

TREASURY LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to make a number of technical changes to Acts administered by the Treasury Department. Apart from the amendments to the *Pay-roll Tax Act 1971* and the *Electricity Act 1994*, these amendments do not involve any significant policy issues.

Reasons for the Objectives and how they will be achieved

The Treasury Department approved the implementation of a program of omnibus legislation in order to make a number of technical amendments to Acts administered by the Department on a regular basis. The amendments which will be included in the omnibus Bills will generally be of a technical nature and are not suitable for inclusion in a Statute Law (Miscellaneous Provisions) Bill.

Administrative costs to Government of Implementation

There will be no administrative cost to Government as a result of the amendments in the Bill.

Fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles except for one amendment to the *Electricity Act 1994*, which retrospectively validates existing commercial transactions for the on-selling of electricity by bodies corporate. In this case, it is fully supported by industry stakeholders in the interests of commercial certainty and it will not adversely impact on existing contractual arrangements between bodies corporate, retailers and consumers.

Consultation

There has been consultation within the Queensland Government in relation to the various amendments in the Bill. Apart from the Business Regulation Reform Unit's ("BRRU") concerns in relation to the amendments to the *Gas Act 1965*, all parties consulted are generally in agreement with the amendments in the Bill.

BRRU is of the view that a cost/benefit study should be completed and recommendations formulated for the Government's consideration prior to any proposed amendments to the *Gas Act 1965*. It is also concerned that the mechanism being proposed for effecting changes to current contestability arrangements, that is via the making of a regulation, could undermine the contestability arrangements established by the principal legislation. This could influence and add an element of uncertainty to the market.

The Office of Energy within the Treasury Department does not agree with BRRU's concerns. The Government's policy is not changing. The implementation of full retail contestability will still be subjected to a cost/benefit analysis. Ultimately the contestability arrangements that are enacted by regulation will be in accordance with the *Gas Act 1965* and will accord with Government policy so there can be no undermining of that policy.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

Clause 2 specifies the dates for commencement of the relevant Parts in the Bill. Parts 2 to 4 and 6 to 8 will commence on assent. Part 5 will commence on 1 November 2002.

PART 2—AMENDMENT OF DUTIES ACT 2001

Clause 3 introduces the amendment to the *Duties Act 2001*.

Clause 4 amends section 9 of the *Duties Act 2001* to ensure that the vesting of dutiable property under any Act or court order constitutes a dutiable transaction.

PART 3—AMENDMENT OF ELECTRICITY ACT 1994

Clause 5 introduces the amendments to the *Electricity Act 1994*.

Clause 6 amends section 23 of the *Electricity Act 1994* to provide that the definition of a customer includes a relevant body corporate.

Clause 7 amends section 64N(1) of the *Electricity Act 1994* to remove the limitation on the number of energy arbitrators that can be appointed.

Clause 8 inserts a new section 254AB to clarify that a reference in the *Electricity Act 1994* to a customer's premises or to premises owned or occupied by a customer is a reference to the premises for which the relevant body corporate is established. In addition, for further clarification it is stated that a reference in this Act to a customer or person who owns or occupies premises or has the right to use premises is a reference to the relevant body corporate established for the premises.

Clause 9 provides for the phrase "And Validation Provisions" to be included in the heading for Chapter 14, and that a new part entitled "Part 4—Validation Provision" and comprising a new section 304 be inserted.

New section 304 validates the prior actions of a body corporate which, before the commencement of this legislation, entered into an agreement to supply and sell electricity for use in the premises for which the body corporate was established. The agreement and all acts done by the body corporate are taken to be validly made or done as if the agreement were entered into after the commencement of this legislation. This amendment ensures retrospectivity to previous arrangements entered into by bodies corporate with respect to the on-selling of electricity to unit occupiers.

Clause 10(1) amends Schedule 5 to include a new definition of "relevant body corporate".

Clause 10(2) amends Schedule 5 so that the definition of a customer includes a relevant body corporate, consistent with the amendment to section 23.

PART 4—AMENDMENT OF GAS ACT 1965

Clause 11 introduces the amendments to the *Gas Act 1965*.

Clause 12 deletes redundant definitions and inserts other definitions relevant to new provisions to the *Gas Act 1965* included in this Bill.

Clause 13 deletes, then inserts, a new subsection 33A(4), defining a contestable consumer (as at 1 January 2003) as one contestable on 31 December 2002 under subsections (1) to (3), or one who is contestable under the certification mechanisms provided by provisions to be inserted by this Bill.

Clause 14(1) inserts “new non-contestable consumer” in the section heading.

Clause 14(2) deletes reference to “31 December 2002” in subsection 33B (1), so that it now defines a non-contestable consumer as a franchise consumer who is not a contestable consumer.

Clause 14(3) deletes subsection 33B(3), which defines gas in this section as natural gas. The subsection is unnecessary, since s33A defines contestable consumers as natural gas consumers, and all other franchise consumers (e.g of LPG) are subject to their franchise holder’s exclusive right to supply.

Clause 15 inserts new *Part 5 Divisions 2 and 3*.

New s 33BA provides that if a consumer is contestable under s 33A and the registered owner of the lot/s on which the premises is situated, then the consumer is also a contestable consumer for replacement premises and any other premises on the lot/s. However, the consumer is not a contestable consumer for premises on the lot/s existing before the consumer became contestable, for which the consumer did not become contestable when the consumer became contestable for the original premises.

New 33BB provides that the subsequent registered owner of a contestable consumer’s premises will be contestable for the premises. *New*

owners will not be contestable for premises which existed prior to their ownership and for which the original owner was not contestable.

New s 33BC provides that that if a consumer becomes contestable under this division, the consumer will remain contestable despite the consumer's consumption of gas and the purpose for which the consumer uses the premises.

New Part 5 Division 3 inserted following new section 33BC.

New Subdivision 1 - Application for contestable customer certification inserted following division heading.

New s 33BD provides that a consumer may apply in writing to the relevant fuel gas supplier for certification of the consumer's contestable status at the consumer's premises.

New s 33BE provides that a fuel gas supplier must decide within one month of receiving an application under s 33BD, on the basis of actual or estimated consumption at the applicant's premises, whether or not the applicant is contestable. If the supplier does not decide within one month, the supplier is taken to have refused the application.

New s 33BF provides that a fuel gas supplier must, as soon as practicable after deciding to grant an application, provide an applicant with written certification of contestable status.

New s 33BG provides that a fuel gas supplier must, as soon as practicable after deciding to refuse an application, provide an applicant with written notification of the decision, the reasons for the decision, and the applicant's right of appeal to the Minister under s 33BH.

New Subdivision 2 - Review of decision to refuse contestable consumer certification inserted following new s 33BG.

New s 33BH provides that if a gas supplier refuses, or is taken to refuse, an application for contestability certification, a consumer may request a Ministerial review of the decision.

New s 33BI provides that the reviewer may request information from the gas supplier or consumer (the review parties) in order to make a decision and that the reviewer will notify the parties in writing of the decision and the reasons.

New s 33BJ provides that in making a decision, the reviewer may seek information from persons other than the review parties and must disclose any information to the review parties.

New s 33BK provides that, if the reviewer discloses information received under s 33BJ to the review parties, it will be an offence for a party to disclose the information to another person without reasonable excuse; if a review party discloses the information for the review or an appeal, this is a reasonable excuse.

New s 33BL provides that a review decision binds all parties, with appeal under the Judicial Review Act 1991.

Clause 16(1) inserts a new Part 5 division heading, “Division 1—Preliminary”, before s 33A.

Clause 16(2) inserts a new Part 5 division heading, “Division 4 - Other provisions relating to contestability”, after s 33BL. This provides a division heading for existing Part 5 provisions currently numbered ss 33BC, 33BD, 33BE and 33BF.

PART 5—AMENDMENT OF PAY-ROLL TAX ACT 1971

Clause 17 introduces the amendments to the *Pay-roll Tax Act 1971*.

Clause 18 renumbers section 5 of the *Pay-roll Tax Act 1971* to correct a numbering error.

Clause 19 amends section 10 of the *Pay-roll Tax Act 1971* so that the exemption in section 10(2)(j) does not apply to wages paid to an existing worker.

New section 10(3) outlines the circumstances in which an employee will be considered to be an existing worker of an employer.

New sections 10(4) and (5) allow the exemption to apply to an existing worker where an employee commenced a Certificate II traineeship (whether before or after commencement of the *Treasury Legislation Amendment Bill 2002*) to which the exemption in section 10(2) applied or applies and, having successfully completed the traineeship, commences a Certificate III traineeship with the same employer. Conditions must be satisfied.

New section 10(6) prevents circumvention of section 10(3) through an arrangement having the purpose of obtaining funding for a traineeship or the pay-roll tax exemption in section 10(2)(j).

New section 10(7) will ensure that the exemption continues to apply in circumstances similar to those outlined in section 10(4) and (5), but where the ownership of the business in which the worker is employed changes hands after the worker commences the Certificate II traineeship.

PART 6—AMENDMENT OF QUEENSLAND COMPETITION AUTHORITY ACT 1997

Clause 20 introduces the amendments to the *Queensland Competition Authority Act 1997*.

Clause 21 removes section 63(3). This section is no longer relevant as it refers to the requirements of section 62, which was removed in a prior amendment.

Clause 22 restates in clearer terms the previous section 187B(2), which requires the chairperson to include in a mediation any associate member appointed for a specific mediation.

Clause 23 restates in clearer terms the previous section 190(2), which requires the chairperson to include in an arbitration any associate member appointed for a specific arbitration.

Clause 24 creates a panel of associate members and replaces the previous arrangements in which associate members were appointed only for specific tasks.

Clause 25 amends a number of terms in the Schedule. The terms amended are:

“associate member” is amended to include a person appointed as a member of the panel of associate members;

“government agency”, “government company”, “public facility” and “water supplier” are amended to avoid problems which might arise if the concept of “the State” were interpreted too narrowly;

“member” is amended to include only associate members appointed for specific arbitrations and investigations. The previous reference to associate members appointed for mediations has been removed as mediations are conducted by the mediator not the authority; and

“panel of associate members” is included to accommodate the new provision for a panel of associate members which will be kept available to ensure timely availability to the Authority of suitably qualified independent people for emerging tasks such as investigations, mediations and arbitrations.

PART 7—AMENDMENT OF QUEENSLAND TREASURY CORPORATION ACT 1988

Clause 26 introduces the amendments to the *Queensland Treasury Corporation Act 1988*.

Clause 27(1) amends section 24(3) to clarify that the subsection applies to the Corporation or an affiliate.

Clauses 27(2) to 27(4) inclusive, amend section 24(4) to clarify that the subsection applies to the Corporation or an affiliate and that “related arrangements”, as defined in clause 27(11), may contain the termination provisions referred to in section 24(4).

Clauses 27(5) and 27(6) amend section 24(5) to clarify that the subsection applies to the Corporation or an affiliate.

Clauses 27(7), 27(9) and 27(10) amend section 24(6) to clarify that a severance provision contained in a financial arrangement or other arrangement entered into by the Corporation or an affiliate, or a “related arrangement”, will have effect despite any other law and without a provision stating that it will have effect despite any other law being included in the relevant arrangement.

Clause 27(8) amends section 24(6) to clarify that buildings, structures or fixtures severed from land under a severance provision contained in a relevant arrangement will be chattels and not realty.

Clause 27(10) inserts a definition of “related arrangements” which clarifies that it is not necessary for the Corporation or an affiliate to be a party to the arrangements which contain the termination provision referred to in section 24(4) or the severance provision referred to in section 24(6), provided the arrangement that contains such provision gives effect to, or is part of, financial arrangements or other arrangements entered into by the Corporation or an affiliate.

**PART 8—AMENDMENT OF TAXATION
ADMINISTRATION ACT 2001**

Clause 28 introduces the amendment to the *Taxation Administration Act 2001*.

Clause 29 amends section 60 of the *Taxation Administration Act 2001* to remove the requirement, when remitting assessed interest by way of an assessment, to issue a notice to the taxpayer where, after any remission and application of payments received, there is no unpaid amount for an instrument or transaction.