

# **Electricity and Other Legislation Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is Electricity and Other Legislation Amendment Bill 2006

#### **Policy Objectives**

The Electricity and Other Legislation Amendment Bill 2006 contains amendments to the *Electricity Act 1994* and the *Gas Supply Act 2003* and consequential amendments to other legislation to facilitate the introduction of Full Retail Competition (FRC) in electricity and gas markets in Queensland from 1 July 2007.

The Bill implements a number of key policy objectives:

- Retailer choice for residential and small business electricity and gas customers in Queensland;
- Customer protection safeguards including new Electricity and Gas Industry Codes, retention of uniform tariffs in electricity and a right of reversion to the uniform tariff for all residential and small business customers;
- Deregulation of gas retail prices, subject to a reserve power for the Minister for Mines and Energy to set prices; and
- Improved price signals in the electricity market over time through a new methodology for annual adjustments to uniform tariffs.

#### **Reasons for the Policy Objectives**

The Queensland Government decided to implement FRC for electricity and gas from 1 July 2007. At present, only electricity customers with consumption greater than 100 megawatt hours per annum and gas

customers with consumption greater than 1 terajoule per annum are entitled to choose their electricity and gas retailer.

The Government's decision on electricity FRC was based on a cost benefit analysis provided by consultancy firm GHD Pty Ltd which concluded that introducing FRC into Queensland provides a positive benefit to the economy and customers. The decision to introduce FRC is also consistent with Queensland's National Competition Policy commitments.

Following the announcement that the FRC would be introduced in the Queensland electricity and gas markets from 1 July 2007, the Queensland Government appointed the Energy Competition Committee (ECC) to oversee the implementation of FRC.

The ECC consulted extensively with Government, industry and consumer groups on a range of key legislative issues regarding business-to-business and consumer to business procedural and process matters, IT systems, consumer protection, marketing, contracting and the overall legislative framework to support FRC. Feedback from this consultation was used to prepare the Bill.

### **How the Policy Objectives will be achieved**

The policy objectives will be achieved through provisions in the Bill for the following:

- All customers (other than "excluded" customers) will be able to choose their electricity and gas retailer. Excluded customers are those in isolated, remote networks (e.g. electricity customers in Mt Isa and gas customers in Roma and Dalby), customers in on-supply arrangements (e.g. caravan parks) and non-metered supply (e.g. street lighting). The Bill provides for FRC to be introduced for these customers at a later date, provided technical difficulties can be overcome and the benefits of extending competition to these customers outweigh the costs.
- No customer will be required to enter into a negotiated customer sale contract with a retailer of their choice – customers retain the option to remain on standard contracts at the uniform tariff. All electricity retailers will be obliged to offer the uniform tariff to its existing small customers and host retailers (Ergon Energy and Sun Retail) will be required to offer the uniform tariff to new connections within their area. However, domestic and small business customers who do choose to enter a negotiated contract will have the right to revert to a

standard contract at the uniform tariff when their market contract ends.

- The uniform tariff will be supported by Community Service Obligation (CSO) payments by the Government for rural and regional customers for whom the cost of supply is greater than the uniform tariff. Ergon Energy will continue to supply these customers and receive compensation from the Government for doing so.
- As Ergon Energy will be the only retail entity involved in delivering the CSO, a restriction on Ergon Energy from competing with other retailers to supply electricity to market customers on a negotiated contract. Ergon Energy will also be precluded from holding a gas retail licence. In addition to improving the efficiency of the CSO arrangements, this will also allow Ergon Energy to focus its efforts on supplying electricity to non-profitable rural and regional customers and improve its performance in this area.
- New Electricity and Gas Industry Codes with code making and enforcement powers for the Queensland Competition Authority (QCA), subject to Ministerial oversight. The Codes will include key customer protection mechanisms such as provisions regulating the marketing conduct of retailers. These retailer marketing provisions will come into effect prior to 1 July 2007 to cover the conduct of retailers in any pre-selling undertaken prior to the commencement of FRC.
- Retailer of Last Resort arrangements, should an electricity or gas retailer fail, have been enhanced to cover retailers with domestic and small business customers.
- The appointment, functions and obligations of the Gas Retail Market Operator to prepare gas market rules and manage the gas market in Queensland.
- A new “electricity cost” index to replace the consumer price index which will be used to determine changes in uniform electricity tariffs on an annual basis from 1 July 2007 (Cabinet Budget Review Committee (CBRC) endorsed these changes to the calculation of uniform tariffs on 20 October 2006) and allows retailers to charge customers on tariffs certain fees and charges approved by the Minister (e.g. late payment fees and dishonour fees).

## **Estimated administrative costs to Government for implementation**

CBRC approved the budget for FRC as part of the 2006-07 Queensland Budget. The project has been allocated \$5.2M over the three year period 2005-06 to 2007-08. The implementation of this legislation does not create any additional administrative costs to Government.

## **Consistency with Fundamental Legislative Principles**

The Bill is consistent with Fundamental Legislative Principles (FLP), except as follows:

- Sections 5, 53, 68 and 170 of the Bill – Henry VII provisions. There is an FLP issue in leaving the definitions of customers and customer types in both electricity and gas legislation substantially to the regulations. The legislation is to include an indication that the definitions must be made by reference to a consumption threshold, thus constraining the possible extent of the definitions in the regulations. Furthermore, these definitions are complex and dependent both on factual circumstances and on prevailing practice in other jurisdictions. It is not appropriate to include such level of changeable detail in legislation. Regulations are further subject to the tabling and disallowance regime under the Statutory Instruments Act 1992, which places the definitions under parliamentary scrutiny.
- Sections 30 and 145 – Penalties proportionate to offences. There is an FLP issue in the penalty imposed in new s 120ZJ(2) (Electricity Act) and s 270ZI(2) (Gas Supply Act) on energy entities, distributors and retailers for a failure to assist independent auditors. Energy entities, although private companies, provide essential services to the Queensland public. It is therefore appropriate that they be subject to relatively substantial penalties for failing to assist with independent audits, carried out in order to determine that they are operating as effectively as possible and in compliance with the regulatory regime. Furthermore, the penalties provided for are consistent with analogous offences in the *Queensland Competition Authority Act 1997*. Other possible penalties, such as suspension or cancellation of authorities, are not workable since they would widely affect customers' access to these essential services.
- Section 146 – Power of non-judicial body to impose a penalty. There is an FLP issue in new s 270ZL(1) (Gas Supply Act) which permits the regulator (a non-judicial body) to impose a civil penalty on a

distributor or retailer. There are many governmental and regulatory agencies that have the power to impose fines and civil penalties, and these provisions are entirely consistent with them. The circumstances in which a penalty can be imposed are limited and the maximum penalty is capped. It is necessary that the regulator have this power in order that breaches of industry codes are dealt with quickly and effectively by an impartial body. The provisions also seek to avoid the time and cost involved in court proceedings to obtain effective penalties against distributors and retailers. The regulator is also empowered to suspend or remove a distributor or retailer's licence, preventing them from operating in Queensland and necessarily impacting to some degree on customers of the entity. This penalty would only be applied in the most serious of cases. As such it is also necessary for the regulator to be empowered to impose a lesser penalty, such as a civil penalty, where the circumstances are sufficiently serious but do not warrant removal or suspension of a licence.

- Sufficient regard to individual rights and liberties. There is an FLP issue in the removal of the arbitration and mediation schemes as means of resolving energy disputes. These functions will be transferred to the energy ombudsman. The new ombudsman scheme provides for a comprehensive dispute resolution regime to cover small customers' disputes with energy entities, and may include arbitration and mediation within its processes. This will have a negligible effect on the arbitrators and mediators appointed, with a very small number of disputes ever being referred to these parties (since July 2002, there have been four formal mediations and 12 arbitrations conducted). Arbitrators and mediators have not been retained by the regulator, rather they receive a fee for service if called upon for a particular dispute.
- Sufficient regard to individual rights and liberties. There is also an FLP issue in the removal of certain safeguards over continuous supply, and the removal of consumer protection conditions. These provisions are to be located more appropriately in industry codes, given the detail and coverage of specific situations that they involve. Compliance with industry codes will be mandatory, with the result that the protection provided to consumers will remain the same.
- Sufficient regard to the institution of Parliament. There is an FLP issue in the broad use of industry codes that are legislative in character but are not subject to parliamentary disallowance. The electricity and gas industries necessarily involve a high degree of technical subject

matter which is not appropriate to address in legislation or regulation. The permitted subject matter of the codes is enumerated in the legislation, and objectives are prescribed within which the codes must operate. Codes facilitate independent regulation, and give regulators a flexible and timely mechanism to deal with issues. The use of codes is also broadly supported by industry and consumers (the latter because codes are more accessible than legislation or regulations). The use of codes in energy regulation is also consistent with most other Australian states and territories.

- Incorporation of external documents. There is an FLP issue in the incorporation of or reference to definitions provided in the National Electricity Rules. These definitions change from time to time and incorporation by reference removes the need for large numbers of amendments to the Act. Many of the existing definitions in the Electricity Act and Gas Supply Act operate by reference to the Rules, and given the particularly close relationship that the Electricity Act has with the Rules and the Queensland Government's own participation in the development of the Rules, these external references do not undermine the Bill and, further, should not raise any Henry VIII concerns.
- Absence of appeal/review rights for large gas customers. There is an FLP issue in the removal of appeal rights for large customers under the Gas Supply Act who are refused services, when the connection or area retailer obligations apply. It is not necessary or appropriate to grant these rights to large customers given that gas is a fuel of choice in Queensland. Large customers can also employ their own negotiating and mediation powers if refused services by energy entities. The FLP issue refers to the area retailer obligation but large gas customers have in fact never had a right to obtain retail services.
- Absence of notice of appeal/review rights for small customers. There is an FLP issue in the removal of a requirement for notice of appeal rights for a small customer wishing to contest the fairness or reasonableness of the terms of a negotiated electricity or gas contract. This requirement was removed from the legislation but will effectively be replaced by the Codes which set out minimum terms and conditions for small customer contracts. Further, small customers have a broad ability to take contractual disputes to the energy ombudsman for resolution. The new regime introduces a much more flexible and comprehensive consumer protection framework. Since the requirement relates only to giving notice of appeal rights and not the appeal rights themselves, there is little risk created by its removal

from the legislation, particularly given that the Codes will contain requirement to inform customers of the ombudsman scheme. A notice requirement obligation is more appropriate in a code as it can be included as part of the broader disclosure requirements placed on retailers when marketing to, and contracting with, customers.

## **Consultation**

The Department of Mines and Energy, through the ECC consulted extensively in the preparation of the policy positions and drafting instructions and with the release of the draft legislation. Workshops were held on 29 and 30 August with interested parties to discuss and refine aspects of the draft EOLA. Further workshops were held on 27 September 2006 and 3 October 2006 to consider the draft Electricity and Gas Industry Codes. Written submissions were also received. Industry and consumer groups have given strong support for the legislative framework as it provides strong and clear consumer protection provisions, will encourage greater churn and minimise barriers to entry for new retailers.

The ECC also consulted with representatives of the following Government Departments:

- Queensland Treasury
- Department of the Premier and Cabinet
- Office of the Queensland Parliamentary Council
- Department of State Development, Trade and Innovation
- Department of Primary Industries and Fisheries
- Department of Justice and the Attorney-General
- Department of Communities
- Department of Employment and Industrial Relations
- Department of Education, Training and the Arts
- Department of Tourism, Fair Trading and Wine Industry Development

All Departments consulted supported the attached legislative amendments

## Notes On Provisions

### Part 1

#### Short title

Clause 1 sets out the short title of the Act as the *Electricity and Other Legislation Amendment Act 2006*.

#### Commencement

Clause 2 makes it clear that the *Electricity and Other Legislation Amendment Act 2006* commences on a day to be fixed by proclamation, other than the headings of part 2 and part 4, section 3 to the extent that it relates to the amendments under section 51, section 51, section 58 to the extent it relates to the amendments of section 167 and section 167.

It is intended that the Act will commence on the introduction of full retail competition other than the transitional sections for both the *Electricity Act 1994* and the *Gas Supply Act 2003* which will commence earlier.

### Part 2                      **Amendment of Electricity Act 1994**

#### Act amended in pt 2

Clause 3 states that part 2 of the *Electricity and Other Legislation Amendment Act 2006* amends the *Electricity Act 1994*.

#### **Amendment of s 20J (Maximum charges for metered supply)**

Clause 4 amends section 20J of the *Electricity Act 1994* by replacing “non-contestable customer” with “non-market customer”. This term is no longer relevant once full retail competition commences.



**Replacement of ss 23 & 23A**

Clause 5 replaces sections 23 and 23A of the *Electricity Act 1994* with a new section 23 (Customers and their types) which defines *customer*, *excluded customer*, *small customer*, *large customer*, *market customer*, *non-market customer*, *large market customer* and *large non-market customer*.

A receiver will not be a “customer” and therefore unable to choose their retailer supplier unless they first arrange for bypass of the on-supply network.

Similarly, excluded customers, being customers connected to an isolated grid, will not be able to choose their retail supplier. An excluded customer is also a non-market customer.

Small customers will be defined by reference to consumption thresholds set out in regulations.

Market customers will also be defined by regulation but the Act is structured on the basis that non-market customers are those who are paying notified prices under a contract deemed to exist by the *Electricity Act 1994*.

**Amendment of s 27 (Conditions of generation authority)**

Clause 6 omits subparagraph 27(b)(iv) from section 27 of the *Electricity Act 1994* to clarify that conduct rules made by the QCA are not a condition of a generation authority. Paragraphs (v), (vi) and (vii) are consequentially renumbered as (iv), (v) and (vi) respectively.

**Amendment of s 31 (Conditions of transmission authority)**

Clause 7 omits subparagraph 31(a)(iii) from section 31 of the *Electricity Act 1994* to clarify that conduct rules made by the QCA are not a condition of a transmission authority. Paragraphs (iv), (v) and (vi) are consequentially renumbered as (iii), (iv) and (v) respectively.

**Replacement of ss 40 to 40D**

Clause 8 replaces sections 40 to 40D of the *Electricity Act 1994* with sections 40 to 40DF.

The new section 40 (Applying for customer connection services) allows a customer who owns or occupies premises to apply to a distribution entity for the provision of customer connection services to the premises if the premises are within the distribution entity’s distribution area and, where the customer is not an excluded customer, the premises are NMI premises. Excluded customers do not need to have NMIs to obtain connection

because NMIs are only relevant to premises connected to the national grid and not to isolated grids.

This application can be made by a retail entity for a customer. The application must be made in the way, and give the information reasonably required by the distribution entity and it would be reasonable if the distribution entity required the application to be made only by a retail entity.

The new section 40A (When distribution entity must provide the services) applies if a customer makes a connection services application for premises. The distribution entity to whom the application is made must provide the customer connection service applied for - this is the connection obligation. The connection obligation is subject to sections 40C (Things to which the connection obligation is subject) and 40D (When connection obligation does not apply) but these sections do not prevent the distribution entity from lawfully providing the services even though it is not obliged to do so.

The new section 40B (Information notice for refusal of service) applies if a customer makes a connection services application and the distribution entity to whom the application is made decides the connection obligation does not apply. In these circumstances as soon as practicable after, but within 1 month of receiving, the application the distribution entity must give the customer an information notice about the decision. A customer has a right of review for such a decision to the Energy Ombudsman if the customer would be a small customer or to the QCA if the customer would be a large customer - see sections 37 and 52 of this Act.

The new section 40C (Things to which connection obligation is subject) makes the connection obligation subject to the other provisions of part 5, any authorisation under section 130 for the taking over of the distribution entity's operations, the retailer of last resort scheme, any relevant electricity restriction regulation or emergency rationing order and the conditions of the distribution entity's distribution authority.

The new section 40D (When connection obligation does not apply) is based on section 31 of the ER which will be deleted from the regulation to the extent of any overlap. It makes it clear that the connection obligation does not apply if the application is for supply at a rate more than the maximum capacity of the connection to the entity's supply network.

The connection obligation also does not apply if, when required to do so by the distribution entity, the customer does not provide a reasonable advance payment for customer connection services, a reasonable security or agreement for security for performing the customer's obligations to the

entity or a capital contribution to the distribution entity's costs in extending or increasing the capacity of its supply network to provide the services. However, this exemption from the connection obligation will not apply if the customer pays an amount to the distribution entity for works necessary to increase the maximum capacity to supply the customer at the rate the customer has applied for. The distribution entity must give the customer a reasonable time to pay such an amount.

The connection obligation also does not apply if, after disconnecting supply under the Act or a connection contract, the entity is not reasonably satisfied that the matter that caused the disconnection has been remedied, rectified or fixed. The connection obligation does not apply if, when there is supply to a premises for which there is an existing agreement with the distribution entity, the applicant does not agree on similar terms for the rest of the existing agreement and the supplier does not otherwise agree. Additionally, the connection obligation does not apply if the customer does not provide and maintain space, equipment, access, facilities or anything else the customer must provide for the services. The connection obligation does not apply if the customer is not a party to a retail contract with a retail entity for provision of customer retail services to the customer's premises or where a regulation provides that it does not apply.

This new section 40D does not limit the right to interrupt supply of electricity under a connection contract or a right or obligation to disconnect premises or refuse to connect or reconnect premises under a connection contract.

The new section 40DA (Distribution contract types) provides definitions for *connection contract*, *negotiated connection contract* and *standard connection contract*.

The new section 40DB (Supply if no negotiated connection contract) applies if premises are connected to a distribution entity's supply network and there is no negotiated connection contract in force for a customer who owns or occupies premises. In these circumstances, the customer and the distribution entity are taken to have entered into a standard connection contract for the provision of customer connection services to the premises, the terms of which are those which, under an industry code, apply to the customer. The customer and the entity are deemed to have agreed to comply with the terms and to have entered into the contract as a deed. The contract is taken to have ended if the customer and the distribution entity enter into a negotiated customer connection contract for the provision of the services and the contract comes into effect; or another customer and the distribution entity enter into, or are taken to have entered into, a connection

contract for the premises and that contract has come into effect. This does not limit how or when the contract may end. The contract does not prevent a dispute notice being given under section 112 of the *Queensland Competition Authority Act 1997* by the customer. Section 40DB is subject to the retailer of last resort scheme.

The new section 40DC (Negotiation of connection contract) allows a customer and a distribution entity, subject to sections 40DD (General limit on what may be negotiated) and 40DE (Provisions for small customers), to enter into a contract for the provision of customer connection services on terms that are different to the standard connection contract terms under an industry code.

The new section 40DD (General limit on what may be negotiated) requires a negotiated connection contract to be consistent with this Act and any relevant industry code. The contract will be unenforceable to the extent of any inconsistencies.

The new section 40DE (Provisions for small customers) applies to a negotiated connection contract for the provision of customer connection services to a small customer's premises. The contract must comply with all relevant industry code provisions about minimum terms for the provision of customer connection services to small customers and is unenforceable to the extent it does not comply. If a term of the contract is unenforceable because it does not comply with a minimum term provision, the minimum term is taken to be a term of the contract.

The new section 40DF (Provisions for large customers) applies to negotiated connection contracts for provision of customer connection services to a large customer's premises. The contract must provide for the provision of the service on fair and reasonable terms. If the contract is consistent with relevant industry code provisions about minimum terms for the provision of customer connection services to small customers, it will be considered to be provided on fair and reasonable terms.

Clause 8 also inserts the heading for a new Division 4 (General provisions about customer connection services)

### **Amendment of s 40E (Limitation on obligation to connect and supply)**

Clause 9 amends section 40E of the *Electricity Act 1994* by replacing the introduction to subsection (1) to make it clear that the connection obligation does not apply in relation to a customer's premises and a distribution entity is not in breach of a connection contract if the obligation

or contract can not be performed because of the reasons set out in paragraphs 40E(1)(a) to (j). In paragraphs 40E(1)(a), (b) and (g) the words “the connection or supply” are replaced by “connection, reconnection or supply to the premises”. Paragraphs 40E(1)(c), (d) and (e) are replaced to clarify that the connection obligation does not apply if the connection, reconnection or supply to the premises would unreasonably interfere with the connection, reconnection or supply of electricity by the distribution entity to the premises of other customers, or the distribution entity has, as the request of the customer’s retail entity, disconnected or not reconnected supply to the premises, or the distribution entity is, under its connection contract, entitled to disconnect supply to the customer. In paragraph 40E(1)(e) “customer connection contract” is replaced by “connection contract”. In paragraphs 40E(1)(h) and (i) “or supply (or reconnect or resupply)” is replaced by “reconnect or supply” and in subsection 40E(2) “connection or supply” is replaced by “connection, reconnection or supply”.

### **Omission of ss 40F & 40G**

Clause 10 omits section 40F (Obligation to connect and supply subject to authority) as this has now been included in section 40C.

It also omits section 40G (Disconnection for failure to pay debts) of the *Electricity Act 1994* as it was not consistent with the new arrangements between distributors and retailers to be introduced for full retail competition. The ability to make regulations about disconnection remains in Schedule 2 of the *Electricity Act 1994*.

### **Amendment of s 41 (Connection and supply of electricity outside distribution area)**

Clause 11 amends section 41 of the *Electricity Act 1994* by omitting “electrical installation or” in subsection 41(1) and omitting “installation or” in paragraph 41(1)(a) and (b) and subsection 41(2). For grammatical reasons, in subsection 41(1) and paragraph 41(2)(a) “is” is replaced with “are” and in paragraph 41(2)(b) “if it is” is replaced with “if they are”.

### **Amendment of s 42 (Conditions of distribution authority)**

Clause 12 omits subparagraph 42(a)(ii) from section 27 of the *Electricity Act 1994* to clarify that conduct rules made by the QCA are not a condition of a distribution authority. Paragraphs (iii) to (v) are consequentially renumbered as (ii) to (iv). A new paragraph 42(f) is inserted to require the

distribution entity to pay any amount that, under the *Energy Ombudsman Act 2006*, it must pay the energy ombudsman.

## **Replacement of ss 48 to 55C**

Clause 13 replaces sections 48 to 55C of the *Electricity Act 1994*

The new section 48 (Retail area of retail entity) allows a retail authority to be issued for a particular area stated in the authority or for no particular area. A retail area may consist of one or more discrete geographical areas and/or particular premises which may be described in a way the regulator considers appropriate.

The new section 48A (What a retail authority authorises) makes it clear that, unless otherwise provided for under part 6, a retail authority that states a retail area authorises the retail entity to provide customer retail services to any customer in the State including an excluded customer whose premises are in the retail area. A retail authority without a retail area authorises its holder to provide customer retail services to any customer in the State other than an excluded customer. Whether it states a retail area or not, the authorisation is subject to the provisions of the retail authority.

The new section 48B (Restriction on providing customer retail services to excluded customer's premises) prohibits a retail entity from providing customer retail services to an excluded customer's premises, unless the entity is the area retail entity for the premises or the provision of the services is authorised or required under the retailer of last resort scheme. Breach of this provision carries a maximum penalty of 500 penalty units.

The new section 48C (Application) allows a customer who owns or occupies premises to make an application to a retail entity for the provision of customer retail services to the premises. However, if the customer is not an excluded customer, the customer can only make a retail services application if the premises are NMI premises. Excluded customers do not need to have national metering identifiers (NMIs) to obtain connection because NMIs are only relevant to premises connected to the national grid and not to isolated grids. If the customer is an excluded customer, the customer can only make a retail services application to the area retail entity for the premises. The retail services application must be made in the way, and give the information reasonably required by, the retail entity.

The new section 48D (When area retail entity must provide the services to an applicant) applies if a customer makes a retail services application to the area retail entity for premises and the customer is not a large market customer. Previously, the area retail entity was required to offer customer

retail services to all non-contestable customers. However, this obligation to serve certain customers has been split between area retail entities (section 48D) and retail entities without a retail area (section 48E).

The retail entity must provide the customer retail services applied for to the premises if the customer is a small customer for the premises and the entity is the financially responsible retail entity for the premises or the premises are not physically connected to a supply network. The retail entity must also provide the customer retail services applied for to the premises if the customer is a large customer for the premises, and either the premises have never been physically connected to a supply network or the entity is the financially responsible retail entity for the premises and the customer who owned or occupied the premises immediately before the applicant was a non-market customer for the premises.

Accordingly, this section 48D now requires the area retail entity to offer customer retail services at notified prices and on a standard retail contract to its existing small customers (whether market or non-market), any small customer who moves into premises of an existing small customer and new small customer connections in the area retail entity's retail area. It also requires the area retail entity to offer customer retail services at notified prices and on a standard large customer retail contract to large customers who move into premises which were previously occupied by a non-market customer of the area retail entity and to new large customer connections in the area retail entity's retail area. An area retail entity has no obligation to offer customer retail services to a large market customer, including a large customer who moves into premises which were previously occupied by a market customer of the area retail entity. This section continues the policy in the existing *Electricity Act 1994* of not generally permitting large customers for a premises, or large customers who move into those premises, reverting to notified prices.

A regulation may provide for the circumstances in which premises are not, or have never been, physically connected to a supply network. For the purposes of this section 48D, physically connected means the premises has an electrical connection between the supply network and a meter at the premises whether or not the connection has been energised.

The new section 48E (When non-area retail entity must provide the services to an applicant) requires the retail entity to provide the customer retail services applied for to the premises if a small customer for the premises makes a retail services application to a retail entity who is not the area retail entity for the premises and the entity is the financially responsible entity and the customer is not an excluded customer for the

premises. The Government policy is that all small customers have the right to revert to the standard contract at notified prices. Accordingly, small customers who have entered into a negotiated contract with a non-area retail entity have a right of reversion with their non-area retail entity rather than the area retail entity for the retail area in which their premises are located. This reversion right extends to small customers who move into premises for which the non-area retail entity is financially responsible in the national electricity market.

The new section 48F (Retail obligation) makes it clear that the retail entity's retail obligation is the obligation under sections 48D (When area retail entity must provide the services to an applicant) and 48E (When non-area retail entity must provide the services to an applicant) and this obligation is subject to sections 48H (Things to which the retail obligation is subject) and 48I (When retail obligation does not apply). However, these sections do not prevent the retail entity from lawfully providing customer retail services even though it is not obliged to do so.

The new section 48G (Information notice for refusal of services to small customer) applies if a customer makes a retail services application under section 48D (When area retailer must provide the services for an applicant) or section 48E (When non-area retailer must provide services to an applicant) and the retail entity to whom the application is made decides the retail obligation does not apply for the services applied for. In these circumstances the retail entity must as soon as practicable, but within 1 month of receiving the application give the customer an information notice about the decision. A customer has a right of review for such a decision to the Energy Ombudsman if the customer would be a small customer or to the QCA if the customer would be a large customer - see sections 37 and 52 of this Act.

The new section 48H (Things to which retail obligation is subject) makes it clear that the retail obligation is subject to the other provisions of part 6 of the Act, any authorisation under section 130 for the taking over of the retail entity's operations, the retailer of last resort scheme, any relevant electricity restriction regulation or emergency rationing order, the conditions of the retail entity's retail authority and any relevant provision of an industry code about customer transfers or cooling-off periods for the provision of customer retail services.

The new section 48I (When retail obligation does not apply) makes it clear that the retail obligation does not apply to a retail entity in relation to a customer if the customer does not comply with a requirement of the entity to give either a reasonable advance payment for customer retail services or



a reasonable security or agreement for security for performing the customer's obligations to the entity. The retail obligation also does not apply if the retail entity has asked the customer's distribution entity to disconnect supply under the Act or under a retail contract and the retail entity is not reasonably satisfied the matter that caused it to ask for the disconnection has been remedied, rectified or fixed. The retail obligation does not apply if the connection obligation does not apply to a distribution entity in relation to the customer's premises. Also, the retail obligation does not apply if there are circumstances beyond the entity's control which prevent it from providing customer retail services to the customer or a regulation provides that the retail obligation does not apply. None of the above limit the retail entity's right under the retail contract to ask the distribution entity to interrupt the supply of electricity or the retail entity's right or obligation under a retail contract to ask the distribution entity to disconnect the premises or refuse to connect or reconnect the premises or the retail entity's right or obligation to refuse to provide customer retail services.

The new section 49 (Retail contract types) defines the types of retail contracts as a *retail contract*, *negotiated retail contract*, *standard retail contract* and *standard large customer retail contract*.

The new section 50 (Application of subdivision 2) makes it clear that subdivision 2 (Retail contract if no negotiated retail contract) applies if a customer has made a retail services application to a retail entity, the retail obligation applies to the retail entity, the premises are connected to a supply network, the retail entity provides the customer retail services applied for, in accordance with the application and there is no negotiated retail contract in place between the retail entity and the customer in relation to the premises. The subdivision also applies if a customer's premises are connected to a supply network without the customer having made a retail services application for the premises and there is no negotiated retail contract in force between a retail entity and the customer in relation to the premises.

The new section 51 (Retail contract with financially responsible retail entity) deems the customer to have entered into a retail contract with the financially responsible retail entity for the premises for the provision of customer retail services to the premises. Accordingly, subdivision 2 deems a contract to exist where a customer makes a retail services application to a retail entity obliged to offer customer retail services on a standard contract at notified prices to that customer and that application is accepted or where a customer moves into premises where that customer commences taking supply without making an application from a retail entity. If the customer

is a small customer the contract is a standard retail contract. If the customer is a large customer for the premises the contract is a standard large customer contract. This section is subject to the retailer of last resort scheme.

The new section 52 (Terms of contract) makes it clear that the terms of the contract, for a standard retail contract are the standard retail contract terms under an industry code as in force from time to time. The terms of the contract for a standard large customer contract are the entity's terms under section 53 (Making or amending terms of standard large customer retail contract) and section 54 (Required and permitted terms of standard large customer retail contract). The customer and financially responsible entity are taken to have agreed to comply with the terms and to have entered into the contract as a deed. The contract is taken to have ended if the customer and the retail entity enter into a negotiated contract for the provision of the services and that contract comes into effect or another retail entity becomes the financially responsible retail entity for the premises. This does not limit how or when a contract may end.

The new section 53 (Making or amending terms of standard large customer retail contract) makes it clear that, subject to section 54 (Required and permitted terms of standard large customer retail contract), the terms of a retail entity's standard large customer retail contract are the terms made by the retail entity as amended by it from time to time. On making or amending terms the retail entity must publish the terms or amended terms on its website, give QCA a copy of the terms or amended terms and give each of its large customers a written notice stating that it has made or amended the terms and that the terms may be inspected on its website. The terms or amended terms take effect only when the retail entity has published the terms on its website and given a copy to the QCA. If a customer becomes a large customer of the retail entity under a standard large customer retail contract, the entity must, as soon as practicable, give the customer a written notice that the terms of the entity's standard large customer retail contract may be inspected on its website.

The new section 54 (Required and permitted terms of standard large customer retail contract) applies for a retail entity's terms or amended terms of a standard large customer retail contract to which it is a party. The standard terms must provide that the retail entity's charges for the provision of services that are or relate to customer retail services to large non-market customers are only the notified prices and provide for the provision of the services to all large customers on the standard large customer retail contract are on fair and reasonable terms. This does not prevent the standard terms from charging or passing on non-DUOS charging under

section 90. The standard terms may include prices, or a methodology to fix the prices for the provision by the entity of customer retail services to its large market customers and be different for stated types of large customers and be contained in a different document for any of the types. Subject to any regulation the services are taken to be provided on fair and reasonable basis if the standard terms are consistent with relevant industry code provisions about minimum terms for the provision of customer retail services to small customers. A regulation may declare what is or is not fair and reasonable for large non-market customers including whether or not, and if so in what circumstances, requiring different advance payments or security deposits from different large non-market customers or different terms for different types of large non-market customers is fair and reasonable. This regulation making power is essentially a reserve power for large non-market customers on standard large customer retail contracts but not for large market customers on such contracts.

The new section 55 (Charging for GST under standard contract) is based on section 51AA of the existing *Electricity Act 1994*. This section 55 applies if there are notified prices for a retail entity, the notification for the prices includes a GST statement, the retail entity provides customer retail services under a standard contract and the entity charges the customer the notified prices. In these circumstances, if the GST statement provides that the notified prices exclude GST, the entity may also charge the customer an amount for GST for providing the services and the customer must pay any amount charged. If the GST statement provides that the notified prices exclude the net GST effect, the entity may also charge the customer the net GST effect for providing the services and the customer must pay any amount charged. This section 55 does not prevent the entity from charging under a standard contract an amount for GST for goods or for any services that are not customer retail services. Subsections (1) to (5) are taken to be terms of a standard contract and this section applies despite any other provisions of this subdivision.

The new section 55A (Negotiation of retail contracts) allows a customer and a retail entity to enter into a contract for the provision of customer retail services on terms that are different to the terms of the retail entity's standard retail contract or standard large customer retail contract. This is subject to sections 55B (General limit on what may be negotiated) and 55C (Provisions for small customers).

The new section 55B (General limit on what may be negotiated) requires a negotiated retail contract to comply with this Act and any relevant industry code provisions and is unenforceable to the extent it does not comply.

The new section 55C (Provisions for small customers) applies to a negotiated retail contract for the provision of customer retail services to a small customer's premises. In these circumstances, the contract must comply with all relevant industry code provisions about minimum terms for the provision of customer retail services to small customers and is unenforceable to the extent it does not comply. If a term of a contract is unenforceable because it conflicts with a minimum term in an industry code, the minimum term is taken to be a term of the contract.

Clause 13 also inserts the title of Division 4 (Conditions of retail authorities).

### **Amendment of s 55D (Conditions of retail authorities)**

Clause 14 replaces subsections 55D(d) and (e) of the *Electricity Act 1994* to make it clear that a retail authority must make it a condition that the retail entity must, under section 53 (Making or amending terms of standard large customer retail contract), make the terms of its standard large customer retail contract. Also, a retail authority must make it a condition that the retail entity must pay any amount that, under the *Energy Ombudsman Act 2006*, it must pay to the energy ombudsman.

### **Insertion of new s 55DA**

Clause 15 inserts a new section 55DA (Additional condition about community services agreement) into the *Electricity Act 1994* to make it a condition of a retail authority that the retail entity must not provide customer retail services until it has entered into an agreement with the State, either agreed between the State and the retail entity or failing agreement, as decided by the Minister, to provide the community services for at least 5 years. The retail entity must comply with the agreement. If the Minister is required to make a decision, the Minister must have regard to the retail entity's reasonable administration costs and other risks to providing the community services. An agreement to provide the community services does not affect the levy, the levy amount paid or payable, the collection of a levy amount or the collection of an amount for electricity if the dispute arises in substance, from the collection of a levy amount. Levy means the community ambulance cover levy under the *Ambulance Cover Act*.

**Insertion of new s 55G and new ch 2, pt 6A**

Clause 16 inserts a new section 55G and Chapter 2, Part 6A into the *Electricity Act 1994*.

The new section 55G (Restriction on Ergon Energy and its subsidiaries) prevents GOC Ergon Energy and its subsidiaries from competing for customers. It imposes conditions on a retail authority held by the GOC Ergon Energy and its subsidiaries (together “Ergon Energy”) by prohibiting Ergon Energy from entering into any negotiated retail contracts. The maximum penalty for breaching this prohibition is 500 penalty units.

Subsection 55G(3) makes it clear that Ergon Energy can only provide customer retail services to a customer for premises if it is an area retail entity for the premises and:

- on the day this section commences, the customer was a non-market customer of the retailer for the premises; or
- the retail obligation applies in relation to the premises; or
- Ergon Energy is the financially responsible retail entity for the premises and the customer was a small customer for the premises and becomes a large customer; or
- Ergon Energy is the financially responsible retail entity for the premises and the premises are in Ergon Energy retail area and connected to a supply network without the customer having made a retail services application for the premises to the retailer.

The maximum penalty for breach of subsections (2) or (3) is 500 penalty units. Subsection (3) does not apply if Ergon Energy provides customer retail services to a customer and the customer is required to be transferred to Ergon Energy to correct an erroneous transfer completed under the National Electricity Rules, from Ergon Energy to another retail entity. Ergon Energy has a defence if it reasonably believed that the retail obligation applied in relation to the premises as a result of information provided by the customer.

The new Part 6A (Coordination agreements between distribution and retail entities) inserts sections 55H and 55I into the *Electricity Act 1994*.

The new section 55H (Negotiation of coordination agreement) allows a distribution entity and a retail entity to enter into a written agreement about protocols under which they agree to help each other perform their functions under this Act or another Act or law relating to electricity that applies in the State or a procedure or protocol made under such an Act or law. The

agreement may be different from the standard coordination agreement provided for under an industry code.

The new section 55I (Standard coordination agreement) applies if a distribution entity and a retail entity have common customer and an agreement under section 55H (Negotiation of coordination agreement) is not in force between them. In these circumstances the entities are taken to have entered into, and agreed to comply with, a standard coordination agreement provided under an industry code.

### **Amendment of s 60 (Conditions of special approval)**

Clause 17 amends section 60 of the *Electricity Act 1994* by inserting paragraph (c) into subsection (1) to make a special approval be subject to a condition that the holder pay any amount that, under the *Energy Ombudsman Act 2006*, the holder must pay the energy ombudsman. Subsection 60(2) is omitted so that conduct rules made by the QCA are not a condition of a generation authority. Subsection (3) is consequentially renumbered as (2).

### **Amendment of s 63 (Functions)**

Clause 18 amends section 63 of the *Electricity Act 1994* by omitting paragraphs 63(1)(b) to (e) and replacing them with paragraphs 63(1)(b) and (c) to make it clear that the regulator's functions is to assist in the settlement of disputes arising under Part 6 of Chapter 4 (Miscellaneous) between electricity entities and between electricity entities and public entities. In addition the regulator's function is to monitor compliance with the conditions of approvals, authorities and licences under this Act. Paragraph 63(1)(f) is consequentially renumbered as 63(1)(d).

### **Omission of ch 2, pt 8, divs 2 and 3 and pts 8A & 8B**

Clause 19 omits chapter 2, part 8, division 2 (Funding for dispute resolution and complaint investigation functions) and division 3 (Industry codes) of the *Electricity Act 1994* as the Energy Consumer Protection Office is being replaced by the Energy Ombudsman and new provisions for the Electricity Industry Code have been included. Clause 19 also omits part 8A (Energy mediators) and 8B (Energy arbitrators) of the *Electricity Act 1994* as energy mediators and arbitrators are being replaced by the Energy Ombudsman.

**Insertion of new ch 4, pt 2, div 1, hdg**

Clause 20 inserts into chapter 4, part 2, division 1 of the *Electricity Act 1994* a new heading: “Division 1 Provisions for Mount Isa-Cloncurry supply network”.

**Insertion of new ch 4, pt 2, div 2, hdg**

Clause 21 inserts into chapter 2, part 2, division 1 of the *Electricity Act 1994* a new heading: “Division 2 General provisions for notified prices”.

**Amendment of s 90 (Deciding prices for non-market customers)**

Clause 22 amends section 90 of the *Electricity Act 1994* by replacing the heading with “Deciding prices for non-contestable customers”, omitting subsection (1) and inserting new subsections (1) to (3). The new subsection 90(1) requires the Minister to decide, each tariff year, the prices or the methodology for fixing the prices, that a retail entity may charge its non-market customers for any or all of: customer services, DUOS charges, charges or fees relating to customer retail services and other goods and services prescribed under a regulation. The Minister cannot make a decision in relation to non-DUOS charges. The Minister may delegate to the QCA any or all of the Minister’s functions under subsection (1). Existing subsections 90(2) to (7) are renumbered as subsections 90(4) to (9). The new subsection 90(5) requires the Minister to comply with division 3 (Requirements for deciding notified prices for a tariff year) in deciding the notified prices. A new subsection 90(10) defines DUOS charges and non-DUOS charges.

**Amendment of s 91 (Retail entities charging for GST)**

Clause 23 amends section 91 of the *Electricity Act 1994* by replacing “non-contestable customers” with “non-market customers” and replacing “standard customer sale contract” with “standard retail contract or standard large customer retail contract”.

**Amendment of s 91A (Retail entity must comply with notification or direction)**

Clause 24 amends section 91A of the *Electricity Act 1994* by replacing “non-contestable customers” with “non-market customers”.

**Insertion of new ch 4, pt 2, div 3**

Clause 25 inserts a new chapter 4, part 2, division 3 (Requirements for deciding notified prices for a tariff year) into the *Electricity Act 1994*. This implements the Government policy of having tariffs linked to changes to an electricity cost index.

The new subdivision 1 (Preliminary) has two sections and sets out preliminary matters. The new section 91B (Application of div 3) applies for the deciding, under section 90 (Deciding prices for non-market customers), of notified prices for a particular tariff year. However division 3 only applies for the deciding of notified prices for customer retail services or DUOS charges under section 90. The new section 91C (Definitions for div 3) defines *c/kWh*, *benchmark retail cost element*, *fixed principle*, *NEM load* and *relevant tariff year*.

The new subdivision 2 (General provisions for notified prices for relevant year) sets out the tariff schedule and the formula for changing each tariff. The new section 91D (Tariff schedule for the relevant tariff year) requires notified prices for the relevant tariff year to consist of a tariff schedule that states each tariff that forms part of the notified prices. The pricing entity may add a new tariff to, or remove a tariff from, the tariff schedule for the previous year if it considers it reasonable to do so.

The new section 91E (Formula for working out each tariff in tariff schedule for relevant tariff year) requires each tariff in the tariff schedule to be calculated by multiplying the relevant tariff component from the previous year by the benchmark retail cost index for the relevant tariff year divided by the benchmark retail cost index from the preceding tariff year. The benchmark retail cost index for the preceding tariff year, expressed in *c/kWh*, is calculated by dividing the total benchmark retail cost for the preceding tariff year by the NEM load for the State for the preceding tariff year. New section 91(3) provides a definition of *tariff component*.

The new subdivision 3 (Benchmark retail cost index for the relevant tariff year) inserts five new sections.

The new section 91F (Benchmark retail cost index) requires the benchmark retail cost index, expressed in *c/kWh*, to be calculated by dividing the total benchmark retail cost for the tariff year by the NEM load for the State for the tariff year.

The new section 91G (Total benchmark retail cost) makes it clear that, for section 91F, the total benchmark retail cost, expressed in *c/kWh*, for the relevant tariff year, is the estimated total cost of supplying customers in the State during that year, as worked out by the pricing entity. The total cost



must be the total, as fixed by the entity, for: the cost of energy as worked out under section 92 (Cost of energy), network costs as worked out under section 93 (Network costs), retail costs as worked out under section 94 (Retail costs) and any other costs the pricing entity considers relevant. In fixing the benchmark retail cost element other than network costs, the pricing entity must consult with interested persons in the way prescribed under a regulation. The working out of any particular benchmark retail cost element is subject to any relevant fixed principle. If the principle is inconsistent with the operation of section 92, 93 or 94, the principle prevails to the extent of any inconsistency.

The new section 92 (Cost of energy) requires the cost of energy to reflect the pricing entity's view of the likely total of the costs to be incurred during the relevant tariff year to purchase energy to supply all of the NEM load of the State for the relevant tariff year. This must be based on the pricing entity's most recent estimate of the long run marginal cost of energy in the part of the State connected to the national grid, after taking into account the 13% gas scheme under chapter 5A (13% gas scheme) and the scheme under the *Renewable Energy (Electricity) Act 2000 (Cwlth)*. The estimate must take into account the most efficient combination of generating plant to supply the entire NEM load of the State for the relevant tariff year. Unless the cost of energy is subject to a fixed principle, the long run marginal cost estimate must be prepared at least every three years but can be prepared more frequently. In estimating the long run marginal cost, the pricing entity must comply with any methodology prescribed under a regulation.

The new section 93 (Network costs) requires network costs to reflect the pricing entity's view of the likely total revenue requirements for the relevant tariff year for transmission entities and distribution entities in the State.

The new section 94 (Retail costs) requires the retail costs to reflect the pricing entity's view of the likely cost of providing customer retail services to Queensland customers connected to the national grid based on an efficient entity carrying on an electricity retail business that is carried on separately from any other businesses, has a significant market share of the State's electricity retail market and provides customer retail services to a cross-section of customers. The costs must include a reasonable retail margin.

The new subdivision 4 (Miscellaneous provisions) inserts two new sections. The new section 95 (Fixing of future principles for benchmark retail cost element) allows the pricing entity to, in deciding notified prices

for the relevant tariff year, fix principles to apply for a benchmark retail cost element. The decision must state the tariff years for which the principles are to apply.

The new section 96 (When prices must be notified) requires the pricing entity to decide and gazette the notified prices at least one month before the relevant tariff year starts. However, a failure to do so does not invalidate the deciding of prices for the relevant tariff year.

### **Amendment of s 118 (Retail entity may recover amount for electricity sold to a person occupying premises)**

Clause 26 amends section 118 of the *Electricity Act 1994* by amending the heading of the section to read “Financially responsible retail entity may recover amount for electricity consumed by a person occupying premises” and omitting “sold by a retail entity” from paragraph 118(a) so that the electricity need not have been sold by a retail entity.

### **Omission of s 119 & 199A**

Clause 27 omits sections 119 (Regulator’s role in disputes between electricity entity and customers or occupiers) and 119A (Exclusion of disputes relating to community ambulance cover levy) from the *Electricity Act 1994*. The Energy Ombudsman will deal with most disputes between electricity entities and small customers.

### **Amendment of s 120AA (Regulator’s powers concerning audit of compliance with Act etc.)**

Clause 28 amends section 120AA of the *Electricity Act 1994* by replacing the existing subsection 120AA(2) with a new subsection (2) and (3) to allow the notice to state terms of reference for carrying out the audit and allowing the regulator to appoint a person as an independent auditor to carry out an audit of all or any of the things mentioned in subsection (1)(a) concerning the entity or holder if the regulator reasonably considers that the person appointed under subsection (1) does not have appropriate qualifications or experience for carrying out the audit or the entity or holder does not comply with a notice given to it under subsection (1). The existing subsection 120AA(3) is consequentially renumbered subsection (4) and reference in the new subsection (4) to subsection (2) is amended to refer to subsection (3).

**Amendment of s 120AC (Independent auditor may require reasonable help or information)**

Clause 29 amends section 120AC of the *Electricity Act 1994* by making a breach of subsection 120AC(1) liable for a maximum penalty of 1000 penalty units and by deleting the note in subsection 120AC(3).

**Replacement of chapter 5, parts 1A to 1C with new part 1A**

Clause 30 replaces chapter 5, parts 1A to 1C the new part 1A of the *Electricity Act 1994*.

The new part 1A (Industry codes) has six divisions.

The new part 1A division 1 (Preliminary) contains section 120A (Definition for pt 1A), which states that the definition of electricity entity includes a special approval holder.

The new part 1A division 2 (Initial industry code) has four sections.

The new section 120B (Making of initial industry codes by Minister) allows the minister to make initial industry codes that will apply to distribution entities, retail entities and authorised special approval holders. A code must state the electricity entities to which it applies and is not subordinate legislation.

The new section 120C (Specific matters for which code may provide) stipulates matters that may be contained in an initial industry code, including the rights and obligations of distribution entities, retail entities and customers about customer connection services and customer retail services, minimum service levels and standards, the payment of amounts by distribution entities to affected customers for failure to provide a stated service level, the preparation by a distribution entity of plans about the operation and management of the entity's supply network, the terms of standard connection contracts and standard retail contracts, a standard coordination agreement for distribution entities and retail entities under which they help each other perform specified functions, minimum requirements for distribution entities and retail entities in dealing with customer complaints, minimum terms for negotiated connection contracts or negotiated retail contracts for small customers including permitted departures from the terms, protecting small customers entering into negotiated retail contracts (including imposing a cooling off period), requirements for obtaining consent of small customers to enter into negotiated retail contracts, marketing conduct of retail entities to small customers, metering, public lighting and customer transfers.

The new section 120D (Gazettal and taking of effect of code) requires the Minister, as soon as possible after making an initial industry code, to publish a gazette notice stating that the Minister has made the code and where it may be inspected. The section also provides that the code will take effect on the later of either the day of effect stated in the gazette notice or (if no date is specified) on the day on which the notice is gazetted.

Section 120E (Tabling of code) requires the Minister to table a copy of an initial industry code in the Legislative Assembly within 14 days of the code taking effect. The copy is tabled for information only and a failure to table the copy of the code does not affect the code's ongoing effect.

The new part 1A division 3 (QCA industry codes) has six sections.

The new section 120F (QCA may make industry code) allows QCA to make industry codes, which may provide for any matter that may be provided for under an initial industry code. QCA's power to make an industry code is subject to the code objective provision set out in the new section 120G (QCA code objective), and specific consultation procedures set out in the new section 120H (Required consultation). The code will not take effect unless approved by the Minister. Sections 120B (Making of initial industry codes by Minister) and 120C (Specific matters for which code may provide) apply to the making of an industry code by QCA as if the code were an initial industry code.

The new section 120G (QCA code objective) sets out the objective of industry codes made by QCA. This objective includes the promotion of efficient investment in, and efficient use of, electricity services for the long-term interests of Queensland customers about the price, quality, reliability and security of the supply of electricity and the reliability, safety and security of the Queensland electricity system. QCA can only make industry codes in accordance with this objective. This objective is consistent with the objective included in the National Electricity Law for the National Electricity Rules.

The new section 120H (Required consultation) requires QCA, before making an industry code, to prepare a draft of the code and engage in the consultation prescribed under a regulation. The section does not apply if QCA considers that the code is needed urgently or does not materially affect anyone's interests.

The new section 120I (Ministerial approval) requires QCA to give a copy of an industry code to the Minister as soon as practicable after the making of the code. This reflects the former section 120GA of the Electricity Act (QCA must advise Minister). The Minister may approve the code within

20 business days of receiving it. In making this decision, the Minister is required to have regard to the QCA code objective. If the Minister decides to not approve the code, the Minister must give QCA a notice stating the decision and reasons for it as soon as practicable after making the decision. If the Minister does not make a decision within 20 business days, the Minister is deemed to have approved the code.

The new section 120J (When approved QCA industry code takes effect) requires QCA to publish Ministerial approval for an industry code by gazette notice as soon as practicable after the approval and state where the code may be inspected. This section also provides that the code will take effect on the later of either the day of effect stated in the gazette notice or (if no date is specified) on the day on which the notice is gazetted.

The new section 120K (Tabling of QCA industry code) provides that if an industry code made by QCA takes effect, the Minister must table a copy of an initial industry code in the Legislative Assembly within 14 days of the code taking effect. The copy is tabled for information only and a failure to table the copy of the code does not affect the code's ongoing effect.

The new part 1A division 4 (Review of industry codes and related matters) has four sections.

The new section 120L (Direction by Minister to review) allows the Minister to give QCA a written direction requiring QCA to conduct a review into matters including matters relating to the Queensland electricity market or the operation and effectiveness of an industry code. QCA must comply with any such direction and must publish the direction on its website.

The new section 120M (Terms of reference) allows the Minister to set out various matters in the direction in relation to the review ordered under the new section 120L, including terms of reference, requirements to give a report to the Minister within a stated period, make the report publicly available, make a draft report available to the public or to a stated entity, requirements for QCA, in conducting the review, to consider stated matters or have stated objectives and other directions the Minister considers appropriate.

The new section 120N (Notice of review or amended term of reference or direction) provides that QCA must publish a notice of reviews and amended terms of reference or directions relating to reviews on its website and in a Statewide newspaper.

The new section 120O (Conduct of review) requires QCA to conduct the review ordered under the new section 120L (Direction by Minister to

review) according to part 6 of the *Queensland Competition Authority Act 1997* (other than section 171), which relates to QCA investigations. This creates consistency in QCA's exercise of its powers. This section is subject to any requirement or direction of the Minister.

The new part 1A division 5 (Amending industry codes) has one section.

The new section 120P (Amending code) allows QCA to amend an industry code and applies the division 3 provisions that relate to making an industry code (including code objective, required consultation, Ministerial approval, effect and tabling) to the amendment of an industry code.

The new division 6 (Enforcing industry codes) has five subdivisions.

The new part 1A division 6 subdivision 1 (Code contravention notices) has 7 sections. Division 6 replaces the mechanism for conduct rule enforcement under the former part 1A division 3 of the *Electricity Act*.

The new section 120Q (Application of sdiv 1) provides that subdivision 1 is to be applied in circumstances where QCA suspects that an electricity entity has contravened, is contravening, or is involved in an activity that is likely to result in a contravention of an industry code. QCA can only enforce contraventions that are, or are likely to be, material contraventions of the code. This materiality requirement aims to ensure that trivial contraventions are not pursued.

The new section 120R (Criteria for deciding material contravention) provides that in assessing whether a contravention is material, regard must be had to, but is not limited to, the QCA code objective set out under the new section 120G (QCA code objectives).

The new section 120S (Warning notice may be given) allows QCA to give an electricity entity a warning notice warning that QCA proposes to give the entity a further notice about the contravention or likely contravention of an industry code. A warning notice can only be given within 2 years after the day on which the contravention happened. The introduction of a warning notice mechanism provides greater opportunity for consultation between QCA and allegedly breaching entities. A warning notice will provide an avenue for potential breaches to be remedied before the issue of a code contravention notice, working towards effective resolution of complaints.

The new section 120T (Requirements for warning notice) sets out the information that must be contained in a warning notice, including the particulars of the contravention or likely contravention and the fact that QCA proposes to issue a code contravention notice unless the entity takes

certain steps and provides QCA with a conduct assurance that similar future contraventions will be avoided. A period of at least 20 business days must be given before a code contravention notice will be issued, except in cases where QCA considers urgent action to be required, and allows the entity to make submissions to show why the proposed code contravention notice should not be given. This time period and the opportunity to make submissions aims to provide structure and clarity and encourage consultation between QCA and allegedly contravening parties, and the rectification of contraventions. The warning notice may also state the steps QCA reasonably believes are necessary to remedy the contravention or avoid its future recurrence or avoid the likely contravention.

The new section 120U (Considering submissions on warning notice) requires QCA to consider submissions made under section 120T(1)(d) by electricity entities in relation to why the proposed code contravention notice should not be given. This aims to afford due process to allegedly contravening parties and to encourage consultation between these parties and QCA. QCA must provide notice to the electricity entity as soon as practicable after deciding not to give a proposed code contravention notice.

The new section 120V (Giving of code contravention notice) allows QCA to give a proposed contravention notice if the electricity entity has not complied with a warning notice. If the electricity entity has taken steps reasonably necessary to remedy the contravention but has not given a required conduct assurance, a code contravention notice can still be given on the basis that the electricity entity is deemed to be still involved in an activity that could result in a material contravention of the relevant industry code. The code contravention notice must state that the electricity entity has, is, or is likely to, contravene an industry code in a material way and give particulars of the contravention of the code.

The new section 120W (Duration of code contravention notice) provides that a code contravention notice comes into effect when it is made or the later time specified in the code contravention notice and ends on the day stated in the notice or, if cancelled before that day, on the day of cancellation.

The new part 1A division 6 subdivision 2 (Proceedings) has four sections.

The new section 120X (Proceeding for civil penalty order) provides that if, on the application QCA, the Supreme Court is satisfied that an electricity entity has contravened, attempted to contravene or been involved in the material contravention of an industry code, then the Supreme Court may order the entity to pay an amount to the State as a civil penalty of no more than \$100,000 for an individual and \$500,000 for a corporation. In fixing

the penalty the Court must consider the nature and extent of the contravention or loss or damage suffered because of a contravention, the circumstances in which the contravention took place and whether the entity has previously been found to have engaged in similar conduct under this Act. An electricity entity is involved in a contravention if it has aided, abetted, counselled or procured the contravention, has induced the contravention, has been in any way, directly or indirectly, knowingly concerned in or party to the contravention or has conspired with others to effect the contravention.

The new section 120Y (How order enforced) provides that if the Supreme Court orders payment of an amount under section 120X(2) in relation to code contravention, the State may enforce the order as a judgment of the court for a debt of that amount.

The new section 120Z (Injunctions) provides that the Supreme Court may, on the application of QCA, grant an injunction if satisfied that an electricity entity has been involved or is likely to be involved in a contravention of an industry code. The injunction may be granted on conditions. The court may grant an interim injunction but must not require anyone as a condition of granting the interim injunction to give an undertaking as to damages. The court may amend an injunction or interim injunction.

The new section 120ZA (Conduct by directors, servant or agents) attributes the conduct and state of mind of the directors, servants and agents of an electricity entity to the electricity entity in specified circumstances.

The new part 1A division 6 subdivision 3 (Referrals to regulator) has three sections.

The new section 120ZB (When QCA must refer material contravention) requires QCA to refer a contravention to the regulator if the Supreme Court decides that an electricity entity has engaged in a material contravention of the code. This aims to ensure that the regulator is kept informed of all findings of material contravention of an industry code.

The new section 120ZC (When QCA may refer material contravention) allows QCA to refer a material contravention or likely material contravention to the regulator if QCA has given the electricity entity a warning notice. The referral can be made whether or not a code contravention notice has been given for, or a proceeding started in relation to, the contravention or likely contravention. This section aims to ensure that potential serious contraventions can be referred to the regulator without the need to engage in the processes involved in code contravention notices and bringing a proceeding in the Supreme Court.



The new section 120ZD (Guidelines for exercise of QCA powers for civil penalties) requires QCA to publish on its website, guidelines about when it will apply for a civil penalty order under section 120X (Proceeding for civil penalty order) or refer a matter to the regulator under section 120ZB (When QCA must refer material contravention). The QCA must take appropriate steps to consult with electricity entities before publishing guidelines. The guidelines must state that they are not legally binding on QCA and are non-judicial.

The new part 1A division 6 subdivision 4 (Production of documents or information) has three sections.

The new section 120ZE (Notice to produce documents or information) applies if QCA is conducting an investigation to find out whether an electricity entity is complying with an industry code. QCA may require, by written notice, an electricity entity to provide it with information or documents relevant to a QCA investigation to find out whether an electricity entity is complying with an industry code. The notice must state the information or documents required, a period of no less than 7 days in which the documents or information are to be given and a reasonable place at which the documents or information are to be given. A penalty of a maximum of 500 penalty units will apply to contravention of the notice without reasonable excuse. An electricity entity is not required to comply with the notice if it claims, on the ground of self-incrimination, a privilege the entity would be entitled to claim against giving the information were the entity a witness in the Supreme Court in a prosecution for an offence. If an electricity entity claims that complying with the notice may tend to incriminate it, QCA or the electricity entity may make an application in the Supreme Court to decide the validity of the claim.

The new section 120ZF (Disclosure of information to regulator) requires QCA to disclose to the regulator any information obtained by QCA from an entity under the Act, the *Electricity-National Scheme (Queensland) Act 1997* or the National Electricity Rules if the regulator requests the information for performing its functions and the entity consents or is required under its approval or authority to consent to the disclosure.

The new section 120ZG (Protection of confidential information given for investigation) applies section 187 of the *Queensland Competition Authority Act 1997* to confidential information obtained by QCA in relation to an industry code compliance investigation. Section 187 of the *Queensland Competition Authority Act 1997* allows the provider of the confidential information to request QCA not to disclose the information to another person. If QCA accepts that the information is confidential and is not

required to be disclosed by the public interest, QCA must take reasonable steps to ensure that the information is not disclosed to any person other than certain specified bodies. The application of section 187 of the *Queensland Competition Authority Act 1997* is subject to the new section 120ZF of the Act which means that the QCA must disclose specified information to the regulator if the entity is required to consent to the disclosure under its approval or authority and the regulator requests the disclosure for performing its functions.

The new part 1A division 6 subdivision 5 (Audits) has four sections.

The new section 120ZH (QCA's powers concerning audit of compliance with industry code) allows QCA to require an entity to carry out an internal audit or to appoint an independent auditor to carry out an audit of the entity's compliance with an industry code or the reliability and quality of information given by the entity to the QCA. If QCA requests the entity to conduct an internal audit and the entity fails to do so or appoints an auditor that does not have appropriate qualifications or experience, QCA can subsequently require an independent audit to be carried out. In appointing an independent auditor, the appointer must reasonably consider the person to have the appropriate qualifications or experience for carrying out the order.

The new section 120ZI (Responsibility for cost of audit) requires the electricity entity to pay for, or reimburse QCA in relation to, the cost of all audits ordered by QCA.

The new section 120ZJ (Independent auditor may require reasonable help or information) allows an independent auditor appointed by QCA under the new section 120ZH(1) to require an entity to give the auditor reasonable help or information to carry out the audit. An electricity entity must comply with this requirement unless it has a reasonable excuse. A breach of this section attracts a penalty of 1000 penalty units. If the entity is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

The new section 120ZK (Audit report and submissions on report) requires an electricity entity required by QCA to carry out, or appoint an independent auditor to carry out, an audit under the new section 120ZH(1), to provide QCA with a copy of the audit report as soon as possible after the completion of the audit. The section also requires QCA to give an entity a copy of the draft of an independent audit report in relation to that entity and allow the entity to make submissions to QCA on the draft report. QCA is

also required to provide the entity with a copy of the final report and an opportunity to make further submissions to QCA on the final report.

### **Amendment of s 131A (Retailer of last resort scheme)**

Clause 31 amends section 131A of the *Electricity Act 1994* by, in paragraph 131A(3)(e), replacing “regulated default customer sale contract or a regulated default customer connection contract” with “regulated default retail contract” and omitting “either of”. Subparagraphs 131A(3)(f)(iii) and (iv) are omitted and subparagraph 131A(3)(f)(iv) is consequentially renumbered 131A(3)(f)(iii). Paragraph 131A(3)(g) replaces “the regulator” with “QCA”.

### **Amendment of s 133 (Types of disciplinary action)**

Clause 32 amends section 133 of the *Electricity Act 1994* by, in subsection 133(2) replacing “contravention of the conduct rules” with “a material contravention of an industry code” and replacing “the QCA” with “QCA whether or not a proceeding has been started in relation to the contravention. *Note - For when QCA must or may make the referral, see sections 120ZB and 120ZC.*”. Subsection 133(3) is omitted. Subsection 133(4) is renumbered as subsection (3) and amended to make it clear that a contravention of the “, the Energy Ombudsman Act 2006, an industry code” may attract a maximum civil penalty of 1333 penalty units for each contravention. A new subsection 133(4) is inserted to make it clear that the penalty in the new subsection (3) only applies if the QCA has not applied for a civil penalty order under section 120X (Proceeding for civil penalty order). Reference in subsection 133(5) to subsection (4) is amended to refer to subsection (3).

Accordingly, the QCA can refer code contraventions to the regulator and the regulator can impose a civil penalty if the QCA has not commenced proceedings to apply a civil penalty in the Supreme Court.

### **Amendment of s 135HX (Electricity sold under retailer of last resort scheme or similar scheme)**

Clause 33 amends section 135HX of the *Electricity Act 1994* by replacing “under a retailer of last resort scheme made under section 131A” in subsection 135HX(1) with “under the retailer of last resort scheme”. In paragraph 135HX(2)(a) “customer sale contract” is replaced with “retail contract”. This updates the section for the new definitions.

**Replacement of s 135HY (Electricity sold under s 49A(2) contract)**

Clause 34 replaces section 135HY of the *Electricity Act 1994* with a new section 135HY (Electricity sold under particular standard large customer retail contracts) which applies if, under section 51 (Retail contract with financially responsible retail entity), an area retail entity is taken to have entered into a standard large customer retail contract with a customer and the retailer must, under section 48D (When area retail entity must provide the services to an applicant), provide customer retail services to the customer because of the circumstances mentioned in paragraph 48D(2)(b)(ii). In these circumstances an electricity load sold under the contract is a non-liable load if it is supplied within 3 months after the contract was taken to have been entered into. This gives an area retail entity a three month grace period to comply with Chapter 5A where it is obliged to offer customer retail services to a new large customer connecting to the network under its retail obligation.

**Amendment of s 203 (Issue of retail authorities)**

Clause 35 amends section 203 of the *Electricity Act 1994* by inserting a new subsection (5) to prohibit the regulator from issuing a retail authority without a retail area to the GOC Ergon Energy or any subsidiary of Ergon Energy.

**Amendment of s 204 (Application for authority)**

Clause 36 amends section 204 of the *Electricity Act 1994* by replacing paragraph 204(1)(b) to make it clear that an application for the issue of a retail authority must, if the application is for a retail authority with a retail area, state the proposed retail area.

**Amendment of s 214 (Who may apply for review etc.)**

Clause 37 amends section 214 of the *Electricity Act 1994* to allow a person whose interests are affected by a decision mentioned in schedule 1 to apply to the QCA for a decision mentioned in sections 40B (Information notice for refusal of services) or 48G (Information notice for refusal of services to small customers) about a connection services application or a retail services application by a large customer or to the regulator for another decision in schedule 1.

**Amendment of s 215 (Applying for review)**

Clause 38 amends section 215 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” to allow the reviewing body to be either the QCA or the regulator.

**Amendment of s 216 (Stay of operation of decision etc.)**

Clause 39 amends section 216 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” and “regulator’s” with “reviewer’s” to allow the reviewing body to be either the QCA or the regulator.

**Amendment of s 218 (Decision on reconsideration)**

Clause 40 amends section 218 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” and “regulator’s” with “reviewer’s” to allow the reviewing body to be either the QCA or the regulator.

**Amendment of s 219 (Who may make an appeal)**

Clause 41 amends section 219 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” and “regulator’s” with “reviewer’s” to allow the reviewing body to be either the QCA or the regulator.

**Amendment of s 220 (Making appeals)**

Clause 42 amends section 220 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” and “regulator’s” with “reviewer’s” to allow the reviewing body to be either the QCA or the regulator.

**Amendment of s 221 (Starting appeals)**

Clause 43 amends section 221 of the *Electricity Act 1994* by replacing “regulator” with “reviewer” and “regulator’s” with “reviewer’s” to allow the reviewing body to be either the QCA or the regulator.

**Insertion of new ch 11, pt 1A**

Clause 44 inserts a new Part 1A of Chapter 11 (Provision for civil penalty proceedings) into the *Electricity Act 1994*.

The new section 244A (Relationship with criminal proceedings) applies if an application under section 120X (Proceeding for civil penalty order) or a referral under section 120ZC (When QCA may refer material

contravention) to the regulator and any decision in relation to the referral that involves the imposition of a civil penalty is taken against or in relation to a person and a criminal proceeding has been started or has already been started against a person for an offence and the conduct that constitutes the offence is substantially the same as the conduct the subject of the civil penalty proceeding. In these circumstances the civil penalty proceeding must be stayed or not continued, however it may be resumed, if at the end of the criminal proceeding, there is no conviction for the offence. Evidence in the civil proceeding of information given or documents produced is not admissible in the criminal proceeding.

The new section 244B (Avoidance of multiple penalties) makes it clear that, if a civil penalty proceeding under 244A is taken and substantially the same conduct constitutes a contravention of 2 or more industry code provisions, a civil penalty must not be imposed or ordered in the proceeding more than once for that conduct.

### **Replacement of s 251A (Evidentiary effect of conduct notice)**

Clause 45 replaces section 251A of the *Electricity Act 1994*. The new section 251A (Evidentiary effect of a code contravention notice) makes it clear that a document purporting to be a certified copy of a code contravention notice is evidence that the notice was given under chapter 5, part 1A, division 6, subdivision 1 (Code contravention notices) and of the contravention or other matters stated in it and that the notice has been given to the entity stated in the notice.

### **Amendment of s 253 (Advisory committee)**

Clause 46 amends section 253 of the *Electricity Act 1994* by making it clear in subsection 253(5) that the advisory committee is the committee set up under subsection 253(1). The new subsection 253(6) requires the QCA to establish a consumer advisory committee to advise it on the performance of its functions under this Act and its corresponding functions under the *Gas Supply Act 2003*, including the making or amending of an industry code under the Acts and any other matter about the electricity supply industry or reticulated processed natural gas markets. The members of the consumer advisory group must be appointed after consultation with groups who represent the interests of consumers. The QCA must give the consumer advisory committee necessary support to allow the committee to perform its functions. The QCA may also establish other advisory committees to advise it on stated matters about the administration of

industry codes under either the *Electricity Act 1994* or the *Gas Supply Act 2003*.

### **Insertion of new s 253A**

Clause 47 inserts a new section 253A (Reporting to Minister by QCA) into the *Electricity Act 1994* to require the QCA before each 31 December and 30 June, to give the Minister a written report about the performance of the QCA's functions under this Act or any of the Minister's functions under this Act that have been delegated to the QCA. The QCA may, from time to time, give the Minister reports about any significant events in the State's electricity market of which it considers the Minister ought to be aware, including systemic issues materially affecting consumers. A reference to the performance of a function includes the exercise of a power.

### **Amendment of s 254 (Protection from liability)**

Clause 48 amends section 254 of the *Electricity Act 1994* by inserting a definition of civil liability (consistent with the *Gas Supply Act 2003*) and clarifying that officials include officers of the department assisting the regulator to perform functions under section 63 (Functions). Reference to QCA is inserted to clarify that QCA is protected from liability in the same way as officials (as defined) are.

### **Insertion of new s 254B**

Clause 49 inserts a new section 254B (Registers QCA must keep) into the *Electricity Act 1994* to require QCA to keep registers of the terms of each retail entity's standard large customer retail contract given to QCA by the entity, industry codes, warning notices including expired warning notices, conduct assurances and code contravention notices, including expired code contravention notices.

### **Amendment of s 309 (Existing electricity supply)**

Clause 50 amends section 309 of the *Electricity Act 1994* by replacing "contestable customer" in paragraph 309(1)(a) with "customer who, under this Act as it was in force on that day, was a contestable customer."

**Insertion of new ch 14, pt 8**

Clause 51 inserts a new chapter 14, part 8 (Transitional provisions for Electricity and Other Legislation Amendment Act 2006) into the *Electricity Act 1994*.

The new section 310 (Definitions for pt 8) defines *amendment Act, commencement, former, FRC day, new, post-amended Act* and *pre-amended Act* for part 9.

The new section 311 (Extension of area retail obligation) applies to a retail entity in relation to premises if it is not the area retail entity for the premises, it is the financially responsible retail entity for the premises and immediately before the FRC day, the premises were owned or occupied by a customer who, under the post-amended Act, is a large non-market customer for the premises. In these circumstances, the new section 48D(2) applies to the retail entity as if it were an area retail entity for the premises, as if the circumstances mentioned in section 48D(2)(b) existed. This section applies to the second retail entity created as part of the Government's sale process and which is an area retail area before the introduction of full retail competition. As that entity will not be a retail entity after the introduction of full retail competition, this section requires that entity to treat any customers who move into premises occupied by that entity's large non-markets as if it was an area retail entity. This ensures the entity must offer such move-in customers customer retail services on notified prices. Note that the entity must provide customer retail services on notified prices to its existing large non-market customers after the introduction of full retail competition by section 54 of the *Electricity Act 1994* as introduced by this Act.

The new section 312 (Small customer may enter into negotiated retail contract before FRC day) applies if, under the pre-amended Act, a customer is a non-contestable customer for premises and if the customer would, under the post-amended Act, be a small customer for the premises. In these circumstances, despite former sections 52 (Customer sale contract outside standard form) and 52A (Regulation may allow contract outside standard form), the customer may enter into a negotiated retail contract under the post-amended Act with a retail entity for the provision of customer retail services to the premises even though the post-amended Act has not commenced. However, until the FRC day, customer retail services cannot be provided under the negotiated retail contract and any standard customer sales contract or standard contract between the customer and the retail entity under the former sections 49 (Obligation to provide customer retail services to non-contestable customers) and 49A (Sale if no customer



sale contract), 310 (Existing standard customer sale contracts) or the Energy Assets (Restructuring and Disposal) Act 2006, section 41 (Existing standard contracts and meter readings) continue to apply for the provision of the services to the premises. Also, it is taken to be a term of the negotiated contract that the customer may by written notice to the retail entity, given within 10 business days after the FRC day, terminate the contract without penalty. The customer does not have to state grounds for the termination.

This section allows pre-selling to non-contestable customers before the introduction of full retail competition but prevents any services being provided before its introduction. However, any negotiated contract entered into must include a 10 business day cooling off period commencing on the introduction of full retail competition to ensure that customers can exit the contract without penalty after the consumer education campaign has commenced.

The new section 313 (Existing contestable customers who are receivers) applies to a person who, immediately before the FRC day, was, under the pre-amended Act, both a contestable customer and a receiver for premises. In these circumstances, despite new subsection 23(2), the person is, under the post-amended Act, a customer for the premises. Subsection (2) continues to apply despite the ending of any contract entered into before the FRC day in relation to the provision of customer connection services or customer retail services to the premises. This “grandfathers” existing receivers who have entered into a negotiated contract with a retail entity while still obtaining supply from an on-supply network.

The new section 314 (Existing standard customer connection contracts) applies on the FRC day if, immediately before that day a contract was, under former sections 40 (Connection and supply of electricity in distribution area) or 40AA (Supply if no customer connection contract), taken to have been in force between a customer and a distribution entity for the provision of customer connection services to premises. In these circumstances the existing contract ends but the ending of the existing contract does not affect rights or obligations accrued under it before the FRC day. The customer and the entity are, under new section 40DB (Supply if no negotiated connection contract) taken to have entered into a standard connection contract for the provision of the services to the premises. New subsections 40DB(3) to (6) apply to the standard connection contract as if it were a contract taken to have been entered into under that section. This section is subject to the retailer of last resort scheme. This migrates existing customers on deemed customers

connection contracts under the *Electricity Act 1994* to the new connection contracts under the amended *Electricity Act 1994*.

The new section 315 (Existing standard customer sale contracts) applies on the FRC day if, immediately before that day, a contract was, under a provision mentioned in section 315(1) taken to have been in force between a customer and a retail entity for the provision of customer retail services to premises. However, subsections (3) to (6) do not apply if the *Energy Assets (Restructuring and Disposal) Act 2006*, section 44 applies to the existing contract. The existing contract ends but the ending of the existing contract does not affect rights or obligations accrued under it before the FRC day. The customer and the financially responsible entity for the premises are, under new section 51 (Retail contract with financially responsible retail entity), taken to have entered into a standard retail contract if the customer is a small customer for the premises or a standard large customer retail contract if the customer is a large customer for the premises for the provision of the services to the premises. New subsections 52(3) to (4) apply to the retail contract as if it were a contract taken to have been entered into under that section. This migrates existing customers on deemed customer sale contracts under the *Electricity Act 1994* to the new deemed retail contracts under the amended *Electricity Act 1994*.

The FRC entity is taken to be the financially responsible retail entity for the premises under the post-amended Act even though the FRC entity would not be the financially responsible retail entity other than for this section. FRC entity is defined as Ergon Energy or an acquiring entity or a sale entity under the *Energy Assets (Restructuring and Disposal) Act 2006* and is the second retail entity created as part of the Government's sale process. The intention is to ensure that the FRC entity's customers are transferred in NEMMCO systems before the introduction of full retail competition so that the FRC entity will be the financially responsible retail entity at the introduction of full retail competition. This section ensures that the FRC entity's existing customers are migrated to the new contracts with the FRC entity in a case where there has been a delay in these transfer occurring and another a retail entity would otherwise be the financially responsible retail entity. If another retail entity becomes the financially responsible retail entity for the premises because of a completed transfer under the National Electricity Rules taking effect on the FRC day or the FRC entity becomes the financially responsible retail entity then subsection 315(7) ceases to apply.

The new section 316 (References to other particular contracts under pre-amended Act) makes it clear that in an Act or a document, a reference to a:

- customer connection contract under the pre-amended Act is taken to be a reference to a connection contract under the post-amended Act;
- a negotiated customer connection contract under the pre-amended Act is taken to be a reference to a negotiated connection contract under the post-amended Act;
- a customer sale contract under the pre-amended Act is taken to be a reference to a retail contract under the post-amended Act; and
- a negotiated customer sale contract under the pre-amended Act is taken to be a reference to a negotiated retail contract under the post-amended Act.

These are subject to sections 312 to 315.

The new section 317 (Exclusion of new section 40DB for existing negotiated sale and connection contracts) applies if, immediately before FRC day, a negotiated sale and connection contract under the pre-amended Act was in force for a customer's premises connected to a distribution entity's supply network. In these circumstances, while the contract continues in force new section 40DB (Supply if no negotiated connection contract) does not apply to the customer and the entity in relation to the premises. This "grandfathers" any existing "bundled" or "linear" retail contracts where a retail entity supplies both customer retail services and customer connection services to the customer. The amended Act is based on a "triangular" contract structure in which the customer and distribution entity have a direct contractual relationship for the provision of customer connection services.

The new section 318 (Street lighting with non-metered connection point) applies to a customer for street lighting that, under the National Electricity Rules, has an non-metered connection point and is in a public place. In these circumstances, from FRC day to the relevant day the post-amended Act applies to the customer in relation to the street lighting as if the customer were an excluded customer for street lighting. Relevant day is defined to mean if, before 1 July 2008, a day after 1 July 2008 is prescribed under a regulation, the prescribed day, otherwise, 1 July 2008. Accordingly, contestability for street lighting will commence on 1 July 2008 unless a regulation provides otherwise.

The new section 319 (Other unmetered connection point) applies to a customer for premises other than street lighting mentioned in section 318, to the extent that under the National Electricity Rules, the premises has an unmetered connection point. In these circumstances, from the FRC day to the day prescribed under a regulation the post-amended Act applies to the

customer in relation to the premises as if the customer were an excluded customer for the premises. Accordingly, contestability for other unmetered loads will not occur until a day prescribed by regulation.

The new section 320 (Obligation to decide notified prices for 2006 - 2007 financial year on basis of amended Act) requires the pricing entity, as soon as practicable after the commencement, to decide notified prices for the financial year from 1 July 2007 to 30 June 2008 for customer retail services and DUOS charges under section 90 (Deciding prices for non-market customers). New section 90, new chapter 4, part 2, division 3 and any other relevant provisions of the amended Act apply for the deciding of the notified prices instead of former section 90. Accordingly, the new retail tariff policy must be followed in setting the notified prices to apply in the 2006 - 2007 financial year.

The new section 321 (Making of transitional conduct rules about marketing conduct) allows the Minister to, at any time after the commencement, make conduct rules about marketing conduct by distribution entities or retail entities. Former section 120C (QCA may prepare proposed conduct rules) and 120GB (Tabling of conduct rules in Legislative Assembly) apply for the making of the rules as if a reference in the sections to QCA were a reference to the Minister. Former sections 120D (Public notices of proposed conduct rules) and 120GA (QCA must advise Minister) do not apply for the making of rules. The Minister must publish a gazette notice stating that the Minister has made the rules which take effect when the notice is published or on a later day of effect stated in the notice. The rules are taken to be conduct rules under the pre-amended Act. This allows the Minister to regulate marketing conduct of retail entities engaging in pre-selling before the introduction of full retail competition using the existing conduct rule sections of the *Electricity Act 1994* given that the sections of the Act which provide for the introduction of the initial industry code will not have commenced.

The new section 322 (Existing mediated agreements) makes it clear that the former chapter 5, part 1B (Disputes referred to energy mediator) continues to apply for a mediated agreement under the pre-amended Act as if the part were still in force.

The new section 323 (Existing orders on arbitrated disputes) makes it clear that the former chapter 5, part 1C (Disputes referred to energy arbitrator) continues to apply for an order made under former section 120ZY (Orders that can be made) as if the part were still in force.

The new section 324 (Preservation of appeal rights for former contribution and user-pays fees) makes it clear that, if, before the commencement, a

member entity under the pre-amended Act had been given an information notice under former section 64E (Notice of contribution and user-pays fees and when they must be paid) for a contribution fee or user-pays fee under the pre-amended Act, former section 64E and former schedule 1 continue to apply for the fee.

The new section 325 (Transitional provision for non-liaible loads) applies if, immediately before the FRC day, a customer was, under former section 49A (Sale if no customer sale contract), taken to have entered into a contract for the provision of customer retail services for premises and, under section 315 or the *Energy Assets (Restructuring and Disposal) Act 2006*, section 44, the old contract is taken to have ended and the customer is taken to have entered into a standard large customer retail contract for the provision of services to the premises on the FRC day. In these circumstances an electricity load sold under the new contract is taken to be a non-liaible load for, if the new contract is with the same retail entity under the old contract - 3 months from the day the old contract was, under former section 49A, taken to have been entered into, or, if the contract is with a different retail entity to the retail entity under the old contract, 3 months from the FRC day.

This section ensures that retail entities continue to obtain the three month grace period under the former section 135HY despite the migration of the customers to new contracts. In addition, under the *Electricity Act 1994* before it is amended by this Act, an area retail entity was deemed to have a contract with customers at premises in certain circumstances even though it was not the financially responsible retail entity for those premises. This was an error and has been corrected by this Act by migrating those customers from the area retail entity to the financially responsible entity. Under this section, the financially responsible retail entity gets a full three month grace period to comply with Chapter 5A for that load.

### **Amendment of sch 1 (Appeals against administrative decisions)**

Clause 52 amends schedule 1 of the *Electricity Act 1994* by omitting the entries for sections 40 and 49 and replacing them with entries for sections 40A to 40D and 48E to 48I.

### **Amendment of sch 5 (Dictionary)**

Clause 53 amends the dictionary of the *Electricity Act 1994* by omitting the following definitions: *conduct notice*, *conduct rules*, *contestable customer*,

*contribution fee, customer connection contract, customer sale contract, electricity load, energy arbitrator, energy mediator, information notice, mediated agreement, member entity, membership fee, negotiated customer connection contract, negotiated sale contract, negotiated sale and connection contract, non-contestable customer, premises, standard customer connection contract, standard customer sale contract and user-pays fees.*

Clause 53 amends the dictionary of the Electricity Act 1994 by inserting the following definitions: *c/kWh, area retail entity, benchmark retail cost element, code contravention notice, conduct assurance, connection point, connection, electricity load, energy ombudsman, excluded customer, financially responsible retail entity, fixed principle, industry code, information notice, initial industry code, large customer, large market customer, large non-market customer, NMI premises, market customer, negotiated connection contract, negotiated retail contract, NEM load, non-market customer, premises, QCA Act, QCA code objective, relevant tariff year, retail contract, retail obligation, retail services application, retailer of last resort scheme, reviewer, small customer, standard large customer retail contract, Statewide newspaper, standard connection contract, standard retail contract, tariff, tariff year and warning notice.*

In schedule 5 the words “or (1A)” in the definition of customer are omitted.

## **Part 3                      Amendment of Energy Assets (Restructuring and Disposal) Act 2006**

### **Act amended in pt 3**

Clause 54 states that part 3 of the *Energy Legislation Amendment Act 2005* amends the *Energy Assets (Restructuring and Disposal) Act 2006*.

### **Replacement of s 44 (Operation of authorities and related matters)**

Clause 55 replaces section 44 of the *Energy Assets (Restructuring and Disposal) Act 2006* with a new section 44 (Provision of particular contracts on FRC day) which applies on the FRC day if, immediately before the day a contract was taken to be in force between a customer and a FRC entity for

the provision of customer retail services to premises under former section 49 (Obligation to provide customer retail services to non-contestable customers), former section 49A (Sale if no customer sale contract), section 310 (Existing standard customer sale contracts) of the *Electricity Act* or section 41 (Existing standard contracts and meter readings) of this Act. In these circumstances the existing contract ends but the ending of the existing contract does not affect rights or obligations accrued under it before the FRC day. The customer and the FRC entity are taken to have entered, under section 51 (Retail contract with financially responsible retail entity) of the *Electricity Act*, into a standard retail contract if the customer is a small customer for the premises or a standard large retail contract if the customer is a large customer for the premises. Subsections 52(3) and (4) of the *Electricity Act* apply to the retail contract as if it were a contract taken to have been entered into under that section. This section 44 applies despite the FRC entity not holding an authority with a stated retail area. This section 44 is subject to the retailer of last resort scheme under the *Electricity Act*.

### **Omission of s 51 (FRC day)**

Clause 56 omits section 51 of the *Energy Assets (Restructuring and Disposal) Act 2006*.

### **Amendment of schedule (Dictionary)**

Clause 57 amends the schedule (Dictionary) of the *Energy Assets (Restructuring and Disposal) Act 2006* by replacing the existing definition of FRC day with a new definition to make it clear that the FRC day for the *Energy Assets (Restructuring and Disposal) Act 2006* is the FRC day under the *Electricity Act 1994*, section 313.

## **Part 4                      Amendment of Gas Supply Act 2003**

### **Act amended in pt 4**

Clause 58 states that part 4 of the *Energy Legislation Amendment Act 2005* amends the *Gas Supply Act 2003*.

**Amendment of long title**

Clause 59 amends the long title of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”

**Amendment of s 3 (Main purposes of the Act)**

Clause 60 amends section 3 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas” in subsection 3(1) and paragraph 3(2)(a). Paragraphs 3(2)(b) and (c) are replaced and the new paragraphs refer to the new chapter 4A (which allows for the appointment of a gas retail market operator) and the new chapter 5A (which allows for the making of industry codes for reticulated processed natural gas markets). A Note is inserted into section 3 referring to particular provisions about LPG distribution pipelines and LPG distribution systems.

**Amendment of s 4 (Gas-related matters to which Act does not apply)**

Clause 61 amends section 4 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas” in paragraphs 4(1)(a) and (b) and by making it clear in paragraph 4(1)(c) that the Act does not apply to gases other than processed natural gas and LPG in relation to LPG distribution pipelines and LPG distribution systems.

**Amendment of s 9 (What is a fuel gas)**

Clause 62 amends section 9 of the *Gas Supply Act 2003* by omitting the redundant definition of “fuel gas”

**Amendment of s 10 (What is LPG)**

Clause 63 amends section 10 of the *Gas Supply Act 2003* by replacing the words “is a substance” with “means a substance”. The definition of LPG set out in section 10 is also moved to Schedule 4 of the Act and section 10 is omitted.

**Amendment of s 12 (What is a transmission pipeline)**

Clause 64 amends section 12 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.



**Amendment of s 13 (What is a *distribution pipeline*)**

Clause 65 amends paragraph 13(a) of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 14 (What is a *distribution system*)**

Clause 66 amends subsection 14(1) of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 15 (What fuel gas is reticulated)**

Clause 67 amends section 15 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Replacement of ss 16 to 18**

Clause 68 replaces sections 16 to 18 of the *Gas Supply Act 2003* by replacing the existing definition of customer in section 16 (Who is a customer) to clarify that a receiver is only a customer if the receiver's premises has a processed natural gas installation that, to the reasonable satisfaction of the relevant distribution entity, is capable of receiving supply directly from a distribution system. Section 17 (Types of customers) defines the types of customers as *small customers*, *large customers* and *excluded customers*. Small customers and excluded customers are prescribed under a regulation, large customers are all customers who are not small customers. Section 18 is omitted.

**Amendment of s 19 (What are *customer connection services*)**

Clause 69 amends section 19 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 20 (What are *customer retail services*)**

Clause 70 amends section 20 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 21 (What is a *distribution authority*)**

Clause 71 amends section 21 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 22 (Who is a distributor)**

Clause 72 amends section 22 of the *Gas Supply Act 2003* by changing the heading to “Distributors and references to distributors”. Paragraph 22(d) is amended by replacing the explanation of who a distributor is for the purposes of gas infrastructure to add that, where the infrastructure is an LPG pipeline or LPG distribution system, a distributor is the LPG distributor who owns or operates the pipeline or system. Paragraph 22(e) is amended by inserting “or an LPG distributor” after “distributor” to make it clear that a distribution officer is also an LPG distributor”. A new subsection 22(2) is inserted to make it clear that a other than a specific reference in section 22, a reference to a distributor is a reference to a person who holds a distribution authority.

**Amendment of s 23 (Types of distribution authority and their distributors)**

Clause 73 amends section 23 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 25 (Who is a retailer)**

Clause 74 amends section 25 of the *Gas Supply Act 2003* by replacing “Who is a retailer” in the heading with “Retailers and references to retailers” and inserting a new subsection 25(2) to make it clear that a reference to a retailer is a reference to a person who holds a retail authority.

**Amendment of ch 2, hdg (Fuel gas distribution)**

Clause 75 amends the heading of chapter 2 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 28 (Requirements for application)**

Clause 76 amends section 28 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”. Paragraph 28(d) is omitted and 28(e) is consequentially renumbered as 28(d).

**Amendment of s 42 (Obligation to operate and maintain distribution pipes)**

Clause 77 amends section 42 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 48 (Contingency practices and procedures)**

Clause 78 amends section 48 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Insertion of new ss 50A & 50B**

Clause 79 inserts section 50A (Compliance with industry codes) into the *Gas Supply Act 2003* to require distributors to comply with any applicable industry codes. Clause 79 also inserts section 50B (Membership of energy ombudsman scheme) into the *Gas Supply Act 2003* to require distributors to pay any amounts to the energy ombudsman that the distributor must pay under the *Energy Ombudsman Act 2006*.

**Amendment of s 57 (Conditions for amendment, cancellation or suspension)**

Clause 80 amends section 57 of the *Gas Supply Act 2003* by inserting subparagraph 57(2)(b)(v) so that material contravention of an industry code by a distributor is an event which enables the regulator to amend, cancel or suspend the distributor’s distribution authority.

**Omission of ch 2, pt 1, div 5 (Service quality standards)**

Clause 81 omits division 5 of part 1 of chapter 2 of the *Gas Supply Act 2003*.

**Amendment of s 75 (What is gas infrastructure and gas infrastructure work)**

Clause 82 amends section 75 of the *Gas Supply Act 2003* by amending the definition of gas infrastructure to make it clear that gas infrastructure includes the whole, or any part of, an LPG distribution pipeline or an LPG distribution system.

**Insertion of new s 75A**

Clause 83 inserts a new section 75A (References to distributor in pt 2 includes a reference to LPG distributor) into the *Gas Supply Act 2003* to make it clear that a reference to a distributor in Part 2 of the *Gas Supply Act 2003* includes a reference to an LPG distributor.

**Amendment of s 78 (Right to carry out work on publicly controlled place)**

Clause 84 amends section 78 of the *Gas Supply Act 2003* by omitting the requirement for the publicly controlled place to be subject to, or in, the distribution area of the distributor's distribution authority.

**Amendment of s 104 (Deciding application)**

Clause 85 omits subsection 104(3) from the *Gas Supply Act 2003* and replaces it with section 104A for consistency with the Electricity Act and its retail equivalents.

**Insertion of s 104A (Information notice for refusal of services)**

Clause 86 inserts a new section 104A section into the *Gas Supply Act 2003* to require a distributor who decides to not provide to the premises, the customer connection services applied for, to give as soon as practicable after, but within one month of, receiving the application, the customer notice about the decision.

**Amendment of s 105 (Distributor's obligation to propose terms)**

Clause 87 amends section 105 of the *Gas Supply Act 2003* by omitting paragraph 105(1)(d) which is now redundant as it refers to "protected customers". Reference to "protected customer" in subsection 105(2) is replaced with "small customer".

**Amendment of s 106 (Customer connection contract)**

Clause 88 amends section 106 of the *Gas Supply Act 2003* by changing the definition of "customer connection contract" to "connection contract" and changing the heading of the section to reflect this changed definition.

**Omission of s 107 (Cooling-off period for customer connection contracts)**

Clause 89 amends the *Gas Supply Act 2003* by omitting section 107 as cooling off periods will be dealt with in the industry code.

**Amendment of s 108 (Commencement of customer connection services)**

Clause 90 amends section 108 of the *Gas Supply Act 2003* by replacing the reference in subsection 108(1) to a “customer connection contract” with “connection contract” as a consequence of the amendment to section 106. Reference to section 107, which has been omitted under clause 89, is also removed. Paragraph 108(5)(a) extends the required period for provisioning a service from 5 business days to 10 business days or longer as agreed within that 10 day period.

**Amendment of s 109 (Limits on provision of customer connection services)**

Clause 91 amends section 109 of the *Gas Supply Act 2003*. Subsection 109(1) is amended by replacing the words “fuel gas” with “processed natural gas”. A new paragraph (v) is inserted into section 109(1)(a) to make it clear that the distributor is not obliged to provide a customer connection service if providing the service would contravene a relevant industry code. Subsection 109(2) is amended to make it clear that the customer connection services obligation ceases during any period in which the provision of the services is disconnected under a connection contract. A new subsection 109(3) is inserted to make it clear that the obligation to provide a connection service does not apply if a regulation states that the obligation does not apply. A new subsection 109(4) is inserted to make it clear that the obligation to provide a connection service is subject to any relevant insufficiency of supply declaration or supply direction, the retailer of last resort scheme, the conditions of the distributor’s relevant retail authority and any relevant provisions of an industry code about cooling-off periods for the provision of customer connection services. Subsection 109(2) is renumbered as 109(3) due to the insertion of a new subsection 109(2) and the former subsection 109(3) is renumbered as 109(5) due to the insertion of a new subsection 109(4).

**Insertion of new ch 2, pt 2, div 2, sdiv 3**

Clause 92 inserts a subdivision 3 (Requirements for connection contracts) into the *Gas Supply Act 2003*.

New section 109A (General limits on what may be negotiated) makes it clear that connection contracts must be consistent with the Act. Additionally a connection contract must be consistent with an access arrangement if the customer connection services relate to proposed natural

gas transported through a covered pipeline and there is an approved access arrangement for that pipeline. A connection contract is unenforceable to the extent of any inconsistency with the Act or with an access arrangement.

New section 109B (Provisions for small customers) requires that connection contracts for small customers must comply with provisions of any industry code about minimum terms and is unenforceable to the extent of any inconsistency. If a connection contract has a term which is inconsistent with a minimum term in an industry code, the term is taken to be that required by minimum terms in the industry code.

New section 109C (Provisions for large customers) requires connection contracts for large customers to be on fair and reasonable terms. A service will be deemed to be provided on fair and reasonable terms if it is consistent with the minimum terms for the provision of services to small customers in a relevant industry code.

### **Amendment of ch 2, pt 3, div 3, hdg (Changes to fuel gas installation)**

Clause 93 amends the heading of chapter 2, part 3, division 3 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Amendment of s 111 (Obligation to give information to allow proposed changes)**

Clause 94 amends section 111 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Amendment of s 112 (Applying to change connection)**

Clause 95 amends section 112 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Omission of ch2, pt 3, divs 4 & 5**

Clause 96 omits divisions 4 (Provision about what is fair and reasonable) and 5 (Discontinuance and recommencement) of chapter 2, part 3 of the *Gas Supply Act 2003* as these matters will be dealt with in an industry code.

**Amendment of s 125 (Operation of pt 4)**

Clause 97 amends section 125 of the *Gas Supply Act 2003* by replacing the words “non-contestable” with “small” in relation to customers and “customer connection contract” with “connection contract”.

**Amendment of s 126 (Distributor must provide meter)**

Clause 98 amends section 126 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 131 (Alternative measurement)**

Clause 99 amends subsection 131(3) of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas” and amends subsection 131(4) of the *Gas Supply Act 2003* by omitting reference to section 120 which was removed in accordance with clause 96.

**Insertion of new ch 2, pt 5, div 1A**

Clause 100 inserts a new chapter 2, part 5, division 1A (Preliminary) comprised of section 131A (References to distributor and processed natural gas in pt 5 includes a reference) into the *Gas Supply Act 2003* to make it clear that a reference to distributors in part 5 includes a reference to an LPG distributor and a reference to a distributor’s distribution pipeline or system includes a reference to an LPG distributor’s LPG pipeline or LPG distribution system.

**Amendment of s 133 (Functions)**

Clause 101 amends section 133 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 140 (Power to enter for emergency)**

Clause 102 amends section 140 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Omission of ch 2, pt 6 (Market operating arrangements in natural gas market)**

Clause 103 omits chapter 2 of part 6 of the *Gas Supply Act 2003*.

**Amendment of ch 3, hdg (Supply of reticulated fuel gas)**

Clause 104 amends the heading of chapter 3 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 148 (Who may apply for retail authority)**

Clause 105 amends section 148 of the *Gas Supply Act 2003* by making it clear that Ergon Energy, or a subsidiary of Ergon Energy, can not apply for retail authority.

**Replacement of ch 3, pt 1, div 2, sdivs 2 & 3**

Clause 106 replaces sections 160 to 163 of the *Gas Supply Act 2003* with a new section 160 (Obligation to have standard terms before providing customer retail services) which requires retailers to have standard terms in force under chapter 3, part 2, division 2 before the retailer provides customer retail services. These matters will be dealt with in an industry code.

**Amendment of s 167 (General right of retailer)**

Clause 107 amends section 167 of the *Gas Supply Act 2003* by making it clear that, subject to sections 169 (Restriction on general retailers) and 171 (Area retailers - restriction for excluded customers) any retailer may provide customer retail services to a contestable customer anywhere in the State.

**Amendment of s 169 (Restriction on general retailers)**

Clause 108 amends section 169 of the *Gas Supply Act 2003* to make it clear that a retailer can not provide a customer retail service to an excluded customer's premises, unless authorised or required under the retailer of last resort scheme.

**Insertion of new s 170**

Clause 109 inserts a new section 170 (Restriction on providing customer retail services to excluded customer's premises) of the *Gas Supply Act 2003* to make it clear that a retailer may provide customer retail services only if the retailer is the area retailer for the authority or the provision of the service is authorised or required under the retailer of last resort scheme. The maximum penalty for breach of this provision is 500 penalty units.



**Amendment of s 171 (Area retailers - restriction for non-contestable customers)**

Clause 110 amends section 171 of the *Gas Supply Act 2003* by replacing the words “non-contestable customers” with “excluded customers” in the heading and in the body of the section.

**Omission of s 172 (Telephone hotline)**

Clause 111 omits section 172 of the *Gas Supply Act 2003* as this is a matter for an industry code.

**Insertion of new ss 174A & 174B**

Clause 112 inserts new sections 174A (Compliance with industry code) and 174B (Membership of energy ombudsman scheme) into the *Gas Supply Act 2003* to make it an obligation for retailers to comply with any industry code that applies to the retailer and to pay any amount that under the *Energy Ombudsman Act 2006*, it must pay to the energy ombudsman.

**Amendment of s 181 (Conditions for amendment, cancellation or suspension)**

Clause 113 amends section 181 of the *Gas Supply Act 2003* by inserting subparagraph 181(2)(b)(v) so that material contravention of an industry code by a distributor is an event which enables the regulator to amend, cancel or suspend the distributor’s distribution authority.

**Replacement of ch 3, pt 2 (Customer retail services)**

Clause 114 replaces chapter 3, part 2 of the *Gas Supply Act 2003* and regulates customer retail services.

The new section 198 (Applying to an area retailer for provision of customer retail services) makes it clear who can make a retail services application (being a customer who owns or occupies premises). Customers other than excluded customers can only make a retail services application if the premises are MIRN premises. Excluded customers can only make a retail services application to the area retailer in whose retail area the premises are located.

The new section 199 (Deciding application) requires an area retailer, within 10 business days after a retail services application made, to grant or refuse the application.

The new section 200 (Information notice for refusal of services to small customer) applies if a customer makes a retail services application to an area retailer for a premises, the retailer decides the area retail obligation does not apply to the services and had the services been provided, the customer would have been a small customer for the premises. In these circumstances the retailer must give the customer, as soon as practicable, but within one month of receiving the application an information notice about the decision.

The new section 201 (Area retail obligation) defines the area retailer obligation as the retailers obligation, if a retail services application to an area retailer is for premises in the retailer's retail area, to provide to the premises the customer retail services applied for. This obligation is subject to sections 202 (Things to which area retailer obligation is subject) and 203 (When area retailer obligation does not apply).

The new section 202 (Things to which area retailer obligation is subject) makes the area retailer obligation subject to any relevant insufficiency of supply declaration or supply direction, the retailer of last resort scheme, any conditions of the retailer's relevant retail authority and any relevant provision on an industry code about customer transfers or cooling off periods.

The new section 203 (When area retailer obligation does not apply) makes it clear that the area retail obligation does not apply in relation to a customer if:

- the retailers is to arrange for customer connection services for the premises and the distributor for the services is not obliged to provide, or has the right to discontinue, services;
- the customer is to arrange for customer connection services for the premises and no connection contract has been entered into for the premises with the distributor;
- the customer has not provided information requested and reasonably required by the retailer within a reasonable time;
- the customer has not, within a reasonable time, provided or maintained reasonably required access, equipment, facilities, space or anything else requested by the retailer;
- the customer contravenes the *Gas Supply Act 2003*, the *Petroleum and Gas (Production and Safety) Act* and the contravention relates to safety;

- circumstances beyond the control of the retailer, prevent the retailer from providing customer retail services to the customer; or
- if a regulation states that the obligation does not apply.

The area retailer obligation ceases during any period during which customer connection services to the premises are discontinued under a connection contract or a dangerous situation direction under the *Petroleum and Gas (Production and Safety) Act*. A retailer may lawfully provide a retail customer service even though it is not obliged to do so

The new section 204 (Standard retail contracts for particular small customers) applies if the area retailer obligation applies for a small customer's premises, the premises are connected to a distribution system and there is no negotiated retail contract in place. In addition, the section applies if a small customer's premises are connected to a distribution system without the customer having made an application and there is no negotiated retail contract in place. In these circumstances, the retailer which is taken to have entered into a contract where there is an area retailer obligation will be the area retailer or, where the customer has not made a retail services application, the retailer that is the registered retailer under an industry code for the metering installation for the premises. Contracts under this section are standard retail contracts, the terms of which are the retailer's standard terms in force from time to time that apply to the customer. The customer and the retailer are deemed to have agreed to comply with the terms and to have entered the contract as a deed. This section is subject to the retailer of last resort scheme.

The new section 205 (Retailer's standard terms for small customers) makes it an obligation for retailers to prepare its standard terms, including charges, before it provides a customer retail service. The terms may be different for stated types of small customers, may be contained in a different document for any of the types, and may include a methodology for fixing the charges. The retailer is allowed to amend its standard terms. The standard terms or an amendment only take effect when the retailer complies with section 206 (Publication of standard terms). The standard terms or the amendment must be consistent with the *Gas Supply Act* or any relevant industry code and must comply with the provision of any industry code about minimum terms for the provision of customer retail services to small customers. To the extent that the standard terms or amendment do not comply with these requirements they are unenforceable. The minimum term in an industry code are taken to be the minimum term in a small customer's standard contract if a term or an amendment otherwise conflicts

with the industry code minimum term. If the minimum term is deemed to be a standard term it does not need to be published to come into effect.

The new section 206 (Publication of standard terms) requires a retailer to publish its standard or amended terms on its website, give the QCA a copy of the terms of amended terms and give the terms or amended terms free of charge to a customer, if the customer requests them. The retailer must also publish a price increase notice on its website and give each of its customers a copy of the price increase notice with or in the next account to the customer for the customer retail service. The price increase notice must set out the increased price or a methodology for fixing the increased price and when the increased price is to start. The price increase notice may be included when the retailer publishes its terms or amended terms on its website.

The new section 207 (Ending of standard retail contract) states that a standard retail contract is taken to end if the retailer and the customer enter into a negotiated retail contract for the premises and that contract comes into effect or if another retailer becomes the registered retailer for the metering installation for the premises. This section does not limit how or when a standard retail contract may end.

The new section 208 (Negotiation of retail contract) allows a customer and a retailer, subject to sections 209 (General limit on what may be negotiated) and 210 (Provisions for small customers), to enter into a negotiated retail contract for the provision of customer retail services on terms that are different to the retailer's standard terms.

The new section 209 (General limit on what may be negotiated) requires connection contracts to be consistent with the Act or any relevant industry code. A contract is unenforceable to the extent of any inconsistencies.

New section 210 (Provisions for small customers) requires that negotiated retail contracts for small customers must comply with provisions of any industry code about minimum terms and are unenforceable to the extent of any inconsistency. If a connection contract has a term which is inconsistent with a minimum term in an industry code, the term is taken to be that required by minimum terms in the industry code.

### **Amendment of s 213 (On-suppliers and their receivers)**

Clause 115 amends section 213 of the *Gas Supply Act 2003* by replacing the words "fuel gas" with "processed natural gas".

**Amendment of s 214 (Common areas and common area consumption)**

Clause 116 amends section 213 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Omission of s 216 (Restriction of application of pt 3 for LPG)**

Clause 117 omits section 216 of the *Gas Supply Act 2003*.

**Amendment of s 217 (On-supply agreements)**

Clause 118 amends section 217 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 222 (Individual metering option)**

Clause 119 amends section 222 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 223 (Compensation for installation damage)**

Clause 120 amends section 223 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Replacement of ch 3, pt 4, hdg (Pricing and service quality standards)**

Clause 121 amends the heading of part 4 of chapter 3 of the *Gas Supply Act 2003* by replacing the words “Pricing and service quality standards” with “Pricing” and inserts Division 1 (QCA Investigation).

The new section 227A (Direction by Minister to investigate effectiveness of retail competition) allows the Minister, by gazette notice, to give the QCA a written direction to investigate the effectiveness of retail competition in the Queensland retail gas market. The QCA must comply with such a direction and must publish the direction on its website.

The new section 227B (Period to giving report) requires the QCA to give the Minister a report within the period specified in the direction or 6 months if no period is specified in the direction.

The new section 227C (Terms of reference) sets out the scope of the direction which may do any or all of the following: state the terms of reference of the investigation; require QCA to give the Minister a report on

the investigation within a stated period; require QCA to, in conducting the investigation, consider stated matters and have stated objectives; and give QCA other directions the Minister considers appropriate.

The new section 227D (Notice of pricing investigation or amended term of reference or direction) requires QCA to publish notice of the investigation and, if a term of reference or direction relating to the investigation is amended, the amended term of reference or direction, on QCA's website and in a Statewide newspaper.

The new section 227E (Conduct of pricing investigation) gives QCA the investigation powers under part 6 of the *Queensland Competition Authority Act 1997*, other than section 171, for pricing investigations as if a reference in part 6 to an investigation were a reference to a pricing investigation and a reference to the authority were a reference to the QCA and as if the *Queensland Competition Authority Act 1997* section 176(3) required the notice mentioned in that section to be given to any entity that QCA knows would be potentially affected by the review. However, part 6 applies subject to any requirement or direction of the Minister.

The new section 227F (Required consultation for report) requires the QCA to prepare a draft report and engage in consultation prescribed under a regulation before it gives the Minister the report.

Clause 121 also inserts a new heading for division 2 of part 4 of chapter 3 of the *Gas Supply Act 2003* being "Notified prices".

### **Replacement of s 228 (Fixing of prices for customer retail services or on-supply)**

Clause 122 replaces section 228 of the *Gas Supply Act 2003* and inserts a new section 228 (Fixing of prices for standard contracts or for on-supply). The new section 228 makes it clear that, subject to section 228A, the Minister may fix prices, or a methodology to fix the prices, for the provision under a standard contract of customer retail services or the supply of processed natural gas by on-suppliers to receivers. In exercising the power, the Minister must consider the main purposes of the *Gas Supply Act 2003* and the QCA code objective. These prices are called 'notified prices'. The notified prices or methodology to fix the prices must be notified in the gazette and take effect on the later of the date the notice is gazetted or later if the gazetted notice states a later day.

Clause 122 also inserts the new section 228A (Restrictions on the first exercise of price fixing power), which applies only the first time the Minister exercises the power under section 228 after commencement. The

section makes it clear that the power may be exercised only if either QCA has given the Minister a report about an investigation under division 1 or if the Australian Energy Market Commission has produced a report about the effectiveness of retail competition in the Queensland retail gas market. In addition, no more than 6 months may have passed since the giving of the report and the Minister must have considered the report. The Minister must publish on the department's website, reasons for exercising the power and give each area retailer a copy of the reasons.

### **Amendment of s 229 (Review of notified prices)**

Clause 123 amends section 229 of the *Gas Supply Act 2003* by requiring the Minister, when requested to review notified prices, to complete the review within 6 months of the request..

### **Replacement of s 230 (Public advertisement of notified prices)**

Clause 124 replaces section 230 of the *Gas Supply Act 2003* and allows the Minister, if there is a change to notified prices that apply to a particular retailer, to publish a notice giving particulars of the change in a newspaper circulating in each locality in which small customers to whom the prices apply reside. If QCA asks, the retailer must pay QCA's reasonable costs of the publication.

### **Amendment of s 231 (Requirement to comply with notified prices)**

Clause 125 amends section 231 of the *Gas Supply Act 2003* by replacing the words "fuel gas" with "processed natural gas".

### **Amendment of s 233 (Directions for prices notification)**

Clause 126 amends section 233 of the *Gas Supply Act 2003* by replacing the words "fuel gas" with "processed natural gas".

### **Omission of s 235**

Clause 127 omits section 235 (Standards about quality of customer retail services) of the *Gas Supply Act 2003* as standards about quality of customer retail services will be set out in the industry code.

**Amendment of s 236 (Who is an *industry participant*)**

Clause 128 amends section 236 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 237 (Regulator’s power to require plan)**

Clause 129 amends section 237 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 239 (Contingency supply plan - content requirement)**

Clause 130 amends section 239 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 244 (Notice of significant disruption)**

Clause 131 amends section 244 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 245 (Regulator’s power to require information from industry participant)**

Clause 132 amends section 245 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 247 (Notice of intention to stop fuel gas transport or customer connection or retail services)**

Clause 133 amends section 247 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas” and replacing the words “chapter 2” in paragraph 247(4)(a) with “a connection contract or a retail contract”.

**Amendment of s 248 (Regulation may provide for scheme)**

Clause 134 amends section 248 of the *Gas Supply Act 2003* by inserting the words “the GRMO and by” after “scheme by” in paragraph 248(b) to make it clear that the GRMO may be required to participate in the retailer of last resort scheme.



**Amendment of s 250 (Matters that may be provided for under scheme)**

Clause 135 amends section 250 of the *Gas Supply Act 2003* by replacing the words “customer connection contract” with “connection contract”, replacing “customer retail contract” with “retail contract”, replacing “customer retail contracts” in subparagraph 250(f)(ii) with “retail contracts”, replacing “fuel gas” in subsection 250(g) with “processed natural gas” and replacing “the regulator’s” in subsection 250(h) with “QCA’s”.

**Amendment of s 251 (Minister’s power to make declaration)**

Clause 136 amends section 251 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 254 (Minister’s power to give directions while declaration in force)**

Clause 137 amends section 254 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas” and by inserting a new paragraph (1)(c) to include a reference to “the GRMO” as a person who the Minister may give a direction to do or not to do something.

**Amendment of s 256 (Liability of recipient for fuel gas supplied under direction)**

Clause 138 amends section 256 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 257 (Direction override contracts)**

Clause 139 amends section 257 of the *Gas Supply Act 2003* by replacing “customer connection contract” in paragraph 257(a) with “connection contract”, replacing “customer retail contract” in paragraph 257(b) with “retail contract and replacing “fuel gas” in paragraph 257(c) with “processed natural gas”.

**Replacement of ch 5, hdg (Dispute resolution)**

Clause 140 replaces the heading of chapter 5 of the *Gas Supply Act 2003* and inserts chapter 4A (Gas retail market operator) which comprises 3 parts.

The new chapter 4A, part 1 (General Provisions about operator) has three sections.

The new section 257A (Appointment) allows the Minister to appoint a body corporate to be the gas retail market operator (GRMO) by gazette notice. However, the Minister is not able to appoint an industry participant (as defined in section 236) and may only appoint a body corporate as the GRMO if the Minister is satisfied the body has agents, employees or officers who are appropriately qualified to help it perform the GRMO's functions.

The new section 257B (Functions) makes it clear that the functions of the GRMO are to provide gas retail market services to others in accordance with industry codes and to administer the parts of any industry code that provide for the following matters: MORN registration, customer transfers, information exchanges, metering, gas balancing, business to business transactions information transfers under the code, any other matters prescribed under a regulation. The GRMO also will give QCA advice on request about issues relating to reticulated processed natural gas markets, recommend to QCA changes to the provisions of an industry code that provide for any of the matters and perform other functions relating to industry codes delegated to it under section 321A of the *Gas Supply Act 2003*. The GRMO is required to consider, but is not obliged to accept, any advice given to it by an industry advisory committee.

The new section 257C (Obligations) require the GRMO, in performing its functions, to comply with the *Gas Supply Act 2003* and any relevant industry codes, act consistently with the functions, keep accounting records and prepare accounts according to any principle decided by QCA, treat distributors and retailers on a fair and equal basis, give distributors and retailers access to its information systems to the extent necessary to allow them to participate in the reticulated processed natural gas market, and comply with any minimum service standards provided for under a regulation or an industry code. The GRMO is also obliged to give any industry advisory body established under part 2 necessary support to allow the committee to perform its functions.

The new chapter 4A, part 2 (Industry advisory committee) has three sections.

The new section 257D (Establishment) enables the Minister to establish one or more advisory committees to support the GRMO and to fix the terms of reference of the advisory committee.

The new section 257E (Functions) makes it clear that an advisory committee's functions are to advise the GRMO on the administration and operation of reticulated processed natural gas markets, make suggestions to the GRMO about changes under paragraph 257B(1)(d) and perform other functions prescribed under a regulation.

The new section 257F (Composition) sets out the composition of an advisory committee which must consist of a chairperson decided by the GRMO and other members decided by distributors and retailers. The number of members decided by distributors and by retailers must be the same and of the members decided by retailers at least one must be nominated by area retailers and one must be nominated by general retailers.

The new chapter 4A, part 3 (Miscellaneous provision) has one section: 257H (Restriction on providing gas retail market services) which sets a maximum penalty of 500 penalty units for any person, other than the GRMO, a director or other officer of the GRMO acting within the scope of the person's directorship or other office or an employee of the GRMO acting in the course of the employee's employment, to provide gas retail market services to someone else.

Clause 140 also replaces the heading of chapter 5 of the *Gas Supply Act 2003* with "Resolution of gas infrastructure work disputes".

### **Replacement of s 258 (Complaint investigation and dispute resolution)**

Clause 141 replaces section 258 of the *Gas Supply Act 2003* to make it clear that chapter 5 (Application of ch 5) applies to a dispute about gas infrastructure work or proposed gas infrastructure work between a distributor and a public entity or an LPG distributor and a public entity.

### **Amendment of s 259 (Regulator's power to require information)**

Clause 142 amends section 259 of the *Gas Supply Act 2003* by replacing subsection 258(1) to enable the regulator, by notice, to require the distributor or public entity to give the regulator stated information the regulator reasonably requires to mediate a dispute. The amended section 259 is also moved to section 268 and renumbered as subsections 268(2) to (5).

**Omission of ch 5, pt 2 (Customer disputes)**

Clause 143 omits part 2 of chapter 5 of the *Gas Supply Act 2003* as disputes with small customers will generally be dealt with by the Energy Ombudsman.

**Omission of s 266 (Application of pt 3)**

Clause 144 omits section 266 of the *Gas Supply Act 2003*.

**Insertion of new chapter 5A**

Clause 145 inserts a new chapter 5A into the *Gas Supply Act 2003*. The new chapter 5A (Industry codes) has five parts.

The new part 1 (Initial industry codes) has four sections.

The new section 270A (Making of initial industry codes by Minister) allows the minister to make initial industry codes for reticulated processed natural gas markets to apply to distributors and retailers and their customers. The code must state the distributors and retailers to which it applies. The code is not subordinate legislation.

The new section 270B (Specific matters for which code may provide) stipulates the matters that may be contained in the initial industry code, including the rights and obligations of distributors, retailers and customers about the discontinuance or recommencement of services, minimum contract terms, minimum requirements for distributors and retailers in dealing with customer complaints, metering, marketing conduct of retail entities to small customers, customer transfers and fees payable to the GRMO by distributors or retailers in relation to the code.

The new section 270C (Gazettal and taking of effect of code) requires the Minister, as soon as practicable after making an initial industry code, to publish a gazette notice stating that the Minister has made the code and where it may be inspected. The code will take effect on the later of either the day of effect stated in the gazette notice or (if no date is specified) on the day on which the notice is gazetted.

Section 270D (Tabling of code) requires the Minister to table a copy of an initial industry code in the Legislative Assembly within 14 days of the code taking effect. The copy is tabled for information only and a failure to table the copy of the code does not affect the code's ongoing effect.

The new part 2 (QCA industry codes) has five sections.

The new section 270E (QCA may make industry code) allows QCA to make industry codes, which may provide for any matter that may be provided for under an initial industry code. QCA's power to make an industry code is subject to the code objective provision set out in the new section 270F (QCA code objective), and specific consultation procedures set out in the new section 270G (Required consultation). The code will not take effect unless approved by the Minister.

The new section 270F (QCA code objective) sets out the objective of industry codes made by QCA. This objective includes the promotion of efficient investment in, and efficient use of, processed natural gas services for the long-term interests of Queensland customers. QCA can only make industry codes in accordance with this objective.

The new section 270G (Required consultation) requires QCA, before making an industry code, to prepare a draft of the code and engage in the consultation prescribed under a regulation. The section does not apply if QCA considers that the code is needed urgently or does not materially affect anyone's interests.

The new section 270H (Ministerial approval) requires QCA to give a copy of an industry code to the Minister as soon as possible after the making of the code. The Minister may approve the code within 20 business days of receiving it. In making this decision, the Minister is required to have regard to the QCA code objective. If the Minister decides to not approve the code, the Minister must give QCA a notice stating the decision and reasons for it as soon as practicable after making the decision. If the Minister does not make a decision within 20 business days, the Minister is deemed to have approved the code.

The new section 270I (When approved QCA industry code takes effect) requires QCA to publish Ministerial approval for an industry code by gazette notice as soon as practicable after the approval and state where the code may be inspected. This section also provides that the code will take effect on the later of either the day of effect stated in the gazette notice or (if no date is specified) on the day on which the notice is gazetted.

The new section 270J (Tabling of QCA industry code) provides that if an industry code made by QCA takes effect, the Minister must table a copy of an initial industry code in the Legislative Assembly within 14 days of the code taking effect. The copy is tabled for information only and a failure to table the copy of the code does not affect the code's ongoing effect.

The new part 3 (Review of industry codes and related matters) has four sections.

The new section 270K (Direction by Minister to review) allows the Minister to give QCA a written direction requiring QCA to conduct a review into matters including matters relating to the Queensland reticulated processed natural gas markets or the operation and effectiveness of an industry code. The QCA must comply with a direction and must publish the direction on its website.

The new section 270L (Terms of reference) allows the Minister to set out various matters in the direction in relation to the review ordered under the new section 270K, including terms of reference and requirements to give a report to the Minister within a stated period, make the report publicly available, make a draft report available to the public or to a stated entity, requirements for QCA, in conducting the review, to consider stated matters or have stated objectives and other directions the Minister considers appropriate.

The new section 270M (Notice of review or amended term of reference or direction) requires QCA to publish a notice of reviews and amended terms of reference or directions relating to reviews on its website and in a Statewide newspaper.

The new section 270N (Conduct of review) requires QCA to conduct the review ordered under the new section 270K according to part 6 of the QCA Act (other than section 171), which relates to QCA investigations. This creates consistency in QCA's exercise of its powers. This section is subject to any requirement or direction of the Minister.

The new part 4 (Amending industry codes) has one section.

The new section 270O (Amending code) allows QCA to amend an industry code and applies the part 2 provisions that relate to making an industry code (including code objective, required consultation, Ministerial approval, effect and tabling) to the amendment of an industry code.

The new part 5 (Enforcing industry codes) has five divisions.

The new part 5 division 1 (Code contravention notices) has three subdivisions.

The new part 5 division 1 subdivision 1 (Preliminary) has two sections.

The new section 270P (Application of div 1) provides that division 1 is to be applied in circumstances where QCA suspects that a distributor or retailer has contravened, is contravening, or is involved in an activity that is likely to result in a contravention of an industry code. This section also contains a materiality requirement so that QCA can only enforce contraventions that are, or are likely to be, material contraventions of the

code. This materiality requirement aims to ensure that trivial contraventions are not pursued.

The new section 270Q (Criteria for deciding material contravention) provides that in assessing whether a contravention is material, regard must be had to the QCA code objective set out under the new section 270F.

The new part 5 division 1 subdivision 2 (Warning notices) has three sections.

The new section 270R (Warning notice may be given) allows QCA to give a distributor or retailer a warning notice warning that QCA proposes to give the entity a further notice about the contravention or likely contravention of an industry code. QCA must make the decision about whether to give the warning notice as soon as practicable after forming the suspicion however, failure to do this does not affect the validity of the warning notice or any subsequent code contravention notice. A warning notice can only be given within 2 years after the day on which the contravention happened. The introduction of a warning notice mechanism provides opportunity for consultation between QCA and breaching entities. A warning notice will provide an avenue for breaches to be remedied before the issue of a code contravention notice, working towards effective resolution of complaints.

The new section 270S (Requirements for warning notice) sets out the information that must be contained in a warning notice, including the particulars of the contravention or likely contravention and the fact that QCA proposes to issue a code contravention notice unless the entity takes certain steps and provides QCA with a conduct assurance that similar future contraventions will be avoided. A period of at least 20 business days must be given before a code contravention notice will be issued, except in cases where QCA considers urgent action to be required, and allows the distributor or retailer to make submissions to show why the proposed code contravention notice should not be given. This time period and the opportunity to make submissions aims to provide structure and clarity and encourage consultation between QCA and allegedly contravening parties, and the rectification of contraventions. The warning notice may also state the steps the QCA reasonable believes are necessary to remedy the contravention or avoid its future recurrence or avoid the likely contravention.

The new section 270T (Considering submissions on warning notice) requires QCA to consider submissions made under section 270S(1)(d) by the distributor or retailer in relation to why the proposed code contravention notice should not be given. This aims to afford due process to allegedly contravening parties and to encourage consultation between

these parties and QCA. This section also requires QCA to provide notice to the distributor or retailer as soon as practicable after deciding not to give a proposed code contravention notice.

The new part 5 division 1 subdivision 3 (Action after warning notice) has two sections.

The new section 270U (Giving of code contravention notice) allows QCA to give a proposed contravention notice if the distributor or retailer has not complied with a warning notice. If the distributor or retailer has taken steps reasonably necessary to remedy the contravention but has not given a required conduct assurance, a code contravention notice can still be given on the basis that the entity is deemed to be still involved in an activity that could result in a material contravention of the relevant industry code.

The new section 270V (Duration of code contravention notice) provides that a code contravention notice comes into effect when it is made or the later time specified in the code contravention notice and ends on the day stated in the notice or, if cancelled before that day, on the day of cancellation.

The new part 5 division 2 (Proceedings) has four sections.

The new section 270W (Proceeding for civil penalty order) provides that if, on the application QCA, the Supreme Court is satisfied that a distributor or retailer has contravened, attempted to contravene or been involved in the material contravention of an industry code, the Supreme Court may order the entity to pay an amount to the State as a civil penalty of no more than \$100,000 for an individual and \$500,000 for a corporation. In fixing the penalty the court must consider the nature and extend of the contravention and loss or damage suffered because of the contravention, the circumstances in which the contravention took place and whether the distributor or retailer has previously been found by the court in proceedings under this Act to have engaged in similar conduct. An electricity entity is involved in a contravention if it has aided, abetted, counselled or procured the contravention, has induced the contravention, has been in any way, directly or indirectly, knowingly concerned in or party to the contravention or has conspired with others to effect the contravention.

The new section 270X (How order enforced) provides that if the Supreme Court orders payment of an amount under section 270W(2) in relation to code contravention, the State may enforce the order as a judgment of the court for a debt of that amount.

The new section 270Y (Injunctions) allows the Supreme Court, on the application of QCA, to grant an injunction in relation to industry code



contravention if satisfied that a distributor or retailer has been involved or is likely to be involved in a contravention of an industry code. The injunction may be granted on conditions. The court may grant an interim injunction but must not require anyone as a condition of granting the interim injunction to give an undertaking as to damages. The court may amend an injunction or interim injunction.

The new section 270Z (Conduct by directors, servant or agents) attributes the conduct and state of mind of the directors, servants and agents of a distributor or retailer to the distributor or retailer in specified circumstances.

The new part 5 division 3 (Referrals to regulator) has three sections.

The new section 270ZA (When QCA must refer material contravention) requires QCA to refer a contravention to the regulator if the Supreme Court decides that a distributor or retailer has engaged in a material contravention of the code. This aims to ensure that the regulator is kept informed of all findings of material contravention of an industry code.

The new section 270ZB (When QCA may refer material contravention) allows QCA to refer a material contravention or likely material contravention to the regulator if QCA has given a warning notice to the distributor or retailer. The referral can be made whether or not a code contravention notice has been given for, or a proceeding started in relation to, the contravention or likely contravention. However, the matter cannot be referred before the giving of a warning notice. This section aims to ensure that potential serious contraventions can be referred to the regulator without the need to engage in the processes involved in code contravention notices and bringing a proceeding in the Supreme Court.

The new section 270ZC (Guidelines for exercise of QCA powers for civil penalties) requires QCA to publish on its website, guidelines about when it will apply for a civil penalty order under section 270W (Proceeding for civil penalty order) or refer a matter to the regulator under section 270ZB (When QCA may refer material contravention). The QCA must take appropriate steps to consult with electricity entities before publishing guidelines. The guidelines must state that they are not legally binding on QCA and are non-justiciable.

The new section 270ZD (How regulator deals with referral) applies when QCA has referred a matter to the regulator, and allows the regulator to take action against the relevant distributor or retailer, including imposing a civil penalty for a distributor or retailer, amending, cancelling or suspending a distributor's or retailer's authority under the *Gas Supply Act*.

The new part 5 division 4 (Production of documents or information) has two sections

The new section 270ZE (Notice to produce documents or information) allows QCA to require, by written notice, a distributor or retailer to provide it with information or documents relevant to a QCA investigation to find out whether an entity is complying with an industry code. The notice must state the information or documents required, a period of no less than 7 days in which the documents or information are to be given and a reasonable place at which the documents or information are to be given. A penalty of a maximum of 500 penalty units will apply to contravention of the notice without reasonable excuse. A distributor or retailer is not required to comply with the notice if it claims, on the ground of self-incrimination, a privilege the entity would be entitled to claim against giving the information were the entity a witness in the Supreme Court in a prosecution for an offence. If a distributor or retailer claims that complying with the notice may tend to incriminate it, QCA or the distributor or retailer may make an application in the Supreme Court to decide the validity of the claim.

The new section 270ZF (Protection of confidential information given for investigation) applies section 187 of the *Queensland Competition Authority Act 1997* to confidential information obtained by QCA in relation to an industry code compliance investigation. Section 187 of the *Queensland Competition Authority Act 1997* allows the provider of the confidential information to request QCA not to disclose the information to another person. If QCA accepts that the information is confidential and is not required to be disclosed by the public interest, QCA must take reasonable steps to ensure that the information is not disclosed to any person other than certain specified bodies.

The new part 5 division 5 (Audits) has 4 sections.

The new section 270ZG (QCA's powers concerning audit of compliance with industry code) allows QCA to require a distributor or retailer to carry out an internal audit or to appoint an independent auditor to carry out an audit of the entity's compliance with an industry code or the information given by the entity to the QCA. If QCA requests the entity to conduct an internal audit and the entity fails to do so or appoints an auditor that does not have appropriate qualifications or experience, QCA can subsequently require an independent audit to be carried out. In appointing an independent auditor, the appointer must reasonably consider the person to have the appropriate qualifications or experience for carrying out the order.

The new section 270ZH (Responsibility for cost of audit) requires the distributor or retailer to pay for, or reimburse QCA in relation to, the cost of all audits ordered by QCA.

The new section 270ZI (Independent auditor may require reasonable help or information) allows an independent auditor appointed by QCA under the new section 270G to require a distributor or retailer to give the auditor reasonable help or information to carry out the audit. An electricity entity must comply with this requirement unless it has a reasonable excuse. A breach of this section attracts a penalty of 1000 penalty units. If the entity is an individual, it is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

The new section 270ZJ (Audit report and submissions on report) requires a distributor or retailer required by QCA to carry out, or appoint an independent auditor to carry out, an audit under the new section 270G(1), to provide QCA with a copy of the audit report as soon as possible after the completion of the audit. The section also requires QCA to give an entity a copy of the draft of an independent audit report in relation to that entity and allow the entity to make submissions to QCA on the draft report. QCA is also required to provide the entity with a copy of the final report and an opportunity to make further submissions to QCA on the final report.

### **Insertion of new ch 6, pt 1A (Civil penalty for particular contraventions)**

Clause 146 inserts a new chapter 6 into the *Gas Supply Act 2003* comprising four new sections.

The new section 270ZK (Application of pt 1A) applies if there is a material contravention of an industry code under sections 270ZA or 270ZB or a contravention of a compliance direction under the *Energy Ombudsman Act 2006* under section 44 of that Act or a retailer does not comply with a condition of the distributor's or retailer's authority under this Act in relation to the *Energy Ombudsman Act 2006*. If the contravention is a contravention of an industry code, this part only applies if the QCA has not applied for a civil penalty order under section 270W. Subsection (3) makes it clear that this part 1A does not limit or affect the taking of action under chapter 2, part 1, division 3 or chapter 3, part 1, division 3 concerning a distributor or retailer authority under this Act.

The new section 270ZL (Regulator may impose civil penalty) allows the regulator to impose a civil penalty on a distributor or retailer of not more

than the monetary value of 1333 penalty units. The regulator may only impose a penalty if the regulator has given the distributor or retailer a notice stating that the regulator proposes to impose the penalty, the grounds for imposing the penalty, the facts and circumstances that are the basis of the grounds and that the distributor or retailer may, within a stated period of at least 20 business days, make written submissions to show why the penalty should not be imposed. The regulator must consider any written submission made within the period of the notice.

The new section 270ZM (Information notice about and taking effect of decision) requires the regulator, as soon as practicable after making a decision to impose a civil penalty, to give the distributor or retailer an information notice about the decision. The decision must not take effect before the day the information notice is given but can take effect on a later day stated in the notice.

The new 270ZN (Civil penalty recoverable as a debt) allows the State to recover the amount of a civil penalty imposed by the regulator as a debt.

Amendment of s 279 (Who may appeal)

Clause 147 amends section 279 of the *Gas Supply Act 2003* by allowing a distributor or retailer who has been given, or is entitled to be given, an information notice about a decision under section 270ZL to impose a civil penalty may appeal against the decision to the District Court.

### **Amendment of s 286 (Unlawfully operating distribution pipeline)**

Clause 148 amends subsection 286(2) of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Amendment of s 287 (Unlawful tampering with gas infrastructure)**

Clause 149 amends section 287 of the *Gas Supply Act 2003* by inserting “or LPG distributor” after “distributor” to make it clear that LPG distributors’ infrastructure is protected by the Act.

### **Amendment of s 288 (Unlawfully selling reticulated fuel gas)**

Clause 150 amends section 288 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

**Amendment of s 289 (Unlawfully taking fuel gas)**

Clause 151 amends section 289 of the *Gas Supply Act 2003* by replacing the words “fuel gas installation” with “processed natural gas installation of LPG installation (the *gas installation*” and “fuel gas” with “processed natural gas or LPG” and by replacing paragraph 289(2)(a) with “an LPG distribution pipeline”.

**Amendment of s 295 (Evidence of tampering with gas infrastructure)**

Clause 152 amends section 295 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas or LPG” and by inserting “or LPG distributor’s” after “distributor’s” in paragraph 295(a) to make it clear that LPG distributor’s gas infrastructure is also addressed.

**Amendment of ch 6, pt 3, div 2 hdg (Provisions for unlawfully taking fuel gas)**

Clause 153 amends the heading of division 2, of part 3 of chapter 6 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas or LPG”.

**Amendment of s 297 (Evidence of unlawful taking of fuel gas)**

Clause 154 amends section 297 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas or LPG”.

**Amendment of s 298 (Proceeding may be for a period)**

Clause 155 amends section 298 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas or LPG”.

**Amendment of s 299 (Ownership of fuel gas for proceeding)**

Clause 156 amends section 299 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas or LPG”.

**Insertion of new ch 6, pt 3, div 3**

Clause 157 inserts a new chapter 6, part 3, division 3 (Provision for civil penalty proceedings) of the *Gas Supply Act 2003*.

The new section 299A (Relationship with criminal proceedings) applies if an application under section 270W (Proceeding for civil penalty order) or a referral under section 270ZB (When QCA may refer material contravention) to the regulator and any decision in relation to the referral that involves the imposition of a civil penalty is taken against or in relation to a person and a criminal proceeding has been started or has already been started against a person for an offence and the conduct that constitutes the offence is substantially the same as the conduct the subject of the civil penalty proceeding. In these circumstances the civil penalty proceeding must be stayed or not continued, however it may be resumed, if at the end of the criminal proceeding, there is no conviction for the offence. Evidence in the civil proceeding of information given or documents produced is not admissible in the criminal proceeding.

The new section 299B (Avoidance of multiple penalties) makes it clear that, if a civil penalty proceeding under 299A is taken and substantially the same conduct constitutes a contravention of 2 or more industry code provisions, a civil penalty must not be imposed or ordered in the proceeding more than once for that conduct.

### **Amendment of s 301 (Additional consequences of unlawfully operating distribution pipe)**

Clause 158 amends section 301 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Amendment of s 302 (Additional consequences of unlawfully selling reticulated fuel gas)**

Clause 159 amends section 302 of the *Gas Supply Act 2003* by replacing the words “fuel gas” with “processed natural gas”.

### **Insertion of new s 307A (Evidentiary effect of conduct notice)**

Clause 160 inserts a new section 307A into the *Gas Supply Act 2003* to make it clear that a document purporting to be a certified copy of a code convention notice is evidence that the notice was given under section 270S and is evidence of the contravention or other matters stated in it and is evidence that the notice has been given to the distributor or retailer stated in it under that section. A certified copy is defined to mean a copy with a certificate purporting to be signed by a member of QCA stating that the copy is a true copy of the document it purports to be.

**Insertion of new s 310A (Registers QCA must keep)**

Clause 161 inserts a new section 310A into the *Gas Supply Act 2003* and specifies that the QCA must keep a register of industry codes, each retailer's standard terms, warning notices (including expired warning notices), conduct assurances and code contraventions.

**Amendment of s 315 (Protection from civil liability for particular persons)**

Clause 162 amends section 315 of the *Gas Supply Act 2003* to include in the list of "relevant people" the GRMO, a director or other officer of the GRMO acting within the scope of the person's directorship or other office with the GRMO, an employee of the GRMO acting within the scope of the employee's employment, the QCA. This will ensure these people are not civilly liable to someone for an act done, or omission made, honestly and without negligence under the *Gas Supply Act 2003*.

**Amendment of s 316 (Limitation of liability of distributors and retailers)**

Clause 163 amends section 316 of the *Gas Supply Act 2003* by replacing the words "fuel gas" with "processed natural gas".

**Insertion of new s 316A (Protection from liability of member or employee of QCA)**

Clause 164 inserts a new section 316A into the *Gas Supply Act 2003* to make it clear that a member or employee of QCA is not civilly liable for an act done, or omission made, in good faith under the *Gas Supply Act 2003*. If civil liability is prevented from attaching to a member or employee of QCA, the liability attaches instead to QCA.

**Amendment of s 320 (Delegation by Minister)**

Clause 165 amends section 320 of the *Gas Supply Act 2003* by replacing the words "section 228 or 233" in subsection 320(3) with "chapter 3, part 4, division 2".

**Insertion of new s 321A & 321B**

Clause 166 inserts new sections 321A and 321B into the *Gas Supply Act 2003*.

The new section 321A (Delegation by QCA) enables QCA to delegate to the GRMO QCA's functions under chapter 5A, part 5 to the extent the functions relate to provisions of an industry code concerning gas retail and market services.

The new section 321B (Reporting to Minister by QCA) requires the QCA before each 31 December and 30 June, to give the Minister a written report about the performance of the QCA's functions under this Act or any of the Minister's functions under this Act that have been delegated to the QCA. QCA may, from time to time, give the Minister reports about any significant events in the State's processed natural gas market of which it considers the Minister ought to be aware, including systemic issues materially affecting consumers. A reference to the performance of a function includes the exercise of a power.

### **Replacement of ch 7 (Transitional provisions for Electricity and Other Legislation Amendment Act 2006)**

Clause 167 replaces chapter 7 of the *Gas Supply Act 2003* with a new chapter 7 comprising eight sections.

The new section 324 (Definitions for chapter 7) sets out definitions for chapter 7 including definitions for *amendment Act*, *FRC day*, *former*, *new*, *post-amended Act* and *pre-amended Act*.

The new section 325 (Conversion of particular customer retail contracts to standard contracts) applies if, immediately before the FRC day, a customer retail contract under the pre-amended Act was in force between a retailer and a customer for a customer for the customer's premises and under the post-amended Act the customer would be a small customer for the premises and notified prices applied to the customer for the provision of customer retail services to the premises. In those circumstances, on the FRC day, the customer retail contract is taken to end and the retailer and customer are taken to have entered into a standard retail contract for the premises. However, the ending of the customer retail contract does not affect rights or obligations accrued under it before the FRC day. The post-amended Act applies to the standard retail contract as if it had been made under the new section 204 and the premises were a small customer's premises. New sections 204 (Standard retail contract for particular small customers) and 207 (Ending of a standard retail contract) apply to the standard retail contract as if it were a contract that had been entered into under those sections.



The new section 326 (Small customer may enter into negotiated retail contract before FRC day) applies if, under the pre-amended Act, a customer is a non-contestable customer for premises if the customer would, under the post-amended Act, be a small customer for the premises. A customer may enter into a negotiated retail contract under the post-amended Act for the provision of customer retail services to the premises. However, until the FRC day, customer retail services can not be provided under the negotiated retail contract and any customer retail contract under the pre-amended Act continues to apply for the provision of the services. It is taken to be a term of the negotiated retail contract that the customer may, within 10 business days of the FRC day, terminate the contract without penalty by giving written notice to the retail entity. There is no need for the notice to state the grounds of the termination.

The new section 327 (Transitional retail contracts) applies on the FRC day if, immediately before the FRC day, a customer retail contract under the pre-amended Act was in force between a customer and a retailer and in the 12 months before FRC day, the customer at the premises consumed more than 1TJ but less than 10TJ of processed natural gas and notified prices applied to the customer for the provision of the services to the premises. In these circumstances the existing contract ends and the customer and retailer are taken to have entered into a transitional retail contract. However, the ending of the existing contract does not affect rights or obligations accrued under it before the FRC day. The terms of the transitional retail contract are the retailers terms for contract of the type to which this section applies as published on the retailer's website and given to the QCA no later than 5 days before the FRC day. As soon as practicable after publishing the terms on its website, the retailer must give the customer a notice that the terms of its transitional retail contract are able to be inspected on the retailer's website. The customer and the retailer are deemed to have agreed to comply with the terms and new section 207 (Ending of a standard retail contract) applies to the transitional retail contract as if a reference to a standard retail contract were a reference to a transitional retail contract. This section is subject to the retailer of last resort scheme. This section migrates this tranche of customers to a set of standard terms published by the area retailers with the purpose of regularising their contract terms. It is of a transitional nature in that there is no on-going regulation of these contracts which are with small customers.

The new section 328 (Reference to other particular contracts under pre-amended Act) makes it clear that, subject to sections 325 to 327, in an Act or document a reference to a customer connection contract under the pre-amended Act is taken to be a reference to a connection contract under the

post-amended Act and a reference to a customer retail contract under the pre-amended Act is taken to be a reference to a retail contract under the post-amended Act.

The new section 329 (Price publication requirements of area retailers for FRC) requires each area retailer to publish and give to the Minister and the QCA a list of the indicative prices that it proposes to charge its small customers under a standard retail contract for the provision of customer retail services on the FRC day if, before the FRC day, a day is prescribed under regulation, the prescribed day or otherwise by 31 March 2007. The maximum penalty for failing to publish these prices and give them to the Minister is 500 penalty units. The indicative prices are the prices the entity reasonably estimates it will be charging customers for the services, other than for network use of system charges, network FRC charges passed on to the area retailer from distributors and charges from the GRMO all of which will be passed on to customers by the area retailer.

Each area retailer must publish and give to the Minister and QCA a list of its actual prices for the services on the earlier of the day that is 20 days after the last of the charges mentioned in subsection 329(2) is fixed or the day that is 5 days before the FRC day. The maximum penalty for failing to publish the actual prices or give them to the Minister by the due date is 500 penalty units. Publication of actual prices under subsection 329(3) may be included in a publication of the area retailer's standard terms under section 206 as that section applies because of section 325. For the purposes of this section, publication of the indicative and actual prices can take place on the area retailer's website.

The new 330 (Area retailer's obligations about standard terms apply 1 month before FRC day) ensures that new section 160 (Obligation to have standard terms before providing customer retail services), section 205 (Retailer's standard terms for small customers) and section 206 (Publication of standard terms) apply as if the sections had commenced 1 month before FRC day. However, subsection (1) does not apply for the prices for customer retail services in a retailer's standard terms. Also, if the retailer gives a list of its actual prices under section 329(3), the retailer may amend its standard terms without complying with section 206 (Commencement of customer retail services).

The new section 331 (Price publication requirements of general retailers for FRC) requires each general retailer, before the FRC day, to publish on its website and give to the QCA, its prices on FRC day for small customers on standard retail contracts for customer retail services.

The new section 332 (Existing mediated agreements) makes it clear that former section 264 (which has been omitted under clause 142) continues to apply for a mediated agreement under the pre-amended Act as if the sections were still in force.

The new section 333 (Existing orders on arbitrated disputes) makes it clear that former section 265 (which has been omitted under clause 142) continues to apply for an order made under the section as if the section were still in force.

### **Omission of sch 1 (Contestable customers)**

Clause 168 omits schedule 1 of the *Gas Supply Act 2003* as the concept of contestable customers is redundant under the new Act.

### **Omission of sch 3 (New authorities)**

Clause 169 omits schedule 3 of the *Gas Supply Act 2003* as old sections 327 and 328 which set up schedule 3 have been omitted and schedule 3 is therefore redundant.

### **Amendment of sch 4 (Dictionary)**

Clause 170(1) amends schedule 4 of the *Gas Supply Act 2003* by omitting the definitions of ‘*contestable customer*’, ‘*customer connection contract*’, ‘*customer retail contract*’, ‘*discontinuance request*’, ‘*fuel gas*’, ‘*information notice*’, ‘*LPG*’, ‘*non-contestable customer*’, ‘*notified prices*’, ‘*protected customer*’ and ‘*register*’.

Clause 170(2) inserts definitions of ‘*advisory committee*’, ‘*area retailer obligation*’, ‘*code contravention notice*’, ‘*conduct assurance*’, ‘*connection contract*’, ‘*energy ombudsman*’, ‘*excluded customer*’, ‘*gas retail market services*’, ‘*GRMO*’, ‘*industry code*’, ‘*information notice*’, ‘*initial industry code*’, ‘*large customer*’, ‘*LPG distribution pipeline*’, ‘*LPG distribution system*’, ‘*LPG distributor*’, ‘*MIRN*’, ‘*MIRN premises*’, ‘*negotiated retail contract*’, ‘*notified prices*’, ‘*premises*’, ‘*pricing investigation*’, ‘*QCA Act*’, ‘*QCA code objective*’, ‘*register of authorities*’, ‘*retail contract*’, ‘*retail services application*’, ‘*small customer*’, ‘*standard retail contract*’, ‘*standard terms*’ and ‘*warning notice*’.

Clause 170(3) replaces the words “fuel gas” with “processed natural gas” in the definitions of ‘*corresponding authority*’ paragraph (h) and definitions, ‘*meter*’, ‘*reticulated*’ and ‘*supply*’.

Clause 170(4) replaces the word “discontinue” with “disconnect” in the definition of “*discontinue*”.

Clause 170(5) inserts the words “of authorities” after “register” in the definition of holder.

Clause 170(6) replaces “*Queensland Competition Authority Act 1997*” with “QCA Act” in the definition of QCA.

Clause 170 renumbers schedule 4 as schedule 2 as a result of the omission of schedule 1 (under clause 167) and schedule 3 (under clause 168).

## **Part 5                      Amendment of Queensland Competition Authority Act 1997**

### **Act amended in pt 5**

Clause 171 states that part 5 of the *Energy Legislation Amendment Act 2005* amends the *Queensland Competition Authority Act 1997*.

### **Amendment of s 10 (Authority’s function)**

Clause 172 amends section 10 of the *Queensland Competition Authority Act 1997* by replacing paragraphs (j), (k) and (l) to make it clear that the Authority’s functions include making industry codes other than an initial industry code under the *Electricity Act 1994* and the *Gas Supply Act 2003*. The Authority’s functions also include monitoring compliance with industry codes under the *Electricity Act 1994* and the *Gas Supply Act 2003* and reviewing particular decisions under the *Electricity Act 1994*. Paragraph (m) is also amended to provide examples of other functions under another Act including performing a function or exercising a power delegated to it under another Act or doing an act the QCA is directed to do under another Act.

### **Amendment of s 187 (Confidential information)**

Clause 173 amends section 187 of the *Queensland Competition Authority Act 1997* by replacing a reference in 187(3)(f) to section 63(1)(e) of the *Electricity Act 1994* with a reference to section 63(1)(c). Paragraphs 187(3)(g) and (h) are renumbered as paragraphs 187(3)(h) and (i) and a new paragraph (g) is inserted to allow disclosure of confidential

information to the regulator under the *Gas Supply Act 2003* to facilitate the performance of the regulator's function of monitoring and compliance with the conditions of authorities under that Act.

### **Replacement of s 227A (Keeping registers)**

Clause 174 replaces section 227A of the *Queensland Competition Authority Act 1997* to make it clear that the QCA can keep a register in a way it considers appropriate. However, if the register is a register of industry codes under the *Electricity Act 1994* or the *Gas Supply Act 2003*, the QCA must keep the register in a way that ensures each code included in the register is published on its website.

### **Amendment of s 239 (Confidential information)**

Clause 175 amends section 239 of the *Queensland Competition Authority Act 1997* by replacing a reference in paragraph 239(2)(e) to section 63(1)(e) of the *Electricity Act 1994* with a reference to section 63(1)(c). Paragraphs 239(2)(e) and (f) are renumbered as paragraphs 239(2)(f) and (g) and a new paragraph (e) is inserted to allow disclosure of confidential information to the regulator under the *Gas Supply Act 2003* to facilitate the performance of the regulator's function of monitoring and compliance with the conditions of authorities under that Act.

### **Amendment of schedule (Dictionary)**

Clause 176 amends the schedule (Dictionary) of the *Queensland Competition Authority Act 1997* by replacing the definition of register to include reference to a register the QCA is required to keep under the *Electricity Act 1994* section 254B or the *Gas Supply Act 2003* section 310A.

## **Part 6                      Minor and consequential amendments**

### Acts amended in schedule

Clause 177 states that part 5 of the *Energy Legislation Amendment Act 2005* amends the Acts it mentions. This Clause makes minor and consequential amendments to the *Electricity Act 1994*, *Gas Supply Act*

*2003, Integrated Planning Act 1997 and Petroleum and Gas (Production and Safety) Act 2004.*