



Queensland

Queensland Competition Authority Amendment Act 2005

Act No. 37 of 2005



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Contents

		Page
1	Short title	4
2	Commencement	4
3	Act amended	4
4	Amendment of s 10 (Authority's functions)	4
5	Amendment of s 75 (Application of Act to authority for purposes of giving notices)	4
6	Insertion of new s 75A	5
	75A Application of Act to authority for purposes of giving notices to operator	5
7	Amendment of s 79 (Making recommendation)	6
8	Amendment of s 85 (Notice of decision)	6
9	Amendment of s 93 (Notice of decision)	6
10	Amendment of s 119 (Restrictions affecting making of access determination)	7
11	Amendment of s 130 (Purpose and contents of codes)	7
12	Amendment of s 133 (Requirement of owner to give draft access undertaking)	7
13	Insertion of new ss 133A and 133B	7
	133A Criteria for choosing entity to give draft access undertaking	8
	133B Requirement to give information or document	8
14	Amendment of s 134 (Consideration and approval of draft access undertaking by authority)	8
15	Amendment of s 135 (Preparation and approval of draft access undertaking by authority)	9
16	Amendment of s 136 (Submission and approval of voluntary draft access undertaking)	9
17	Amendment of s 137 (Contents of access undertakings)	9

18	Amendment of s 138 (Factors affecting approval of draft access undertaking)	9
19	Amendment of s 139 (Requirement of owner to give draft amending access undertaking)	10
20	Amendment of s 142 (Submission and approval of voluntary draft amending access undertaking)	10
21	Amendment of s 143 (Factors affecting approval of draft amending access undertaking)	11
22	Amendment of s 144 (Application of subdivision)	11
23	Amendment of s 146 (Notice of investigation)	11
24	Amendment of s 158A (Orders to enforce approved access undertaking)	11
25	Amendment of ss 159–161	11
26	Amendment of s 162 (Responsible operator must keep books and records under manual)	12
27	Amendment of s 163 (Responsible operator to keep separate accounting records)	12
28	Amendment of s 176 (Notice of hearings)	12
29	Amendment of s 187 (Confidential information)	12
30	Amendment of s 188A (Consolidation of arbitration of access and water supply disputes)	13
31	Amendment of s 239 (Confidential information)	13
32	Amendment of schedule (Dictionary)	14



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Act No. 37 of 2005

An Act to amend the *Queensland Competition Authority Act 1997*

[Assented to 1 September 2005]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Queensland Competition Authority Amendment Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act amended

This Act amends the *Queensland Competition Authority Act 1997*.

4 Amendment of s 10 (Authority's functions)

Section 10—

insert—

‘(1a) if directed by the Ministers—to monitor compliance by a government agency, or conduct arbitration hearings for resolving disputes about a government agency’s compliance, with a code of conduct the agency has agreed to abide by; and’.

5 Amendment of s 75 (Application of Act to authority for purposes of giving notices)

(1) Section 75, heading, after ‘notices’—

insert—

‘to owner’.

(2) Section 75(1) and (2)(b), ‘part’—

omit, insert—

‘Act’.

6 Insertion of new s 75A

Before part 5, division 2—

insert—

‘75A Application of Act to authority for purposes of giving notices to operator

- ‘(1) If this Act requires or permits a notice to be given to the operator of a facility or service by the authority and there is more than 1 operator of the facility or service, the notice may be given to—
- (a) if there is a nominated operator for the facility or service—the nominated operator; or
 - (b) if the authority has requested notification of a nominated operator for the facility or service but there is no nominated operator—any one of the operators.
- ‘(2) An operator is the nominated operator, for a facility or service for which there is more than 1 operator, only if a written notice has been given to the authority in relation to the operator (the *nominee*) and the notice contains—
- (a) the nominee’s name and address for receiving notices; and
 - (b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and
 - (c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.
- ‘(3) For subsection (1)(b), the authority may request notification of a nominated operator, for a facility or service for which there is more than 1 operator, by giving a notice to each operator whose name and address is known to the authority asking that a written notice be given to the authority containing—
- (a) the name, and address for receiving notices, of 1 operator (also the *nominee*); and

- (b) a signed statement by the other operators that the nominee is authorised by them to receive notices under this Act for all the operators; and
- (c) a signed statement by the nominee agreeing to be the operator authorised to receive notices under this Act for all the operators.’.

7 Amendment of s 79 (Making recommendation)

Section 79(6)—

omit.

8 Amendment of s 85 (Notice of decision)

(1) Section 85(2)(c)—

renumber as section 85(2)(d).

(2) Section 85(2)—

insert—

‘(c) if the owner and operator of the service are different entities, and the applicant for the request about the declaration of the service is not the operator of the service—give the designated material for the decision to the operator of the service; and’.

9 Amendment of s 93 (Notice of decision)

(1) Section 93(2)(b)—

renumber as section 93(2)(c).

(2) Section 93(2)—

insert—

‘(b) if the owner and operator of the service are different entities—the operator of the service; and’.

10 Amendment of s 119 (Restrictions affecting making of access determination)

(1) Section 119(5)(a), after ‘owner’—

insert—

‘or operator’.

(2) Section 119(5)(b)—

insert—

‘(iii) if the owner and operator of the facility are different entities—the legitimate business interests of the operator of the facility are also protected; and’.

11 Amendment of s 130 (Purpose and contents of codes)

Section 130(3)(c)—

omit, insert—

‘(c) arrangements to be made by the owner or operator of a declared service to separate the owner’s, or operator’s, operations relating to the service from other operations of the owner or operator relating to another commercial activity;’.

12 Amendment of s 133 (Requirement of owner to give draft access undertaking)

Section 133, after ‘owner’—

insert—

‘or operator’.

13 Insertion of new ss 133A and 133B

After section 133—

insert—

‘133A Criteria for choosing entity to give draft access undertaking

- ‘(1) This section applies if the owner and operator of a declared service are different entities.
- ‘(2) In deciding which of the entities to give an initial undertaking notice to, the authority may have regard to the following—
 - (a) the terms of any contract about the service to which the entities are parties;
 - (b) the extent to which each entity is able to provide access to the service;
 - (c) the extent to which each entity is able to give effect to an access undertaking for the service;
 - (d) any written representations made to it by the entities.

‘133B Requirement to give information or document

- ‘(1) The authority may by written notice given to an entity mentioned in section 133A(1) require the entity to give the authority, within a reasonable time of at least 14 days stated in the notice, information or a document the authority reasonably requires to have proper regard to the criteria mentioned in section 133A(2).
- ‘(2) The entity must comply with the requirement within the time stated in the notice, unless the entity has a reasonable excuse.
Maximum penalty—500 penalty units or 6 months imprisonment.’.

14 Amendment of s 134 (Consideration and approval of draft access undertaking by authority)

Section 134, after ‘owner’—

insert—

‘or operator’.

15 Amendment of s 135 (Preparation and approval of draft access undertaking by authority)

Section 135, after ‘owner’—

insert—

‘or operator’.

16 Amendment of s 136 (Submission and approval of voluntary draft access undertaking)

Section 136, after ‘owner’—

insert—

‘or operator’.

17 Amendment of s 137 (Contents of access undertakings)

(1) Section 137(2), after ‘owner’—

insert—

‘or operator’.

(2) Section 137(2)(ea), after ‘owner’s’—

insert—

‘, or operator’s,’.

18 Amendment of s 138 (Factors affecting approval of draft access undertaking)

(1) Section 138, after ‘owner’—

insert—

‘or operator’.

(2) Section 138(2), before ‘the following’—

insert—

‘each of’.

(3) Section 138(2)(b) to (d)—

renumber as section 138(2)(c) to (e).

(4) Section 138(2)—

insert—

‘(b) if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected;’.

19 Amendment of s 139 (Requirement of owner to give draft amending access undertaking)

(1) Section 139, heading, ‘owner’—

omit, insert—

‘responsible person’.

(2) Section 139(1), ‘for’—

omit, insert—

‘who gave’.

20 Amendment of s 142 (Submission and approval of voluntary draft amending access undertaking)

(1) Section 142(1), ‘for’—

omit, insert—

‘who gave’.

(2) Section 142(4), definition *responsible person for an approved access undertaking*—

omit, insert—

‘responsible person who gave an approved access undertaking includes a person who gave the access undertaking because the person expects to be the owner or operator of the service to which the access undertaking relates.’.

21 Amendment of s 143 (Factors affecting approval of draft amending access undertaking)

Section 143(2), ‘138(2)(a) to (d)’—

omit, insert—

‘138(2)’.

22 Amendment of s 144 (Application of subdivision)

Section 144(c), after ‘owner’—

insert—

‘or operator’.

23 Amendment of s 146 (Notice of investigation)

Section 146(1)(a), ‘of the service’—

omit, insert—

‘or operator of the service, or the responsible person’.

24 Amendment of s 158A (Orders to enforce approved access undertaking)

Section 158A(2)(a), ‘the responsible’—

omit, insert—

‘a responsible’.

25 Amendment of ss 159–161

Sections 159 to 161, ‘responsible operator’—

omit, insert—

‘access provider’.

26 Amendment of s 162 (Responsible operator must keep books and records under manual)

- (1) Section 162, heading, ‘Responsible operator’—
omit, insert—
‘Access provider’.
- (2) Section 162, ‘responsible operator’—
omit, insert—
‘access provider’.

27 Amendment of s 163 (Responsible operator to keep separate accounting records)

- (1) Section 163, heading, ‘Responsible operator’—
omit, insert—
‘Access provider’.
- (2) Section 163, ‘responsible operator’—
omit, insert—
‘access provider’.
- (3) Section 163(4)(b), ‘responsible operator’s’—
omit, insert—
‘access provider’s’.

28 Amendment of s 176 (Notice of hearings)

- Section 176(3)(c), after ‘owner’—
insert—
‘or operator’.

29 Amendment of s 187 (Confidential information)

- Section 187(3)—
insert—

- ‘(f) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator’s function mentioned in section 63(1)(e) of that Act; or
- (g) the chief executive of the department administering the *Transport Infrastructure Act 1994*, to facilitate the exercise of that chief executive’s powers mentioned in chapter 7, part 3, division 4¹ of that Act; or
- (h) the regulator under the *Water Act 2000*, to facilitate the performance of the regulator’s function mentioned in section 515(1)(c) of that Act.’.

30 Amendment of s 188A (Consolidation of arbitration of access and water supply disputes)

Section 188A(a), after ‘owner’—

insert—

‘or operator’.

31 Amendment of s 239 (Confidential information)

Section 239(2)—

insert—

- ‘(d) the regulator under the *Electricity Act 1994*, to facilitate the performance of the regulator’s function mentioned in section 63(1)(e) of that Act; or
- (e) the chief executive of the department administering the *Transport Infrastructure Act 1994*, to facilitate the exercise of that chief executive’s powers mentioned in chapter 7, part 3, division 4² of that Act; or

1 *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters), part 3 (Accreditation), division 4 (Disputes about or under agreements for access to rail transport infrastructure that relate to rail safety)

2 *Transport Infrastructure Act 1994*, chapter 7 (Rail transport infrastructure and other matters), part 3 (Accreditation), division 4 (Disputes about or under agreements for access to rail transport infrastructure that relate to rail safety)

- (f) the regulator under the *Water Act 2000*, to facilitate the performance of the regulator's function mentioned in section 515(1)(c) of that Act.'

32 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *mediation conference* and *responsible operator*—
omit.
- (2) Schedule—
insert—
'mediation conference—
- (a) for the mediation of an access dispute for part 5, division 5, subdivision 2A—see section 115A(2); or
- (b) for the mediation of a water supply dispute for part 5A, division 4, subdivision 3—see section 170ZW(2).³.
- (3) Schedule, definition *access undertaking*, after 'owner'—
insert—
'or operator'.
- (4) Schedule, definition *responsible person*, paragraph (a), after 'owner'—
insert—
'or operator'.

3 Part 5 (Access to services), division 5 (Access disputes about declared services), subdivision 2A (Mediation of access disputes)
Part 5A (Pricing and supply of water), division 4 (Water supply disputes), subdivision 3 (Mediation of water supply disputes)