# National Energy Retail Law (Queensland) Bill 2014

# Explanatory Notes

## Short title

The short title of the Bill is the National Energy Retail Law (Queensland) Bill 2014.

## Policy objectives and the reasons for them

The objectives of the Bill are to:

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

The Queensland Government announced its intention to apply the National Energy Retail Law as a law of Queensland following an Interdepartmental Committee review of the Electricity Sector in Queensland. The review arose out of long standing concerns about: the cost effectiveness of electricity supply; the viability, sustainability and competitiveness of the electricity sector; and the financial sustainability of arrangements for government. Applying the National Energy Retail Law forms part of a wide ranging suite of reforms announced by the Queensland Government in response to the review. Underpinning the reforms are three strategies:

- Strategy 1 is to stop building unnecessary infrastructure and improve the efficiency of network businesses.
- Strategy 2 is to maximise the benefits of competition while protecting customers.
- Strategy 3 is more effective government.

The measures contained in this Bill support Strategy 2. The Bill will benefit energy consumers by providing enhanced customer protections, especially for those experiencing hardship. It will also reduce the regulatory burden for energy businesses, drive greater efficiencies and foster greater competition in the energy retail market. The objective of the

National Energy Retail Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

## Achievement of policy objectives

To achieve its objectives, the Bill will apply the National Energy Retail Law in Queensland, with a number of modifications.

The Bill will achieve its objective of improving customer protections by applying the National Energy Retail Law to regulate customer retail services and customer connection services for electricity and gas supply.

The National Energy Retail Law (Queensland) is an applied law arrangement, whereby a harmonised legislative framework relating to retail authorisations, the terms and conditions of selling energy to small customers, and the terms and conditions of providing customer connection services (including disconnection and reconnection) are applied by participating jurisdictions to improve the efficiency of retailers operating across state borders.

Compared to existing arrangements under the *Electricity Act 1994* and the *Gas Supply Act 2003*, the National Energy Retail Law:

- will implement a clearer and more effective price comparison service to help customers choose the most appropriate customer retail contract for their needs
- will place regulatory obligations on retailers to operate programs to help small customers experiencing financial difficulty due to hardship to manage their energy costs on an ongoing basis
- will establish a comprehensive 'exempt seller' framework that gives small customers in on-supply situations (such as retirement villages) broadly equivalent protections to others customers, including increased access to concessions
- will include clearer processes and requirements for gas customers around billing and credit management
- will apply a National Connections Framework that sets out clear processes for new connections, including response times to customer requests.

The Bill will achieve its objective of reducing the regulatory burden for energy retail businesses and driving greater efficiencies by aligning Queensland's regulatory regime for retail licensing and customer protections across energy types (electricity and gas) and with other states that apply the framework. This will allow retailers to become more efficient as their regulatory obligations (with the exception of a small number of modifications) will not require system adjustments or different processes for each energy type and for each state.

The Bill will achieve its objective of improving retail competition by reducing barriers to the entry of interstate retailers into the Queensland market. A single licence regime and consistent regulatory requirements will make it easier for interstate retailers to expand their base to include Queensland.

The Bill will achieve its objective of ensuring arrangements are appropriate for regional Queensland by modifying application of the National Energy Retail Law to:

- facilitate the continued delivery of the Queensland Government's Uniform Tariff Policy by Ergon Energy Queensland and Origin Energy by requiring the retailers to offer eligible large customers the regulated retail price on standard contract terms and restricting Ergon Energy Queensland from competing with other retailers to balance its competitive advantage
- expressly require retailers to offer customer retail services to large customers where they are the financially responsible retailer for the premises to ensure customers can continue to access supply despite weak competition
- provide specialised standard retail and connection contracts for card-operated meter customers that set out clear rights and obligations within technical limitations of the service to better align rights and obligations with similar services
- continue restrictions on retail competition in some areas where technical limitations exist or there is not economic benefit to do so.

The Bill will achieve its objective of supporting other reforms under the Queensland Government's electricity industry reform program by introducing transitional measures to support electricity customers in South East Queensland to move to market monitoring and by providing that customers must be given advance notice of price changes.

The approach to achieving the policy objectives is appropriate and reasonable. Implementing the National Energy Retail Law will deliver additional protection for customers as well as efficiency and competition benefits for the retail sector. The proposed Queensland modifications only affect a small number of National Energy Retail Law provisions. The benefits to the community of these modifications, such as advanced notice of price changes and access to the Uniform Tariff Policy in regional Queensland, outweigh the opportunity cost to retailers of not receiving the full efficiency benefits of a completely harmonised retail framework. In the majority of instances, the modifications are continuations of existing arrangements in Queensland and therefore should not impose any significant new cost on retailers.

## Alternative ways of achieving policy objectives

The key alternative means to achieve the policy objectives delivered by the Bill would be through the development of mirror legislation. Rather than adopting an applied law approach, identical legislation to that set out in the National Energy Retail Law could be developed for Queensland. This approach was partially adopted in mid-2012 with amendments to the Electricity Industry Code and Gas Industry Code which removed those code provisions that placed higher obligations on retailers to those set out in the National Energy Retail Law. While this delivered some efficiency benefits for retailers, it was unable to deliver the benefits of a national retail authorisation and rule-making regime. Retailers are still required to apply for Queensland retail authorisations, and enforcement and rule-making have continued to be undertaken by Queensland bodies.

A further difficulty with the mirror law approach is that updates would need to be made over time to maintain consistency. However, the State would lose the ability to participate in and influence national decision making processes about the National Energy Retail Law, meaning that changes may not suit the Queensland environment. Consultation with stakeholders through the Interdepartmental Committee on Electricity Sector Reform and the development

of the 30 Year Electricity Strategy indicate strong support for adoption of the National Energy Retail Law from retailers and consumer representatives.

An alternative approach to ensuring arrangements are appropriate for regional Queensland, particularly for off-grid electricity networks, would be to provide that the National Energy Retail Law not apply in these areas and provide for customer service requirements through less prescriptive means. This is the approach that has been adopted in the majority of other states facing similar issues. However, this approach unnecessarily removes access to the majority of National Energy Retail Law customer benefits, would create legislative complexity for government and is unlikely to achieve any real cost saving for industry.

Retailers advocate for no change to the national arrangements, whereas consumer representatives have advocated for more change. The modifications that have been included in this package represent a reasonable balance between the views of each group. Modifications have only been included where they will provide a net benefit and have been restricted to ensure the overall efficiency benefits of applying the regime are not undermined.

# Estimated cost for government implementation

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

Costs associated with the rule-making and review functions of the Australian Energy Market Commission are charged to the State. However, these costs (approximately $225 000 per annum) are already charged to the Queensland Government so do not represent a new expense.

# Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

**Legislation should have sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, subsection 4(2)(b)**

Clause 4 (Application of National Energy Retail Law)

Clause 4 of the Bill potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament. The clause applies the national Law, set out in a South Australian Act, in Queensland, subject to modifications set out in the schedule to the Bill or prescribed under a regulation.

The Law is part of a national scheme, which may be seen as eroding the sovereign power of the Queensland Parliament. Subject to the unanimous agreement of all relevant state energy Ministers, changes to the National Energy Retail Law may be made by the South Australian Parliament (as lead legislator) and changes to the National Energy Retail Regulation may be

made by the South Australian Governor. Changes to the National Energy Retail Rules may be made by the Australian Energy Market Commission without the agreement of states, though only following formalised consultation processes.

However, application of the Law has a number of advantages, including easier conditions for consumers and businesses to operate under, the removal of duplication of administration and compliance costs, and increased efficiencies and economies of scale. The national regulation impact statement for the application of the Law found it would produce a net benefit. This has been confirmed through more recent consultation with stakeholders about the application of the arrangements in Queensland.

The national Law is broadly similar to arrangements applying in Queensland's electricity sector, and its application is critical for harmonisation of the arrangements between jurisdictions. Modifications have been made in the Schedule to the Bill to ensure that the arrangements are appropriate for regional Queensland and support reforms in the Queensland electricity sector, including the introduction of market monitoring arrangements. Further modifications may be made to the Law by Parliament over time if needed by amending the application legislation, though as noted above, the agreement of energy Ministers in other participating jurisdictions would first be required.

To provide greater Parliamentary oversight of the arrangements, all changes to the Law, regulation and rules will be tabled in Parliament within 10 sitting days of being made: see clause 8. This will ensure Parliament is aware of changes. It is broadly consistent with provisions applying the National Electricity Law in Queensland, which require changes to the Law (though not Rules and Regulations) to be tabled.

Clause 7 (Exclusion of legislation of this jurisdiction and South Australia)
Clause 7(1) of the Bill potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament. The clause excludes the application of the *Acts Interpretation Act 1954* and the Statutory Instruments Act to the proposed National Energy Retail Law (Queensland) or to the instruments made under that law.

To operate effectively as national scheme legislation, interpretation of provisions needs to be consistent across jurisdictions. The interpretation provisions for the National Energy Retail Law and instruments made under that law are set out in Schedule 2 of the *National Gas Scheme Act 2008,* and are largely equivalent to provisions in the Acts Interpretation Act.

Comprehensive assessment processes for the making of instruments are included in the National Energy Retail Law. For example, to vary a rule made under the Law, the Australian Energy Market Commission must undertake at least two stages of public consultation and consider the costs and benefits of any changes against the National Energy Retail Objective – that is, to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy. The level of scrutiny and assessment is similar to arrangements under the Statutory Instruments Act. For transparency, clause 8 also provides that any variations to the National Energy Retail Law, or subordinate instruments (the National Energy Retail Regulation and National Energy Retail Rules) made under that Law must be tabled in the Queensland Parliament within 10 sitting days of being made as noted above.

Clause 11 (Regulation-making power for the National Energy Retail Law (Queensland)
Clause 11 of the Bill potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament. Clause 11(b) allows the Governor in Council to make regulations that modify the application of the National Energy Retail Law in Queensland as are contemplated in the schedule to the Bill. In particular, this will allow a regulation-

- To prescribe entities who are an 'assigned retailer' for the Law and therefore subject to additional regulation, particularly in relation to large customers (schedule, s 18, inserted s 64C)

This regulation making power is restricted to a government owned corporation or subsidiary of a government owned corporation which is also a retailer. Ergon Energy Queensland (a subsidiary of the government owned Ergon Energy Corporation Limited) will be declared the assigned retailer. The provision allows for possible future adjustments to Ergon Energy Queensland, such as name changes.

- To prescribe circumstances in which assigned retailers may provide customer retail services to a customer other than under a standard retail contract (schedule, s12, inserted s19C(5)

Ergon Energy Queensland (the proposed 'assigned retailer') is currently restricted from competing with other retailers in order to balance the competitive advantages it enjoys from being the only recipient of the Community Service Obligation in the Ergon Energy Corporation Limited distribution area. Community Service Obligation payments to Ergon Energy Queensland ensure that it is able to offer its customers notified prices under a standard retail contract on an ongoing basis. However, in some situations, it may be desirable for Ergon Energy Queensland to be able to enter into a negotiated agreement with customers for customer retail services, for example to trial new products and tariff structures. This provision replicates existing arrangements under the Electricity Act which would allow this to occur. If Ergon Energy Queensland is permitted to enter into a non-standard retail contract with a customer in accordance with a regulation, the minimum terms and conditions of market retail contracts set out in the National Energy Retail Law would apply to any contract with a small customer.

- To prescribe different terms and conditions for customers on deemed large customer retail arrangements, compared with customers on large customer standard retail contracts (schedule, s18, inserted s64J(3))

This provision is needed to provide flexibility in relation to the terms and conditions that will be taken to apply to a large customer in the circumstances where they have started to consume electricity, but not entered into a contract or applied to the assigned retailer for a standard retail contract. In these circumstances, the terms and conditions of service are taken to be equivalent to the assigned retailer's large customer standard retail contract. However, the assigned retailer is able to determine their own terms and conditions of a standard retail contract, some of which may not be practicable for deemed arrangements. For example, terms and conditions requiring the assigned retailer to notify the customer of a thing may be difficult to comply with for deemed arrangements, where the assigned retailer does not necessarily know who the large customer is (because the customer has not applied for services). The provision will provide flexibility to adjust arrangements in these types of circumstances.

- To prescribe circumstances in which assigned retailers can be registered as a retailer of last resort (schedule, s 22, inserted s123A)

In general, the assigned retailer as a government owned corporation should not be retailer of last resort. Restrictions on the assigned retailer from competing with other retailers (i.e. by not being allowed to offer non-standard retail contracts, unless specifically permitted by regulation) would make the assigned retailer's nomination as a retailer of last resort impracticable. This is because customers with a failed retailer will have non-standard retail contracts that the retailer of last resort will need to honour in the first instance until alternative arrangements are entered into. However, this provision allows for nomination of the assigned retailer as retailer of last resort if unforseen events necessitate it. For example, where the assigned retailer is the only retailer in the relevant area that would be reasonably able to provide services to customers.

Clause 12 (Modification regulation-making power)

Clause 12 of the Bill potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament.

Clause 12(1)(a) allows for a regulation to modify the application of the National Energy Retail Law in Queensland. This is limited to necessary or convenient changes for giving effect to the operation of the Law in Queensland arising from an amendment of the Law made after commencement. Any such modification regulation must be made within three months of the amendment to the Law and will expire in 12 months.

As a number of modifications to the National Energy Retail Law are needed to ensure the arrangements are appropriate for regional Queensland on commencement, it is possible that future variations to the National Energy Retail Law may require similar adjustments to provide for Queensland regional customers. While the energy Minister will need to agree to changes to the National Energy Retail Law before they take effect, it would be inefficient and against the general principle of national harmonisation to require the National Energy Retail Law to explicitly account for localised state issues in each amendment considered going forward. New South Wales has dealt with this issue by providing that a regulation can carve out the application of any part of the National Energy Retail Law in any part of the State or for any customer group. However, this runs counter to the policy intent in Queensland that the National Energy Retail Law will be applied to its fullest extent, including in regional areas, where possible. This policy intent is better achieved through an ability to adjust the National Energy Retail Law to account for localised issues rather than dis-application. The South Australian Parliament will be able to account for localised issues in its application act at the same time as considering amendments to the National Energy Retail Law (as lead legislator).

The provision has been limited so that the power can only be used for relatively urgent matters (must be made within three months of a national amendment) and if the variation is to be applied over a period longer than 12 months, the change must be made by Parliament through a variation to the application legislation.

Clause 29 (Transitional regulation-making power)

Clause 29 of the Bill potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament.

The clause allows for a regulation to modify the application of the National Energy Retail Law in Queensland to provide for matters of a savings or transitional nature necessary for transitioning from the existing legislative scheme to the new legislative scheme. This power is necessary to accommodate necessary transitional provisions that are not apparent at this stage, given the complex nature of the existing and new legislative schemes and the move to national scheme legislation. Any transitional regulation will expire within three years.

**Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act,* subsection 4(2)(a)**

Clause 28 (Provision of information and assistance by Queensland regulator)
Clause 28 potentially infringes the rights to privacy of an individual. The clause authorises the Queensland electricity regulator, the Queensland gas regulator and the Queensland Competition Authority to disclose information (which could include personal or confidential information) about a person to the Australian Energy Regulator.

The provision is a necessary requirement to facilitate the practical transition from the existing legislative scheme under the Electricity Act and the Gas Supply Act to the new legislative scheme under the National Energy Retail Law (Queensland). The information that may be disclosed is limited to that which is reasonably needed for the purposes of the operation of the new legislative scheme.

# Consultation

Throughout its development, the National Energy Retail Law package has been the subject of a number of public consultations, including:

- five reports by Allens Arthur Robinson (AAR) in 2006 and 2007 proposing the outline of the framework and a policy response from the then Ministerial Council on Energy Standing Committee of Officials (MCE SCO) in 2008
- a draft national Retailer of Last Resort Framework developed by NERA Economic Consulting and AAR in 2008
- a consultation Regulation Impact Statement in 2008
- a consultation by the MCE SCO on draft policy frameworks for new connections to electricity and gas networks in 2009
- two exposure drafts of the legislative package in 2009.

At a State level, consultation activities have included:

- targeted consultation with key retailers, distributors and consumer representatives about application of the Law through the Interdepartmental Committee on Electricity Sector Reform in 2012 and early 2013
- public consultation about application of the Law through the 30 Year Electricity Strategy Discussion Paper and targeted workshops with retailers, distributors and consumer and business representatives in late 2013 and early 2014
- targeted consultation and a workshop with key stakeholders, including retailers, distributors, consumer and business representatives, and dispute resolution agencies from the Minister's Consumer and Industry Reference Group in 2014.

A range of stakeholders have participated in these consultation exercises, including electricity and gas retailers and distributors, consumer representatives, regulators and other bodies such as the Energy and Water Ombudsman Queensland. The consultation exercises have shaped many aspects of the National Energy Retail Law and modifications for Queensland.

## Consistency with legislation of other jurisdictions

The National Energy Retail Law has been developed under the Australian Energy Market Agreement. It establishes a consistent and cohesive approach to regulating the sale and supply of energy across the national electricity markets. The Law has already been applied by New South Wales, South Australia, Tasmania and the Australian Capital Territory. Victoria has committed to implement the package.

# Notes on provisions

## Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *National Energy Retail Law (Queensland) Act 2014*.

Clause 2 states that the Bill will commence on a day or days fixed by proclamation. This will allow different provisions to commence on different days.

Clause 3 defines a number of terms used in the Bill. In particular, the clause clarifies that the National Energy Retail Law (Queensland) or NERL (Qld) means the National Energy Retail Law as modified to apply in Queensland.

The clause also clarifies that where terms used in the National Energy Retail Law are also used in the Bill, the definitions in the National Energy Retail Law apply.

## Part 2 Adoption of the National Energy Retail Law

Clause 4 applies the National Energy Retail Law as a law of Queensland. The National Energy Retail Law is contained in the schedule to the *National Energy Retail Law (South Australia) Act 2011* (the 'South Australian Act'). The National Energy Retail Law, and instruments made under it, including the National Energy Retail Rules, set out:

- a national energy retailer authorisation regime (who can sell electricity and gas)
- a 'small customer' definition for energy and gas and associated consumer protections, including specific protections for residential customers experiencing financial difficulties or hardship
- obligations on distributors to connect new customers and on retailers to sell to small customers
- for small customers, a standard retail contract with prescribed terms and conditions, and prescribed minimum terms and conditions for market retail contracts
- arrangements for new customer connections to distribution networks and a deemed distribution contract between distributors and customers
- retail support obligations between retailers and distributors to support their roles in selling and supplying to their shared customers
- national retailer of last resort scheme arrangements to ensure continued supply to customers in the event of a retailer failure
- performance and compliance monitoring, reporting and enforcement regimes administered by the Australian Energy Regulator (AER).

The governance and decision-making arrangements under the National Energy Retail Law mirror those in the National Electricity Law and the National Gas Law:

- national laws agreed by a national policy and legislative body (Ministers' Council), passed by the South Australian Parliament and applied by Application Acts;

- a common objective – promoting efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of the supply;
- rules subject to change by the Australian Energy Market Commission (AEMC) on application by any person, in accordance a consultative rule change process and tested against the objective of the relevant law;
- AEMC review of matters relating to the rules on direction from the Ministers' Council or by its own initiative, or review of broader matters relating to energy on direction from the Ministers' Council;
- AER monitoring and enforcement of regulatory compliance.

The way the National Energy Retail Law applies in Queensland will be subject to modifications included in the Bill or prescribed by regulation. The clause states that the Law will be known as the National Energy Retail Law (Queensland) and will apply as though it were an Act. This separates it conceptually from the Bill itself (which is the enabling mechanism) and facilitates later differential treatment. For example, clause 7 provides that the *Acts Interpretation Act 1954* and *Statutory Instruments Act 1992* apply to the Bill, but not to the National Energy Retail Law (Queensland).

Under the clause, any future amendments made to the National Energy Retail Law by the South Australian Parliament by amending the schedule to the South Australian Act will also apply in Queensland. This does not extend to State-specific modifications made by the South Australian Parliament to the body of South Australian Act, only the schedule.

Once the National Energy Retail Law (Queensland) comes into force, subordinate instruments under the National Energy Retail Law (Queensland) will also apply, in particular, the National Energy Retail Rules.

Clause 5 applies regulations that were initially made under the National Energy Retail Law as regulations in force under the National Energy Retail Law (Queensland). These regulations and any future variations to them do not need to be made by the Governor-in-Council to apply in Queensland. However, in accordance with the Australian Energy Market Agreement, they must be agreed by the energy Ministers of all participating jurisdictions (Queensland, New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory) before they can be made.

Clause 6 amends the National Energy Retail Law (Queensland) to clarify that any references in the Law or National Energy Retail Regulations to 'this Law' or 'the National Energy Retail Law' mean the National Energy Retail Law (Queensland), not the National Energy Retail Law as contained in the schedule to the South Australian Act. References to 'this jurisdiction' will also mean Queensland, not South Australia.

Clause 7 provides that the Acts Interpretation Act and the Statutory Instruments Act do not apply to the National Energy Retail Law (Queensland) or instruments made under it. However, these Acts do apply to the Bill and instruments made under the Bill.

To achieve national harmonisation, the Acts Interpretation Act cannot apply to the National Energy Retail Law (Queensland). If applied, it would create an inconsistent regime. This is

because matters such as when notice is taken to be received vary slightly across jurisdictions. As such, if each jurisdiction applied their own Acts Interpretation Acts, customers would have slightly different rights depending on the interpretation in the relevant jurisdiction. This would undermine a key objective of harmonisation.

To avoid these issues, consistent interpretation rules are provided under national energy laws. The majority of these are contained in Schedule 2 of the National Gas Law (contained in a schedule to the *National Gas Law (South Australia) Act 2008*). Section 8 of the National Energy Retail Law provides for these national interpretation rules under Schedule 2 of the National Gas Law to apply, with the exception of the definition of 'business day' and a number of other clauses, where interpretation rules are included in the National Energy Retail Law itself (for example, the definition of 'business day' is included in section 2 'Interpretation').

The Statutory Instruments Act will also not apply to the National Energy Retail Law (Queensland) and instruments made under it. Applying disallowance provisions from the Statutory Instruments Act in particular would create difficulties for Queensland in complying with its commitments under the Australian Energy Market Agreement. Under the Australian Energy Market Agreement, jurisdictions may not amend national scheme legislation without the prior agreement of other participating jurisdictions. If the Queensland Parliament were to disallow an instrument varying the National Energy Retail Rules, it would effectively be an amendment to the national scheme. However, there would not be time to seek prior agreement of other jurisdictions before a notice of disallowance was considered by the Parliament and if passed before the agreement of other jurisdictions was achieved, Queensland would be in breach of its commitments under the Australian Energy Market Agreement. Other provisions in the Statutory Instruments Act, such as the requirement of automatic expiry of regulation after 10 years would also cause difficulties.

However, any provisions made in or under the Bill will be state-specific and as such, should be subject to normal Acts Interpretation Act and the Statutory Instruments Act requirements. For example, a modification regulation that varies the National Energy Retail Rules as they apply in Queensland will need to comply with the Statutory Instruments Act.

Clause 8 states that any future amendments to the National Energy Retail Law (Queensland), for example, made by the South Australian Parliament in varying the schedule to the South Australian Act must be tabled in the Legislative Assembly within 10 sitting days. Regulations made and instruments varying the National Energy Retail Rules must also be tabled. An example of an instrument varying the National Energy Retail Rule is an Australian Energy Market Commission Final Rule Determination. Subclause 8(3) makes clear that a failure to table an instrument within 10 sittings will not affect the validity of that instrument.

This will give Parliament transparency of the arrangements and how they are being applied. If the Queensland Parliament has concerns about changes being made to the national Law, Regulations or Rules, an amendment to this Bill may be made to vary how those changes operate in Queensland or a modification regulation made under the provisions in Clause 12. However, it is unlikely that national changes will raise concerns as the Queensland energy Minister must agree changes to the Law and regulation before they are made, and the Australian Energy Market Commission must go through a comprehensive assessment process before changes to the Rules are made.

Clause 9 states that the powers of the Australian Energy Regulator and the Australian Competition Tribunal given by other jurisdictions in their application of the National Energy Retail Law also apply in Queensland. Reciprocal provisions are also included in the application legislation of other participating jurisdictions. This is needed for the practical operation of the national scheme legislation, given most retailers operate across state borders, and to deal with cross border matters.

Clause 10 states that the reading down provisions in section 320 of the National Energy Retail Law (Queensland) apply to the provisions in the Bill. Section 320 of the National Energy Retail Law provides that the National Energy Retail Law and National Energy Retail Rules are to be construed as operating to the full extent of, but not to exceed, the legislative power of a jurisdiction. If construed as exceeding the jurisdiction's legislative power, a provision in the Law and Rules will be valid to the extent to which it does not exceed the power. Section 320 sets similar provisions in relation to powers or functions conferred on a Commonwealth officer or body.

Section 320 of the National Energy Retail Law (Queensland) will also apply to (but not be construed as limiting) any regulation made under this Bill. This will include regulations relating to powers of an entity prescribed as being the regulator for Queensland modifications to the arrangements, and to transitional matters.

Clause 11 states that the Governor in Council may make such regulations, including local instruments, as are contemplated in the National Energy Retail Law set out in the Schedule to the South Australian Act or modifications of that Law set out in the schedule to this Bill. This will allow regulations to be made in circumstances envisaged in the National Energy Retail Law (Queensland).

## Part 4 Miscellaneous

Clause 12 states the Governor in Council may make a regulation – to be known as a modification regulation – that modifies the operation of the:

- National Energy Retail Law (Queensland).
- National Energy Retail Regulations (Queensland).
- National Energy Retail Rules to the extent they apply as rules under the National Energy Retail Law (Queensland).

The ability to modify the operation of the National Energy Retail Law (Queensland) is restricted to changes necessary or convenient as a consequence of amendments that are made to the Law at a national level (i.e. through an amendment to the schedule of the South Australian Act) after the National Energy Retail Law (Queensland) commences. As a number of modifications to the National Energy Retail Law are needed to ensure the arrangements are appropriate for regional Queensland on commencement, it is possible that future variations to the National Energy Retail Law may require similar adjustments to provide for Queensland regional customers. For example, if provisions were to be introduced around third party energy providers and services, adjustments may be needed in relation to how the arrangements apply to excluded customers. Alternatively, the energy Ministers of other states may decide that a Queensland modification, such as the requirement on retailers to give advanced notice of price changes to customers on standard retail contracts or the removal of six month restrictions on varying standing offer prices where the price is to be reduced,

should be adopted nationally. If this were to occur, a variation would need to be made to remove the Queensland modification or there would be duplication.

As the power relates directly to changes made at a national level after commencement of the National Energy Retail Law (Queensland) and is intended to ensure the continued effective operation of the Law, the modification regulation must be made within three months of the change, though may provide for a later start date if additional time is needed to implement. The regulation will expire in 12 months after commencement. This will allow sufficient time for longer term changes to be brought to Parliament for consideration.

The ability to modify the operation of the National Energy Retail Regulation and National Energy Retail Rules is limited to where necessary or convenient to give operation to the arrangement in Queensland, or necessary or consequential as a result of modifications to the Law. Modifications to the Rules will also be permitted to support the transition to the national regime.

In accordance with Queensland's commitments under the Australian Energy Market Agreement, energy Ministers of participating jurisdictions would first need to agree to any changes made via a modification regulation.

Clause 13 provides for instruments or decisions made by the Australian Energy Regulator in the lead up to the introduction of the National Energy Retail Law (Queensland) to be validated. This will ensure the arrangements operate effectively from the start date. Instruments include matters such as guidelines for exempt sellers (the rules that entities must comply with if they wish to sell energy to customers at premises without a retail authorisation) and guidelines for pricing information (rules around the way in which retailers must present price information to customers to help customers easily compare offers). Decisions include matters such as the appointment of default retailers of last resort under the Retailer of Last Resort scheme (a scheme to provide emergency arrangements to support continued supply and minimum disruption to customers if a retailer fails).

Clause 14 provides for preparatory work undertaken by the Australian Energy Regulator in the lead up the National Energy Retail Law (Queensland) to be validated. This includes preparatory work, such as calling for nominations for default retailers under the Retailer of Last Resort scheme and requesting price information from retailers to support the price comparison website that the Australian Energy Regulator will operate (*Energy Made Easy*).

Clause 15 states that the Minister (or the Queensland Competition Authority on behalf of the Minister if requested) must complete a review of the operation of the National Energy Retail Law (Queensland) by 1 January 2018. The review is to assess whether the National Energy Retail Law (Queensland) has met its objectives in terms of increased efficiencies and enhanced customer protections and to ensure that the arrangements are delivering a net benefit to Queensland. The review will also consider the impact of Queensland modifications to the Law on the objectives. The review will need to be tabled in Parliament as soon as practicable after completion.

## Part 5 Transitional Provisions

Clause 16 provides definitions of terms used in Part 5 (Transitional Provisions). The definition of '***retailer'*** for Part 5 includes an entity that under the National Energy Retail Regulations (Queensland) is taken to be a retailer under the National Energy Retail Law (Queensland). This clarifies that the term includes the entities listed in Schedule 2 of the Regulation. Under section 13 of the Regulation, these entities will be taken to be holders of retail authorisations under the National Energy Retail Law (Queensland).

Clause 17 provides that conditions of the retail exemptions that will apply to the Maranoa Regional Council and the Western Downs Regional Council for the provision of customer retail services for gas will be set out in regulation. Under section 88 of the National Energy Retail Law (Queensland), a person or entity must have a retail authorisation or exemption to sell energy to premises. Currently, the Maranoa Regional Council and the Western Downs Regional Council hold retail authorisations under the Gas Supply Act. However, given the very limited purposes for which the Councils undertake retail functions (selling gas to customers within their constituencies), it would not be appropriate to transition them into the national arrangements as retailers.

The exempt seller regime in the National Energy Retail Law (Queensland) is designed for entities that sell energy to customers, but not on a large scale or not as their principal business. Conditions are placed on exempt sellers that are commensurate with the purposes for which they sell energy, and in consideration of the needs of the relevant customers to whom they sell energy. For the Maranoa Regional Council and the Western Downs Regional Council, the initial conditions for the sale of gas will be included in a regulation, based on existing requirements. These conditions will apply to the Councils on the commencement of Part 5 of the Bill. The conditions will then be subject to normal decision making processes of the Australian Energy Regulator in relation to retail exemptions under the National Energy Retail Law (Queensland). For example, each Council will be able to apply to the Australian Energy Regulator for a variation of their exempt seller authorisation in future.

Clause 18 transitions existing holders of special approvals to sell electricity into the National Energy Retail Law (Queensland) framework. The special approval regime for selling electricity will be removed from the Electricity Act. The policy is to maintain the rights of these entities to continue to sell electricity to customers at premises in the transition to the National Energy Retail Law (Queensland). Accordingly, each holder of a special approval will be taken to be an exempt seller on commencement of Part 5 of the Bill and the Australian Energy Regulator will be required to issue an instrument of exemption to the entity as soon as practicable.

In issuing an instrument of exemption, the Australian Energy Regulator will be able to determine the most appropriate type of exemption to apply to a particular special approval holder. Under section 110 of the National Energy Retail Law, the Australian Energy Regulator is authorised to exempt persons or classes of persons from the requirement to hold a retailer authorisation in order to sell energy to customers at premises. There are three different types of exemption:

- deemed exemption– an exemption that applies automatically to certain classes of seller. The exemption applies to sellers that fit within the stated class.

- registrable exemption – this exemption also applies to certain classes of people, however the Australian Energy Regulator keeps a register of the sellers to whom the exemption applies.
- individual exemption – this is required where a seller is not covered by a class exemption.

In determining the most appropriate type of exemption, the Australian Energy Regulator is likely to consider whether each existing seller falls within a prescribed class set out in the Australian Energy Regulator's exempt selling guidelines. For sellers currently authorised under section 130 of the *Electricity Regulation 2006*, it may be appropriate for the Australian Energy Regulator to develop a corresponding class exemption. Section 130 of the Electricity Regulation provides that persons who operate generating plant with a capacity of 30MW or less are taken to have a special approval to connect the generating plant to a transmission grid or supply network and sell electricity generated by that plant.

While many of these special approval holders will not require a retail exemption because they do not sell electricity to premises, to the extent that any of these entities do sell electricity to premises under the special approval, they will be taken to be exempt sellers under the National Energy Retail Law (Queensland) on commencement of Part 5 of the Bill. The Australian Energy Regulator may decide to determine a class exemption to cover these sellers as their individual identities may not be clear.

The conditions applying to exempt sellers transitioned under this clause may be set out in regulation. Once the National Energy Retail Law (Queensland) commences, any conditions that are prescribed will then be subject to normal decision making processes of the Australian Energy Regulator in relation to retail exemptions (set out in the Australian Energy Regulator's Exempt Seller Guidelines). For example, each entity will be able to apply to the Australian Energy Regulator for a variation of their exempt seller authorisation in future.

Clause 19 sets out transitional arrangements to establish National Energy Retail Law (Queensland) standard retail contracts for small customers. A standard retail contract is the default contract that applies to small customers and retailers where alternatives terms and conditions have not been specifically negotiated and agreed through explicit informed consent.

The model terms and conditions for the standard retail contract will be set out in the National Energy Retail Rules (Queensland) to provide safeguard protection for customers who do not wish to negotiate with retailers. The price that applies is a retailer's standing offer price, which for electricity customers outside of South East Queensland will be the notified price under section 90(4) of the Electricity Act. For other customers, each retailer will determine its own standing offer prices, and requirements around publication and variation will apply (modified for electricity customers as set out in the Schedule to this Bill).

The safeguard protections included in the model terms and conditions under the National Energy Retail Rules include requirements around: the start and end of the contract; price (including price changes); payment and billing; access to historical billing information; overcharging and undercharging; security deposits; what happens if a customer has difficulty paying their bill; when disconnections can occur; and complaints and dispute resolution.

The National Energy Retail Law (Queensland) standard retail contract is substantially similar to the standard retail contract that currently exists under the Electricity Act and provides

clearer rights and obligations than the standard retail contract that exists under the Gas Supply Act.

This clause provides that on the start of Part 5 of the Bill, the contracts of customers who have standard retail contracts under the Electricity Act and Gas Supply Act immediately before the Part commences and who will become small customers under the National Energy Retail Law (Queensland), will be replaced with National Energy Retail Law (Queensland) standard retail contracts. This will capture a slightly broader range of customers that are currently classified as 'small' under the Electricity Act and Gas Supply Act.

Currently, customers (including residential customers) that consume 100MW of electricity or 1 TJ gas per annum or more are classified as large customers. Under the National Energy Retail Law (Queensland), all residential customers, irrespective of their consumption amount, will become classified as small customers. Businesses consuming less than 100MW of electricity or 1 TJ gas per annum will continue to be classified as small customers.

Clause 20 sets out transitional arrangements to establish National Energy Retail Law (Queensland) market retail contracts for small customers on commencement of Part 5 of the Bill. Small customers under the National Energy Retail Law (Queensland) that have negotiated retail contracts under the Electricity Act and Gas Supply Act immediately before commencement will be taken to have National Energy Retail Law (Queensland) market retail contracts on commencement.

Under section 33 of the National Energy Retail Law (Queensland), customers must give their explicit informed consent to enter into a market retail contract. Subsection (2) of clause 20 provides that the explicit informed consent of the customer will not be needed to establish a National Energy Retail Law (Queensland) market retail contract under this section. This is a transitional measure. As these customers have already given explicit informed consent for the formation of the original contract, it would be inefficient and costly to require them to give their explicit informed consent again.

Subsection (3) of clause 20 makes clear that where the terms and conditions of an existing contract are inconsistent (i.e. cannot comply) with the minimum terms and conditions of a National Energy Retail Law (Queensland) market retail contract, the minimum requirements of the market retail contract apply to the extent of the inconsistency. This will increase the level of protection afforded to customers. The provision makes clear that if previous terms and conditions provide for more favourable customer outcomes, the more favourable terms and conditions apply. For example, if under an existing negotiated retail contract, a customer has a right to not pay for any historic billing data, that condition will transfer into the National Energy Retail Law (Queensland) contract and customer will still have a right to their historic billing data without charge, notwithstanding that the National Energy Retail Rules (rule 28(2)) provides that a retailer may charge the customer for data that is over 2 years old.

Clause 21 sets out transitional arrangements for certain small customers who currently receive customer retail services from Origin Energy under a special approval issued to Origin Energy under the Electricity Act. This relates to customers on the cross-border distribution system of Essential Energy. The terms of the special approval require Origin to provide customer retail services to these customers under the terms and conditions that would apply if the relevant customers were customers under New South Wales energy legislation at a price equivalent to the Queensland notified price. This is the mechanism by which the Queensland

Government's Uniform Tariff Policy is delivered to customers on the Essential Energy network. The policy is to ensure that on commencement, customers who receive customer retail services from Origin Energy under the special approval will become small customers of Origin Energy with a standard retail contract at the notified price. These customers will continue to receive services on standard terms equivalent to their existing terms because New South Wales has already applied the National Energy Retail Law and continue to receive the notified price.

Clause 22 sets out transitional arrangements for large customers who have standard large customer retail contracts under the Electricity Act immediately before Part 5 of the Bill starts. Large customers under the National Energy Retail Law (Queensland) will be businesses that consume equal to or over 100MWh electricity (or 1TJ gas) per annum, and State and local governments who consume energy at street lighting premises.

The National Energy Retail Law (Queensland) does not provide standard form contract arrangements for large customers for customer retail services. The reason for this is that these businesses are more sophisticated and have more market power than small customers, given the volume of energy by consume. In a competitive retail market, these businesses should be able to negotiate their own terms and conditions with their preferred retailer, or find a retailer that will better satisfy their requirements.

The way in which large customers with standard large customer retail contracts under the Electricity Act transition to the National Energy Retail Law (Queensland) depends on whether they currently benefit from the Queensland Government's Uniform Tariff Policy. The Uniform Tariff Policy is delivered to large customers on Ergon Energy's distribution network by requiring Ergon Energy Queensland to provide eligible large customers (customers who have not gone to another retailer) with a standard large customer retail contract at the notified price. It is therefore important to retain these arrangements. For customers on the Essential Energy distribution network, the Uniform Tariff Policy is delivered to large customers through obligations placed on Origin Energy under a special approval. Because these customers receive services under a special approval (rather than a standard large customer retail contract), their transition to the National Energy Retail Law (Queensland) is dealt with separately in clause 23 below.

Retailers other than Ergon Energy may also currently offer standard large customer retail contracts under requirements set out in the Electricity Act. However, the pricing arrangements are determined by the relevant retailer and the retailer does not receive any payment from the Queensland Government to restrict prices to the notified price. Instead, retailers are able to determine their own pricing methodology and include it in the standard large customer retail contract.

The policy is to continue existing arrangements for Ergon Energy Queensland to deliver the Uniform Tariff Policy by providing customer retail services to large customers on large customer standard retail contracts at the notified price. Other large customers with existing large customer standard retail contracts (but no access to the Uniform Tariff Policy) will keep the terms and conditions of the large customer standard retail contracts they were on immediately before the National Energy Retail Law (Queensland) starts, but will be able to negotiate variations to those terms and conditions under normal contractual arrangements going forward.

The clause therefore provides that if the retailer of a large customer on a current standard large customer retail contract is:

- an assigned retailer (intended to be Ergon Energy Queensland), the customer's standard large customer retail contract under the Electricity Act becomes the assigned retailer's large customer standard retail contract under the National Energy Retail Law (Queensland)
- not an assigned retailer (retailers other than Ergon Energy Queensland), the customer's standard large customer retail contract will continue as a contract for the provision of the relevant services on the same terms and conditions.

Clause 23 provides transitional arrangements for large customers who currently receive customer retail services from Origin Energy under a special approval issued to Origin Energy under the Electricity Act. This relates to customers on the cross-border distribution system of Essential Energy. The terms of the special approval require Origin to provide customer retail services to these customers under the terms and conditions that would apply if the relevant customers were customers under New South Wales energy legislation at a price equivalent to the Queensland notified price. This is the mechanism by which the Queensland Government's Uniform Tariff Policy is delivered to customers on the Essential Energy network.

The policy is to ensure that large customers under these arrangements continue to receive customer retail services at the Queensland notified price and under fair and reasonable terms. As New South Wales has already applied the National Energy Retail Law (which contains no requirements around terms and conditions for customer retail services for large customers) it is not clear, but it is likely, that the terms and conditions applied to these customers are unchanged from those that existed prior to New South Wales adopting the National Energy Retail Law. To provide clarity to customers, the arrangements will be replaced with large customer standard retail contracts on commencement of the National Energy Retail Law (Queensland).

Clause 24 provides transitional arrangements for residential customers with instalment plans under the Electricity Industry Code or the Gas Industry Code. Instalment plans are arrangements between retailers and residential customers which give customers more time to pay a bill or to pay arrears (including any disconnection or reconnection charges). Instalment plan arrangements in place at the time of commencement will become payment plans under the National Energy Retail Law (Queensland) on the same terms and conditions as applied. For example, if an instalment plan provides for the payment of arrears at $50 per month, that arrangement will continue under the National Energy Retail Law (Queensland) payment plan provisions.

Clause 25 sets out transitional arrangements for standard connection contracts for small and large customers. Under the clause, standard connection contracts under the Electricity Act (there are no standard form connection contracts under the Gas Supply Act) immediately before commencement are replaced with standard connection contracts under the National Energy Retail Law (Queensland) on commencement. For a large customer, the standard connection contract may be a contract that has been developed specifically for their customer type (for small customers, all standard connection contracts are identical). Under section 75 of the National Energy Retail Law (Queensland), a distributor may submit, and the Australian Energy Regulator may approve, a form of standard connection contract that will apply to one or more classes of large customer, as long as the terms and conditions are fair and reasonable.

For example, different arrangements might be more appropriate for the provision of customer connection services to a large mine consuming over 4 GWh electricity per annum, compared with a suburban household. The type of standard connection contract that will apply to the large customer will depend on whether they fall into a class for which the Australian Energy Regulator has approved a standard customer contract. If not, the normal standard customer connection contract will apply.

Clause 26 sets out transitional arrangements for negotiated connection contracts for small customers. This will apply to connection contracts for all small customers for gas (there are no standard form connection contracts under the Gas Supply Act), and to small customers for electricity that have negotiated a connection contract under the Electricity Act. On commencement, the previous connection contract becomes a negotiated connection contract under the National Energy Retail Law (Queensland) with the same terms and conditions of the previous contract.

Clause 27 clarifies that the National Energy Retail Law (Queensland) will not disrupt connection contracts negotiated between a large customer and a retailer before commencement of Part 5 of this Bill.

Clause 28 authorises the Queensland electricity regulator, the Queensland gas regulator and the Queensland Competition Authority to disclose information (which could include personal or confidential information about a person) to the Australian Energy Regulator in specific circumstances. The policy intent is to facilitate the transfer of regulatory powers for customer retail services and customer connection services from the Queensland electricity and gas regulators and the Queensland Competition Authority to the Australian Energy Regulator. At present, the Queensland regulator may receive and investigate referrals from the Queensland Competition Authority where the Queensland Competition Authority considers there may have been a material breach of the Electricity Industry Code or the Gas Industry Code. The regulator may also collect information concerning retailer compliance with licence conditions. The Queensland Competition Authority may collect information as part of its compliance and enforcement role in relation to the Electricity Industry Code and the Gas Industry Code.

Much of the existing subject matter in the Electricity Industry Code and Gas Industry Code and under retail licence conditions will be replaced with National Energy Retail Law (Queensland) requirements, regulated by the Australian Energy Regulator. As such, circumstances may exist in which the Australian Energy Regulator may reasonably require information or other assistance from the Queensland regulator or Queensland Competition Authority to perform its functions under the National Energy Retail Law (Queensland). The type of information likely to be requested under this provision may include:

- Retailer performance data (for example, data that retailers have provided for the last three years under section 8.5 of the Electricity Industry Code).
- Retailer and distributor compliance data (including exception reports for the 12 months prior to transition) where this relates to obligations likely to translate into compliance issues under the National Energy Retail Law (Queensland) or Rules.
- A briefing on any open or ongoing compliance matter (for retailers and distributors) at the time of transition that is likely to translate into compliance issues under the National Energy Retail Law (Queensland) or Rules.

If the information or assistance is reasonably required for the performance of the Australian Energy Regulator's National Energy Retail Law (Queensland) functions or powers, the Queensland regulator or Queensland Competition Authority will not be in breach of any Act or law, contractual arrangement, understanding or undertaking, or duty of confidence. The Queensland regulator or Queensland Competition Authority's actions will not constitute a civil or criminal wrong or terminate an agreement or obligation or give rise to any right or remedy. It will not release a surety or any other obligee from an obligation.

Clause 29 allows for a regulation to modify the application of the National Energy Retail Law (Queensland) to provide for unforseen matters of a savings or transitional nature necessary for transitioning from the existing legislative scheme to the new legislative scheme. This power is needed to accommodate necessary transitional provisions that are not apparent at this stage, given the complex nature of the existing and new legislative schemes and the move to national scheme legislation. Any transitional regulation will expire within three years.

# Part 6 Amendment of Acts

## Division 1 Amendment of this Act

Clause 30 states that Division 1 amends this Act.

Clause 31 varies the long title of the Bill to remove references in the long title to amendments to the Bill and the Application Acts for the National Electricity (Queensland) Law and the National Gas Law (Queensland) for particular purposes. These references are not required.

## Division 2 Amendment of Electricity – National Scheme (Queensland) Act 1997

Clause 32 states that Division 2 amends the *Electricity – National Scheme (Queensland) Act 1997*. The Electricity – National Scheme (Queensland) Act is the application act for the National Electricity (Queensland) Law which establishes obligations in the National Electricity Market and for electricity networks, including the economic regulation of distribution networks.

Clause 33 amends section 6(a) of the Electricity – National Scheme (Queensland) Act to provide that the National Electricity Law applies as a law of Queensland, subject to the modification stated in section 6A (see clause 34).

Clause 34 inserts a new section 6A (Application of National Energy Retail Law amendments) which states that the amendments made to the National Electricity Law by the *Statutes Amendment (National Energy Retail Law) Act 2011* (South Australia) start to apply when the National Energy Retail Law, Part 2, commences. The amendments made to the National Electricity Law by the Statutes Amendment (National Energy Retail Law) Act do not currently apply in Queensland. This is because section 24 of the National Electricity Law states that the amendments do not apply in a jurisdiction until the National Energy Retail Law commences in that jurisdiction. The amendments provide a head of power to make National Electricity Rules about:

- Connection services. This has been used to develop detailed rules under Chapter 5A of the National Electricity Rules regarding connection application processes and obligations

for new physical connections to the distribution network (e.g. at 'greenfield' sites and for photovoltaic generator systems). The rules also cover connection charging arrangements. While the National Energy Retail Law (Queensland) will principally deal with the ongoing obligations on distributors and customers once premises are physically connected to the distribution network, the National Electricity Rules will deal with obligations for arranging a new physical connection. Each set of arrangements has been designed to operate in concert with the other.

- Retail support obligations between distributors and retailers. This has been used to develop detailed rules under Chapter 6B of the National Electricity Rules relating to the recovery of network charges by a distributor from a retailer in relation to shared customers.
- Credit support arrangements between distributors and retailers. This has been used to develop detailed rules under Chapter 6B of the National Electricity Rules relating to the circumstances in which a distributor can request credit support from a retailer and the maximum value of that credit support.

As different parts of the National Energy Retail Law (Queensland) may commence on different days, this clause 34 clarifies that the above amendments are linked to the commencement of Part 2 of the National Energy Retail Law (Queensland), being provisions relating to the relationship between customers and retailers.

Clause 35 inserts a new heading into the National Electricity (Queensland) Law: 'Part 4 Related Matters'.

Clause 36 inserts three new sections (ss 12, 13 and 14) into the National Electricity (Queensland) Law.

- Section 12 (Regulation making power for the National Electricity (Queensland) Law) states that the Governor in Council may make such regulations as are contemplated by the National Electricity (Queensland) Law.

Under amendments in the Statutes Amendment (National Energy Retail Law) Act, a regulation may be made under the National Electricity (Queensland) Law about how the National Electricity Rules about connection services (Chapter 5A), retail support obligations and credit support arrangements (Chapter 6B) apply to a 'nominated distributor'. Nominated distributor arrangements apply to a distributor in relation to those parts of its distribution system which are not subject to economic regulation under the National Electricity Law. In Queensland, this will cover those parts of the Ergon Energy distribution system not connected to the national electricity grid or on the Mt Isa - Cloncurry network. A regulation will be needed to vary how the connection services arrangements for premises within this system work, particularly in relation to connection charging. This is because the connection charging arrangements under Chapter 5A are currently linked to economic regulation that does not apply in relation to these systems. Accordingly, alternative arrangements reflecting the charging arrangements that apply to these distribution systems will need to replace those sections in the rules that relate to economic regulation.

- Section 13 (Validation of instruments and decisions made by Australian Energy Regulator) states that instruments or decisions made by the Australian Energy Regulator in the lead up to introduction of new provisions contained in the Statutes Amendment (National Energy Retail Law) Act are valid.

These relate to connection services (Chapter 5A), retail support obligations and credit support arrangements (Chapter 6B). An example of the types of decision envisaged under this section is a decision to approve a distributor's connection charging policy, or basic or model standing offer connection contract under Chapter 5A.

- Section 14 (Authorisation of preparatory steps by Australian Energy Regulator) states that preparatory work undertaken by the Australian Energy Regulator in the lead up to introduction of new provisions contained in the Statutes Amendment (National Energy Retail Law) Act is valid.

These relate to connection services (Chapter 5A), retail support obligations and credit support arrangements (Chapter 6B). The types of preparatory work will include receiving and considering proposed basic or model standing offers for connection contracts under Chapter 5A.

## Division 3 Amendment of National Gas (Queensland) Act 2008

Clause 37 states that Division 3 amends the *National Gas (Queensland) Act 2008*. The National Gas (Queensland) Act is the application act for the National Gas (Queensland) Law, which establishes obligations for gas pipelines, gas wholesale markets (including a short term trading market) and a gas market bulletin board.

Clause 38 amends section 7 of the National Gas (Queensland) Act to provide that the application of the National Gas Law as a law of Queensland is subject to the modification stated in section 7A (see clause 39) or prescribed by a regulation under section 16 (see clause 40).

Clause 39 inserts a new section 7A (Application of National Energy Retail Law amendments) which states that the amendments made to the National Gas Law by the Statutes Amendment (National Energy Retail Law) Act (South Australia) start to apply when the National Energy Retail Law, Part 2, commences. The amendments made to the National Gas Law by the Statutes Amendment (National Energy Retail Law) Act do not currently apply in Queensland. This is because section 88 of the National Gas Law states that the amendments do not apply in a jurisdiction until the National Energy Retail Law commences in the jurisdiction. The amendments provide a head of power to make National Gas Rules about:

- Connection services. This has been used to develop detailed rules under Part 12A of the National Gas Rules regarding connection application processes and obligations for new physical connections to the distribution network (e.g. at 'greenfield' sites). The rules also cover connection charging arrangements. While the National Energy Retail Law (Queensland) will principally deal with the ongoing obligations on distributors and customers once premises are physically connected to a distribution pipeline, the National Gas Rules deals with obligations for arranging a new physical connection. Each set of arrangements has been designed to operate in concert with the other.
- Retail support obligations between distributors and retailers. This has been used to develop detailed rules under Part 21 of the National Gas Rules relating to the recovery of network charges by a distributor from a retailer in relation to shared customers.
- Credit support arrangements between distributors and retailers. This has been used to develop detailed rules under Part 21 of the National Gas Rules relating to the

circumstances in which a distributor can request credit support from a retailer and the maximum value of that credit support.

As different parts of the National Energy Retail Law (Queensland) may commence on different days, this clause clarifies that the above amendments are linked to the commencement of Part 2 of the National Energy Retail Law (Queensland), being provisions relating to the relationship between customers and retailers.

Clause 40 replaces section 16 (Regulation-making power) of the National Gas (Queensland) Law with three new sections (ss 16, 16A and 16B).

- New section 16 states that the Governor in Council may make such regulations as are contemplated by the National Gas (Queensland) Law and to provide for a transitional arrangement for the provision of connection services.

Under amendments made by the Statutes Amendment (National Energy Retail Law) Act, a regulation may be made about how certain parts of the National Gas Rules apply to a 'nominated distributor'. The relevant parts are connection services (Part 12A), retail support obligations and credit support arrangements (Part 21). Nominated distributor arrangements apply to an entity in relation to a distribution pipeline that is not a covered pipeline under the National Gas Law but is authorised under jurisdictional gas legislation. In Queensland, Envestra Limited will be nominated in respect of its Wide Bay network, comprising the Maryborough – Hervey Bay distribution network and the Bundaberg distribution network, both of which are authorised under distribution authority DA-A-007. A regulation will be needed to vary how the connection services arrangements for premises connected to these distribution pipelines work, particularly in relation to connection charging. This is because the connection charging arrangements are currently linked to economic regulation that does not apply in relation to these pipelines. Accordingly, alternative arrangements reflecting the charging arrangements that apply to these distribution pipelines will need to replace those sections in the rules that relate to economic regulation.

Transitional arrangements for the provision of a connection services may allow connection services to be provided under a model standing offer that has not been approved by the Australian Energy Regulator for a period of up to 1 year. This may be needed to give distributors sufficient time to arrange for the Australian Energy Regulator to approve a model standing offers under the new connection rules. In the transitional period, a model standing offer that meets the requirements of the rules would still need to be developed and offered to customers, but it would not be necessary for the offer to have been formally approved by the Australian Energy Regulator. As new gas connections are largely unregulated at present, the gas distributors may reasonably require more time than electricity distributors to transition to the new arrangements.

- New Section 16A (Validation of instruments and decisions made by Australian Energy Regulator) states that instruments or decisions made by the Australian Energy Regulator in the lead up to introduction of new provisions contained in the Statutes Amendment (National Energy Retail Law) Act are valid.

These relate to connection services (Part 12A), retail support obligations and credit support arrangements (Part 21). An example of the types of decision envisaged under this section is a decision to approve a basic or model standing offer for a connection contract under Part 12A.

- New Section 16B (Authorisation of preparatory steps by Australian Energy Regulator) states that preparatory work undertaken by the Australian Energy Regulator in the lead up to introduction of new provisions contained in the Statutes Amendment (National Energy Retail Law) Act are valid.

These relate to connection services (Part 12A), retail support obligations and credit support arrangements (Part 21). The types of preparatory work will include receiving and considering proposed basic or model standing offers for connection contracts under Part 12A.

## Schedule Modification of application of National Energy Retail Law

The schedule sets out the modifications to the National Energy Retail Law (contained in the schedule to the National Energy Retail Law (South Australia) Act 2011 (SA)) that are to apply in Queensland. The head of power for these modifications is Clause 4 of the Bill.

Clause 1 of the Schedule inserts the following new definitions into section 2(1) of the National Energy Retail Law:

- ***assigned retailer, Ergon Energy Distribution***, and ***government owned corporation*** – these definitions are principally used in new Division 12A to continue existing obligations on Ergon Energy Queensland to deliver the Uniform Tariff Policy to large customers. The term assigned retailer also appears at new section 19C and 123A. The definitions clarify that an assigned retailer may only be a government owned corporation, or subsidiary of a government owned corporation. The relevant provisions apply to customer retailer services on the Ergon Energy Distribution network.

- ***card-operated meter*** and ***card-operated meter premises*** – these definitions are principally used in new Division 10A and new Division 6A which provide a framework for the terms and conditions that will apply for customer retail services to customers with card-operated meters. They provide that a 'card-operated meter' is a meter that operates by switching electricity on and off based on the value of credit applied to the meter by way of a pre-paid card. Card-operated meter premises are premises where a card-operated meter is installed.

- ***compliance, investigation or enforcement provision*** – this term is used in several parts of the schedule that are designed to provide for a regulator other than the Australian Energy Regulator (the normal regulator for the National Energy Retail Law (Queensland)) to be able to regulate the Queensland modifications to the National Energy Retail Law. The provisions operate so that the nominated regulator has the same monitoring, investigating or enforcement powers in relation to the modified sections of the National Energy Retail Law (Queensland) as the Australian Energy Regulator has in a compliance, investigation or enforcement provision in relation to other provisions in the National Energy Retail Law (Queensland). Specific compliance, investigation and monitoring provisions in the National Energy Retail Law (Queensland) are included at:
    - Part 8 – Functions and powers of the Australian Energy Regulator, which prescribe general information gathering powers, how confidential information is to be treated and provide for the development of enforcement guidelines.

- Divisions 1 to 3 of Part 13 – Enforcement, which addresses enforceable undertakings, instituting civil proceedings and other proceedings for breaches of the Law, Regulations or Rules.

The definition also captures any other provision of the National Energy Retail Law (Queensland) that confers a function or power on the Australian Energy Regulator relating to monitoring, investigating or enforcing the Law or relating to the performance of a function or exercise of a power. For example, this will include matters set out in Part 12 – Compliance and performance, which provides for, amongst other matters compliance audits and reports.

Clause 2 of the Schedule modifies the meaning of the term ***financially responsible retailer*** under section 2(1) of the National Energy Retail Law. As defined in the National Energy Retail Law, the term can apply only to retailers for premises connected to economically regulated electricity or gas distribution infrastructure. The modification provides for circumstances where relevant premises are connected to a distribution system that is not economically regulated (new paragraph (a)(i) for electricity) or a distribution system or pipeline that is not covered (new paragraph (b)(i)). In these circumstances, the financially responsible retailer is the retailer who is currently selling, or most recently sold, energy to a customer at the premises.

Clause 3 of the Schedule inserts the following new definitions into section 2(1) of the National Energy Retail Law:

- ***large customer standard retail contract*** – for the assigned retailer, this is a contract formed under new Subdivision 2 of Division 12A between a large customer and the assigned retailer. The term 'large customer standard retail contract' is also used in Subdivision 3 of Division 12A in relation to certain contracts between large customers and Origin Energy. Its meaning in Subdivision 3 is defined at the start of that subdivision.

- ***monitoring, investigating or enforcing*** – this term is used in several parts of the schedule that are designed to provide for a regulator other than the Australian Energy Regulator (the normal regulator for the National Energy Retail Law (Queensland)) to be able to regulate the Queensland modifications to the National Energy Retail Law. The provisions operate so that the nominated regulator has the same monitoring, investigating or enforcement powers in relation to the modified sections of the National Energy Retail Law (Queensland) as the Australian Energy Regulator has in a compliance, investigation or enforcement provision in relation to other provisions in the National Energy Retail Law (Queensland).

Clause 4 of the Schedule replaces the definition of ***prepayment meter system*** under section 2(1) of the National Energy Retail Law to clarify that a prepayment meter system does not include a card-operated meter. While the prepayment meter provisions of the National Energy Retail Law (Queensland) are an optional element and not intended to apply on commencement, this definition will ensure that should the prepayment meter arrangements be applied in Queensland in future, they will not extend to card-operated meters. Because of the limited functionality of card-operated meters, influenced by location (for example, no remote communications due to topography of areas where card-operated meters are rolled out), the prepayment meter system rules would not be appropriate for card-operated meter systems. Also, the prepayment meter rules provide that services can only be offered under a market retail contract (with the customer's explicit informed consent), whereas the provision of card-

operated meter customer retail services under the National Energy Retail Law (Queensland) will only be able to occur under standard retail contract arrangements with set terms and conditions.

Clause 5 of the Schedule inserts a definition into section 2(1) of the National Energy Retail Law for ***standard retail contract (card-operated meters)***. This is a contract entered into with a small customer that is consistent with the relevant model terms and conditions. The framework for the relevant model terms and conditions is set out in new Division 10A and new Division 6A.

Clause 6 of the Schedule amends the table of civil penalty provisions in section 4 of the National Energy Retail Law (Queensland) ('Meaning of civil penalty provision and conduct provision') to add additional civil penalty provisions in relation to the Queensland modifications. The additional civil penalties relate to:

- restrictions selling energy to an 'excluded customer' (new sections 19A(1), 19B(1) and 64A(1))
- restrictions and obligations placed on the assigned retailer (new sections 19C(1), (4) and (6), 64D(2) and (4) and 64E(5))
- restrictions and obligations around selling energy to card-operated meter premises (new sections 60C(1), 60D(1) and (4) and 78B(1))
- restrictions and obligations placed on Origin Energy (new sections 64M(2) and(3) and 64N(5).

In the case of a breach of a civil penalty provision by a body corporate, the maximum value under section 2 of the National Energy Retail Law (Queensland) is $100 000 and no more than $10 000 for each day during which the breach continues. For a natural person, the maximum value is $20 000 and an amount not exceeding $2 000 per day.

Part 13 of the National Energy Retail Law (Queensland) sets out enforcement provisions for breaches of civil penalty provisions. Action for breaches can be taken to the Supreme Court, but must commence within 6 years. If a person is found in breach, the court may order that the person: pay a civil penalty; cease the conduct constituting the breach; or undertake action to remedy the breach or to prevent a reoccurrence. An injunction may also be ordered. The regulator for these additional provisions is to be prescribed by a regulation, but may be either the Australian Energy Regulator, or an appropriate Queensland body such as the Queensland Competition Authority.

Clause 7 of the Schedule inserts a drafter's note after the table of civil penalty provisions in section 4 of the National Energy Retail Law (Queensland) ('Meaning of civil penalty provision and conduct provision') to highlight the entries in the table that are additional Queensland provisions. This will provide guidance as to what the Queensland modifications are in a published version of the National Energy Retail Law (Queensland).

Clause 8 of the Schedule modifies section 5 of the National Energy Retail Law (Queensland) ('Meaning of customer and associated terms') to expand the meaning of ***large customer*** as it applies in Queensland. The expanded meaning will include the State or a local government that consumes energy at street lighting premises, in addition to a business customer that consumes energy at business premises at or above the upper consumption threshold (set at 100MW electricity or 1TJ gas per annum). The effect of the modification is that even if the State or a local government consumes energy at levels below the threshold for street lighting

premises, they will be taken to be large customers. This is similar to existing arrangements under the Electricity Act, whereby the terms and conditions of contracts with street lighting customers are predominantly treated in the same manner as contracts with large customers. It also reflects the practicality that the provision of services to street lighting customers is generally unmetered (and therefore difficult to assess whether the customer has consumed above the consumption threshold).

Clause 9 of the Schedule modifies section 5 of the National Energy Retail Law (Queensland) ('Meaning of customer and associated terms') to include definitions of ***local government***, the ***State***, and ***street lighting premises***.

Clause 10 of the Schedule modifies section 8 of the National Energy Retail Law (Queensland) ('Interpretation generally') to clarify that Editor's notes do not form part of the Law. Editor's notes are being introduced to facilitate a reprint of the National Energy Retail Law as it applies in Queensland, as well as identifying modifications.

Clause 11 of the Schedule modifies section 19(2) ('Application of this Part') to refer to new Division 12A. Section 19 clarifies that Part 2 ('Relationship between retailers and small customers') generally does not apply to or affect the relationship between large customers and retailers, with the exception of Division 12. As new Division 12A (to be inserted under clause 18 of the Schedule) sets out arrangements for large customers and retailers, section 19 has been modified to reflect this.

Clause 12 of the Schedule inserts a new division (Division 1A) after section 19 ('Application of this Part'). New Division 1A ('Additional Queensland provisions about restrictions on sale of energy') sets out a number of restrictions on the sale of energy. These are included in four new sections: sections 19A, 19B, 19C and 19D.

New section 19A (Restriction on selling electricity to particular small customers) states that unless the retailer is a customer's designated retailer (defined in the National Energy Retail Law (Queensland) as either the local area retailer where there is no connection or the financially responsible retailer where there is an existing connection), the retailer cannot sell electricity to an excluded customer. This continues existing arrangements in the Electricity Act, under which excluded customers cannot choose their electricity retailer. It is necessary for the National Energy Retail Law (Queensland) to set out who 'excluded customers' are because the national retail scheme does not provide for retail contestability arrangements (i.e. the customers who can and cannot under law access the competitive retail market). The details of retail contestability arrangements are the responsibility of individual jurisdictions according to the Australian Energy Market Agreement.

Excluded customer is defined as a small customer to whom sections 23(5), 319 and 319A of the Electricity Act applies::

- A small customer whose premises are connected, or to be connected, to a distribution entity's supply network that is not connected to the national grid: s23(5) Electricity Act. This covers the isolated networks of Ergon Energy Queensland (such as in Mt Isa).
- Customers whose premises have an unmetered connection point or supply point for the delivery of electricity: s319 Electricity Act. This covers things like supply to telephone booths.
- Customers whose premises consist only of a watchman light: s319A.

These restrictions will be able to be removed at a later date, provided technical difficulties can be overcome and the benefits of extending competition to these customers outweigh the costs.

An exception will apply to these restrictions as they relate to customers with unmetered connection or supply points and watchman light customers. This is if retailer of last resort arrangements commence. Retailer of last resort arrangements under Part 6 of the National Energy Retail Law (Queensland) are designed to ensure the continuity of supply to customers in the event of retailer failure. Under clause 21 of the Schedule to the Bill (insertion of new section 121A), the retailer of last resort arrangements will not apply in the isolated networks.

New section 19B ('Restriction on selling gas to particular small customers') states that a retailer must not sell gas to an excluded customer, being a small customer who is an excluded customer under section 16(4) of the Gas Supply Act. This continues existing arrangements in the Gas Supply Act, under which excluded customers cannot choose their gas retailer.

Section 16(4) of the Gas Supply Act allows for regulation to prescribe who excluded customers are. Section 24 of the *Gas Supply Regulation 2007* prescribes each customer for a premises in the Maranoa distribution area or Western Downs distribution area to be an excluded customer. The arrangements for customer retail services for these customers will be included in individual exempt seller arrangements applying to the Councils, as provided for under clause 17 of the Bill. These will broadly continue existing arrangements for these customers. Accordingly, the new section 19B states that the requirements of the National Energy Retail Law (Queensland) section 22 in relation to the obligation to make a standing offer to provide customer retail services to small customers at the standing offer prices and under the retailer's form of standard retail contract do not apply to a retailer selling gas to an excluded small customers.

Emergency exceptions from the prohibition on retailers from selling gas to excluded customers are provided for, being if:

- retailer of retailer of last resort arrangements come into force under Part 6 of the National Energy Retail Law (Queensland)
- an insufficiency of supply declaration (or direction) is made under the Gas Supply Act.

If a retailer becomes a designated retailer for premises in the event of one of these emergency provisions, division 9 will apply. Division 9 relates to deemed customer arrangements (that is, what arrangements apply where there is no retail contract in force between a designated retailer and a small customer).

New section 19C (Additional restrictions on sale of energy by assigned retailer) places restrictions on the provision of customer retailer services by an assigned retailer, being a government owned corporation declared to be an assigned retailer under Division 12A.

The restrictions provide that the assigned retailer, proposed to be Ergon Energy Queensland, may only sell electricity to customers at premises ('provide customer retail services'):

- where there is no existing connection between the premises and a distribution network, and where the assigned retailer is nominated as local area retailer (under section 11 of the National Energy Retail Law (Queensland)) for the relevant geographic area, and type of premises and type of customer
- where there is an existing connection between the premises and a distribution network (including where a connection alteration is required), and where the assigned retailer is

nominated as local area retailer as described in the preceding paragraph and is additionally the financially responsible retailer for the premises.

A civil penalty is provided for a breach of these conditions. However, these conditions do not apply where a customer being transferred by the assigned retailer to another retailer must be transferred to back to the assigned retailer as part of correcting an error in applying the customer transfer procedures under the National Electricity Rules. Additionally, if the assigned retailer reasonably believes the conditions obliged it to provide customer retail services to a customer for premises, then this is a defence against a civil penalty proceeding relating to those conditions.

Where permitted to provide customer retailer services, the assigned retailer may provide services to small customers only under its standard retail contract and to large customer only under its large customer standard retail contract. A civil penalty is provided for a breach of these conditions. These conditions do not apply, however, where the assigned retailer provides customer retail services to a customer in circumstances set out in a regulation.

The provision extends existing restrictions on Ergon Energy Queensland (the proposed 'assigned retailer'). Ergon Energy Queensland is currently restricted from competing with other retailers to balance the competitive advantages it enjoys from being the only recipient of the Community Service Obligation in the Ergon Energy distribution area. Community Service Obligation payments to Ergon Energy Queensland ensure that it is able to offer its customers notified prices under a standard retail contract on an ongoing basis (facilitating delivery of the Queensland Government's Uniform Tariff Policy).

However, in some situations, it may be desirable for Ergon Energy Queensland to be able to enter into a non-standard agreement with a customer, for example in order to trial new products and tariff structures. This provision replicates existing arrangements under the Electricity Act which would allow this to occur if permitted under a regulation. If the assigned retailer is permitted to enter into a non-standard retail contract with a customer in accordance with a regulation, the minimum terms and conditions of market retail contracts set out in the National Energy Retail Law (Queensland) would apply to any contract with a small customer. When providing customer retail services in these circumstances, the assigned retailer must comply with conditions prescribed in a regulation. A civil penalty is provided for a breach of this condition.

New section 19D ('Monitoring, investigating and enforcing this Division') requires that a local instrument nominate the entity who is the regulator for new Division 1A. The Regulator is provided with the same functions and powers of the Australian Energy Regulator for the purposes of monitoring, investigating or enforcing Division 1A.

Clause 13 of the Schedule inserts a new section 22A after section 22 of the National Energy Retail Law (Queensland). New Section 22A ('Additional Queensland provision about standing offer prices for particular retailers') restricts what a retailer's standing offer price may be. Standing offer prices are all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under a standard retail contract.

Under new subsections 22A(1) and (2), if notified prices have been made under section 90(4) of the Electricity Act, the retailer's standing offer prices must be the notified prices. Notified prices may set the charges that a retailer can charge its customers for:

- customer retail services
- charges or fees relating to customer retail services (for example, charges or fees for late or dishonoured payments or credit card surcharges for payments for the services
- other goods and services prescribed under a regulation

Where a notified price has been set under a price determination, the standing offer prices cannot vary from these. For example, if a price determination sets tariffs for customer retail services, but does not include charges for late payments, the retailer cannot include charges for late payment in their standing offer prices.

A price determination may cover all or particular customers. If a price determination only covers particular small customers, it is only the retailer's standing offer prices for those customers are required to be the notified price.

New subsections 22A(3) and (4) provide transitional arrangements in the event that a price determination ceases to apply to particular customers. This provision is intended to support the adoption of market monitoring in South East Queensland by ensuring that customers do not see new charges and fees applied to their accounts once the price restrictions are removed. The provision will also apply if the price determination is removed for any other particular customers in future.

For the first two years after a price determination ceases to apply to particular customers, a retailer may only include charges or fees in their standing offer prices of a type that were included in the price determination for the financial year immediately preceding revocation. For example, if a price determination applying to South East Queensland customers in 2014-2015 does not include late payment fees and that price determination ceases in July 2015, then the retailer's standing offer price for South East Queensland customers also cannot provide for late payment fees until July 2017. If the price determination did include an amount for late payment fees, when the price determination ceases to apply the retailer's standing offer prices will be able to include charges for late payment. The value of the actual charge will be able to be determined by the retailer. The provision does not affect the types of tariff that a retailer may include in a standing offer.

Clause 14 of the Schedule modifies section 23 of the National Energy Retail Law (Queensland) ('Standing offer prices') to include two new subsections. In general, section 23 sets out requirements around standing offer prices, and is designed principally to apply in circumstances where no notified price exists. Under section 23, a retailer must publish their standing offer prices on their website (s23(1)). They may also vary their standing offer prices (s23(2)). However, if a retailer does vary its standing offer price, it must first publish a notice about the variation in a newspaper and inform each affected customer when it sends the customer their next bill (s23(3)).

Subsection 23(5) includes limitations on when price variations take effect. The effect of these limitations is that a variation cannot take effect:

- any earlier than 6 months after the last price variation; and
- any earlier than 10 business days after notification of the variation was published.

As section 23 is only intended to apply in circumstances where standing offer prices are not restricted by State law (for example, by a price determination under section 90(4) of the Electricity Act), clause 14 inserts a new subsection 23(8) limiting application of the section to retailers who:

- sell gas – in Queensland, there are no retail price restrictions on the sale of gas
- sell electricity in relation to customers for whom there is no price determination or notified price in force under section 90(4) of the Electricity Act.

Where notified prices are in effect, a retailer will not be required to comply with section 23.

New subsection 23(9) provides that a retailer who sells electricity in relation to customers for whom there is no price determination or notified price in force under section 90(4) of the Electricity Act must:

- set its standing offer prices for those customers immediately after the price determination ceases to apply
- cannot vary those prices for one year after they are set, unless the variation is to reduce the standing offer prices.

This is a transitional provision to support customers in the move to market monitoring. It will ensure that prices remain stable for the first year of market monitoring. After the first year of market monitoring, retailers will be able to vary their standing offer prices under arrangements set out in subsection 23(5) and new subsection 23(9). That is either

- if the retailer varies its standing offer prices to reduce the prices – at any time (ss 23(9)(c)): or
- if the retailer varies its standing offer prices to increases the prices – 6 months after the last price variation (ss23(5)(a)), as long as the retailer has given the customer advanced notice (ss23(9)(b)) and published notification of the variation 10 business days in advance (s23(5)(b)).

This means that if a price determination for customers in South East Queensland ceases to apply on 1 July 2015, an affected retailer will be able to vary its standing offer prices:

- to reduce prices at any time; or
- to increase prices on 1 July 2016 subject to publishing the variation 10 business days in advance as per subsection 23(5)(b) and informing the affected customer in advance as per subsection 23(9)(b).

From 1 July 2016, the retailer would be able (though would not have to) vary its standing offer prices at 6 monthly intervals (unless it is reducing prices in which case the 6 month limitation does not apply), as long as it has published a notification of the variation in accordance with section 23(5)(b) at least 10 business days in advance of the date the variation will come into force and informed the affected customer in advance as per subsection 23(9)(b).

New paragraph 23(9)(b) states that a retailer who sells electricity in relation to customers for whom there is no price determination or notified price in force under subsection 90(4) of the Electricity Act must inform each affected customer of a variation before the variation takes effect, unless the retailer varies its standing off prices to reduce prices. This is in addition to the requirements in subsection 23(3) that will also require the retailer to publish the variation

on its website, publish a notice about the variation in a newspaper and inform the affected customer of the variation when retailer sends the next bill to the customer. The policy is to ensure that affected customers are aware of price increases before they come into effect.

While some customers may be aware of price increases through public notifications on their retailer's website or in a newspaper, many customers will not be, particularly as there is no set date when price changes will happen. To reduce costs on retailers, no mechanism is prescribed as to how each affected customer is informed, but it is anticipated that this will occur through a mechanism such as: the customer's bill before the variation takes effect, a letter addressed to the customer or an email or text message sent to the customer if the customer has given their explicit informed consent to be notified in this manner in accordance with requirements included at section 319 of the National Energy Retail Law (Queensland) ('Giving of notices and other documents under Law or Rules'). Publishing notice of the variation on the retailer's website or in a newspaper will not be sufficient as it is not reasonable to assume that a particular affected customer will read or access the retailer's website or read the relevant publication in the newspaper before the variation takes effect.

Subsection 23(9)(c) clarifies that the restrictions included in subsection 23(2)(b), which provides that a variation has no effect until published, and subsection 23(5) around when a retailer may vary the standing offer prices, do not apply if the retailer varies the standing offer price to reduce the prices. For example, if a retailer wishes to reduce the consumption element of a tariff to reflect falling wholesale prices, but retain all other fees and charges in a standing offer.

Clause 15 of the Schedule inserts two new subsections after section 23 of the National Energy Retail Law (Queensland).

- New section 23A ('Additional Queensland provision about publication and notification of standing offer prices etc.') provides that retailers who sell electricity to small customers on standard retail contracts at the notified price under subsection 90(4) of the Electricity Act must inform each affected customer of any variation to prices when the retailer sends the next bill to the customer. As variations to the notified price are widely reported on in the media, it is reasonable to assume that these customers will be aware of price changes before they occur. In addition, as the notified price is set by the Minister for Energy (or the Queensland Competition Authority if delegated), individual retailers have no control over when this occurs.
- New section 23B ('Monitoring, investigating and enforcing s 22A and 23A') requires that a local instrument nominate the entity who is the regulator for new section 22A ('Additional Queensland provision about standing offer prices for particular retailers') and new section 23A ('Additional Queensland provision about publication and notification of standing offer prices etc.'). The regulator is provided with the same functions and powers of the Australian Energy Regulator for the purposes of monitoring, investigating or enforcing these sections.

Clause 16 of the Schedule inserts a new subsection (3) in section 31 of the National Energy Retail Law (Queensland) to provide that the section does not apply to a designated retailer who sells electricity.

Without new subsection 31(3), the effect of section 31 would be that if a medium consumption business (40 to 100MW electricity or 400 GJ to 1 TJ gas per annum) contacted their designated retailer (that is, where there is no existing connection, the local area retailer

and where there is an existing connection, the retailer that most recently sold energy to the premises), that retailer would be required to offer a contract but the contract offered would not have to be a standard retail contract. Accordingly, if the retailer decided not to offer a standard retail contract, the business and the retailer would need to enter into negotiations for a market retail contract. While minimum terms and conditions are set for market retail contracts, these are not as comprehensive as the standard retail contract protections.

Under existing arrangements in Queensland, where a small customer contacts their designated retailer for the sale of electricity to their premises, the retailer must offer a standard retail contract (retailers may also offer a market retail contract, but are not required to do so). For gas customers, the standard retail contract applies if the parties do not enter into negotiated retail arrangements.

The full terms and conditions of standard retail contracts are set by regulation and cannot be varied by the parties to the agreement. In regional Queensland, only electricity customers of the assigned retailer, or certain Origin Energy customers on the Essential Energy network, on standard retail contracts can access the benefits of the Uniform Tariff Policy (specifically, regulated pricing). Accordingly, removal of this for electricity could affect access to the Uniform Tariff Policy. It would be also inconsistent with restrictions placed on the assigned retailer that require the assigned retailer to only provide customer retailer services under a standard retail contract. The effect of this clause is therefore to preserve existing arrangements for medium consumption electricity businesses.

Clause 17 of the Schedule inserts a new Division 10A ('Additional Queensland provisions about selling electricity using card-operated meters') into Part 2 ('Relationship between retailers and small customers'). Division 10A includes five new sections that will apply to the provision of customer retail services to customers with card-operated meters: sections 60A to 60E.

Card-operated meters are a type of prepayment meter. They block the supply of electricity to premises until a pre-paid power card is inserted in the meter. Electricity then flows until the credit on the power card runs out or another power card is inserted.

Approximately 4 250 premises on the Ergon Energy Corporation Limited distribution system have card-operated meters (3 900 on isolated networks, 350 in grid-connected but remote areas). They are used in remote Indigenous communities to help with debt management and costs associated with changing account holders when customers move premises. In effect, any person can purchase a power card and use it to power premises installed with a card-operated meter. There are no forms to complete that tell Ergon Energy Queensland, as retailer, who the account holder is. Ergon Energy Queensland does not need to know who the customer is because no debt can be accrued. The arrangements suit both the communities and Ergon Energy Queensland.

The current Electricity Industry Code provides some allowance for the differences between card-operated meters and standard meters. For example, it expressly provides that a customer at premises with a card-operated meter must apply for a Guaranteed Service Level payment within one month of a failure by Ergon Energy Queensland to meet a specified service level, rather than receiving an automatic credit. Meter reads must occur once every 52 weeks rather than every 12-14 weeks. However, the most important provision relating to card-operated meters is an express statement that the obligation to bill quarterly does not apply to customers

with card-operated meters. As the majority of other customer protections in the code relate to billing and the issuing of a bill, this provision effectively removes a significant number of protections for card-operated meter customers.

Under existing arrangements, these protections are not replaced by anything else suited to the card-operated meter situation. This has created a type of regulatory vacuum for these customers. The National Energy Retail Law (Queensland) expressly provides for the difference between different types of prepayment and standard meter arrangements by creating a specific chapter to deal with prepayment meters.

However, the prepayment arrangements in the National Energy Retail Law are based on an individual customer choosing to have a prepayment meter installed under a market retail contract (where they also have the option of exiting the contract and replacing the meter with a standard meter). By contrast, card-operated meters are rolled out in communities after consultation with and on the request of elders. Choice is not given to individual customers with Ergon Energy's distribution business retaining sole discretion as to the type of meter a customer gets. As well as not being able to choose their meter type, the card-operated meter customers on the isolated networks are also excluded from retailer choice (classified at 'excluded customers' under the Electricity Act). The prepayment arrangements also require greater functionality than card-operated meters currently have capacity for – for example, card-operated meters have no remote communications functionality.

The policy is to develop a type of standard retail contract and standard connection contract that will apply to customers with card-operated meters that gives card-operated meter customers broadly equivalent protections to other customers to the extent possible, recognising the technical limitations of these meters.

New section 60A ('Model terms and conditions for standard retail contract for selling electricity using card-operated meter') provides that the model terms and conditions that apply to standard retail contracts for selling electricity to a small customer using a card-operated meter must be set out in regulation.

New section 60B ('Adoption of form of standard retail contract (card-operated meters)') extends requirements under section 25(1) of the National Energy Retail Law (Queensland) to retailers who sell electricity to a small customer using a card-operated meter. This will require the retailer to adopt a form of the standard retail contract (card-operated meters) to be prescribed under section 60A and publish the contract on the retailer's website.

New section 60C ('Contractual arrangements for selling electricity using card-operated meter') restricts a retailer from selling electricity to a customer with a card-operated meter at their premises under a market retail contract. Under section 60C(1), the sale must be under a standard retail contract (card-operated meters). This requirement will be a civil penalty.

Notwithstanding the requirement that the sale can only occur under a standard retail contract, if the customer's premises have been registered under the National Energy Retail Rules as having life-support equipment, the retailer must obtain the explicit informed consent of the small customer to provide customer retail services under the standard retail contract (card-operated meters). Under section 59 of the National Energy Retail Law (Queensland), retailers are prohibited from entering into a prepayment meter market retail contract with small customers in relation to premises where one or more persons require life support equipment

at the premises. This is because under prepayment meter arrangements, the flow of electricity to premises stops when prepaid and any emergency credit has expired. This is also the case with card-operated meters. The prohibition in section 59 is intended to ensure that customers who have registered premises as having life support equipment cannot have their electricity effectively disconnected for non-payment.

However, due to the popularity of card-operated meters in the communities in which they are installed, a similar blanket prohibition will not apply in relation to card-operated meters. The decision whether or not to have a card-operated meter at the premises will be made by the small customer who has registered their premises as having life support equipment. If the customer decides to have the card-operated meter remain at the customer's premises notwithstanding that they have registered life support equipment, they must give their explicit informed consent. The requirements for explicit informed consent are set out in Division 5 ('Explicit Informed Consent') of Part 2 of the National Energy Retail Law (Queensland). For example, section 39 provides that the retailer must clearly, fully and adequately disclose all matters relevant to the consent of the customer. In the case of a decision to have a card-operated meter at premises registered as having life support equipment, this will include disclosure of matters including the ability to have a standard meter installed (under section 60D) and the effect of doing so (for example, provisions in the Rules that provide that a customer with life support equipment registered at their premises is not able to be disconnected for non-payment).

New section 60D ('Premises registered as having life support equipment') provides that if a retailer is notified by a customer or distributor that a customer using a card-operated meter has registered their premises as having life support equipment, the retailer must make immediate arrangements for replacing the card-operated meter with a standard meter at no cost to the customer, unless the customer gives their explicit informed consent for the card-operated meter to continue to be used at the premises. In the case that a customer does give their explicit informed consent for the card-operated meter to continue to be used at the premises, the retailer must deploy programs and strategies to help the customer to manage their electricity costs on an ongoing basis, and to reduce the potential for the customer to be disconnected due to financial difficulty (for example, not being able to afford to buy top up credit to ensure continuity of supply). The requirement for the retailer to deploy programs and strategies is a civil penalty provision.

New section 60E ('Monitoring, investigating and enforcing this Division') requires that a local instrument nominate the entity who is the regulator for Division 10A (Additional Queensland provisions about selling electricity using card-operated meters) of Part 2. The Regulator is provided with the same functions and powers of the Australian Energy Regulator for the purposes of monitoring, investigating or enforcing Division 10A.

Clause 18 of the Schedule inserts a new Division 12A ('Additional Queensland provisions about large customers') into Part 2. Division 12A consists of four subdivisions. Subdivision 1 relates to restrictions on sale of gas. Subdivision 2 concerns sale of electricity by the assigned retailer. Subdivision 3 concerns sale of electricity to particular large customers by Origin Energy. Subdivision 4 contains a number of other provisions regarding large customers.

In new Subdivision 1A, new section 64A ('Restriction on selling gas to particular large customers') states that a retailer must not sell gas to an excluded customer. This is a large customer who is an excluded customer under section 16(4) of the Gas Supply Act. This

continues existing arrangements in the Gas Supply Act, under which excluded customers cannot choose their gas retailer.

Subsection 16(4) of the Gas Supply Act allows for regulation to prescribe who excluded customers are. Section 24 of the Gas Supply Regulation prescribes each customer for a premises in the Maranoa distribution area or Western Downs distribution area to be an excluded customer. The arrangements for customer retail services for these customers will be included in individual exempt seller arrangements applying to the Councils, as provided for under clause 17 of the Bill. These will broadly continue existing arrangements for these customers. Emergency exceptions from the prohibition on retailers from selling gas to excluded customers are provided for, being if:

- retailer of retailer of last resort arrangements come into force under Part 6 of the National Energy Retail Law (Queensland)
- an insufficiency of supply declaration (or direction) is made under the Gas Supply Act.

Subdivision 2 (Assigned retailer to provide customer retail services to particular large customers) contains 10 new provisions governing the sale of electricity by the assigned retailer to a large customer: sections 64B to 64K.

The National Energy Retail Law (Queensland) does not provide standard form contract arrangements for large customers for customer retail services.

However, the Uniform Tariff Policy is currently delivered to large customers on Ergon Energy's distribution network by requiring Ergon Energy Queensland to provide eligible large customers (customers who have not gone to another retailer) with a standard large customer retail contract at the notified price. The provisions in this division will continue existing arrangements to deliver the Uniform Tariff Policy by requiring an 'assigned retailer' (a government owned corporation or subsidiary) to provide customer retail services to large customers on large customer standard retail contracts at the notified price and on fair and reasonable terms.

New section 64B ('Definition') defines the term 'notified price' for an assigned retailer as the notified prices applying under section 90(4) of the Electricity Act. Under subsection 90(4) of the Electricity Act, notified prices may set the charges that a retailer can charge its customers for:

- customer retail services
- charges or fees relating to customer retail services (for example, charges or fees for late or dishonoured payments or credit card surcharges for payments for the services
- other goods and services prescribed under a regulation

New section 64C ('Declaration of assigned retailer') states that a local instrument may declare a retailer to be an assigned retailer if the retailer is a government owned corporation. Government owned corporation is defined under clause 1 of the Schedule to the Bill as including a subsidiary of a government owned corporation. It is intended that Ergon Energy Queensland will be declared to be the assigned retailer as a subsidiary of the government owned Ergon Energy Corporation Limited.

New section 64D ('Assigned retailer to make offer to large customers') requires an assigned retailer to offer to provide customer retail services to a large customer:

- at the notified prices under subsection 90(4) of the Electricity Act
- under the retailer's large customer standard retail contract, which are set under new section 64E.

This is a civil penalty provision.

To preserve the Government's non-reversion policy, subsection 64D(1) provides that the obligation only applies where, for the large customer's premises, the assigned retailer is:

- the local area retailer if there is no existing connection; or
- the retailer that most recently sold electricity to the premises if there is an existing connection.

Under the non-reversion policy, if a large customer accepts customer retail services from a retailer other than Ergon Energy Queensland (which will be declared to be the 'assigned retailer'), they and any subsequent large customer at their premises cannot return to Ergon Energy Queensland to receive customer retail services at the notified price. Subsidising the provision of customer retail services by Ergon Energy Queensland at the notified price to large customers is a significant expense for the Queensland Government. If a large customer has moved to a different retailer, this indicates that services can be supplied competitively without government subsidies. Accordingly, access to the subsidy is removed.

Subsection 64D(3) provides that a regulation may prescribe the manner and form in which a standing offer is to be made. Without limiting this, the terms and conditions of the standing offer must be published on the assigned retailer's website (subsection 64D(4)). This is a civil penalty provision.

To correspond with the regulation making power in new section 19C that will permit an assigned retailer to offer customer retail services other than under a standard retail contract if so prescribed, subsection 64D(5) provides that this section does not apply to an assigned retailer in the circumstances prescribed in regulation.

New section 64E ('Assigned retailer's large customer standard retail contract') sets out the requirements for a large customer standard retail contract of an assigned retailer. Under the provision, the assigned retailer is able to determine and vary the terms and conditions for a large customer standard retail contract (ss 64E(1)) and may have different terms and conditions for different types of large customer (ss 64E(4)), subject to the requirement that:

- the terms and conditions be fair and reasonable (ss 64E(2)). The terms and conditions need not be identical to or consistent with the terms and conditions for standard retail contracts for small customers. However, if the terms and conditions are consistent with the terms and conditions for standard retail contracts for small customers, they will be taken to be reasonable (ss 64E(3)). Many of the terms and conditions in standard retail contracts for small customers may be impractical for very large customers. In determining what is fair and reasonable for a particular customer type, the characteristics of the customer, including consumption volume and purpose, are reasonable considerations
- the customer be charged at the notified price under subsection 90(4) of the Electricity Act.

Under new subsection 64E(5), the assigned retailer must publish its large customer standard retail contract on its website. If the retailer has more than one large customer standard retail contract, each must be published. This is a civil penalty provision.

New section 64F ('Formation of assigned retailer's large customer standard retail contract') states when a large customer standard retail contract will come into force. This will apply when the large customer asks the assigned retailer to provide customer retail services under the assigned retailer's standing offer (in accordance with new section 64D, including limitations on which large customers are eligible to receive an offer) and complies with any pre-conditions for forming a contract in the National Energy Retail Rules prescribed by regulation to apply to large customer standard retail contracts. The pre-conditions on customers in the National Energy Retail Rules relating to the formation of a standard retail contract are (Rule 18) that the customer:

- provide their name and acceptable identification – for example, the Australian Company Number or Australian Business number of a body corporate (Rule 3, definition of *acceptable identification*)
- provide contact details for billing purposes
- ensure there is safe and unhindered access to the meter at the premises.

The assigned retailer must enter into the large customer standard retail contract if the customer is eligible to receive an offer under new section 64D, requests the contract and complies with preconditions.

New section 64G ('Obligation to comply with assigned retailer's large customer standard retail contract') makes clear that the assigned retailer must comply with the terms and conditions of a large customer standard retail contract entered into with a large customer.

New section 64H ('Duration of assigned retailer's large customer standard retail contract') provides that a large customer standard retail contract may be terminated in accordance with the National Energy Retail Law (Queensland), a regulation or under the contract. For example, the contract will be terminated if the customer enters into an agreement for the provision of services with another retailer.

New section 64I ('Deemed large customer retail arrangement for new or continuing customer without assigned retailer's large customer standard retail contract') sets out the arrangements that will apply to 'move-in' large customers. These arrangements apply where:

- a large customer has moved into premises that are already connected
- the large customer has started to use electricity at the premises without contacting the assigned retailer
- the assigned retailer was the last retailer that sold electricity to the premises (the financially responsible retailer).

In this situation, a large customer standard retail contract does not apply, because the customer has not asked the assigned retailer to provide customer retail services under its large customer standard retail contract or met any applicable preconditions (as required by new section 64F for the formation of a large customer standard retail contract with an assigned retailer).

Instead, a 'deemed large customer retail arrangement' is taken to apply between the assigned retailer and the large customer. The terms and conditions of the deemed large customer retail arrangements are stated in new section 64J ('Terms and conditions of deemed large customer retail arrangements') to be the terms and conditions of the assigned retailer's large customer

standard retail contract, with the customer to be charged at the notified price for electricity consumed.

The deemed large customer retail arrangement starts as soon as the customer starts to use electricity at the premises and will end when the customer enters into a contract for the sale of energy (with either the assigned retailer or a different retailer). The customer is required to pay the assigned retailer for any electricity used during the term of the deemed arrangement, whether or not they enter into a subsequent contract with the assigned retailer.

If the customer consumes energy by fraudulent or illegal means (for example, by breaking a switch seal in order to use electricity at the premises), they will not be taken to be a party to the deemed arrangement under new section 64I, though they will still be liable to pay for the energy consumed at the notified prices. If the amount of electricity consumed is unclear, the assigned retailer may estimate the amount and recover the value as a debt (though a bill must first be issued for the charges payable). Under new paragraph 64I(7)(c), the fact that a customer has paid for the electricity used will not be a defence to an offence relating to obtaining energy by fraudulent or illegal means.

Under new subsection 64I(3), a regulation may supplement or modify the terms and conditions of deemed large customer arrangements. This provision is needed to provide flexibility in relation to the terms and conditions that will be taken to apply to a large customer in a move in situation. As the terms and conditions of service are taken to be equivalent to the assigned retailer's large customer standard retail contract, and the assigned retailer is able to determine their own terms and conditions of a standard retail contract, some of the terms and conditions may not be practicable for deemed arrangements. For example, any terms and conditions requiring the assigned retailer to give written notification to a customer may be difficult to comply with for deemed arrangements. This is because the assigned retailer does not necessarily know who the large customer is (because the customer has not applied for services). The provision will provide flexibility to adjust arrangements in these types of circumstances.

New section 64K ('Application of Rules to assigned retailer's large customers') enables a regulation to be made that applies customer related provisions of the National Energy Retail Rules to the assigned retailer's large customers. The rules are largely set out in Part 2 ('Customer retail contracts') and concern matters including billing requirements, tariff changes, security deposits and marketing. Part 6 of the Rules includes arrangements around when premises can be disconnected.

New subdivision 3 ('Origin Energy to provide customer retail services to particular large customers') contains six new provisions governing the sale of electricity by Origin Energy to particular large customers whose premises are connected to the Essential Energy distribution system: new sections 64L to 64Q.

Origin Energy currently delivers the Uniform Tariff Policy to customers on the Essential Energy distribution system through obligations included under a special approval. Under the terms of the Special Approval, Origin Energy must provide customer retail services to certain large customers at a price equivalent to the Queensland or New South Wales notified price, whichever is lower. The obligation ceases if a customer enters into a negotiated retail contract

with Origin Energy, or another retailer. The policy is to continue to apply the existing obligations on Origin Energy under the National Energy Retail Law (Queensland).

Under the National Energy Retail Law (Queensland), there is not an ability to place special conditions on Origin. It will not be an exempt seller, but rather a retailer subject to normal retail arrangements (exempt seller arrangements enable a body to sell energy to premises without holding a retail authorisation and Origin will hold a retail authorisation). There is no scope to put a special licence condition on Origin's retail authorisation to continue these obligations due to the national nature of retail authorisations. As such, express obligations will be placed on Origin Energy in relation to these customers to provide customer retail services to these customers under a large customer standard retail contract and at the notified price under subsection 90(4) of the Electricity Act, similar to the arrangements that will apply to the assigned retailer in relation to the Ergon Energy distribution system.

New section 64L ('Definition') defines the term '***notified price***' as the notified prices applying under subsection 90(4) of the Electricity Act. Under subsection 90(4) of the Electricity Act, notified prices may set the charges that a retailer can charge its customers for:

- customer retail services
- charges or fees relating to customer retail services (for example, charges or fees for late or dishonoured payments or credit card surcharges for payments for the services
- other goods and services prescribed under a regulation.

New section 64M ('Origin Energy to make offer to particular large customers') requires Origin Energy to provide customer retail services to a large customer:

- at the notified prices under subsection 90(4) of the Electricity Act;
- under Origin Energy's large customer standard retail contract, the terms and conditions of which are regulated under new section 64N.

This is a civil penalty provision.

To preserve the Queensland Government's non-reversion policy, new subsection 64M(1) provides that the obligation only applies where, for the large customer's premises, Origin Energy is:

- the local area retailer if there is no existing connection
- the retailer that most recently sold electricity to the premises if there is an existing connection and, since March 2011, the supply of customer retail services to the premises has only been provided under:
    - the Origin Energy large customer standard retail contract (under new section 64N or as transitioned under clause 23 of the Bill); or
    - a standard retail contract with Origin Energy (under section 25 or as transitioned under clause 21 of the Bill) – this provision is needed to provide for small customers on standard retail contracts who become large customers; or
    - arrangements pursuant to Origin Energy's special approval SA02/11. Origin Energy's special approval SA02/11 came into force in March 2011 and will expire on commencement of the National Energy Retail Law (Queensland), as a result of amendments to the Electricity Act contained in the *Electricity Competition and Protection Legislation Amendment Bill 2014*. After this time, all of Origin Energy's customer retail services will be provided under a retailer authorisation.

Under the non-reversion policy, if a large customer has been supplied customer retail services other than under standard arrangements, they and any subsequent large customer at their premises will no longer be able to access large customer standard retail contracts at the notified price. The standard arrangements are, before this clause comes into effect, supplied under the Origin Energy special approval; and after this clause comes into effect, supplied under the Origin Energy large customer standard retail contract.

Subsidising the provision of customer retail services by Origin Energy at the notified price to large customers is a considerable expense for the Queensland Government. If a large customer has moved to a different retailer or negotiated an alternative contract with Origin Energy, this indicates that services can be supplied competitively without a Government subsidy. Accordingly, access to the subsidy is removed.

New subsection 64M(3) requires Origin Energy to publish the terms and conditions of the standing offer on its website. This is a civil penalty provision designed to ensure that eligible customers will be able to access the merits of the Origin standing offer for large customer standard retail contracts against other contracts on offer in the retail market.

New section 64N ('Origin Energy's large customer standard retail contract') sets out the requirements for a large customer standard retail contract. Under the provision, Origin Energy is able to determine and vary the terms and conditions for a large customer standard retail contract (ss 64N(1)) and may have different terms and conditions for different types of large customer (ss 64N(4)), subject to the requirement that:

- the terms and conditions be fair and reasonable (ss 64N(2)). The terms and conditions need not be identical to or consistent with the terms and conditions for standard retail contracts for small customers. However, if the terms and conditions are consistent with the terms and conditions for standard retail contracts for small customers, they will be taken to be reasonable (ss 64N(3)). Many of the terms and conditions in standard retail contracts for small customers may be impractical for large customers. In determining what is fair and reasonable for a particular customer type, the characteristics of the customer, including consumption volume and purpose, are reasonable considerations
- the customer be charged at the notified price under subsection 90(4) of the Electricity Act.

Under new subsection 64N(5), Origin Energy must publish its large customer standard retail contract on its website. If Origin Energy has more than one large customer standard retail contract, each must be published. This is a civil penalty provision.

Section 64O ('Formation of Origin Energy's large customer standard retail contract') states when a large customer standard retail contract will come into force. This will apply when the large customer asks Origin Energy to provide customer retail services under Origin Energy's standing offer (in accordance with new section 64M, including limitations on which large customers are eligible to receive an offer) and complies with any pre-conditions for forming a contract in the National Energy Retail Rules prescribed by regulation to apply to Origin Energy's large customer standard retail contracts. The pre-conditions on customers in the National Energy Retail Rules relating to the formation of a standard retail contract (Rule 18) are that the customer:

- provides their name and acceptable identification – for example, the Australian Company Number or Australian Business number of a body corporate (Rule 3, definition of acceptable identification)
- provides contact details for billing purposes
- ensures there is safe and unhindered access to the meter at the premises.

Origin Energy must enter into the large customer standard retail contract if the customer is eligible to receive an offer under new section 64M, requests the contract and complies with preconditions.

New section 64P ('Obligation to comply with Origin Energy's large customer standard retail contract') makes clear that Origin Energy must comply with the terms and conditions of a large customer standard retail contract entered into with a large customer.

New section 64Q ('Duration of Origin Energy's large customer standard retail contract') provides that a large customer standard retail contract may be terminated in accordance with the National Energy Retail Law (Queensland), a regulation or under the contract. For example, the contract will be terminated if the customer enters into an agreement for the provision of services with another retailer or for customer retail services with Origin Energy under non-standard arrangements.

New subdivision 4 ('Other provisions') includes two new provisions: sections 64R and 64S.

New section 64R ('Obligation to provide customer retail services to particular large customers') applies to retailers that are financially responsible retailers for premises on the Ergon Energy or Essential Energy distribution systems. A retailer is financially responsible for premises if they provide or were the last retailer to provide customer retail services to that premises.

Under new section 64R, if a large customer applies for customer retail services to the financially responsible retailer for their premises, and the premises are currently disconnected, the retailer must provide the customer retail services applied for. This provision is designed to ensure that customers on the distribution systems of Ergon Energy or Essential Energy will always be able to access an offer for customer retail services.

New section 60S ('Monitoring, investigating and enforcing this Division'). This section requires that a local instrument nominate the entity who is the regulator for Division 12A ('Additional Queensland provisions about large customers') of Part 2. The Regulator is provided with the same functions and powers of the Australian Energy Regulator for the purposes of monitoring, investigating or enforcing Division 12A.

Clause 19 of the Schedule inserts a new Division 6A ('Additional Queensland provisions about providing customer connection services for card-operated meter premises') into Part 3 of the National Energy Retail Law (Queensland). Part 3 concerns the relationship between distributors and customers. New Division 6A has three new provisions that related to the supply of electricity to customers with card-operated meters installed at their premises: section 78A to 78C.

As described in these explanatory notes in relation to new Division 10A ('Additional Queensland provisions about selling electricity using card-operated meters') under Part 2

(inserted by clause 17 of the Schedule), card-operated meters are a type of prepayment meter. They block the supply of electricity to premises until a pre-paid power card is inserted in the meter. Electricity then flows until the credit on the power card runs out or another power card is inserted.

The policy is to develop a type of standard connection contract that will apply to customers with card-operated meters that gives card-operated meter customers broadly equivalent protections to other customers to the extent possible, recognising the technical limitations of these meters.

New section 78A ('Model terms and conditions for deemed standard connection contract for card-operated meter premises') provides that the model terms and conditions that apply to a deemed standard connection contract for supplying electricity to a small customer using a card-operated meter must be set out in regulation.

New section 78B ('Contractual arrangements for card-operated meter premises') provides that a distributor may only provide customer connection services for card-operated meter premises under a deemed standard connection contract (card-operated meters). This is a civil penalty provision. This effectively means that the distributor and the customer cannot enter into a negotiated connection contract.

New section 78C ('Monitoring, investigating and enforcing this Division') requires that a local instrument nominate the entity who is the regulator for Division 6A ('Additional Queensland provisions about providing customer connection services for card-operated meter premises') of Part 3. The regulator is provided with the same functions and powers of the Australian Energy Regulator for the purposes of monitoring, investigating or enforcing Division 6A.

Clause 20 of the Schedule inserts a new provision after section 88, being new section 88A ('Additional Queensland provision for exception from requirement for authorisation or exemption'). New section 88A will preserve existing exemptions contained in section 20Q of the Electricity Act for certain rail government owned corporations, railway managers and their related bodies corporate from needing to hold a retail authorisation (or be exempted from holding a retail authorisation under the Australian Energy Regulator exempt seller framework) under section 88 of the National Energy Retail Law (Queensland) for the sale of energy to premises.

The exemption has been long held by Queensland Rail and rail entities in relation to the sale of electricity to Airtrain Citylink Limited for the Brisbane Airport Rail Link. The section also provides an exemption for sale of energy between a rail government owned corporation and a relevant railway manager. This is necessary due to the integrated nature of the rail network. The integrated nature of the rail network means that retail government owned corporations and railway managers sell electricity to each other that is used by each for the purposes of operating their respective parts of the network.

Clause 21 of the Schedule inserts a section after section 121, being new section 121A ('Additional Queensland provision about application to distribution systems of Ergon Energy Distribution'). The effect of new section 121A is that the retailer of last resort scheme contained in Part 6 of the National Energy Retail Law (Queensland) will not apply in relation to Ergon Energy's isolated networks (being a distribution system for which Ergon Energy

distribution will be the nominated distributor under a Queensland regulation). The reason that the retailer of last resort scheme need not apply is because no retailer other than Ergon Energy Queensland provides customer retail services to customers on the Ergon Energy Corporation Limited's isolated network. Ergon Energy Queensland is subsidised by the Queensland Government. Accordingly, a scheme is not needed as Ergon Energy Queensland is not at risk of failing.

The exemption from the retailer of last resort scheme in new section 121A will not apply to Ergon Energy's distribution systems on which retailers other than Ergon Energy Queensland offer customer retail services; namely, Ergon Energy's grid-connected distribution system and its Mt Isa – Cloncurry distribution system. The systems on which retailers (other than Ergon Energy Queensland) cannot offer customer retail services are Ergon Energy's small isolated networks, and Ergon Energy will be nominated as distributor in respect of these.

The effect of this clause will be to ensure that the retailer of last resort scheme will apply as normal on Ergon Energy's grid-connected and Mt Isa – Cloncurry distribution systems, where retailers other than Ergon Energy Queensland offer customer retail services; but not on Ergon Energy's small isolated networks, where Ergon Energy Queensland is the sole retailer.

Clause 22 of the Schedule inserts a section after section 123, being new section 123A ('Additional Queensland provision about when assigned retailer can be registered as a RoLR'). New section 123A provides that an assigned retailer cannot be registered as a retailer of last resort unless it is permitted by a regulation. A retailer of last resort is intended to take on, and provide customer retailer services to, the customers of a failed retailer to ensure continuity of supply. As the assigned retailer will not be able to provide market retail contracts, it would have difficulty assuming the responsibility of a retailer of last resort. Enabling the assigned retailer to be retailer of last resort would also have significant budget implications, as assigned retailer standard retail contracts are the mechanism by which the Uniform Tariff Policy is delivered on the Ergon Energy distribution system in regional Queensland.

Clause 23 of the Schedule modifies section 141 ('Termination of customer retail contracts') under the National Energy Retail Law (Queensland) to provide for how card-operated meter customers should be treated in the event of retailer failure. New subsection (11) makes clear that a payment equal to the value of any credit remaining on a small customer's card at the date they are transferred to a new retailer must be made to the customer by the failed retailer or insolvency official without any deduction.

Clause 24 of the Schedule modifies section 163 ('Contents of RoLR plans') to ensure that a Retailer of Last Resort Plan for a distribution system (a plan for the procedures to be followed in the event of a retailer failure, including direct communications with the customers of the failed retailer) must include strategies to quickly and effectively communicate to affected small customers, including details of what happens with their credits remaining on cards used with card-operated meters.

Clause 25 of the Schedule omits Part 7 of the National Energy Retail Law (Queensland). Part 7 of the NERL includes a Small Compensation Claims Regime to enable small customers to make small claims for compensation from distributors who provide customer connection services to their premises. This Part will not be adopted as Queensland already has equivalent tried and tested regimes. With low rates of complaints associated with distribution business

customer connection services, these are evidenced to be operating satisfactorily in the interests of customers providing adequate customer protections.

These regimes include informal compensation arrangements operated by Queensland electricity distribution businesses, and general laws such as Australian Consumer Law. Adopting the Small Compensation Claims Regime will add costs to distribution businesses with changes to existing processes, subjecting them to costs for little perceived benefit to customers. Accordingly, the Small Compensation Claims Regime not be adopted in Queensland.