

Queensland Government
Department of Environment and Science

Submitted via email: EPAProgram@des.qld.gov.au

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Independent Queensland EPA Discussion Paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Queensland Government's consultation on the Independent Queensland EPA Discussion Paper.

The Australian Energy Council is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

The AEC and its members regularly engage and work with the respective environmental regulators around Australia to ensure our operations are up to date and compliant. In this engagement, our members have not experienced material challenges or difficulties arising from the different environmental governance structure used in Queensland compared to other states. The Discussion Paper also does not identify any current problems with how Queensland's Department of Environment and Science ('DES') has performed its environmental regulatory duties other than to say it does not align with the governance model used in other states.

This misalignment appears to be the main reason for this consultation. The AEC does not consider that, on its own, Queensland's absence of an EPA style regulator is cause for change.

For this reason, at this time, the AEC does not support Model 2 or Model 3. Before committing to either of these models, there should be an analysis of the actual, not theoretical, operational shortcomings of Queensland DES' performance to date as an environmental regulator and how shifting towards either an EPA Statutory Authority or EPA Statutory Body would improve performance. Otherwise, it appears to add significant initial and ongoing costs for no clear environmental benefit.

In the AEC's view, Queensland DES has adequately performed its functions to date and should remain the environmental regulator in Queensland. The AEC is comfortable with Model 1's recommendation to rename the Environmental Services and Regulation ('ESR') division to the Environmental Protection Agency as this will improve public awareness about the existence of an environmental regulator in Queensland.

Assessment Criteria Weighting

The Discussion Paper has produced a series of assessment criteria to guide its decision-making. This is helpful because it enables there to be multiple perspectives on the pros and cons of each governance model. However, the AEC also cautions about putting too much weight on the stakeholder valuation of each metric. Metrics like 'independence' and 'accountability' are aspirational so will always be rated highly whereas metrics like 'economic' imply a tradeoff between the economy and environment, so will not be universally favored.

Assessing Models 2 and 3

This is mentioned because of the aspirational appeals of Models 2 and 3, which should be balanced against their likely real-world output. The Discussion Paper rightly notes that while having separation between government policy making and regulatory functions is desirable, the structure of a regulator does not on its own equate to full independence. To date, the AEC has not found Queensland DES to be more susceptible to political interference compared to other jurisdictional regulators due to its absence of governance separation. In some instances, the relatively low profile of the ESR has allowed it to avoid the politicisation and subsequent political pressures that other environmental regulators face.

Whether an independent structure can drive better efficiencies is not entirely clear. There has recently been some criticism in other jurisdictions that EPAs move too slow when making important decisions, partly because they must manage their own structures as well as pressures outside it. That being said, having an independent body could enable a useful segregation of authority for dealing with matters (for example, the EPA might have a clearly limited scope to handle only environmental issues whereas things like planning would be the responsibility of another department). At the same time, it may lead to duplication and handballing between the EPA and DES when there are crossovers in responsibility yet no clear direction for who has ultimate authority. If Model 2 or 3 is pursued, these types of processes will need to be worked through, preferably with stakeholders, to ensure operations are streamlined.

The other matter that will require considerable stakeholder engagement is the financing arrangements. Both Models 2 and 3 will incur additional costs compared to maintaining the status quo, with the extent of the costs depending on the final constitution (e.g. whether a board and/or advisory committee are established). The Discussion Paper ponders different sources of funding including asking stakeholders the risks of an EPA controlling its own industry-sourced revenue.

The AEC considers the risks to be considerably high and could create undesirable incentives if the regulator stands to benefit from its enforcement activities. Many environmental regulatory matters rely on self-reporting and collaboration between industry and the regulator. Having an EPA that could control its own funds could have a chilling effect on this collaboration. The AEC strongly encourages that the view expressed in the Discussion Paper, which warns against industry revenue being retained directly to 'reduce the potential for conflicts of interest', is maintained.

The Discussion Paper additionally asks for views on the regulator funding its operations through the revenue it collects via fees on regulated industries. The difficulty with this approach is that it risks fees being set arbitrarily – i.e. fees are set to cover the regulator's operational expenses rather than set in line with principles related to proportionality and fairness. For this reason, the AEC is not comfortable with this arrangement, but if it was implemented, there would need to be full and transparent oversight of whether the regulator's expenses are reasonable.

Finally, there should be regard to the scope of any future EPA. The appendix to the Discussion Paper highlights that while many other jurisdictions might have an independent EPA, they vary significantly in scope. For example, the Western Australian EPA 'does not undertake approval, monitoring/compliance and enforcement activities'. There will inevitably be stakeholder pressure for a QLD EPA to be essentially a second arm for environmental policy. The AEC cautions against this and agrees with the sentiment of Graeme Samuel AC, as captured in the Discussion Paper, that policy direction is the remit of the elected

government¹ – in the event of doubt, any future EPA should be designed to err on the side of caution when it relates to policy matters.

Conclusion

While this submission has raised some scope, process and implementation questions relating to Model 2 and Model 3, we do not consider a reasonable case has been made for change. The Discussion Paper has not identified any gaps or shortcomings with the current DES model that would necessitate the type of change being recommended. We believe such analysis should take place before considering establishing an EPA. Given the general satisfaction with the performance of DES to date, the AEC supports the current arrangements remaining in place, noting that a name change as recommended in Model 1 could improve public awareness.

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Yours sincerely,



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¹ [Striking a balance – Peter Shergold and Graeme Samuel discuss independent vs departmental regulators | ANZSOG.](#)