relates to the Queensland electricity market and involves small photovoltaic generators.

60 Replacement of ch 5, pt 1A, hdg (Industry codes)

Chapter 5, part 1A, heading—

[s 61]

omit, insert—

Part 1A Distribution network codes

61 Replacement of ch 5, pt 1A, div 2, hdg (Initial industry codes)

Chapter 5, part 1A, division 2, heading —

omit, insert—

Division 2 Initial distribution network codes

62 Amendment of s 120B (Making of initial industry codes by Minister)

(1) Section 120B, heading and subsection (1)—

omit, insert—

120B Making of initial distribution network codes by Minister

(1) The Minister may make initial distribution network codes to apply to electricity entities or retailers, or both.

(2) Section 120B(2), after ‘electricity entities’—

insert—

or retailers

63 Replacement of s 120C (Specific matters for which code may provide)

Section 120C—

omit, insert—

120C Specific matters for which code may provide

Without limiting section 120B, a distribution network code may provide for all or any of the following—

- (a) the service levels to be provided by electricity entities to customers;
- (b) the payment of amounts by electricity entities to affected customers for failure to provide a stated service level;
- (c) metering;
- (d) public lighting.

64 Replacement of ch 5, pt 1A, div 3, hdg (QCA industry codes)

Chapter 5, part 1A, division 3, heading—

omit, insert—

Division 3 QCA distribution network codes

65 Amendment of ch 5, pt 1A, div 4, hdg (Review of industry codes and related matters)

Chapter 5, part 1A, division 4, heading, ‘industry’—

omit, insert—

distribution network

66 Replacement of ch 5, pt 1A, div 5, hdg (Amending Industry codes)

Chapter 5, part 1A, division 5, heading—

omit, insert—

Division 5 Amending distribution network codes

67 Replacement of ch 5, pt 1A, div 6, hdg (Enforcing Industry codes)

Chapter 5, part 1A, division 6, heading—

[s 68]

omit, insert—

Division 6 Enforcing distribution network codes

68 Amendment of s 120Z (Injunctions)

(1) Section 120Z(1), (3) and (8), after ‘entity’—

insert—

or retailer

(2) Section 120Z(7), after ‘electricity entity’—

insert—

or retailer

(3) Section 120Z(7)(a) and (b), after ‘entity’—

insert—

or retailer

(4) Section 120Z(7)(c), ‘the person’—

insert—

the entity or retailer

69 Amendment of s 120ZL (Relationship with Fair Trading Act 1989)

Section 120ZL, ‘, subject to section 120ZM, an industry code’—

omit, insert—

a distribution network code

70 Omission of s 120ZM (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)

Section 120ZM—

omit.

71 Omission of ch 5, pts 1B and 3A

Chapter 5, parts 1B and 3A—

omit.

72 Amendment of s 132 (Grounds for disciplinary action)

(1) Section 132(1)(b), from ‘this Act’—

omit, insert—

 this Act, the Electrical Safety Act or the *Energy and
Water Ombudsman Act 2006*;

(2) Section 132(1)(f)—

omit.

73 Amendment of s 133 (Types of disciplinary action)

(1) Section 133(1)(c)—

omit.

(2) Section 133(2), (3) and (4), ‘an industry’—

omit, insert—

 a distribution network

74 Insertion of new ch 5, pt 5

Chapter 5—

insert—

[s 74]

Part 5 Enforcing sections 55DA(1), 55DB(1) and 55DBA(2) against retailers

Division 1 Contravention notices

135AA Application of pt 5

This part applies if the regulator suspects—

- (a) a retailer has contravened, or is contravening, section 55DA(1), 55DB(1) or 55DBA(2); and
- (b) the contravention is likely to be a material contravention of the section.

135AB Criteria for deciding material contravention

- (1) This section applies to the making of any decision under this division by the regulator about whether a contravention of section 55DA(1), 55DB(1) or 55DBA(2) is a material contravention of the section.
- (2) The regulator must have regard to the objects of the Act.
- (3) Subsection (2) does not limit or otherwise affect what may be considered in making the decision.

135AC Warning notice may be given

- (1) The regulator may give the retailer a notice (the *warning notice*) warning the retailer that the regulator proposes to give the retailer a further notice about the contravention (a *contravention notice*).

- (2) The regulator must make the decision about whether to give the warning notice as soon as practicable after forming the suspicion.
- (3) However, a failure to comply with subsection (2) does not affect the validity of the warning notice or any subsequent contravention notice.
- (4) Despite subsections (2) and (3), if the regulator proposes to give a warning notice for a contravention, it can only be given within 2 years after the day on which the contravention happened.

135AD Requirements for warning notice

- (1) The warning notice must state each of the following—
 - (a) particulars of the contravention;
 - (b) that regulator proposes to give the retailer a contravention notice unless the retailer—
 - (i) takes steps reasonably necessary to remedy the contravention; and
 - (ii) gives the regulator a written assurance, in the terms stated in the warning notice, that the retailer will—
 - (A) avoid any similar future contravention; and
 - (B) take steps reasonably necessary to avoid a future recurrence of the contravention;
 - (c) a period (the *warning period*) after which the contravention notice may be given unless the warning notice is complied with;
 - (d) that the retailer may make, within the warning period, written submissions to

[s 74]

show why the proposed contravention notice should not be given.

- (2) The warning period must be—
 - (a) if the warning notice is given because the regulator considers the contravention is of a type that requires urgent action—a period the regulator considers is reasonable in the circumstances; or
 - (b) otherwise—at least 20 business days.
- (3) The warning notice may also state the steps the regulator reasonably believes are necessary to remedy the contravention or avoid its future recurrence.

Example of a step that may remedy a contravention—

paying compensation to someone who has suffered damage, injury or loss because of the contravention

135AE Considering submissions on warning notice

- (1) The regulator must consider any written submission made under section 135AD(1)(d) by the retailer within the warning period stated in the warning notice.
- (2) If the regulator at any time decides not to give the proposed contravention notice, it must, as soon as practicable, give the retailer notice of the decision.

135AF Giving of contravention notice

- (1) The regulator may give the proposed contravention notice if—
 - (a) the retailer has not complied with the warning notice; and

- (b) after complying with section 135AE, the regulator still believes the contravention notice ought to be given.
- (2) The contravention notice must state—
- (a) the retailer has contravened, or is contravening, section 55DA(1), 55DB(1) or 55DBA(2); or
 - (b) the contravention is a material contravention of the section; and
 - (c) particulars of the contravention.

135AG Duration of contravention notice

The contravention notice—

- (a) comes into effect—
 - (i) when it is made; or
 - (ii) if it states a later time—at the later time; and
- (b) ends—
 - (i) on the day stated in the notice; or
 - (ii) if it is cancelled before that day—when it is cancelled.

Division 2 Proceedings

135AH Proceeding for civil penalty order

- (1) This section applies if, on the application of the regulator, the Supreme Court is satisfied the retailer has—
 - (a) committed a material contravention of section 55DA(1), 55DB(1) or 55DBA(2); or

[s 74]

- (b) attempted to a commit a material contravention of section 55DA(1), 55DB(1) or 55DBA(2); or
 - (c) been involved in a material contravention of section 55DA(1), 55DB(1) or 55DBA(2).
- (2) The court may order the retailer to pay the State as a civil penalty an amount of no more than—
 - (a) for an individual—\$100000; or
 - (b) for a corporation—\$500000.
- (3) In fixing the penalty, the court must consider—
 - (a) the nature and extent of—
 - (i) the contravention; and
 - (ii) loss or damage suffered because of the contravention; and
 - (b) the circumstances in which the contravention took place; and
 - (c) whether the retailer has previously been found by the court in proceedings under this Act to have engaged in any similar conduct.
- (4) For subsection (1)(c), a retailer is involved in a contravention if the retailer—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether through threats, promises or in another way; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

135AI How order enforced

If the Supreme Court orders payment of an amount under section 135AH(2), the State may enforce the order as a judgment of the court for a debt of that amount.

135AJ Injunctions

- (1) The Supreme Court may, on the application of the regulator, grant an injunction if satisfied the retailer has engaged or is proposing to engage, in conduct that constitutes, or would constitute—
 - (a) a contravention of section 55DA(1), 55DB(1) or 55DBA(2); or
 - (b) attempting to contravene section 55DA(1), 55DB(1) or 55DBA(2).
- (2) An injunction may be granted on conditions.
- (3) The court may also grant an injunction by consent of all parties to the application, whether or not the court is satisfied the retailer has engaged, or is proposing to engage, in conduct of a type mentioned in subsection (1).
- (4) The court may grant an interim injunction pending its decision on the application.
- (5) The court must not require anyone, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (6) The court may amend an injunction or interim injunction.
- (7) An injunction or interim injunction restraining the retailer from engaging in conduct may be granted whether or not—
 - (a) it appears to the court that the retailer intends to engage again, or to continue to engage, in conduct of that kind; or

[s 74]

- (b) the retailer has previously engaged in conduct of that kind; or
 - (c) there is an imminent danger of substantial damage to another person if the retailer engages in conduct of that kind.
- (8) An injunction or interim injunction requiring the retailer to do an act or thing may be granted whether or not—
- (a) it appears to the court that the retailer intends to fail again, or to continue to fail, to do that act or thing; or
 - (b) the retailer has previously failed to do the act or thing; or
 - (c) there is an imminent danger of substantial damage to another person if the retailer does not do the act or thing.

135AK Conduct by directors, servants or agents

- (1) This section applies to a proceeding under this division.
- (2) If—
 - (a) the proceeding concerns alleged conduct engaged in by the retailer; and
 - (b) it is necessary to prove the retailer's state of mind;it is enough to prove that a director, servant or agent (a *representative*) of the retailer, acting within the scope of the representative's actual or apparent authority, had the state of mind.
- (3) Conduct engaged in for a retailer by the following persons is taken to have been engaged in by the retailer—

- (a) a representative of the retailer, acting within the scope of the representative's actual or apparent authority;
 - (b) another person at the direction, or with the consent or agreement, of a representative of the retailer, if the giving of the direction, consent or agreement was within the scope of the representative's actual or apparent authority;
 - (c) a servant or agent of the retailer, acting within the scope of the servant's or agent's actual or apparent authority;
 - (d) another person at the direction, or with the consent or agreement, of a servant or agent of the retailer, if the giving of the direction, consent or agreement was within the scope of the servant's or agent's actual or apparent authority.
- (4) In this section—
- consent or agreement* includes an implied consent or agreement.
- state of mind*, of a person, may include—
- (a) knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the person's intention, opinion, belief or purpose.

Division 3 Production of documents or information

135AL Notice to produce documents or information

- (1) This section applies if the regulator is conducting an investigation to find out whether the retailer is

[s 74]

complying with section 55DA(1), 55DB(1) or 55DBA(2).

- (2) The regulator may, by written notice to the retailer, require the retailer to give the regulator the following things the regulator believes, on reasonable grounds, are relevant to the investigation—
 - (a) information within the retailer’s knowledge or possession;
 - (b) documents in the retailer’s custody, possession or power.
- (3) The notice must state—
 - (a) the information or documents required; and
 - (b) a period in which the information or documents must be given of at least 7 days; and
 - (c) a reasonable place at which the information or documents must be given.
- (4) The retailer must comply with the notice, unless it has a reasonable excuse.
Maximum penalty—500 penalty units.
- (5) The retailer is not required to comply with the notice if it claims, on the ground of self-incrimination, a privilege the retailer would be entitled to claim against giving the information or documents were the retailer a witness in a prosecution for an offence in the Supreme Court.
- (6) If the retailer claims that complying with the notice may tend to incriminate it, the regulator or the retailer may make an application to the Supreme Court to decide the validity of the claim.

75 Amendment of s 137 (Entry to read meters etc.)

Section 137—

insert—

- (2) In this section—
electricity entity includes a retailer.

76 Amendment of s 138 (Disconnection of supply if entry refused)

Section 138—

insert—

- (4) In this section—
electricity entity includes a retailer.

77 Amendment of s 139 (Entry to disconnect supply)

Section 139—

insert—

- (3) In this section—
electricity entity includes a retailer.

78 Amendment of s 143 (Compensation)

Section 143—

insert—

- (4) In this section—
electricity entity includes a retailer.

79 Amendment of s 178 (Issue of generation authorities)

- (1) Section 178(2)(c)—

omit.

[s 80]

(2) Section 178(2)(d)—
renumber as section 178(2)(c).

80 Amendment of s 179 (Application for generation authority)

Section 179(1)(b)(iii)—
omit.

81 Omission of ch 9, pt 4 (Retail authorities)

Chapter 9, part 4—
omit.

82 Amendment of s 210 (Consideration of application for special approval)

(1) Section 210(2), from ‘(6), 197(2)’ to ‘(8)’—
omit, insert—

(6) and 197(2) to (7)

(2) Section 210(3), definition *relevant authority*, ‘, distribution or retail’—

omit, insert—

or distribution

83 Amendment of s 214 (Who may apply for internal review etc.)

Section 214(1), from ‘following’ to ‘regulator.’—
omit, insert—

regulator for internal review of the decision.

84 Amendment of s 215 (Applying for internal review)

Section 215(3), ‘reviewer’—

omit, insert—

regulator

85 Amendment of s 216 (Stay of operation of decision etc.)

(1) Section 216(4), ‘reviewer’—

omit, insert—

regulator

(2) Section 216(4), ‘reviewer’s’—

omit, insert—

regulator’s

86 Amendment of s 218 (Decision on reconsideration)

(1) Section 218, ‘reviewer’—

omit, insert—

regulator

(2) Section 218(5), ‘reviewer’s’—

omit, insert—

regulator’s

87 Amendment of s 219 (Who may apply for external review)

Section 219(1), ‘reviewer’—

omit, insert—

regulator

88 Amendment of s 220 (Application of QCAT Act notice requirement)

Section 220, ‘reviewer’—

omit, insert—

[s 89]

regulator

89 Amendment of s 226B (Avoidance of multiple penalties)

Section 226B(a), ‘section 244A’—

omit, insert—

section 226A

90 Amendment of s 240A (Executive officer may be taken to have committed offence)

Section 240A(4), definition *deemed executive liability provision*, last dot point—

omit.

91 Amendment of s 253AA (Direction by Minister to give information or advice)

Section 253AA(3), after ‘website’—

insert—

if directed in writing by the Minister to do so

92 Amendment of s 253 (Advisory committees)

Section 253(4)(c), ‘retail entities’—

omit, insert—

retailers

93 Amendment of s 254B (Registers QCA must keep)

(1) Section 254B(a) and (b)—

omit, insert—

(a) distribution network codes;

(2) Section 254B(c) to (e)—

renumber as section 254B(b) to (d).

94 Insertion of new ch 14, pt 17

After section 351—

insert—

Part 17 **Transitional provisions
for Electricity
Competition and
Protection Legislation
Amendment Act 2014**

352 Generation authorities

- (1) This section applies if, immediately before the commencement, a generation authority authorised the sale of electricity.
- (2) The generation authority is taken to have been amended to remove the authorisation for the sale of electricity.

353 Customer connection services

- (1) This section applies if—
 - (a) before the commencement, a customer and a distribution entity—
 - (i) are taken to have entered into a standard connection contract under section 40DB as in force immediately before the commencement; or
 - (ii) have entered into a negotiated connection contract under section 40DC as in force immediately before the commencement; and

[s 94]

- (b) at the commencement, the customer's premises are not physically connected to the distribution entity's supply network.
- (2) Sections 40E, 40H and 41 and the *Electricity Regulation 2006*, section 34, as in force immediately before the commencement, to the extent they apply to the construction of a new connection, continue to apply to the construction of the connection.
- (3) However, chapter 5A of the National Electricity Rules does not apply to the construction of the connection.

354 Undecided retail authority applications

- (1) This section applies if, before the commencement, a person applied to the regulator for a retail authority but the application had not yet been decided.
- (2) The application lapses.

Note—

The person may be able to apply for a retailer authorisation under the NERL (Qld).

355 Existing retail authorities

- (1) This section applies if, immediately before the commencement, a person was the holder of a retail authority.
- (2) The retail authority ceases to have effect.

Note—

The retail sale of electricity is regulated under the NERL (Qld).

356 Special approvals

- (1) Subsection (2) applies if, immediately before the commencement, a special approval authorised only either of the following—
 - (a) the sale of electricity;
 - (b) the provision of customer retail services.
- (2) The special approval ceases to have effect.
- (3) Subsection (4) applies if, immediately before the commencement, a special approval authorised—
 - (a) either—
 - (i) the sale of electricity; or
 - (ii) the provision of customer retail services; and
 - (b) the performance of other activities under the approval.
- (4) The special approval is taken to have been amended to remove the authorisation for the sale of electricity or the provision of customer retail services.

357 QCA industry codes

- (1) This section applies if, before the commencement, the QCA made an industry code, or made an amendment to an industry code, but had not given the Minister a copy of the code or the amendment.
- (2) Chapter 5, part 1A, divisions 3 and 5, as in force immediately before the commencement, continue to apply to the making of the industry code, or the making of an amendment to the industry code.

[s 94]

358 Continuation of actions by QCA

- (1) This section applies if, before the commencement—
 - (a) QCA has given a warning notice under section 120S as in force immediately before the commencement to an electricity entity; or
 - (b) QCA has given a code contravention notice under section 120V as in force immediately before the commencement to an electricity entity; or
 - (c) QCA has, under section 120X as in force immediately before the commencement, applied to the Supreme Court for a civil penalty order in relation to an electricity entity; or
 - (d) QCA has, under chapter 5, part 1A, division 6, subdivision 3 as in force immediately before the commencement, referred a matter to the regulator; or
 - (e) QCA has given an electricity entity a notice, under section 120ZE as in force immediately before the commencement, to produce documents or information; or
 - (f) QCA has, under section 120ZH(1) as in force immediately before the commencement, required an electricity entity to carry out an internal audit or to appoint an independent auditor.
- (2) QCA may continue to take action under chapter 5, part 1A as in force immediately before the commencement.

359 Limited continuation of disciplinary action by regulator

- (1) This section applies if the regulator has, under chapter 5, part 4, started to take disciplinary action against an electricity entity.
- (2) The Act, as in force immediately before the commencement, continues to apply to the matter unless the matter relates to the cancellation, suspension or amendment of a retail authority.

95 Amendment of sch 1 (Review of administrative decisions)

- (1) Schedule 1, part 1, entries for sections 205(1), 207C and 55D(i)—
omit.
- (2) Schedule 1, part 2, entries for sections 40A to 40D and 48E to 48I and notes—
omit.

96 Amendment of sch 2 (Subject matter for regulations)

- (1) Schedule 2, section 1, ‘and sale’—
omit.
- (2) Schedule 2, section 1(a)—
omit.
- (3) Schedule 2, section 1(b), from ‘interest’—
omit, insert—
interest);
- (4) Schedule 2, section 1(c) to (e), (g), (j) and (k)—
omit.
- (5) Schedule 2, section 1(b), (f), (h) and (i)—
renumber as schedule 2, section 1(a) to (d).

[s 97]

97 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definitions *accounting period*, *area retail entity*, *common area*, *common area consumption*, *connection contract*, *connection obligation*, *connection services application*, *Country Energy*, *credit support guidelines*, *customer connection services*, *customer retail services*, *electricity entity*, *Ergon Energy*, *excluded customer*, *financially responsible retail entity*, *first accounting period*, *industry code*, *initial industry code*, *large customer*, *large market customer*, *large non-market customer*, *market customer*, *negotiated connection contract*, *negotiated retail contract*, *net GST effect*, *non-market customer*, *on-supply agreement*, *prescribed retail entity*, *prospective on-supplier*, *prospective receiver*, *relevant small customer*, *retail area*, *retail authority*, *retail contract*, *retail entity*, *retailer of last resort scheme*, *retail obligation*, *retail services application*, *reviewer*, *small customer*, *spot market*, *standard connection contract*, *standard large customer retail contract*, *standard retail contract*, *State electricity entity*, *street lighting customer* and *warning notice*—

omit.

- (2) Schedule 5—

insert—

contravention notice see section 135AC(1).

customer connection service has the meaning given by the NERL (Qld).

customer retail services has the meaning given by the NERL (Qld) to *customer retail service* so far as it relates to electricity.

designated retail market area see section 89A.

distribution network code means—

- (a) an initial distribution network code; or
- (b) a distribution network code made by QCA under chapter 5, part 1A and as amended from time to time under that part.

electricity entity—

- (a) in general—see section 22(1); or
- (b) for chapter 2, part 9—see also section 64B; or
- (c) for chapter 5, part 1A—see also section 120A.

energy means electricity or gas or both.

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

Ergon Energy Retail means Ergon Energy Queensland Pty Ltd ACN 121 177 802.

excluded customer see section 23(5).

initial distribution network code means an initial distribution network made by the Minister under section 120B and as amended under chapter 5, part 1A, division 5 from time to time.

large customer see section 23(3).

local area retailer, for chapter 4, part 2A, see section 92.

National Energy Retail Rules has the meaning given by the NERL (Qld).

NERL (Qld) see the *National Energy Retail Law (Queensland) Act 2014*, section 3.

net GST effect, for providing a customer retail service, see section 90(6)(b).

prescribed retailer see section 92.

qualifying customer means a customer whose annual consumption at a premises is, or is estimated by the relevant distributor to be, less than 100MWh.

relevant qualifying customer see section 92.

[s 97]

retailer means a retailer under the NERL (Qld), that sells electricity to a customer in Queensland.

small customer see section 23(4).

standard contract customer means a customer who—

(a) receives a customer retail service under—

(i) a standard retail contract under the NERL (Qld); or

(ii) a standard retail contract (card-operated meters) under the NERL (Qld); or

(iii) a large customer standard retail contract under the NERL (Qld); or

(b) is subject to—

(i) a deemed customer retail arrangement under the NERL (Qld); or

(ii) a deemed large customer retail arrangement under the NERL (Qld).

State electricity entity means—

(a) an electricity entity that is a GOC, a GOC subsidiary or a government company; or

(b) Ergon Energy Retail.

warning notice—

(a) for chapter 5, part 1A, division 6—see section 120S(1); or

(b) for chapter 5, part 5, division 1—see section 135AC(1).

warning period see section 135AD(1)(c).

(3) Schedule 5, definition *qualifying generator*, paragraph (a), ‘small customer’—

omit, insert—

[s 101]

omit, insert—

- (2) Also, a person is a *small customer (energy)* if—
 - (a) the person is an exempt customer under the NERL (Qld), section 109; and
 - (b) a condition is imposed under the NERL (Qld) on the exempt seller who sells energy to the customer that the seller complies with this Act to the extent it applies to the seller.
- (3) Section 6(3)—
renumber as section 6(4).
- (4) Section 6—
insert—
 - (3) However, a customer at street lighting premises under the NERL (Qld) is not a small customer (energy) for the premises.

101 Amendment of s 7 (What is an *energy entity*)

- (1) Section 7(c), ‘or customer retail services’—
omit.
- (2) Section 7—
insert—
 - (d) an exempt seller.

102 Amendment of s 19 (Restrictions on disputes relating to *energy entities that can be referred*)

Section 19(c)—

omit, insert—

- (c) the relevant dispute may be dealt with under the *Queensland Competition Authority Act 1997*;

103 Amendment of s 46 (Failure by relevant entity to comply with accepted order or compliance directions)

- (1) Section 46(2), ‘subsections (3) to (5) apply’—
omit, insert—
subsection (3) applies
- (2) Section 46(4) and (5)—
omit.
- (3) Section 46(6) and (7)—
renumber as section 46(4) and (5).
- (4) Section 46(4), as renumbered, ‘subsection (7)’—
omit, insert—
subsection (5)

104 Amendment of s 64 (Scheme participation—energy entities)

- (1) Section 64(1), before subsection (1)—
insert—
(1A) An exempt seller becomes a scheme participant only when it starts to sell energy to a small customer (energy).
- (2) Section 64(1), ‘customer retail services’—
omit, insert—
a customer retail service
- (3) Section 64(1A) to (4)—
renumber as section 64(1) to (5).

105 Amendment of s 67 (Amount of participation fee—energy entity)

- (1) Section 67(1)(a), from ‘provides’ to ‘Act—’—
omit, insert—

[s 106]

is the holder of a distribution authority under either the *Electricity Act 1994* or the *Gas Supply Act 2003* but not both Acts—

- (2) Section 67(1)(b), from ‘provides’ to ‘Acts—’—
omit, insert—

is the holder of a distribution authority under both the *Electricity Act 1994* and the *Gas Supply Act 2003*—

- (3) Section 67(1)(c), from ‘provides’ to ‘Act—’—
omit, insert—

is the holder of 1 retailer authorisation under the NERL (Qld)—

- (4) Section 67(1)(d), from ‘provides’ to ‘Acts—’—
omit, insert—

is the holder of 2 retailer authorisations under the NERL (Qld)—

- (5) Section 67(1)—
insert—

- (e) if it is the holder of a special approval and provides customer connection services—
 - (i) the amount prescribed under a regulation; or
 - (ii) if no amount is prescribed—\$5000; or
- (f) if it is an exempt seller—the amount prescribed under a regulation for the exempt seller or the class of exempt sellers to which the exempt seller belongs.

106 Insertion of new pt 13

After section 112—

insert—

Part 13 Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014

113 Scheme participation by retailers and exempt sellers

- (1) This section applies if, immediately before the commencement, a retailer or an exempt seller was a scheme participant under pre-amended section 64.
- (2) The retailer or exempt seller continues to be a scheme participant after the commencement.
- (3) An obligation to pay a fee under this Act or any other obligation under this Act that accrued before the commencement continues after the commencement.
- (4) In this section—

commencement means the commencement of this section.

pre-amended section 64 means section 64 as in force immediately before the commencement.

107 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *customer connection services*, *customer retail services*, *distributor* and *retailer*—
omit.
- (2) Schedule—
insert—

customer connection service—

Note—

See also the amendments in schedule 1.

109 Replacement of s 3 (Main purposes of Act)

Section 3—

omit, insert—

3 Main purposes of Act

The main purposes of this Act are to—

- (a) promote efficient and economical processed natural gas supply; and
- (b) ensure the interests of customers are protected by—
 - (i) regulating the distribution services for reticulated processed natural gas; and
 - (ii) providing for the making of relevant distribution network codes.

Note—

This Act also includes provisions about LPG distribution pipelines and LPG distribution systems. See sections 75, 75A, 131A, 258, 289, 295 and 297 to 299.

110 Amendment of s 4 (Gas-related matters to which Act does not apply)

- (1) Section 4(2), editor's note, from *Queensland Competition Authority Act 1997*—

omit, insert—

Australian Consumer Law (Queensland) and the *Queensland Competition Authority Act 1997*.

- (2) Section 4(3), 'chapter 2, part 6, and'—

omit.

[s 111]

111 Replacement of s 5A (Declaration for Commonwealth Act)

Section 5A—

omit, insert—

5A Declaration for Commonwealth Act

A distribution authority is declared not to be personal property under the *Personal Property Securities Act 2009* (Cwlth).

112 Amendment of s 16 (Who is a *customer*)

(1) Section 16, heading—

omit, insert—

16 Customers and their types

(2) Section 16—

insert—

(3) A *small customer* is a person who is—

- (a) a small customer, for gas, under the NERL (Qld), section 5(2); or
- (b) an excluded customer to whom processed natural gas may be sold for premises only by an exempt seller and—
 - (i) who purchases processed natural gas from the exempt seller principally for personal, household or domestic use at premises; or
 - (ii) who consumes energy at premises below the upper consumption threshold applying under the NERL (Qld), section 6.

(4) An *excluded customer* is a person whose premises are located in—

- (a) the Maranoa distribution area; or
- (b) the Western Downs distribution area.

(5) In this section—

Maranoa distribution area means the distribution area described in the distribution authority held by the Maranoa Regional Council.

Western Downs distribution area means the distribution area described in the distribution authority held by the Western Downs Regional Council.

113 Omission of ss 17 and 20

Sections 17 and 20—

omit.

114 Replacement of s 21 (What is a *distribution authority*)

Section 21—

omit, insert—

21 What are a *distribution authority* and *distribution area*

A *distribution authority* authorises its holder to—

- (a) transport processed natural gas through a distribution pipeline or system within a stated area (*distribution area*); and
- (b) provide customer connection services to premises in the area.

115 Omission of s 23 (Types of distribution authority and their distributors)

Section 23—

omit.

[s 116]

116 Omission of ch 1, pt 3, div 2, sdiv 7 (Retail authorities and retailers)

Chapter 1, part 3, division 2, subdivision 7—

omit.

117 Amendment of s 28 (Requirements for application)

Section 28(a) to (d)—

omit, insert—

- (a) describe the distribution area for the distribution authority; and
- (b) be accompanied by the fee prescribed by regulation.

118 Amendment of s 29 (Public notice by regulator and submissions)

Section 29(1)—

omit, insert—

- (1) This section does not apply if the applicant holds a corresponding authority for the distribution authority.

119 Amendment of s 37 (Issue and public notice of authority)

Section 37(3)(b)—

omit, insert—

- (b) the authority's distribution area; and

120 Amendment of s 43 (Restriction for area distributors)

- (1) Section 43, heading, 'area'—

omit.

- (2) Section 43, 'An area'—

omit, insert—

A

121 Amendment of s 48 (Contingency practices and procedures)

Section 48—

insert—

- (6) Subsections (3) and (4) do not apply to a distributor within the meaning of the NERL (Qld).

122 Amendment of s 60 (Notice of proposed action)

Section 60(3)—

omit.

123 Replacement of s 102 (Application of pt 3)

Section 102—

omit, insert—

102 Application of pt 3

This part applies to a distributor in relation to the distributor's gas infrastructure that is not a distribution system under the NERL (Qld).

124 Amendment of s 108 (Commencement of customer connection services)

Section 108(3)—

insert—

- (c) the payment of charges for establishing a connection to the applicant's premises, if the charges are reasonable having regard to the expected revenue from the transportation of gas as a result of the connection.

[s 125]

125 Amendment of s 109C (Provisions for large customers)

Section 109C—

insert—

(4) In this section—

large customer, for premises, means a customer other than a small customer for the premises.

126 Amendment of s 125 (Operation of pt 4)

Section 125(2)—

omit.

127 Replacement of ch 3, pt 1, hdg (Retail authorities)

Chapter 3, part 1, heading—

omit, insert—

**Part 1 Retailers and particular
exempt sellers**

128 Omission of ch 3, pt 1, div 1 (Applying for and obtaining retail authority)

Chapter 3, part 1, division 1—

omit.

129 Omission of ch 3, pt 1, div 2, hdg and ss 159–175

Chapter 3, part 1, division 2, heading and sections 159 to 175—

omit.

130 Amendment of s 175A (Additional condition about community services agreement)

(1) Section 175A, heading—

omit, insert—

175A Retailer or particular exempt sellers must enter into community services agreement

(2) Section 175A(1), example—

omit.

(3) Section 175A(1), penalty—

omit, insert—

Maximum penalty—1333 penalty units.

(4) Section 175A—

insert—

(3) In this section—

retailer includes each of the following councils if the council is taken under the National Energy Retail Regulations (Queensland), section 14 as an exempt seller holding an individual exemption under the NERL (Qld), part 5, division 6—

(a) the Maranoa Regional Council;

(b) the Western Downs Regional Council.

131 Omission of ch 3, pt 1, divs 3 and 4 and pt 2

Chapter 3, part 1, divisions 3 and 4 and part 2—

omit.

132 Amendment of ch 3, pt 3, hdg (On-supply)

Chapter 3, part 3, heading, editor's note—

omit.

133 Omission of ch 3, pt 3, div 1, hdg (Preliminary)

Chapter 3, part 3, division 1, heading—

omit.

[s 134]

134 Omission of ss 214 and 215

Sections 214 and 215—

omit.

135 Omission of ch 3, pt 3, divs 2 and 3 and div 4, hdg

Chapter 3, part 3, divisions 2 and 3 and division 4, heading—

omit.

136 Amendment of s 222 (Individual metering option)

(1) Section 222(1) and (2)—

omit, insert—

(1) A receiver may, at any time—

(a) elect, by written notice given to the relevant on-supplier, to have the receiver's consumption of processed natural gas supplied from the on-supplier measured by a meter; and

(b) have the meter installed, at the receiver's expense.

(2) Section 222(3) and (4)—

renumber as section 222(2) and (3).

(3) Section 222(3), as renumbered, 'subsection (3)'—

omit, insert—

subsection (2)

137 Amendment of s 223 (Compensation for installation damage)

Section 223(1)(c)(i), 'section 222(3)(b)'—

omit, insert—

section 222(2)(b)

138 Omission of ch 3, pt 3, div 5 (Disclosure requirements for common area consumption charges)

Chapter 3, part 3, division 5—

omit.

139 Amendment of s 228 (Fixing of prices for standard contracts or for on-supply)

(1) Section 228, heading—

omit, insert—

228 Fixing of prices

(2) Section 228(1)—

omit, insert—

(1) Subject to section 228A, the Minister may fix any or all of the following—

- (a) standing offer prices of a retailer for or relating to the sale of processed natural gas to a customer;
- (b) charges relating to the sale of processed natural gas to a customer;
- (c) a methodology to fix the standing offer prices or charges.

Examples of matters for which prices, charges or a methodology may be fixed—

- charges for selling processed natural gas
- charges or fees for late or dishonoured payments
- charges or fees for discontinuing or recommencing the sale of processed natural gas

(3) Section 228, before the note—

insert—

(5) In this section—

retailer means a retailer under the NERL (Qld).

[s 140]

standing offer prices has the meaning given by the NERL (Qld), section 2.

140 Amendment of s 228A (Restrictions on the first exercise of price fixing power)

(1) Section 228A(3)(b), ‘area’—

omit.

(2) Section 228A(4)—

insert—

retailer means a retailer under the NERL (Qld).

141 Amendment of s 229 (Review of notified prices)

Section 229(1), ‘or on-supplier’—

omit.

142 Amendment of s 231 (Requirement to comply with notified prices)

(1) Section 231(1)(a)—

omit, insert—

(a) there is a notified price for or relating to the sale of processed natural gas; and

(2) Section 231(2)—

omit.

143 Amendment of s 232 (Additional consequences of failure to comply with notified prices)

(1) Section 232, ‘or on-supplier’—

omit.

(2) Section 232(3), ‘or receiver’—

omit.

- (3) Section 232(4), ‘or receiver’s’—
omit.
- (4) Section 232(5), ‘or on-supply agreement’—
omit.

144 Amendment of s 233 (Directions for prices notification)

- (1) Section 233(1), ‘or on-supplier’—
omit.
- (2) Section 233(1), examples, ‘customer retail services’—
omit, insert—
the sale of processed natural gas

145 Amendment of s 234 (Requirement to comply with direction for prices notification)

Section 234, ‘or on-supplier’—
omit.

146 Amendment of s 241 (Limitation of industry participant’s liability because of compliance with plan)

- (1) Section 241(2)(a), ‘or retail authority’—
omit, insert—
authority or retailer authorisation
- (2) Section 241—
insert—
 - (4) In this section—
retailer authorisation means a retailer authorisation under the NERL (Qld).

[s 147]

147 Replacement of s 247 (Notice of intention to stop processed natural gas transport or customer connection or retail services)

(1) Section 247, heading—

omit, insert—

247 Notice of intention to stop processed natural gas transport or sale or customer connection services

(2) Section 247(2), ‘An area’—

omit, insert—

A

(3) Section 247(3), ‘provision of customer retail services’—

omit, insert—

sale of processed natural gas to a customer

(4) Section 247(4)(a), ‘retail contract’—

omit, insert—

contract for the sale of processed natural gas to a customer

148 Omission of ch 4, pt 4 (Retailer of last resort scheme)

Chapter 4, part 4—

omit.

149 Amendment of s 257 (Direction overrides contracts)

Section 257(b) and (c)—

omit, insert—

(b) another contract relating to the production, transport or sale of processed natural gas.

150 Replacement of ch 5A, hdg and pt 1, hdg

Chapter 5A, heading and part 1, heading—

omit, insert—

Chapter 5A Distribution network codes

Part 1 Initial distribution network codes

151 Amendment of s 270A (Making of initial industry codes by Minister)

Section 270A, ‘and retailers’—

omit.

152 Replacement of s 270B (Specific matters for which code may provide)

Section 270B—

omit, insert—

270B Specific matters for which code may provide

Without limiting section 270A, a distribution network code may provide for the rights and obligations of distributors and customers about customer connection services.

153 Insertion of new s 270BA

After section 270B—

insert—

[s 154]

270BA Required consultation

- (1) This section applies if the Minister proposes to make a distribution network code, unless the Minister considers the proposed code—
 - (a) is needed urgently; or
 - (b) will not be materially detrimental to anyone's interests.
- (2) Before the Minister makes the distribution network code, the Minister must prepare a draft of the code and consult with—
 - (a) entities the Minister is satisfied are likely to be affected by the proposed code; and
 - (b) entities representing gas consumers.

154 Replacement of ch 5A, pt 2, hdg (QCA industry codes)

Chapter 5A, part 2, heading—

omit, insert—

Part 2 QCA distribution network codes

155 Amendment of ch 5A, pt 3, hdg (Review of industry codes and related matters)

Chapter 5A, part 3, 'industry'—

omit, insert—

distribution network

156 Amendment of ch 5A, pt 4, hdg (Amending industry codes)

Chapter 5A, part 4, heading, 'industry'—

omit, insert—

distribution network

157 Amendment of ch 5A, pt 5, hdg (Enforcing industry codes)

Chapter 5A, part 5, heading, ‘industry’—

omit, insert—

distribution network

158 Amendment of s 270ZD (How regulator deals with referral)

(1) Section 270ZD, ‘all or any of the following action’—

omit, insert—

either or both of the following actions

(2) Section 270ZD(c)—

omit.

159 Amendment of s 270ZJA (Relationship with Fair Trading Act 1989)

Section 270ZJA, ‘, subject to section 270ZJB,’—

omit.

160 Omission of s 270ZJB (Compliance with particular requirements under Australian Consumer Law (Queensland) for unsolicited consumer agreements)

Section 270ZJB—

omit.

161 Amendment of s 270ZK (Application of pt 1A)

(1) Section 270ZK, ‘or retailer’—

omit.

[s 162]

- (2) Section 270ZK, ‘an industry’—
omit, insert—
a distribution network
- (3) Section 270ZK(1)(b), ‘or retailer’s’—
omit.
- (4) Section 270ZK(3), ‘or chapter 3, part 1, division 3’—
omit.

162 Amendment of s 270ZL (Regulator may impose civil penalty)

Section 270ZL, ‘or retailer’—
omit.

163 Amendment of s 270ZM (Information notice about and taking effect of decision)

Section 270ZM(1), ‘or retailer’—
omit.

164 Insertion of new ch 6, pt 1B

Chapter 6, after part 1A—
insert—

Part 1B Enforcing section 175A against retailers

Division 1 Contravention notices

Subdivision 1 Preliminary

271AA Application of pt 1B

This part applies if the regulator suspects—

- (a) a retailer has contravened, or is contravening, section 175A; and
- (b) the contravention is likely to be a material contravention of section 175A.

271AB Criteria for deciding material contravention

- (1) This section applies to the making of any decision under this Act about whether a contravention of section 175A is a material contravention of the section.
- (2) The regulator must have regard to the objects of the Act.
- (3) Subsection (2) does not limit or otherwise affect what may be considered in making the decision.

Subdivision 2 Warning notices

271AC Warning notice may be given

- (1) The regulator may give the retailer a notice (the *warning notice*), warning the retailer that the regulator proposes to give the retailer a further notice about the contravention (a *contravention notice*).

[s 164]

- (2) The regulator must make the decision about whether to give the warning notice as soon as practicable after forming the suspicion.
- (3) However, a failure to comply with subsection (2) does not affect the validity of the warning notice or any subsequent contravention notice.
- (4) Despite subsections (2) and (3), if the regulator proposes to give a warning notice for a contravention, it can only be given within 2 years after the day on which the contravention happened.

271AD Requirements for warning notice

- (1) The warning notice must state each of the following—
 - (a) particulars of the contravention;
 - (b) that the regulator proposes to give the retailer a contravention notice unless the retailer—
 - (i) takes steps reasonably necessary to remedy the contravention; and
 - (ii) gives the regulator a written assurance, in the terms stated in the warning notice, that the retailer will—
 - (A) avoid any similar future contravention; and
 - (B) take steps reasonably necessary to avoid a future recurrence of the contravention;
 - (c) a period (the *warning period*) after which the contravention notice may be given unless the warning notice is complied with;
 - (d) that the retailer may make, within the warning period, written submissions to

show why the proposed contravention notice should not be given.

- (2) The warning period must be—
 - (a) if the warning notice is given because the regulator considers the contravention is of a type that requires urgent action—a period that the regulator considers is reasonable in the circumstances; or
 - (b) otherwise—at least 20 business days.
- (3) The warning notice may also state the steps the regulator reasonably believes are necessary to remedy the contravention or avoid its future recurrence.

Example of a step that may remedy a contravention—

paying compensation to someone who has suffered damage, injury or loss because of the contravention

271AE Considering submissions on warning notice

- (1) The regulator must consider any written submission made under section 271AD(1)(d) by the retailer within the warning period stated in the warning notice.
- (2) If the regulator at any time decides not to give the proposed contravention notice, it must, as soon as practicable, give the distributor or retailer notice of the decision.

Subdivision 3 Action after warning notice

271AF Giving of contravention notice

- (1) The regulator may give the proposed contravention notice if—

[s 164]

- (a) the retailer has not complied with the warning notice; and
 - (b) after complying with section 271AE, the regulator still believes the contravention notice ought to be given.
- (2) The contravention notice must state—
- (a) that the retailer has contravened, or is contravening, section 175A; or
 - (b) the contravention is likely to be a material contravention of the section.

271AG Duration of contravention notice

The contravention notice—

- (a) comes into effect—
 - (i) when it is made; or
 - (ii) if it states a later time—at the later time; and
- (b) ends—
 - (i) on the day stated in the notice; or
 - (ii) if it is cancelled before that day—when it is cancelled.

Division 2 Proceedings

271AH Proceeding for civil penalty order

- (1) This section applies if, on the application of the regulator, the Supreme Court is satisfied the retailer has—
 - (a) committed a material contravention of section 175A; or

- (b) attempted to commit a material contravention of section 175A; or
 - (c) been involved in a material contravention of section 175A.
- (2) The court may order the retailer to pay the State as a civil penalty an amount of no more than—
 - (a) for an individual—\$100000; or
 - (b) for a corporation—\$500000.
- (3) In fixing the penalty, the court must consider—
 - (a) the nature and extent of—
 - (i) the contravention; and
 - (ii) loss or damage suffered because of the contravention; and
 - (b) the circumstances in which the contravention took place; and
 - (c) whether the retailer has previously been found by the court in proceedings under this Act to have engaged in any similar conduct.
- (4) For subsection (1)(c), a distributor or retailer is involved in a contravention if the distributor or retailer—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced the contravention, whether through threats, promises or in another way; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

271AI How order enforced

If the Supreme Court orders payment of an amount under section 271AH(2), the State may enforce the order as a judgment of the court for a debt of that amount.

271AJ Injunctions

- (1) The Supreme Court may, on the application of the regulator, grant an injunction if satisfied the retailer has engaged, or is proposing to engage, in conduct that constitutes, or would constitute any of the following—
 - (a) a contravention of section 175A;
 - (b) attempting to contravene section 175A.
- (2) An injunction may be granted on conditions.
- (3) The court may also grant an injunction by consent of all parties to the application, whether or not the court is satisfied the retailer has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).
- (4) The court may grant an interim injunction pending its decision on the application.
- (5) The court must not require anyone, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (6) The court may amend an injunction or interim injunction.
- (7) An injunction or interim injunction restraining the retailer from engaging in conduct may be granted whether or not—
 - (a) it appears to the court that the retailer intends to engage again, or to continue to engage, in conduct of that kind; or

- (b) the retailer has previously engaged in conduct of that kind; or
 - (c) there is an imminent danger of substantial damage to another person if the retailer engages in conduct of that kind.
- (8) An injunction or interim injunction requiring the retailer to do an act or thing may be granted whether or not—
- (a) it appears to the court that the retailer intends to fail again, or to continue to fail, to do that act or thing; or
 - (b) the retailer has previously failed to do the act or thing; or
 - (c) there is an imminent danger of substantial damage to another person if the retailer does not do the act or thing.

271AK Conduct by directors, servants or agents

- (1) This section applies to a proceeding for a civil penalty, an interim injunction or an injunction under this division.
- (2) If—
 - (a) the proceeding concerns alleged conduct engaged in by the retailer; and
 - (b) it is necessary to prove the retailer's state of mind;it is enough to prove that a director, servant or agent (a *representative*) of the distributor or retailer, acting within the scope of the representative's actual or apparent authority, had the state of mind.
- (3) Conduct engaged in for a retailer by the following persons is taken to have been engaged in by the retailer—

[s 164]

- (a) a representative of the retailer, acting within the scope of the representative's actual or apparent authority;
 - (b) another person at the direction, or with the consent or agreement, of a representative of the retailer, if the giving of the direction, consent or agreement was within the scope of the representative's actual or apparent authority.
- (4) Conduct engaged in for a retailer by the following persons is taken to have been engaged in by the principal—
- (a) a servant or agent of the retailer, acting within the scope of the servant's or agent's actual or apparent authority;
 - (b) another person at the direction or with the consent or agreement, of a servant or agent of the retailer, if the giving of the direction, consent or agreement was within the scope of the servant's or agent's actual or apparent authority.
- (5) In this section—
- consent or agreement*** includes an implied consent or agreement.
- state of mind***, of a person, may include—
- (a) knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the person's intention, opinion, belief or purpose.

Division 3 Production of documents or information

271AL Notice to produce documents or information

- (1) This section applies if the regulator is conducting an investigation to find out whether the retailer is complying with section 175A.
- (2) The regulator may, by written notice to the retailer, require the retailer to give the regulator all or any the following things the regulator believes, on reasonable grounds, are relevant to the investigation—
 - (a) information within the retailer’s knowledge or possession;
 - (b) documents in the retailer’s custody, possession or power.
- (3) The notice must state—
 - (a) the information or documents required; and
 - (b) a period in which the information or documents must be given of no less than 7 days; and
 - (c) a reasonable place at which the information or documents must be given.
- (4) The retailer must comply with the notice, unless it has a reasonable excuse.
Maximum penalty—500 penalty units.
- (5) The retailer is not required to comply with the notice if the retailer claims, on the ground of self-incrimination, a privilege the retailer would be entitled to claim against giving the information or documents were the retailer a witness in a prosecution for an offence in the Supreme Court.

[s 165]

- (6) If the retailer claims that complying with the notice may tend to incriminate it, the regulator or retailer may make an application to the Supreme Court to decide the validity of the claim.

165 Omission of s 288 (Unlawful selling reticulated processed natural gas)

Section 288—

omit.

166 Amendment of ch 6, pt 4, hdg (General remedies)

Chapter 6, part 4, heading, editor's note—

omit, insert—

Note—

See also sections 101 and 145.

167 Omission of s 302 (Additional consequences of unlawfully selling reticulated processed natural gas)

Section 302—

omit.

168 Amendment of s 303 (Recovery of unlawful profits)

Section 303, 'or retailer'—

omit.

169 Amendment of s 307 (Other evidentiary aids)

Section 307(a)(iii) and (e), 'or retail'—

omit.

170 Amendment of s 307A (Evidentiary effect of code contravention notice)

Section 307A(1)(c), ‘or retailer’—

omit.

171 Amendment of s 308 (Register of authorities)

Section 308(a), ‘and retail’—

omit.

172 Amendment of s 309 (Keeping of register of authorities)

(1) Section 309(1)—

omit, insert—

(1) The regulator must include in the register of authorities information about the distribution area mentioned in section 28(a) for a distribution authority.

(2) Section 309(3), ‘or retail’—

omit.

173 Amendment of s 310A (Registers QCA must keep)

(1) Section 310A(a) and (b)—

omit, insert—

(a) distribution network codes;

(2) Section 310A(c) to (e)—

renumber as section 310A(b) to (d).

174 Amendment of s 316 (Limitation of liability of distributors and retailers)

(1) Section 316, heading, ‘and retailers’—

omit.

[s 175]

(2) Section 316(2)—

omit, insert—

(1A) This section applies to a distributor only in relation to the distributor's gas infrastructure that is not a distribution system under the NERL (Qld).

(2) A distributor is not civilly liable for the cost, damage or loss if—

(a) the failure or defect was caused by a circumstance beyond the distributor's control; and

(b) in relation to the supply, the distributor—

(i) complied with this Act and the conditions of any relevant distribution authority; and

(ii) acted in good faith and without negligence.

(3) Section 316(3), 'Subsection (3)'—

omit, insert—

Subsection (2)

(4) Section 316(1A) to (3)—

renumber as section 316(2) to (4).

175 Insertion of new ch 7, pt 3

After section 334—

insert—

Part 3

Transitional provisions for Electricity Competition and Protection Legislation Amendment Act 2014

335 Definition for pt 3

In this part—

commencement means the commencement of this section.

336 Continuation of cancellation or suspension of distribution authorities

- (1) This section applies if, before the commencement—
 - (a) an event mentioned in section 57(2) has happened; and
 - (b) the regulator had commenced procedures under section 58 or chapter 2, part 1, division 3, subdivision 5 in relation to the event for cancellation or suspension of a distribution authority.
- (2) This Act, as in force immediately before the commencement, continues to apply for the cancellation or suspension of the distribution authority.

337 Unfinished customer connection services

- (1) This section applies if—
 - (a) before the commencement, a customer and a distributor have entered into a connection contract under section 106; and

[s 175]

- (b) at the commencement, the customer's premises are not physically connected to the distributor's distribution system.
- (2) Section 108 as in force immediately before the commencement, continues to apply to the construction of the connection under the connection contract.

338 Undecided retail authority applications

- (1) This section applies if, before the commencement, a person applied to the regulator for a retail authority but the application had not been decided.
- (2) The application lapses.

Note—

The person may be able to apply for a retailer authorisation under the NERL (Qld).

339 Existing retail authorities

- (1) This section applies if, immediately before the commencement, a person was the holder of a retail authority.
- (2) The retail authority ceases to have effect.

Note—

The retail sale of processed natural gas is regulated under the NERL (Qld) from the commencement.

340 Continuation of actions by QCA

- (1) This section applies if, before the commencement—
 - (a) QCA has given a warning notice under former section 270R to a distributor or retailer; or

- (b) QCA has given a code contravention notice, under former section 270U, to a distributor or retailer; or
 - (c) QCA has, under former section 270W, applied to the Supreme Court for an order about the payment of a civil penalty by a distributor or retailer; or
 - (d) QCA has, under former chapter 5A, part 5, division 3, referred a matter to the regulator; or
 - (e) QCA has given a distributor or retailer a notice under former section 270ZE to produce documents or information; or
 - (f) QCA has, under former section 270ZG, required a distributor or retailer to carry out an internal audit or to appoint an independent auditor.
- (2) QCA may continue to take action under chapter 5A, part 5 as in force immediately before the commencement.
- (3) In this section—
former, for a provision mentioned in this section, means the provision as in force immediately before the commencement.

341 Regulator may continue to impose civil penalties

- (1) This section applies if, before the commencement—
- (a) a matter mentioned in section 270ZK, as in force immediately before the commencement, was referred to the regulator; and

[s 176]

- (b) the regulator has not yet exercised a power under section 270ZL in relation to the matter.
- (2) The regulator may exercise the power under section 270ZL in relation to the matter.

176 Amendment of sch 1 (Decisions subject to internal review)

Schedule 1, entries for sections 151 or 156, 180, 182, 186, 189, 193 and 197—

omit.

177 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *acceptance notice, accounting period, area distribution authority, area distributor, area retail authority, area retailer, area retailer obligation, common area, common area consumption, customer retail services, decision notice, defaulting retailer, distribution area, excluded customer, first accounting period, general retail authority, general retailer, industry code, initial industry code, large customer, negotiated retail contract, on-supply agreement, point-to-point distribution authority, proposed action, prospective on-supplier, prospective receiver, retail area, retail authority, retailer, retailer of last resort scheme, retail services application, small customer, standard retail contract, standard terms, suitability criteria and warning notice*—

omit.

- (2) Schedule 2—

insert—

acceptance notice see section 35(1)(d).

contravention notice see section 271AC(1).

decision notice see section 35(1).

distribution area see section 21(a).

distribution network code means—

- (a) an initial distribution network code; or
- (b) a distribution network code made by QCA under chapter 5A and as amended from time to time under that chapter.

excluded customer see section 16(4).

exempt seller means an exempt seller under the NERL (Qld), that sells gas to a customer in Queensland.

initial distribution network code means an initial distribution network code made by the Minister under chapter 5A and as amended from time to time under that chapter.

NERL (Qld) see the *National Energy Retail Law (Queensland) Act 2014*, section 3(1).

proposed action see section 60(1)(a).

retailer means a retailer under the NERL (Qld), that sells gas to a customer in Queensland.

retailer of last resort scheme means the RoLR scheme under the NERL (Qld), section 122.

small customer see section 16(3).

suitability criteria see section 32(2).

warning notice—

- (a) for chapter 5A, part 5—see section 270R(1);
or
- (b) for chapter 6, part 1B, division 1—see section 271AC(1).

warning period see section 271AD(1)(c).

- (3) Schedule 2, definition *corresponding authority*, ‘or retail’—
omit.

Part 7 **Amendment of Retail Shop Leases Act 1994**

181 Act amended

This part amends the *Retail Shop Leases Act 1994*.

182 Omission of s 37A (Lessor's recovery of electricity charges)

Section 37A—

omit.

Part 8 **Acts amended**

183 Acts amended

Schedule 1 amends the Acts it mentions.

Schedule 1 Minor amendments

section 183

Electricity Act 1994

- 1 Sections 55H(2), 55I(2), 120F(4), 120G, 120H(1), 120I(1), 120J(1), 120K(1), 120L(1), 120P, 120Q(a), 120R(1), 120V(2)(a), 120X(1), 120Z(1), 120ZA(2)(a), 120ZB, 120ZC(1), 170ZE(1), 120ZG(1)(a), 120ZH(1)(a)(i) and 253(6)(a), ‘an industry’—**

omit, insert—

a distribution network

- 2 Sections 120AA(1)(a)(i), 120B(3) note, 120D(1), 120E(1), 120F heading, (1) and (3), 120H(2), 120J heading, 120K heading, 120V(3) and (4), 120ZH heading, 226B(b) and 253(9), ‘industry’—**

omit, insert—

distribution network

- 3 Section 120F(4), ‘initial industry’—**

omit, insert—

initial distribution network

- 4 Sections 120ZA, 120ZE(2), 120ZF(2)(b)(ii), 120ZH(1)(a)(i) and 120ZJ(1)(a), examples, after ‘entity’s’—**

insert—

or retailer’s

- 5 Sections 120Q(a), 120S(1), 120T(1), 120U, 120V, 120X, 120ZA, 120ZB, 120ZC(1), 120ZE, 120ZF, 120ZG(1), 120ZH, 120ZI, 120ZJ and 120ZK, after ‘entity’—**

insert—

or retailer

- 6 Sections 120Z(7)(a) and (b) and (8)(a) and (b), ‘; and’—**

omit, insert—

; or

- 7 Section 120ZD(2), after ‘entities’—**

insert—

or retailers

Gas Supply Act 2003

- 8 Sections 50A, 109A(1), 109B(2), 109C(3), 270A, 270C(1), 270D(1), 270E heading, (1) and (3), 270G(2), 270I heading, 270J, 270U(3) and (4), 270ZG heading and 299B(b), ‘industry’—**

omit, insert—

distribution network

- 9 Sections 57(2)(b)(v), 109(4)(d), 270E(4), 270F, 270G(1), 270H(1), 270I(1), 270J(1), 270K(1), 270O, 270P(a), 270Q(1), 270U(2)(a), 270W(1), 270Y(1), 270Z(2)(a), 270ZA, 270ZB(1), 270ZE(1), 270ZF(1)(a), 270ZG(1)(a)(i) and 270ZJA, ‘an industry’—**

omit, insert—

a distribution network

- 10 Section 270E(4), ‘initial industry’—**
omit, insert—
initial distribution network
- 11 Sections 270P(a), 270R(1), 270S(1), 270T, 270U, 270W, 270Y, 270Z, 270ZA, 270ZB(1), 270ZD, 270ZE, 270ZF(1), 270ZG, 270ZH, 270ZI, 270ZJ, 279(3) and 316(3)(a), ‘or retailer’—**
omit.
- 12 Sections 270Y(7)(a) and (b) and (8)(a) and (b), ‘; and’—**
omit, insert—
; or
- 13 Sections 270Z(2)(b), 270ZE(2), 270ZG(1)(a)(i) and 270ZI(1)(a) examples, ‘or retailer’s’—**
omit.