

Electricity Competition and Protection Legislation Amendment Bill 2014

Explanatory Notes

FOR

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

Title of the Bill

Electricity Competition and Protection Legislation Amendment Bill 2014

Objectives of the Amendments

The objective of these amendments to the *Electricity Competition and Protection Legislation Amendment Bill 2014* (ECPLA Bill) is to correct a number of technical issues that have been identified and need to be addressed in order for the Bill to function as intended.

Additionally, amendments are needed to accommodate amendments made to the *Electricity Act 1994* by the *Electricity and Other Legislation Amendment Act 2014* (EOLA Act) which had not passed at the time of introduction of this Bill.

Achievement of the Objectives

The policy objective will be achieved by the passage of these amendments.

Alternative Ways of Achieving Policy Objectives

There are no other methods of achieving these policy objectives.

Estimated Cost for Government Implementation

No cost is expected to be associated with the passage of these amendments.

Consistency with Fundamental Legislative Principles

No fundamental legislative principle issues have been identified in relation to these amendments.

Consultation

The Office of the Queensland Parliamentary Council and the Department of the Premier and Cabinet were consulted in relation to these amendments.

NOTES ON PROVISIONS

Clause 1 amends the Bill to provide that clause 31 of the Bill, which removes the requirement that electricity retailers include a carbon and renewable energy target cost statement on bills, should commence on assent.

Clause 2 amends the Bill to clarify that Chapter 2, Part 6, Division 1 of the *Electricity Act 1994* (the Electricity Act) should be omitted. Sections 46-48B, which define ‘retail entity’ and ‘retail authority’ and provide for matters in relation to retail authorities, comprise all of Chapter 2, Part 6, Division 1 of the Electricity Act.

Clause 3 amends clause 28 (Replacement of s55DA (Additional condition about community services agreement)) to remove the maximum penalty units for a breach of this condition. This is not needed, as penalties for retailer breaches of section 55DA are to be decided according to the new enforcement mechanism proposed by clause 74.

Clause 4 amends clause 29 ((Additional condition about electricity produced by small photovoltaic generators)) to replace the term “small photovoltaic generators” with “qualifying generator”. Because clause 29 was drafted before the EOLA Act amended section 55DB of the Electricity Act, it must be updated to reflect section 55DB as amended – including the replacement of ‘small photovoltaic generator’ with ‘qualifying generator’ – and to reflect that penalties for retailer breaches of the section will be decided according to the new enforcement mechanism proposed.

Clause 5 amends clause 29 (Amendment of s 55DB (Additional condition about electricity produced by small photovoltaic generators)). Because clause 29 was drafted before the EOLA Act amended section 55DB of the Electricity Act, it must be updated to reflect that penalties for retailer breaches of the section will be decided according to the new enforcement mechanism proposed by clause 74.

Clause 6 inserts new Section 29A Amendment of s 55DBA (Additional condition about electricity produced by small photovoltaic generator) as the EOLA Act inserted new section 55DBA in chapter 2 of the Electricity Act. The section must be amended for the same policy reasons discussed in respect of clause 29. That is, the substantive content of the provision must be expressed as a direct obligation rather than a condition of retail authority, it must apply to a ‘retailer’ rather than a ‘retail entity’, and eligible customers must be described as ‘qualifying customers’ rather than ‘small customers’ to avoid unintentionally changing feed-in tariff policy.

Clause 7 amends clause 30 (Omission of ss 55DC and 55E). This clause omits two sections of the Electricity Act dealing with distributor credit support, as this matter will be dealt with by new rules in the National Electricity Rules that come into force when the NERL (Qld) commences. An error has been identified in the body of clause 30 as drafted: it references ‘55D’ rather than ‘55DC’.

Clause 8 amends clause 31 of the Bill to remove the requirement that electricity retailers include a prescribed carbon and renewable energy target cost statement on consumers' bills. This is due to the repeal of the federal carbon tax.

Clause 9 amends clause 39 Amendment of s 61B (Additional condition for electricity produced by photovoltaic generators). This clause amends section 61B of the Electricity Act by omitting subsection (2), which obliges a special approval holder prescribed in a regulation, and taken to be the holder of a retail authority, to comply with section 55DB. This was necessary because Electricity Act special approvals will no longer authorise the sale of electricity after the NERL (Qld) commences. The EOLA Act inserted new subsection (3) into section 61B of the Electricity Act to update the section to include an obligation to comply with new section 55DBA, which was also inserted by the EOLA Act. This subsection must be omitted because Electricity Act special approvals will no longer authorise the sale of electricity. In practical terms, the only special approval holder subject to retailer-related obligations in section 61B, Origin Energy Electricity Limited, will become a NERL (Qld) retailer when the NERL (Qld) commences and will be subject to the obligations on a retailer set out in sections 55DB and 55DBA as amended.

Clause 10 amends Clause 40 Insertion of new s64A as the EOLA Act inserted a new provision numbered section 64A in chapter 2 part 8 of the Electricity Act therefore proposed section 64A must be amended to become section 64B.

Clause 11 amends Clause 40 Insertion of new 64A as the EOLA Act inserted a new provision numbered section 64A in chapter 2 part 8 of the Electricity Act therefore proposed section 64A must be amended to become section 64B.

Clause 12 amends Clause 49 (Amendment of s 91A (Retail entity must comply with notification or direction)) to ensure that the term "non-market" is replaced by "standard" to reflect that "non-market" arrangements will now be referred to as "standard contracts".

Clause 13 inserts new section 50A Amendment of s 92 (Definitions for pt 2A) as the EOLA Act inserted new section 92 containing definitions for new part 2A of chapter 4, also inserted by the EOLA Act, which concerns feed-in tariffs. The definitions in section 92 rely on other defined terms that will be amended by various clauses of the Bill. Wherever 'small customer' is used in feed-in tariff provisions, including definitions, it must be replaced by 'qualifying customer' to avoid unintentionally changing feed-in tariff policy. Wherever 'retail entity' is used in any provision, it must be replaced by 'retailer' because retailers will no longer be 'electricity entities' when the NERL (Qld) commences.

Clause 14 amends section 74 Insertion of new ch 5, pt 5. This clause inserts new part 5 in Electricity Act chapter 5. This will provide the regulator with clear powers to take enforcement action against retailers when the NERL (Qld) commences and retailers are no longer authorised under the Electricity Act. The new part is drafted to apply in respect of breaches of sections 55DA (which obliges retailers to enter into community services agreements with the State) and 55DB (which obliges retailers to comply with obligations associated with feed-in tariffs), as these would be considered serious breaches.

The EOLA Act inserted new section 55DBA into the Electricity Act. Like section 55DA, it obliges retailers to comply with obligations relating to feed-in tariffs. Enforcement powers

available under new part 5 therefore must be applicable in respect of breaches of section 55DBA, as these would be considered serious breaches.

Clause 15 amends Clause 74 Insertion of new ch 5, pt 5 for the same reasons outlined in Clause 14.

Clause 16 amends Clause 86 Amendment of s 218 (Decision on reconsideration) to correct a drafting error in relation to replacing the term “reviewer” with “regulator” for the purposes of chapter 10 part 1 of the Electricity Act which concerns internal reviews of decisions. This is necessary because of the amendment of section 214 that omits the QCA as an internal reviewer for certain decisions.

Clause 17 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “pt 16” to “pt 17”. Clause 94 inserts new part 16 (Transitional provisions for *Electricity Competition and Protection Legislation Amendment Act 2014*) in chapter 14 of the Electricity Act. Clause 94 was drafted before the EOLA Act inserted part 16 (Transitional provision for Electricity and Other Legislation Amendment Act 2014) in chapter 14. The new part to be inserted in chapter 14 by clause 94 must be renumbered and references to it must reflect that renumbering.

Clause 18 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from section 343 to section 351. This renumbering is required for the reasons outlined in clause 17.

Clause 19 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “pt 16” to “pt 17”. This renumbering is required for the reasons outlined in clause 17.

Clause 20 removes proposed new section 344 as it is current drafting practice to no longer include a definition of commencement for transitional provisions.

Clause 21 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from section “345” to section “352”. This renumbering is required for the reasons outlined in clause 17.

Clause 22 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “346” to “353”. This renumbering is required for the reasons outlined in clause 17.

Clause 23 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “347” to “354”. This renumbering is required for the reasons outlined in clause 17.

Clause 24 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “348” to “355”. This renumbering is required for the reasons outlined in clause 17.

Clause 25 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “349” to “356”. This renumbering is required for the reasons outlined in clause 17.

Clause 26 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “350” to “357”. This renumbering is required for the reasons outlined in clause 17.

Clause 27 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “351” to “358”. This renumbering is required for the reasons outlined in clause 17.

Clause 28 amends Clause 94 (Insertion of new ch 14, pt 16) to update the current reference from “352” to “359”. This renumbering is required for the reasons outlined in clause 17.

Clause 29 modifies clause 95 of the Bill which amends Schedule 1 (Review of administrative decisions) of the Electricity Act. Clause 95 omits items in schedule 1 applying in respect of provisions omitted by other clauses of the Bill, including items (that were) in schedule 1 part 3. Because clause 95 was drafted before the *Energy and Water Legislation Amendment Act 2013* renumbered part 3 of schedule 1 as part 2, references in the clause must reflect the numbering as amended. Clause 29 addresses this by replacing ‘part 3’ with ‘part 2’ in subsection (2) of clause 95.

Clause 30 to 37 modify clause 97 of the Bill which amends Schedule 5, the Dictionary, of the Electricity Act. Clause 97, amongst other things, inserts a definition of ‘regional system control’ into the dictionary to correct an existing oversight identified when the clause was being drafted. The EOLA Act has since inserted the same definition into that Act for the same reason, i.e. identification of an existing oversight; hence the Bill need not do so.

The EOLA Act also inserted new definitions ‘prescribed retail entity’ and ‘relevant small customer’. The definition of ‘prescribed retail entity’ needs to be amended to reflect that ‘retail entities’ will be known as ‘retailers’ when the NERL (Qld) commences. The definition of ‘relevant small customer’ needs to be amended to reflect that provisions relating to feed-in tariffs will apply in respect of ‘qualifying customers’ and not ‘small customers’ in order to avoid an unintended change in feed-in tariff policy. The EOLA Act also inserted a new provision numbered section 64A in chapter 2 part 8 of the Electricity Act therefore proposed section 64A must be amended to become section 64B.

New definitions are needed for terms used in section 92 as amended by this Bill, including ‘local area retailer’ (using that term in amended section 92 allows a ‘prescribed retailer’ to be set out in the Electricity Act itself rather than a regulation). This is required to ensure the definition ‘designated retail market area’ applies to the whole Act and section 92, not just chapter 4, part 2.

Clause 97(1) of the Bill includes the definition ‘retailer’ among the definitions to be omitted from the Electricity Act. Although ‘retailer’ is used in section 55G as a tag-term to indicate a retail subsidiary of government owned corporation Ergon Energy and in many other provisions, defined terms (for example, ‘retailer of last resort’) and headings, the word itself is not defined in the schedule 5 Dictionary.

Clause 30 modifies clause 97 of the Bill adding ‘prescribed retail entity’ to the list of terms to be removed from the dictionary.

Clause 31 modifies clause 97 of the Bill adding ‘relevant small customer’ to the list of terms to be removed from the dictionary.

Clause 32 modifies clause 97 of the Bill removing ‘retailer’ from the list of terms to be removed from the dictionary.

Clause 33 modifies clause 97 of the Bill removing ‘, for chapter 4, part 2,’ from the definition of ‘designated retail market area’ so the definition applies to the whole of the Electricity Act.

Clause 34 modifies clause 97 of the Bill changing the reference to ‘section 64A’ to ‘section 64B’ in the definition of ‘electricity entity’ to account for the change made by the EOLA Act.

Clause 35 modifies clause 97 of the Bill by inserting a new definition to the general effect that a local area retailer is a local area retailer, in the meaning given by the NERL (Qld), for electricity.

Clause 36 modifies clause 97 of the Bill by inserting a new term ‘prescribed retailer’ including reference to section 92.

Clause 37 modifies clause 97 of the Bill by removing the definition of ‘regional system control’, and inserting a new term ‘relevant qualifying customer’ including reference to section 92.