

Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2017.

Policy objectives and the reasons for them

The objectives of the Bill are to amend the *Electricity Act 1994* (Electricity Act) and the *Energy and Water Ombudsman Act 2006* (Energy and Water Ombudsman Act) to:

1. clarify when additional generation systems and electricity storage devices can be deployed in association with the Solar Bonus Scheme; and
2. enable the effective implementation of a new national regulatory framework for retail competition in embedded electricity networks commencing on 1 December 2017.

Solar Bonus Scheme

The Solar Bonus Scheme offers eligible small electricity customers a premium feed-in tariff of 44 cents per kilowatt-hour (c/kWh) for surplus electricity generated by eligible solar photovoltaic (PV) systems and exported into the electricity grid. Since its introduction in 2008, the Solar Bonus Scheme has helped over 280,000 Queensland homes and small businesses to install solar PV systems and has been instrumental in building the Queensland solar industry.

The Queensland Government is committed to retaining the Solar Bonus Scheme for customers who continue to meet eligibility requirements. The Queensland Government is also committed to enabling the installation of more solar PV and other new energy technologies, such as batteries, and recognises that both technologies will be central to Queensland's future energy mix. Rapidly falling prices for these technologies is fuelling interest from customers to take more control over their energy use.

However, the current Solar Bonus Scheme rules do not anticipate the availability and affordability of these technologies and do not specifically address their use. This has created ambiguity for customers who may be interested in additional generation or storage, but are reluctant to risk their eligibility for the Solar Bonus Scheme feed-in tariff.

It is important that the Government set the right conditions to create opportunities for the installation of new solar PV and batteries without adding to the cost of the Solar Bonus Scheme. This Bill aims to give certainty to Solar Bonus Scheme customers about how they can install and operate additional solar PV and/or batteries without affecting their Solar Bonus Scheme eligibility. This will give Solar Bonus Scheme customers the necessary confidence to invest in

new technology, assured that they can continue to receive the 44c/kWh feed-in tariff as long as they remain eligible.

Regulatory Arrangements for Competition in Embedded Networks

The Queensland Government committed to providing competition to customers within embedded networks when a nationally consistent approach for embedded networks was developed and incorporated into the National Electricity Rules (NER).

As part of the Australian Energy Market Commission's Power of Choice Review reform program, the Embedded Network Rule directly contributes to this commitment by making changes to the NER that aim to reduce the barriers to embedded network customers from choosing the products, services and provider of retail services that suit them best.

Under the National Electricity Law, applied in Queensland by the *Electricity—National Scheme (Queensland) Act 1997*, the NER have the force of law in this jurisdiction. Accordingly, amendments to those rules providing for the reform of arrangements regarding competition in embedded networks will come into force without the need for any Queensland-specific legislative amendment. However, amendments to Queensland legislation are required in order to remove barriers that prevent competition for embedded network customers and avoid any conflict with the implementation of this major national reform in Queensland.

Achievement of policy objectives

Solar Bonus Scheme

To achieve its objectives in relation to the Solar Bonus Scheme, the Bill amends the Electricity Act to clarify the specific circumstances in which Solar Bonus Scheme customers will not be permitted to use additional generation and electricity storage devices. This will give certainty to Solar Bonus Scheme customers who may wish to install new technology, while limiting the potential cost impact of new technology on the Solar Bonus Scheme if left unaddressed.

The proscribed circumstances are:

- installation of additional generation systems and/or electricity storage devices in a way that enables the system and/or device to supply energy to the premises at the same time the Solar Bonus Scheme qualifying generator is operating;
- installation of additional generation systems and/or electricity storage devices in a way that allows them to export electricity to the network; and
- the practice of 'oversizing' existing Solar Bonus Scheme qualifying generators.

Other uses are permitted.

These amendments align with the intent of the Solar Bonus Scheme, which was that generation from a qualifying generator would be used in customers' homes and businesses first with any excess beyond normal consumption to be exported. The approach in the Bill balances the Government's commitment to Solar Bonus Scheme customers to retain the 44c/kWh feed-in tariff, while supporting the deployment of new energy technologies, minimising compliance costs, and limiting the potential for Solar Bonus Scheme costs to rise.

Without amendment to the Electricity Act, there is a risk that Solar Bonus Scheme costs could rise by up to 25 per cent by 2028, potentially increasing total scheme cost from \$4.1 billion to around \$5.1 billion.

Regulatory Arrangements for Competition in Embedded Networks

To achieve its objectives of avoiding any conflict with the implementation of the Embedded Networks Rule on 1 December 2017, the Bill amends the Electricity Act to remove the restriction placed on ‘receivers’ having to connect to the local distribution network in order to access retail market offers from an authorised retailer.

The Bill also amends the Energy and Water Ombudsman Act to enable embedded network customers who choose a retailer to access the Queensland Energy and Water Ombudsman’s dispute resolution services, as other retail customers can.

The approach to achieving the policy objective is appropriate and reasonable. Removing the restriction on receivers to cost effectively purchase electricity from a chosen retailer will allow for the commencement and implementation of the Embedded Networks Rule, and provide a national harmonised framework for facilitating access to retail competition for customers in embedded networks.

Alternative ways of achieving policy objectives

Solar Bonus Scheme

Several options were considered to achieve the policy objective. However, these were ruled out due to administrative cost and complexity.

In accordance with the Queensland Government Guide to Better Regulation, Department of Energy and Water Supply submitted an application to the Office of Best Practice Regulation to exclude the proposed amendments from further regulatory impact assessment. The application for exclusion was made on the basis the proposal would reduce cost risks, and had already undergone extensive impact assessment, which informed the development of policy options.

Regulatory Arrangements for Competition in Embedded Networks

There is no alternative way to achieve the desired policy objectives.

Estimated cost for government implementation

Solar Bonus Scheme

There is no direct cost to the State Government in relation to the implementation of the Bill. Enforcing compliance with the clarified provisions will fall on Queensland’s electricity distribution businesses as part of their existing Solar Bonus Scheme compliance activity.

Regulatory Arrangements for Competition in Embedded Networks

There is no direct cost to the State Government in relation to the amendments in the Bill. The Energy and Water Ombudsman is industry funded and will recover any expected additional costs associated with an increase in the number of customers who will become eligible to access the scheme, via participation and user-pays fees obtained from scheme participants.

Consistency with fundamental legislative principles

This Bill has been examined for compliance with, and drafted with regard to, the fundamental legislative principles, outlined in section 4 of the *Legislative Standards Act 1992* (Qld) (LSA), and potential breaches of fundamental legislative principles were identified. These are addressed as follows.

Legislation should have sufficient regard to the rights and liberties of individuals – LSA section 4(2)(a)

Clause 2 – Commencement

Clause 2(1) of the Bill proposes to commence amendments relating to the Solar Bonus Scheme retrospectively from the date of introduction into the Legislative Assembly. This may potentially breach the principle that legislation has sufficient regard to rights and liberties of individuals. A consideration in determining this is whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively: s4(3)(g) LSA.

The proposed changes to the Solar Bonus Scheme may adversely affect, in some cases, the rights of certain individuals, being Solar Bonus Scheme customers who may have been considering whether to:

- ‘oversize’ their Solar Bonus Scheme qualifying generator, or
- install additional generators and/or electricity storage devices in a way that could boost the premium feed in tariff payments they receive under the Solar Bonus Scheme.

To minimise the potential impact on those customers, the Minister for Energy, Biofuels and Water Supply has publicly announced the proposal on the date of introduction. The Bill also protects Solar Bonus Scheme customers who have already installed, or have entered into contracts to purchase, additional generation capacity or batteries, prior to the date of the announcement.

This approach reduces the potential negative impacts from retrospective legislation on individual rights by preserving the rights of individuals who have made investments, or have contracted to invest, in equipment under the legislation in place at the time of introduction, while minimising the opportunities for customers to unfairly profit from ambiguity in the legislation.

Clause 5 - Amendment of s44A (Additional condition to allow credit for electricity produced by small photovoltaic generators)

Clause 5 of the Bill proposes restricting Solar Bonus Scheme customers from: ‘oversizing’ their Solar Bonus Scheme qualifying generators, or installing additional generators and/or electricity storage devices in a way that could boost the premium feed in tariff payments they receive under the Solar Bonus Scheme. Should a customer undertake one of these activities, they will lose eligibility to receive the Solar Bonus Scheme premium feed-in tariff payment. This may potentially breach the principle that legislation has sufficient regard to rights and liberties of individuals.

At present, the Solar Bonus Scheme rules do not anticipate the availability and affordability of these technologies and do not address their use. While customers undertaking these activities are generally not eligible for premium feed-in tariff payments in relation to energy generated from a secondary generation system or electricity storage device, they will not necessarily lose eligibility for scheme payments in relation to legitimate exports from their qualifying generator. However, given technical limitations it is in practice very difficult to determine whether an exported electron has come from a Solar Bonus Scheme qualifying generator, or an additional generator/storage device, particularly if these are operating concurrently. Ambiguity around this creates uncertainty for distribution businesses who are liable for payment, and customers trying to comply with the rules. In addressing this ambiguity and setting clear boundaries for what is not permissible, the clause gives sufficient regard to the rights of individuals.

Consultation

Solar Bonus scheme

Public consultation on the changes to the Solar Bonus Scheme has not been undertaken. This is due to the community sensitivities to the Solar Bonus Scheme and potential for the costs of the Solar Bonus Scheme to increase if Solar Bonus Scheme customers rush to take up new technology in the face of an impending restriction. The Government determined that an increase in Solar Bonus Scheme costs represented an unacceptable risk which outweighed the need for broad consultation.

However, throughout the development of the proposal in 2016, Department of Energy and Water Supply has consulted confidentially with a number of major stakeholders in the Queensland electricity market. These were Energex, Ergon Energy, AGL, Origin Energy and Lumo/Red Energy).

Regulatory Arrangements for Competition in Embedded Networks

The Queensland Government released a discussion paper canvassing the major market and regulatory challenges associated with electricity supply in embedded networks, with a particular focus on addressing consumer protection and introducing competition in the marketplace. In addition, the Department of Energy and Water Supply held a targeted stakeholder workshop to explore the impacts of the Embedded Network Rule change proposal and subsequently released a further discussion paper to stakeholders to explore the potential impacts, benefits and technical issues associated with introducing retail competition in embedded networks.

The Office of Best Practice Regulation within the Queensland Productivity Commission confirmed that the embedded networks proposal is excluded from the Regulatory Impact Statement (RIS) process on the grounds that the Embedded Network Rule has undergone an extensive consultation and impact assessment which is comparable to the requirements of the RIS system.

Consistency with legislation of other jurisdictions

Solar Bonus Scheme

This aspect of the Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. The treatment of additional generators and batteries in the solar feed-in tariff schemes in other jurisdictions varies widely. Queensland's approach seeks to balance the needs of Solar Bonus Scheme customers with its commitment to support the installation of new energy technologies in Queensland.

Regulatory Arrangements for Competition in Embedded Networks

The amendment of existing legislation will mean that Queensland will be consistent with the NER, which have the force of law in this jurisdiction. Currently Victoria, NSW, South Australia and the Australian Capital Territory have regulatory frameworks that allow for embedded network customers to access retail market offers. However, upon commencement of the Embedded Network Rule on 1 December 2017, these jurisdictions will transition to the new framework as the NER also have the force of law in these jurisdictions.

Notes on provisions

Part 1 Preliminary

1 Short Title

Clause 1 states that this Act, if enacted, will be cited as the *Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Act 2017*.

2 Commencement

Clause 2 states that the Bill will be implemented in two stages.

Clause 2(1) states that the amendments to the Electricity Act implementing changes to the Solar Bonus Scheme will be taken to have come into effect from the date the Bill is introduced into Parliament. These are the amendments in Part 2 of the Bill, other than sections 4 and 7.

Clause 2(2) states that the amendments to the Electricity Act and the Energy and Water Ombudsman Act related to embedded networks will commence on 1 December 2017. These are the amendments in sections 4 and 7, and part 3 of the Bill. This is needed to align the amendments with the changes to the National Electricity Rules to clarify the regulatory arrangements for embedded network customers accessing retail market offers (Embedded Network Rule change).

Part 2 Amendment of Electricity Act 1994

3 Act amended

Clause 3 states that Part 2 of the Bill amends the Electricity Act.

4 Amendment of s 23 (Customers and their types)

Clause 4 omits section 23(2) of the Electricity Act. Section 23(2) restricts the circumstances in which a receiver will be considered a customer for the purposes of the Electricity Act. Omission of this restriction is needed to ensure consistency with the *National Energy Retail Law (Queensland)* and to remove the barrier that prevents embedded network customers from cost effectively purchasing electricity from a chosen retailer.

Clause 4(2) renumbers section 23(3) to (5) of the Electricity Act as section 23(2) to (4).

5 Amendment of s 44A (Additional condition to allow credit for electricity produced by small photovoltaic generators)

Clause 5 makes a number of amendments to section 44A of the Electricity Act. Section 44A is the main enabling provision for the Solar Bonus Scheme.

Clause 5(1) omits the term ‘a premises’ in section 44A(1) and inserts ‘premises’ to reflect current drafting practice.

Clause 5(2) corrects a drafting error in section 44A(1)(b)(i).

Clause 5(3) inserts new subsections (1A) and (1B) into section 44A of the Electricity Act.

Section 44A(1A) establishes that a customer stops being entitled to receive the Solar Bonus Scheme 44c/kWh feed-in tariff from their distributor if they act in any of three ways:

- i) add generation capacity to their qualifying generator which exceeds the output of their system’s inverter (i.e. oversize);
- ii) install a battery which can be used at the same time as qualifying generator is generating or is able to export energy to the supply network; or
- iii) install an additional generation system which can be used at the same time the qualifying generator is generating or is able to export energy to the supply network.

Under section 44A(1A)(a), Solar Bonus Scheme customers will lose eligibility if they add additional generation capacity (i.e. extra solar panels) to their existing Solar Bonus Scheme qualifying generator if the total peak combined output of the panels is greater than the rated output of their systems inverter as approved by their distributor. For example:

- a Solar Bonus Scheme customer has a solar power system with an inverter with a rated output of 2 kilowatts (kW), but has installed six panels each with a peak capacity of 250 watts (W): a total peak generation capacity of 1500W, or 1.5kW. The customer may add an additional 500W of generation capacity (i.e. 2 x 250W panels) and remain eligible for the Solar Bonus Scheme. However, if the customer adds more than 500W of extra capacity, (i.e. three or more panels) they would become ineligible for the Solar Bonus Scheme.
- a Solar Bonus Scheme customer has a solar power system with an inverter with a rated output of 5 kW, but has installed 16 panels each with a peak capacity of 250W: a total peak generation capacity of 4000W, or 4kW. The customer may add an additional 1kW of generation capacity (i.e. 4 x 250W panels) and remain eligible for the Solar Bonus Scheme. However, if the customer adds more than 1kW of extra capacity, (i.e. more than 4 x 250W panels) they would become ineligible for the Solar Bonus Scheme.

Under section 44A(1A)(b), Solar Bonus Scheme customers will lose eligibility if they install a battery (or similar) on the same electrical installation as their qualifying generator, and the battery is installed in a way that allows it to:

- supply electricity to the electrical installation at the same time as the qualifying generator, or
- export electricity to the grid.

However, the use of a battery to supply the home or business which is also supplied by the qualifying generator is permitted during interruptions to supply, such as blackouts.

Under section 44A(1A)(c), Solar Bonus Scheme customers will lose eligibility if they install an additional generator, such as an additional solar PV system, a wind turbine, a liquid fuel generator (e.g. diesel) on the same electricity installation as their qualifying generator, and the additional generator is installed in a way that allows it to:

- supply electricity to the electrical installation at the same time as the qualifying generator, or
- export electricity to the grid.

However, the use of an additional generator to supply the home or business which is also supplied by the qualifying generator is permitted during interruptions to supply, such as blackouts.

These conditions in (b) and (c) apply regardless of whether or not electricity is being exported from the qualifying generator to the grid.

For clarity, customers may install an additional generator or battery and remain eligible for the Solar Bonus Scheme as long as the additional generator or battery:

- is attached to an electrical installation which is different to the one that their Solar Bonus Scheme qualifying generator is attached to; or
- is attached to the same electrical installation as their Solar Bonus Scheme qualifying generator, but installed in a way that prevents it from
 - o supplying electricity to the grid; and
 - o supplying electricity to the installation while the qualifying generator is generating.

This means that customers may:

- install an additional generator which only supplies the home or business at night, or during a blackout, and remain eligible for the Solar Bonus Scheme;
- install a battery which only supplies the home or business at night, or during a blackout, and remain eligible for the Solar Bonus Scheme;
- install an additional generator which supplies a separate structure which is not connected to the part of the home or business which is also supplied by the qualifying generator (e.g. a shed).

Section 44A(1B) explains that if a customer breaches any of the conditions in section 44A(1A), then the distributor is no longer obliged to pay the customer the Solar Bonus Scheme feed-in tariff of 44c/kWh for any excess electricity exported to the grid.

Clause 5(4) inserts new subsection (6) which includes three new definitions for subsection (1A).

The term *approved total rated inverter capacity referred to in subsection (1A) paragraph (a)* means the capacity of the inverter for the customer's qualifying generator which was approved by the customer's distributor and which is stated in the customer's Inverter Energy System connection agreement.

The term *electricity storage device* is defined to mean equipment which can store energy and release that stored energy as electricity – e.g. a battery.

The term *supply interruption* refers to any interruption in the supply of electricity to a customer from the electricity grid. Examples of interruptions include, but are not limited to, unplanned power outages such as blackouts due to storm damage, and planned outages due to network maintenance activity.

6 Insertion of new chapter 14, part 18 - Transitional provision for Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Act 2017

Clause 6 inserts a new part 18 into chapter 14.

New section 360 explains the application of the revised section 44A.

Section 360(1) explains that the new provisions in subsections 44A(1A), (1B) and (6) as outlined in clause 5 of this Bill will apply to all customers who are eligible to receive the Solar Bonus Scheme, regardless of when their qualifying generator was installed. This means that the new provisions will apply to Solar Bonus Scheme customers who installed, or received approval to install, their qualifying generator before 8 June 2011 to whom section 328 applies, as well as customers who installed their qualifying generator before 30 June 2013.

Section 360(2) contains an exemption from the application of the new section 44A(1A)(a) for Solar Bonus Scheme customers who have, before the date of commencement of the Bill, already oversized their qualifying generator.

Section 360(3) contains an exemption from the application of the new section 44A(1A)(b) for Solar Bonus Scheme customers who have, before the date of commencement of the Bill, already either installed or contracted with a supplier to install a battery in a way that would otherwise be prohibited by new section 44A(1A)(b).

Section 360(4) contains an exemption from the application of the new section 44A(1A)(c) for Solar Bonus Scheme customers who have, before the date of commencement of the Bill, already either installed or contracted with a supplier to install an additional generator in a way that would otherwise be prohibited by new section 44A.

7 Amendment of schedule 5 (Dictionary)

Clause 7 (1) omits the reference to section 23(5) in the definition of an ‘excluded customer’ and inserts a reference to section 23(4). This is a consequential change due to the renumbering of section 23 of the Electricity Act in clause 4 of this Bill.

Clause 7 (2) omits the reference to section 23(3) in the definition of ‘large customer’ and inserts a reference to section 23(2). This is a consequential change due to the renumbering of section 23 of the Electricity Act in clause 4 of this Bill.

Clause 7 (3) omits the reference to section 23(4) in the definition of ‘small customer’ and inserts a reference to section 23(3). This is a consequential change due to the renumbering of section 23 of the Electricity Act in clause 4 of this Bill.

Part 3 Amendment of Energy and Water Ombudsman Act 2006

8 Act amended

Clause 8 states that Part 3 amends the *Energy and Water Ombudsman Act 2006*.

9 Amendment of s 6 (Who is a *small customer (energy)*)

Clause 9 (1) inserts a new subsection 2A after section 6(2)(b).

New subsection 2A outlines that in addition to ‘who is a small customer (energy)’ a person is also a small customer energy if the person is both an ‘eligible non-residential energy customer’ and a ‘receiver’ of an ‘on-supplier’ under an energy Act. This means that small business customers who consume up to 160 megawatt hours of electricity per annum, and who are also a receiver of an on-supplier, will be eligible to access the energy and water ombudsman scheme.

Clause 9 (2) omits section 6(4) and replaces it with new wording to remove any doubt in regards to who is a ‘small customer (energy)’ by declaring that a ‘receiver’ of an ‘on-supplier’ under an energy Act, (but is not a small customer under an energy Act, or an eligible non-residential energy customer), is not a ‘small customer (energy)’. This means that receivers of an on-supplier are not eligible to access the energy and water ombudsman scheme.

10 Amendment of s 12 (Restrictions on functions – energy entities)

Clause 10(1) inserts a new paragraph (ca) to state that disputes between a ‘small customer’ under an energy Act, or an eligible non-residential energy customer, and an ‘on-supplier’ are restricted functions placed on the Energy and Water Ombudsman.

Clause 10(2) makes consequential renumbering changes.