

National Energy Retail Law (Queensland) Bill 2014

Report No. 48

State Development, Infrastructure and Industry Committee

August 2014

State Development, Infrastructure and Industry Committee

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The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Energy and Water Supply.

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the National Energy Retail Law (Queensland) Bill 2014.

The committee has also considered the Electricity Competition and Protection Legislation Amendment Bill 2014 (refer to Report No. 47) in conjunction with the National Energy Retail Law (Queensland) Bill 2014. Both Bills are part of the Government's electricity reform agenda. The Electricity Competition and Protection Legislation Amendment Bill 2014 seeks to introduce a market monitoring regime in South East Queensland and makes consequential amendments to support the proposed application of the National Energy Customer Framework.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

In the long term, both Bills are expected to drive a more efficient market, foster competition and put downward pressure on energy prices. The committee has made a number of recommendations on the basis of enhancing consumer protection.

The effects of both Bills will need to be closely monitored and it is pleasing to note that the National Energy Retail Law (Queensland) Bill 2014 proposes a legislative requirement to review its effects by 1 January 2018.

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

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of Energy and Water Supply who briefed the committee, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.



David Gibson MP

Chair

August 2014

Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Bill	National Energy Retail Law (Queensland) Bill 2014
CCG	Customer Consultative Group
committee	State Development, Infrastructure and Industry Committee
department	Department of Energy and Water Supply
Electricity Act	<i>Electricity Act 1994</i>
EIC	Electricity Industry Code
energy consumers	electricity and gas consumers
the guidelines	Exempt Selling (Retail) Guidelines
Explanatory notes	National Energy Retail Law (Queensland) Bill 2014 Explanatory Notes
Gas Supply Act	<i>Gas Supply Act 2003</i>
FLP	fundamental legislative principle
IDC	Interdepartmental Committee on Electricity Sector Reform
IDC Report	Report from the Interdepartmental Committee on Electricity Sector Reform
LSA	<i>Legislative Standards Act 1992</i>
Minister	Minister for Energy and Water Supply
NECF	National Energy Customer Framework
NERL or the Law	National Energy Retail Law
NER Regulations	National Energy Retail Regulations
NER Rules	National Energy Retail Rules
OQPC	Office of the Queensland Parliamentary Counsel
QCA	Queensland Competition Authority
QCOSS	Queensland Council of Social Service
RoLR	Retailer of Last Resort
SEQ	South East Queensland
SLC	former Scrutiny of Legislation Committee

Recommendations

Recommendation 1 3

The committee recommends the National Energy Retail Law (Queensland) Bill 2014 be passed.

Recommendation 2 9

The committee recommends retailers be required to provide at least 10 business days' notice of a price increase.

Recommendation 3 11

The committee recommends the National Energy Retail Law (Queensland) Regulation provide a \$20.00 cap on early termination fees.

Recommendation 4 16

The committee recommends the Department of Energy and Water Supply undertakes additional consultation with consumer groups, including those representing older Queenslanders and people from non-English speaking backgrounds, to develop suitable tools to equip them to interpret their energy bills.

Recommendation 5 16

The committee recommends the Department of Energy and Water Supply facilitates a discussion between energy retailers and peak consumer groups on the issue of simplifying and standardising energy bills.

Recommendation 6 25

The committee recommends Clause 17 of the Bill be amended to clarify the intent of the definition of 'standard meter' in proposed new section 60D(5) beyond any doubt.

Points for Clarification

Point for clarification 1 **12**

The committee requests the Minister for Energy and Water Supply, in his second reading speech, clarify late payment fees are not charged to customers who have registered with their retailer and entered into a hardship payment arrangement, to address the concerns raised by the Queensland Council of Social Service and National Seniors Australia.

Point for clarification 2 **20**

The committee seeks advice from the Department of Energy and Water Supply in relation to the work the Department will undertake to ensure that the information tools are suitable for vulnerable groups.

Point for clarification 3 **22**

The committee seeks advice from the Minister for Energy and Water Supply in relation to the rationale for not providing the majority of exempt sellers and customers in on-supply situations with access to the Energy and Water Ombudsman Queensland in order to resolve complaints.

Point for clarification 4 **26**

The committee seeks advice from the Department of Energy and Water Supply in relation to the timeframe for the development of extreme weather event provisions and whether the provisions would only relate to heat waves.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:¹

- State Development, Infrastructure and Planning,
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 20 May 2014, the National Energy Retail Law (Queensland) Bill 2014 (the Bill) was referred to the committee for examination and report. In accordance with Standing Order 136(1), the Committee of the Legislative Assembly fixed the committee's reporting date as 28 August 2014.

1.3 The committee's inquiry process

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

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

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

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

The committee's consideration of this Bill occurred in conjunction with the Electricity Competition and Protection Legislation Amendment Bill 2014 (refer to the committee's Report No. 47).

The submissions and the transcripts of the public departmental briefing and public hearing are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.

¹ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

1.4 Policy objectives of the Bill

The Bill is part of a uniform scheme of legislation applying the *National Energy Retail Law (South Australia) Act 2011* of South Australia to Queensland. The National Energy Retail Law ('NERL' or 'The Law') has been implemented in New South Wales, South Australia, Tasmania and the Australian Capital Territory and Victoria have committed to its implementation.²

The policy objectives of the Bill are to:³

1. apply as a law of Queensland the NERL to regulate the sale and supply of energy (electricity and gas) to consumers, and
2. modify the application of the NERL to:
 - a) ensure that regional electricity customers can continue to access supply despite weak market competition and provided services on a fair and reasonable basis, and
 - b) provide additional customer protection and support to small customers following the removal of regulated prices in South East Queensland (SEQ).

The Bill would give effect to the National Energy Customer Framework (NECF) which is an energy (electricity and gas) consumer's protection framework. The NECF is designed to protect consumers and drive retail market competition in three ways:⁴

- a) by enhancing protections and support by compelling retailers to comply with hardship policies,
- b) by providing customers with better tools to compare offers in the market, and
- c) by making it easier for new retailers to join the market as retailers would not have to apply for state based retail authorisations and would instead rely on a single national authorisation.

1.5 The Government's consultation on the Bill

The NERL package has been developed over a period of 10 years alongside a significant level of consultation with stakeholders at a national level and at a state level by participating jurisdictions.⁵

At the time the NERL was being finalised (in 2010), the department published a discussion paper to seek feedback on how the Law should apply in Queensland and conducted a workshop with stakeholders. Consumer representatives generally supported the application of the Law and suggested additional consumer protections such as advanced notice of price changes.⁶

Following the committee's public briefing on the Bill, the department provided a comprehensive written response in relation to the consultation on the proposal. The response included a number of attachments summarising the stakeholder feedback. The committee commends the department for its thorough response to the committee's questions.

The explanatory notes detail consultation undertaken at national and state levels on the NERL package. The consultation undertaken in Queensland included:⁷

² Explanatory notes, p 9.

³ Queensland Parliament, Record of Proceedings, 20 May 2014, pp 1550-1552; Explanatory Notes, p 1.

⁴ Queensland Parliament, Record of Proceedings, 20 May 2014, p 1553.

⁵ Department of Energy and Water Supply, Correspondence dated 10 June 2014.

⁶ Ibid.

⁷ Explanatory notes, pp 8-9.

- 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, and
- 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.

The consultation informed many aspects of the NERL and the proposed modifications for Queensland. The committee is satisfied the consultation on the proposal has been thorough and transparent.

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. After examining the Bill, and considering issues raised in submissions and at the public hearing, the committee has determined the Bill should be passed.

Recommendation 1

The committee recommends the National Energy Retail Law (Queensland) Bill 2014 be passed.

2 Examination of the Bill

2.1 National Energy Customer Framework

Background

The National Energy Customer Framework (NECF) is a set of national laws, rules and regulations governing the sale and supply of energy (electricity and gas) to residential and small business energy customers.

The legislative components of the NECF are the:⁸

- *National Energy Retail Law (South Australia) Act 2011* (NERL),
- National Energy Retail Regulations (NER Regulations), and
- National Energy Retail Rules (NER Rules).

The NECF was introduced following consultation by the Council of Australian Government's Energy Council (previously the Standing Council on Energy and Resources).

The NECF brings the whole energy supply chain (i.e. wholesale markets, transmission networks, distribution networks and retail markets) under national regulation. The Australian Energy Regulator (AER) regulates the energy market and networks and the Australian Energy Market Commission (AEMC) oversees the rules.⁹

In March 2011, the South Australian Parliament passed the *National Energy Retail Law (South Australia) Act 2011*. The NERL is contained in a schedule to the Act. South Australia is the 'host' jurisdiction.

In order for the NERL to apply in any Australian jurisdiction, the state or territory needs to have passed its own legislation to adopt the schedule to the *National Energy Retail Law (South Australia) Act 2011* (this is known as an applied law arrangement).

In applying this law, a state or territory could modify the way the NERL applies in its jurisdiction, for example by including additional or different protections for consumers and obligations on retailers. The modifications would only apply to the particular jurisdiction.¹⁰

The NECF aims to reduce regulatory red tape for the electricity industry and strengthen the protections available to consumers experiencing financial difficulty or hardship. The NECF is beneficial to retailers as they only have to comply with a single set of energy laws, rather than a different set of laws for each state they operate in.¹¹

2.2 Background to the Bill

In mid-2012, an Interdepartmental Committee on Electricity Sector Reform (IDC) was formed by the Queensland Government to scrutinise cost pressures on electricity prices, focussing on network

⁸ Australian Energy Market Commission, *National Energy Retail Rules Version 1*, <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Current-rules>.

⁹ Under the NERR, the AER is required to establish and maintain a Customer Consultative Group (CCG). The purpose of the CCG is to provide advice to the AER in relation to its functions under the energy laws affecting energy consumers across participating jurisdictions. CCG meetings are held up to three times a year.

¹⁰ Australian Energy Regulator, *National Energy Customer Framework*, <http://www.aer.gov.au/retail-markets>.

¹¹ Department of Energy and Water Supply, *National Energy Customer Framework (NECF)* <http://www.dews.qld.gov.au/policies-initiatives/electricity-sector-reform/supply/customer-framework>.

costs, electricity supply and retail competition. In May 2013, the IDC provided a report to government (IDC Report) which contained a recommendation to introduce the NECF in Queensland.¹²

On 16 June 2013, the government released its response to the IDC Report. The government accepted the IDC's recommendations and committed to increasing retail competition and removing price controls in South East Queensland (SEQ) by 1 July 2015, provided it could be demonstrated that customers could benefit and adequate protections were in place.¹³

In further support of this position, the Minister for Energy and Water Supply (the Minister) introduced the Electricity Competition and Protection Legislation Amendment Bill 2014 at the same time as this Bill. The National Energy Retail Law (Queensland) Bill 2014 applying the NECF is an important precondition for the introduction of market monitoring to be implemented by the Electricity Competition and Protection Legislation Amendment Bill 2014.¹⁴

The National Energy Retail Law (Queensland) Bill proposes to:¹⁵

- provide enhanced protections for consumers especially for those experiencing hardship,
- reduce the regulatory burden for energy businesses, and
- foster greater competition within the energy retail market.

The Bill proposes to modify the NERL to ensure the arrangements are appropriate for regional Queensland and specifically:¹⁶

- to continue delivery of the government's Uniform Tariff Policy by Ergon Energy Queensland and Origin Energy and require the retailers to offer eligible large customers the regulated price on standard contract terms and restrict 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, and
- continue restrictions on retail competition in some areas where technical limitations exist or there is no economic benefit in doing so.

The Bill provides transitional measures to support electricity customers in SEQ move to market monitoring and require retailers to give customers advance notice of price changes.

Upon introduction of the Bill, the Minister stated the Queensland Parliament would retain the power to oversee and vary the NECF if necessary and that the proposed legislation would be reviewed by 1 January 2018 to examine its effects. The committee notes that the results of the review must be tabled in the House as soon as practicable.¹⁷

¹² *Report to government: Interdepartmental Committee on Electricity Sector Reform May 2013*, p 19.

¹³ Government Response to the Interdepartmental Committee on Electricity Sector Reform, p 9.

¹⁴ Public briefing transcript, 4 June 2014, p 2. The committee's Report No. 47 examines the Electricity Competition and Protection Legislation Amendment Bill 2014 and is also referred to in this report where necessary.

¹⁵ Explanatory notes, p 1.

¹⁶ *Ibid*, pp 2-3.

¹⁷ Queensland Parliament, Record of Proceedings, 20 May 2014, p 1553, Clause 15.

2.3 Issues raised by submitters

The majority of the submitters expressed support for introduction of the NERL in Queensland.¹⁸ Alinta Energy Retail Sales submitted the adoption of the NERL would:¹⁹

... offer consumers greater choice as the adoption of the national framework will reduce the barriers to entry for new retailers and have a positive impact on competition in the market, whilst also ensuring the consistent application of customer protections.

QCOSS submitted the introduction:

... represents an overall improvement on the existing consumer protections for residential energy customers across the state. QCOSS is also supportive of the consultation undertaken by the Department of Energy and Water Services to develop the modifications to further enhance the protections for Queensland consumers.

Australian Energy Retailers Association stated:²⁰

We believe that the changes outlined in the legislation will ensure that Queensland energy consumers will enjoy the benefits of a more competitive energy retail market from the middle of 2015 while also being covered by a comprehensive range of consumer protections provided under the National Energy Customer Framework, which is created through the retail law bill.

Submitters also raised concerns in relation to the adoption of the NERL, which are discussed in the following sections. As outlined above, the NERL is contained in a schedule to the *National Energy Retail Law (South Australia) Act 2011*.²¹

Prices, fees and charges

A range of issues in relation to prices, fees and charges were raised by submitters as they relate to the two main types of contracts offered by retailers.

A 'standard retail contract' is the default contract that applies to small customers and retailers where alternative terms and conditions have not been specifically negotiated and agreed to through explicit informed consent.²² 'Market retail contracts' are contracts where certain terms have been negotiated and agreed to through explicit informed consent.²³

¹⁸ Submissions Nos. 1-9, 13, 14, 18.

¹⁹ Alinta Energy, Submission No. 3.

²⁰ Public hearing transcript, 6 August 2014, p 1.

²¹ Government of South Australia, Attorney-General's Department, *South Australian Legislation - National Energy Retail Law (South Australia) Act 2011* [http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011.aspx](http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011.aspx).

²² Explanatory Notes, pp 16-17. Standing offer contracts are basic electricity and gas contracts with terms and conditions that are prescribed by law and designed to protect consumers' rights. The price of electricity under a standing offer contract is set by the state or territory government or the independent energy regulator in the state or territory: Australian Government, Australian Energy Regulator, *Energy Made Easy, What is an energy contract?* Downloaded on 14 August 2014 from <https://www.energymadeeasy.gov.au/understand-your-bill-and-contract/what-is-an-energy-contract>.

²³ Explanatory Notes, pp 16-17. Market retail contracts are electricity and gas contracts that include minimum terms and conditions prescribed by law. The terms and conditions of market retail contracts generally vary from standing offer contracts. Prices under market retail contracts are set by energy retailers. Retailers generally offer a number of market retail contracts with different prices, incentives and other terms and conditions: Australian Government, Australian Energy Regulator, *Energy Made Easy, What is an energy*

Both National Seniors and QCOSS submitted a range of issues for the committee's consideration. The issues included:

1. Request to ban fees and charges on standard retail contracts permanently.²⁴
2. 10 business days' notice of price changes for all customers (including those on market contracts) and any increases to fees and charges.²⁵
3. 10 business days' notice of the expiry of fixed benefit periods.²⁶
4. Request to cap or remove early termination fees.²⁷
5. Request to remove late payment fees for customers (including on-supply customers).²⁸
6. Request to require standing offer price increases to be published on set dates every six months.²⁹
7. Request to prevent retailers from increasing tariff prices under fixed term contracts.³⁰

Request to ban fees and charges on standard retail contracts permanently

The Bill provides a transitional restriction preventing retailers from levying new fees and charges on customers on standard retail contracts within two years of prices being set. This is to support customers to become familiar with the new market monitoring regime.

QCOSS supported the transitional provision but called for a permanent restriction on fees and charges for standard retail contracts.³¹

The department advised that issue was considered during stakeholder consultation. The position of retailers is that a permanent ban on fees and charges for standard retail contracts would restrict product development and innovation resulting in limited customer choice. Further, if costs associated with the provision of services or products could not be passed on, then the costs would be amortised across the business which may result in higher prices for all customers.³²

Committee comment

The committee supports the transitional measure to restrict retailers from levying new fees and charges on standard retail contracts for a period of time in order to support customers in becoming familiar with market monitoring. The committee is satisfied with the current proposal and considers a permanent ban on fees and charges would create inefficiencies in the market.

Advance notice of price changes

Currently, all customers are advised of price changes for standard and market retail contracts in their next bill which is *after* the price change has come into effect.

contract? Downloaded on 14 August 2014 from <https://www.energymadeeasy.gov.au/understand-your-bill-and-contract/what-is-an-energy-contract>.

²⁴ QCOSS, Submission No. 7.

²⁵ National Seniors Australia, Submission No. 18 and QCOSS, Submission No. 7.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ QCOSS, Submission No. 7.

³⁰ Ibid.

³¹ QCOSS, Submission No.5.

³² Department of Energy and Water Supply, Correspondence dated 9 July 2014, p11.

The Bill proposes to require retailers to provide advance notice of price increases to customers on standard retail contracts in SEQ. The current provisions will continue to apply in regional Queensland customers on notified prices as the prices are set by the regulator and not the retailers.³³

The department advised that corresponding provisions are intended to be included in the regulations to place the same obligation on electricity retailers in relation to customers on market retail contracts. Retailers will also be required to publish any price increases for standard retail contract customers on their website and in the newspaper 10 business days in advance.³⁴

Both QCOSS and National Seniors Australia submitted:³⁵

- the requirements to provide advance notification be extended to all customers in SEQ, including customers on market retail contracts, and not just those on standard retail contracts,
- that notice be provided in writing if requested, and
- the Bill be amended to provide at least 10 business days individualised advanced notice from retailers notifying all their customers of price changes, including any increase to fees, charges and the expiry of any time-limited discounts the customer may have been receiving.³⁶

QCOSS and National Seniors were of the view that mandating 10 business days for providing individualised advanced notice would not only provide consistency with publishing standard offer prices but also ensure time for customers to shop around for new providers.³⁷ National Seniors Australia highlighted:³⁸

...advance notice has to be more than just the night before. That is completely unacceptable for our members. If in fact they receive advance notice, they can actually plan. They can be given time and the opportunity to budget and they will not fall into hardship...

The department advised that the provisions in the Bill will not stop a customer from being able to shop around. A more prescriptive approach to specifying a timeframe and the mechanism for advising customers for particular groups may, according to retailers, add to operational costs and put upward pressure on energy prices.³⁹

The proposed provision is aimed at providing advance notice as opposed to customers becoming aware after the price change has taken effect. The proposed modification is specific to Queensland as no other state provides advanced notice.⁴⁰

Committee comment

The committee acknowledges the competing views of stakeholder groups. Whilst the committee acknowledges the department's advice that Queensland is the only state which provides advance notice and that some retailers may give greater than 10 days' notice, the committee is not comforted by the possibility of consumers being given notice the night before a price increase. Accordingly, the committee recommends retailers be required to provide at least 10 business days' notice of a price

³³ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 8.

³⁴ Ibid.

³⁵ QCOSS, Submission No. 5; National Seniors Australia, Submission No. 15.

³⁶ The expiry of fixed benefit periods is addressed in the next section of the report.

³⁷ QCOSS, Submission No. 5; National Seniors Australia, Submission No. 15.

³⁸ National Seniors Australia, Public hearing transcript, 6 August 2014, p 11.

³⁹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 8-9.

⁴⁰ Public briefing transcript, 4 June 2014, p 13.

increase on all contracts and does not consider this would be too burdensome on a retailers' operations.

Recommendation 2

The committee recommends retailers be required to provide at least 10 business days' notice of a price increase.

Advance notice of expiry of fixed benefit periods

QCOSS and National Seniors Australia recommended the Bill be amended to provide 10 business days advanced notice of the expiry of fixed benefit periods (time-limited discounts).⁴¹

The department advised:⁴²

The QCA is finalising changes to the existing Electricity and Gas Industry Codes that will require retailers to notify customers of the date on which the fixed benefit period will expire. The Code changes will require retailers to advise their small customers, no earlier than 40 business days and at least 20 business days prior to the expiry of a fixed benefit period. Retailers will also need to advise customers of other contractual options that may be available, any termination or other fees that will apply if the customer decides to end the contract and their ability to choose other retailers.

...

This modification will ensure customers receive individual and timely notification prior to any change occurring in relation to benefits of a fixed nature a customer receives under their contract, even when the end of the benefit is identified in the contract. Customers will have opportunity to discuss the fixed benefit with their retailer prior to expiry.

The department also advised:

... there is an AEMC [Australian Energy Market Commission] rule change out now looking at the issue of fixed benefit fixed term contracts and whether they should regulate over the top of that. But whether it is 10 days or is 20 days the right amount, for us the important thing is you are given advance notice...⁴³

Committee comment

The committee is satisfied with the department's response in the context that the Australian Energy Market Commission is currently considering a rule change in relation to regulating notification of advance notice in relation to the expiration of fixed benefit periods.

Ban on early termination fees

Standard retail contracts do not have a fixed period and a consumer can exit the contract at any time without having to pay an early termination fee (or exit fee). However, if a consumer chooses to leave a market retail contract before the term is up a consumer may have to pay an early termination fee.

⁴¹ QCOSS, Submission No. 5; National Seniors Australia, Submission No. 15.

⁴² Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 9.

⁴³ Public hearing transcript, 6 August 2014, p 23.

Both QCOSS and National Seniors Australia were of the view that early termination fees acted as a barrier to competition as they prevent customers from responding to price increases by switching to another retailer.⁴⁴ QCOSS submitted:⁴⁵

Allowing exit fees to be charged at varied amounts that are uncapped also increases the complexity for customers when they are trying to calculate the overall value of an energy offer.

QCOSS recommended that early termination fees be capped at \$20.00 (excluding GST) plus the pro-rata cost of any inducements consistent with the approach taken by Victoria in order to balance the cost to retailers and enable consumers to shop around and engage in the market.⁴⁶ National Seniors Australia also supported a dollar cap on early termination fees and/or consumers being given one free change of contract every 12 months.⁴⁷

Further, QCOSS recommended early termination fees be removed in the following circumstances:⁴⁸

- where the customer does not have the option to continue the contract, for example where they have vacated the premises and cannot carry their account with the retailer to new premises,
- where the customer has been identified as being in hardship either before or after a transfer has taken place,
- where the customer has entered a new contract with the same retailer before their previous contract expired, and
- where the retailer has acted unreasonably, for example by reducing the value of the discount that the customer signed up to during the term of the contract.

The department advised it had considered capping or removing early termination fees during consultation:⁴⁹

...all stakeholders consulted – including consumer representatives – acknowledged that a blanket restriction on the value of an early termination fee would have broader consequences. If set below reasonable cost to a retailer, the costs not recovered from the customer would be passed on to all other customers via higher energy prices. If set by a regulator, feedback was that most retailers could then automatically charge that amount, even if their reasonable costs were lower. This would potentially result in customers being disadvantaged and exposed to higher costs.

According to the department, the best protection for consumers in relation to exit fees is competition within the market and more choice of product between retailers.⁵⁰ The committee was advised that it is common for retailers to offer one market product without an exit fee.⁵¹

The proposed approach in Queensland is to require retailers to offer at least one market retail contract without an early termination fee (if the retailer offers a market retail contract with an early termination fee). This is a similar approach to that of South Australia. The department advised that

⁴⁴ QCOSS, Submission No. 5; National Seniors Australia, Submission No.15.

⁴⁵ QCOSS, Submission No. 5.

⁴⁶ Ibid.

⁴⁷ National Seniors Australia, Submission No.15.

⁴⁸ QCOSS, Submission No. 5.

⁴⁹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 10.

⁵⁰ Public hearing transcript, 6 August 2014, p 26.

⁵¹ Public briefing transcript, 4 June 2014, p 7.

this provision would be progressed via the National Energy Retail Law (Queensland) Regulation 2014.⁵²

The department further advised:⁵³

*[u]nder the Australian Energy Regulator's Exempt Selling Guideline, an exempt seller (on-supplier) must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer under a standard retail contract. **This means that on-supply customers are not subject to early termination charges.** [Emphasis added].*

During the public hearing, the committee raised the possibility of cross-subsidising the costs for retailers operating in various jurisdictions when other jurisdictions, such as Victoria, cap exit fees.

The department's view was that it could not be guaranteed that a retailer would charge more on their exit fee in Queensland in order to cover their costs across the National Energy Market; however, regulating a dollar value on the capping of exit fees could expose customers to higher energy costs as it was not possible to determine a fee that met the costs for every retailer and may result in some retailers charging more than their actual costs.⁵⁴

The department advised:⁵⁵

The idea is that we will get more retailers here and more retailers in Victoria offering a better range of products. There are less in Queensland, and you want that competition because the best protection is that there is a better deal for you.

Committee comment

The committee acknowledges the concerns raised by QCOSS and National Seniors Australia in relation to capping early termination fees to provide customers with the ability to easily switch retailers and reduce the disparity of exit fees between retailers.

The committee considers capping exit fees in a deregulated market could provide consistency for consumers and foster greater competition by enabling consumers to easily switch providers.

Accordingly, the committee recommends Queensland follow Victoria's model and include a \$20.00 cap on early termination fees in the National Energy Retail Law (Queensland) Regulation.

Recommendation 3

The committee recommends the National Energy Retail Law (Queensland) Regulation provide a \$20.00 cap on early termination fees.

Removal of late payment fees for customers (including on-supply customers)

QCOSS and National Seniors Australia expressed their opposition to retailers charging late payment fees under either standing or market retail contracts. According to QCOSS, retailers have a number of other options available to discourage chronic late payment and such fees place additional burden on customers experiencing financial hardship.⁵⁶

⁵² Department of Energy and Water Supply, Correspondence dated 12 August 2014, p 1.

⁵³ Ibid.

⁵⁴ Public hearing transcript, 6 August 2014, p 26.

⁵⁵ Ibid.

⁵⁶ QCOSS, Submission No. 5; National Seniors Australia, Submission No. 15.

National Seniors Australia suggested late payment fees:

- be prohibited for concession card holders and those consumers on payment/hardship plans, and
- not be charged to consumers on contracts provided by specific exempt sellers (manufactured home parks and retirement villages owners/operators) when the consumer has no choice of retailer.

In response to this issue, the department advised the application of the NERL and NERR in Queensland would restrict late payment fees in a number of ways. The first restriction applies to regional Queensland customers on standard retail contracts: late payment fees will only be able to be levied if they have been included in the notified prices and, as late payment fees do not form part of the notified price, they cannot be levied.⁵⁷

The second restriction applies to SEQ customers on standard retail contracts. As mentioned in previous sections, the Bill restricts retailers on being able to introduce any new charges for a period of two years—this includes ‘late payment’ fees. This protection would also extend to exempt seller customers. The proposed new framework continues the current status of allowing late payment fees on market retail contracts.⁵⁸

The department advised that late payment fees are not charged to customers that have registered with their retailer and entered into a hardship payment arrangement under the provisions of the NERR.⁵⁹

The department further advised that in consultation on the proposal, retailers noted the financial risk associated with an inability to charge late payment fees would be factored into standing offer prices on 1 July 2015 and may be slightly inflated as a result.⁶⁰

The department considered the transitional arrangement would ‘support a smooth transition and reduce potential customer anxiety at the early stages of market monitoring, while limiting the long term financial impact on customers’.⁶¹

Committee comment

The committee is satisfied with the department’s response and the current policy proposal. The committee is reassured by the department’s advice that late payment fees are not charged to customers who have entered into a hardship payment arrangement with their retailer.

Point for clarification 1

The committee requests the Minister for Energy and Water Supply, in his second reading speech, clarify late payment fees are not charged to customers who have registered with their retailer and entered into a hardship payment arrangement, to address the concerns raised by the Queensland Council of Social Service and National Seniors Australia.

Request to prevent retailers from increasing tariff prices under fixed term contracts

QCOSS recommended that retailers be prevented from increasing tariff prices under fixed term contracts in order to improve protections for Queensland consumers. QCOSS argued that the current

⁵⁷ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 11.

⁵⁸ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 11; Public hearing transcript, 6 August 2014, p 21.

⁵⁹ Ibid.

⁶⁰ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 11.

⁶¹ Ibid.

provisions under the NERL that permitted retailers to increase the price they charge during a fixed contract period created a disincentive for consumers to engage in competitive retail markets:⁶²

If consumers do switch retailers in response to a price increase, they face the risk that their new retailer will also increase the price, thereby eliminating the benefit of switching. There is also less reason for consumers to investigate other offers and participate in the market if they believe the prices agreed can be changed at any time.

QCOSS submitted that it was confusing for customers that the price could be increased during the term of a fixed-term contract.⁶³ National Seniors Australia recommended that the term 'fixed' be restricted in the name of electricity contracts 'to avoid confusion and misrepresentation of market electricity contracts':⁶⁴

Seniors in other states often incorrectly assume that when an electricity contract uses the term 'fixed' in its title or promotional material this infers a fixed price which is not the case.

The department advised:⁶⁵

This matter has been raised and is currently being considered by the Australian Energy Market Commission (AEMC) via a national rule change process. As this is an issue for customers across the National Energy Market, it is appropriate consideration be given at the national level to ensure consistency for all customers. It is expected the AEMC considerations will be finalised before the commencement of the NERL in Queensland. If the rule change request is successful, retailers will not be able to increase tariff prices during a fixed term contract in Queensland (and all jurisdictions that have implemented the NERL). If unsuccessful, the AEMC will provide its reasons stemming from rigorous consultation and consideration of the issues, impacts, costs and benefits of the rule change proposal.

It's the department view that this process should be allowed to run its course rather than pre-empt a decision by seeking and additional derogation from the NERL package.

Committee comment

The committee is satisfied with the department's response.

Request to require standing offer price increases to be published on set dates every six months.

Currently, the NERL provides that standing offer prices cannot be changed any earlier than six months after the last price variation but otherwise can occur at any time. The Bill proposes to modify its application to Queensland to enable retailers to lower their prices at any time. A transitional provision is also proposed to ensure prices remain stable for the first year of market monitoring by preventing retailers from increasing standard offer prices more than once in the first year.⁶⁶

QCOSS expressed its support for the transitional provision but suggested that after the transitional period, standing offer prices should be restricted to six monthly increases to be published on set dates. It suggested this would assist customers with comparing prices and also decrease the likelihood that retailers set their prices after viewing their competitors.

⁶² QCOSS, Submission No. 5.

⁶³ QCOSS, Public hearing transcript, Brisbane, 6 August 2014, p 15.

⁶⁴ National Seniors Australia, Submission No. 15.

⁶⁵ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 12.

⁶⁶ Explanatory notes, pp 31, 32 and Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 9.

The department advised it considered this matter during stakeholder consultation and concluded that setting fixed dates for the variation of standard offer prices would not produce the best outcomes for customers.

The department provided further rationale:⁶⁷

Retailers have many energy purchasing contracts in place, each with varying timeframes, prices etc. Through these ongoing purchasing processes, energy costs to retailers will vary on timeframes not set to particular dates within a year, so retailers need reasonable ability to reflect these changes in their product and pricing. This was a critique by retailers during consultation on proposals to fix the date of price changes. If retailers are not able to adjust their standing offer prices to reflect costs within the change frequency constraints, they will need to build risk premiums into those prices resulting in less than efficient offerings to customers. Innovation in standing offer products is also likely to be diminished as in an efficient market competitors will respond to each other's initiatives in their quest to secure customers. Setting common dates for publishing new prices eliminates this key market response, and will likely result in less than efficient standing offer prices.

Committee comment

The committee is satisfied with the department's advice that including pre-determined dates for publishing standing offer price increases in the Bill would detract from a competitive market environment and potentially lead to higher prices.

Billing

Frequency of billing

National Seniors Australia requested that retailers should be obligated to provide standard retail contract customers with more frequent billing periods, such as weekly or fortnightly billing.⁶⁸ National Seniors stated:⁶⁹

Our key position is that any additional costs associated with supplementary billing options are made clear to consumers as opposed to being buried within lengthy and complex contract documentation, which the current Bills would allow.

QCOSS stated:⁷⁰

... more frequent billing does definitely have a benefit. It is the three-month stretch of using electricity without having any sort of indication what the cost is that can really shock people

The department advised:⁷¹

Section 24 of the NERR [National Energy Retail Rules] provides that a retailer and a small customer may agree to a billing cycle with a regular recurrent period that differs from the retailer's usual recurrent period where the retailer obtains the explicit informed consent of the small customer.

⁶⁷ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 10.

⁶⁸ National Seniors Australia, Submission No. 15; Public hearing transcript, 6 August 2014, p 12.

⁶⁹ National Seniors Australia, Correspondence dated 12 August 2014.

⁷⁰ Public hearing transcript, 6 August 2014, p 18.

⁷¹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 12.

Customers also have the ability to better manage the payment of their bills by paying a portion of their bill in advance or by entering into a 'bill smoothing' arrangement with their retailer.

Committee comment

The committee considers section 24 of the NERR provides sufficient flexibility to enable a small customer and retailer to negotiate a different billing cycle from the standard three month cycle.

Standardised billing format

National Seniors Australia requested that retailers be obligated to provide a standardised billing format including clearer comparative data on usage patterns and that consumers be consulted on the format prior to implementation.⁷²

Section 25 of the NERR provides a comprehensive list of requirements for a small customer's energy bill. The department stated:⁷³

There is a lot of work that went on in NECF around that. There was a working group over a number ... of years to look at standardising the key requirements on a bill. That work went over a couple of years. I understand QCOSS—not QCOSS so much, National Seniors disagree with some of that. What we have said to them is we wanted to take that evidence of the work that went across a few years...

We were happy to go with the research and the work that was done and then focus our attention on giving people the skills about how they can interpret that information on there.

The department further advised that it considered ways to make an energy bill simpler and noted that it is difficult to provide a standard bill that would satisfy each section of the community. The department also advised that standardised billing may restrict competition because retailers would have a reduced ability to differentiate themselves from their competitors.⁷⁴

QCOSS stated:⁷⁵

Up until recently there was a Commonwealth program, the Home Energy Saver Scheme, which was an in-home energy audit and energy advice program that provided face-to-face information to people. They did run through the bill, they explained things, they pointed out different appliances in the home, they saw how people were using energy in their home and they provided that real hands-on assistance. That style of program, I think, is what really speaks to low-income and disadvantaged people, rather than a web based resource or other forms of communication.

Committee comment

The committee notes concerns raised by consumer groups relating to the complexity of billing information. While the committee appreciates the consultation work already undertaken in relation to billing formats, the committee recommends the department undertakes further consultation with consumer groups, including those representing older Queenslanders and people from non-English speaking backgrounds, to develop suitable tools to equip them to interpret their energy bill. The

⁷² National Seniors Australia, Submission No. 15.

⁷³ Public hearing transcript, 6 August 2014, p 22.

⁷⁴ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 12-13.

⁷⁵ Public hearing transcript, 6 August 2014, p 17.

committee also recommends the department facilitates a discussion between energy retailers and peak consumer groups on the issue of simplifying and standardising energy bills.

Recommendation 4

The committee recommends the Department of Energy and Water Supply undertakes additional consultation with consumer groups, including those representing older Queenslanders and people from non-English speaking backgrounds, to develop suitable tools to equip them to interpret their energy bills.

Recommendation 5

The committee recommends the Department of Energy and Water Supply facilitates a discussion between energy retailers and peak consumer groups on the issue of simplifying and standardising energy bills.

Billing and credit management for gas customers

Part 21 of the National Gas Rules (NGR) applies to a distributor and a retailer who have shared customers and sets out the retail support obligations between distributors and retailers, including billing and payment rules and credit support regime.

The APA Group and Envestra submitted Part 21 of the NGR be deferred until the commencement of the next access period (on 1 July 2016). This would address an inconsistency between regulatory and contractual arrangements with their Queensland gas retailers during this time. Any new billing and payment rules would alter the financial arrangements between gas distributors and retailers. APA Group and Envestra would be required to:⁷⁶

- amend their billing and payment systems to implement the new billing period and statement/information formats, and
- implement new credit support arrangements between the gas distributors and retailers.

The department advised its position is that the 'renegotiation of current contracts to reflect the proposed new rules would be feasible given the arrangements are not proposed to commence until 1 July 2015.'⁷⁷

Further, 'a delay in commencing these requirements may act as a barrier to entry for second tier gas retailers seeking to enter the Queensland market between 1 July 2015 and 1 July 2016' which has the potential to reduce competition during that time.⁷⁸

In relation to the implementation of new systems, the department noted APA Group and Envestra were active participants in the consultation processes to inform the development of the NERL (Qld) Bill and would have been aware of the new requirements. Additionally, the department assumed 'that APA Group and Envestra underwent similar upgrades and credit support arrangement additions in the other states in which the national legislation has been adopted, and that they can rely on that

⁷⁶ APG Group, Submission No. 16 and Envestra Limited, Submission No. 17.

⁷⁷ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 6.

⁷⁸ Ibid.

experience to expedite the process.’ The department did not support the proposal to defer commencement of this part of the Bill.⁷⁹

Committee comment

Based on the information the department has provided, the committee is satisfied with the proposal.

Provision of information and assistance by the Australian Energy Regulator

Currently, the Queensland regulator can receive and investigate referrals from the Queensland Competition Authority (QCA) where the QCA is of the view there may have been a breach of the Electricity Industry Code or the Gas Industry Code. The regulator can also collect information about retailer compliance with licence conditions.⁸⁰

Clause 28 of the Bill would authorise the Queensland electricity regulator, the Queensland gas regulator and the QCA to disclose information to the Australian Energy Regulator in certain situations. The information could include personal or confidential information about a person. The policy intent is to:⁸¹

... 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.

Circumstances may reasonably require the Australian Energy Regulator to have access to information in order to perform its functions. The type of information that could be requested includes:⁸²

- retailer performance data (data retailers have provided for the last three years under the Electricity Industry Code),
- retailer and distributor compliance data where this may translate into compliance issues under the NERL (Qld) or NERR, and
- a briefing on any open or ongoing compliance matter for retailers and distributors (at the time of transition) that may translate into compliance issues under the NERL (Qld) or NERR.

Energex submitted that if the information related to, or was provided by, an electricity entity then provision should be included to require the disclosing party to advise the affected electricity entity of the provision of the information and the nature of the disclosure.⁸³

The department advised that the provision of information is likely to contain commercial in confidence or sensitive information such as potential business collapse, whistle-blower or customer complaint issues. Disclosing that such information has been provided to the Australian Energy Regulator may compromise an investigation or lead to other unintended consequences.

For example:⁸⁴

... if the Regulator was of the view a RoLR [Retailer of Last Resort] event may be imminently triggered, the Regulator would need to advise and prepare in partnership with the AER. If such information was disclosed to the RoLR, a nominated entity to continue supply to customers in the event of a retailer failure in the market, the

⁷⁹ Ibid.

⁸⁰ Explanatory notes, p 20.

⁸¹ Ibid.

⁸² Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 1.

⁸³ Energex, Submission No. 1.

⁸⁴ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 1 & 2.

nominated RoLR could have significant opportunity for unfair commercial advantage. This might manifest in pre-emptively approaching customers of the other retailer, and so contributing to the premature collapse of that retailer when it may have been able to resolve its issues, for example by trading through or finding a buyer of the business.

Committee comment

The committee understands that supplying information that may be commercially sensitive to an affected retailer may jeopardise an investigation or lead to other unintended consequences and is satisfied with the department's response.

Consumer protections

Retailer of Last Resort Scheme for gas retailers

Part 6 of the NERL (Qld) would establish a Retailer of Last Resort scheme (RoLR). The purpose of the RoLR scheme is to:⁸⁵

... protect customers from potential disconnection of supply should their retailer fail or make an unplanned exit from the market, and the wholesale market from being unable to settle for energy consumed in the same scenario. The national RoLR scheme provides named retailers who will become responsible for the customers of a failed retailer and continue to supply electricity and/or gas to those customers.

Clause 21 of the schedule provides that the RoLR scheme does not apply in relation to the Ergon Energy isolated distribution network. This is because no retailer other than Ergon Energy Queensland provides customer retail services to customers on the network and as Ergon is subsidised by the government and not at risk of failing a RoLR scheme is not necessary.⁸⁶

APA Group and Envestra submitted that a RoLR scheme should not be introduced for gas distributors because it would create additional compliance costs that would be passed onto consumers.⁸⁷

Envestra stated:⁸⁸

[T]he downstream gas industry has managed without such a scheme since the introduction of natural gas and given the unlikelihood of a retail failure event occurring, and the significant costs involved to set up systems to support compliance with the scheme, Envestra does not believe there to be any material gain or further protection for consumers of a failed retailer with such a scheme in place.

However, the submitters proposed that any scheme introduced should only apply to second tier retailers and that at least one month be provided for transferring customers of the failed retailer to the default retailer of last resort in order to minimise costs.⁸⁹

The department agreed with the concerns raised by APA Group and Envestra and advised that because the majority of SEQ's gas is supplied by Origin and AGL, which are financially robust, it is highly unlikely that a gas RoLR event would occur. Additionally, the *Gas Supply Act 2003* gives the

⁸⁵ Department of Energy and Water Supply, Correspondence dated 5 August 2014.

⁸⁶ Explanatory notes, p 45.

⁸⁷ APG Group, Submission No. 16 and Envestra Limited, Submission No. 17.

⁸⁸ Envestra Limited, Submission No. 17.

⁸⁹ APG Group, Submission No. 16 and Envestra Limited, Submission No. 17.

Minister emergency powers to ensure supply of natural gas continues due to an insufficiency of supply event.⁹⁰

However, there are a small number of customers not serviced by Origin or AGL but by second tier retailers which may benefit from a RoLR scheme in the event of a retail failure.

Accordingly, the department agreed to amend the Bill to exclude the RoLR arrangements from applying to a first tier gas retailer (i.e. Origin Energy or AGL). The rationale for amendment is as follows:⁹¹

... the cost of developing distributor arrangements to support the RoLR scheme in relation to a first tier retailer event is likely to outweigh the anticipated benefits. This is due to an assessment that the risk of such an event occurring is relatively small and that should such an event occur, reserve emergency powers exist under Chapter 4, Part 5 of the Gas Supply Act 2003.

Committee comment

The committee supports the proposed amendment of the Bill to address this issue.

Consumer engagement

Price comparison service & fact sheets

The AER has developed a price comparator website, 'Energy Made Easy'. The website assists customers in comparing different prices offered by retailers in their area. The AER also publishes a range of factsheets.⁹²

In relation to the comparator website, National Seniors stated:⁹³

The comparison website will not be accessible for many seniors and others in the community who are either not computer literate or do not have access...

QCOSS stated:⁹⁴

... one of the benefits of NECF is that it will provide access to the Australian Energy Regulator's Energy Made Easy website and phone line...

In relation to fact sheets, National Seniors stated:⁹⁵

The facts sheets do not list all fees and charges. For example, printed bill fees are not captured under the fact sheet template. That is, if you get a printed bill, as many older Queenslanders would, they will be charged extra. That is not revealed in the fact sheet, and I think that is an important piece of information people should be entitled to.

National Seniors submitted it should be a requirement that energy price facts sheets list all fees, and retailers provide hard copy fact sheets to customers within five business days of request. Additionally, fact sheets should note a consumer's right to request a hard copy on all retailer marketing material.⁹⁶

⁹⁰ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 7.

⁹¹ Department of Energy and Water Supply, Correspondence dated 5 August 2014, Attachment.

⁹² Australian Energy Regulatory, 'Energy Made Easy', <http://www.energymadeeasy.gov.au/>.

⁹³ Public hearing transcript, 6 August 2014, p 10.

⁹⁴ Ibid, p 15.

⁹⁵ Ibid, p 10.

⁹⁶ National Seniors Australia, Submission No. 14.

In relation to listing all fees, the department advised that under AER's Retail Pricing Information Guideline, a retailer must provide information on key fees that are applicable to a contract offer on an Energy Price Fact Sheet. If a retailer applies certain fees that are not considered key fees (for example, a special meter reading), the fact sheet must include a reference to where additional information on the fees is available.⁹⁷

In relation to the provision of hard copy fact sheets, the guideline requires retailers during telemarketing activity or phone queries, to provide requested fact sheets for a contract offer within five business days. The department further advised that the guideline does not explicitly require retailers to alert customers to the availability of hard copy fact sheets in mass media marketing, however, marketing in relation to generally available contracts must include a statement about the availability of fact sheets.⁹⁸

The department advised that it plans to work with the AER and other jurisdictions in applying the NERL to ensure the Guideline continues to meet its intent into the future.

Committee comment

The committee is satisfied with the department's responses and considers the 'Energy Made Easy' website and fact sheets are vital tools for ensuring customers are provided with sufficient information in order to participate in the market. The committee considers the current regulatory provisions are adequate.

However, the committee notes that further work and additional resources are needed to effectively engage vulnerable groups in the market. The committee expects the department will continue to work with consumer groups to ensure that the information tools work effectively for such groups.

Point for clarification 2

The committee seeks advice from the Department of Energy and Water Supply in relation to the work the Department will undertake to ensure that the information tools are suitable for vulnerable groups.

Other matters

On-supply arrangements and the exempt seller framework

National Seniors Australia, the Shopping Centre Council of Australia and the Property Council of Australia raised concerns or sought clarification in relation to on-selling arrangements.

Currently, on-selling arrangements are regulated under the *Electricity Act 1994*. The NERL seeks to establish an '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. 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.⁹⁹

The Australian Energy Regulator developed the *Exempt Selling (Retail) Guidelines* (the guidelines) that are aimed at ensuring exempt customers are not unreasonably disadvantaged compared to

⁹⁷ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 15.

⁹⁸ Ibid.

⁹⁹ Explanatory notes, pp 2 & 15.

customers of authorised retailers. Most residential exempt customers have some protections under their tenancy or equivalent legislation or agreements.¹⁰⁰

The Shopping Centre Council of Australia submitted:¹⁰¹

The AER guidelines were developed in consultation with all jurisdictions and relevant stakeholders. Importantly, these guidelines provide consistency which benefits companies, such as our members, that operate across multiple jurisdictions as national businesses. ...

The NECF will improve certainty, consistency and the efficiency in the operation of embedded networks in Queensland.

Issues raised by submitters

National Seniors submitted the NERL enables 'owners of multi residential complexes to charge residents up to the standard offer price which is likely to result in a price increase for many residents'.¹⁰²

The department advised the guidelines set a price cap on what tariffs can be charged by the exempt seller (similar to the current arrangements under the *Electricity Act 1994*). Where an exempt seller is intending to profit from selling energy (i.e. by negotiating a cheaper market contract and charging the standard tariff) the AER will need to be satisfied there are appropriate protections in place. The AER has determined that an exempt seller must not charge a small residential customer more than the local area retailer's standing offer.¹⁰³

National Seniors submitted that on-supply customers should have access to the Energy and Water Ombudsman Queensland.¹⁰⁴ The department considered that receivers will have improved billing arrangements and improved information and payment options and access to concessions or rebates under the NERL which would alleviate most of the issues for customers in on-supply arrangements. The department advised that it is not proposed to allow access to the Energy and Water Ombudsman Queensland, however the situation would be monitored.¹⁰⁵

In response to requests from the Shopping Centre Council of Australia and Property Council of Australia to clarify tariff protections for specific exempt customers (on-supply situations), the department provided the following information.

Customer type	Price protection ¹⁰⁶
South East Queensland small exempt customers	Condition 7(1) of the AER's Exempt Selling Guidelines (the Guidelines): From 1 July 2015, cannot be charged tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections. This will be Origin Energy.

¹⁰⁰ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 15-17.

¹⁰¹ Shopping Centre Council of Australia, Submission No. 4.

¹⁰² National Seniors Australia, Submission No. 15.

¹⁰³ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 15-17.

¹⁰⁴ National Seniors Australia, Submission No. 15.

¹⁰⁵ Department of Energy and Water Supply, Correspondence dated 9 July 2014, pp 17.

¹⁰⁶ Note: a proposed derogation preventing exempt sellers from charging large customers in regional Queensland more than the notified price will be contained in the National Energy Retail Regulation (Queensland).

South East Queensland large exempt customers	No pricing protection (as per current arrangements) other than Condition 7(2) of the Guidelines which states: An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
Regional Queensland small exempt customers	As per Condition 7(1) of the Exempt Selling Guidelines, noting that local area retailers standing offer price will be the regulated tariff for small regional customers in the Ergon Energy distribution area.
Regional Queensland large exempt customers	As per Queensland derogation, extend Condition 7(1) of the Exempt Selling Guidelines, noting that local area retailers standing offer price will be the regulated tariff for large regional customers in the Ergon Energy distribution area.

Source: Department of Energy and Water Supply, Correspondence dated 9 July 2014.

Committee comment

The committee is satisfied with the department's responses and notes that on-sellers will be required to provide additional information above what they currently provide to receivers in terms of prices and options for payment (as stipulated by the Exempt Selling Guideline).

The committee notes the Energy and Water Ombudsman does not have jurisdiction to deal with complaints in relation to the on-selling of water or electricity in multi-tenanted dwellings. The committee also notes that the avenue for pursuing a complaint via other means (i.e. via a breach of tenancy agreement) can be challenging for exempt customers. The committee seeks to better understand the rationale for not providing access to the Water and Energy Ombudsman (other than exempt gas customers of the Maranoa and Western Downs Regional Councils).

Point for clarification 3

The committee seeks advice from the Minister for Energy and Water Supply in relation to the rationale for not providing the majority of exempt sellers and customers in on-supply situations with access to the Energy and Water Ombudsman Queensland in order to resolve complaints.

Indemnity provisions

Section 316 of the NERL provides that a distributor does not incur any civil monetary liability for any partial or total failure to supply energy unless the failure is due to an act or omission done or made by the distributor in bad faith or through negligence. A distributor may enter into an agreement with a person (other than a small customer) to vary or exclude the limitation of liability.

Section 316 of the *Gas Supply Act 2003* also provides for the exclusion of civil liability for a distributor for failure to supply and for defective supply in relation to cost, damage or loss claims as long as the distributor demonstrates meeting the requirements of the provision.¹⁰⁷

¹⁰⁷ Under section 316 of the *Gas Supply Act 2003*, in order to rely on the protection of the provision, the distributor must establish that a) the failure or defect was caused by a circumstance beyond the distributor's control; b) the distributor complied with the Act and the conditions of its distribution authority; and c) the distributor acted in good faith and without negligence.

Several electricity and gas distribution submitters raised concerns about differences between the liability provisions under sections 316 and 317 of the NERL and existing arrangements. Submitters considered that the indemnity provisions within the NERL would increase their exposure to actions against them and could therefore increase insurance costs and result in higher tariffs to customers.

Gas distribution

The main concern from APA Group and Envestra, two gas distribution businesses, was that the NERL would change the current arrangements that protect gas distributors from making an agreement with a small customer to vary or exclude the limitation of liability. By changing the status quo, they submitted this would expose them to unlimited liability. It was submitted that the current access arrangement be retained with modification as follows:¹⁰⁸

- a) maximum liability of \$100m for any one event, for damage to property or persons (the access arrangement allows for \$100,000 but Envestra/APA would increase this to \$100m 'in line with prudent insurance levels', and
- b) exclusion of consequential loss.

Under section 316 of the NERL, the current ability of the distributor to agree a liability cap or exclusion with a large customer would be retained. However, the NERL would exclude small customers from the class of persons that a distributor may enter into an agreement with to vary the liability provision. The department advised the reasons for this as follows:¹⁰⁹

As small customers generally have an unequal bargaining position with distribution businesses in relation to customer connection services, they may find it difficult to negotiate or agree different terms to those proposed by the distribution business. Further, it is good precedent to provide an incentive on the distribution businesses to avoid conduct which could constitute bad faith or negligence resulting in loss of supply.

The department further advised:¹¹⁰

The potential for large scale damages as a result of this is not anticipated to be significant or necessarily result in significantly increased insurance costs for distributors. While a large number of customers may be affected by an outage, the risk of a large number of successful claims against the distributor is small. For example, in Johnson Tiles Pty Ltd v Esso Australia Pty Ltd (No 4) [2004], 1.4 million customers were affected. However, only some 472 customers were found to have valid claims (e.g. relating to property loss or damage). If the same ratio applied where all Queensland gas customers were affected then only around 70 valid claims would result from a widespread loss of supply affecting each gas customer in Queensland.

The department concluded that the risk to gas distributors under section 316 of the NERL would not significantly differ from existing risks under current arrangements.¹¹¹

Committee comment

The committee is satisfied with the proposal to exclude small customers from the class of persons that a distributor may enter into an agreement with to vary the liability provision. This is on the basis that small customers would most likely have an unequal bargaining position and the potential for

¹⁰⁸ APA Group, Submission No. 16 and Envestra Limited, Submission No. 17.

¹⁰⁹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 3.

¹¹⁰ Ibid.

¹¹¹ Ibid.

large scale damages from loss of supply is not anticipated to be significant or significantly contribute to insurances costs for distributors.

Electricity distribution

Both Energex and Ergon Energy submitted the indemnity provisions in section 317 of the NERL did not mirror the existing jurisdictional arrangements in the Standard Coordination Agreement set out in the Electricity Industry Code (EIC). The submitters raised concerns about the onus being on the distributor to prove a retailer had been negligent, breached a statutory duty or acted in bad faith.¹¹²

Both Energex and Ergon recommended an amendment to the NERL to mirror the current indemnity provisions under section 11(e) of the Standard Coordination Agreement which provides:¹¹³

The Retailer shall indemnify the Distributor against all Claims arising from, or incurred by, the Distributor as a consequence of the cessation of supply as a result of any disconnection by the Distributor pursuant to a Service Order Request, except to the extent that the Claim arises from the negligent or reckless act or omission of the Distributor, or from any breach or non-observance by the Distributor of the Agreement or any applicable law.

The department advised:¹¹⁴

Under the NERL, the indemnity for distributors applies if the retailer has been negligent, breached a statutory duty or has acted in bad faith. Under the EIC (in relation to wrongful disconnection), the indemnity automatically applies unless the distributor has been negligent or reckless, breached the agreement or any law. The distribution businesses submit that this change will mean that, as a matter of practice, they will need to prove negligence, breach of a statutory duty or bad faith on the part of the retailer in each instance it seeks to be reimbursed for a claim by a customer in relation to an act or omission of the distributor. Noting that, in relation to claims relating to a failure to supply (as would be the case for a wrongful disconnection), the distribution businesses will have a general immunity under section 316 of the NERL unless they have acted in bad faith or negligently, it does not appear unreasonable to require the distributor to ensure that the retailer has also acted in bad faith or negligently before recovering the costs of a claim from them. In addition, as a matter of practice, it is anticipated that distributors and retailers may agree to practices and processes that will manage these types of claim issues in order to reduce operating expenses.

The department also advised the differences between the existing arrangements and the indemnity provisions under the NERL were not substantial and that retail and distribution businesses did not raise the issue during any consultation process relating to the NERL's application in Queensland.¹¹⁵

Committee comment

The committee supports the department's view that, given distribution businesses will have a general immunity for failure to supply under section 316 of the NERL (unless they have acted in bad faith or negligently), it should not be too onerous for distributors to prove that retailers had acted in bad faith or negligently before recovering the costs of a claim. The committee encourages this issue to be revisited when the legislation is reviewed.

¹¹² Energex, Submission No. 1; and Ergon Energy, Submission No. 12.

¹¹³ Electricity Industry Code, Annexure C, 11(e).

¹¹⁴ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 4.

¹¹⁵ Ibid, p 5.

Life support equipment*Definition of 'standard meter'*

Proposed new section 60D of the NERL (Qld) requires a retailer to replace a card-operated meter with a standard meter if it is notified that a premises is registered as having life support equipment and the customer has not given their explicit informed consent to remain on a card-operated meter. This is to occur at no cost to the customer.¹¹⁶

Clause 17 proposes new section 60D(5) and defines 'standard meter' as 'a metering installation of the type that would ordinarily be installed at the premises of the customer.'

Ergon Energy submitted the definition is confusing and could be interpreted as being a card-operated meter in those communities where card-operated meters are the type that would ordinarily be installed at the request of elders rather than at the request of individual customers.¹¹⁷

The department considered that 'when the provision is read as a whole, it is clear that a standard meter is not a card-operated meter.' However, the department advised that an alternative definition could be developed 'if necessary to clarify this beyond doubt.'¹¹⁸

The committee recommends the definition be amended to clarify the intent beyond any doubt.

Recommendation 6

The committee recommends Clause 17 of the Bill be amended to clarify the intent of the definition of 'standard meter' in proposed new section 60D(5) beyond any doubt.

Exemption from life support provisions for gas distributors

Part 7 of the NERL provides the obligations on retailers and distributors in relation to life support customers. Customers requiring life support equipment at their premises are likely to rely on electricity, rather than gas, to power the equipment.¹¹⁹

APA Group and Envestra Limited requested that gas distributors be exempted from life support provisions on the basis:¹²⁰

- there are no known gas consumers currently registered as life support customers or currently dependent upon natural gas for their life support equipment, and
- the obligations would require a new regime of compliance for the gas industry which would have an administrative and cost burden for the industry 'without providing any practical customer protection outcomes'.

The department advised the 'definition of life support equipment includes, in relation to a particular customer, any equipment that a registered medical practitioner certifies is required for a person

¹¹⁶ Explanatory notes, p 36.

¹¹⁷ A card operated meter is a type of pre-payment meter that blocks the supply of electricity to premises until a pre-paid power card is inserted into the meter. They are used in remote Indigenous communities to help with debt management and costs associated with changing account holders when customers move premises: Department of Energy and Water Supply, Correspondence dated 5 August 2014; Ergon Energy, Submission No. 12.

¹¹⁸ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 5.

¹¹⁹ Ibid.

¹²⁰ APA Group, Submission No. 16 and Envestra Limited, Submission No. 17.

residing at the customer's premises for life support' and that this could include equipment powered by gas in the future.¹²¹

The department further advised that gas distributors are compliant with the NERL life support provisions in South Australia and given this precedent it would not be onerous for gas distributors to comply with the NERL's life support obligations.¹²²

Committee comment

The committee is satisfied with the department's response.

Extreme weather events

National Seniors Australia recommended that disconnections at the discretion of the supplier be prohibited in extreme weather events.¹²³

The department advised its intention to 'apply extreme weather event provisions as soon as an appropriate definition of a heat wave event becomes available that is suitable for Queensland.' The committee requests further information in relation to this issue.

Point for clarification 4

The committee seeks advice from the Department of Energy and Water Supply in relation to the timeframe for the development of extreme weather event provisions and whether the provisions would only relate to heat waves.

Tweed Heads and Banora Point Distribution networks

The APA Group sought that regulations to be made under the NERL (Qld) nominate Allgas Energy Pty Ltd as owner of the Tweed Heads and Banora Point gas distribution networks to ensure Queensland law applies to those networks. APA argued that this would 'ensure that customers connected to the Tweed Heads and Banora Point networks will receive the same rights and protections as other gas customers in Queensland in addition to reducing the regulatory duplication by operating under a single regulatory framework.'¹²⁴

The department advised that these networks are located in New South Wales (NSW) and the matter, therefore, needs to be addressed by the NSW Government. The department has raised the issue with NSW officials.¹²⁵

Committee comment

The committee is satisfied with the department's response.

Card-operated meters

Definition and protections for card-operated meter customers

A card-operated meter is a type of prepayment meter that blocks the supply of electricity to premises until a pre-paid power card is inserted into the meter. They are used in remote Indigenous

¹²¹ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 5-6.

¹²² Ibid, p 5.

¹²³ National Seniors Australia, Submission No. 15.

¹²⁴ APA Group, Submission No. 16.

¹²⁵ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 6.

communities to help with debt management and costs associated with changing account holders when customers move premises.

QCOSS submitted the definitions of a card-operated meter and a prepayment meter system are confusing and may conflict with one another.

The definition of 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.¹²⁶

Clause 4 of the Schedule replaces the definition of prepayment meter system under section 2(1) of the NERL to clarify that a prepayment meter system does not include a card-operated meter.¹²⁷

QCOSS submitted the definition of card-operated meters should be amended to reflect that card-operated meters are those 'located in remote communities where geographic isolation and lack of reliable communications infrastructure prevents the meters from complying with some of the prepayment meter provisions in the NERL', rather than referring to the use of 'cards'.

The department advised that the definition proposed by QCOSS may have the unintended consequence of preventing card-operated meters being installed in communities after the commencement of the NECF.¹²⁸

Committee comment

The committee is satisfied with the department's response.

¹²⁶ Explanatory notes, p 25.

¹²⁷ Ibid, p 26.

¹²⁸ Department of Energy and Water Supply, Correspondence dated 9 July 2014, p 19.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ (FLP) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. Clauses 4, 7, 11, 12, 28 and 29 raise potential FLP issues.

3.1 Rights and liberties of individuals

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

Clause 28 allows for the disclosure of an individual’s private information to the Australian Energy Regulator and provides significant legal protection for Queensland’s regulators in releasing this information.

Clause 28(3) provides that the release of information by a Queensland regulator will not constitute a breach or default of:

- an Act or other law,
- a contract, agreement, understanding or undertaking,
- a duty of confidence (whether arising by contract, in equity or by custom or in any other way),
- a civil or criminal wrong,
- terminate an agreement or obligation, or fulfil any condition that allows a person to terminate an agreement or obligation, or give rise to any other right or remedy, or
- release a surety or any other obligee wholly or in part from an obligation.

The OQPC Notebook provides that the right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified by the former Scrutiny Committee (SLC) as relevant to consideration of whether legislation has sufficient regard to individual’s rights and liberties.

The explanatory notes provide the following justification for the clause:¹²⁹

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.

The department advised:¹³⁰

... information sharing will be particularly necessary to facilitate the transition of existing holders of generation authorities and special approvals under the Electricity Act 1994 (the Electricity Act) to the NERL (Qld). Clause 18 of the Bill provides for current holders of generation and special approval authorities to become exempt sellers under the NERL (Qld).

¹²⁹ National Energy Retail Law (Queensland) Bill 2014, Explanatory Notes, p 8.

¹³⁰ Department of Energy and Water Supply, Correspondence dated 15 August 2014.

The AER will need to know who these holders are or will not be able to exercise its duties as regulator for these holders.

...

In determining whether information would be reasonably required by the AER, the regulator or Queensland Competition Authority will necessarily need to consider issues including privacy and the confidentiality of information. ... In the event that information does include confidential subject matter, the AER is restricted in how it may deal with that information. ... This includes a provision that restricts the AER from disclosing information given in confidence if that information could lead to the identification of the person to whom the information relates (s 212) and requires the AER to apply a public benefit test in determining whether to disclose certain information.

Committee comment

The committee commented on this proposal in Part 2 of the report. The committee is satisfied that the type of information that could be gathered would be reasonably required by the Australian Energy Regulator (AER) to perform a function or exercise a power during the proposed transition to NERL (Queensland) and that there appear to be sufficient protections around how the AER could deal with the information.

3.2 Institution of Parliament

Scrutiny of by the Legislative Assembly

Section 4(4)(b) of the LSA provides that a Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly.

Clause 29 allows for a transitional regulation to modify the application of the National Energy Retail Law (NERL) in Queensland to provide for any matters of a saving or transitional nature for which it is necessary to make provision to allow or facilitate change from the operation of the Electricity Act or Gas Supply Act to the NERL (Qld).

Clause 29(2) provides that a transitional regulation may have retrospective operation to a day not earlier than the commencement of the Act. Pursuant to clause 29(4), a transitional regulation will expire three years after the day the regulation commences.

The SLC found transitional regulations objectionable if they were:¹³¹

- expressed to allow for a regulation that can override an Act,
- so general as to allow for a provision about any subject matter, including those that should be dealt with by Act as opposed to subordinate legislation, and
- not subject to any other control, for example, sun-setting (preferably 12 months).

The department advised that a three year sun-setting period was proposed as it may take some time for an issue to emerge that may require a transitional regulation and for the process to make a regulation.¹³²

¹³¹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 160.

¹³² Department of Energy and Water Supply, Correspondence dated 15 August 2014.

Committee comment

The committee notes that a 12 month ideal sun-setting period may not be practical in this particular context. The committee also notes that the retrospective nature of the clause is justifiable on the basis that a regulation would begin operation on a day no earlier than the commencement of the Bill.

Amendment of an Act only by another Act

Section 4(4)(c) of the LSA provides that a Bill should only allow or authorise the amendment of an Act by another Act.

Clause 11

Clause 11 provides that the Governor in Council may make regulations, including local instruments, as contemplated in the NERL and set out in the schedule to the South Australian Act. Clause 11(b) allows the Governor in Council to make regulations that modify the application of the NERL in Queensland.

The explanatory notes advise the regulation would prescribe:¹³³

- entities who are an ‘assigned retailer’ for the Law and therefore subject to additional regulation, particularly in relation to large customers (schedule, s18, inserted s64C),
- 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),
- 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)), and
- circumstances in which assigned retailers can be registered as a retailer of last resort (schedule, s 22, inserted s123A).

A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC’s approach to Henry VIII clauses was that if an Act is purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SCL would voice its opposition by requesting that Parliament disallow the part of the instrument that breaches the FLP requiring legislation to have sufficient regard for the institution of Parliament. The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:¹³⁴

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

The OQPC Notebook explains that the existence of these circumstances does not automatically justify the use of Henry VIII clauses, and, if the Henry VIII clause does not fall within any of the above situations, the SLC classified the clause as ‘generally objectionable’.¹³⁵

¹³³ Explanatory Notes, p 6.

¹³⁴ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159.

¹³⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 159; Alert Digest 2006/10, p 6, paras 21-24; Alert Digest 2001/8, p 28, para 31.

The explanatory notes advise that the regulation making power will be restricted in some instances and provide flexibility when dealing with large customers.¹³⁶

Clause 12

Clause 12(1)(a) allows for a regulation to modify the application of the NERL in Queensland. The Governor in Council may make a regulation – to be known as a modification regulation – that modifies the operation of the NERL (Qld) and NER Regulations (Qld).

The explanatory notes advise that the provision has been limited so that the power can only be used for relatively urgent matters (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.¹³⁷

Committee comment

In relation to clauses 11 and 12, the committee considers that the specific regulation making power and subsequent disallowance powers of the parliament provide sufficient regard to the institution of Parliament. The committee also considers that it is acceptable and common for regulation making power such as this to be used to facilitate the application of national scheme legislation. The committee also supports the modification of the NERL to ensure that the arrangements are appropriate for regional Queensland should the Bill be passed and also enable future variations.

3.3 National scheme legislation

The committee considered the issue of the Bill implementing a national scheme (applied law) and whether the limitations on the sovereignty of the Queensland Parliament justifiable.

Clause 4

Clause 4 applies the NERL as a law of Queensland. The NERL is contained in the schedule to the *National Energy Retail Law (South Australia) Act 2011* (the ‘South Australian Act’).

The explanatory notes state:¹³⁸

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.

The OQPC Notebook provides that Parliament’s sovereign power to make laws for Queensland should not be compromised by administrative agreements made between Australian executive governments that bind the parties to obtain specific laws from their Parliaments without amendment by their Parliaments.

The need for governments of more than one parliamentary jurisdiction in a federation to agree on legislation to be passed in jurisdictions to some extent may cause a practical difficulty for the independence of their Parliaments.¹³⁹

¹³⁶ Explanatory Notes, p 6.

¹³⁷ Ibid, p 7.

¹³⁸ Ibid, pp 4-5.

SLC considered legislation drafted in Queensland and not in a predetermined form, or drafted in a way that incorporates Queensland drafting practices as well as modifications addressing local issues, is less objectionable.¹⁴⁰

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.

... 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.

The department advised:¹⁴¹

... future changes to the NERL may relate to new technologies and business models. As such, this a common sense provision aimed at expediting any non-contentious changes necessary to ensure legislation keeps step with inevitable technological advancement.

Clause 7

Clause 7 provides that the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* do not apply to the NERL (Queensland) or instruments made under it. The explanatory notes advise that the interpretation provisions for the NERL are set out in Schedule 2 of the *National Gas Scheme Act 2008* and are 'largely equivalent to provisions in the *Acts Interpretation Act*'.¹⁴²

Both the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* are well established acts which provide important statutory guidance and understanding on the terms used in Queensland legislation.

The explanatory notes state:¹⁴³

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. ...

Applying disallowance provisions from the Statutory Instruments Act in particular would create difficulties for Queensland in complying with its commitments under the Australian

¹³⁹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 176.

¹⁴⁰ Ibid, p 177.

¹⁴¹ Department of Energy and Water Supply, Correspondence dated 15 August 2014.

¹⁴² Explanatory Notes, p 5.

¹⁴³ Ibid, pp 11-12.

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. ...

Other provisions in the Statutory Instruments Act, such as the requirement of automatic expiry of regulation after 10 years would also cause difficulties.

Committee comment

The committee notes that this is a common issue with applied law arrangements. The committee is satisfied that the provisions are necessary to facilitate the operation of a national regime and for providing consistency across all jurisdictions and are therefore justified in this circumstance.

3.4 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

Appendix A – List of submitters

Sub #	Name
1	Energex Limited
2	Stanwell Corporation Limited
3	Alinta Energy Retail Sales Pty Ltd
4	Shopping Centre Council of Australia
5	Queensland Council of Social Service
6	Energy Retailers Association of Australia
7	AGL Energy Limited
8	Maranoa Regional Council
9	Lumo Energy
10	Queensland Consumers Association
11	Queensland Urban Utilities
12	Ergon Energy
13	Origin
14	Property Council of Australia
15	National Seniors Australia
16	APA Group on behalf of Allgas Energy
17	Envestra Limited
18	Momentum Energy

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

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

Appendix C – Proposed amendments to the National Energy Retail Law (Queensland) Bill 2014

Ref	Issue	Brief Description (Please see further detail in next section)
A1	<i>Retailer of Last Resort (gas)</i>	Policy amendment to reduce the scope of the RoLR regime in order to lower costs.
A2	<i>Gladstone Power Station</i>	Technical amendment to clarify that the NERL (Qld) is not intended to disrupt commercial sales under the <i>Gladstone Power Station Agreement Act</i>
A3	<i>Ergon Energy restrictions</i>	Technical amendment to clarify that restrictions on EEQ from entering into a market retail contract don't prevent it from entering into an agreement with a customer to buy electricity generated from solar PVs.
A4 & A5	<i>Exempt seller arrangements – AER duties / powers</i>	Technical amendments to: <ul style="list-style-type: none"> • Clarify AER has normal NERL powers after commencement to revoke / vary and exemption. • Remove mandate on AER to issue instruments of exemption to reflect existing AER practice
A6	<i>Card-operated meter provisions</i>	Technical amendment to clarify that card operated meter customers need not go through normal administrative processes (providing ID etc.) to form contract with retailer
A7	<i>Regulation making power</i>	Technical amendment to create head of power that would allow a regulator other than the AER to be nominated as regulator for Qld-specific amendments in rules
A8	<i>Off grid network (definitions)</i>	Technical amendment to definition of 'meter identifier' for off-grid networks to provide workable alternative to current NEM-related concept

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

Statement of Reservation

HON. TIM MULHERIN MP

DEPUTY LEADER OF THE OPPOSITION

SHADOW MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING

SHADOW MINISTER FOR LOCAL GOVERNMENT AND RACING

SHADOW MINISTER FOR TOURISM, MAJOR EVENTS AND THE COMMONWEALTH GAMES

MEMBER FOR MACKAY

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25 August 2014

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

Dear Chair

Statement of Reservation – *National Energy Retail Law (Queensland) Bill 2014*

I wish to notify the State Development Infrastructure and Industry Committee that the Queensland Opposition has reservations about aspects of Report No. 48 of the State Development Infrastructure and Industry Committee into the *National Energy Retail Law (Queensland) Bill 2014*.

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

Yours sincerely

A handwritten signature in blue ink, reading "Tim Mulherin".

Tim Mulherin MP
Deputy Leader of the Opposition