

ELECTRICITY LEGISLATION AMENDMENT AND REPEAL BILL 2001

EXPLANATORY NOTES

SHORT TITLE

The Bill may be cited as the *Electricity Legislation Amendment and Repeal Bill 2001*

POLICY OBJECTIVES

The main objectives of the Bill are:

1. To omit the uncommenced Electricity Industry Ombudsman legislation provided for in the *Electricity Amendment Act (No.3) 1997*;
2. To provide for the establishment of the Energy Consumer Protection Office model for dispute resolution within Queensland Treasury to provide complaint investigation, mediation and arbitration processes to Queensland electricity consumers; and
3. To provide for increased flexibility in the way the levy that is imposed on electricity entities to fund the dispute resolution processes undertaken by the Energy Consumer Protection Office is determined and administered.

RATIONALE FOR THE BILL

The Deputy Premier, Treasurer and Minister for Sport supported the trial and evaluation of the Energy Consumer Protection Office model for dispute resolution within twelve months of commencement of operation, before making a final decision on the preferred model of dispute resolution in Queensland. To allow the trial to be undertaken, the automatic commencement on 5 December 2000 of the uncommenced Electricity Industry Ombudsman legislation in the *Electricity Amendment Act (No.3) 1997* was postponed to 1 January 2002. The postponement of this

legislation was included in the *Statute Law (Miscellaneous Provisions) Bill 2000*.

A detailed evaluation has been undertaken of the performance of the Energy Consumer Protection Office model for dispute resolution which included the Office being benchmarked against interstate Ombudsman schemes, international dispute resolution models, the Australian Complaints Handling Standard and the “Benchmarks for Industry Based Dispute Resolution Schemes”. The findings and recommendations of the evaluation report supports the establishment of a revised four stage process of dispute resolution within the Energy Consumer Protection Office model of dispute resolution within Queensland Treasury.

The *Electricity Act 1994* provides for the imposition of a levy to be paid by electricity entities to fund the dispute resolution processes undertaken by the Energy Consumer Protection Office. The current wording of the Act states the levy is to be “prescribed by regulation” and necessitating the preparation of amending legislation each year to fund the dispute resolution processes of the Energy Consumer Protection Office.

WAYS IN WHICH OBJECTIVES ARE TO BE ACHIEVED

The objectives will be achieved by amending the *Electricity Act 1994* to provide for the required legislative changes.

In relation to the Electricity Industry Ombudsman legislation, the Bill provides for the omitting of the uncommenced Electricity Industry Ombudsman provisions prior to 1 January 2002.

Section 63(1)(d) of the *Electricity Act 1994* provides that the functions of the Regulator (the Under Treasurer, Queensland Treasury) are to assist the settlement of disputes between electricity entities and between electricity entities and others. Section 64(1) provides that the regulator may delegate a power of the Regulator to an officer of the department, an authorised person or an employee of an electricity entity if satisfied the person has the expertise and experience necessary to exercise properly the power.

It is proposed that the Regulator’s extended functions in relation to consumer protection and dispute resolution will be carried out by the Energy Consumer Protection Office which will be administratively located within Queensland Treasury. It is also proposed that the Regulator’s extended functions to settle disputes will be accomplished through a four-

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stage process of dispute resolution. Formal mediation will be conducted by independent energy mediators.

It is proposed to enhance the arbitration phase of the dispute resolution process by increasing the amount that an electricity entity must pay to another party to the dispute from a maximum of \$10 000 to \$20 000 which is consistent with the limits in other States.

It is proposed to amend Section 64AA of the *Electricity Act 1994* to implement a flexible and equitable funding model. The proposed funding model includes three parts: a) a scheme membership levy of \$5 000 for retailers and \$ 20 000 for distributors which is similar to schemes in other States; b) a fixed contribution levy of \$120 000 which is proportioned on the customer-base of retailers; and c) user-pays fees and charges, that recover the costs to the scheme of disputes arising between consumers and particular scheme members.

This process ensures that electricity consumers and other affected parties have an accessible and effective means of having complaints and disputes with electricity entities investigated and determined by an independent third party.

ALTERNATIVE WAYS OF ACHIEVING THE POLICY OBJECTIVES

The objectives can only be achieved through amendments to legislation

ADMINISTRATIVE COSTS TO GOVERNMENT

There are no financial implications for the Government associated with the proposed legislative amendments.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

No Fundamental Legislative Principles have been identified.

Section 64M (Powers) – superficially seems broad, however, the mediators functions are to purely mediate, they do not make judgements or determinations.

Section 64K (Termination of Appointment) – mediators have the right to due process.

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Section 120ZK ad 120ZZFA (Ordinary protection and immunity allowed) – is necessary to ensure mediations can be conducted candidly, and parties can make full disclosures without ramifications.

CONSULTATION

The following organisations were consulted in relation to the proposed legislation:

- Queensland Consumers' Association
- Queensland Council of Social Services
- ENERGEX
- Ergon Energy
- Country Energy
- Citypower
- United Energy
- Origin Energy
- Yallourn Energy
- Enron Australia Energy
- AGL Electrical
- Stanwell Corporation
- CS Energy
- Tarong Energy
- Great southern Energy
- ACTEW Energy
- Ferrier Hodgson Electrical
- Anscott
- Pulse Energy
- Energy and Water Ombudsman NSW
- Energy and Water Ombudsman Victoria

The following government agencies have been consulted:

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Department of Employment and Training (Employment Impact Statement)

- Department of Primary Industries (Office of Rural Communities)
- Department of Equity and Fair Trading (Office of Fair Trading)
- Department of Premier and Cabinet (Policy Co-ordination Division)
- Office of the Queensland Parliamentary Counsel

PURPOSE AND INTENDED OPERATION OF EACH CLAUSE

CLAUSE 1- Short Title

Provides that the short title of the Amendment Act is the *Electricity Legislation Amendment and Repeal Bill 2001*.

CLAUSE 2- Act amended

Provides that the Amended Act will amend the *Electricity Act 1994*.

CLAUSE 3- Amend Part 8 s 64AA

Provides for a funding model to be imposed on scheme members to fund the complaint investigation and dispute resolution processes of the Energy Consumer Protection Office. The levy consists of a membership levy, contribution levy and a user pays component.

CLAUSE 4- Amend s 64 S

Provides that the Regulator may appoint independent energy arbitrators to deal with disputes to which section 119 applies.

CLAUSE 5- Omit, ch 2, pt 8A – Electricity Industry Ombudsman

Provides for the repealing of the Electricity Industry Ombudsman provision.

CLAUSE 6- Insertion of new ch , pt

Provides that a new part entitled “PART -ENERGY MEDIATORS” which contains the following new divisions and section inserted.

Division 1—Appointment

New section 64G (Appointment of energy mediators)

Subsection 1 provides that the Regulator may appoint persons as energy mediators to mediate in disputes to which section 119 of the Electricity Act 1994 applies.

Subsection 2 provides that the independent energy mediators must either be graded members of the Institute of Arbitrators and Mediators, Australia, or must possess the qualifications and experience which are considered by the Regulator to be appropriate to carry out the functions of an energy mediator in dispute resolution processes.

New section 64H (Duration of appointment)

Provides that each energy mediator is to be appointed for a term of not more than two years.

New section 64I (Remuneration)

Provides that an energy mediator is to be paid the remuneration and allowances approved by the Governor in Council and must be paid from levies paid to the chief executive by electricity entities. The fees of the energy mediators will be determined by the Deputy Premier, Treasurer and Minister for Sport. The fees will be determined at the beginning of the two year appointment of the energy mediators.

New section 64J (Resignation)

Provides that an energy mediator may resign by submitting a signed notice of resignation to the Regulator.

New section 64K (Termination of Appointment)

Subsection (1) The Regulator, by written notice given to an energy mediator, may terminate the person's appointment as an energy mediator if the Regulator reasonably believes the person is not satisfactorily performing the functions of an energy mediator.

Subsection (2) The notice must contain the Regulator's reasons for terminating the appointment.

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Subsection (3) The Regulator must give notice of termination by gazette notice.

Division 2—Functions and powers

New section 64L (Functions)

Provides that an energy mediator’s function is to mediate in disputes referred to the energy mediator under new section ____ which relates specifically to how disputes are referred, that is:

- A dispute may be referred to an energy mediator only if the electricity customer has agreed and made application for resolution by formal mediation;
- the referral must be by written application.

New section 64M (Powers)

Provides that an energy mediator does not have any determination powers, but may do anything necessary or convenient to be done for, or in connection with, the performance of the energy mediator’s functions.

CLAUSE 7- Amend s 119 (Regulator’s role in disputes between electricity entities and customers or occupiers)

This clause modifies section 119(1)(a) omitting of the words “other than a dispute that may be referred to the electricity industry ombudsman under this Act”.

CLAUSE 8- Insertion of new ch 5, pt 1B

Provides that a new part entitled “**PART - DISPUTES REFERRED TO ENERGY MEDIATOR**” which contains the following new divisions and sections is inserted.

Division 1—Preliminary

New section 120ZD (Application of pt 1B)

Provides that Part __ applies to a dispute to which section 119 applies.

Division 2—Referring and arbitrating disputes

New section ___ (How dispute is referred)

Subsection (1) provides that a customer may make application to an energy mediator for resolution by formal mediation if the dispute could not be satisfactorily resolved at the negotiation stage.

This is to ensure that all other appropriate avenues at the enquiry and investigation stages are explored prior to engaging the formal mediation process, and as a means of monitoring and controlling the administration of the formal mediation phase of the dispute resolution process.

Subsection (2) provides that the referral must be by written application to ensure clarity and focus of the dispute.

New section 120ZE (Giving notice of referral to parties to dispute)

Provides that the regulator must provide parties to a dispute written notice of such referral, if the dispute is being referred to an energy mediator.

New section 120ZF (Disclosure of interests)

Subsection (1) restricts the mediation of an energy mediator if (a) the energy mediator has a direct or indirect interest in the dispute, and (b) the interest could conflict with the appropriate performance of the energy mediator's functions concerning the dispute.

Subsection (2) provides an exemption to section ___ if the interest to the energy mediator consists only of the receipt of services, or information about electricity supply, that (a) are also available to members of the public, and (b) are made available on the same terms that apply to members of the public.

Subsection (3) determines that if subsection (1) applies, then the energy mediator must advise the regulator of the potential conflict of interest.

Subsection (4) provides that if the Regulator receives advice through the application of subsection (3), then the Regulator must refer the dispute to another energy mediator.

New section 120ZG (Presentation of cases)

Subsection (1) provides that each party to a dispute before the energy mediator presents their own case. This process is designed to achieve the mutual resolution of disputes between parties and to restrict any legal representation in the process.

Subsection (2) allows representation by a support person only with the agreement of the energy mediator.

New section 120ZI (Conduct of formal mediation)

Subsection (1) provides that the energy mediator's role is independent and the energy mediator does not make judgements on the matters in dispute.

Subsection (2) provides that the energy mediator may conduct the mediation in the way the energy mediator considers appropriate to achieve the resolution of disputes.

Subsection (3) provides that the dispute may proceed directly to arbitration if formal mediation is not required by the consumer.

New section 120ZO (Energy mediator's report to the regulator)

Provides that the energy mediator must give the regulator (a) a written report on the outcome of the mediation process and (b) a copy of a signed agreement by both parties if a resolution to the matters in dispute has been achieved.

CLAUSE 9- Amendment of s 120ZZB

This clause modifies section 120ZZB(1) omitting the wording "the Regulator, and only the regulator, may refer a dispute to an energy arbitrator" and inserting "a dispute will progress automatically to an energy arbitrator if the energy mediator is unable to resolve the dispute, unless by written application the consumer requests the dispute to progress directly to arbitration.

This clause modifies section 120ZZB(2) omitting the wording "the Regulator may make referral only if the party to the dispute, other than the electricity entity, has agreed to the referral" and inserting "the referral will progress automatically to arbitration within 28 days of receipt of application for the formal mediation process".

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This clause modifies section 120ZZB(3) omitting the wording “the referral must be written” and inserting “the referral is automatic”.

CLAUSE 10- Amendment of s 120ZZC

This clause modifies section 120ZZC(1) omitting the wording “if the Regulator refers a dispute to an energy arbitrator” and inserting “if a dispute progresses automatically to an energy arbitrator”.

CLAUSE 11- Amendment of s 120ZZH

This clause modifies section 120ZZH(1)(a) omitting the wording “the amount of no more than \$10 000” and inserting the wording “the amount of no more than \$20 000”. The modification of this clause ensures monetary compensation limits are maintained in line with other States.

CLAUSE 12- Amendment of s 254

This clause modifies section 254(1)(c) omitting the wording “the electricity industry ombudsman and employees in the Office of the Electricity Industry Ombudsman” and inserting “employees of the Energy Consumer Protection Office”.

CLAUSE 13- Amendment of sch 5 (Dictionary)

Amends Schedule 5 by inserting a definition for the term “energy mediator”.

The term “energy mediator” is used in new section ____ (**Appointment of energy mediators**) inserted by clause 6 of the Bill.