Parliamentary Committees

Electricity and Other Legislation Amendment Bill 2014

Report No. 40
State Development, Infrastructure and Industry Committee
May 2014

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Energy and Water Supply.

[1] On 6 May 2014, the committee was advised of the inability of the member for Gympie to attend meetings of the committee. The member for Keppel was appointed as Acting Chair and the member for Hervey Bay was appointed as a committee member for the duration of Mr Gibson's absence.

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Electricity and Other Legislation Amendment Bill 2014.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of Energy and Water Supply who briefed the committee, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Bruce Young MP
Acting Chair

May 2014

Abbreviations

AEMC	Australian Energy Market Commission
APPEA	Australian Petroleum Production and Exploration Association
Bill	Electricity and Other Legislation Amendment Bill 2014
committee	State Development, Infrastructure and Industry Committee
CSG water	coal seam gas water
department	Department of Energy and Water Supply
EHP	Department of Environment and Heritage Protection
explanatory notes	Electricity and Other Legislation Amendment Bill 2014 Explanatory Notes
FLP	fundamental legislative principle
KWh	kilowatt hour
MEA	Master Electricians Australia
NCC	National Competition Council[2]
NGL or National Gas Law	The Schedule to the *National Gas (South Australia) Act 2008* (SA)
PV	Photovoltaic
QCA	Queensland Competition Authority
QFF	Queensland Farmers' Federation
Water Supply Bill	Water Supply Services Legislation Amendment Bill 2014
WSRA	*Water Supply (Safety and Reliability) Act 2008* (Qld)

[2] The National Competition Council was established by section 29A of the *Trade Practices Act 1974* (Cth).

Recommendations

The committee recommends the Electricity and Other Legislation Amendment Bill 2014 be passed.

The committee recommends the Bill be amended to include definitions for 'prescribed retail entity' and 'relevant small customer' for the purposes of proposed new sections 55DBA and 61B(3).

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:[3]

- State Development, Infrastructure and Planning
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 20 March 2014, the Electricity and Other Legislation Amendment Bill 2014 (the Bill) was referred to the committee for examination and report. In accordance with Standing Order 136(1), the Committee of the Legislative Assembly fixed the committee's reporting date as 13 May 2014.

1.3 The committee's inquiry process

On 20 March 2014, the committee called for written submissions by placing notification of the inquiry on its website and notifying its email subscribers. In the week commencing 24 March 2014, the committee sent letters to a range of relevant stakeholders notifying them of the committee's inquiry and seeking submissions. The closing date for submissions was 4 April 2014. The committee received 5 submissions (see Appendix A for list of submitters).

On 2 April 2014, the committee held a public briefing with the Department of Energy and Water Supply (the department). On 10 April 2014, the committee held a public hearing in Brisbane (see Appendix B for list of witnesses).

The submissions and the transcripts of the public departmental briefing and public hearing are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.

1.4 Policy objectives of the Bill

The policy objectives of the Bill fall into three areas:

- continuation of the Solar Bonus Scheme for regional Queensland customers
- regulation of coal seam gas (CSG) water, and
- funding for Queensland's Australian Energy Market Commission payment.

[3] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

Specifically, the objectives of the Bill are to:[4]

- ensure customers of Ergon Energy Queensland and Queensland Special Approval Customers in the Essential Energy network ('regional Queensland customers') continue to receive a mandatory feed-in tariff payment for electricity produced by a small solar photovoltaic generator installed at the premises and exported to the supply network, and that the cost of funding the mandatory feed-in tariff to regional Queensland customers is not borne by Queensland electricity consumers
- repeal the provisions of the *Water Supply (Safety and Reliability) Act 2008* that treat CSG water as recycled water to remove regulatory duplication and encourage the use of CSG water, and
- recover Queensland's portion of the cost of funding the Australian Energy Market Commission (AEMC) through the imposition of a levy on electricity transmission entities and gas pipeline licence holders that are regulated under the national energy laws.

These objectives are examined in Part 2 of this report.

1.5 The Government's consultation on the Bill

The department consulted with various stakeholders during its preparation of the Bill. Specifically:[5]

- Solar Bonus Scheme – the department consulted with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of State Development, Infrastructure and Planning, Ergon Energy Queensland and the Queensland Competition Authority (QCA).
- CSG water – the department consulted with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of State Development, Infrastructure and Planning, the Department of Health, and the Department of Environment and Heritage Protection. The explanatory notes comment that the QCA consulted Government, industry and community groups during its review of the CSG industry regulation. The QCA released a draft report for consultation that recommended the repeal of the CSG water provisions in the *Water Supply (Safety and Reliability) Act 2008*.[6]
- AEMC payment – the department consulted with the Department of the Premier and Cabinet, Queensland Treasury and Trade and the Department of Natural Resources and Mines. Community groups were not consulted due to 'the minor financial impost on households.'[7] The affected companies - Powerlink, APT Petroleum Pty Ltd, Roverton Pty Ltd and Westside CSG A Pty Ltd - were notified of the new levy. The department advised the committee that it is further considering the issues raised by the APA Group.[8]

The committee notes that there was no broad community consultation on the proposed legislation.

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. After examining the Bill, and considering issues raised in submissions and at the public hearing, the committee has determined the Bill should be passed.

4 Explanatory Notes, pp 1-4.
5 Explanatory Notes, p 6.
6 Explanatory Notes, p 6.
7 Explanatory Notes, p 6.
8 Department of Energy and Water Supply, correspondence dated 15 April 2014.

Recommendation 1

The committee recommends the Electricity and Other Legislation Amendment Bill 2014 be passed.

2 Examination of the Bill

2.1 Solar Bonus Scheme

The Bill proposes to amend the *Electricity Act 1994* to continue mandating a feed-in tariff payment for regional Queensland customers with solar photovoltaic systems.

Under the Solar Bonus Scheme, eligible participants are paid for surplus electricity generated by solar photovoltaic systems and supplied into the electricity network.[9] The tariff is set by the Government.[10]

Participants who satisfied certain conditions prior to 10 July 2012 are paid $0.44 for each kilowatt hour (category 1 small customers). Participants who satisfied certain conditions after 9 July 2012 are paid $0.08 for each kilowatt hour (category 2 small customers).[11]

2.1.1 Cessation of the Solar Bonus Scheme for South-East Queensland customers

From 30 June 2014, Energex will not be required to credit category 2 small customers connected to the Energex network in South-East Queensland for surplus electricity they supply to the electricity network.[12] These customers will be able to negotiate a rate with their electricity retailer.[13]

The Government decided not to mandate new feed-in tariff arrangements for small customers in South-East Queensland because 'retail competition already delivers voluntary feed-in tariffs in this area, outside of the regulated Scheme'.[14] Retailers are presently paying customers on the Energex network an extra voluntary feed-in tariff ranging from $0.04 to $0.10 on top of the $0.08 feed-in tariff.[15]

The department considered that competition between the retailers will encourage them to continue to offer reasonable voluntary feed-in tariff rates.[16] The department advised the committee that changes are to be made to the Electricity Industry Code so that the QCA can publish the rates offered by the retailers and thereby encourage increased levels of competition.[17]

2.1.2 Continuation of the Solar Bonus Scheme for regional Queensland customers

The Bill proposes to continue the Solar Bonus Scheme for regional Queensland customers whereby the electricity retailers will pay the feed-in tariff rather than the distributors.

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9 Explanatory Notes, p 1.

10 Ibid, p 2.

11 *Electricity Act 1994*, s 44A; Electricity Regulation 2006, s 30AA(1)(a)&(b).

12 *Electricity Act 1994*, s 44A(2); Electricity Regulation 2006, s 30AA(3). Electricity Amendment Regulation (No.4) 2012 amended the Electricity Regulation 2006 to prescribe the date at which small customers stop receiving the credit. See also, Hon Mark McArdle MP, Minister for Energy and Water Supply, 'Government reforms the 8c solar feed-in tariff from 1 July 2014', *Ministerial Media Release*, 6 March 2014. Category 1 small customers will continue to receive $0.44 per kilowatt hour until 1 July 2028. All links in this paper were accessed on 5 May 2014.

13 Hon Mark McArdle MP, Minister for Energy and Water Supply, 'Government reforms the 8c solar feed-in tariff from 1 July 2014', *Ministerial Media Release*, 6 March 2014. In South-East Queensland, consumers can choose from the following electricity retailers: AGL Sales Pty Ltd; Australian Power and Gas; Click Energy; Diamond Energy; Dodo Power and Gas; Energy Australia; Lumo Energy; Momentum Energy; Origin Energy Electricity Limited; Powerdirect Pty Ltd; QEnergy; Red Energy; Sanctuary Energy; and Simply Energy: Queensland Competition Authority (QCA), 'Electricity Retailers'.

14 Explanatory Notes, p 2.

15 Public briefing transcript, 2 April 2014, p 7.

16 Ibid, pp 7-8.

17 Ibid, p 8.

The explanatory notes state that the Government decided to continue mandating a feed-in tariff for regional Queensland customers because when the 8c/kWh feed-in tariff expires, these customers, unlike South-East Queensland customers, are not likely to receive payment for their exported electricity.[18]

Under the current arrangements, electricity distributors fund the feed-in tariff payment and recover the payment from their customers. The department advised the committee that under the proposed amendments, electricity retailers will fund the feed-in tariff because retailers receive a financial benefit from on-selling the electricity supplied to the network by customers with solar PV systems.[19] In addition, the QCA recommended the change from distributors to retailers because it will avoid cross-subsidies between customers and 'the inequitable recovery of costs from those customers least able to afford them'.[20] The amendment is designed to implement the policy objective of ensuring that the cost of funding the mandatory feed-in tariff payment to regional Queensland customers is not borne by Queensland electricity consumers.[21]

Electricity produced by small photovoltaic generator

Proposed new section 55DBA makes it a condition of a 'prescribed retail entity's' retail authority that the entity must reduce the charges on eligible customers' bills by the feed-in tariff amount unless the small customer is entitled to receive $0.44 per kilowatt hour for electricity supplied to the network.[22]

The feed-in tariff amount is the amount worked out by multiplying the feed-in tariff by the number of kilowatt hours of electricity that is, at any instant in the relevant supply period, produced by one small photovoltaic (PV) generator connected at the relevant small customer's premises to a supply network and supplied to the network.

If the feed-in tariff amount is more than the charges payable, the customer is to be paid the unused amount of the feed-in tariff amount after the end of 12 months after the end of the first supply period.

Under proposed new s 55DBA, the prescribed retail entity must also give the customer the following information for each relevant supply period:

- the amount of electricity supplied by the customer to the supply network, and
- the feed-in tariff amount.

The explanatory notes advise that supporting amendments will be made to the Electricity Regulation 2006 to prescribe the retail entities required to pay the feed-in tariff. The prescribed retail entities will be Ergon Energy Queensland and the holder of Special Approval No. SA 02/11 (Origin Energy Electricity Limited).[23]

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[18] Explanatory Notes, p 2. See QCA, 'Electricity Retailers' <http://comparator.qca.org.au/Price-Comparator/Electricity-Retailers> for the reason why retail competition has not developed in regional Queensland.

[19] Public briefing transcript, 2 April 2014, p 2.

[20] QCA, *Estimating a Fair and Reasonable Solar Feed-in Tariff for Queensland: Final report*, March 2013, p vi.

[21] Explanatory Notes, pp 1 and 3.

[22] A retail authority authorises its holder to provide customer retail services under the terms of the authority: *Electricity Act 1994*, s 47.

[23] Page 3 of the Explanatory Notes outlines that Origin Energy Electricity Limited provides retail services to approximately 5700 Queensland non-market customers on New South Wales distributor Essential Energy's network in southern Queensland under the terms of Special Approval No. 02/11, which commenced in 2011 and expires on 30 June 2020.

Committee comment

The committee notes that there does not appear to be definitions for 'prescribed retail entity' and 'relevant small customer' for Chapter 2, Parts 6 and 7, despite the term being used in proposed new section 55DBA and proposed new section 61B(3). There are definitions for the terms in proposed new section 92 but they are only relevant for proposed new Chapter 4, Part 2A.

The committee recommends the Bill be amended to include definitions for 'prescribed retail entity' and 'relevant small customer' for the purposes of proposed new sections 55DBA and 61B(3) to improve legislative clarity. Without amendment, the committee considers there is a small risk of uncertainty over which entity and which customers will be subject to proposed new sections 55DBA and 61B(3).

Recommendation 2

The committee recommends the Bill be amended to include definitions for 'prescribed retail entity' and 'relevant small customer' for the purposes of proposed new sections 55DBA and 61B(3).

Feed-in tariff

'Feed-in tariff' is defined in proposed new section 92 of the *Electricity Act 1994* as the rate to be used for working out the amount that must be credited by a prescribed retail entity to a relevant small customer for electricity that is produced by a small photovoltaic (PV) generator connected at the customer's premises and supplied to the network.[24]

Determination of the feed-in tariff

Under the proposed amendments, the Minister would direct the QCA to determine the feed-in tariff for electricity produced by a small PV system and exported to the supply network. The QCA would be required to take into account the effect of the feed-in tariff on competition in the Queensland retail electricity market and any other matter stated in the Minister's direction, such as consultation. The existing feed-in tariff continues to apply until a new feed-in tariff applies. The QCA must publish the new feed-in tariff at least one month before it is to apply.[25]

The department advised the committee that it expects that regional Queensland customers will receive around $0.08 per kilowatt hour.[26]

Requirement to comply with section 55DBA

Proposed new s 61B(3) provides that if a special approval holder is a prescribed retail entity, it is a condition of the special approval that the holder must comply with proposed new section 55DBA.

Ability to reduce charges payable

Proposed new s 91A(5) makes it clear that a retail entity can reduce the charge payable by a non-market customer by the amount the retail entity pays for electricity produced at the customer's premises and supplied to the network.[27]

[24] 'Relevant small customer', of a prescribed retail entity, means a small customer if:
- the entity provides customer retail services to the customer's premises; and
- one small photovoltaic generator is connected at the customer's premises to a supply network: proposed new s 92.

[25] Proposed new sections 93 to 95. Note however that the first feed-in tariff need only be published at least 2 weeks before it is to apply: proposed new s 351.

[26] Public briefing transcript, 2 April 2014, p 9.

Amendment to section 55G

Clause 9 seeks to clarify that section 55G of the *Electricity Act 1994* does not prevent Ergon Energy or its subsidiaries from entering into a separate arrangement with a small customer to buy electricity produced at the small customer's premises and supplied to a supply network.

Amendment to section 55DB

Clause 7 proposes to replace the words 'small photovoltaic generator' in the heading of section 55DB with the words 'qualifying generator'. The intent of this amendment is to clarify that section 55DB applies additional conditions on a retail entity in relation to electricity produced by a qualifying generator. The amendment ensures that section 55DB is distinguished from section 55DBA which applies conditions on a prescribed retail entity in relation to electricity produced by a 'small photovoltaic generator'.[28]

Review of feed-in tariff provisions

Within five years after the commencement of the proposed amendments, the chief executive of the department must review the operation of proposed section 55DBA and Chapter 4, Part 2A.[29]

Committee consideration and comment

Submissions received by the committee in relation to the Solar Bonus Scheme supported the proposed amendments. Master Electricians Australia (MEA) considered that those customers with solar PV systems benefit from having access to solar power and '[a]ny further financial support [for PV system owners in South-East Queensland] only penalises the rest of the public through higher electricity bills'.[30] The MEA considered the proposed amendments 'will result in a more sustainable scheme'. The Queensland Farmers' Federation (QFF) supported the amendments for similar reasons. The QFF also expressed its support for the QCA having responsibility for setting the level of the feed-in tariff for rural areas. [31]

The QFF commented that the Bill does not take into account the 'significant impact' of the $0.44 feed-in tariff on electricity prices. In response, the department advised that the 44c/kWh feed-in tariff is being separately considered.

Steel Wave Power submitted that there are issues with connecting Virtual Power Parks in regional Queensland and suggested a different amendment to section 55G of the *Electricity Act 1994* to enable Ergon Energy and its subsidiaries to enter into a negotiated retail contract relating to an Alternative Energy Development program on North Stradbroke Island. The committee considers that the proposed amendment does not fall within the policy objectives of the Bill.[32]

The committee supports the continuation of the mandatory feed-in tariff for regional Queensland customers on the basis that such customers would not receive payment for the electricity they contribute to the network if it were not legislated. The committee also supports the proposed change to the Solar Bonus Scheme on the basis that retailers will fund the feed-in tariff and this may result in savings for customers.[33]

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27 Current s 91A(5) is proposed to be renumbered s 91A(6).

28 Explanatory Notes, pp 8 – 9.

29 Proposed new s 64A.

30 Master Electricians Australia, Submission No. 4.

31 Queensland Farmers' Federation, Submission No. 3; Department of Energy and Water Supply, correspondence dated 15 April 2014.

32 Steel Wave Power, Submission No. 2; Department of Energy and Water Supply, correspondence dated 15 April 2014.

33 Public briefing transcript, 2 April 2014, pp 8-9.

2.2 Regulation of coal seam gas water

Currently, the *Water Supply (Safety and Reliability) Act 2008* (the Act) treats coal seam gas (CSG) water as recycled water in instances where it may enter the drinking water supply. This means that entities that supply CSG water into a watercourse or aquifer are required to have a recycled water management plan unless the recycled water scheme has no material impact on the drinking water supply.[34]

The explanatory notes state that the regulation imposed by the *Water Supply (Safety and Reliability) Act 2008* reduces the opportunity for the beneficial reuse of CSG water. The Bill proposes to repeal the provisions of the *Water Supply (Safety and Reliability) Act 2008* that treat CSG water as recycled water to 'encourage the use of CSG water as a resource'.[35]

The department advised the committee that proponents are currently required to meet drinking water standards even if, for example, the water 'is going 100 kilometres downstream and then five per cent of it is being taken by a drinking water provider'. This requirement is in addition to the drinking water provider also being required to have a drinking water management plan to assess the risks in the catchment and to treat water.[36]

The GasFields Commission found that rural and industry stakeholders who contributed to its CSG Water Management Policy review submission believed that the Act made the beneficial use of CSG water more difficult and questioned whether it was useful given that other regulatory protections are in place.[37]

The QCA's *Coal Seam Gas Review Final Report* found that it is unnecessary for both the Department of Energy and Water Supply and the Department of Environment and Heritage Protection (EHP) to regulate CSG water that may enter a drinking source, 'particularly when water from other industries is only regulated by EHP'.[38] Accordingly, the QCA recommended that Part 9A of the *Water Supply (Safety and Reliability) Act 2008* be repealed and that CSG water that may enter a public drinking water source be solely regulated under the *Environmental Protection Act 1994*. The QCA estimated this could save between $2.8 and $3.4 million per annum for industry and $0.4 million per annum for Government.[39]

2.2.1 Public health

According to the former Minister for Natural Resources, Mines and Energy, the Hon Stephen Robertson MP, the provisions relating to CSG water that impacts on drinking water supply sources were inserted in the *Water Supply (Safety and Reliability) Act 2008* because it was 'necessary to ensure the protection of public health and provide public assurance that public health is being protected'.[40]

The department assured the committee that there are 'no implications for drinking water quality' if the relevant provisions are omitted. The committee was told that if CSG water is to be supplied

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34 Explanatory Notes, p 2; *Water Supply (Safety and Reliability) Act 2008*, s 319.

35 Explanatory Notes, pp 1 - 2.

36 Public briefing, 2 April 2014, transcript, p 4.

37 GasFields Commission Queensland, 'CSG Water Management Policy review submission – October 2012', p 6. The stakeholders who contributed to the submission included the Basin Sustainability Alliance, Queensland Farmers' Federation, AgForce, Cotton Australia, QGC, Origin Energy, Santos, Arrow Energy and the Australian Petroleum Production and Exploration Association. See also, Departmental briefing, 2 April 2014, p 2.

38 QCA, *Coal Seam Gas Review Final Report*, January 2014, p 2.

39 QCA, *Coal Seam Gas Review Final Report*, January 2014, p 7.

40 Hon S Robertson MP, Water and Other Legislation Amendment Bill 2010, Second Reading Speech, 26 October 2010, pp 3,799 – 3,801.

directly for drinking, 'it will continue to be regulated through the drinking water regulatory framework to ensure that the water supplied to customers' taps is safe'.[41] The department further reassured the committee:[42]

> *The Bill … contains transitional provisions that maintain existing CSG recycled water management plans or exclusion decisions until the relevant environmental authority, or specific beneficial use approval, is amended to ensure that they contain conditions to protect public health. The bill is consistent with the CSG national harmonised regulatory framework and the Queensland CSG water management policy, both of which make it clear that CSG water should be used and managed in a way that is of benefit for the community and reduces impacts on the environment.*

The committee is satisfied that if the proposed amendments regarding the regulation of CSG water are passed by the Legislative Assembly, the *Environmental Protection Act 1994* will continue to apply to the release of coal seam gas water and that this Act will adequately consider any public health impacts. The *Waste Reduction and Recycling Act 2011* will continue to regulate the beneficial use of CSG water.[43]

2.2.2 Amendment of Water Supply (Safety and Reliability) Act 2008

Most of the proposed amendments to the *Water Supply (Safety and Reliability) Act 2008* remove references to CSG water or CSG recycled water schemes. Clause 35 proposes to omit Chapter 3, Part 9A which 'supported the framework for regulating CSG water as recycled water'. Other provisions in the Bill propose to remove offences that are no longer applicable and other provisions that are no longer needed.[44]

Clause 43 proposes to insert new Chapter 10, Part 8 which provides transitional arrangements for entities that have in place prior to the commencement of the proposed amendments:

- a recycled water management plan involving coal seam gas water that augments a supply of drinking water
- an interim recycled water plan, or
- an exclusion decision for a CSG recycled water scheme.

The transitional provisions provide that the plans and exclusion decisions continue in effect under the current Act until 1 July 2015 or the relevant environmental authority or specific beneficial use approval is amended to include public health conditions. In specific instances, the provisions enable the administering authority to amend a CSG environmental authority to include certain public health conditions.

Committee comment

The committee only received one submission regarding the proposed amendments to the regulation of coal seam gas water, from the Australian Petroleum Production and Exploration Association (APPEA). APPEA expressed support for the amendments and estimated that industry will save approximately $100,000 to $150,000 in external consultancy fees per application for exclusion decisions.

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41 Public briefing, 2 April 2014, transcript, pp 2 and 5. At present there is no direct supply.

42 Public briefing, 2 April 2014, transcript, p 3.

43 Public health has to be considered as part of an approval under that Act: Departmental briefing, 2 April 2014, p 4; Explanatory Notes, p 14.

44 Explanatory Notes, pp 15-16.

The committee supports the proposed amendments to the regulation of CSG water on the basis that there are minimal risks to public health and unnecessary regulation is removed which will result in savings to industry and government.

2.3 Funding for Queensland's Australian Energy Market Commission payment

The Australian Energy Market Commission (AEMC) was established in 2005. It develops Australia's energy markets and makes rules for the National Electricity Market and elements of the natural gas markets. The AEMC's objective is to 'ensure efficient, reliable and secure energy market frameworks which serve the long-term interests of consumers'.[45]

The AEMC's funding is provided through contributions by the jurisdictions participating in the National Electricity Market and the National Gas Market.[46]

The Bill proposes to recover Queensland's portion of the cost of funding the AEMC. The explanatory notes provide:[47]

> *The 2012 Department of Energy and Water Supply (DEWS) Cabinet Budget Review Committee (CBRC) Agency outcomes removed DEWS' budget funding for the State's contribution to the AEMC after 2012-13. In 2012, CBRC reinstated the funding for 2013-14, tasking DEWS with exploring options for future industry funding. On 6 February 2014, CBRC approved the recovery of Queensland's AEMC contribution via industry levies … On 17 February 2014, Cabinet gave the authority to prepare the necessary legislative amendments …*

The levy is to be imposed on regulated electricity transmission entities and holders of covered pipeline licences. That is, Powerlink Queensland, APT Petroleum Pty Ltd, Roverton Pty Ltd and Westside CSG A Pty Ltd.[48] The explanatory notes provide that this is:[49]

> *... the most appropriate method of recovering Queensland's AEMC payment from industry, as these bodies are subject to the National Electricity Rules and National Gas Rules, and therefore benefit from the functions of the AEMC. They also have the widest reach of customers that benefit from the work of the AEMC and are administratively the simplest point at which to implement a levy (all market gas and electricity passes through a small number of transmission systems).*

South Australia, New South Wales, Tasmania and the Australian Capital Territory have established industry cost recovery models for funding the AEMC. South Australia specifically recovers their AEMC payment though licence fees while the other jurisdictions impose a levy.[50]

2.3.1 Fees

Queensland is required to contribute $4.36 million in 2014-15 to fund the AEMC,[51] of which $348,000 is to be contributed by holders of covered pipeline licences and the remainder by regulated transmission system operators.[52]

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45 Australian Energy Market Commission, 'Who we are', Accessed from: http://www.aemc.gov.au/about-us/about-the-aemc on 5 May 2014.

46 Australian Energy Market Commission, *Annual Report 2012-13*, p 47.

47 Explanatory Notes, p 3.

48 Clauses 4 and 18; Explanatory Notes, pp 4-6.

49 Explanatory Notes, p 4.

50 Explanatory Notes, pp 5 & 7.

51 Public briefing transcript, 2 April 2014, p 3.

52 Public hearing transcript, 10 April 2014, p 9. A regulated transmission system operator is an owner, controller or operator of a transmission system who is a Registered participant and whose revenue from, or

It is proposed that regulated transmission system operators will be required to pay an annual fee based on the length of the electric lines making up the transmission grid operated by the entity and covered pipeline licence holders will be required to pay an annual fee calculated on the number of kilometres of pipeline the subject of the holder's pipeline licence.[53] If the covered pipeline licence holder does not pay the required fee, the holder must also pay the State a civil penalty.[54]

The Government determined to apply the fees at the transmission level because it is 'the simplest point to levy the charge' and it 'ensures that there is a wide reach of customers … [enabling] the regulated entities to ultimately pass that cost back to the users who ultimately get a benefit from efficient regulation'.[55] It is expected that consumers will only incur a minor additional charge as a result of the levy ultimately being passed onto them, probably less than $1.00 per household per year.[56]

2.3.2 Gas pipelines

As noted above, not all pipeline licence holders are subject to the annual fee, only covered gas pipeline licence holders. Covered pipelines are those pipelines subject to regulatory arrangements under the National Gas Law. Regulatory arrangements are only put in place if the pipelines 'exhibit a level of market power where the benefits of regulation outweigh the costs'.[57]

The pipeline coverage criteria are set out in section 15 of the National Gas Law as follows:

- that access (or increased access) to pipeline services provided by means of the pipeline would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline
- that it would be uneconomic for anyone to develop another pipeline to provide the pipeline services provided by means of the pipeline
- that access (or increased access) to the pipeline services provided by means of the pipeline can be provided without undue risk to human health or safety
- that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the public interest.

In Queensland, three of the nine major gas transmission lines are covered. The three pipelines are: Carpentaria Pipeline (Ballera to Mount Isa), Dawson Valley Pipeline and Roma (Wallumbilla) to Brisbane Pipeline.[58]

APA Group submitted it was concerned that 'the levy will only be applied to covered pipelines and therefore only three out of the many transmission pipelines in Queensland will be subject to the new levy'.[59] APA Group argued that it is inequitable that one company which owns 18% of the relevant

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prices that are charged for, the provision of electricity network services are regulated under a transmission determination: clause 4; National Electricity (Queensland) Law, Schedule – National Electricity Law, s 2.

53 Presently, there is only one regulated transmission system operator – Powerlink: Public briefing transcript, 2 April 2014, p 4. Clause 4 proposes to amend section 31 of the *Electricity Act 1994*. Clause 18 proposes to replace s 423 of the *Petroleum and Gas (Production and Safety) Act 2004*.

54 Clause 19 proposes to amend s 424 of the *Petroleum and Gas (Production and Safety) Act 2004*.

55 Public briefing, 2 April 2014, transcript, p 2.

56 Public briefing, 2 April 2014, transcript, p 4; Explanatory Notes, p 6.

57 Australian Energy Regulator, *State of the Energy Market 2009*, p 256; Hon P Holloway MP, Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning, 'National Gas (South Australia) Bill', South Australian Legislative Council, Parliamentary Record, 30 April 2008, pp 2,537-2,570.

58 Australian Energy Regulator, *State of the Energy Market 2013*, p 108.

59 APA Group, Submission No. 1.

pipelines is liable for 96% of the gas industry costs. APA Group further stated that it would be able to pass these costs on to its customers but pointed out that there may be costs associated with renegotiating contracts with customers.

APA Group suggested that the levy be imposed on all pipelines in Queensland that are subject to the National Gas Law, not just covered pipelines.[60]

Committee comment

The policy position to impose a levy to recover the costs of Queensland's portion of funding the Australian Energy Market Commission is not opposed by the committee. The committee does however, note the concerns of the APA Group and the department's advice at the public hearing that it was further considering the alternatives raised by APA Group.[61] The model in which the department has chosen to impose the levy and the associated equity issues are assessed in more detail in the next section of this report.

[60] Public hearing transcript, 10 April 2014, p 1; APA Group, Submission No. 1.
[61] Public hearing transcript, 10 April 2014, p 9.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the application of the fundamental legislative principles to the Bill.

3.1 Does the Bill have sufficient regard to the rights and liberties of individuals?

Clauses 4 and 18

As noted above, the FLPs include requiring that the legislation has sufficient regard to the rights and liberties of individuals. The committee considers that the concepts of rights and liberties extend to business activities. In deciding whether legislation has sufficient regard to these rights and liberties, the committee considered the reasonableness and fairness of the treatment of businesses.

Clause 4 of the Bill proposes to amend section 31 of the *Electricity Act 1994* to create an obligation for regulated transmission system operators to pay a fee as a proportion of the State's funding commitment to the AEMC. Proposed new section 31(2) establishes that the fee payable is calculated based on the length of the electric lines making up the transmission grid operated by the entity. The explanatory notes state:

> *While there is currently only a single regulated transmission authority holder with physical assets, the clause is written to apply when other entities build assets regulated under the National Electricity Rules and to ensure transmission entities that do not operate regulated transmission assets are not subject to the fee.*[62]

Clause 18 proposes to omit existing section 423 of the *Petroleum and Gas (Production and Safety) Act 2004* and replace it with a provision which, amongst other things, mandates collection of a fee from covered pipeline licence holders to pay a proportion of the State's funding commitment to the AEMC.[63] Proposed new section 423(4) establishes that the fee payable is calculated based on the kilometres of pipeline the subject of the holder's pipeline licence.

It is arguable that clauses 4 and 18 do not provide objective criteria for the calculation and imposition of fees. In response to this suggestion, the department advised the committee that it received advice from the Crown Law supporting the imposition of a fee on transmission entities because there is a rational connection between the functions of the AEMC and the entities' businesses.

Crown Law advised the department that the transmission entities could be levied on the basis of the number of customers or the length of the relevant transmission conduit. The department selected the latter option because customer numbers 'would include customers of varying sizes and would therefore not have a direct relationship to the level of benefit received'. Using the length of the relevant transmission conduit 'provides an objective test for apportioning the AEMC cost in that it targets a factual, observable and measurable element rather than involving judgment and/or interpretation'.[64] The committee agrees that determining the amount to be paid on the basis of the proportion of the transmission conduit is an appropriate method in which to impose the level.

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62 Explanatory Notes, p 8.
63 Ibid, p 13.
64 Department of Energy and Water Supply, correspondence dated 6 May 2014.

Accordingly, the committee is satisfied with the department's response and that clauses 4 and 18 have sufficient regard to the rights and liberties of businesses.

Clause 23

Clause 23 proposes to amend section 196 of the *Water Supply (Safety and Reliability) Act 2008* to remove reference to a CSG recycled water scheme. The explanatory notes state:[65]

> *With the repeal of the CSG water provisions, it is no longer an offence to supply CSG water without an approved recycled water management plan. This means that entities which release CSG water to a watercourse or aquifer are not required to apply for approval of a recycled water management plan or an exclusion decision from the recycled water provisions.*

As discussed above, the committee sought confirmation from the department that the proposed omission of references to CSG water from the *Water Supply (Safety and Reliability) Act 2008* would not cause any risk to public health and that the provisions of the *Environmental Protection Act 1994* will function to effectively regulate CSG recycled water.

The department advised the committee that the *Water Supply (Safety and Reliability) Act 2008* treats CSG water as a high risk form of wastewater and places stringent conditions on its release to a watercourse. The department pointed out that the *Water Supply (Safety and Reliability) Act 2008* does not regulate any other situations in which water is released to the environment, such as sewage plant effluent or mine site discharge. The department also advised the committee that the *Environmental Protection Act 1994* regulates releases of water to the environment from all sources. The department stated that the transitional period will enable it and the Department of Environment and Heritage Protection to ensure that appropriate conditions are applied to existing approvals.[66]

The committee is satisfied with the department's response to the potential FLP issue. Accordingly, the committee is satisfied that clause 23 has sufficient regard to community expectations in terms of the regulation of CSG water and any public health impacts are adequately managed by this regulation.

3.2 Does the Bill have sufficient regard to the institution of Parliament?

Whilst the committee was considering this Bill there was another Bill before the Parliament that proposed amendments to the same sections of the *Water Supply (Safety and Reliability) Act 2008* (WSRA)—the Water Supply Services Legislation Amendment Bill 2014 (Water Supply Bill). The Water Supply Bill was previously reported on by the committee and subsequently passed with amendment on 6 May 2014.

Section 4(2) of the *Legislative Standards Act 1992* provides that legislation is required to have sufficient regard to the institution of Parliament. Whilst the Water Supply Bill is now an Act, this practice alerted the committee to a possible breach of fundamental legislative principles.

A bill that has been drafted that is reliant on the provisions of another bill passing may not have sufficient regard to the institution of parliament because the practice is presumptuous. The practice presumes that the Parliament will debate bills in a particular order, that no amendments will be proposed, and that the bill will ultimately pass.

This approach is not desirable and may be seen as the Executive failing to demonstrate sufficient regard to the institution of Parliament. As a result of the Water Supply Bill passing the potential breach is not imminent, nevertheless the committee brings the issue to the attention of the Assembly and discourages this practice in the future.

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[65] Electricity and Other Legislation Amendment Bill 2014, Explanatory Notes, page 14.

[66] Department of Energy and Water Supply, correspondence dated 6 May 2014.

3.3 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

Appendix A – List of submitters

Sub #	Name
1	APA Group
2	Steel Wave Power
3	Queensland Farmers' Federation
4	Master Electricians Australia
5	Australia Production and Petroleum Exploration Association

Appendix B – List of witnesses at the public hearing held 10 April 2014

Witnesses
Rod Johannessen, General Manager, Strategy and Service Delivery - APA Group
Malcolm Richards, Chief Executive Officer - Master Electricians Australia
Catherine Cussen, Director, Networks and demand Response – Department of Energy and Water Supply
Cherie Gregoire, A/Manager, National Energy Market Reform - Department of Energy and Water Supply
Alan Millis, General Manager, Energy Supply and Regulation - Department of Energy and Water Supply
Tim Quirey, Director, Renewable & Alternative Energy - Department of Energy and Water Supply
Richard Scott, A/Director, Water Reform - Department of Energy and Water Supply

Appendix C – Correspondence received from the Department of Energy and Water Supply throughout the inquiry

Queensland Government

Department of
Energy and Water Supply

CLLO CIC - 14038

15 April 2014

Mr David Gibson MP
Chair
State Development, Infrastructure and Industry Committee
sdiic@parliament.qld.gov.au

CABINET-IN-CONFIDENCE

Dear Mr Gibson

Thank you for your letter of 24 March 2014 outlining the process and timetable for the review of the *Electricity and Other Legislation Amendment Bill 2014* (the Bill) by the State Development, Infrastructure and Industry Committee. As requested in the letter, I wish to provide the department's response to issues raised in submissions on the Bill.

I note three out of the five submissions expressed strong support for the proposals in the Bill, including the single submission addressing the proposed amendments to the *Water Supply (Safety and Reliability) Act 2008* about coal seam gas water. Consequently the department's response, in the attachment, is confined to the issues raised in other submissions.

I hope the attached information assists the Committee in gaining an enhanced understanding of the issues raised in submissions and the department's response to them.

I look forward to the Committee's report being handed down on 13 May 2014.

If you require further information please contact Ms Catherine Cussen, Director, Networks and Demand Response, on (07) 3199 4923.

Yours sincerely

Dan Hunt
Director-General
Department of Energy and Water Supply

Att: 1

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Department of Energy and Water Supply's Response to the State Development, Infrastructure and Industry Committee on submissions received on the *Electricity and Other Legislation Amendment Bill 2014*

1. SOLAR BONUS AMENDMENTS

Queensland Farmers' Association

Bill does not address the impact of 44 cent feed-in tariff costs on electricity prices

The ongoing cost of the 44 cent Solar Bonus Scheme is being considered as a separate matter to the subject of this inquiry. The Government has indicated through public announcement, that it will not change the 44 cent entitlement for existing customers.

Steel Wave Power

Request for further amendment to Section 55G of the *Electricity Act 1994*

The proposal from Steel Wave Power is outside the policy objectives of the proposed legislative amendments. The amendments in relation to the Solar Bonus Scheme are specifically in response to a review of solar feed-in tariffs undertaken by the Queensland Competition Authority in 2013, and seek to address future solar photo-voltaic feed-in tariff arrangements for regional Queensland in the absence of voluntary feed-in tariff offers in that region.

The Government's changes proposed to s55G of the *Electricity Act 1994* are specifically to clarify how the regional feed-in tariff at new section s55DBA will operate in parallel with existing constraints on Ergon Energy's retail operation in relation to the sale of electricity to a premise.

2. AUSTRALIAN ENERGY MARKET COMMISSION (AEMC) FUNDING AMENDMENTS

APA Group

Scope of the gas levy

The purpose of the proposed levy is to recover efficiently the costs of Queensland's contribution to the funding of the AEMC. APA objects to limiting the levy to covered pipelines on the basis that the AEMC's work also covers matters that benefit unregulated pipelines.

The levy is targeted at the transmission level as it provides the administratively simplest point at which to recover the levy, and all customers are ultimately supplied through the transmission systems. Transmission companies are also able to pass costs on to customers. APA does not disagree with this point, however has noted there will be some unknown costs in negotiating the details of the pass-through under contracts with customers.

The levy arrangements have been designed to achieve equity objectives in that the gas portion of the levy represents the proportion of the AEMC's work program associated with gas matters (currently 8 per cent of the annual work program), and is targeted at the primary beneficiaries of the AEMC's work.

In regard to gas pipelines, the AEMC has carriage of the National Gas Rules (not the National Gas Law). The Rules deal mainly with the access arrangements which apply to covered pipelines. In recent years, however, there has been an increasing focus in the Rules on gas markets, which do provide broader benefits.

APA also raised these issues with the Department directly and they are being considered.

Queensland Government

Department of
Energy and Water Supply

CLLO CIC 14051

6 May 2014

Mr David Gibson MP
Chair
State Development, Infrastructure and Industry Committee
sdiic@parliament.qld.gov.au

CABINET-IN-CONFIDENCE

Dear Mr Gibson

I refer to the State Development, Infrastructure and Industry Committee's current process to review the *Electricity and Other Legislation Amendment Bill 2014* (the Bill), and a request for a departmental response on Fundamental Legislative Principles (FLP) issues.

I trust the attached response provides sufficient information to satisfy the Committee that the FLP issues have been considered and adequately addressed.

I look forward to the Committee's report being handed down on 13 May 2014.

If you require further information please contact Ms Catherine Cussen, Director, Networks and Demand Response, on (07) 3199 4923.

Yours sincerely

Dan Hunt
Director-General
Department of Energy and Water Supply

Att: DEWS Response to FLP issues

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Attachment 1

Department of Energy and Water Supply's Response to the State Development, Infrastructure and Industry Committee on Fundamental Legislative Principles issues raised on the Electricity and Other Legislation Amendment Bill 2014

Issue: *Clauses 4 and 8 - "The committee may wish to consider whether clauses 4 and 18 provide objective criteria for the calculation and imposition of fees."*

Answer: Clause 4 and 18 of the Bill provide for recovery of the costs of Queensland's contribution to the national regulatory functions of the Australian Energy Market Commission (AEMC), through imposition of a new fee on licensed electricity and gas transmission entities.

It is understood the issue raised in advice to the Committee relates to a desire to ensure fairness and equity in the imposition and calculation of the new fee, consistent with the fundamental legislative principle that legislation should have regard to the rights and liberties of individuals.

The Department of Energy and Water Supply's (DEWS) policy and legislative process actively considered issues around the legality of the proposed new fee and options for its framing, including features to ensure reasonableness, fairness and equity.

In terms of the imposition of the fee, Crown Law advice received by DEWS supported imposing the fee on transmission entities as there is a rational connection between the functions of the AEMC and the business of the transmission entities. It was also noted the approach avoids 'doubling-up' of recoupment of the AEMC funding which would occur if the fee was levied at more than one level of the energy market. Transmission entities also have the widest reach of customers that benefit from the work of the AEMC and are administratively the simplest point at which to implement a levy (all market gas and electricity passes through a small number of transmission systems).

Regarding the calculation of the fee, Crown Law advice received by DEWS suggested two options that would satisfy the need for transparency and fairness and a rational connection with the AEMC's functions: (1) by reference to the number of customers of each entity; (2) by reference to the length of the relevant transmission conduit, whether electricity or gas pipeline. The second option was chosen by DEWS because customer numbers would include customers of varying sizes and would therefore not have a direct relationship to the level of benefit received. The chosen approach also provides an objective test for apportioning the AEMC cost in that it targets a factual, observable and measurable element rather than involving judgement and/or interpretation.

Issue: *Clause 23 - "In order to balance commercial and community expectations the committee may consider seeking departmental assurances that the provisions of the Environmental Protection Act 1994 will function to effectively regulate Coal Seam Gas (CSG) recycled water."*

Answer: The current provisions of the *Water Supply (Safety & Reliability) Act 2008* (the Water Supply Act) relating to CSG water treat it as a high risk form of wastewater, and place stringent provisions on any direct or indirect release to a water course. This is the only point where the Water Supply Act seeks to regulate release to the environment of any form of water – there is no equivalence with the regulation of sewage plant effluent or mine site discharge, for example.

In terms of protection of the community, the *Environment Protection Act 1994* (the EP Act) regulates releases of water to the environment from all sources. The object of the EP Act is to, *inter alia*, 'protect Queensland's environment' (section 3), and the environment includes 'people and

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communities' (section 8a). The environmental values specifically protected under the EP Act are 'quality or physical characteristic[s] of the environment that [are] conducive to ecological health or public amenity or safety' (section 9a). So in general terms, the EP Act acts to protect public safety and health. In more specific terms, the *Environmental Protection (Water) Policy 2009* explicitly establishes that the 'suitability of the water for supply as drinking water' is a general environmental value for 'waters that may be used for drinking water' (section 6(2)(i)).

DEWS and the Department of Environment and Heritage Protection agree with the Queensland Competition Authority's view that the final quality of the water is the key issue for regulation, not the source of the water, and that releases of water into sources that could potentially be used for drinking water purposes should only be regulated under the EP Act.

The transitional period established under the Bill until 30 June 2015 will allow both Departments to ensure that detailed conditions imposed under existing regulatory approvals under the EP Act provide equivalent protection to those imposed under existing recycled water management plans or exclusion decisions under the Water Supply Act.

2