



Queensland

Electricity Amendment Act (No. 2) 2004

Act No. 51 of 2004



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An Act to amend the *Electricity Act 1994*

[Assented to 29 November 2004]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Electricity Amendment Act (No. 2) 2004*.

2 Commencement

- (1) The following provisions commence on assent—
 - sections 3, 14 to 25 and 26(1) and (2)
 - schedule, items 1 to 6, 9 to 12, 16 and 17.
- (2) The remaining provisions commence on a day to be fixed by proclamation.

3 Act amended

This Act and the schedule amend the *Electricity Act 1994*.

4 Amendment of s 40 (Connection and supply of electricity in distribution area)

- (1) Section 40(1)(b), after ‘entity’—

insert—

‘who has entered into a negotiated sale and connection contract with a contestable customer who owns or occupies the premises’.
- (2) Section 40(5), ‘the customer’—

omit, insert—

‘the applicant’.

5 Amendment of s 40AA (Supply if no customer connection contract)

- (1) Section 40AA(2), ‘For premises of a contestable customer, the customer’—

omit, insert—

‘Unless subsection (4) applies, the customer who owns or occupies the premises’.

(2) Section 40AA(3)—

omit, insert—

‘(3) Subsection (4) applies if a contestable customer enters into a negotiated sale and connection contract with a retail entity for the premises.

‘(3A) The retail entity and the host distribution entity are taken to have entered into a contract on the terms of the host distribution entity’s standard customer connection contract, in effect from time to time, for the provision of customer connection services to the premises.’.

(3) Section 40AA(4), ‘(3)’—

omit, insert—

‘(4)’.

(4) Section 40AA(5), ‘A contract under subsection (2) or (3)’—

omit, insert—

‘The contract’.

(5) Section 40AA(7), definition *host retail entity*—

omit.

(6) Section 40AA(3A) to (7)—

renumber as section 40AA(4) to (8).

6 Replacement of ss 40A, 40B and 40BA

Sections 40A, 40B and 40BA—

omit, insert—

‘40A Terms of standard customer connection contract

‘(1) The terms of a distribution entity’s standard customer connection contract are the terms stated for the contract, from time to time, in an approved industry code.

- ‘(2) If the terms of the contract are inconsistent with this Act, the contract is unenforceable to the extent of the inconsistency.’.

7 Amendment of s 40G (Disconnection for failure to pay debts)

Section 40G(c), after ‘contract’—

insert—

‘, or negotiated sale and connection contract,’.

8 Amendment of s 49 (Obligation to provide customer retail services to non-contestable customers)

- (1) Section 49(4)(b), after ‘does not’—

insert—

‘, under section 52A,’.

- (2) Section 49(7), after ‘sale contract’—

insert—

‘, under section 52A,’.

9 Amendment of s 49A (Sale if no customer sale contract)

- (1) Section 49A(1)(b), after ‘contract’—

insert—

‘, or negotiated sale and connection contract,’.

- (2) Section 49A(2), ‘For the premises of a non-contestable customer, the customer’—

omit, insert—

‘The customer who owns or occupies the premises’.

- (3) Section 49A(2), from ‘the following’—

omit, insert—

‘customer retail services to the premises.’.

- (4) Section 49A(3)—

omit.

- (5) Section 49A(5), ‘A contract under subsection (2) or (3)’—
omit, insert—
‘The contract’.
- (6) Section 49A(5)(b), from ‘the host’ to ‘contract’—
omit, insert—
‘a retail entity enter into, or are taken to have entered into, a customer sale contract or negotiated sale and connection contract’.
- (7) Section 49A(4) to (7)—
renumber as section 49A(3) to (6).

10 Replacement of ss 50 and 51

Sections 50 and 51—

omit, insert—

‘50 Terms of standard customer sale contract

- ‘(1) The terms of a retail entity’s standard customer sale contract are the terms stated for the contract, from time to time, in an approved industry code.
- ‘(2) If the terms of the contract are inconsistent with this Act, the contract is unenforceable to the extent of the inconsistency.’.

11 Omission of s 51A (Amendment of standard customer sale contract)

Section 51A—

omit.

12 Amendment of s 55B (Contracting out of s 53, 55, 96 or 97)

- (1) Section 55B, ‘, 96’—
omit.
- (2) Section 55B(1), after ‘sale contract’—

insert—

‘, or negotiated sale and connection contract.’.

13 Replacement of s 55C (Sale of electricity outside retail area)

Section 55C—

omit, insert—

‘55C Sale of electricity outside retail area

- ‘(1) If a customer’s electrical installation or premises is outside a retail entity’s retail area, the entity may sell electricity to the customer for the installation or premises.
- ‘(2) However, subsection (1) applies only if—
- (a) the customer is a contestable customer; or
 - (b) the customer’s electrical installation or premises is not within another retail entity’s retail area; or
 - (c) for a non-contestable customer’s electrical installation or premises in another retail entity’s area—the other retail entity agrees to electricity being sold to the customer.’.

14 Amendment of s 63 (Functions)

- (1) Section 63(1)(a), ‘become’—

omit, insert—

‘are’.

- (2) Section 63(1)(b)—

omit, insert—

‘(b) to make standards and codes for regulating the electricity industry; and’.

15 Insertion of new ch 2 pt 8 div 3

Chapter 2, part 8—

insert—

‘Division 3 Industry codes

‘64FA Making of codes

- ‘(1) The regulator may make industry codes that apply to all or any of the following—
- (a) distribution entities;
 - (b) retail entities;
 - (c) special approval holders authorised to perform activities for which a distribution authority or retail authority would otherwise be required under this Act.
- ‘(2) An industry code must state the distribution entities, retail entities or special approval holders to which it applies.
- ‘(3) The matters for which an industry code may provide include, but are not limited to, the following—
- (a) minimum service standards for electricity supply to be met by distribution entities;
 - (b) the service levels to be provided by distribution entities and retail entities to customers;
 - (c) the payment of amounts by distribution entities or retail entities to affected customers for failure to provide a stated service level;
 - (d) the preparation, by a distribution entity, of plans about the operation and management of the entity’s supply network;
 - (e) the rights and obligations of distribution entities, retail entities and customers about customer connection services and customer retail services;
 - (f) the terms of standard customer connection contracts and standard customer sale contracts;
 - (g) the terms of contracts between distribution entities and retail entities relating to the provision of customer connection services and customer retail services;
 - (h) minimum requirements for distribution entities and retail entities in dealing with customer complaints.

- ‘(4) The terms of a contract mentioned in subsection (3)(f) or (g) must not be inconsistent with this Act.
- ‘(5) To remove any doubt, it is declared that, in providing for the terms of a contract mentioned in subsection (3)(f) or (g), an industry code may provide for different terms to apply to different types of customer.
- ‘(6) An industry code is not subordinate legislation.
- ‘(7) In subsection (3)—
 - distribution entity* includes a special approval holder authorised to perform activities for which a distribution authority would otherwise be required under this Act.
 - retail entity* includes a special approval holder authorised to perform activities for which a retail authority would otherwise be required under this Act.

‘64FB Approval of code

- ‘(1) A regulation may approve an industry code.
- ‘(2) When the regulation is tabled as required under the *Statutory Instruments Act 1992*, section 49, a copy of the approved code must also be tabled.

‘64FC When approved code has effect

‘An approved industry code has effect on and from the later of the following days—

- (a) the day the regulation approving the code is gazetted;
- (b) the commencement day stated in the code.

‘64FD Access to approved code

- ‘(1) The chief executive must keep a copy of each approved industry code available for inspection, without charge—
 - (a) during normal business hours at the department’s head office; and
 - (b) on the department’s web site on the Internet.

- ‘(2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the code from the chief executive.
- ‘(3) The fee decided by the chief executive for producing a copy of the code must not be more than the chief executive’s reasonable cost of producing the copy.

‘64FE Act prevails over approved code

‘If an approved industry code is inconsistent with this Act, including a regulation made under this Act, the Act or regulation prevails to the extent of the inconsistency.’.

16 Amendment of ch 4, pt 2 (Pricing and service quality standards)

Chapter 4, part 2, heading, ‘**and service quality standards**’—

omit.

17 Amendment of s 90 (Deciding retail prices for non-contestable customers)

Section 90(3), ‘and relevant service quality standards’—

omit.

18 Omission of s 92 (Standards about quality of service)

Section 92—

omit.

19 Amendment of s 119 (Regulator’s role in disputes between electricity entity and customers or occupiers)

Section 119(1)(a), after ‘function’—

insert—

‘or obligation’.

20 Insertion of new ss 120AA to 120AE

Chapter 5, part 1—

insert—

‘120AA Regulator’s powers concerning audit of compliance with Act etc.

- ‘(1) The regulator may, by written notice given to an electricity entity or special approval holder, require the entity or holder—
- (a) to carry out an internal audit of all or any of the following—
 - (i) the entity or holder’s compliance with this Act, industry codes, and the authority issued or approval given to it under this Act;
 - (ii) the reliability and quality of information given by the entity or holder to the regulator under this Act;
or
 - (b) to appoint a person as an independent auditor to carry out an audit of all or any of the things mentioned in paragraph (a).
- ‘(2) The regulator may appoint a person as an independent auditor to carry out an audit of all or any of the things mentioned in subsection (1)(a) concerning the entity or holder—
- (a) instead of making a requirement of the entity or holder under subsection (1); or
 - (b) if the entity or holder fails to comply with a notice given to it under the subsection.
- ‘(3) A person may be appointed as an independent auditor under subsection (1)(b) or (2) only if the appointer reasonably considers the person has the appropriate qualifications or experience for carrying out the audit.

‘120AB Responsibility for cost of audit

- ‘(1) An electricity entity or special approval holder required under section 120AA(1) to carry out, or appoint an independent auditor to carry out, an audit is responsible for the cost of the audit.

- ‘(2) If the regulator appoints an independent auditor to carry out an audit concerning an electricity entity or special approval holder, the entity or holder must reimburse the regulator for the cost of the audit if required to do so by the regulator.

‘120AC Independent auditor may require reasonable help or information

- ‘(1) An independent auditor appointed under section 120AA to carry out an audit concerning an electricity entity or special approval holder may require the entity or holder to give the auditor—
- (a) reasonable help to carry out the audit; or
- Examples—*
- access to the entity’s or holder’s premises and records
 - help from the entity’s or holder’s employees
- (b) information, in a form reasonably required by the auditor, to help the auditor carry out the audit.
- ‘(2) An electricity entity or special approval holder required to give reasonable help under subsection (1)(a), or information under subsection (1)(b), must comply with the requirement unless the entity or holder has a reasonable excuse.
- ‘(3) If the entity or holder is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

Note—

A contravention of subsection (2) is a contravention of the entity’s authority or holder’s approval.

‘120AD Audit report and submissions on report

- ‘(1) An electricity entity or special approval holder required under section 120AA(1) to carry out, or appoint an independent auditor to carry out, an audit must give a copy of the audit report to the regulator.
- ‘(2) The copy must be given promptly after the audit is completed.

- ‘(3) If the regulator appoints an independent auditor to carry out an audit concerning an electricity entity or special approval holder, the regulator must give the entity or holder—
- (a) a copy of the draft audit report and an opportunity to make submissions to the regulator on the draft report; and
 - (b) a copy of the final audit report and an opportunity to make further submissions to the regulator on the final report.

‘120AEDisclosure of information

- ‘(1) This section applies if an electricity entity or special approval holder gives the regulator written information about the entity or holder under this Act.
- ‘(2) The regulator must disclose the information to QCA if—
- (a) QCA requests the disclosure for performing its functions; and
 - (b) the entity or holder—
 - (i) consents to the disclosure; or
 - (ii) is required, under the entity’s authority or holder’s approval, to consent to the disclosure.’.

21 Amendment of s 120ZC (Notice to produce documents or information)

Section 120ZC(1), from ‘with’—

omit, insert—

‘with the conduct rules.’.

22 Insertion of new s 120ZCA

Chapter 5, part 1A—

insert—

‘120ZCADisclosure of information

- ‘(1) This section applies if an electricity entity or special approval holder gives QCA written information about the entity or holder under this Act, the *Electricity–National Scheme (Queensland) Act 1997* or the Market Code.
- ‘(2) QCA must disclose the information to the regulator if—
- (a) the regulator requests the disclosure for performing the regulator’s functions; and
 - (b) the entity or holder—
 - (i) consents to the disclosure; or
 - (ii) is required, under the entity’s authority or holder’s approval, to consent to the disclosure.’.

23 Amendment of s 140 (Entry to place to protect electricity entity’s works)

Section 140—

insert—

- ‘(1A) Without limiting subsection (1), the electricity officer may enter the place to remove vegetation that is interfering, or has the potential to interfere, with the operation of an electric line or other works of the entity.’.

24 Amendment of s 141 (Entry to make works or electrical installations safe)

Section 141—

insert—

- ‘(2A) Without limiting subsection (1) or (2), the electricity officer may enter the place to remove vegetation that is affecting, or may affect, the safety of works or an electrical installation mentioned in the subsection.’.

25 Insertion of new s 141B

Chapter 6, part 3—

insert—

‘141B Associated powers on entry

‘An electricity officer may take into or onto a place any person, equipment and materials the officer reasonably requires for exercising a power under this chapter.’.

26 Amendment of sch 5 (Dictionary)

- (1) Schedule 5, definition *service quality standard*—

omit.

- (2) Schedule 5—

insert—

‘***approved industry code*** means an industry code approved under section 64FB.’.

- (3) Schedule 5, definitions *standard customer connection contract* and *standard customer sale contract*—

omit.

- (4) Schedule 5—

insert—

‘***negotiated sale and connection contract*** means a contract entered into under section 52 for the provision of customer retail services and customer connection services to a contestable customer’s premises.

standard customer connection contract means a customer connection contract under section 40A.

standard customer sale contract means a customer sale contract under section 50.’.

- (5) Schedule 5, definition *customer retail services*, from ‘means’—

omit, insert—

‘means the sale of electricity to the premises.’.

- (6) Schedule 5, definition *customer sale contract*, after ‘a contract’—

insert—

‘, other than a negotiated sale and connection contract,’.

- (7) Schedule 5, definition *negotiated customer sale contract*, from ‘a contract’ to ‘52’—

omit, insert—

‘a contract, other than a negotiated sale and connection contract, entered into under section 52 or 52A’.

27 Insertion of new ch 14, pt 8

Chapter 14—

insert—

‘Part 8 Transitional provisions for Electricity Amendment Act (No. 2) 2004

‘310 Existing standard customer sale contracts

- ‘(1) This section applies to a standard customer sale contract (the *existing contract*) that is taken, under section 49 or 49A,¹ to have been entered into between a non-contestable customer and a retail entity and—
- (a) is in force immediately before the commencement of this section; and
 - (b) provides for customer retail services and customer connection services for the customer’s premises.
- ‘(2) On and from the commencement of this section—
- (a) the existing contract terminates; and
 - (b) the customer is taken to have entered into—
 - (i) a standard customer sale contract for the premises with the retail entity; and

¹ Section 49 (Obligation to provide customer retail services to non-contestable customers) or 49A (Sale if no customer sale contract)

- (ii) a standard customer connection contract with the distribution entity to whose supply network the premises are connected.

‘311 Existing negotiated customer sale contracts

- ‘(1) This section applies to a negotiated customer sale contract that—
 - (a) is in force immediately before the commencement of this section; and
 - (b) provides for customer retail services and customer connection services.
- ‘(2) On and from the commencement of this section, the contract is taken to be a negotiated customer sale and connection contract.

‘312 Existing standard customer connection contracts

- ‘(1) This section applies to a standard customer connection contract that is—
 - (a) in force between a distribution entity and a retail entity immediately before the commencement of this section; and
 - (b) provides for customer connection services to a non-contestable customer’s premises.
- ‘(2) On the commencement of this section, the contract terminates.’.

Schedule Minor amendments

section 3

1 Chapter 1, part 3, heading—

omit, insert—

‘Part 3 Dictionary and notes in text’.

2 Chapter 1, part 3—

insert—

‘4A Notes in text

‘A note in the text of this Act is part of the Act.’.

3 Section 27(b)(vi), ‘(Additional condition to comply with protocols, standards and codes)’—

omit.

4 Sections 28 and 36, ‘the regulations’—

omit, insert—

‘this Act’.

5 Section 40H, ‘, 96’—

omit.

6 Section 45, ‘the regulations’—

omit, insert—

‘this Act’.

Schedule (continued)

- 7 Section 51AA(7), ‘sections 50 to 51A’—**
omit, insert—
‘section 50’.
- 8 Sections 53, 54 and 55, ‘49(1)’—**
omit, insert—
‘49’.
- 9 Section 55E, ‘a regulation’—**
omit, insert—
‘this Act’.
- 10 Section 60(1)(a)(iii), ‘(Additional condition to comply with protocols, standards and codes)’—**
omit.
- 11 Section 61, ‘the regulations’—**
omit, insert—
‘this Act’.
- 12 Section 89A(4), ‘quality’—**
omit.
- 13 Section 135HY, ‘49A(3)’—**
omit, insert—
‘49A(2)’.

Schedule (continued)

14 Section 135HY(1), '49A(5)'—*omit, insert—*

'49A(4)'.

15 Section 135HY(2), 'and (3)'—*omit, insert—*

'and (2)'.

16 Chapter 6, part 3, heading—*omit, insert—***'Part 3 Other provisions about
exercise of electricity officer's
powers'.****17 Section 264(1) and 266, 'A'—***omit, insert—*

'Without limiting section 263, a'.