

Energy Alert

NECF to commence in Queensland - 1 July 2015

WHAT YOU NEED TO KNOW

- The *National Energy Retail Law (Queensland) Bill 2014 (NERL Qld Bill)* and the *Electricity Competition and Protection Legislation Amendment Bill 2014 (Electricity Competition Bill)*, which will implement the National Energy Customer Framework (**NECF**) in Queensland, have been passed by the Queensland Parliament. NECF is scheduled to commence in Queensland on 1 July 2015.
- Amendments made to the NERL Qld Bill prior to it being passed by the Queensland Parliament have changed the transitional requirements for entities who are currently selling electricity in Queensland in accordance with a special approval or generation authority under the *Electricity Act 1994 (Qld) (Electricity Act)*.
- The Department of Energy and Water Supply has also prepared, and made available to certain industry participants, exposure drafts of the *National Energy Retail Law (Queensland) Regulation 2014*, the *National Energy Retail Law (Consequential Amendments) Regulation 2014*, the *Electricity-National Scheme (Queensland) Regulation 2014* and the *National Gas (Queensland) Regulation 2014*.

WHAT YOU NEED TO DO

- From 1 July 2015:
 - Energy retailers (electricity and natural gas) will need to ensure their contracts and processes in Queensland are ready for NECF's implementation; and
 - anyone who sells electricity in Queensland in accordance with a special approval, generation authority or on-supplier exemption under the Electricity Act will be required to hold either a retail authority or retail exemption under the National Energy Retail Law.
- On commencement of the NERL, entities who are currently selling electricity in accordance with a special approval or generation authority will hold a transitional exemption and will be given a one year grace period during which they must either apply for a retail exemption or fit within an exemption class prescribed under the National Energy Retail Law.
- The transitional exemption will not apply to entities on-selling electricity under the on-supplier exemptions in the Electricity Act. These entities must either apply for a retail exemption or fit within an exemption class prescribed under the National Energy Retail Law prior to the commencement of the NECF in Queensland.
- Industry participants that received an invitation from the Department of Energy and Water Supply to comment on the exposure drafts of the regulations should provide their comments to the Department of Environment and Water Supply by 7 October 2014.

NECF

NECF establishes a national framework governing the sale and supply of energy (electricity and natural gas) to customers and includes consumer protection

provisions. NECF is established by the National Energy Retail Law (**NERL**) which is contained in the schedule to the South Australian *National Energy Retail Law (South Australia) Act 2011*, and the National Energy Retail Rules (**Retail Rules**).

The NERL Qld Bill will apply the NERL and Retail Rules (with some modifications) as the law of Queensland. In June 2014 we reported on the implementation of NECF in Queensland and the key changes to the existing regulatory framework. For more information please see our earlier alert available [here](#). This update focuses on the amendments made to the NERL Qld Bill during its passage through Parliament.

Report of the Committee

The NERL Qld Bill and Electricity Competition Bill were referred to the State Development, Infrastructure and Industry Committee (**Committee**) for consideration prior to their passage through Parliament. The Committee provided its report on the NERL Qld Bill and Electricity Competition Bill to Parliament on 28 August 2014.

In addition to recommending that the NERL Qld Bill be passed, in its Report the Committee made a number of recommendations to the Department of Energy and Water Supply (**Department**) including recommending that:

- retailers be required to provide small customers at least 10 business days' notice of a price increase;
- the regulations made under the NERL Qld Bill provide a \$20 cap on early termination fees;
- the Department:
 - undertake additional consultation with consumer groups, including those representing older Queenslanders and people from non-English speaking backgrounds; and
 - facilitate discussions between energy retailers and peak consumer groups;

in order to develop suitable tools to equip them to interpret their energy bills.

A number of the recommendations of the Committee were accepted by the Government and are reflected in the amendments made to the NERL Qld Bill before it was passed.

The Committee only made three recommendations in respect of the Electricity Competition Bill. In addition to recommending the Electricity Competition Bill be passed, the Committee recommended that:

- the Department closely monitor guaranteed service level payments and whether any significant fluctuations in payments follow from transitioning to a deregulated market; and
- the Electricity Competition Bill and NERL Qld Bill be considered by the House at the same time.

There were only minor amendments made to the Electricity Competition Bill before it was passed.

NERL Qld Bill

Amendments to NERL Qld Bill

In brief, the following amendments were made to the NERL Qld Bill before it was passed:

- the regulation making powers under the NERL Qld Bill were amended to provide a local regulator (for example, the Queensland Competition Authority or the regulator under the Electricity Act) the same functions and powers as the Australian Energy Regulator (**AER**) to:
 - make regulations in order to modify the Retail Rules; and
 - monitor, investigate or enforce such modifications.
- the process for transitioning existing exempt sellers, who currently sell electricity under the Electricity Act in accordance with either a special approval or generation authority, was amended (for more information please see our discussion below);
- new provisions were inserted to provide that a retailer must notify customers at least 10 business days prior to any proposed increases in standing offer prices that are not notified prices;
- in respect of gas retailing, the Retailer of Last Resort Scheme was amended so that the scheme only contemplates the failure of a 'second tier' retailer (ie a retailer with no more than 15 percent of the small gas customers in Queensland); and
- technical amendments in respect of metering.

In particular, entities which currently sell electricity in Queensland under either a special approval or generation authority issued under the Electricity Act should note the amendments made to the transitional arrangements under the NERL Qld Bill.

Transitional arrangements for exempt sellers in Queensland

Previously, the NERL Qld Bill provided that upon commencement of the NERL entities who sell electricity under either a special approval or generation authority would be transitioned to a retail exemption by the AER. The AER was responsible for determining the most appropriate class of exemption for each entity (either deemed, registrable or individual).

Amendments to the NERL Qld Bill have removed the obligation on the AER to transition entities. Upon commencement of the NERL, entities who sell electricity under either a generation authority or special approval will automatically be taken to hold a "transitional exemption". A transitional exemption will be valid for one year and will allow the holder to continue to sell electricity in accordance with the conditions of their special approval or generation authority.

Upon expiry of the transitional exemption, entities must hold either a retail authority or an appropriate class of retail exemption under the AER's Retail Exempt Selling Guidelines. On-sellers will need to ensure they either meet the requirements for a deemed exemption or apply for a registrable or individual exemption.

Persons who currently sell electricity under the on-supplier exemptions in sections 20A to 20O of the Electricity Act do not fall within the transitional provisions and must hold either a retail authority or an appropriate class of retail exemption upon commencement of the NERL.

Regulations

The Department has also prepared, and made available to certain industry participants, exposure drafts of the following regulations:

- the *National Energy Retail Law (Queensland) Regulation 2014*;
- the *National Energy Retail Law (Consequential Amendments) Regulation 2014*;
- the *Electricity-National Scheme (Queensland) Regulation 2014*; and
- the *National Gas (Queensland) Regulation 2014*.

In addition to amending the current Queensland electricity and gas regulations in order to facilitate the implementation of NECF, the regulations also make a number of modifications to the application of the Retail Rules in Queensland.

The modifications proposed under the regulations align with the Queensland Government's position under the NERL Qld Bill and the recommendations made by the Committee. We have not specifically considered the content of the regulations in this alert.

Commencement

NECF is scheduled to commence in Queensland on 1 July 2015.

Upon commencement, the NERL will only regulate the sale of electricity and natural gas. All other activities which currently require a licence under the Electricity Act or the *Gas Supply Act 2003 (Qld)*, for example operating a supply network or connecting generating equipment to a supply network, will continue to be regulated under the respective Act.

Electricity Competition Bill

The Electricity Competition Bill removes provisions of existing Queensland energy legislation to avoid duplication upon commencement of the NERL Qld Bill (such as provisions regarding retail authorities, special approvals for the sale of electricity and the on-supplier exemptions).

The Electricity Competition Bill also amends the Electricity Act to remove retail price regulation in South East Queensland and establish an effective market monitoring regime. While the removal of price controls is a significant change, particularly for small customers in South East Queensland, it is not dealt with in this update.

What you need to do

- Energy retailers will need to ensure their contracts and processes in Queensland are ready for NECF's implementation.
- If you hold a special approval, or generation authority, which authorises you to perform other activities in addition to the sale of electricity, upon commencement of the NERL you must continue to comply with the terms of that special approval or generation authority in respect of those activities.
- If you currently sell electricity in accordance with a special approval, generation authority or under the on-supplier exemption under section 20A to 20O of the Electricity Act, you need to review the available exemption classes under the NERL and determine the appropriate class of exemption for your activities. If you cannot comply with the conditions attached to either a deemed or registrable class of exemption, then you will need to apply to the AER for an individual exemption.
- If you have received a request for input on the exposure drafts of the regulations, and you intend to make a submission to the Department, then you should provide your comments by 7 October 2014.

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