

Electricity Price Reform Amendment Bill 2011

Explanatory Notes

Introduction

The Electricity Price Reform Amendment Bill 2011 (the Bill) amends the *Electricity Act 1994* (the Electricity Act) and the *Electricity Regulation 2006* (the Electricity Regulation), to allow for the replacement of the Benchmark Retail Cost Index (BRCI) methodology for determining notified electricity prices, and the Queensland Competition Authority (QCA) developing a new electricity pricing methodology and retail tariff structures, to commence from 1 July 2012.

The Bill also amends the Electricity Act to allow for changes to the conditions of eligibility for connection to the Queensland Solar Bonus Scheme (the Scheme), to commence retrospectively from 8 June 2011.

Short Title of the Bill

The short title of the Bill is the *Electricity Price Reform Amendment Bill 2011*.

Objectives of the Bill

The policy objective of the Bill is to replace the existing annual BRCI methodology for determining notified electricity prices and allow for the introduction of a new price setting methodology for notified electricity prices. The new methodology will address the issues with the current legislation by removing the unnecessary legislative prescription, and providing a more enabling legislative framework which allows for greater flexibility and responsiveness on the part of the pricing entity when determining notified prices.

For the Scheme, the policy objective of the Bill is to introduce an individual system cap of five kilowatts and a limit of one photovoltaic (PV) generator system per premises, applicable from 8 June 2011, for customers to be eligible for a feed-in tariff of 44 cents per kilowatt hour (the solar

bonus tariff). Customers with existing connections to the Scheme that are above five kilowatts in size will continue to be eligible for the solar bonus tariff.

Policy rationale

Electricity Pricing

In recent years, a number of issues have been raised by stakeholders in relation to the way the existing BRCI methodology, as prescribed in the Electricity Act and Electricity Regulation, has been interpreted and applied. The current legislative framework is a mix of very specific direction on the calculation of certain components of the BRCI, and poorly specified areas which must be interpreted by the QCA.

In response to these concerns, in 2009, the Premier and the Treasurer issued a Direction Notice to the QCA requiring it to undertake a two stage Review of Electricity Pricing (Stage One) and Tariff Structures (Stage Two) (the Review).

At the completion of the review, the QCA concluded that a fundamental overhaul of the current price setting framework was warranted and proposed that an alternative price setting methodology, based on a Network (N) + Retail (R) cost build-up (building block) approach, and a new set of retail tariffs, be introduced.

On 11 May 2011, the Minister for Energy and Water Utilities announced the development of a new electricity pricing methodology and tariff structures, based on a cost reflective price setting approach, to commence from 1 July 2012. A Direction Notice was also issued to the QCA, under section 10(e) of the *Queensland Competition Authority Act 1997* (QCA Act), directing it to commence a public stakeholder consultation process to develop an alternative methodology and set of tariff structures.

Solar Bonus Scheme

The Scheme pays a premium tariff of 44 cents per kilowatt hour (the solar bonus tariff) to eligible households and other small customers for the surplus electricity generated from solar PV panel systems that is exported to the Queensland electricity grid.

Recent advice from Queensland electricity distribution entities indicates a growing number of customers applying to install multiple large solar PV systems, each up to 30 kilowatts in size, on a single premises in order to secure a guaranteed return on investment.

The connection of multiple large installations for investment purposes is not a policy objective of the Scheme. Therefore, on 10 May 2011, the Minister for Energy and Water Utilities announced changes to the eligibility for solar PV systems and noted a four week time period for the changes to come into effect.

How objectives are achieved

The Bill will authorise amendments to the Electricity Act and Electricity Regulation to achieve the stated policy objectives.

Electricity Pricing

To ensure the concerns relating to the current BRCI methodology are resolved and to enable a new methodology to be implemented from 1 July 2012, the amendments to the Electricity Act and Electricity Regulation will remove the overly prescriptive nature of the current legislation and all references to the BRCI.

In its place, a more enabling legislative framework is proposed to be inserted which specifies broad Government policy objectives and parameters for the determination of notified electricity prices. The amendments will also provide sufficient flexibility to deal with any unidentified policy changes or market upheavals. In particular, this approach will ensure the regulatory framework is flexible enough to allow any future carbon costs or additional costs associated with environmental obligations to be captured and passed through to end use customers.

Solar Bonus Scheme

To assist the Scheme to achieve its policy intentions, the amendments to the Electricity Act will limit the size and number of eligible solar PV systems to be connected to the solar bonus tariff, commencing from 8 June 2011.

Customers currently receiving the solar bonus tariff will not be subject to the new eligibility restrictions and will continue to receive the solar bonus tariff for existing eligible solar PV systems.

The amendments will also provide flexibility to deal with future policy changes for the Scheme. This approach will provide a more flexible regulatory framework for future management of the Scheme, with particular regard to the size of eligible PV systems or the amount of the solar bonus tariff.

Alternative method of achieving policy objectives

There are no non-legislative methods by which the objects of the Bill can be achieved.

Estimated cost for Government implementation

There are no budgetary implications for Government in relation to the implementation of the proposed amendments.

Consistency with Fundamental Legislative Principles

The Bill was drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*.

The proposed amendments for the Solar Bonus Scheme will be applied retrospectively to commence on 8 June 2011. Legislative amendments that adversely affect the rights and liberties of individuals retrospectively infringe a fundamental legislative principle as set out in section 4(3)(g) of the *Legislative Standards Act 1992*. The proposed changes to the Solar Bonus Scheme will in some cases adversely affect the rights of individuals.

However, on 10 May 2011, the Minister for Energy and Water Utilities announced the intention to make specific changes to the Scheme's allowable solar PV generating capacity and number of eligible systems, and advised of the commencement of the particular changes in four weeks time. As this public advice was given four weeks before the proposed date of effect (8 June 2011), the potential negative impacts from retrospective legislation on individual rights is avoided.

Consultation

Community

The QCA will undertake further consultation with stakeholders on a new electricity pricing methodology and tariff structures, to commence from 1 July 2012, in accordance with the Direction Notice that has been issued to the QCA under the QCA Act.

Discussions between the Department of Employment, Economic Development and Innovation and key stakeholders, including the Energy Supply Association of Australia, retailers (individually and through the Energy Retailers Association of Australia), the Queensland Council of Social Service (QCOSS) and the Queensland Consumers' Association are

ongoing. These discussions will continue through the implementation period for the new methodology and tariff structures.

No public consultation was undertaken on the changes to the Solar Bonus Scheme. Subsequent to the announced changes on 10 May 2011, a variety of stakeholders were advised of the new eligibility criteria and the date of commencement. Stakeholders included electricity retailers, electricity distributors, major industry stakeholders, industry groups, environmental groups, consumer groups, Commonwealth and State Governments, and peak industry bodies such as the Clean Energy Council and the Australian PV Association.

Government

Representatives of the Department of the Premier and Cabinet, Queensland Treasury and the Department of Environment and Resource Management (including the Office of Climate Change) were consulted in relation to this Bill.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 establishes the short title of the Act as the *Electricity Price Reform Amendment Act 2011*.

Commencement

Clause 2 provides that sections 3, 4, 12 (other than to the extent it inserts new ss 329 and 330) and 13(1) commence on 8 June 2011. All other sections commence on assent.

The commencement date of the new sections on customer eligibility for connection to the Solar Bonus Scheme is in accordance with the Queensland Government announcement of 10 May 2011, with 8 June 2011

being a date four weeks after the Minister for Energy and Water Utilities announced the changes in the Queensland Parliament.

Part 2 Amendment of Electricity Act 1994

Act amended

Clause 3 provides that this part amends the *Electricity Act 1994*.

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

Clause 4 (1) amends the heading by inserting ‘small’ to provide consistency with s 55DB which provides for additional conditions for electricity produced by small photovoltaic customers.

Clause 4 amends s 44A to insert wording in s 44A(1)(a) to provide ‘for a premises’ to connect ‘one qualifying generator’ to ensure each small customer of a premises is eligible to receive only one solar bonus tariff for electricity produced by the solar PV system. Each individual customer for a premises will only be eligible for one solar bonus tariff, as set out in s 44A(1)(b). That is, only one solar bonus tariff for electricity produced by an eligible solar PV system is available to any one customer, and is not intended as an entitlement for a small customer to apply for further additional connections to a supply network specifically for the purpose of receiving the solar bonus tariff.

Clause 4(3) further amends s 44A to provide clarity on the continuing eligibility of an existing eligible solar PV system in the instances where there is a transfer of a small customer.

Clause 4(4) also amends s 44A to insert wording in s 44A(1)(b) which provides a head of power to make a regulation to set an amount for the solar bonus tariff that is applicable to a solar PV system. The ability to make a regulation to set the rate of the solar bonus tariff will provide more flexibility for the future management of the Scheme. Should there be no amount prescribed under a regulation, the amount set down in this section, currently 44 cents per kilowatt hour, will continue to apply to all solar PV systems connected to the solar bonus tariff.

Clause 4(5) additionally amends s 44A to insert wording in s 44A(1)(b)(i) to clarify that the relevant small customer who owns an eligible (qualifying) generator continues to receive the solar bonus tariff.

Omission of chap 4, pt 2, div 2, hdg

Clause 5 omits the heading for chapter 4, part 2, division 2.

Insertion of new s 89A

Clause 6 inserts a new s 89A which refers to the definition of ‘price determination’ and defines ‘pricing entity’ as the Minister or the QCA, if the Minister decides to delegate a function of the Minister under s 90(1) to the QCA.

Amendment of s 90 (Deciding prices for non-market customers)

Clause 7(1) amends s 90(1) to refer to ‘a price determination’ as a decision by the Minister on the notified prices, or the methodology for fixing the prices, for a tariff year.

Clauses 7(2) to 7(6) are applied to ensure consistency and to correct style.

Clause 7(7) replaces s 90(5) with a new section that provides that in making the price determination, the pricing entity must have regard to all of the following:

- The actual costs of making, producing or supplying the goods or services;
- The effect of the price determination on competition in the Queensland retail electricity market; and
- If the QCA is the pricing entity, any matter the pricing entity is required by delegation to consider.

This provision also provides that the pricing entity may have regard to any other matter the pricing entity considers relevant.

Clause 7(8) omits ss 90(7) to 90(9).

Clause 7(9) renumbers s 90(10) as subsection (7).

Insertion of new ss 90AA and 90AB

Clause 8 inserts a new s 90AA. Section 90AA(1) provides that the Minister may delegate to the QCA all or any of the Minister's functions under s 90(1).

Section 90AA(2) provides that should the Minister decide to issue a delegation to the QCA, the delegation may state the terms of reference for deciding the prices, or the methodology for fixing the prices.

Section 90AA(3) provides that the terms of reference may specify:

- The period the price determination is to apply to;
- The timeframe within which the QCA is to make and publish reports on the price determination;
- The particular policies or principles the QCA is to consider when making the price determination;
- The matters the QCA must consider when working out the notified prices and making the price determination; and
- The consultation requirements the QCA must comply with before making the price determination.

Section 90AA(4) provides that the terms of reference may be applied in the same way to all tariffs, or be applied in different ways to different tariffs according to specific exception or factors specified in the terms of reference. In this way, the terms of reference can be tailored to different tariffs, if required.

A new s 90AB is to be inserted in relation to the publication of notified prices and applies only if the QCA is the pricing entity. Sections 90AB(2) and 90AB(3) provide that the pricing entity must announce its final price determination and publish the notified prices by gazette notice, at least one month before the start of each tariff year. However, a failure to comply with this provision does not invalidate or otherwise affect the price determination.

A new s 90AB(3) and s 90AB(4) is to be inserted to replace the previous ss 90(8) and 90(9).

Amendment of s 90A (Obtaining relevant information for deciding prices or methodology for fixing prices)

Clause 9(1) inserts a new heading for s 90A.

Clause 9(2) is applied to ensure consistency with s 90.

Omission of ch 4, pt 2, div 3 (Annual indexation)

Clause 10 omits chapter 4, part 2, division 3, as these provisions relate specifically to the annual indexation requirements under the BRCI methodology, which are no longer required.

Insertion of new s 253AA

Clause 11 inserts a new section 253AA which gives the Minister responsible for Energy the authority to require the QCA to provide information or advice to Government on any matter related to the Queensland electricity market.

Whilst s 120L presently allows the Minister to give the QCA a written notice to conduct a *review* into any matter relating to the Queensland electricity market, there is no provision which gives the Minister the authority to seek general information or advice.

Insertion of new ch 14, pt 10A

Clause 12 inserts a new chapter 14, part 10A containing transitional provisions for the *Electricity Price Reform Amendment Act 2011*.

A new s 328 is to be inserted which provides for existing eligible solar PV systems to continue to be eligible for the solar bonus tariff after the changed conditions commence on 8 June 2011.

Section 328(1)(a) provides for customers with an existing eligible solar PV system connected to the solar bonus tariff to continue under their existing conditions of connection, that is prior to 8 June 2011, when the changes to the Scheme commence from 8 June 2011. Section 328(1)(b) provides for customers who applied to connect an eligible solar PV system prior to 8 June 2011, who, providing the solar PV system is subsequently connected to a distribution supply network, will be eligible for the solar bonus tariff as set out under the conditions of the Scheme prior to 8 June 2011.

This transitional provision is necessary to maintain the eligibility of existing solar PV systems that will fall outside the conditions set down in the provisions to commence from 8 June 2011. It allows for both existing customers with eligible PV generators that are in excess of five kilowatts

and for existing eligible PV generators that are in excess of five kilowatts to remain eligible for the solar bonus tariff after 8 June 2011.

It is not intended that existing applications as set out in s 328(1)(b) will transfer to another small customer for the same qualifying generator.

A new s 329 is to be inserted which provides that any investigation or consultation undertaken by the QCA, in response to a direction issued under s10(e) of the *Queensland Competition Authority Act 1997* (QCA Act), is taken to be a valid part of the price determination process for the relevant tariff year. In this section, ‘relevant tariff year’ refers to the period commencing 1 July 2012 to 30 June 2013.

This transitional provision is necessary to maintain continuity during the stakeholder consultation process to be undertaken by the QCA to develop the tariff structures and methodology to be applied from 1 July 2012. Section 329 applies if, prior to the commencement of this section, a direction is issued to the QCA, under section 10(e) of the QCA Act, to investigate and report on an alternative pricing methodology and tariff structures for the period commencing 1 July 2012 to 30 June 2013. To ensure the process and intent detailed in the direction can be deemed sufficient under the Electricity Act in terms of the tariff setting process for 2012-13, s 329 provides that any consultation undertaken and reports submitted by the QCA in accordance with this direction are considered a valid part of the price determination process. In this way, the QCA will not have to undertake an additional consultation process once the required legislative amendments have been made.

A new s 330 is also to be inserted to confirm that the amendments to the Electricity Regulation under this Bill will not affect the power of the Governor in Council to further amend or repeal the Electricity Regulation.

Amendment of sch 5 (Dictionary)

Clause 13(1) inserts wording to amend the definition of a ‘small photovoltaic generator’ and provides a head of power to make a regulation in relation to the size of the solar PV system.

The amended definition for a ‘small photovoltaic generator’ refers to the rated inverter capacity. This will provide an appropriate mechanism for ensuring the maximum allowable kilowatt capacity applicable to a solar PV system for the solar bonus tariff is connected to the distribution supply network.

The ability to make a regulation for the size of an eligible solar PV system will provide more flexibility for the future management of the Scheme. Should there be no amount prescribed under a regulation, the size of the solar PV system set down in this section, namely five kilowatts, will continue to apply to all solar PV systems connected to the solar bonus tariff.

Clause 13(2) omits the definitions of terms specifically related to the BRCI, as any reference to the BRCI will be omitted from the Electricity Act.

Clause 13(3) amends Schedule 5 to insert a reference to the definitions of ‘GST statement’, ‘price determination’ and ‘pricing entity’.

Part 3 Amendment of Electricity Regulation 2006

Regulation amended

Clause 14 provides that this part amends the *Electricity Regulation 2006*.

Omission of ch 3, pt 7 (Prescribed matters about notified prices)

Clause 15 omits Chapter 3, part 7, as these provisions relate specifically to the BRCI methodology and are no longer required.

Amendment of sch 9 (Dictionary)

Clause 16(1) omits the definitions of terms specifically related to the BRCI as any reference to the BRCI will be omitted from the Electricity Regulation.

Clause 16(2) amends Schedule 9 to insert a reference to the definitions of ‘final consultation period’ and ‘interim consultation period’.