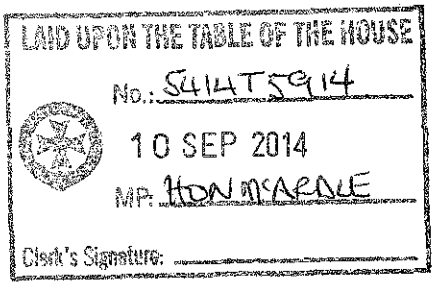
National Energy Retail Law (Queensland) Bill 2014



Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark McArdle MP

Title of the Bill

National Energy Retail Law (Queensland) Bill 2014

Objectives of the Amendments

The policy objectives of the proposed amendments and the reasons for them are to ensure the objectives of the Bill are achieved being to:

1. Apply as a law of Queensland the National Energy Retail Law to regulate the sale and supply of energy (electricity and gas) to consumers. The National Electricity Retail Law is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the sales and supply of energy to customers by retailers and distributors) in the States and the Australian Capital Territory (participating jurisdictions).
2. Modify the application of the National Energy Retail Law to:
   a. ensure that regional electricity customers can continue to access supply despite weak market competition and are provided services on a fair and reasonable basis
   b. support advancement of the Queensland Government's electricity industry reform priorities by providing additional customer protection and support to small customers following the removal of regulated prices in South East Queensland.

The Bill was introduced to the House on 20 May 2014. It was forwarded to the State Development, Infrastructure and Industry Committee (the Committee) for consideration and the Committee reported back to the House on 28 August 2014. In its Report - No. 48 National Energy Retail Law (Queensland) Bill 2014, the Committee made a number of recommendations to further promote competition and strengthen protections for energy consumers in Queensland.

A number of these recommendations have been accepted by the Government and need to be reflected in the Bill.

Since Introduction of the Bill, a number of technical and minor policy issues have been identified, and the *Electricity and Other Legislation Amendment Act 2014* was passed which made amendments to the *Electricity Act 1994*, which need to be accommodated in the Bill.

Achievement of the Objectives

The policy objectives of the proposed amendments will be achieved by:

1. Addressing a relatively small number of technical and minor policy issues that have been identified.
2. Accommodating amendments made to the *Electricity Act 1994* by the *Electricity and Other Legislation Amendment Act 2014*, which had not passed at the time of introduction of the *National Energy Retail Law (Queensland) Bill 2014* and the *Electricity Competition and Protection Legislation and Amendment Bill 2014*.
3. Reflecting a number of recommendations accepted by the Government made by the Committee in its final report on the Bill. Amendments stemming from these recommendations are also proposed to support the intent of the Bill – that is promoting competition and strengthening protections for energy consumers in Queensland.

Alternative Ways of Achieving Policy Objectives

Amendments to be moved during Consideration in Detail are considered the only practical way to accommodate the changes required to address the technical and minor policy issues, and the changes to the *Electricity Act 1994* stemming from the introduction of the *Electricity and Other Legislation Amendment Act 2014*. Likewise, one of the Committee recommendations accepted by the Government is technical in nature, being clarification of a definition, so no alternative way of achieving the objective has been considered.

The Committee recommended that retailers be required to give customers at least 10 business days' advanced notice of any proposed increases in prices. The Government has accepted this recommendation. As the associated requirements are set out in the Bill, amendment is considered the only practical way to achieve the policy objective.

Estimated Cost for Government Implementation

Implementing the arrangements is expected to be cost neutral for the Queensland Government. At present, compliance and rule making functions are largely undertaken by the Queensland Competition Authority, which recovers its costs from industry. The retail authorisation functions of the Chief Executive of the Department of Energy and Water Supply are similarly recovered from industry through annual fees. As these functions will be largely discontinued, the cost to government for implementation is expected to be neutral.

Consistency with Fundamental Legislative Principles

The amendments to the Bill are consistent with fundamental legislative principles.

Consultation

Subsequent to Introduction of the Bill, further targeted consultations have been undertaken by the Department with key stakeholders including regulators and other statutory bodies, retailers, distributors and consumer representatives, focusing on the technical and minor policy issues.

In preparing its Report, the Committee undertook extensive public consultation to arrive at its recommendations.

NOTES ON PROVISIONS

Clauses 1 to 4 modify Clause 12 of the Bill. Clause 12 enables a regulation to be made that may modify the operation of the National Energy Retail Rules in Queensland to make necessary or convenient changes for giving effect to the operation of the Rules, to make necessary or consequential changes arising from modification of the National Energy Retail Law (Queensland) (NERLQ), or for matters of a savings or transitional nature.

The *Competition and Consumer Act 2010 (Cth)* sets out the scope of monitoring and enforcement action that the Australian Energy Regulator (AER), as a Commonwealth body, may undertake. Where a variation is purported to be made to the scope of AER enforcement duties by a state law – for example, by a regulation made under clause 12 – this will have no effect until the Commonwealth amends the AER's responsibilities in a regulation made under the Competition and Consumer Act.

To ensure each Queensland-specific modification to the National Energy Retail Rules is enforceable, amendments are needed to ensure that a local regulator – for example, the Queensland Competition Authority or the regulator under the *Electricity Act 1994* (Electricity Act) or *Gas Supply Act 2003* – may be named as the relevant regulator for the Queensland-specific modification.

Clause 1 inserts a new subclauses (3) and (4) to clause 12 of the Bill that has the general effect that a regulator other than AER may be nominated, by a regulation under the section, in relation to Queensland-specific changes in the National Energy Retail Rules. The regulator nominated has, for monitoring, investigating or enforcing specified modifications in the National Energy Retail Rules, the same functions and powers the AER has for monitoring, investigating or enforcing other provisions of the National Energy Retail Rules.

Clause 2 amends the numbering of subclause (3) of clause 12 of the Bill to subclause (5) to accommodate the changes resulting from clause 1 above.

Clause 3 amends the numbering of subclause (4) of clause 12 of the Bill to subclause (6) to accommodate the changes resulting from clause 1 above.

Clause 4 amends the numbering of subclause (5) of clause 12 of the Bill to subclause (7) to accommodate the changes resulting from clause 1 above.

Clause 5 modifies clause 17 of the Bill which enables a regulation to be made that sets conditions applying to either or both the Maranoa Regional Council and the Western Downs Regional Council in their capacity as exempt sellers under the NERL (Qld). The NERL

provides for persons to be exempted from holding a retailer authorisation to sell energy to premises where, for example, selling energy is an incidental activity to their main business.

Clause 17 subclause (2) of the Bill makes it clear that conditions set in a regulation will apply only until the AER varies or revokes this type of exemption. The AER has requested further certainty, in the form of an express provision that it may vary or revoke a condition prescribed under clause 17; for example, if either Council applies for a variation.

The modification adds a new subsection to the general effect that the AER may deal with an exemption held by either Council in the same way as it deals with exemptions granted by it under the NERL (Qld).

Clauses 6 to 8 modify Clause 18 of the Bill. Clause 18 is a transitional measure providing that each existing 'generation authority (retail) holder' and 'special approval (retail) holder' under the Electricity Act becomes an exempt seller of electricity for the NERL (Qld) on commencement, and subclause (2) of clause 18 provides that the AER must issue an instrument of exemption under the National Energy Retail Rules to each of these entities.

The AER has advised in consultation that it issues instruments of exemption only to holders of individual exemptions, whereas entities subject to this clause will not be transitioning as holders of individual exemptions. For this reason, there will be no obligation on the AER to issue instruments of exemption to entities to be transitioned under this clause.

Subclause (3) of clause 18 provides that an 'electricity exempt seller exemption' is subject to conditions prescribed by regulation until the AER varies or revokes the exemption, and that an instrument of exemption is taken to include conditions prescribed by regulation. A regulation under subclause (3) of clause 18 was initially proposed in order to address a policy aim about exempt sellers that stated in the initial Drafting Instructions: 'The policy is to provide that persons who sell energy to large exempt customers will continue to be subject to price protection arrangements for those customers in regional Queensland'.

That policy aim will be addressed by other regulations concerning 'on-suppliers' under the Electricity Act supplying large 'receivers' (on-supply customers) in regional Queensland, these being the only large exempt customers in regional Queensland subject to price protection arrangements (in the Electricity Act 1994 section 20J).

Subclause (5) of clause 18 defines 'electricity exempt seller exemption' as an exemption under the NERL (Qld) held by a person who was a 'special approval (retail) holder'; that is, a 'generation authority (retail) holder' is not included in the definition. The AER will not be obliged to issue instruments of exemption to entities to transition under this clause, regulations under another clause will address the relevant policy intent and current drafting does not include a 'generation authority (retail) holder' as an entity subject to conditions prescribed in a regulation. Therefore it is not necessary for clause 18 to provide for an associated regulation.

The AER also advised in consultation that express words indicating its normal powers will apply to transitioning entities would not be needed in a simplified transitional provision as envisaged (that is, with no conditions to be prescribed in a regulation), since there would be nothing to imply its normal powers would not apply. For this reason it is not necessary to provide that AER may deal with transitioning exemptions in the same way as it may deal with exemptions granted by it under section 110 of the NERL(Qld).

It had been contemplated that exemptions for a certain class of transitioned entities would expire one year after commencement, and that a regulation associated with this clause would provide accordingly. Although there will be no regulations associated with this clause, a 12-month term for all transitional exemptions under this clause is expected to allow affected entities sufficient time for determining whether or not they need one of the classes of exemption decided by the AER and take any necessary steps. For this reason, transitional exemptions under this clause should cease to have effect 12 months after commencement.

Finally, in addition to Origin Energy in relation to special approval SA02/11, it must be clear that this clause does not apply to the holder of a licence under the *Gladstone Power Station Agreement Act 1993* (section 13 of that Act provides that a licence issued under the Act is taken to be a special approval under the Electricity Act for the sale of electricity, amongst other things — a separate clause of the Bill will exempt the relevant entity from the operation of section 88 of the NERL(Qld)). This is to ensure existing arrangements remain undisturbed.

Clause 6 modifies clause 18 of the Bill so that on the commencement, each generation authority (retail) holder and each special approval (retail) holder is taken to hold an exemption for electricity for the NERL (Qld) (a transitional exemption), and that a transitional exemption applying under the first subclause will cease to apply 12 months after the commencement.

Clause 7 modifies clause 18 of the Bill so that it is not necessary to provide that the AER may deal with transitioning exemptions in the same way as it may deal with exemptions granted by it under section 110 of the NERL(Qld).

Clause 8 modifies clause 18 of the Bill clarifying that 'special approval (retail) holder' means the holder of a special approval given under the Electricity Act or the Electricity Regulation that, immediately before the commencement, authorised the sale of electricity, but does not include either:

- Origin Energy, in relation to special approval SA02/11, or
- the holder of Licence Number 960, issued pursuant to section 13 of *Gladstone Power Station Agreement Act 1993* and taken to hold a special approval under the Electricity Act authorising the supply of electricity.

Clause 9 modifies clause 3 of the Schedule to the Bill by adding new section 3A. For electricity, 'meter identifier' means a NMI (national meter identifier), and a NMI is assigned only to meters at premises connected to the national grid.

Ergon Energy is a 'distributor' within the meaning of the NERL (Qld) in respect of its Mount Isa–Cloncurry network because the network is economically regulated, despite not being physically connected to the national grid. Ergon Energy will also be nominated by a regulation made under the NERL (Qld) as a distributor in respect of its small isolated (non-grid-connected) networks.

Certain obligations applying to electricity distributors and retailers rely on there being a premises' meter identifier. Because that term is currently defined for electricity as the national meter identifier, a second definition is needed to account for premises connected to networks where NMIs are not assigned.

Clause 9 extends the definition of 'meter identifier' to include a unique identification number allocated by Ergon Energy Distribution to a meter.

Clause 10 inserts new sections to clause 12 of the Schedule to the Bill. Clause 12 of the Schedule adds a new section 19C to continue restrictions on Ergon Energy Queensland Pty Ltd contained in Electricity Act section 55G that will be omitted when the NERL (Qld) commences. The restrictions in section 19C apply to an 'assigned retailer' prescribed by a regulation in order to allow for possible future adjustments to Ergon Energy Queensland Pty Ltd such as a name change.

Section 19C was drafted before the *Energy and Other Legislation Amendment Act 2014* (EOLA Act) amended Electricity Act section 55G to clarify the restrictions do not prevent Ergon Energy Queensland from entering into the feed-in tariff arrangement also inserted in the Electricity Act by the EOLA Act. Since the intent of section 19C is to continue the restrictions in Electricity Act section 55G, the former must be updated to reflect the latter as amended. Other minor changes are made as needed.

Clause 10 modifies clause 12 of the Schedule to the Bill to the general effect that the section does not prevent an assigned retailer entering into a separate arrangement with a qualifying customer of the retailer to buy electricity produced at the qualifying customer's premises and supplied to a distribution system. It also adds a new definition for qualifying customer to the general effect that a qualifying customer is a customer whose annual consumption at a premises is, or is estimated by the relevant distributor to be, less than 100 megawatt hours.

Clause 11 modifies clause 14 of the Schedule to the Bill. Clause 14 currently inserts proposed section 23(9)(b) regarding the publication and notification of standing offer electricity prices. Specifically it requires that retailers whose standing offer prices stop being notified prices under section 90(4) of the Electricity Act notify their affected customers of any increases in the price at any time before the variation takes effect.

The State Development, Infrastructure and Industry Committee has recommended that retailers be required to give customers under this provision at least 10 business days' advanced notice of any proposed increases in standing offer prices. The Government considers that prescribing such a period of notice is likely to build consumer confidence in the new market monitoring arrangements. In particular it will help to assure customers that they will not be 'caught-out' by price increases.

Clause 11 amends clause 14 of the schedule to the Bill so that the proposed section 23(9)(b) requires that a retailer must notify customers at least 10 business days prior to any proposed increases in standing offer prices that are not notified prices under section 90(4) of the Electricity Act take effect. For these purposes a price increase occurs if the amount of a charge or tariff or part of a tariff (for example, a service fee or daily charge) exceeds the corresponding amount of the charge or tariff or part of a tariff in the immediately preceding standing offer.

Clause 12 modifies clause 17 of the Schedule to the Bill, which currently inserts new NERL (Qld) division 10A, which sets out arrangements for the sale of electricity to customers using card operated meters, a type of pre-payment meter installed by Ergon Energy that supplies power as long as a pre-paid power card with credit is inserted in the meter. These meters are used in remote Indigenous communities to help with debt management and with costs associated with changing account holders when residents move premises. Any person may

purchase a power card to use in card operated meter – there is no paperwork to inform Ergon Energy who the account holder is.

Given this lack of associated paperwork and given policy is to retain the existing arrangements as far as possible, it must be clear that customers may start accruing rights under the 'standard retail contract (card-operated meter)' without the need for paperwork in the form of an application. Specifically, a customer should not have to expressly request the provision of customer retail services under the retailer's standing offer, or comply with the requirements specified in the National Energy Retail Rules, as pre-conditions to the formation of a standard retail contract.

Clause 17 of the Schedule to the Bill also inserts new section 60D which requires a retailer to replace a card operated meter with a standard meter if a customer has registered for life support and does not give their explicit informed consent to remain on a card operated meter.

Proposed section 60D(5) currently defines a standard meter, for a particular small customer, as a metering installation of the type that would ordinarily be installed at the premises of the customer.

The State Development, Infrastructure and Industry Parliamentary Committee is concerned that the current proposed definition of standard meter could be interpreted as still including a card operated meter, as a card operated meter, in some remote communities, is the type of meter that would ordinarily be installed at a customer's premises.

Clause 12 adds a new section 60DA to division 10A within clause 17 of the Schedule to the Bill to the general effect that, for the purposes of NERL (Qld) section 26 (Formation of standard retail contract), a retailer's form of standard retail contract (card operated meter) takes effect as a contract between the retailer and a small customer when the customer starts consuming electricity at the premises.

Clause 12 also clarifies the intent of the definition of standard meter, ensuring it is clear that card operated meters are excluded from the definition.

Clause 13 modifies clause 20 of the Schedule to the Bill, which adds new section 88A to part 5 division 1 of the NERL (Qld). The Electricity Act permits a licence holder under the *Gladstone Power Station Agreement Act 1993* (GPSAA) to supply electricity and undertake incidental sales activities as though the licence holder were the holder of a special approval under the Electricity Act. Section 88 of the NERL (Qld) prohibits the selling of energy (electricity or gas) to premises without a retailer authorisation or an exemption issued by the AER.

The Government's position is to provide certainty to the licence holder under the GPSAA that the relevant existing arrangements will be ongoing, that is, the arrangements are not to be disturbed by NERL (Qld) provisions that may otherwise require a licence holder under the GPSAA to apply to the AER for a retail authorisation or exemption, and enable the AER to vary terms and conditions of an exemption.

This is best achieved by excluding a licence holder under the GPSAA from the requirement to hold a retail authorisation or exemption issued by the AER in relation to incidental sale activities in accordance with their licence. For the purpose of clarity, the holder of a licence under the GPSAA will be expressly excluded from being subject to a transitional provision of

the NERL (Qld) that deems each holder of an Electricity Act special approval authorising the sale of electricity to be an exempt seller of electricity for the NERL (Qld) on commencement.

Clause 13 inserts a new provision in new part 5 division 1 to the general effect that a person does not contravene section 88 in respect of the sale of electricity if the person holds Licence Number 960 issued pursuant to section 13 of Gladstone Power Station Agreement Act 1993, the holder of which was, immediately before commencement of the NERL (Qld), taken to hold a special approval under the Electricity Act authorising the connection of Gladstone Power Station to a transmission grid or supply network, and the supply of electricity.

Clause 14 adds a new clause 21A to the Schedule to the Bill. The intent of the national retailer of last resort (RoLR) scheme is to identify a retailer (the 'RoLR') responsible for supplying customers of a retailer that fails or makes an unplanned exit from the market (the 'failed retailer'). Relevantly, NERL section 122 provides: 'failed retailer means a retailer (or former retailer) in relation to whom a RoLR event has occurred'.

Submissions from gas industry stakeholders APA and Envestra raised valid concerns about applying a gas RoLR scheme in full in Queensland, particularly as there is no existing gas RoLR scheme under the Gas Supply Act 2003 to transition. Their assessment is that the cost of developing distributor arrangements to support a RoLR scheme in relation to a 'first tier' (large incumbent) retailer being the 'failed retailer' is likely to outweigh the anticipated benefits, given the risk of such an event occurring is relatively small and given reserve emergency powers under chapter 4 part 5 of the *Gas Supply Act 2003* could be used if such a failure were to occur.

Additionally, it is anticipated that, at commencement of the NERL (Qld), the overwhelming majority of small gas customers in Queensland will be supplied by a first tier retailer. For these reasons a gas RoLR scheme for Queensland should contemplate only the failure of a 'second tier' (smaller non-incumbent) retailer. It is likely that the RoLR for any given network will be the first tier retailer that is the local area retailer for that network.

Clause 14 adds a new clause 21A to the Schedule to the Bill setting out how NERL part 6 will apply in Queensland in respect of gas, the general intent being that a RoLR scheme under the part will contemplate only the failure of a second tier retailer. This is achieved by clarifying that, for gas in Queensland, the 'failed retailer' cannot be a retailer with more than 15 percent of the small gas customers in Queensland.