

Queensland



Subordinate Legislation 2000 No. 262

Electricity Act 1994

ELECTRICITY AMENDMENT REGULATION (No. 2) 2000

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Short title

1. This regulation may be cited as the *Electricity Amendment Regulation (No. 2) 2000*.

Regulation amended

2. This regulation amends the *Electricity Regulation 1994*.

Insertion of new ch 8, pt 1, div 2, sdiv 1 hdg

3. After chapter 8, part 1, after division 2 heading—
insert—

‘Subdivision 1—Preliminary’.

Amendment of s 342 (Definitions for div 2)

4. Section 342—
insert—

“**anniversary**”, of an on-supply agreement, means—

- (a) each anniversary of the day the agreement was made; or
- (b) if the agreement was made on 29 February in a leap year—28 February.

“**common area**”, of an on-supplier’s premises, means a part of the premises that the on-supplier and each lessee or other person the on-supplier has given a right to use the premises have agreed is a common area of the premises.

Examples of a part of an on-supplier’s premises that may be a common area—

- community, entertainment, information and leisure facilities in a caravan park
- elevators, escalators and stairways
- fountains and gardens
- malls and walkways

- parking areas
- rest rooms and toilets.

“common area consumption”, for an on-supplier’s premises, means the whole or part of the electricity consumed in a common area of the on-supplier’s premises.

“on-supplier’s premises”, for a person who is an on-supplier, means the premises for which the person is an on-supplier.

“on-supply agreement” means an agreement made under section 342B.

“year”, of an on-supply agreement, means—

- (a) if the agreement is in force for a period of less than 12 months—that period; or
- (b) if the agreement is in force for 12 months or more—
 - (i) the period starting on the day the agreement was made and ending on the first anniversary of that day; and
 - (ii) each subsequent period of 12 months or less during which the agreement is in force, starting on each subsequent anniversary of that day and ending on—
 - (A) the next anniversary of that day; or
 - (B) if the agreement ends before the next anniversary—the day the agreement ended.’.

Insertion of new ch 8, pt 1, div 2, sdiv 2 hdg

5. After chapter 8, part 1, division 2, after section 342—

insert—

‘Subdivision 2—Exemptions’.

Amendment of s 342A (Exemptions for on-suppliers)

6. Section 342A(2), ‘section 342B(2) and (3)’—

omit, insert—

‘subdivisions 3 to 7’.

Replacement of s 342B (Charges from on-suppliers to receivers)**7. Section 342B—**

omit, insert—

‘Subdivision 3—On-supply agreements**‘On-supply agreements**

‘342B.(1) An on-supplier and a receiver may agree about how—

- (a) the on-supplier is to supply electricity to the receiver; or
- (b) the on-supplier may charge the receiver for common area consumption for the on-supplier’s premises.

‘(2) The agreement may provide for a stated charge or for no charge for the supply or common area consumption.

‘(3) The agreement may be—

- (a) written or oral; or
- (b) made in any way permitted by law; or
- (c) incorporated in a lease or other agreement between the on-supplier and the receiver.

‘Regulation prevails over on-supply agreement

‘342C. If there is an inconsistency between an on-supply agreement and this regulation, this regulation prevails to the extent of the inconsistency.

‘Subdivision 4—Preliminary disclosure requirements about common area charges**‘Application of sdiv 4**

‘342D. This subdivision applies if—

- (a) a person (the **“prospective on-supplier”**) proposes to enter into an on-supply agreement as an on-supplier; and
- (b) under the agreement, the on-supplier will charge another

(the “**prospective receiver**”) for common area consumption for the on-supplier’s premises.

‘Preliminary consumption estimate

‘342E.(1) The prospective on-supplier must, within a reasonable period before making the on-supply agreement, give the prospective receiver an estimate of the common area consumption for the first year of the agreement.

‘(2) In deciding what is reasonable for subsection (1), regard must be had to whether the period was enough to allow the prospective receiver to estimate his or her liability for the common area consumption for the first year.

‘Required contents for on-supply agreement

‘342F.(1) The prospective on-supplier must not enter into the on-supply agreement unless it provides for—

- (a) how the common area consumption is to be worked out; and
- (b) if the receiver is only required to pay part of the common area consumption—how that part is to be worked out.

‘(2) Subject to section 342G, a failure to comply with subsection (1) does not invalidate the agreement.

‘Consequence of not complying with sdiv 4

‘342G.(1) This section applies if the prospective on-supplier—

- (a) does not comply with section 342E(1) before entering into the on-supply agreement; or
- (b) enters into an on-supply agreement in contravention of section 342F.

‘(2) The receiver under the agreement, may by written notice to the on-supplier, terminate any liability that the receiver would, other than for this section, have had for common area consumption to which the agreement applies.

‘(3) However, the notice may be given only within 2 months after the agreement is made.

‘(4) A termination under this section ends any liability for common area consumption accrued or incurred under the agreement or otherwise at any time before or after the termination.

‘(5) To remove any doubt, it is declared that a termination under this section does not, of itself, affect any other liability of the receiver to the on-supplier under the agreement or another agreement.

‘(6) This section does not limit section 342A(2).

‘Subdivision 5—Individual metering

‘Individual metering option

‘**342H.(1)** This section applies if an on-supply agreement between an on-supplier and a receiver is in force.

‘(2) The receiver may, at any time—

- (a) elect, by written notice to the on-supplier, to be charged on the basis of the receiver’s consumption of electricity supplied from the on-supplier, as measured by a meter; and
- (b) install the meter, at the receiver’s expense.

‘(3) However, the election has effect only if the installation—

- (a) complies with this regulation; and
- (b) is done in a way—
 - (i) that complies with any reasonable written directions the on-supplier gives the receiver within 5 business days after the giving of the notice; or
 - (ii) if no written directions are given within the 5 business days—that is reasonable.

‘(4) In deciding what is reasonable for subsection (3), regard must be had to the interests of the on-supplier and anyone who is an occupier of the on-supplier’s premises.

‘Compensation for installation damage

‘342I.(1) This section applies if—

- (a) a receiver has, under section 342H, given an on-supplier a written notice of election; and
- (b) the receiver installs a meter for electricity supplied from the on-supplier to the receiver; and
- (c) either—
 - (i) no written direction was given by the on-supplier under section 342H; or
 - (ii) the installation was done in a way that does not comply with the on-supplier’s reasonable written directions under that section; or
 - (iii) the installation was not done in a way that is reasonable; and
- (d) a person as follows (the **“claimant”**) suffers damage to property because of the installation—
 - (i) the on-supplier;
 - (ii) anyone who is an occupier of the on-supplier’s premises.

‘(2) Compensation for the damage is payable by the receiver to the claimant.

‘(3) The compensation may be claimed and recovered in a proceeding brought in a court of competent jurisdiction.

‘(4) A court may order payment of the compensation only if it is just to make the order in the circumstances of the particular case.

‘(5) In making the order the court must have regard to—

- (a) whether it was reasonable for the claimant to give the receiver an opportunity to fix the damage; and
- (b) if paragraph (a) applies—whether the receiver was given a reasonable period to fix the damage.

‘(6) This section does not limit a civil right or remedy that exists apart from this section, whether at common law or otherwise.

‘Maximum charge for metered supply

‘**342J.(1)** This section applies if electricity supplied from an on-supplier to a receiver is charged on the basis of the receiver’s electricity consumption as measured by a meter.

‘(2) If there is a relevant retail entity for the supply, the rate of the charge must not be more than the lowest rate that the receiver would have paid for the consumption had the receiver been a non-contestable customer of the entity.

‘(3) If there is no relevant retail entity for the supply, the rate of charge must not be more than the lowest rate that the receiver would have paid for the consumption had the receiver been a non-contestable customer of the retail entity that sells electricity to the on-supplier.

‘(4) In working out the lowest rate for subsections (2) and (3), any cost of connecting the receiver’s premises to a supply network to allow the supply of electricity from the network to the premises must be disregarded.

‘(5) The on-supplier can not recover an amount for the consumption to the extent the amount has been worked out at a rate that is more than the lowest rate allowed under subsection (2) or (3).

‘(6) In this section—

“**relevant retail entity**”, for the supply, means a retail entity whose retail authority states an area in which the receiver’s premises are located.

*‘Subdivision 6—Disclosure requirements for common area
consumption charges*

‘Application of sdiv 6

‘**342K.** This subdivision applies if, under an on-supply agreement, the on-supplier may charge for common area consumption.

‘Periodic consumption estimates

‘**342L.(1)** The on-supplier must, for each year of the agreement after its first year, give the receiver an estimate of the common area consumption for the on-supplier’s premises during the year.

‘(2) The first estimate must be given at least 1 month before the second anniversary of the agreement.

‘(3) Each subsequent estimate must be given at least 1 month before the next anniversary of the agreement.

‘**Annual audited statements**

‘**342M.(1)** The on-supplier must, for each year of the agreement, give the receiver audited statements of the common area consumption.

‘(2) Each statement must—

- (a) comply with section 342N; and
- (b) be given within 3 months after each anniversary of the agreement.

‘**Content requirements for audited statement**

‘**342N.** Each audited statement under section 342M must—

- (a) comply with the standards in the statements of accounting and auditing standards made by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia; and
- (b) be prepared by a person (the “**auditor**”) who is—
 - (i) registered, or taken to be registered, as an auditor under the Corporations Law; or
 - (ii) a member of, and holds a practising certificate from, the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia.
- (c) contain the auditor’s opinion about whether the statement presents fairly the on-supplier’s charges for the common area consumption during the period to which it relates, in accordance with the on-supplier’s financial records; and
- (d) compare each relevant estimates given under this division with the amount actually spent by the on-supplier on the common area consumption during the period; and
- (e) compare the total amount actually spent by the on-supplier on

common area consumption during the period with the amount actually paid for the period by anyone for the on-supplier's premises.

Subdivision 7—On-sellers who operate a private network

Market Code exemption required

342O. An on-supplier must be exempt from the requirement under the Market Code, clause 2.5,¹ to be registered as a network service provider if the on-seller—

- (a) operates a supply network located solely within the on-supplier's premises; and
- (b) supplies electricity using the network or sells electricity from the network.'.

Insertion of new ch 8, pt 5

8. Chapter 8, after section 348—

insert—

**PART 5—TRANSITIONAL PROVISIONS FOR
ELECTRICITY AMENDMENT REGULATION (No. 2)
2000**

Existing decisions or agreements about on-supply charging

349.(1) This section applies to the following in force immediately before the day this section commenced—

- (a) a decision by an on supplier about a way of charging made under section 342B as it was in force immediately before the commencement; or
- (b) an agreement between an on-supplier and a receiver about how

¹ The Market Code, clause 2.5 (Network service provider)

the receiver is to be supplied electricity by the on-supplier, made in any way allowed under section 342B as in force immediately after the commencement (the “**current section 342**”).

‘(2) On the commencement, the decision or agreement is taken to be an on-supply agreement made under the current section 342B.

‘Existing agreements about common area consumption

‘**350.** Chapter 8, part 1, division 2, subdivisions 4 and 6 do not apply to an on-supply agreement made before the day this section commenced.’.

Amendment of sch 8 (Dictionary)

9. Schedule 8—

insert—

‘ “**anniversary**”, of an on-supply agreement, for chapter 8, part 1, division 2, see section 342.

“**common area**”, of an on-supplier’s premises, for chapter 8, part 1, division 2, see section 342.

“**common area consumption**”, for chapter 8, part 1, division 2, see section 342.

“**on-supplier’s premises**”, for a person who is an on-supplier, for chapter 8, part 1, division 2, see section 342.

“**on-supply agreement**”, for chapter 8, part 1, division 2, means an agreement of a type allowed under section 342B.

“**prospective on-supplier**”, for chapter 8, part 1, division 2, subdivision 4, see section 342D(a).

“**prospectivereceiver**”, for chapter 8, part 1, division 2, subdivision 4, see section 342D(b).

“**year**”, of an on-supply agreement, for chapter 8, part 1, division 2, see section 342.’.

ENDNOTES

1. Made by the Governor in Council on 12 October 2000.
2. Notified in the gazette on 13 October 2000.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Mines and Energy.