

Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2018

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

Title of the Bill

The short title of the Bill is the Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2018 (the Bill).

Objectives of the Amendments

Amendments to National Energy Retail Law

The objectives of the amendments are to amend the *National Energy Retail Law (Queensland) Act 2014* (the NERLQ Application Act) to:

1. extend the current Queensland derogation preventing retailers from charging any new types of fees and charges under standing offers for small customers in south east Queensland (SEQ); and
2. correct a minor drafting error.

Queensland derogation preventing new standing offer fees and charges

To support residential and small business customers in the transition to price deregulation in SEQ, the Queensland Government strengthened the customer protection framework and introduced a number of state-specific protections (derogations).

A new derogation was introduced to prevent retailers from introducing any new types of fees and charges on standing offers, for the first two years of deregulation. The derogation expired on 30 June 2018.

The ongoing need for this derogation was intended to be assessed as part of a legislated review of the National Energy Retail Law in Queensland. Given the review has been delayed, it is proposed to extend the derogation for a further two years (until 30 June 2020) to allow time for the review to be conducted and any subsequent legislative amendments to be made.

Correction of minor administrative error

Section 22A(3)(b) of the Schedule to the NERLQ Application Act incorrectly refers to the Ministerial price determination power to fix notified prices as being prescribed in section 89B of the *Electricity Act 1994*, rather than section 89E. The proposed amendment corrects this drafting error.

Amendments to facilitate redevelopment of Queens Wharf Brisbane precinct

The objectives of the amendments are to facilitate the redevelopment of the Queen's Wharf Brisbane (QWB) precinct, specifically the Neville Bonner Bridge (Bridge), by excluding the application of certain *Land Act 1994* (Land Act) provisions which were not intended to apply to the QWB project.

To facilitate the delivery of the QWB project, the State and Destination Brisbane Consortium (DBC) entered into a suite of agreements which outline each party's obligations in respect of the development and long-term occupation of state-owned land. However, in addition to these commercial agreements, it was necessary to establish a policy and legislative environment to support the achievement of the intended objectives of the QWB project.

The amendments provide exemptions to provisions in the Land Act so that the commercial outcomes negotiated by the State can be achieved through the streamlined leasing of Land Act land to the State and DBC to promote the activation of the precinct around the water's edge and development of the Bridge. The amendment extends these exemptions to areas declared as Priority Development Area-associated (PDA-associated) land under the *Economic Development Act 2012* (ED Act), schedule 1 for the Queen's Wharf PDA.

Achievement of the Objectives

Amendments to National Energy Retail Law

The proposed amendment to the NERLQ Application Act will extend the derogation preventing new types of fees and charges on standing offers in SEQ for a further two years. The current derogation expired on 30 June 2018. As the proposed amendment will commence after the expiry of the derogation, it will have retrospective effect.

The additional amendment to the NERLQ Application Act will correct an erroneous cross-reference to section 89B of the *Electricity Act 1994*.

Amendments to facilitate redevelopment of Queens Wharf Brisbane precinct

On 28 November 2014, a PDA was declared for the QWB precinct under the ED Act. The PDA was declared to establish the necessary legislative environment to support the intended development outcomes for the site and facilitate the planning and delivery of the QWB project. To address the multiple planning approval issues, the *Queen's Wharf Brisbane Act 2016* (QWB Act) amended the ED Act to allow for a declaration of PDA-associated development. This is a declaration made by the Minister for Economic Development Queensland (MEDQ) for infrastructure associated with a PDA to be declared and assessed under the PDA development scheme.

On 12 March 2017, the area for the Bridge was declared as PDA-associated development for the QWB PDA by MEDQ to allow for the Bridge to be developed. The amendments provide for the exemptions currently available to the Land Act land with the QWB PDA boundary to apply to the areas declared as PDA-associated development for the QWB project. This will allow for the State to issue a development sublease to DBC on the same

terms as the other Land Act subleases which have been issued to DBC for Land Act land within the QWB PDA.

Alternative Ways of Achieving Policy Objectives

Due to their nature, the policy objectives can only be achieved by legislative amendment.

Estimated Cost for Government Implementation

There is no cost to Government in relation to the proposed amendments to the NERLQ Application Act.

There are no significant implementation costs for Government associated with the amendments to the QWB Act. Where costs do arise, they will be met from within existing budget allocations.

Consistency with Fundamental Legislative Principles

The amendments have been examined for compliance with, and drafted with regard to, the fundamental legislative principles, outlined in section 4 of the *Legislative Standards Act 1992 (Qld)* (LSA), and a potential breach of fundamental legislative principles was identified. This is addressed below.

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

Clause 13 – Amendment of schedule (Modification of application of National Energy Retail Law)

Clause 13(4) proposes to extend the derogation in section 22A(4) of the Schedule to the NERLQ Application Act, which expired on 30 June 2018, for a further two years. As a result, the application of the amendment will apply retrospectively from 1 July 2018, which may potentially breach the principle that legislation has sufficient regard to the rights and liberties of individuals. A consideration of this is whether the legislation adversely affects rights and liberties, or imposes obligations, retrospectively: s.4(3)(g) LSA.

The proposed amendment is not expected to adversely affect or impose any additional costs on energy retailers. Retailers in SEQ have not introduced any new fees and charges on standing offers since the derogation expired on 30 June 2018. As such, extending the derogation and applying it retrospectively from 1 July 2018 is not expected to have any adverse impacts on retailers.

Consultation

No public consultation has been undertaken on the amendments to the NERLQ Application Act.

DBC was consulted on the proposed amendments to the QWB Act and did not raise any concerns with the proposed amendments.

The Department of Innovation, Tourism Industry Development and the Commonwealth Games consulted with the Department of the Premier and Cabinet, Queensland Treasury,

Department of Natural Resources, Mines and Energy and the Department of Justice and Attorney-General (through the Office of Liquor and Gaming Regulation). Agencies consulted raised no concerns with the proposed amendments.

NOTES ON PROVISIONS

Clause 1 amends clause 13 of the Bill to insert two new amendments.

Clause 1 amends section 22A(3)(b) of the Schedule to the NERLQ Application Act to correct a minor drafting error. Section 22A(3)(b) incorrectly refers to the Ministerial price determination power for fixing notified prices as being prescribed in section 89B of the *Electricity Act 1994*, rather than section 89E. Clause 1 omits the reference to section 89B and inserts a reference to section 89E.

Clause 1 amends section 22A(4) of the Schedule to the NERLQ Application Act to extend the Queensland derogation for a further two years. The derogation, which prevents retailers from introducing any new types of fees and charges on standing offers for small customers in SEQ, commenced in SEQ on 1 July 2016 when notified prices were removed, and expired on 30 June 2018. Clause 1 omits the reference to '2' and inserts a reference to '4', in order to extend the derogation for a further two years, until 30 June 2020.

Clause 2 amends the QWB Act.

Clause 2 amends section 41 of the QWB Act to remove 'priority development' from the purpose of the QWB Act so the part applies to land within the 'Queen's Wharf area'.

Clause 2 amends section 42 of the QWB Act to insert a new definition of 'Queen's Wharf area' in section 42(1) of the QWB Act to include the Queen's Wharf PDA; or the PDA-associated land under the ED Act, schedule 1 for the Queen's Wharf PDA. The new definition allows for the legislative exemptions in the Part to apply to areas declared as PDA-associated development by MEDQ for the Queen's Wharf Brisbane PDA.

Clause 2 amends section 43 of the QWB Act to remove 'priority development' in section 43(1) in the QWB Act so the Minister may declare land within the 'Queen's Wharf area' by instrument to be either granted in fee simple (freehold declaration) or leased (leasehold declaration) to the State under the Land Act.

Clause 2 amends schedule 2 of the QWB Act to insert the definition 'Queen's Wharf area', for chapter 5, part 1 into the dictionary and refers to section 42(1).