

COMMUNITY AMBULANCE COVER BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To provide for the imposition and collection of a levy to be known as the community ambulance cover levy to fund ambulance services in Queensland using the system of supply and sale of electricity as the basis for the imposition and collection of the levy.

Reasons for the Bill

A review of the Queensland Ambulance Subscription Scheme found that it has not been earning sufficient revenue to meet the rising costs of providing the Queensland Ambulance Service. As a result, the Subscription Scheme was no longer a viable funding source. The Community Ambulance Cover will ensure a secure funding base for the Service.

Achievement of Objectives

Summary of the Scheme

The *Community Ambulance Bill 2003* (“the Bill”) will impose the community ambulance cover levy on certain electricity sale arrangements that are in place for the supply of electricity in Queensland by electricity retailers. The annual levy for 2003-04 is \$88.

The levy applies where electricity is supplied for consumption in Queensland. It does not matter that the electricity sale arrangement is made in or outside Queensland, or whether a person involved in the arrangement is resident in Queensland or is otherwise connected with Queensland or that the supply originates from in or outside Queensland.

The Bill will commence on Royal Assent. However, the levy will not apply until 1 July 2003. Commencement of the Bill prior to that date will allow exemption claims and other administrative and systems matters to be progressed in preparation for commencement of the levy.

The Commissioner of State Revenue is responsible for the administration of the legislation. However, the levy will not be collected directly by the Office of State Revenue but will be collected mainly through electricity accounts issued by electricity retailers to their customers.

The *Electricity Act 1994* (the “Electricity Act”) provides for electricity to be supplied and sold for consumption in Queensland in different ways depending on the circumstances. Consequently, the levy will be imposed on standard contracts, power card arrangements, on-supply arrangements and contestable sale arrangements, each of which is dealt with in a separate Part of the Bill.

- (a) Standard contracts: The Electricity Act provides for customer sale arrangements between electricity retailers and their non-contestable customers for the supply of electricity. In the Bill, these are called “standard contracts”. The levy will apply for each standard contract where the supply of electricity under the contract is measured by a meter. The customer is liable to pay the levy to the retailer through their electricity account.
- (b) Power card arrangements: Electricity is also supplied to premises using card operated meters. Under the Bill, the levy is imposed on each power card arrangement. The owner of the premises is liable to pay the levy to the electricity retailer which, because no electricity accounts are issued, will issue separate accounts for the levy. The owner may recover the cost of the levy from any person with an occupancy right for the premises.
- (c) On-supply arrangements: On-supply arrangements type 1 arise where electricity is being supplied and sold by an electricity retailer to a person (the “on-supplier”) for a building and the on-supplier has the facility to make the electricity available for on-supply and sale for consumption within a separate area in the building. On-supply arrangements commonly exist for residential unit complexes, shopping centres and commercial office buildings.

Another type of on-supply arrangement (type 2) is also taken to exist under the Bill. The most common example of a type 2 arrangement is the sale of electricity by an electricity retailer to

the owner of a block of flats, where the account issued by the retailer shows the cost of electricity attributable to each separate area in the building. For a type 2 arrangement, there must be at least 3 separate areas in the building.

For both cases, the on-supplier is liable for the levy for each on-supply arrangement for each separate area. However, there are rights of recovery conferred by the Bill so that the cost of the levy is borne ultimately by a person with a right of occupation of the separate area, if there is one.

- (d) Contestable sale arrangements (contestable customers): The *Electricity Regulation 1994* (the “Electricity Regulation”) provides for arrangements for the sale of electricity by an electricity retailer to contestable customers for separate premises of the customer for which the customer has been declared to be a contestable customer under that regulation. The contestable customer is liable to pay the levy for each of these contestable sale arrangements with the retailer.

The Bill conditionally exempts pensioners (as defined) for their principal place of residence, farming sheds, pumps, Commonwealth, State and local governments and certain religious and other institutions. There are also exemptions for later standard contracts and later power card arrangements in certain circumstances.

Administration provisions in the Bill enable the levy to be efficiently and effectively collected and administered. The provisions of the *Taxation Administration Act 2001* (“TAA”), except Parts 3 to 6, have been adopted, where possible. The TAA makes general provision about the administration and enforcement of Queensland revenue laws. In addition, the Bill contains some administration provisions specifically designed for the levy.

Liability for the levy

Parts 2 to 5 of the Bill set out the circumstances in which a person will be liable for the levy and when an exemption from the levy will apply. As noted, the levy will be imposed and collected through the system of electricity supply in Queensland under the Electricity Act being through standard contracts, power card arrangements, on-supply arrangements and contestable sale arrangements for contestable customers. The generic term used in the Bill for all these arrangements is “electricity sale arrangement”.

The Bill sets the annual levy for the 2003/2004 financial year at \$88.00. For each financial year there will also be a daily levy calculated by dividing the annual levy for the financial year by the number of days in the financial year. For the 2003/2004 financial year, the daily levy will be 24.044c.

The daily levy is imposed on an electricity sale arrangement for each day on or after 1 July 2003 the electricity sale arrangement is in place, unless the electricity sale arrangement is an exempt arrangement. For standard contracts and power card arrangements, the first day of the arrangement will not be included when determining the amount of the levy. This avoids double counting of the levy for the same premises for a day. For example, a new customer may commence an arrangement for premises on the same day that another arrangement for those premises ends. This might occur, for instance, where one tenant moves out and a new tenant moves in on the same day. Therefore, if a standard contract or a power card arrangement commences on or after 1 July 2003, the levy will be imposed at the daily rate from the day after the arrangement is entered into until (and including) the day the arrangement ends. For arrangements which are already in place on 1 July 2003, the levy will be imposed immediately on 1 July 2003.

Standard Contract

The Bill defines a standard contract as a contract for the sale of electricity by an electricity retailer to a non-contestable customer where the electricity is supplied for consumption in Queensland and the supply of electricity is measured by a meter. The levy is not imposed on standard contracts where the supply of electricity is unmetered.

An electricity retailer is a retail entity (the holder of a retail authority) or a holder of a special approval authorising the holder to provide electricity retail services as defined in the Bill.

A non-contestable customer is defined as a non-contestable customer under the Electricity Act. The Electricity Act provides for non-contestable customers to have either a “standard customer sale contract” or, less commonly, a “negotiated customer sale contract”. The definition of standard contract under the Bill covers all types of customer sale contracts under the Electricity Act.

The levy is imposed on the contract for the supply of electricity and not on the supply of electricity. Consequently, the levy will continue to apply even if there is no supply of electricity or during a temporary disconnection as long as the contract remains in place and electricity is available for sale under the contract. As the levy is imposed on the contract rather than on

each electricity account (although it is usually collected by means of the account), if a customer has standard contracts for the sale of electricity to a number of premises, the customer will be liable to pay the levy on each contract even if those contracts are all billed through one consolidated electricity account.

The levy imposed on a standard contract must be paid by the non-contestable customer who is the person or persons in whose name the electricity account is held. If the customer consists of 2 or more persons, those persons are jointly and severally liable to pay the levy.

Power card arrangements

The Bill states that a power card arrangement exists for premises in Queensland if an electricity retailer has the facility to sell electricity for consumption at those premises using a card operated meter installed, and available for operation, for those premises. A card operated meter is a meter that allows electricity to be consumed at premises for which the meter is installed to the value of an amount credited to a card that operates the meter.

The levy is imposed on the power card arrangement and not on the supply of electricity and will apply provided that the meter is installed and available for operation. Consequently, it does not matter if the premises are occupied or electricity is being consumed.

The levy imposed on a power card arrangement must be paid by the owner of the premises. If the owner consists of 2 or more persons, those persons are jointly and severally liable to pay the levy. As no electricity account is issued for premises with power card meters, the electricity retailer must issue a statement of levy liability to the owner of the premises not less than quarterly.

Although the owner is liable to pay the levy, the Bill gives the owner a right to recover the cost of the levy from any person with a right of occupation of the premises. As in the case of on-supply arrangements, the recovery right means that, if the premises are occupied, it is the occupier who ultimately bears the cost of the levy.

On-supply arrangements

The Bill makes provision for two types of on-supply arrangement. An on-supply arrangement type 1 exists where a person, called an “on-supplier”, has the facility to further supply and further sell electricity

being sold for a building by an electricity retailer to the on-supplier for consumption at a separate area in the building. For example, the body corporate of a residential unit complex which purchases electricity from an electricity retailer may have the facility to further supply and further sell some or all of the electricity for units in the building. Similarly, the owner of a shopping centre who purchases electricity from an electricity retailer may have the facility to further supply and further sell some or all of the electricity for shops in the centre.

Any sale of electricity by the on-supplier for a separate area need not involve a direct relationship between the on-supplier and owner or occupier of that area. Often there will not be a direct relationship as the on-supply may take place through one or more interposed entities. For example, a body corporate may be the customer of the electricity retailer, but may then on-supply to a building manager, which further on-supplies to owners or tenants of units in the building.

For an on-supply arrangement type 2, there must be at least 3 separate areas in the relevant building and the electricity account issued to the on-supplier by the electricity retailer must show the cost of the electricity supplied to each separate area.

For type 1 arrangements, it does not matter whether or not a separate area is occupied or electricity is connected to, or consumed at, the separate area. For example, the levy will apply to a vacant shop in a shopping centre provided that the on-supplier has the facility to further supply and further sell electricity for that shop. Similarly, the levy would apply to a type 2 on-supply arrangement for a flat in a block of flats even if the flat was vacant.

The Bill defines “separate area” in terms of a building or part of a building which is used or, if not being used, is available for use, solely as a single place of business or residence, or for conducting an single undertaking, enterprise or activity. The main examples are areas established as, or for, shops, home units and offices. Because it is the facility for further supply and further sale to which the levy applies, it does not matter whether or not the separate area is occupied.

The on-supplier is liable to pay the levy on each on-supply arrangement for each separate area. The on-supplier may recover the cost of the levy from the owner of the separate area (if the owner is not the on-supplier) or any person with an occupancy right for the separate area. Where the on-supplier does recover the cost of the levy from an owner, the owner may, in turn, recover the cost from any person with an occupancy right for the separate area. However, occupiers are liable in relation to the cost of the

levy only for the period of their occupancy right for the separate area. These recovery rights mean that, if there is an occupier for the separate area, it is the occupier who ultimately bears the cost of the levy. However, these recovery rights do not alter the fact that the on-supplier must pay the levy to the electricity retailer.

Claims for exemptions, where applicable, may be made for a separate area through the on-supplier.

As the levy is imposed for each on-supply arrangement rather than on the billing arrangements such as the electricity account (although it is collected by means of the account), if an on-supplier has an on-supply arrangement for a number of separate areas, the on-supplier is liable to pay the levy on each arrangement even if those arrangements are all billed by the on-supplier through a single billing arrangement. For example, if a person owns 4 units in a residential complex for each of which there is an on-supply arrangement, the levy is payable for each of the 4 on-supply arrangements whether or not a single account is issued by the on-supplier.

If the on-supplier consists of 2 or more persons, those persons are jointly and severally liable to pay the levy.

An on-supplier will be liable for the levy payable for the on-supply arrangement, but will, depending on the circumstances, also be liable for the levy which is payable on the standard contract (if a non-contestable customer) or contestable sale arrangement (if a contestable customer) under which the on-supplier acquires electricity from the electricity retailer, unless an exemption applies. For example, the standard contract between an on-supplier and an electricity retailer will attract the levy in addition to the levies payable for the various on-supply arrangements.

Contestable sale arrangements

The Bill defines a contestable sale arrangement as an arrangement for the sale of electricity to premises in Queensland where the electricity is sold by an electricity retailer to a person who is declared by a regulation under the Electricity Act to be a contestable customer for the supply of electricity to those premises and the supply of electricity to the premises is measured by a meter. To be declared a contestable customer, the person must consume more than the threshold amount of electricity, as specified by the Electricity Act, at the premises. The declaration as a contestable customer is made in respect of separate identified premises.

Part 5 of the Bill imposes the levy on each arrangement for supply of electricity to the identified premises of the contestable customer. As the levy is imposed on the arrangement and not on the supply of electricity, the

levy will continue to apply even if there is no supply of electricity or during a temporary disconnection, as long as the arrangement remains in place and electricity is available for sale under the arrangement. As the levy is imposed on the arrangement rather than the electricity account (although it is collected by means of the account), if a customer has contestable sale arrangements for the sale of electricity to a number of premises, the customer is liable to pay the levy on each arrangement even if those arrangements are all billed through one consolidated account.

The levy imposed on a contestable sale arrangement must be paid by the contestable customer who is the person or persons in whose name the electricity account is held. If the contestable customer consists of 2 or more persons, those persons are jointly and severally liable to pay the levy.

Exemptions

A standard contract, a power card arrangement, an on-supply arrangement or a contestable sale arrangement will be exempt from the levy if it is an exempt contract or arrangement. The levy will not be imposed on an electricity sale arrangement for any day on which the arrangement qualifies as an exempt arrangement. A brief summary of the exemptions follows. Parts 2 to 5 of the Bill contain the relevant provisions for each exemption.

Exemption for later standard contracts or later power card arrangements

More than one standard contract or power card arrangement can exist for the same non-domestic premises. For example, there may be three standard contracts for the supply of electricity to a single place of business. Similarly, there may be two power card arrangements for the same premises. If the standard contracts or power card arrangements relate to a separate non-domestic area and the electricity is charged at a non-domestic tariff to be prescribed by regulation, the first of the contracts or arrangements will attract the levy but the remaining contracts or arrangements for the area will be exempt.

The Bill defines “separate non-domestic area” in terms of a building or part of a building which is used or, if not being used, is available for use, solely as a single place of business, or for conducting a single undertaking, enterprise or activity.

This exemption is not required for on-supply arrangements or contestable sale arrangements because only one of those arrangements can exist for the same premises.

Pensioner Exemption

An electricity sale arrangement will be an exempt arrangement under the Bill if:

- the customer (other than for on-supply and power card arrangements) consists of at least 1 pensioner;
- all electricity sold under the arrangement is supplied only to premises that are the pensioner's principal place of residence; and
- any other person sharing the premises, other than as a visitor, that person is the pensioner's spouse or dependant, another pensioner, a person who receives certain income support payments from the Commonwealth and does not pay rent, or the pensioner's carer who does not pay rent. For example, if the pensioner shares the premises with a family member who is not one of the above persons, the exemption will not apply.

The Dictionary in the Bill defines a pensioner as the holder of a current Pensioner Concession Card, Gold Card or Queensland Government Seniors Card.

Farming shed

An electricity sale arrangement will be exempt under the Bill if all electricity sold under the arrangement is supplied to a farming shed. A farming shed is defined as a building or silo located on land used primarily for primary production which is itself used only for primary production. A building which is only used indirectly for primary production will not qualify. For example a building which is used at any time for residential purposes, such as shearers' accommodation quarters, will not qualify as a farming shed, even if it is only occasionally used for those purposes.

“Primary production’ is defined in the Dictionary to the Bill.

Pump

An electricity sale arrangement will be exempt under the Bill if it relates only to a pump which is:

- a water pump used for irrigation, stock or other purposes of primary production; or
- a water or sewerage pump used for domestic purposes.

This exemption is not necessary for on-supply arrangements. The circumstances could not give rise to an on-supply arrangement because a pump could not be a separate area.

Government

The Bill provides for exemptions in the case of supply of electricity to governments in certain circumstances. Broad exemptions exist for the Commonwealth, including in relation to on-supply arrangements. In the case of the State and local government, an electricity sale arrangement will be exempt generally if all electricity sold under the arrangement is supplied to premises used only for core government services or that are public infrastructure.

Religious and other institutions

There are conditional exemptions for the following.

- Religious bodies in relation to premises used solely or almost solely as a church or other public place of worship. Associated halls may also be exempt unless they are used or hired out for commercial purposes.
- Institutions whose principal object or pursuit is the care of the sick, aged, infirm, afflicted or incorrigible persons (other than the conduct of a hospital, aged care hostel or nursing home).
- Institutions whose principal object or pursuit is the relief of poverty, suffering, distress or misfortune of people.
- Institutions whose principal object or pursuit is the care of children.

In each case, the exemption is conditional upon the premises to which the arrangement relates being used solely or almost solely for the relevant purpose. Consequently, the levy will apply for these bodies and institutions in relation to other situations.

The exemptions (other than those for religious bodies) will only apply for an institution if it is a non-profit institution as defined in the Bill.

More than one exemption category

Generally, the Bill provides that the electricity sale arrangement must relate to the supply of electricity only for one or more exempt categories and for no other purpose. For example, if the arrangement relates only to supply to a farming shed and a qualifying pump, it will be exempt. However if the arrangement relates to supply to a farming shed and

residential premises to which the pensioner exemption does not apply, it will not be exempt.

Electricity retailers as agents of the Commissioner

Part 6 of the Bill sets out the role and functions of the electricity retailer. In general, an electricity retailer is the agent of the Commissioner for the collection of the levy. The role of the electricity retailer is to help the Commissioner in the administration of the Act.

The main functions of retailers are -

- issuing statements of levy liability to electricity customers;
- collecting the levy from electricity customers and paying these amounts to the Commissioner;
- receiving the various returns and forms under the Act;
- administering exemptions;
- making refunds; and
- undertaking certain debt recovery processes.

An electricity retailer may, with the written approval of the Commissioner, appoint a contractor to perform any functions, but the electricity retailer remains responsible for the performance of the functions.

The Commissioner may enter an administration agreement with the electricity retailer about the performance of the electricity retailer's functions under the Act.

Provision is made for payment by the Commissioner of an administration fee to the electricity retailer. The fee must be approved by the Treasurer.

The Commissioner still may, if necessary, perform any function specified as a function of the electricity retailer as part of the Commissioner's general power to administer the legislation. The Commissioner may also give written directions to an electricity retailer to do anything reasonably necessary for the administration or enforcement of the Act.

Payment

Part 7 of the Bill contains provisions regarding payment. Electricity accounts issued by electricity retailers must include a “statement of levy liability” for each electricity sale arrangement the account relates to. This is a statement of the amount of levy liability of the electricity customer for the period covered by the account. The levy is required to be paid by the electricity customer by the date by which the electricity customer is required to pay their electricity account. Also, a statement of levy liability can be issued other than in an electricity account if approved by the Commissioner. For power card arrangements, a separate statement of liability must be issued by the retailer under Part 7 because no electricity account is issued.

An electricity retailer must also issue a statement of levy liability to replace a previously issued statement in limited circumstances such as to give effect to the outcome of an objection or to correct minor errors in the statement, namely, mistakes of fact or arithmetic calculation errors.

Part 7 also specifies when electricity retailers are required to pay to the Commissioner the levy collected and the returns required to be lodged by the electricity retailer at the time the levy is paid.

Notification requirements

Part 7 of the Bill details the notifications and returns required to be given in relation to the exemptions. For example, notification may be given by a non-contestable customer to an electricity retailer that the non-contestable customer is eligible for an exemption. Notification is also required to be given by the non-contestable customer when their eligibility for the exemption claimed ceases. Special provision is made in Division 6 of Part 7 for alternate notification arrangements for the exemptions for pensioners, pumps and government.

Notification of loss of entitlement to an exemption is usually required to be given within 28 days of the loss occurring.

Priority of payment

Part 7 also provides that any payment received by an electricity retailer in relation to an electricity amount must be applied first in payment of any amount outstanding for the levy or other amounts payable under the Bill for any electricity sale arrangement to which the account relates before being

applied to amounts outstanding for electricity or any other amounts payable under the account.

Refunds

The Bill specifies the circumstances in which a person may be entitled to refunds of amounts overpaid.

Non-payment of levy

Part 7 of the Bill contains provisions which detail the consequences of non-payment of the levy. Upon non-payment of a levy amount, the electricity retailer is required to take such debt recovery action as the electricity retailer would usually take when recovering outstanding amounts on electricity accounts or such action directed by the Commissioner. Also, if there is outstanding amount for both the levy and electricity consumption and the electricity retailer would usually take action, in accordance with its established business procedures, to disconnect the electricity in the circumstances, the electricity retailer must take the steps to disconnect the electricity supply which are available for the electricity charges. However, the provision for disconnection of electricity does not apply to levy payable in relation to power card arrangements.

Outstanding amounts are a debt due to the State which may be recovered by the Commissioner in court.

Late payments

Part 8 of the Bill provides that electricity retailers must pay interest (unpaid levy interest) on the amount of the levy which is received by the electricity retailer but which has not been paid to the Commissioner. Interest will accrue daily at a rate to be prescribed by the regulation starting on the day after the due date for payment to the Commissioner.

Review of decisions

Part 9 of the Bill sets out the review rights of electricity customers. In addition to the objection and appeal mechanisms in this Part, electricity retailers may correct minor errors by issuing a replacement statement of levy liability, for example, to correct an arithmetic calculation error.

If dissatisfied with the amount of levy or a decision of the Commissioner or an electricity retailer affecting their liability for the levy, an electricity customer may lodge a written objection with the Commissioner (or the electricity retailer as agent of the Commissioner) stating the grounds on which the objection is made. The objection must be lodged within 60 days after the customer receives the statement of levy liability or written notice of the decision unless the Commissioner extends the time. Objectors are responsible for proving their case on objection.

The Commissioner may completely or partly allow the objection or disallow it and give written notice to the objector of the Commissioner's decision on the objection with reasons and details of the objector's appeal rights.

Appeals

Where an electricity customer is dissatisfied with the Commissioner's decision on an objection, the electricity customer may appeal to the Magistrates Court. A notice of appeal must be filed in the Court within 60 days of the electricity customer being served with notice of the Commissioner's objection decision, however, the Court may extend that time.

The grounds of appeal are limited to the grounds of objection, unless the court orders otherwise and taxpayers are responsible for proving their cases on appeal.

The Court may confirm the decision or set aside the decision and substitute another decision or set aside the decision and return the issue to the Commissioner with the directions the court considers appropriate.

An appeal lies to the District Court from the Magistrates Court decision but only on a question of law.

Judicial review

Because the Bill provides objection and appeal rights for electricity customers, the *Judicial Review Act 1991* will not apply to decisions of the Commissioner or an electricity retailer on a person's levy liability, a decision or conduct leading up to or forming part of the process of making the decision or a decision disallowing wholly or partly an objection against the decision.

Non-reviewable decisions

A limited number of decisions are stated in the Bill to be non-reviewable decisions. A non-reviewable decision is not subject to objection or appeal, it cannot be challenged, reviewed or called into question in any way under the *Judicial Review Act 1991* or otherwise, (whether by the Supreme Court, another court, a tribunal or another entity) and is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

Examples of non-reviewable decisions are the Commissioner's decision in relation to waiving a levy liability or the Treasurer's decision in relation to approval of the administration fee.

Investigations

Investigation powers in Part 7 of the TAA apply for the levy.

Confidentiality

Part 8 of the TAA dealing with confidentiality of information, apply for the levy with some modifications. Those provisions specify the types of confidential information and the circumstances in which the information may be disclosed.

Record keeping

The record keeping requirements of Part 9 of the TAA apply to the levy with some modifications. The Bill, in Part 10, specifies the records which are required to be kept by electricity retailers, on-suppliers and persons who have received an exemption.

Records must be kept in a way that ensures that they can be readily produced to the Commissioner if required. A record must be kept for a period of 5 years from when it was made or obtained.

Enforcement and legal proceedings

The provisions of Part 10 of the TAA dealing with enforcement and legal proceedings apply for the levy with some modifications.

Giving and lodging documents

The Bill also includes provisions regarding the giving of documents by the Commissioner and also how documents may be given to the Commissioner.

Consequential amendments

The Bill also makes consequential amendments.

Alternatives to the Bill

The policy objectives can only be achieved by legislative enactment.

Estimated Cost for Government Implementation

Administrative costs will be incurred by government in implementing the Community Ambulance Cover Bill 2003. These costs relate to public communication consultation and education campaigns and programs, additional Office of State Revenue staff, education programs for staff of electricity retailers and Office of State Revenue, systems changes for electricity retailers and Office of State Revenue, development of new forms, information sheets and other publications, further development of the Community Ambulance Cover Website, call centre operations, establishing exempt accounts and managing public enquiries through the implementation period.

Consistency with Fundamental Legislative Principles

The Community Ambulance Bill 2003 raises the following fundamental legislative principles issues.

- Clause 19 of the Bill provides that the annual levy and the daily levy for a financial year later than 2003-04 may be prescribed by regulation and notified in the Gazette no later than 31 May in the preceding financial year. The levy has been introduced to fund ambulance services, the annual cost of which has been, and is, increasing. It is essential that these new funding arrangements keep pace with the costs of the service so that the Bill achieves its policy objective. Amending the annual levy and daily levy by legislation each year would not be practical given the lead times involved and the need for electricity retailers to know these

amounts in sufficient time before 1 July in each year to make any necessary systems changes. The making of a regulation each year is therefore considered necessary to ensure that the Bill achieves its policy objective into future years.

- Clauses 30 and 44 provide an exemption for later standard contracts and later power card arrangements. Exemption is conditional on the electricity under those electricity sale arrangements being charged at a non-domestic tariff of a type to be prescribed by regulation. As electricity tariffs may vary in number and scope from time to time, prescribing the relevant tariffs for the exemption ensures that the exemption keeps pace with any such changes and that the exemptions continue to achieve their objective.
- Clause 110 empowers the Commissioner to waive payment of levy liability up to an amount prescribed by a regulation. Similar provision is made by the *Taxation Administration Act 2001*. The intention of the provision is to facilitate the waiver of very small amounts to enable a debt to be treated as satisfied even though it has been partly paid and a small balance remains outstanding. For example, an outstanding liability of \$1 may exist for an account. This provision is considered reasonable for administrative efficiency.
- Clause 139 provides that a non-reviewable decision is final and conclusive, cannot be the subject of objection or appeal under Part 9 and is not subject to judicial review or any writ or order of a court, tribunal or other entity on any ground. Clause 138 defines a non-reviewable decision as a decision or determination declared under the Bill to be non-reviewable. While Part 9 provides comprehensive rights of review under the objection and appeal arrangements, review rights under the Bill are considered inappropriate for non-reviewable decisions. The non-reviewable decisions in the Bill are as follows.
 - Clause 83 – Treasurer’s decision to refuse to approve the amount of an electricity retailer’s administration fee or the way it is to be worked out. Clause 83 provides for payment of an administration fee to the electricity retailer for performance of the retailer’s functions under the Act. The fee is payable by the Commissioner but the fee must be approved by the Treasurer. The amount of the fee payable to each electricity retailer involves commercial

considerations and it is inappropriate that the Treasurer's decision be subject to review.

- Clause 103 – Commissioner's refusal to approve a later time for payment by an electricity retailer to the Commissioner of an amount of levy collected from an electricity customer. The clause provides that levy collections must be paid to the Commissioner within 1 day after the electricity retailer receives the amount unless a later time is approved by the Commissioner. Levy is collected by the electricity retailers as administration agents on behalf of the State. A delay in payment of these monies would confer a windfall financial advantage on the electricity retailer with consequential opportunity cost to the State. Delay also increases the amount payable by the electricity retailer with consequent increase in revenue risk to the State. It is therefore inappropriate for the Commissioner's decision not to approve a later time to be the subject of review.
- Clause 110 – Commissioner's decision not to waive levy liability. The Commissioner's decision not to waive levy liability should not be subject to challenge or review. The levy liability itself may be challenged through the objection and appeal processes of Part 9 and allowing the non-waiver decision to be challenged would be tantamount to establishing an alternative review mechanism.
- Clause 128 – Commissioner's refusal to extend the time for lodging an objection. Persons who are dissatisfied with a statement of levy liability may lodge an objection against the decision. Clause 87 provides that the statement of levy liability issued by the electricity retailer must include advice to the effect that the electricity customer has a right of objection under the legislation if they claim that the amount of levy payable is incorrect. To ensure revenue certainty and customer equity, the time limits for lodging an objection should be consistently applied. However, as there will be cases where electricity customers are unable to comply with this requirement through no fault of their own, the Commissioner has a discretion to extend the lodgment time. Given the significance of the discretion and for equity reasons, it is appropriate that review rights do not arise in relation to a refusal to extend. This approach is also consistent with the *Taxation Administration Act 2001*.

- Clause 140 of the Bill precludes the application that the *Judicial Review Act 1991* for decisions on a person's levy liability or a decision or conduct leading up to or forming part of the process of making such a decision or a decision disallowing, in whole or in part, an objection against a decision. Other decisions under the Bill can be the subject of judicial review. Excluding the application of the *Judicial Review Act 1991* is consistent with the approach taken by the *Taxation Administration Act 2001 (Qld)* and Commonwealth taxation legislation. Although judicial review is excluded for the named decisions, Part 9 of the Bill provides specific mechanisms for objection and appeal for these decisions. Appeals lie to the Magistrates Court which is considered the appropriate jurisdiction given the levy amounts likely to be in dispute. (Applications for judicial review are to the Supreme Court and involve significant cost.) The specific review mechanisms in the Bill provide a full merits review.
- Clause 148 provides that production of a document signed by the Commissioner purporting to be a copy of a statement of levy liability or a notice of a shortfall amount is conclusive evidence of the proper making of the statement and, other than in an appeal against the levy, is conclusive evidence that the amount and all particulars of the liability are correct. In proceedings on appeal against a decision on objection, however, the document is evidence only. This provision is consistent with a similar provision in the *Taxation Administration Act 2001* and Commonwealth taxation legislation. It ensures that the proper mechanism for challenging the correctness of a statement of levy liability or of a decision of the Commissioner is the objection and appeal arrangements established in Part 9, rather than in other proceedings, such as proceedings for recovery of the outstanding amount. Clause 148 ensures that alternative review rights are not established in relation to the levy thereby allowing a person to challenge an assessment outside the Part 9 mechanisms.
- Clause 155 of the Bill confers power to make interim regulations about matters for which the Bill does not make provision or sufficient provision. The regulations may allow, or facilitate the doing of, anything to achieve the introduction of the system of collection of the levy by electricity retailers through electricity accounts. The power is broadly framed and also allows for the regulations to operate retrospectively, but not earlier than the commencement day for the Bill. However, the regulation-

making power is considered necessary given that the levy is being imposed for the first time and will apply to a very large number of electricity accounts in Queensland. It will assist the smooth implementation of the new funding system by allowing a more timely response to legislative issues arising in the implementation period. The power is also considered reasonable and limited because any interim regulation, as well as the clause itself, expires 1 year after commencement of the Bill.

The remaining provisions of the Bill are not considered to raise fundamental legislative principles.

Consultation

Following announcement of the levy, there has been extensive consultation with the community on the policy principles of the legislation. A wide range of opportunities and forums have been made available to the community for comment upon the levy. These include through call centres, an email address, media coverage, correspondence with the Implementation Review Unit established to manage the implementation process, Ministerial visits throughout regional Queensland and consultation with a Reference Group comprising representatives from business and community organisations. There has also been extensive consultation with electricity retailers on administrative, operational, business process and systems issues. Consultation has also occurred with electricity on-suppliers.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Act.

Clause 2 specifies that Part 12 of the Act will commence on 1 July 2003.

Clause 3 specifies the objects of the Act.

Clause 4 specifies that the Act imposes the levy for days on or after 1 July 2003.

Clause 5 provides that all persons, including the State and, to the extent possible, the other States and the Commonwealth, are bound by the Act. The Act does not impose a tax on Commonwealth property.

Clause 6 states that nothing in the Act makes the State liable to be prosecuted for an offence.

Clause 7 provides that the levy is imposed on electricity sale arrangements relating to the consumption of electricity in Queensland regardless of whether an arrangement is entered into or made in or outside Queensland, whether any person involved in an arrangement is resident in Queensland or is otherwise connected with Queensland or whether the supply of electricity for the purposes of an arrangement originates in or outside Queensland.

Clause 8 provides that the dictionary in the schedule defines particular words used in the Act.

Clause 9 provides that notes in the text of the Act are part of the Act.

Clause 10 defines “standard contract”. A standard contract is a contract for the sale of electricity by an electricity retailer to a non-contestable customer if, for the sale, the electricity is supplied for consumption in Queensland and the supply is measured by a meter. The supply of electricity through a power card arrangement is not a standard contract. “Contract” is defined for the purposes of the clause.

Clause 11 defines “power card arrangement”. A power card arrangement will exist for premises in Queensland if an electricity retailer has the facility to sell electricity for consumption at the premises using a card operated meter installed and available for operation for the premises. A power card arrangement will exist regardless of whether the premises are occupied or connected for the supply of electricity or electricity is being consumed at the premises. Also, it does not matter whether a card operated meter is installed at the power card premises. For example, the power card meter for the premises may be installed on a power pole outside the premises.

Clause 12 defines “separate area”. This definition is relevant for the definition of “on-supply arrangement type 1” and “on-supply arrangement type 2”. A separate area is a building or part of a building in Queensland that is used or, if not being used, is available for use, solely as a single business, a single self-contained place of residence or to conduct a single undertaking or enterprise or other single activity (or a combination of these uses). The area must also be wired for the supply of electricity to it. The clause provides examples of separate areas.

Clause 13 defines “separate non-domestic area”. A separate non-domestic area is a building or part of a building in Queensland that is used or, if not being used, is available for use, solely as a single business or to

conduct a single undertaking or enterprise or other single activity (or a combination of these uses). The area must also be wired for the supply of electricity to it.

Clause 14 defines “on-supply arrangement (type 1)”. The definition of separate area is relevant for this definition. An on-supply arrangement (type 1) will exist for a separate area if –

- electricity is being supplied to a person (the “on-supplier”) for the purposes of a building that includes the separate area;
- the electricity is being sold to the on-supplier by an electricity retailer;
- the supply of electricity to the on-supplier by the electricity retailer is measured by a meter;
- the on-supplier has the facility to further supply and further sell some or all of the electricity for consumption at the separate area; and
- if electricity is being consumed at the separate area, it is electricity which is sold by the on-supplier for consumption at the separate area.

An on-supply arrangement (type 1) will exist regardless of whether any further supply and sale of the electricity is directly from the on-supplier or indirectly through entities interposed between the on-supplier and the person consuming the electricity. Also, it does not matter whether the premises are occupied or connected for the further supply or electricity is being consumed at the separate area. Also, it does not matter whether there is an identifiable person to whom the electricity is or may be further supplied or sold. These provisions make it clear that the definition applies where there is the facility to further supply and sell electricity to the separate area rather than there having to be any actual supply and sale. Consequently, there can be an on-supply arrangement in relation to vacant premises.

Clause 15 defines “on-supply arrangement (type 2)”. An on-supply arrangement (type 2) will exist for a separate area if –

- the separate area is included in a group of 3 or more separate areas in a building;
- there is no on-supply arrangement (type 1) for any of the separate areas in the group;

- an electricity retailer sells to a person (the “on-supplier”) all electricity consumed at any separate area in the group;
- any supply of electricity to a separate area in the group is measured by a meter; and
- there is an arrangement between the on-supplier and the electricity retailer under which electricity accounts issued to the on-supplier by the electricity retailer show the cost of electricity supplied to each separate area.

An on-supply arrangement (type 2) will exist regardless of whether electricity is consumed in the separate areas. As with on-supply arrangements type 1, this makes it clear that there can be an on-supply arrangement type 2 for vacant premises. Also, it does not matter whether all separate areas in the building are included in the group.

Clause 16 defines “contestable sale arrangement”. A contestable sale arrangement is an arrangement for the sale of electricity by an electricity retailer to a person (the “relevant contestable customer”) for consumption at premises if the relevant contestable customer is declared to be a contestable customer under a regulation under the Electricity Act for the supply of electricity to the premises, the premises are in Queensland and the supply of electricity to the premises are measured by a meter.

Subclause (2) makes it clear that a relevant contestable customer may have 2 or more contestable sale arrangements in place even though the relevant contestable customer may only have 1 contract for the sale of electricity with the electricity retailer.

Clause 17 confirms that under the Act a person may have more than one role. That is, a person could be a non-contestable customer under a standard contract or a relevant contestable customer under a contestable sale arrangement and also an on-supplier for an on-supply arrangement. A person must comply with the requirements of the Act according to the role in which the person is acting.

Clause 18 establishes that there is an amount of levy for each financial year (the “annual levy”) and also an amount of levy for each day in a financial year (the “daily levy”).

Clause 19 states that for the financial year starting on 1 July 2003, the annual levy is \$88. For a later financial year, the annual levy is the amount prescribed by regulation.

Clause 20 states that for the financial year starting on 1 July 2003, the daily levy is 24.044 cents. In addition, this clause provides a formula for

calculating the daily levy for a later financial year and prescribes requirements for notification of the daily levy for a later financial year.

Clause 21 states that if a regulation prescribing the annual levy and the daily levy for a later financial year has not been notified in the gazette by 31 May in the preceding financial year, the annual levy and the daily levy for the financial year are the same as for the preceding financial year.

Clause 22 provides that Part 2 imposes the levy on standard contracts and that liability for the levy is imposed on a standard contract for each day the contract is in place.

Clause 23 provides that the days which a standard contract is in place do not include the day the standard contract commences but does include the day the standard contract ends. In addition, a standard contract will be taken to have ended when the supply of electricity for sale under the contract is disconnected, other than because of a temporary disconnection or other interruption.

Clause 24 provides that liability for the levy will continue even if no electricity is the subject of sale under the contract. However, liability for the levy does not arise until the premises are connected.

Clause 25 states that a levy imposed on a standard contract must be paid by the non-contestable customer under the standard contract. If there are 2 or more persons who are the non-contestable customer under the contract, all persons are jointly and severally liable for payment of the levy.

Clause 26 provides that if a person is the non-contestable customer under 2 or more standard contracts and a single electricity account is issued for the standard contracts, the person remains liable for the levy on each standard contract. Consolidation of electricity accounts issued for standard contracts does not affect liability for the levy for each standard contract.

Clause 27 states that the amount of the levy imposed on a standard contract for each day the contract is in place is the daily levy for the financial year in which the day occurs.

Clause 28 states that the levy is not payable for a day that a standard contract is an exempt standard contract.

Clause 29 ensures that, where a number of circumstances apply to a standard contract, the contract will be an exempt standard contract only if each of those circumstances, considered separately, would result in the contract being exempt under Division 5 of Part 2.

Clause 30 provides a conditional exemption for later standard contracts.

Clause 31 provides a conditional exemption for pensioners as defined in the dictionary.

Clause 32 provides an exemption where all electricity sold under a standard contract is supplied to a farming shed as defined in the dictionary.

Clause 33 provides an exemption where all electricity sold under a standard contract is supplied to a pump that is a water pump used for irrigation, stock or other purposes of primary production or a water or sewerage pump used for domestic purposes.

Clause 34 provides an exemption where the non-contestable customer under a standard contract is the Commonwealth.

Clause 35 provides an exemption where the non-contestable customer under a standard contract is the State and all electricity sold under the contract is supplied to premises used only for providing core government services or that are public infrastructure. The “State” includes any State instrumentality, authority, corporation or other State entity, including any GOC and whether or not representing the State but does not include a local government.

Clause 36 provides an exemption where the non-contestable customer under a standard contract is a local government and all electricity sold under the contract is supplied to premises used only for providing core local government services or that are public infrastructure.

Clause 37 provides that a standard contract is an exempt standard contract in the following circumstances.

- The non-contestable customer is a religious body or a body controlled or associated with a religious body, whose principal object and pursuit is the conduct of activities of a religious nature and all electricity sold under the contract is supplied to premises used solely or almost solely as a church or other public place of worship or as a church or other public place of worship and an associated hall. A hall used or hired out for commercial purposes will not qualify for the exemption.
- The non-contestable customer is an institution whose principal object or pursuit is the care of sick, aged, infirm, afflicted or incorrigible persons and all electricity sold under the contract is supplied to premises used solely or almost solely for the purposes of the institution’s principal object or pursuit. However, premises which are a hospital, an aged care hostel or a nursing home will not qualify for the exemption. In addition, to qualify

for the exemption, the institution's constitution must satisfy the conditions contained in section 37(5).

- The non-contestable customer is an institution whose principal object or pursuit is the relief of poverty, suffering, distress or misfortune of people and all electricity sold under the contract is supplied to premises used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 37(5).
- The non-contestable customer is an institution whose principal object or pursuit is the care of children by being responsible for them on a full time basis, providing the children with all the necessary food, clothing and shelter and providing for their general well-being and protection and all electricity sold under the contract is supplied to premises used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 37(5).

Clause 38 provides that Part 3 imposes the levy on power card arrangements and that liability for the levy is imposed on a power card arrangement for each day of the arrangement.

Clause 39 states that a levy payable for a power card arrangement must be paid by the owner of the power card premises. If there are 2 or more persons who are the owner of the power card premises, all persons are jointly and severally liable for payment of the levy.

Clause 40 provides that a person must pay the levy in relation to each power card arrangement for which the person is the owner.

Clause 41 states that the amount of the levy imposed on a power card arrangement for each day of the arrangement is the daily levy for the financial year in which the day occurs.

Clause 42 states that the levy is not payable for a day that a power card arrangement is an exempt power card arrangement.

Clause 43 ensures that, where a number of circumstances apply to a power card arrangement, the arrangement will be an exempt power card arrangement only if each of those circumstances, considered separately, would result in the arrangement being exempt under Division 5 of Part 3.

Clause 44 provides a conditional exemption for later power card arrangements.

Clause 45 provides that a conditional exemption for pensioners as defined in the dictionary.

Clause 46 provides an exemption where the power card premises are a farming shed.

Clause 47 provides an exemption where the power card premises are a pump that is a water pump used for irrigation, stock or other purposes of primary production or a water or sewerage pump used for domestic purposes.

Clause 48 provides that a power card arrangement will be an exempt power card arrangement if the owner is the Commonwealth.

Clause 49 provides that a power card arrangement will be an exempt power card arrangement if the power card premises are used by the State only for the purposes of providing core government services or public infrastructure. The “State” includes any State instrumentality, authority, corporation or other State entity, including any GOC and whether or not representing the State but does not include a local government.

Clause 50 provides that a power card arrangement will be an exempt power card arrangement if the power card premises are used by a local government only for the purposes of providing core local government services or public infrastructure.

Clause 51 provides that a power card arrangement is an exempt power card arrangement in the following circumstances.

- The power card premises are used by a religious body or a body controlled or associated with a religious body, whose principal object and pursuit is the conduct of activities of a religious nature and the power card premises are used solely or almost solely as a church or other public place of worship or as a church or other public place of worship and an associated hall. A hall used or hired out for commercial purposes will not qualify for the exemption.
- The power card premises are used by an institution whose principal object or pursuit is the care of sick, aged, infirm, afflicted or incorrigible persons and the power card premises are used solely or almost solely for the purposes of the institution’s principal object or pursuit. However, power card premises which are a hospital, an aged care hostel or a nursing home will not

qualify for the exemption. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 51(5).

- The power card premises are used by an institution whose principal object or pursuit is the relief of poverty, suffering, distress or misfortune of people and the power card premises are used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 51(5).
- The power card premises are used by an institution whose principal object or pursuit is the care of children by being responsible for them on a full time basis, providing the children with all the necessary food, clothing and shelter and providing for their general well-being and protection and the power card premises are used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 51(5).

Clause 52 provides that Part 4 imposes the levy on on-supply arrangements and that liability for the levy is imposed on an on-supply arrangement for each day of the arrangement.

Clause 53 states that a levy payable for an on-supply arrangement must be paid by the on-supplier. If there are 2 or more persons who are the on-supplier, all persons are jointly and severally liable for payment of the levy.

Clause 54 provides that if a person is the on-supplier for 2 or more on-supply arrangements and a single billing arrangement is established for all the on-supply arrangements, the person remains liable for the levy for each on-supply arrangement. The establishment of a single billing arrangement does not affect liability for the levy for each on-supply arrangement.

Clause 55 states that the amount of levy imposed on an on-supply arrangement for a day is the daily levy for the financial year in which the day occurs.

Clause 56 states that the levy is not payable for a day that an on-supply arrangement is an exempt on-supply arrangement.

Clause 57 ensures that, where a number of circumstances apply to an on-supply arrangement, the arrangement will be an exempt on-supply

arrangement only if each of those circumstances, considered separately, would result in the arrangement being exempt under Division 5 of Part 4.

Clause 58 provides that an on-supply arrangement will be an exempt on-supply arrangement if the separate area is the principal place of residence of a pensioner and any other person sharing the separate area, other than a visitor, are the pensioner's spouse, a person wholly dependant on the pensioner, another pensioner, a social security beneficiary who does not pay rent to the pensioner or a person who is the pensioner's carer and who does not pay rent to the pensioner.

Clause 59 provides that an on-supply arrangement will be an exempt on-supply arrangement if the separate area is a farming shed.

Clause 60 provides that an on-supply arrangement will be an exempt on-supply arrangement if the on-supplier is the Commonwealth.

Clause 61 provides that an on-supply arrangement will be an exempt on-supply arrangement if the separate area is used by the State only for the purposes of providing core government services or public infrastructure. The "State" includes any State instrumentality, authority, corporation or other State entity, including any GOC and whether or not representing the State but does not include a local government.

Clause 62 provides that an on-supply arrangement will be an exempt on-supply arrangement if the separate area is used by a local government only for the purposes of providing core local government services or as public infrastructure.

Clause 63 provides that an on-supply arrangement is an exempt on-supply arrangement in the following circumstances.

- The separate area is used by a religious body or a body controlled or associated with a religious body, whose principal object and pursuit is the conduct of activities of a religious nature and the separate area is used solely or almost solely as a church or other public place of worship or as a church or other public place of worship and an associated hall. A hall used or hired out for commercial purposes will not qualify for the exemption.
- The separate area is used by an institution whose principal object or pursuit is the care of sick, aged, infirm, afflicted or incorrigible persons and the separate area is used solely or almost solely for the purposes of the institution's principal object or pursuit. However, a separate area which is a hospital, an aged care hostel or a nursing home will not qualify for the exemption. In

addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 63(5).

- The separate area is used by an institution whose principal object or pursuit is the relief of poverty, suffering, distress or misfortune of people and the separate area is used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 63(5).
- The separate area is used by an institution whose principal object or pursuit is the care of children by being responsible for them on a full time basis, providing the children with all the necessary food, clothing and shelter and providing for their general well-being and protection and the separate area is used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 63(5).

Clause 64 provides that Part 5 imposes the levy on contestable sale arrangements and that liability for the levy is imposed on a contestable sale arrangement for each day of the arrangement.

Clause 65 provides that the days which a contestable sale arrangement is in place do not include the day the contestable sale arrangement commences but does include the day the contestable sale arrangement ends. In addition, a contestable sale arrangement will be taken to have ended when the supply of electricity for sale under the arrangement is disconnected, other than because of a temporary disconnection or other interruption.

Clause 66 provides that liability for the levy arises even if no electricity is the subject of sale under the contestable sale arrangement. However, liability for the levy does not arise until the premises are connected.

Clause 67 states that a levy payable for a contestable sale arrangement must be paid by the relevant contestable customer. If there are 2 or more persons who are the relevant contestable customer, all persons are jointly and severally liable for payment of the levy.

Clause 68 provides that if a person is the relevant contestable customer for 2 or more contestable sale arrangements and a single electricity account is issued for all the contestable sale arrangements, the person remains liable

for the levy for each contestable sale arrangement. The issue of a single electricity account does not affect liability for the levy for each contestable sale arrangement.

Clause 69 provides that the amount of the levy imposed on a contestable sale arrangement for a day is the daily levy for the financial year in which the day occurs.

Clause 70 states that the levy is not payable for a day that a contestable sale arrangement is an exempt contestable sale arrangement.

Clause 71 ensures that, where a number of circumstances apply to a contestable sale arrangement, the arrangement will be an exempt contestable sale arrangement only if each of those circumstances, considered separately, would result in the arrangement being exempt under Division 5 of Part 5.

Clause 72 provides a conditional exemption for pensioners as defined in the dictionary.

Clause 73 provides that a contestable sale arrangement will be an exempt contestable sale arrangement if all electricity sold under the arrangement is supplied to a farming shed.

Clause 74 provides that a contestable sale arrangement will be an exempt contestable sale arrangement if all electricity sold under the arrangement is supplied to a pump that is a water pump used for irrigation, stock or other purposes of primary production or a water or sewerage pump used for domestic purposes.

Clause 75 provides that a contestable sale arrangement will be an exempt contestable sale arrangement if the relevant contestable customer is the Commonwealth.

Clause 76 provides that a contestable sale arrangement will be an exempt contestable sale arrangement if the relevant contestable customer is the State and all electricity sold under the arrangement is supplied to premises that are used only for providing core government services or that are public infrastructure. The "State" includes any State instrumentality, authority, corporation or other State entity, including any GOC and whether or not representing the State but does not include a local government.

Clause 77 provides that a contestable sale arrangement will be an exempt contestable sale arrangement if the relevant contestable customer is a local government and all electricity sold under the arrangement is supplied to premises that are used only providing core local government services or that are public infrastructure.

Clause 78 provides that a contestable sale arrangement is an exempt contestable sale arrangement in the following circumstances.

- The relevant contestable customer is a religious body or a body controlled or associated with a religious body, whose principal object and pursuit is the conduct of activities of a religious nature and all electricity sold under the arrangement is supplied to premises used solely or almost solely as a church or other public place of worship or as a church or other public place of worship and an associated hall. A hall used or hired out for commercial purposes will not qualify for the exemption.
- The relevant contestable customer is an institution whose principal object or pursuit is the care of sick, aged, infirm, afflicted or incorrigible persons and all electricity sold under the arrangement is supplied to premises used solely or almost solely for the purposes of the institution's principal object or pursuit. However, premises which are a hospital, an aged care hostel or a nursing home will not qualify for the exemption. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 78(5).
- The relevant contestable customer is an institution whose principal object or pursuit is the relief of poverty, suffering, distress or misfortune of people and all electricity sold under the arrangement is supplied to premises used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 78(5).
- The relevant contestable customer is an institution whose principal object or pursuit is the care of children by being responsible for them on a full time basis, providing the children with all the necessary food, clothing and shelter and providing for their general well-being and protection and all electricity sold under the arrangement is supplied to premises used solely or almost solely for the purposes of the institution's principal object or pursuit. In addition, to qualify for the exemption, the institution's constitution must satisfy the conditions contained in section 78(5).

Clause 79 provides that an electricity retailer is the agent of the Commissioner in relation to the collection of the levy for the agent's electricity sale arrangements.

Clause 80 specifies the role and functions the electricity retailer must perform and the expected standard of performance of the electricity retailer. Generally, the role of the electricity retailer is to assist the Commissioner in the administration of the Act through the collection of the levy from the electricity retailer's customers.

Clause 81 allows an electricity retailer, with the written approval of the Commissioner, to contract with an authorised subcontractor to perform some or all of the electricity retailer's functions under the Act. However, the electricity retailer remains liable for the proper performance of their functions. Furthermore, an obligation or requirement of an electricity retailer applies to an authorised subcontractor to the extent of the performance of the functions contracted to the subcontractor.

Clause 82 states that the Commissioner may enter an administration agreement with an electricity retailer regarding the performance of the electricity retailer's functions. An administration agreement is of no effect to the extent that it is inconsistent with a requirement of the Act.

Clause 83 allows the Commissioner to pay an electricity retailer a fee for performing their functions under the Act. The details of the administration fee may be included in an administration agreement. The Treasurer's approval of the amount of the administration fee or the basis on which the fee is calculated is required.

Clause 84 details the information and documents which an electricity retailer must provide to the Commissioner or allow the Commissioner to access. An electricity retailer is not permitted to charge a fee for the provision of information or documents or access to that information or documents.

Clause 85 states that the Commissioner may perform the electricity retailer's obligations under the Act, a direction given by the Commissioner or the administration agreement if the electricity retailer fails to do so.

Clause 86 specifies that the Commissioner may give written directions to an electricity retailer or a retailer's subcontractor who are obliged to comply with the direction.

Clause 87 states that an electricity retailer must include in each electricity account given to an electricity customer a statement setting out the amount of the levy for each electricity sale arrangement the account relates to. The statement must be provided even if the levy amount is nil. With the Commissioner's approval, the statement may be issued separately. Clause 87(6) sets out the information which an electricity retailer must

have regard to when calculating the levy. The statement must include advice that the electricity customer has a right of objection.

Clause 88 states that an electricity retailer for a power card arrangement must issue a statement of levy liability to the owner of power card premises at least once every 3 months and as soon as practicable after the power card arrangement ends. The statement need not be provided if the levy amount is nil. *Clause 88(4)* sets out the information which an electricity retailer must have regard to when calculating the levy. The statement must include advice that the electricity customer has a right of objection.

Clause 89 states that an electricity retailer must give an electricity customer a statement of levy liability to replace a statement of levy liability previously issued in the following circumstances –

- if the outcome of a review or appeal requires it; or
- to correct mistakes of fact or arithmetic error in the calculation of a levy amount.

Clause 90 provides that a non-contestable customer who claims a standard contract is an exempt standard contract may notify the electricity retailer in the approved form of the circumstances supporting their claim to exemption.

Clause 91 states that if a standard contract stops being an exempt standard contract the non-contestable customer must notify the electricity retailer in the approved form within 28 days.

Clause 92 applies to an exempt power card arrangement. An owner of power card premises who has direct knowledge of circumstances causing a power card arrangement to be an exempt power card arrangement may notify the electricity retailer in the approved form of the circumstances supporting the claim for exemption.

A person who is not the owner of power card premises but who has direct knowledge of circumstances causing a power card arrangement to be an exempt power card arrangement may notify the owner of power card premises in the approved form of the circumstances supporting the claim for exemption. If the owner of power card premises receives notification, the owner must claim the exemption from the electricity retailer not later than 28 days after receipt of the notification.

Clause 93 states that if a power card arrangement stops being an exempt power card arrangement, the relevant person must notify the owner of the power card premises in the approved form within 28 days. If the owner of power card premises receives notification, the owner must notify the

electricity retailer not later than 28 days after receipt of the notification. If the relevant person is the owner of the power card premises, the owner must notify the electricity retailer in the approved form within 28 days.

Clause 94 applies to an exempt on-supply arrangement. A person who has direct knowledge of circumstances causing an on-supply arrangement to be an exempt on-supply arrangement may notify the on-supplier in the approved form of the circumstances supporting the claim for exemption. If the on-supplier receives notification, the on-supplier must give notice to the electricity retailer in the approved form not later than 28 days after receipt of the notification.

If the on-supply arrangement is an on-supply arrangement (type 1) and the person who notifies the on-supplier of the circumstances supporting the claim for exemption is the occupier of the separate area but not the receiver for the arrangement, the occupier must advise the receiver of the notification in any reasonable way as soon as practicable after the notification was given to the on-supplier.

Clause 95 states that if an on-supply arrangement stops being an exempt on-supply arrangement, the relevant person must notify the on-supplier in the approved form within 28 days. If the on-supplier receives notification, the on-supplier must notify the electricity retailer not later than 28 days after receipt of the notification.

Clause 96 requires a person who is an on-supplier to lodge with the electricity retailer for the on-supply arrangement a return of all the on-supply arrangements of the person in relation to electricity sold by that retailer to the on-supplier. The return must also state the number of on-supply arrangements that are exempt on-supply arrangements. The return must be lodged within 90 days of commencement of the clause or the on-supplier becoming an on-supplier. Returns must also be given on request by the electricity retailer and within 28 days of a change in the number of on-supply arrangements.

Clause 97 states that a relevant contestable customer under a contestable sale arrangement who claims that the contestable sale arrangement is an exempt contestable sale arrangement may notify the electricity retailer in the approved form of the circumstances supporting the claim to exemption.

Clause 98 states that if a contestable sale arrangement stops being an exempt contestable sale arrangement, the relevant contestable customer must notify the electricity retailer in the approved form within 28 days.

Clause 99 states that if an exemption is claimed on the basis of the pensioner exemption, an electricity retailer is taken to have been notified of

the claim for exemption by the making of a claim with the electricity retailer for an electricity rebate. Also, if the exemption is claimed on the basis of the pump exemption, an electricity retailer is taken to have been notified of the claim for exemption if any electricity retail services provided by for the arrangement are charged or chargeable at a tariff prescribed under a regulation.

Clause 100 states that information that may be or is required to be notified because of a government exemption may be given in a way approved by the commissioner.

Clause 101 states that an electricity customer must pay the electricity retailer the total levy shown in a statement of levy liability given to the electricity customer by the electricity retailer by the date stated in the electricity account as the day for payment of the electricity account. The levy amount must be paid by the electricity customer even if the electricity customer claims that they are not liable to pay the levy for any reason. If the statement of levy liability is not included in the electricity account, the levy must be paid within the period stated in the statement and approved by the Commissioner but must not be less than 30 days.

Clause 102 provides that any payment received by an electricity retailer in relation to an electricity account must first be applied to any amount payable for the levy or other amount payable under the Act.

Clause 103 states that an electricity retailer must pay any levy amount collected from an electricity customer within 1 day after receipt of the amount, or such later period approved by the Commissioner. The amount must be paid without set off or deduction of any amount other than refunds. The electricity retailer must give a return in the approved form with payment.

Clause 104 makes provision for acceptance by electricity retailers and the Commissioner of voluntary contributions by certain persons who have obtained the benefit of a pensioner exemption under the Act. However, the maximum voluntary contribution that may be made and accepted is the amount prescribed by regulation.

Clause 105 states that a shortfall amount is payable within 14 days after receipt of written notice from an electricity retailer or the Commissioner of the shortfall amount. The requirement to pay a shortfall amount is, other than in the listed circumstances, limited to 5 years after the shortfall amount should have been paid. Notice of the shortfall amount must provide that the person has a right to object to the requirement to pay the shortfall amount.

Clause 106 provides that there is no entitlement to a refund of any amount paid, or purportedly paid under the Act other than the entitlement created under part 7, division 8. That Division provides an exhaustive code of a person's refund entitlement. For example, no right of refund would arise under the common law for payment under a mistake.

Clause 107 states that an electricity customer may claim a refund in the approved form where a levy amount is paid for an electricity sale arrangement that was an exempt arrangement. If satisfied that the electricity consumer is entitled to the refund, the electricity retailer must either pay the refund or provide the electricity customer with a credit for the refund amount in the next statement of levy liability given to the electricity customer.

A person is not entitled to a refund if more than 1 year has elapsed since the amount was paid and the person has not claimed the refund during that time.

Clause 108 states that an electricity customer is entitled to a refund of levy if the customer's levy liability decreases by the issue of a replacement statement of levy liability. The electricity retailer must either pay the refund or provide the electricity customer with a credit for the refund amount in the next statement of levy liability given to the electricity customer.

Clause 109 states that no interest is payable on any amount of levy that is refunded.

Clause 110 allows the Commissioner to waive an amount of levy liability up to the amount prescribed by the regulation. The liability for the amount waived is extinguished.

Clause 111 explains the effect of writing off a levy liability under the *Financial Administration and Audit Act 1977*.

Clause 112 states that if a levy amount is not paid to the electricity retailer by the due date, the electricity retailer must carry out procedures for recovery of the unpaid amount as directed by the Commissioner.

Clause 113 states that the disconnection provisions under the Electricity Act apply where a person fails to pay an amount of levy liability as if the failure to pay the levy amount were a failure to pay the electricity retailer an amount for the provision of electricity retail services.

An electricity retailer must take action under the disconnection provisions of the Electricity Act, including action to disconnect electricity, if the electricity customer owes the electricity retailer a levy amount and an amount payable for electricity retail services and the electricity retailer

would, under its established business procedures, take action under the disconnection provisions. This clause does not apply to power card arrangements.

Clause 114 provides that any unpaid amount of a levy may be recovered by the Commissioner as a debt payable to the State. This is in addition to any action that the electricity retailer may take under the other provisions of Division 10 of Part 7.

Clause 115 provides that an owner of power card premises may recover a levy amount that the owner has paid for the power card arrangement from the occupier of the power card premises if the power card premises are subject to a lease, tenancy or other right of occupation.

Amounts of levy may only be recovered from the lessee, tenant or occupier if the amount relates to the period of the person's lease, tenancy or occupation.

Clause 116 provides that it is an offence for an owner of power card premises to recover or try to recover from a person the amount of levy for a power card arrangement or an amount purportedly payable as an amount of levy for a power card arrangement, unless the owner has received a statement of levy liability for the amount.

Clause 117 provides that where the owner of power card premises has been notified that a power card arrangement is or was an exempt power card arrangement and the owner does not claim the exemption from the relevant electricity retailer for the arrangement and because of the owner's failure to notify the electricity retailer, the owner is required to pay an amount of levy for the power card arrangement, the owner must not recover or take action to recover the levy from any person.

Clause 118 prevents the owner of power card premises from making a windfall gain by receiving a refund of a levy amount. For example, an owner may have recovered an amount for the levy from a lessee of the power card premises. If the owner subsequently obtains a refund, clause 118 ensures that the owner is under an obligation to pass on the benefit of the refund to the person from whom the owner had earlier recovered an amount to which the refund relates. The clause states that if the owner of power card premises receives a refund for an amount of levy which was overpaid, the owner must, within 90 days after receiving the refund amount, pay the required amount to the entitled person. An entitled person is a person from whom the owner recovered or otherwise collected the levy the subject of the refund. If the owner does not pay the entitled person the refund amount within 90 days, the owner must, within 7 days, give the

Commissioner notice that the entitled person was not paid the amount and pay the Commissioner the amount plus interest at an amount prescribed under the regulation.

Clause 119 states that nothing in the Act authorises the owner for a power card arrangement to recover an amount of levy from the Commonwealth.

Clause 120 provides that an on-supplier may recover an amount of levy that the on-supplier has paid for an on-supply arrangement from the receiver if there is a receiver, from an owner if the on-supplier is not the owner or from the occupier if the separate area is the subject of a lease, tenancy or other right of occupation.

If the on-supplier recovers an amount of levy from the receiver, the receiver may recover the amount of the levy from the owner (if the receiver is not the owner) or from the occupier if the separate area is the subject of a lease, tenancy or other right of occupation.

If the on-supplier or receiver recovers an amount of levy from the owner, the owner may recover the amount of the levy from the occupier if the separate area is the subject of a lease, tenancy or other right of occupation.

Amounts of levy may only be recovered from the occupier if the amount relates to the period of the person's lease, tenancy or occupation.

Clause 121 provides that it is an offence for an on-supplier to recover or try to recover from a person the amount of levy for an on-supply arrangement or an amount purportedly payable as an amount of levy for an on-supply arrangement, unless the on-supplier has received a statement of levy liability for the amount.

Clause 122 provides that where the on-supplier has been notified that an on-supply arrangement is or was an exempt on-supply arrangement and the on-supplier does not claim the exemption from the relevant electricity retailer for the arrangement and because of the on-supplier's failure to notify the electricity retailer the on-supplier is required to pay an amount of levy for the on-supply arrangement, the on-supplier must not recover or take action to recover the levy from any person.

Clause 123 prevents on-suppliers and owners of separate areas for on-supply arrangements from making a windfall gain by receiving a refund of a levy amount. For example, an on-supplier may have recovered an amount for the levy from an owner who, in turn, may have received an amount from a lessee of the separate area. If the on-supplier subsequently obtains a refund, clause 123 ensures that the on-supplier and, if applicable,

the owner are under an obligation to pass on the benefit of the refund to the person who ultimately bore the liability for the levy.

The clause states that if the on-supplier receives a refund for an amount of levy which was overpaid, the on-supplier must, within 90 days after receiving the refund amount, pay the required amount to the entitled person. An entitled person is a person from whom the on-supplier recovered or otherwise collected the levy the subject of the refund. If the on-supplier does not pay the entitled person the refund amount within 90 days, the on-supplier must, within 7 days, give the Commissioner notice that the entitled person was not paid the amount and pay the Commissioner the amount plus interest at an amount prescribed under the regulation. It is an offence for the on-supplier not to comply with this provision. There is a similar passing on requirement which applies to the owner in relation to any lessee, tenant or other occupier of the separate area.

Clause 124 states that nothing in the Act authorises the on-supplier for an on-supply arrangement or the owner of a separate area the subject of the on-supply arrangement, to recover an amount of levy from the Commonwealth.

Clause 125 provides that an electricity retailer must pay interest, at the prescribed rate, on the amount of levy received by the electricity retailer and payable to the Commissioner but not paid by the due date.

Clause 126 specifies that the Commissioner may, by written notice, remit whole or part of any unpaid levy interest owed.

Clause 127 provides that an electricity customer of an electricity retailer who is dissatisfied with either the amount of the levy in a statement issued to the customer by the retailer or a decision by the Commissioner or an electricity retailer regarding the electricity customer's liability to pay the levy, may lodge a written objection. In addition, certain persons who are dissatisfied with the decision of the Commissioner or an electricity retailer about the status of the on-supply arrangement or a power card arrangement as an exempt arrangement may lodge a written objection with the Commissioner. However, an objection may not be lodged unless the person has complied with the notification provisions of the Act relating to claiming an exemption.

Clause 128 provides that the objection must be lodged in writing and stating fully the grounds of the objection.

The objection must be lodged within 60 days of the objector receiving the statement of levy or notice of the decision, unless the Commissioner is satisfied that the objector had a reasonable excuse for failing to do so and

extends the period for lodging the objection. The Commissioner's decision to refuse an extension is a non-reviewable decision.

Clause 129 specifies that the onus of proving the objector's case is on the objector.

Clause 130 provides that after considering the objection the Commissioner may allow the objection completely or in part, or disallow the objection. If a delegate of the Commissioner made the decision that is the subject of the objection, the delegate must not decide the objection.

Clause 131 specifies that the Commissioner must give written notice of the Commissioner's decision stating the reasons for the decision and details of the right of appeal to the objector and, where relevant, the electricity retailer.

Clause 132 provides that where an objector is dissatisfied with the Commissioner's decision on an objection they may appeal against the decision.

Clause 133 states that an appeal is commenced by filing a notice of appeal, within 60 days of the appellant receiving a notice of the Commissioner's decision on an objection, with the clerk of the court of the Magistrates Court and giving copy of the notice of appeal to the Commissioner. The notice of appeal must state fully the grounds of the appeal, which are limited to the grounds of the objection unless otherwise ordered by the court, and the facts relied upon.

Clause 134 specifies that the onus of proving the appellant's case is on the appellant.

Clause 135 details the procedures for hearing an appeal.

Clause 136 states that the Magistrates Court may confirm the decision, set aside the decision and substitute another decision or set aside the decision and return the issue to the Commissioner with directions the court considers appropriate. In the case where the court substitutes a decision, that decision is taken to be the Commissioner's decision for the purposes of the Act, other than this part.

Clause 137 specifies that should the appellant be dissatisfied with the Magistrates Court's decision an appeal can be made to the District Court, but only on a question of law.

Clause 138 defines a "non-reviewable decision". A non-reviewable decision is a decision declared by the Act to be a non-reviewable decision.

Clause 139 ensures that a non-reviewable decision is final and conclusive and cannot be reviewed, challenged or called into question in any way, whether by objection or appeal, judicial review or otherwise.

Clause 140 ensures that Parts 3 and 5 of the *Judicial Review Act 1991* do not apply to a decision of the Commissioner or an electricity retailer on a person's levy liability, a decision or conduct leading up to or forming part of the process of making a decision on a person's levy liability, or a decision disallowing, in whole or in part, an objection against the decision.

Clause 141 provides that parts 3 to 6 of the *Taxation Administration Act 2001* do not apply to the Act.

Clause 142 defines who is taken to be an official for the purposes of section 111 of the *Taxation Administration Act 2001*. The clause also states that section 111 of the *Taxation Administration Act 2001* does not prevent an electricity retailer or its authorised subcontractor from disclosing confidential information to the Commissioner.

Clause 143 allows the Commissioner to use information obtained in the administration or enforcement of a taxation law for the administration or enforcement of the Act. The phrase "taxation law" is defined for the purposes of the clause.

Clause 144 requires certain persons to keep records in relation to the levy. It is an offence for records not to be kept by persons required to keep records.

Clause 145 provides it is an offence for a person to fail to give to an electricity retailer a notice as required by the Act without a reasonable excuse.

Clause 146 provides that it is an offence for a person providing a document to an electricity retailer or an on-supplier or an owner for a power card arrangement that the person knows, or should reasonably know, is false or misleading in a material particular. Certain defences are available under the clause.

Clause 147 provides that it is an offence for a person stating anything to an electricity retailer or an on-supplier or an owner for a power card arrangement that the person knows, or should reasonably know, is false or misleading in a material particular.

Clause 148 states the evidentiary effect of a document signed by the Commissioner purporting to be a copy of a statement of levy liability or a notice or a shortfall amount.

Clause 149 provides additional ways of giving a document to the Commissioner for the purposes of the Act, and when these documents are taken to be given to the Commissioner.

Clause 150 states that an electricity retailer or an authorised subcontractor to whom a document is given, must give the document to the Commissioner as soon as practicable after receipt of the document. This section specifies the manner in which these documents are to be given to the Commissioner.

Clause 151 states that a document is taken to be provided to all persons who are liable to pay the levy for an electricity sale arrangement if it is given to 1 of the persons who is liable to pay the levy for the arrangement.

Clause 152 contains definitions of “lodge” and “lodgement requirement” for the purposes of the application of the *Taxation Administration Act 2001*.

Clause 153 provides that the Commissioner may approve forms.

Clause 154 provides for the making of regulations.

Clause 155 provides for the making of a regulation to allow or facilitate the doing of anything to achieve the introduction of the system of collection of the levy by electricity retailers through electricity accounts where the Act does not provide or sufficiently provide for that situation. The regulation may have limited retrospective effect. Provision is also made for the expiry of this section and any regulation made under it.

Clause 156 states that Part 12 amends the *Ambulance Service Act 1991*.

Clause 157 amends section 19(5)(a) to remove the reference to subscriptions.

Clause 158 amends section 29 to remove status as a subscriber as a prerequisite to vote at elections for Local Ambulance Committees and become a member of a committee.

Clause 159 amends sections 29A to remove the reference to subscriber for the purpose of determining who is eligible to be appointed to a vacancy in a Committee.

Clause 160 omits section 44 of the *Ambulance Service Act* as a result of a national competition policy review of the *Ambulance Service Act 1991*.

Clause 161 omits section 45 as a result of a national competition policy review of the *Ambulance Service Act 1991*.

Clause 162 amends section 48 so that the Minister, rather than the Commissioner of Ambulance, decides when a person other than the

Queensland Ambulance Service can use the words “ambulance service”. This amendment is a result of a national competition policy review of the *Ambulance Service Act 1991*.

Clause 163 inserts new sections 53B to 53D.

Section 53B provides which persons are not liable to pay a charge for ambulance services, some of the matters to be taken into account when deciding whether a person has their principal place of residence in Queensland, and when a fee is payable for ambulance services in Queensland.

Section 53C provides that the Chief Executive may enter into an agreement with nominated entities about payment for ambulance services.

Section 53D provides that a fee or charge payable under the Ambulance Service Act and not paid may be recovered in a court with appropriate jurisdiction.

Clause 164 amends section 54 consistent with the abolition of the ambulance subscription scheme.

Clause 165 inserts a new Part 8 Division 5 containing sections 92 to 95 containing transitional provisions.

Section 92 contains the definitions for the division.

Section 93 ends the entitlements of subscribers in line with the decision to abolish the ambulance subscription scheme.

Section 94 clarifies that ambulance services which end on the day of commencement will be free to Queensland residents notwithstanding that the service may have started before commencement.

Section 95 provides that a written authorisation by the Commissioner of Ambulance is taken to be an authorisation by the Minister to reflect the amendment to section 48 which provides that the Minister, rather than the Commissioner of Ambulance, will decide when a person other than the Queensland Ambulance Service can use the words “ambulance service”.

Clause 166 amends the dictionary to remove the reference to subscriber.

Clause 167 states that Part 13 amends the *Electricity Act 1994*.

Clause 168 amends the Electricity Act to state that it is a condition of a retail authority that the retail entity must comply with all requirements applying to it as an electricity retailer under the Act.

Clause 169 amends the Electricity Act to state that it is a condition of special approval that special approval holders must comply with all the requirements applying to it under the Act.

Clause 170 inserts a section 119A which removes the levy from the dispute resolution processes found in section 119. A person who wishes to challenge the levy must utilise the review and appeal procedures in the *Community Ambulance Cover Act 2003* and not the Electricity Act.

Clause 171 amends the schedule.

Clause 172 states that Part 14 amends the *Taxation Administration Act 2001*.

Clause 173 states that the *Community Ambulance Cover Act 2003* is a revenue law for the purposes of section 6 of the *Taxation Administration Act 2001*.

Schedule 1 contains a dictionary of significant terms used in the Act.