

Electricity Competition and Protection Legislation Amendment Bill 2014

Report No. 47

State Development, Infrastructure and Industry Committee

August 2014

State Development, Infrastructure and Industry Committee

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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 Competition and Protection Legislation Amendment Bill 2014.

The committee has also considered the National Energy Retail Law (Queensland) Bill 2014 (refer to Report No. 48) in conjunction with the Electricity Competition and Protection Legislation Amendment Bill 2014. Both bills are part of the Government's electricity reform agenda.

In the long term, both bills are expected to drive a more efficient market, foster competition and put downward pressure on energy prices. The effects of both bills will need to be closely monitored and it is pleasing to note that the National Energy Retail Law (Queensland) Bill 2014 proposes a legislative requirement to review its effects by 1 January 2018.

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.

The committee commends the department for its comprehensive responses throughout the inquiry process, in particular the department's format used in its response to submissions which greatly assisted the committee's consideration of the Bill.

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.



David Gibson MP
Chair

August 2014

Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Bill	Electricity Competition and Protection Legislation Amendment Bill 2014
committee	State Development, Infrastructure and Industry Committee
department	Department of Energy and Water Supply
Electricity Act	<i>Electricity Act 1994</i>
ERAA	Energy Retailers Association of Australia
ESAA	Energy Supply Association of Australia
ETU	Electrical Trades Union of Employees Queensland Branch
explanatory notes	Electricity Competition and Protection Legislation Amendment Bill 2014 Explanatory Notes
FLP	fundamental legislative principle
Gas Supply Act	<i>Gas Supply Act 2003</i>
GSL	Guaranteed service level
IDC	Interdepartmental Committee on Electricity Sector Reform
IDC Report	Interdepartmental Committee on Electricity Sector Reform Report
Minister	Minister for Energy and Water Supply
NCC	National Competition Council ¹
NECF	National Energy Customer Framework
NERL (Qld)	National Energy Retail Law (Queensland)
NERL (Qld) Bill	National Energy Retail Law (Queensland) Bill 2014
Ombudsman	Energy and Water Ombudsman
OQPC	Office of Queensland Parliamentary Counsel
QCA	Queensland Competition Authority
QCOSS	Queensland Council of Social Service
SEQ	South East Queensland (that part of Queensland in which electricity is supplied by Energex)
SLC	Former Scrutiny of Legislation Committee
WDP	Wrongful disconnection payment

¹ The National Competition Council was established by section 29A of the *Trade Practices Act 1974* (Cth).

Recommendations

Recommendation 1

2

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

Recommendation 2

13

The committee recommends the Department of Energy and Water Supply closely monitors guaranteed service level payments and whether any significant fluctuations in payments follow from transitioning to a deregulated market.

Recommendation 3

20

The committee recommends the Electricity Competition and Protection Legislation Amendment Bill 2014 and National Energy Retail Law (Queensland) Bill be considered by the House at the same time.

Points for Clarification**Point for clarification 1****7**

The committee requests advice from the Minister for Energy and Water Supply in relation to how consumers will be engaged and educated about market monitoring prior to commencement.

Point for clarification 2**8**

The committee requests further advice in relation to how the Department of Energy and Water Supply will internally monitor and report on the effectiveness of the deregulation of the electricity market and consumer protections within the first 12 months of commencement.

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:²

- 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 May 2014, the Electricity Competition and Protection 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 to 28 August 2014.

1.3 The committee's inquiry process

On 23 May 2014, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of relevant stakeholders. The closing date for submissions was 30 June 2014. The committee received 18 submissions (see Appendix A for list of submitters).

On 4 June 2014, the committee held a public briefing with the Department of Energy and Water Supply (the department). On 6 August 2014, the committee held a public hearing in Brisbane (see Appendix B for list of witnesses).

On 5 August 2014, the department wrote to the committee to outline a number of proposed amendments to the Bill. The amendments include a policy change, a range of technical amendments to enhance clarity and consequential amendments as a result of the commencement of the *Electricity and Other Legislation Amendment Act 2014*. A table of proposed amendments is included at Appendix C and referred to in this report where necessary.

The committee commends the department for its comprehensive responses throughout the inquiry process, in particular the department's format used in its response to submissions which greatly assisted the committee's consideration of the Bill.

The committee's consideration of this Bill occurred in conjunction with the National Energy Retail Law (Queensland) Bill 2014 (refer to the committee's Report No. 48).

The submissions and the transcripts of the public briefing and public hearing, and the correspondence from the department referred to in this report are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.³

² Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:

- amend the *Electricity Act 1994* to remove retail price regulation in South East Queensland and establish an effective market monitoring regime, and
- remove or amend provisions of existing Queensland energy legislation to avoid duplication upon commencement of the National Energy Retail Law (Queensland) Bill 2014 and to ensure that the remaining provisions continue to operate effectively.

1.5 The Government's consultation on the Bill

The department consulted with a broad range of stakeholders on its 'proposed approach to implementing market monitoring in [South East Queensland], including the desired customer protection and engagement pre-conditions.'⁴

The consequential amendments in the Bill are a necessary consequence of provisions included in the National Energy Retail Law (Queensland) Bill 2014. The National Energy Retail Law has been subject to various public consultations between 2006 and 2014.⁵

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.

Recommendation 1

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

³ At the time of writing this report, the transcript of the public hearing was a proof transcript.

⁴ Explanatory notes, p 6.

⁵ Explanatory notes, pp 6 – 7. See the committee's Report No. 48 on the National Energy Retail Law (Queensland) Bill 2014.

2 Examination of the Bill

2.1 Background to the Bill

In mid-2012, the Queensland Government established an Interdepartmental Committee on Electricity Sector Reform (IDC) to scrutinise pressures on electricity prices, focussing on network costs, electricity supply and retail competition. In May 2013, the IDC provided a report to government (IDC Report). The IDC Report included the following recommendations which were accepted by the Government:⁶

- 4.6.1 *Commit to increased retail competition as a key energy policy goal.*
- 4.6.2 *To stimulate investment and competition for the benefit of customers, remove price controls in South East Queensland by 1 July 2015 if consumer protection and engagement in the market are judged to be adequate.*
- 4.6.3 *Consult on a pathway to remove price controls in South East Queensland, including:*
 - *the pre-conditions that would need to be met to ensure customers benefit*
 - *a timetable to achieve the conditions*
 - *the development of alternate customer safeguards (such as the power to re-regulate under certain conditions).*

2.2 Policy objectives of the Bill

The Bill proposes to:⁷

- implement the IDC Report recommendations by removing retail price regulation for small domestic and business customers in South East Queensland (SEQ) and establish a new market monitoring regime, and
- make amendments to existing laws to support the application of the National Energy Customer Framework in Queensland.

While most submitters and witnesses supported the policy objectives of the Bill,⁸ some expressed concerns, such as the likely complexity of products to be offered by electricity retailers if the Bill is passed.⁹

⁶ [Interdepartmental Committee on Electricity Sector Reform Report to Government](#), May 2013, p 17; [Queensland Government response to the Interdepartmental Committee on Electricity Sector Reform](#), p 9. The Government response was released on 16 June 2013.

⁷ Hon Mark McArdle MP, Electricity Competition and Protection Legislation Amendment Bill 2014, Introductory Speech, Record of Proceedings, 20 May 2014, pp 1550 – 1551.

⁸ See, for example, Energex, Submission No. 1; Stanwell, Submission No. 2; Alinta Energy, Submission No.3; Steel Wave Power, Submission No. 4; Energy Retailers Association of Australia, Submission No. 8; AGL, Submission No. 9; EnergyAustralia, Submission No. 10; Maranoa Regional Council, Submission No. 11; Lumo Energy, Submission No. 12; Ergon Energy, Submission No. 12; Origin Energy, Submission No. 15; Momentum Energy, Submission No. 16; Energy Supply Association of Australia, Submission No. 17.

⁹ See, for example, National Seniors Australia, Submission No. 18; Queensland Council of Social Service, Submission No. 7; Electrical Trades Union of Employees Queensland Branch, Submission 6.

2.3 Regional Queensland

The Bill does not propose to change the electricity pricing arrangements for regional Queensland customers.¹⁰ Regional customers on standard contracts will continue to pay regulated prices set by the Queensland Competition Authority (QCA).¹¹

Ergon Energy expressed its support for the preservation of the mechanism for setting regulated retail electricity prices for standard contract customers outside SEQ, as did Maranoa Regional Council.¹² The Energy Retailers Association of Australia (ERAA) submitted that market monitoring should be extended to regional Queensland after it has become established in SEQ.¹³

The Government is currently investigating options for introducing competition in regional Queensland. The Minister stated that work was underway on a longer term reform strategy for the area and advice has been sought from the QCA on potential price setting options in order for the Government to develop a suitable approach.¹⁴

2.4 Establishment of a new market monitoring regime

The Bill proposes to achieve its objective of introducing market monitoring in SEQ by amending the *Electricity Act 1994* to:¹⁵

- remove the Ministerial power to decide regulated retail electricity prices for standard contract (non-market) customers in SEQ,¹⁶
- establish a limited reserve power to allow the Minister responsible for Energy to re-introduce price controls in SEQ should competition become ineffective and subject to an independent review, and
- allow the Minister responsible for Energy to direct the QCA to undertake a market monitoring function and publish an annual market comparison report.

Removal of power of Minister to decide regulated retail electricity price for SEQ

Currently, section 90 of the *Electricity Act 1994* provides the Minister must determine regulated retail electricity prices each year.¹⁷

The Bill proposes new sections 89A and 89E to stipulate that the Minister will not decide the price, or the methodology for fixing the prices, that a retailer¹⁸ may charge in SEQ for:

- the sale of electricity to its standard contract customers, or
- charges or fees relating to the sale of that electricity.

¹⁰ That is, those in the Ergon Energy distribution area. Section 90 of the *Electricity Act 1994* will continue to apply to areas of Queensland not in the Energex distribution area.

¹¹ Explanatory notes, p 2. The Minister may delegate to the QCA all or any of the Minister's functions under section 90(1): *Electricity Act 1994*, s 90AA.

¹² Ergon Energy, Submission No. 14; Maranoa Regional Council, Submission No. 11.

¹³ Energy Retailers Association of Australia, Submission No. 8.

¹⁴ Hon Mark McArdle MP, Introductory Speech, Record of Proceedings, 20 May 2014, pp 1551-1552. See also, *Government Response to the Interdepartmental Committee on Electricity Sector Reform*, p 9.

¹⁵ Explanatory notes, p 2.

¹⁶ That is, the Energex distribution area.

¹⁷ These are the prices that customers who are not on market contracts pay for electricity: Department of Energy and Water Supply, '[Electricity prices](#)', last updated 30 September 2013. The Minister may delegate to the QCA all or any of the Minister's functions under section 90(1): *Electricity Act 1994*, s 90AA.

¹⁸ 'Retailer' is defined in proposed new Schedule 5 of the *Electricity Act 1994* as a retailer under the NERL (Qld), that sells electricity to a customer in Queensland.

The aim of the amendments is to increase competition amongst electricity retailers in SEQ.

In a competitive electricity market, if a customer is unhappy with their retailer, the customer can change to a different retailer.¹⁹ Increased competition is expected to 'drive better outcomes than regulation for customers in terms of choice, efficiency, customer service and price discounts'.²⁰ It is likely, however, that the benefits of competition will take time to eventuate.²¹

Stanwell submitted that deregulation of electricity prices in Victoria 'has led to strong competition among retailers which in turn has provided customers with access to efficient, cost reflective electricity offers'.²² Conversely, the Electrical Trades Union of Employees Queensland Branch (ETU) submitted that deregulation of electricity prices in Victoria has led to higher electricity prices than Queensland and increased customer complaints and dissatisfaction.²³

The Energy Supply Association of Australia (ESAA) submitted competition in the retail electricity market will ensure retail prices are set at sustainably low prices.²⁴

According to Energy Australia, deregulation reduces risk for retailers because it removes the concern that the regulator may set tariffs below efficient levels.²⁵

The ETU was concerned about the proposed removal of the 'safety net' of regulated tariffs.²⁶ With respect to this, the department advised the committee that customers who do not wish to enter a market contract will be supplied electricity under a standard retail contract.

National Seniors Australia submitted that while competition may result in lower electricity prices for some customers, others may pay more and current levels of concessions and associated eligibility criteria should not be scaled back.²⁷ The department advised that market monitoring should put downward pressure on costs and the Government would oversee the market to ensure competition remains effective.²⁸

Committee comment

The committee notes that Queensland will not be the first Australian jurisdiction to deregulate electricity retail prices - Victoria did so on 1 January 2009, South Australia on 1 February 2013 and New South Wales on 1 July 2014.²⁹

The committee supports the deregulation of the retail electricity market in SEQ as it is likely to increase competition between electricity retailers, result in a wider choice of retailers and products for consumers and place downward pressure on prices.

¹⁹ Public briefing transcript, 4 June 2014, p 4.

²⁰ Hon Mark McArdle MP, Introductory Speech, Record of Proceedings, 20 May 2014, p 1551. See also, Alinta Energy, Submission No. 3; EnergyAustralia, Submission No. 10; AGL, Submission No. 9.

²¹ Hon Mark McArdle MP, Introductory Speech, Record of Proceedings, 20 May 2014, p 1551; Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 20; Energy Retailers Association of Australia, Submission 8.

²² Stanwell, Submission No. 2.

²³ Electrical Trades Union of Employees Queensland Branch, Submission 6.

²⁴ Energy Supply Association of Australia, Submission No. 17.

²⁵ EnergyAustralia, Submission No. 10.

²⁶ Electrical Trades Union of Employees Queensland Branch, Submission 6.

²⁷ National Seniors Australia, Submission No. 18.

²⁸ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 22.

²⁹ Victoria, [Essential Services Commission, Progress of Electricity Retail Competition in Victoria: Research Paper](#), May 2013, pp 2 – 3; New South Wales, [Independent Pricing & Regulatory Tribunal, 'Electricity prices'](#).

Pre-conditions

To ensure that SEQ customers will benefit from the removal of price regulation, the Minister advised that the following conditions would have to be met before it is removed.³⁰

- confirm there is sufficient competition in SEQ (The Australian Energy Market Commission (AEMC) will report on the state of retail market competition in September 2014.)³¹
- ensure that consumer protections are in place (The National Energy Retail Law (Queensland) Bill proposes to strengthen consumer protections.)³²
- improve customer engagement in the market so that customers understand and can engage in the market (Communication strategies are discussed below.)
- establish a strong framework to oversee the market to ensure retailers act fairly and a fair price is paid (The QCA will oversee the operation of the market, as will the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC). In addition, the Bill includes a reserve power for the Minister to re-introduce price regulation if it is determined independently that competition is not functioning.)
- establish a suitable price setting method for regional Queensland in 2015-16 (The Minister has sought advice from the QCA on potential price setting options.).

The Queensland Consumers Association supports the proposal not to deregulate prices and commence market monitoring in SEQ until the pre-conditions have been met.³³

Committee comment

The committee considers that the Government's decision to set pre-conditions that must be met before electricity prices are deregulated is sensible and will ensure that the transition to market monitoring occurs successfully.

Commencement

It is planned that the market monitoring reforms would come into operation on 1 July 2015.³⁴

Submitters differed in their views on whether this commencement date provides sufficient time for consumers to be made aware of the proposed changes. This issue was also raised in the committee's consideration of the National Energy Retail Law (Queensland) Bill 2014.

The ERAA considered the anticipated time between when the Bill and the National Energy Retail Law (Queensland) Bill 2014 (NERL (Qld) Bill) are passed and the commencement of the Acts will provide sufficient time for consumers to be 'appropriately informed of proposed changes' and for retailers to 'make changes to operating systems'.³⁵

On the other hand, the Queensland Council of Social Service (QCOSS), National Seniors Australia and Queensland Consumers Association argued that the commencement date should be postponed until

³⁰ Hon Mark McArdle MP, Introductory Speech, Record of Proceedings, 20 May 2014, p 1551. See also, Energy Retailers Association of Australia, Submission No. 8; Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 20.

³¹ The AEMC will report on matters such as switching rates between retailers; whether there are any institutional barriers between providers of electricity services; whether consumers have sufficient information to benefit from competition: Public briefing transcript, 4 June 2014, p 3.

³² See the committee's Report No. 48 on the National Energy Retail Law (Queensland) Bill 2014.

³³ Queensland Consumers Association, Submission No. 10.

³⁴ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 22.

³⁵ Energy Retailers Association of Australia, Submission No. 8. Momentum Energy supports the Energy Retailers Association of Australia's submission: Momentum Energy, Submission No. 16.

1 July 2016 on the basis consumers need more time to be informed about the Bill and the NERL (Qld) Bill.³⁶ The organisations were concerned about the expected greater complexity for consumers. In addition, QCOSS considered that postponing the commencement date by a year would 'enable the government's preconditions to be fully considered and addressed'.³⁷ Further, it considered that the concessions framework needs to be improved before deregulation occurs.³⁸

The department is of the view that QCOSS's concerns with respect to the commencement date of the market reforms are unwarranted on the basis that the Government is expected to satisfy the preconditions for market monitoring at least six months before the commencement date.³⁹

Committee comment

The committee acknowledges that increased competition and deregulation of prices are likely to make choosing a retailer and product more complex for consumers but the committee is satisfied that there will be sufficient time between the passage of the Bill and the commencement of market monitoring on 1 July 2015 for SEQ consumers to be made aware of the changes to electricity retailing.

Point for clarification 1

The committee requests advice from the Minister for Energy and Water Supply in relation to how consumers will be engaged and educated about market monitoring prior to commencement.

Market monitoring direction and report

Proposed new section 89B enables the Minister to give the QCA a written direction requiring the QCA to monitor, and give a written report on, the operation of the retail electricity market in SEQ. It is anticipated the QCA would prepare a report annually which would be published on the QCA's website.⁴⁰

AGL considered that QCA's monitoring role should be phased out given the AEMC and the AER would also monitor the Queensland market.⁴¹ The department's intention, however, is that the QCA 'will complement, rather than duplicate, the existing market monitoring functions undertaken by the AER and AEMC'.⁴² The department advised:⁴³

- the AER will undertake monitoring and reporting on non-price indicators, including retailer activity, customer switching and levels of customer service,
- the AEMC will undertake annual competition assessments across all jurisdictions but it is not expected to provide a jurisdictional comparison of charges in standing and market offer prices across all retailers or for more than one type of tariff, and

³⁶ National Seniors Australia, Submission 18; Queensland Council of Social Service, Submission No. 7; Queensland Consumers Association, Submission No. 10.

³⁷ Queensland Council of Social Service, Submission No. 7. The QCOSS submission is supported by the Queensland Consumers Association: Queensland Consumers Association, Submission No. 10.

³⁸ Queensland Council of Social Service, Submission No. 7.

³⁹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 22 – 23.

⁴⁰ Public briefing transcript, 4 June 2014, p 3.

⁴¹ AGL, Submission No. 9.

⁴² Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 21-22.

⁴³ Ibid.

- the QCA will focus on price changes for market and standard contracts, discounts and customer bill impacts in the Queensland market.

The ERAA submitted that market monitoring should be phased out unless it is proven to be of net benefit.⁴⁴ The department advised that 'careful monitoring of the deregulated market is necessary to ensure the market is operating in a way that is consistent with effective competition and delivers real benefits to customers'.⁴⁵ It acknowledged, however, that the level of monitoring may change over time. Similar market monitoring frameworks were established in Victoria, South Australia and New South Wales when retail prices were deregulated.⁴⁶

Origin Energy considered the introduction of a market monitoring regime would 'enhance the South East Queensland electricity market by providing customers with more efficient prices, greater product offerings and a robust customer protection framework'.⁴⁷

Committee comment

The committee strongly supports the monitoring of, and reporting on, the operation of the SEQ retail electricity market by the QCA, especially in the early years of price deregulation. It acknowledges that it may be appropriate for the level of monitoring to change as the market matures.

The committee requests further advice in relation to how the department will internally monitor and report on the effectiveness of deregulation and consumer protections within the first 12 months of commencement.

Point for clarification 2

The committee requests further advice in relation to how the Department of Energy and Water Supply will internally monitor and report on the effectiveness of the deregulation of the electricity market and consumer protections within the first 12 months of commencement.

Reintroduction of price determination

Proposed new section 91B provides a reserve power for the Minister to reintroduce price regulation in SEQ. The Minister may only decide to make a price determination regarding the prices that a retailer may charge in relation to the sale of electricity to consumers if the AEMC (or another body such as the QCA) considers that competition in the relevant market is not effective and gives advice to the Minister recommending the reintroduction of price controls on the sale of electricity.⁴⁸

The ERAA supported the proposal for the Minister to decide to re-regulate on the basis of an independent assessment of competition and recommended consultation be undertaken on the methodology to form the basis of the decision in order to avoid any uncertainty for retailers that may discourage those from entering the market.⁴⁹

⁴⁴ Energy Retailers Association of Australia, Submission No. 8.

⁴⁵ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 20-21.

⁴⁶ Ibid.

⁴⁷ Origin Energy, Submission No. 15.

⁴⁸ See also, proposed new s 89D.

⁴⁹ Energy Retailers Association of Australia, Submission No. 8.

The explanatory notes state:⁵⁰

... the provision ensures the Minister's power to re-regulate will only be exercised subject to specific criteria being met, as outlined in section 91B(1). The power to re-regulate under 91B(2) is intended to incentivise good market conduct by retailers and reassure consumers that their interests will be protected under the market monitoring regime.

Committee comment

The committee supports the reserve power of the Minister to reintroduce price determination as it provides a safety net for consumers if competition in the SEQ electricity market is not effective.

Consumer engagement

Some submitters commented on the provision of information to consumers about the proposed changes.

Origin Energy stated that customer education is central to customers benefitting from market monitoring.⁵¹

QCOS considered that information about energy offers in Queensland is currently very poor and will need to be made simpler, clearer and more accessible to ensure consumers engage in the deregulated market.⁵²

The department advised the Government 'will work closely with retailers and advocacy groups to develop a communications campaign to ensure that appropriately targeted communications are delivered to customers'.⁵³

Committee comment

The committee strongly supports measures to improve the accessibility and clarity of information about electricity offers. It is pleased to note that stakeholders appear willing to work together to improve consumers' understanding of the electricity market so they can fully benefit from the proposed changes. The committee also comments on this aspect in its Report No. 48 on the National Energy Retail Law (Queensland Bill) 2014.

Other matters

Coordination agreements

Energex sought clarity about the retention of sections 55H and 55I of the *Electricity Act 1994* as it had understood that negotiation of coordination agreements and operation of standard coordination agreements would be replaced by the retail support obligations in the National Energy Retail Rules and the National Electricity Rules.⁵⁴ The department advised section 55H 'is to be retained until the department consults with industry stakeholders before a decision is made whether a standard coordination agreement will still serve a useful or necessary purpose'.⁵⁵

Committee comment

The committee is satisfied that the department is dealing with the issue.

⁵⁰ Explanatory notes, p 19. See also, Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 21.

⁵¹ Origin Energy, Submission No. 15.

⁵² Queensland Council of Social Service, Submission No. 7

⁵³ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 23.

⁵⁴ Energex, Submission No. 1.

⁵⁵ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 20.

Card meters

QCOSS expressed concern that card-operated meter customers are currently missing out on concessions and rebates. In response, the department noted that clause 28 proposes to replace section 55DA to impose an obligation on retailers to enter into an agreement with the State for the provision of community services, replacing the current retail authority condition. The department further stated that it is working with Ergon Energy, the Department of Communities, Child Safety and Disability Services and Smart Service Queensland 'to address the technicalities that have been preventing residential customers supplied by card-operated meters in Ergon Energy's electricity distribution area receiving the rebate in compliance with the policy.'⁵⁶

Committee comment

The committee is satisfied with the department's response to this issue.

Wrongful disconnections

The Electricity Industry Code (the Code) is administered by the Queensland Competition Authority (QCA).⁵⁷ The Code sets guaranteed service levels (GSLs) which Energex and Ergon Energy must meet in relation to the quality of service provided to small customers.⁵⁸ This includes if a customer's electricity is wrongfully disconnected.

If a distributor wrongfully disconnects a small customer, a customer is eligible for a GSL payment in the following circumstances:⁵⁹

- if the distribution entity was not entitled to do so under legislation or the connection contract with the customer,
- if the distribution entity fails to comply with the procedures for disconnection under the connection contract, or
- if the distribution entity disconnects the customer at the request of a retail entity if:
 - the wrong premises is disconnected due to an error of the retailer, or
 - the retailer does not give the customer a disconnection warning.

Clause 2.5.10 of the Code sets the GSL payment amount for the relevant financial year in which the GSL was not met. A GSL payment for a wrongful disconnection is currently set at \$130 (per instance) and payments are not capped. A distributor's right to recover a GSL payment from a retailer is provided in its co-ordination agreement with the retailer and is not regulated in Queensland.⁶⁰

The Queensland Competition Authority must review the GSLs and payment amounts to apply at the beginning of each regulatory control period (which is, in simple terms, every five years).⁶¹ On

⁵⁶ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 19.

⁵⁷ The *Electricity Act 1994* requires the QCA to enforce the provisions of the Electricity Industry Code.

⁵⁸ Guaranteed service levels operate in conjunction with minimum service standards (MMS) which are a set of network reliability standards that establish minimum levels of network performance for the duration and frequency of outages on the electricity distribution networks. The Queensland Competition Authority also has a responsibility to review MSS.

⁵⁹ Clause 2.5.3, Electricity Industry Code: Seventeenth Edition.

⁶⁰ Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, pp 2 & 20.

⁶¹ Clause 2.5.19, Electricity Industry Code: Seventeenth Edition. 'Regulatory control period' - Transmission Network Service Provider: a period of not less than 5 regulatory years in which a total revenue cap applies to that provider by virtue of a revenue determination; Distribution Network Service Provider: a period of

24 June 2014, the Queensland Competition Authority completed its review of the GSLs and released its final decision on the GSLs to apply from 1 July 2015 to 30 June 2030. It has set the payment for wrongful disconnections to \$142.⁶²

The Queensland Competition Authority stated:⁶³

GSLs are not designed to be a high-powered economic incentive for the networks to improve reliability or customer service performance, or function as means of providing full compensation to impacted customers. Rather, GSLs are a means of providing some financial recognition of poor service and reliability experienced by individual customers.

As a result of the recommendations of the Independent Review Panel on Network Costs the Minister advised that the government agreed to retain the GSL arrangements as currently specified.⁶⁴ Accordingly, this Bill and the National Energy Retail Law (Queensland) Bill 2014 do not propose to change the current arrangements.

The Queensland Consumers Association is of the view:⁶⁵

In Queensland, compensation for wrongful disconnection is only available via the distributor and overwhelmingly the very modest level of compensation is paid for disconnections where the distributor was responsible for the error or failure to comply with legislative requirements. This means that almost no compensation is paid to consumers, or by retailers, for retailer-caused wrongful disconnections even though it is likely that retailers are responsible for far more wrongful disconnections than distributors.

Queensland Consumers Association recommended the Bill require electricity retailers to pay compensation to consumers who are wrongfully disconnected due to an error or the retailer or a retailer's failure to comply with legislative requirements.⁶⁶

Based on the information presented to the committee, the committee notes that Victoria appears to be the only Australian jurisdiction to run a 'retailer-based' wrongful disconnection compensation scheme in parallel with a distributor-based scheme.

Recently, the Victorian Minister for Energy and Resources released a consultation paper on a number of proposed forms to retail regulation. One of the proposed changes includes increases to the wrongful disconnection payment (WDP) from \$250 per day off supply to \$500, and an increase to the prescribed cap from \$3,500 to \$5,000.⁶⁷

The rationale for the proposed policy change is that despite the current consumer protections contained in the Energy Retail Code (Vic), an Essential Services Commission 2013 report on retailer

not less than 5 regulatory years for which the provider is subject to a control mechanism imposed by a distribution determination: National Electricity Rules, Glossary.

⁶² Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, Appendix A.

⁶³ Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, p 2.

⁶⁴ Ibid, p 1. An independent review panel was engaged by the Interdepartmental Committee on Electricity Sector Reform (IDC) to investigate the impact of Queensland's electricity network on prices and provide solutions for a secure and cost-effective network. The government's response to the panel recommendations are set out in the government response to the IDC report.

⁶⁵ Queensland Consumers Association, Submission No. 13.

⁶⁶ Ibid.

⁶⁷ The cap applies if a customer does not notify the retailer of the disconnection within 14 days after the disconnection: Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, p 10.

performance indicated that wrongful disconnections were increasing. The Victorian Government has stated it was concerned the current WDP was not providing adequate incentive to retailers to follow the correct procedure before disconnecting customers.⁶⁸

The Queensland Competition Authority also stated:⁶⁹

The GSL arrangements for distributors in Queensland are the most comprehensive of all NEM jurisdictions, based on the number of parameters included. However, different jurisdictions may capture measures of performance through other regulatory instruments (such as MSS or other consumer protection obligations, with or without payments for non-compliance) and this should be considered when making direct comparisons. Based on this high-level comparison there is no reason to conclude that the existing GSL arrangements are deficient compared to other jurisdictions.

The table below provides the GSL parameters for distributors in other jurisdictions.

<i>GSL parameters</i>	<i>SA</i>	<i>ACT</i>	<i>NSW</i>	<i>Vic^a</i>	<i>Tas</i>	<i>Qld</i>	<i>AER STPIS</i>
Notice of planned interruption		•				•	•
Timeliness of new connections	•	•	•	•		•	•
Wrongful disconnection						•	
Hot water complaints						•	
Timeliness of reconnections						•	
Missed scheduled appointment	•			•		•	
Reliability - Interruption duration	•	•		•	•	•	•
Reliability - Interruption frequency	•			•	•	•	•
Timely repair of faulty streetlights	•		•				•
Time to respond to complaints		•					
Time to respond to notification of a problem		•					

Source: Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, p 10.

Committee comment

The committee notes the department did not comment on this aspect of the Queensland Consumers Association's submission which has made it difficult for the committee to make an assessment on the best way forward. The committee acknowledges the concerns raised by the Queensland Consumers Association and is satisfied with the report of the Queensland Competition Authority which stated

⁶⁸ Victorian Government, *Consultation Paper – Reforms to retail regulation 2014 and planned outages*, <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/consumer-protection-reforms>.

⁶⁹ Queensland Competition Authority, June 2014, *Final Decision: Review of Minimum Service Standards and Guaranteed Service Levels to apply in Queensland from 1 July 2015*, p 10.

that the GSL arrangements for distributors in Queensland are the most comprehensive of all NEM jurisdictions.⁷⁰

The committee has briefly considered this issue in the context of applying the National Energy Customer Framework (NECF) in Queensland. The committee acknowledges that each jurisdiction applies the NECF in a way that suits its individual needs, however the proposed move to market monitoring and deregulation in Queensland needs to be informed by the experiences of deregulated jurisdictions such as Victoria.

The committee has no information before it to indicate wrongful disconnections are increasing and it cannot predict what may occur in a deregulated market. The committee considers close monitoring of the number of GSL payments, particularly in relation to wrongful disconnections, needs to occur in order to assess whether any significant fluctuations in GSL payments follow from transitioning to a deregulated market.

Recommendation 2

The committee recommends the Department of Energy and Water Supply closely monitors guaranteed service level payments and whether any significant fluctuations in payments follow from transitioning to a deregulated market.

2.5 Amendments related to the National Energy Retail Law (Queensland)

As the NERL (Qld) is intended to deal with the majority of matters regarding retail energy matters and customer connection services, the Bill proposes to remove certain provisions dealing with these matters from the *Electricity Act 1994*, the *Gas Supply Act 2003*, the *Energy and Water Ombudsman Act 2006*, the *Electrical Safety Act 2002* and the *Queensland Competition Authority Act 2003*.⁷¹

The Bill proposes to:⁷²

- amend the *Energy and Water Ombudsman Act 2006* to preserve existing rights of customers to access the Energy and Water Ombudsman for the purposes of settling billing and other disputes,
- amend the *Electricity Act 1994* and the *Gas Supply Act 2003* to include a new enforcement regime to ensure retailers continue to enter into and comply with community service agreements with the Queensland Government in relation to the delivery of Queensland Government concessions and rebates, and
- amend the *Electricity Act 1994* to include a new enforcement regime to ensure retailers continue to be required to pass on benefits of the Queensland Government's solar bonus scheme to qualifying customers.

Amendment of *Electrical Safety Act 2002*

Currently, electricity retailers are required to provide certain information to the regulator pursuant to section 153 of the *Electrical Safety Act 2002*. The Bill proposes to amend the provision to reflect

⁷⁰ Ibid.

⁷¹ Explanatory Notes, p 3. The National Energy Retail Law is discussed in the committee's Report No. 48 on the National Energy Retail Law (Queensland) Bill 2014.

⁷² Explanatory Notes, p 3.

that under the NERL (Qld) Bill, the NERL (Qld) will be the legislation under which retail authorisations are issued and administered.⁷³

Amendment of *Energy and Water Ombudsman Act 2006*

The amendments to the *Energy and Water Ombudsman Act 2006* in the Bill propose to:⁷⁴

- preserve the existing rights of customers of the Maranoa Regional Council and the Western Downs Regional Council to continue to access the Energy and Water Ombudsman (Ombudsman) for dispute resolution in relation to the sale and supply of gas, notwithstanding the Councils will become 'exempt sellers', rather than retailers under the NERL (Qld),
- extend the jurisdiction of the Ombudsman to consider disputes in relation to customer connection services for small customers under Chapter 5A of the National Electricity Rules and Part 21 of the National Gas Rules, which will commence at the same time as the NERL (Qld), and
- make consequential terminology changes to reflect the terminology used in the NERL (Qld) and under amendments to the *Electricity Act 1994* and the *Gas Supply Act 2003* made by the Bill.

Amendment of *Gas Supply Act 2003*

The Bill proposes to amend the *Gas Supply Act 2003* to:⁷⁵

- remove provisions relating to:
 - retail authorities,
 - special approvals for the sale of gas, and
 - the sale and supply of gas to customers by retailers and distributors that would otherwise duplicate or be inconsistent with those proposed to be contained in the NERL (Qld)
- make changes to terminology to ensure consistency with the NERL (Qld), and
- make changes to enable customer protections operate effectively and can be enforced.

Amendment of *Retail Shop Leases Act 1994*

Clause 182 of the Bill proposes to omit section 37A from the *Retail Shop Leases Act 1994* because it duplicates the obligations that lessors who sell energy to premises would have under the NERL (Qld).⁷⁶

Amendment of *Queensland Competition Authority Act 2003*

Part 6 of the Bill proposes to amend the *Queensland Competition Authority Act 1997* to:⁷⁷

- replace the QCA's powers to make and enforce 'industry codes' with powers to make and enforce 'distribution network codes' because this reflects the new names under the *Electricity Act 1994* and the *Gas Supply Act 2003*,

⁷³ Ibid, p 8.

⁷⁴ Ibid, pp 30-31.

⁷⁵ Ibid, p 33.

⁷⁶ Ibid, p 50.

⁷⁷ Ibid, pp 49-50.

- remove the QCA's power to make credit support guidelines under the *Electricity Act 1994* because the National Electricity Rules would cater for these, and
- remove the requirement to keep registers in relation to industry codes because the QCA would not have responsibility for them under the NERL (Qld).

Other minor amendments

The Bill proposes to make minor consequential amendments to the *Electricity Act 1994* and the *Gas Supply Act 2003* to reflect terminology changes and to fix minor errors.⁷⁸

Committee comment

The committee notes that stakeholders did not raise any concerns about the amendments to existing laws to avoid duplication with, or to enable the operation of, the proposed NERL (Qld). The committee is satisfied with the proposals.

⁷⁸ Ibid, pp 50-52.

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.

It is considered that clauses 4, 5, 17, 22, 24, 28, 30, 44, 45, 48, 50, 94, 97, 99, 100, 105, 107, 112, 121, 123, 130, 139, 140, 146, 174 and 177 raise potential FLP issues.

3.1 Rights and liberties of individuals

Rights and liberties of individuals

Clauses 28 and 130

Section 4(2)(a) of the *Legislative Standards Act 1992* (LSA) provides that legislation have sufficient regard to rights and liberties of individuals.

Clause 28 replaces section 55DA of the *Electricity Act 1994* to impose a direct obligation on retailers to enter into an agreement with the State for the provision of community services.

The explanatory notes advise:⁷⁹

The effect of the amendments is to change the existing obligation to enter into an agreement with the State from a condition of an electricity or gas retail authority to a direct obligation on an electricity or gas retailer. This is necessary because retailer authorities will no longer be issued under either the Electricity Act or the Gas Supply Act. Retailers have been consulted on the proposed obligation and support the continuation of the obligation.

A retailer must not provide 'customer retail services' (i.e. sell electricity to a customer at the customer's premises) unless the retailer and the State have entered into an agreement for the retailer to provide community services for at least five years. The community services to be provided are those agreed between the retailer and the State or, if the retailer and the State fail to reach agreement, the community services decided by the Minister.

If a retailer provides customer retail services without entering into an agreement or, having entered into an agreement, fails to comply with that agreement, compliance and enforcement action may be taken under new part 5 of chapter 5 (clause 74). The maximum penalty provided for is 1,333 penalty units or \$151,762.⁸⁰

Clause 130 replaces existing section 175A of the *Gas Supply Act 2003*. The new section will impose a direct obligation on retailers to enter into an agreement with the State for the provision of community services for example, a pensioner rebate. A retailer must not provide 'customer retail services' (i.e. sell gas to a customer at the customer's premises) unless the retailer and the State have entered into an agreement for the retailer to provide community services for at least five years.

If a retailer provides customer retail services without entering into an agreement or, having entered into an agreement, fails to comply with that agreement, compliance and enforcement action may

⁷⁹ Explanatory notes, p 5.

⁸⁰ SL No. 44 of 2014 was tabled 6 May 2014 with a disallowance date of 27 August 2014 and sets an increase in value of a penalty unit from \$110.00 to \$113.85 as at 1 July 2014.

be taken under new part 1B of chapter 6 (clause 164). The maximum penalty provided for is 1,333 units or \$151,762.

The concept of liberty requires that an activity (including business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

The former Scrutiny of Legislation Committee (SLC) considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The explanatory notes state:⁸¹

Clauses 28 and 130 of the proposed Bill amend existing provisions of the Electricity Act and the Gas Supply Act obliging (respectively) an electricity retailer and a gas retailer to enter into an agreement with the State to provide community services. This may potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes also advise that the obligation to provide community services comprises the retailer delivering to customers, concessions or rebates funded by the Queensland Government.

The department advised:⁸²

To the extent these clauses might encroach on the rights and liberties of commercial energy entities, they are considered justifiable having regards to the overall benefits that the existing community services arrangements bring to vulnerable sectors of the community.

Committee comment

The amendments provided by clauses 28 and 130 would create a direct obligation on electricity and gas retailers to enter into an agreement with the State to provide community services. This should have a positive impact across the community in the form of concessions or rebates despite the direct obligation on electricity and gas retailers to provide such services. Therefore, the committee considers clauses 28 and 130 have sufficient regard to the rights and liberties of individuals.

Delegation of administrative power

Clauses 28 and 130

Section 4(3)(c) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.

Clause 28, new section 55DA and clause 130, amended section 175A, would provide a broad discretion for the Minister to decide the terms of a community services agreement where the State and the retail provider fail to agree on terms.

The explanatory notes acknowledge that providing the Minister with a broad discretionary power may potentially breach the FLP that administrative power be delegated only in appropriate cases and to appropriate persons.

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the

⁸¹ Explanatory notes, p 4.

⁸² Department of Energy and Water Supply, Correspondence dated 15 August 2014.

circumstances including the nature of the power, its consequences, and whether its use appears to require particular expertise or experience.⁸³

The explanatory notes provide the following justification for providing the Minister with this power:⁸⁴

In the provisions as they currently exist, this is a fall-back mechanism to ensure that a retailer cannot avoid a duty to pass on Queensland Government concessions or rebates to qualifying customers. The amendments continue this mechanism in the form of a direct regulatory obligation rather than a condition of a retail authority. Merely altering the way in which Queensland energy legislation places duties on energy retailers does not lessen the importance of ensuring that such duties will apply to all retailers.

Committee comment

While the discretionary power provided to the Minister is broad, the committee considers it is appropriate given the intention is to facilitate an agreement between the State and retailers which would obligate retailers to carry out community service obligations for the benefit of relevant sectors of the community.

Clause 139

Clause 139 proposes to amend section 228 of the *Gas Supply Act 2003* to allow the Minister to fix either the price, or a methodology to fix the price, that:

- (i) a retailer can charge a customer on a standard retail contract for (or relating to) the sale of processed natural gas, or
- (ii) that an on-supplier can charge a customer for the sale of processed natural gas.

The amended section would deprive a retailer or on-supplier of the ability to set its own charges.

The explanatory notes provide the following justification for the amendment:⁸⁵

The gas price-fixing power is a consumer protection of long standing, appearing in current and repealed Queensland gas legislation. The current powers have not been exercised since 1 July 2007 but are retained as reserve powers in the interests of consumer protection in the event that competition is not effective. The powers to fix on-supply pricing have never been exercised.

The clause 139 amendments update the terminology used in the section in relation to the retailer price-fixing power to reflect the terminology of the National Energy Retail Law (proposed to be applied by the National Energy Retail Law (Queensland) Bill). The reserve power in relation to retailers is otherwise unaffected.

The department advised that the prescriptive preconditions for exercising this power 'make it clear that market failure in respect of effective competition must be evident in order for the Minister to take action under the relevant provisions'.⁸⁶

Committee comment

The committee notes the current powers have not been used since 2007 and the proposed amendments introduce terminology consistent with the national regime to be introduced by the NERL(Qld) Bill.

⁸³ Office of the Queensland Parliamentary Counsel, *The OQPC Notebook*, p 33.

⁸⁴ Explanatory notes, p 5.

⁸⁵ Explanatory notes, p 5.

⁸⁶ Department of Energy and Water Supply, Correspondence dated 15 August 2014.

The powers afforded to the Minister are essentially a backup mechanism in the event that market forces do not provide effective competition. Given the Minister, for example, would exercise the reserve power to alleviate escalating prices for the benefit consumers, the committee considers the power to be appropriate and justified.

3.2 Institution of Parliament

Amendment of an Act only by another Act

Section 4(4)(c) of the *Legislative Standards Act 1992* provides that a Bill should only authorise the amendment of an Act by another Act. A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause.

Clause 44 proposes to amend section 89A of the *Electricity Act 1994* to insert a definition for 'designated retail market area'. A designated retail market area is defined as 'an area described by regulation or, if no area is prescribed, the distribution area described in the schedule to the distribution authority numbered 007/98.'

The explanatory notes advise:⁸⁷

Allowing the designated retail market area to also be described by regulation allows flexibility to amend or expand the area, if desired, through the making of a regulation.

The SLC's approach to Henry VIII clauses was that if an Act is purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SCL would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament. The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:⁸⁸

- to facilitate immediate executive action
- to facilitate the effective application of innovative legislation
- to facilitate transitional arrangements, and
- to facilitate the application of national scheme legislation.

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as 'generally objectionable'.⁸⁹

Committee comment

Notwithstanding the former SLC's objections to the use of Henry VIII clauses, the committee considers the limited scope of this regulation making power, and subsequent disallowance powers, provide sufficient regard to the institution of Parliament.

Executive action

Section 4(2)(b) of the *Legislative Standards Act 1992* provides that legislation should have sufficient regard to the institution of Parliament.

A number of clauses refer to the National Energy Retail Law (Queensland) Act 2014 relying on the assumption that this proposed Act, currently the NERL (Qld) Bill, will be passed without amendment.⁹⁰

⁸⁷ Explanatory notes, p 17.

⁸⁸ Office of the Queensland Parliamentary Counsel, *The OQPC Notebook*, p 159.

⁸⁹ Ibid; Alert Digest 2006/10, p 6, paras 21-24; Alert Digest 2001/8, p 28, para 31.

For example, clauses 5, 17, 45 and 97 defer to NERL (Qld) in relation to several important definitions such as ‘customer connection service’, ‘customer retail service’, ‘retailer’ and ‘customer’, ‘market offer prices’, ‘standing offer prices’, ‘customer connection service’ and ‘customer retail services’.

The department advised the committee that it would have been possible for the two bills to be combined into a single Bill. It was decided, however, ‘for reasons of efficiency and convenience in instructing and drafting,’ to prepare separate bills. This meant that the bills ‘contain express references to terms defined in, or to provisions of, the other. Because of this ... any amendments to one Bill may result in necessary amendments to the other’.

The department further advised:⁹¹

Even so, the potential for cascading amendments would not have been avoided by the introduction into Parliament of a single Bill to apply and modify the National Energy Retail Law, establish a new electricity price monitoring regime and make the numerous major and minor amendments to existing Queensland Acts. If Parliament decided to amend, for example, the definition of ‘customer retail services’ in the Bill solely for the purposes of applying the National Energy Retail Law in Queensland, Parliament would also need to consider the policy implications of that amendment in terms of its effect on existing Queensland legislation, and therefore would almost certainly need to make further legislative amendments.

More importantly, the mere fact of separate Bills dealing with inter-related matters should not be taken as demonstrating insufficient regard for the institution of Parliament. The preparation and simultaneous introduction into Parliament of separate draft instruments was considered the best way of presenting this most substantial package of new and amending draft legislation for the deliberation of Parliament.

Committee comment

The presumptive approach adopted in this circumstance assumes that a bill before the House will pass without amendment, which arguably fails to demonstrate sufficient regard to the institution of Parliament. Further, any amendments to the former bill may result in necessary amendments to the later bill. While this approach is not desirable the committee recognises the challenges in this instance of preparing legislation for two related, but distinct policies. The committee recommends that both Bills be considered by the House at the same time.

Recommendation 3

The committee recommends the Electricity Competition and Protection Legislation Amendment Bill 2014 and National Energy Retail Law (Queensland) Bill be considered by the House at the same time.

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.

⁹⁰ Clauses 5, 17, 22, 24, 45, 48, 50, 94, 97, 99, 100, 105, 107, 112, 121, 123, 130, 139, 140, 146, 174 and 177.

⁹¹ Department of Energy and Water Supply, Correspondence dated 15 August 2014, Electricity Competition and Protection Legislation Amendment Bill 2014, pp 4 - 5.

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	Energex Limited
2	Stanwell Corporation Limited
3	Alinta Energy Retail Sales Pty Ltd
4	Steel Wave Power
5	Queensland Urban Utilities
6	Electrical Trades Union Qld and N.T.
7	Queensland Council of Social Service
8	Energy Retailers Association of Australia
9	AGL Energy Limited
10	Energy Australia Pty Ltd
11	Maranoa Regional Council
12	Lumo Energy
13	Queensland Consumers Association
14	Ergon Energy
15	Origin
16	Momentum Energy
17	Energy Supply Association of Australia
18	National Seniors Australia

Appendix B – List of witnesses at the public hearing held on 6 August 2014

Witnesses	
1	Mr Cameron O'Reilly, Chief Executive, Officer Energy Retailers Association of Australia
2	Ms Alex Fraser, Public Affairs Manager, Energy Retailers Association of Australia
3	Mr Michael O'Neill, Chief Executive, National Seniors Australia
4	Mr James Sedman, Policy Advisor, National Seniors Australia
5	Ms Carly Allen, Team Leader Low Income Consumer Advocacy, Queensland Council of Social Service
6	Ms Karen Murphy, Senior Manager, Media and Communications Queensland Council of Social Service
7	Mr Benn Barr, General Manager, Pricing, Consumer and Retail, Department of Energy and Water Supply
8	Ms Ty Taylor, Director, Consumer and Retail, Department of Energy and Water Supply
9	Mr Andrew Thomson, Manager, Consumer and Retail, Department of Energy and Water Supply
10	Ms Kristen Findlay, Manager, Pricing, Department of Energy and Water Supply

Appendix C – Proposed amendments to Electricity Competition and Protection Legislation Amendment Bill

Ref	Issue	Brief Description
B1, B2	<i>Enforcement regime (concessions, FiT)</i>	Technical amendment to remove internal inconsistencies re maximum penalty amounts for non-compliance
B2, B3, B5, B6, B7, B9	<i>Consequential amendments Electricity and Other Legislation Amendment Act (ELOA)</i>	Technical amendments to adjust the terminology of sections in the Electricity Act that were amended by the ELOA Act to ensure they continue to work in new regime.
B4	<i>Cross referencing error</i>	Minor amendment to clause 30 to fix cross referencing error.
B8	<i>Regulator powers</i>	Technical amendment to clarify that Queensland regulator has power to take action against retailer for failure to comply with civil penalty provisions

Source: Department of Energy and Water Supply, Correspondence dated 5 August 2014.

Statement of Reservation

HON. TIM MULHERIN MP

DEPUTY LEADER OF THE OPPOSITION

SHADOW MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING

SHADOW MINISTER FOR LOCAL GOVERNMENT AND RACING

SHADOW MINISTER FOR TOURISM, MAJOR EVENTS AND THE COMMONWEALTH GAMES

MEMBER FOR MACKAY

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25 August 2014

Mr David Gibson MP
Chair
State Development Infrastructure and Industry Committee
Parliament House
George St
Brisbane QLD 4000

Dear Chair

Statement of Reservation – *Electricity Competition and Protection Legislation Amendment Bill 2014*

I wish to notify the State Development Infrastructure and Industry Committee that the Queensland Opposition has reservations about aspects of Report No. 47 of the State Development Infrastructure and Industry Committee into the *Electricity Competition and Protection Legislation Amendment Bill 2014*.

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in blue ink that reads "Tim Mulherin".

Tim Mulherin MP
Deputy Leader of the Opposition