

Review of Queensland Energy Legislation Issues Paper
Energy Industry Policy – Strategic Futures
Department of Natural Resources, Mines and Energy
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Review of Queensland Energy Legislation

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to Queensland Department of Natural Resources, Mines and Energy (DNRME) regarding the Review of Queensland Energy Legislation.

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The Queensland Government's review of state-based energy legislation provides an opportunity to streamline existing state legislation and the processes arising under that legislative framework, while supporting the harmonised national energy regulatory framework. State energy legislation plays an important role in supporting the technical, operational, safety requirements and consumer protections afforded under the national energy regulatory framework. It holds particular significance for Queensland in the delivery of electricity supply outside of the interconnected National Electricity Market (NEM). Given the significant changes to energy regulation which have occurred since the enactment of the state-based energy legislation, and the technological and consumer-driven transition currently occurring in the energy sector, it is timely to consider whether any changes are required to Queensland's energy legislation to ensure it is fit-for-purpose.

The role of state-based legislation in the national energy regulatory framework

The national energy regulatory framework was formed almost 20 years ago with the establishment of the NEM in 1998. At that stage, the NEM encompassed supply of electricity to parts of Queensland, New South Wales, the Australian Capital Territory, Victoria and South Australia, with Tasmania joining later in 2005. The framework evolved to extend to gas through the National Gas Laws in 2014, and subsequently to afford consumer protections under the national energy customer framework (which has to date not been adopted in Victoria).

This legislative framework supports the operation of the interconnected wholesale market to supply electricity to retailers and customers. Importantly, it creates the energy market bodies - the AEMC, AER and AEMO – that, between them:

- write the rules governing the energy markets and related customer protections;
- regulate and enforce compliance with the rules; and
- operate the wholesale energy market.

Recognised by the Australian Energy Market Agreement and implemented through uniform legislation in the relevant states and territories, the national energy framework is central to the technical workings of our energy system as well as the investment environment which underpins it. The NECF establishes a uniform set of energy-specific customer protections, creating business efficiencies while safeguarding consumer rights to energy as an essential service.

In this context, state-specific energy regulation plays an important role in supporting the national energy framework. It also plays an important role in governing energy supply to customers in areas which are not NEM connected. This second feature is particularly important in Queensland, as the interconnected grid does not extend to all Queensland communities.

At a high level, the legislation should:

- establish the overarching framework for the operation of electricity and gas markets;
- appropriately empower the relevant Minister or statutory authority to issue regulations or codes with regard to technical matters which are not otherwise regulated by the national energy framework (including by AEMO's technical requirements); and
- establish customer focused and cost efficient dispute resolution services through the jurisdictional Ombudsman.

The Review is considering the *Electricity Act 1994*, *Gas Supply Act 2003* and the *Energy and Water Ombudsman Act 2006* (as it relates to energy), and corresponding regulations. We limit our comments to the matters raised in those instruments.

Other legislative and regulatory instruments in Queensland which have a direct bearing on the delivery of energy to customers are outside the scope of this review, including for example:

- *Petroleum and Gas (Production and Safety) Act 2004*;
- *Electrical Safety Act 2002*; and
- The acts which adopt the national energy framework, and their supporting regulations:
 - *Electricity National Scheme (Queensland) Act 1997*
 - *National Energy Retail Law (Queensland) Act 2014*
 - *National Energy Retail Law (Queensland) Regulation 2014*
 - *National Gas (Queensland) Act 2008*
 - *National Gas (Queensland) Regulation 2014*

Objectives of the state-based energy laws

Consistent with the dual role of supporting the national energy framework (for those parts of the state which are governed by the NEM) and providing for energy supplied outside of the interconnected grid, the stated objectives of the legislation should be to:

- promote the long term interests of consumers with regard to the price, quality and reliability of electricity and gas services; and
- support the operation of the harmonised national energy regulatory framework.

As noted in the consultation paper, Queensland has several other state priorities regarding energy, including on the subjects of energy prices, energy security, support for the transition to a low-carbon energy sector and

attracting investment in Queensland's energy sector. These priorities are all consistent with the national energy objective and promoting the long-term interests of consumers. It is preferable to state the legislative objective at a high level, to reduce the need for any change in legislative object if there is a minor change in government policy in future (for example, a decrease in wholesale energy market prices may encourage a future change in policy to support a reduction in energy prices, rather than stable prices). Incorporating the national energy objective directly in the legislation ensures that relevant concepts are captured at a high level, in a manner consistent with the national energy regulatory framework. It is also helpful to directly incorporate an objective relating to supporting the national energy regulatory framework, as this may assist in ensuring consistency of the interpretation of the legislation and any regulations issued pursuant to it.

Energy and Water Ombudsman Scheme

The Energy Council supports consideration of changes to the Energy and Water Ombudsman Scheme Queensland (EWOQ) to increase the efficiency and flexibility of ombudsman services and reduce participant fees.

Participant fees for EWOQ are comparatively higher than in other jurisdictions. For example, in 2017 the Victorian Energy and Water Ombudsman conducted a report on funding models which reports that user fees for an inquiry in Victoria as \$73. This compares with a fee of around \$455 in Queensland for a comparable inquiry.

In part, these higher user costs may reflect a lack of flexibility in staffing and overhead costs under the EWOQ, which is a statutory body of the Queensland Government governed by an advisory body (appointed by the Queensland Government). In contrast, the jurisdictional energy ombudsman in New South Wales, Victoria and South Australia are structured as companies limited by guarantee, governed by a Board of Directors. These jurisdictional ombudsmen operate under company constitutions and charters, which allows members to agree required amendments from time to time. Retailers have observed that jurisdictional ombudsmen in NSW, Victoria and SA appear to be more flexible in scaling up or down according to demand.

The cost of EWOQ participant fees risks forming a barrier to entry for smaller retailers and new entrants, particularly noting the potential for the scope of the scheme to be expanded to include new participants (embedded networks). In this context, there is merit in reconsidering the governance structure of EWOQ to assess whether changes could result in decreasing fees and improved efficiency.

Innovation and new technologies

As noted in the Queensland Energy Legislative Review Consultation Paper, the electricity industry is in the midst of a broad-ranging transition, marked by a shift from centralised generation and a one-directional grid to increased consumer-driven decentralized energy generation and storage. Queensland is at the forefront of this transition, with almost a third of residential homes having solar PV installed (more than any other state or territory in Australia).

The transition in the energy sector brings with it a range of technical and regulatory challenges to ensure energy reliability, security and reduce the risk of poor customer outcomes. The AEMC has noted these challenges in its 2018 Review of Retail Energy Competition in the NEM (NEM Market Review), which reflected on the inconsistent regulatory treatment customers face in the context of continued take-up of solar PV and increase adoption of residential battery technologies. The NEM Market Review notes that currently, if a customer acquires distributed energy resources via its electricity retailer, the customer may have access to a jurisdictional ombudsman scheme. If the same customer acquires the same goods or services from a third party, it may not receive the benefit of the protections afforded by the NECF and would have no access to the ombudsman.

In the context of the NEM, the technical and operational issues arising with distributed energy resources are best tackled through NEM-wide solutions. Similarly as customers take up new technologies, new customer protection issues may arise, these are most appropriately dealt with under the national energy regulatory framework.

We note that these issues are being actively considered by Council of Australian Governments Energy Council (COAG EC) the AEMC and industry.

In 2016, the COAG EC released a discussion paper on consumer protections behind the meter. Following this, the COAG EC Ministers agreed to write to industry groups asking them to develop a Code of Conduct for new energy products and services. The Australian Energy Council has been actively working with Energy Consumers Australia and other stakeholders on a proposed industry self-regulated code covering behind the meter products and services. It is proposed that the Code would apply to distributed energy resources connected to the NEM, as well as beyond the NEM (including for example islanded systems or DER connected to microgrids).

In addition, one of the key recommendations of the 2018 NEM Market Review is for the AEMC to assess whether changes to the NECF are required to protect customers receiving services from new energy service providers (taking into account any voluntary code developed by industry).

The Energy Council supports the AEMC's consideration of these issues. The regulatory and technical challenges that arise with new energy technologies are best dealt with under the national framework, and not under state-specific energy legislation.

Powers of entry

The Energy Council supports the legislation extending powers of entry and access to any party who requires such entry and access in order to fulfil its regulatory role under the national energy regulatory framework. This would extend the express statutory powers to metering providers in the performance of their regulatory functions.

Unfortunately, we would caution against viewing powers of entry as a total solution to the access issues that are currently arising in Queensland's metering context. Metering providers are also noting that power industry locks are preventing access to meters (as only distributors are able to access the locked meter). In addition to improving the powers to enter property and access meters in connection with metering services, the legislative review could consider prohibitions on industry participants preventing access to meters by persons who require such access to fulfil their regulatory role under the national energy regulatory framework.

The role of retailers, metering coordinators, metering providers and metering data providers differ in an important way from other energy service providers, such as a third party who has been contracted to install a battery on the customer's premises. While retailers and metering parties perform a regulatory role in the NEM (including testing, replacement, and meter reads for billing and settlements purposes), the provider of new energy services is providing an additional service to the customer. The customer has a direct relationship with the battery provider, and can provide access directly. In this context there is no requirement for a statutory access right for new energy service providers.

Generator licensing and technical requirements

The legislative review provides an opportunity to remove duplication in state and national processes for generators. The Energy Council would also welcome clarification of timeframes in the licensing process and reconsideration of the suitable person test.

We also welcome the opportunity to move technical requirements from legislation into regulations. This approach creates increased flexibility so that changes can be made to technical requirements to meet changing operational requirements.

Opportunity to simplify legislation

In addition to addressing the specific concerns outlined above, we encourage the review to consider ways to simplify the legislation and regulations applying to energy wherever possible. This may include for example combining the gas and electricity laws into a single enactment, but only if this approach offers greater simplicity than keeping the laws as separate instruments. We expect that a view on this may be best developed by industry.

We would welcome the opportunity to further engage with the Queensland Government as you progress the review process.

For any questions about our submission please contact Oliver Williams by email at oliver.williams@energycouncil.com.au or on (03) 9205 3111.

Yours sincerely,

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Australian Energy Council