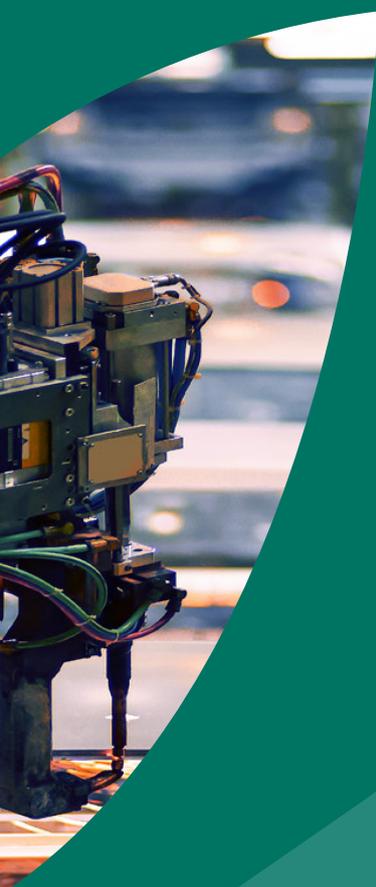


# Review of Queensland Energy Legislation

## Part 2: Options paper

A consultation paper containing detailed regulatory  
impact statements

October 2019



This publication has been compiled by the Department of Natural Resources, Mines and Energy

© State of Queensland, 2019

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence.

Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.



You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

**Interpreter statement:**

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this document, you can contact us within Australia on 13QGOV (13 74 68) and we will arrange an interpreter to effectively communicate the report to you.



## Contents

<b>Introduction</b> .....	4
Section 1: Contextual information.....	5
<b>Section 1.1</b> Background information on Queensland’s state laws .....	5
<b>Section 1.2</b> Summary of core issues.....	8
Section 1.3    Related state and national projects.....	11
Section 1.4 Other issues .....	14
Section 2: Detailed regulatory impact statements .....	15
<b>Section 2.1</b> Purpose of state energy laws (i.e. the Objectives of the Acts) .....	16
<b>Section 2.2</b> Energy efficiency and demand management .....	25
<b>Section 2.3</b> Interaction with applied national laws .....	34
Section 2.4    Licensing.....	57
<b>Section 2.5</b> Powers of entry and resumption .....	84
<b>Section 2.6</b> Technical requirements.....	109
<b>Section 2.7</b> Price control .....	130
<b>Section 2.8.1</b> Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers .....	148
<b>Section 2.8.2</b> Dispute resolution - Energy and Water Ombudsman.....	174
<b>Section 2.8.3</b> Dispute resolution - Regulator.....	196
<b>Section 2.9</b> Customer protections.....	203
<b>Section 2.10</b> Emergency powers .....	217
Section 2.11    Offences and enforcement.....	229
Section 3: Navigation tools.....	251
<b>Section 3.1</b> Summary of stakeholder consultation responses to Stage 1 Issues Paper .....	251
<b>Section 3.2</b> Acronyms and glossary.....	260

## Introduction

This document is Part 2 of the Energy Legislation Review Options Paper. It contains additional contextual information, detailed regulatory impact statements and navigation tools to help readers better understand the summarised options and recommendations put forward in Part 1.

### Section 1: Contextual information

- Background information on Queensland's state energy laws: *Electricity Act 1994* (Electricity Act), *Gas Supply Act 2003* (Gas Supply Act), *Energy and Water Ombudsman Act 2006* (Energy and Water Ombudsman Act) and *Liquid Fuel Supply Act 1984* (Liquid Fuel Supply Act).
- A summary of the core issues identified in relation to Queensland's state energy laws.
- An explanation of how this Review relates to other state and national work programs.

### Section 2: Detailed Regulatory Impact Statements

- 11 x detailed regulatory impact statements for consultation. These are technical documents that breakdown the relevant issue, explain in detail the options considered and the merits and impacts of each, and provide the comparative assessment performed to arrive at the recommended option.

### Section 3: Navigation tools

- Summary of stakeholder consultation responses to the Stage 1: Issues Paper.
- Acronyms and glossary list.

## Section 1: Contextual information

### Section 1.1 Background information on Queensland's state laws

#### Electricity Act 1994

Twenty-five years ago, Queensland's energy sector was run and regulated by the Queensland Electricity Commission. It was created solely for Queensland consumers and Queensland coal met 97 per cent of our energy demand. It was also predominantly regulated under state laws.

The original structure of the Electricity Act reflected the then vision for the sector:

- encouraging competition
- responsive to growing environmental concerns
- committed to retaining high safety, reliability and equity standards for an essential service.

A significant element of the original Electricity Act was its licensing framework which for the first time formally divided the supply chain into four distinct parts: generation, distribution, transmission and retail.<sup>1</sup> This was done to:

- create fit-for-purpose regulation for each part, based on their individual characteristics. For example to recognise the natural monopoly characteristics of a transmission business required different regulation to a generation business that could operate in a competitive market
- allow competition to grow in those parts where it was possible
- align the structure of Queensland's supply chain with other jurisdictions in the national electricity market.

Beyond licences, the Electricity Act also included:

- reserve powers for the Minister to set prices for electricity charged by electricity entities each year
- powers for Governor in Council and the Minister to restrict, ration and take over operations to ensure electricity supply in emergency and other special situations
- investigation powers and dispute resolution arrangements
- safety provisions related to electrical accidents and articles
- requirements for energy labelling and minimum energy performance standards.

#### Gas Supply Act 2003

Before the Gas Supply Act, all aspects of the gas industry from production, storage, supply and safe handling of gases had been regulated by Queensland's *Gas Act 1965*.

---

<sup>1</sup> The licensing framework also created two further categories for all else that did not fall into the four main categories. These were 'exemptions' and 'special approvals'. Exemptions did not require a licence (or authority), and a special approval was reserved for a unique or rare occurrence that required bespoke regulation.

In 2003, Queensland's gas industry was preparing to enter a newly created national market and its supply chain needed to be defined in a way that aligned with the new national framework just as the electricity industry had done before it.<sup>2</sup> An overhaul was therefore undertaken of the gas legislation in place at that time. This resulted in two new Acts: the Gas Supply Act and the *Petroleum and Gas (Production and Safety) Act 2004*, with the latter retaining most of the powers.<sup>3</sup>

The Gas Supply Act was designed to mirror, where possible, the structure and effect of the Electricity Act. However, while the Electricity Act and the Gas Supply Act shared similar supply chain terminology and licensing frameworks, the reach of the Gas Supply Act was much smaller in that it focussed on a very discrete part of Queensland's gas industry—LPG and natural processed gas distribution pipelines. As enacted, the Gas Supply Act was responsible for:

- distribution and retail authorities<sup>4</sup>
- works and access rights and responsibilities for distribution pipelines
- sufficiency of supply provisions for natural gas industry participants, including production, transmission, distribution and some large customers.

#### Energy and Water Ombudsman Act 2006

In July 2007, full retail competition commenced in Queensland's electricity and gas markets. This meant that for the first time small customers could choose their energy retailer.

In preparation for the introduction of full retail competition, the state's first Energy Ombudsman was appointed. Previously the functions of the Ombudsman had been performed by the Regulator through the Energy Consumer Protection Office.

The creation of the Energy Ombudsman was intended to be a "future evolution and enhancement of energy dispute resolution processes...to meet the demands of an impending full retail competition" and give "small electricity and gas customers in Queensland a timely, effective, independent and just way of having their disputes with energy sector entities investigated and resolved".<sup>5</sup>

The Energy Ombudsman Act 2006:

- gave the Ombudsman powers to make binding orders against energy sector entities and to establish dispute resolution processes and functions
- provided for the establishment of an advisory council, to give advice to the Ombudsman and the Minister
- provided for the Ombudsman be funded by scheme members i.e. energy distribution and retail entities.

In 2011 the Energy Ombudsman Act was extended to include south east Queensland small water customers and became the Energy and Water Ombudsman Act.

---

<sup>2</sup> Council of Australian Governments Natural Gas Pipeline Access Agreement of 7 November 1997 and the *Gas Pipelines Access Act 1998* (Qld)

<sup>3</sup> As enacted the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) was responsible for regulation and control of the upper and mid-stream parts of the gas industry (including the licensing regime for petroleum and gas transmission pipelines), and the technical and safety aspects of gas production, transmission, distribution and use.

<sup>4</sup> Retail licences would later be moved to the national framework and LPG distribution pipelines would no longer be licensed.

<sup>5</sup> Energy Ombudsman Bill 2006 (Qld), Explanatory Notes, p. 2

### Liquid Fuel Supply Act 1984

During the 1970s the world experienced two significant oil shocks which constrained supply and led to sharp increases in the cost of oil.

In the wake of these shocks, Australia's Commonwealth, State and Territory Governments developed national and state laws to coordinate the management of a liquid fuel emergency. These were the Commonwealth's *Liquid Fuel Emergency Act 1983* and in Queensland, the Liquid Fuel Supply Act.

The emergency provisions of the Liquid Fuel Supply Act relate to the extraction, production, supply, distribution, sale, purchase, use, consumption and storage of liquid fuel. Liquid fuel is defined as 'liquid petroleum, a liquid petroleum product, a liquid petrochemical, methanol or ethanol'.

The Commonwealth and State emergency provisions require states and territories to make preparations *prior to* the onset of a supply shortage and give emergency powers *in the event of* a declared liquid fuel emergency.

Between 2015 and 2017 the Liquid Fuel Supply Act was amended to include Queensland's bio-based petrol and bio-diesel mandates. These provisions do not fall into the scope of this review and are being reviewed separately.

## Section 1.2 Summary of core issues

The review has identified **four core issues** with Queensland's state energy laws:

1. There is duplication and lack of alignment with nationally applied laws.
2. Existing state legislation locks in an outdated view of the energy sector.
3. Customer protection arrangements are not flexible enough for the new energy sector.
4. The structures that support government action could be improved.

### Issue 1: There is duplication and lack of alignment with nationally applied laws

In 1998 Queensland became part of the National Electricity Market (NEM), which enabled Queensland to trade electricity with other states. Queensland's energy sector is now governed by state and applied national laws, with national regulatory bodies and rules playing an increasingly central role in both the reticulated gas and electricity sectors.

The extension of applied national laws has created duplication and a number of inconsistencies between the two schemes. This is inefficient and has led to unnecessary complexity and regulatory uncertainty. In the future, state laws need to better integrate and work alongside applied national laws, with less double handling.

#### **Example: Demand management**

Demand management can reduce or delay the need for expensive energy infrastructure. Since 2009 Queensland distribution businesses have been required to carry out demand management planning and reporting for consideration by the Regulator. National demand management regulations followed in 2013 and 2017. Today, national planning and reporting requirements duplicate state regulations, except in relation to Ergon Energy's 33 isolated networks.

By removing duplication between state and national demand management regulations while retaining obligations that are unique and important to Queensland, the reporting process can be simplified without any loss of benefits across Queensland.

### Issue 2: Existing state legislation locks in an outdated view of the energy sector

Changes over the last 25 years mean electricity's traditional one-way linear model—consisting of generation, distribution, transmission and retail—is no longer the only way to make and receive electricity. As solar and storage technologies improve and become more affordable, there will be growth in different types of energy systems with some attached and some detached from the national grid.

The framework of the Electricity Act is based on the linear model and this structure makes it difficult for the laws to fairly accommodate and acknowledge new types of energy sector participants. This is particularly evident in the Electricity Act's licensing framework and works and access provisions. For example, these laws assume that generators and network businesses are critically important physical structures that require land and access rights. While this may be true for traditional generators and network businesses, new supply models may also require rights to provide safe and secure services.

Queensland's energy laws need to be unlocked from its traditional linear structure, so they can signal support for an evolving energy sector.

**Example: Queensland's electricity licencing framework**

When the Electricity Act was first enacted, its licence was the only one needed to operate in the electricity sector in Queensland, and was designed for large, grid-connected and centralised participants.

Today, in addition to Queensland's electricity licencing arrangements, there is a national 'licence' (or registration process) to enter the NEM, and participants come in a range of shapes and sizes.

This creates a problem for Queensland's energy laws—the types of electricity participants that it was designed to fit are now also licensed by applied national law (i.e. is duplicated), and there is currently no well-fitting licence for the new types of generators and networks.

Queensland's Electricity Act can be improved by adjusting its underlying structure to better fit today's energy sector.

**Issue 3: Customer protection arrangements are not flexible enough for the new energy sector**

Electricity is recognised as an essential service in Queensland and a robust framework is required to ensure all customers have access to reliable, secure and affordable electricity, and to fast, fair, free dispute resolution services, regardless of where they live.

As referred to above, energy sector changes have and will continue to alter the traditional linear supply chain. As the sector changes, it is likely a growing number of customers will fall outside the scope of existing customer support and protections mechanisms within the current state laws. Further, the current design of customer support and protection mechanisms are rigid and difficult to adjust. Queensland's state energy laws need to be amended so that consumer protections are sufficiently flexible to manage changes in the sector.

**Example: the inflexible design of the Energy and Water Ombudsman**

The Energy and Water Ombudsman Act makes it difficult for the Ombudsman to deliver fast, fair, free help to Queensland energy and water customers. This is because the Act is prescriptive about which customers can access its services and how the service operates, including cost recovery.

Changes to the Energy and Water Ombudsman Act requires a lengthy legislative process. A current change to give electricity customers in embedded networks access to the Ombudsman's services has taken many years of work while equivalent customers in other jurisdictions can already access services.

In other states, a different structure delivers a more flexible and affordable Ombudsman scheme.

**Issue 4: The structures that support government action could be improved**

In any regulated sector the government has an important role to play, e.g. in relation to enforcement, dispute resolution, and management of emergencies.

At present, state laws have some inconsistencies around *how* government will intervene.

Best practice dictates that government action, when required, is most effective when it is fair, predictable, proportionate and transparent. Improvements can be made to Queensland's state laws

to clarify how the government will perform its established role in the sector. This will assist current industry participants and prospective investors in the sector.

**Example: *Technical requirements***

Technical requirements are essential to a safe and reliable energy supply. They include reliability standards and rules around what can be connected to the network.

Queensland's current technical requirements are spread across a number of documents – legislation, regulation, codes and licence conditions – and elements are based on a linear energy model. This means the framework is at times slow to change and difficult to navigate and apply effectively. These problems will be exacerbated by the increasing pace of change in the energy sector.

A new approach is needed. One that is flexible enough to shape around a changing energy landscape and written and located in a simple way so that it can be effectively applied and complied with.

## Section 1.3 Related state and national projects

### Caring for our environment

A number of stakeholder consultation responses commented on environmental issues.

The energy sector is Australia's largest contributor to carbon emissions. As such, climate change policy must intersect with energy policy. The Queensland Government is committed to transitioning the energy sector to a lower carbon future. Under the *Queensland Climate Transition Strategy: Pathways to a clean growth economy*, the Government is progressing measures to support its three key climate commitments.



Figure 1: Queensland Government's three key climate commitments<sup>6</sup>

Specific requests from stakeholders to address the renewable generation and emissions targets in state energy legislation are not directly addressed in this paper. To do so would duplicate or pre-empt the above initiatives.

However, the energy legislation review makes its own direct contribution to the Queensland Government's environmental journey, through options considered that may reduce or remove barriers to new and emerging participants like renewable energy generation. Legislative amendments arising from Climate Transition Strategy initiatives may be progressed separately, or in Stage 3 of this Review: Decision Paper, if timing permits.

### National Energy Retail Law (Queensland) ('NERL(Q)') Review

Customer protection laws for the sale and supply of energy to consumers are largely regulated through the NERL.

The Queensland Government is currently reviewing the application of the NERL in Queensland (i.e. the NERL(Q)) to assess whether the laws are increasing efficiency, improving consumer protection and delivering a net benefit to Queensland. The review is also considering options for future retail market reforms and ways to maximise the effectiveness of the law and improve customer outcomes.

<sup>6</sup> Department of Environment and Heritage Protection 2017, *Pathways to a clean growth economy - Queensland Climate Transition Strategy*, Queensland Government, Brisbane, viewed 17 July 2019 [https://www.qld.gov.au/\\_\\_data/assets/pdf\\_file/0026/67283/qld-climate-transition-strategy.pdf](https://www.qld.gov.au/__data/assets/pdf_file/0026/67283/qld-climate-transition-strategy.pdf)

Better integration of state energy laws with applied national laws, including the NERL is a key consideration of this review. Any legislative reform outcomes of the NERL(Q) Review may be progressed separately, or as part of Stage 3: Decision Paper.

### Hydrogen

Hydrogen offers potential benefits for Queensland's economy, energy sector, and environment. Opportunities lie in the production of renewable hydrogen and use of hydrogen as a flexible electricity load and as a substitute for natural gas in distribution pipelines.

By 2040, the hydrogen industry is projected to contribute \$4.3 billion of value to the Australian economy and support over 7000 jobs.<sup>7</sup> Work is underway to explore and capitalise on the hydrogen opportunity with the development of a national hydrogen strategy (led by Dr Alan Finkel through the Council of Australian Government's (COAG) Energy Council). Queensland launched its Hydrogen Industry Strategy in May 2019. Queensland is well placed to capitalise on this new industry, given our strong renewable energy resources, close proximity and established trading relationships with Asian markets, and existing infrastructure base.

Recommendations in the Queensland strategy commit to creating a streamlined regulatory environment to enable the safe and sustainable development of the hydrogen industry. It is expected that a similar commitment will be made in the national hydrogen strategy by December 2019. The energy legislation review has not separately examined options in relation to hydrogen, but will instead dovetail with the outcomes of these work programs, if timings permit.

### Electric vehicles

At present, uptake of electric vehicles is low—just 0.2 per cent of new light vehicle sales—but expected to grow significantly as electric vehicles become cost competitive with petrol vehicles (expected to occur in approximately 10 years' time).<sup>8</sup> The Queensland Government is planning ahead and work is underway to examine the regulatory framework for electric vehicles. This review presents a number of high-level options about how electric vehicles should be treated under the energy laws. Feedback on these options will inform further targeted consultation with key stakeholders. If legislative changes are required, these changes may be progressed separately, or as part of the Stage 3: Decision Paper.

### Stand-alone power systems and embedded networks

The Australian Energy Market Commission (AEMC) is currently undertaking a comprehensive review of laws that apply to stand-alone power systems and embedded networks.

Its *Review of the Regulatory Frameworks for stand-alone power systems – Priority 1 Final Report* was published on 30 May 2019.<sup>9</sup> Priority 2 of its stand-alone power systems work is expected to be completed by 31 October 2019.<sup>10</sup> The AEMC's *Updating the Regulatory Frameworks for Embedded Networks: Final Report* was published on 20 June 2019.

---

<sup>7</sup> ACIL Allen Consulting for ARENA 2018, *Opportunities for Australia from Hydrogen Exports*, p. 54, viewed 17 July 2019, <https://arena.gov.au/assets/2018/08/opportunities-for-australia-from-hydrogen-exports.pdf>

<sup>8</sup> Australian Energy Market Operator, *2018 Electricity Statement of Opportunities*, p. 30, viewed 17 July 2019, [https://www.aemo.com.au/-/media/Files/Electricity/NEM/Planning\\_and\\_Forecasting/NEM\\_ESOO/2018/2018-Electricity-Statement-of-Opportunities.pdf](https://www.aemo.com.au/-/media/Files/Electricity/NEM/Planning_and_Forecasting/NEM_ESOO/2018/2018-Electricity-Statement-of-Opportunities.pdf)

<sup>9</sup> Focussing on the development of a national framework for customers that move from grid-connected supply to stand-alone systems provided by distributors.

<sup>10</sup> Focussing on the development of a national framework to support the supply of electricity from stand-alone power systems provided by parties other than distributors.

As part of these reviews, the AEMC is considering numerous matters regulated by state energy law—including licensing, works and access rights, technical requirements, price control, dispute resolution, and customer protections. This stage of the review does not duplicate that work but rather proposes options to support directions established by the AEMC. Further consideration of any specific recommendations will be incorporated as part of Stage 3: Decision Paper, if timing permits.

#### Open Energy Networks Project

The AEMO and Energy Networks Australia are currently undertaking a project to determine the best mechanism to transition to a two-way grid that allows better integration of distributed energy resources (DER) for the benefit of all customers. Included in this work are considerations of various model market frameworks managing system monitoring and planning, dispatch arrangements, connection of DER and optimisation of the distribution level.

This may have the potential to impact on state energy laws, for example recognition of DER benefits within the retail price control framework. This Stage 2: Options Paper has highlighted the potential to build additional flexibility into the price control framework to support the Open Energy Networks Project and other developments in the sector. However, no findings have been made on these, or on other aspects such as existing provisions in the Electricity Act, which give:

- transmission entities the responsibility for regional system control of the transmission grid
- distribution entities responsibility for network control of its supply network. This includes co-ordinating the operation of the supply network and any generators connected to it, controlling the switching of elements of the supply network and access to them and scheduling and controlling the switching of controllable load.<sup>11</sup>

A White Paper for the Open Energy Networks Project is currently being developed and is expected to be finalised in 2019. Any legislative changes that are needed under state legislation in response to that paper may be progressed separately, or as part of Stage 3: Decision Paper, if timing permits.

---

<sup>11</sup> Electricity Act ss. 9, 36A and 45A.

## Section 1.4 Other issues

### Fewer changes proposed for the Gas Supply Act

A broad range of changes are proposed for the Electricity Act. Fewer changes are proposed for the Gas Supply Act, noting ongoing work to develop a Gas Action Plan.

Compared to the Electricity Act, few consultation respondents commented on or suggested improvements to the Gas Supply Act. This likely reflects the narrower scope of the Gas Supply Act and that in the time since the Act was introduced, the industry has been less impacted by the drivers of change that have transformed the electricity sector.

### Revisiting the idea of a single Energy Act

The Stage 1: Issues Paper floated the idea to merge the Electricity Act and the Gas Supply Act into a single Energy Act. This idea was based on the possibility that future changes might converge the two industries and their associated risks.

Consultation responses indicated that stakeholders were generally open to the idea but only if it did not create new risks.

Having further examined the differences and similarities between the gas and electricity industries, there does not appear to be a sound rationale for joining the Electricity Act and Gas Supply Act at this time; there would be little benefit gained from merging the two acts and any benefits would be outweighed by new risks.

The review identified:

- Areas of genuine overlap have already been merged under the NERL(Q) and the Energy and Water Ombudsman Act.
- For the most part, the remaining state regulations for the electricity and gas industries are necessarily different to properly address the different type and scale of risks of each industry.
- A merged Energy Act could 'sit' similar types of regulations from each industry next to each other, however to merge the regulations would likely compromise the effectiveness of each industry's regulations.
- Joining the two acts would likely create poorer compliance outcomes as gas and electricity participants would have the confusing task of wading through a merged Energy Act to find the regulations that apply to them.

## Section 2: Detailed regulatory impact statements

This section contains 11 detailed regulatory impact statements (RIS). Each statement provides information on the issue/s, the options considered to address the issue/s, and analysis of potential impacts of each option.

Each detailed RIS has a corresponding summarised RIS, see the table below for details.

<b>Topics</b>		<b>Part 1</b>	<b>Part 2</b>
<b>T1</b>	Purpose of state energy laws (i.e. the Objectives of the Acts)	Section 2.1	Section 2.1
<b>T2</b>	Energy efficiency and demand management	Section 2.2	Section 2.2
<b>T3</b>	Interaction with applied national laws	Section 2.3	Section 2.3
<b>T4</b>	Licensing	Section 2.4	Section 2.4
<b>T5</b>	Powers of entry and resumption	Section 2.5	Section 2.5
<b>T6</b>	Technical requirements	Section 2.6	Section 2.6
<b>T7</b>	Price control	Section 2.7	Section 2.7
<b>T8</b>	Dispute resolution	Section 2.8.1 Energy and Water Ombudsman fee options for embedded networks	Section 2.8.1
		Section 2.8.2 Energy and Water Ombudsman	Section 2.8.2
		Section 2.8.3 Other	Section 2.8.3
<b>T9</b>	Customer protection	Section 2.9	Section 2.9
<b>T10</b>	Emergency powers	Section 2.10	Section 2.10
<b>T11</b>	Offences and enforcement	Section 2.11.1 Structural arrangements	Section 2.11
		Section 2.11.2 Penalties	

## Section 2.1 Purpose of state energy laws (i.e. the Objectives of the Acts)

### Context

The purpose section of legislation plays an important role in guiding how the law is interpreted and applied. Section 14A of the *Acts Interpretation Act 1954* provides:

*In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.*

Getting the purpose right helps decision-makers and those subject to the law to understand and exercise their obligations and rights in ways that best support desired outcomes. It is one of the factors a court will consider in the context of the specific provision which is the subject of litigation, though it is not the only factor. The High Court's approach has been that general statements in legislation as to purpose and object need to be treated with caution and understood by reference to other provisions in the legislation i.e. they must be interpreted in the context of the Act as a whole. The purpose section nevertheless shapes interpretation.<sup>12</sup>

Historically, outcomes sought by Government intervention in the energy industry—whether legislative or otherwise—have concerned:

*Access and security* i.e. making sure users can access energy services and energy supply is secure. This recognises energy as an essential service for public good. Examples of how this is managed within state energy law include obligations placed on energy entities to connect, powers of resumption for new infrastructure, and provisions dealing with emergency situations.

*Quality* i.e. making sure the energy system is safe and reliable. This recognises both the inherent dangers of energy supply and community reliance on energy. Examples of how this is managed within state energy law include considerations in issuing licenses, and technical requirements placed on entities.

*Cost* i.e. making sure energy is produced and delivered efficiently. This recognises the monopoly characteristics of energy infrastructure provision. Examples of how this is managed within state energy law include through energy efficiency and demand management, licensing, general obligations placed on entities and powers of entry.

---

<sup>12</sup> Pearce D. C., Geddes R. S., *Statutory Interpretation in Australia* (7<sup>th</sup> edition), 2014, Lexisnexis Butterworths, Australia at [2.11]. The practical effect of purpose sections in legislation was explored in the *Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection & Anor* [2016] QSC 272. That case concerned the application of ss. 3 and 5 of the *Environmental Protection Act 1994* (the EPA). Section 3 is the objects section of the EPA whereas s. 5 effectively replicates s. 14A of the *Acts Interpretation Act*. The applicant argued that the effect of ss. 3 and 5 of the EPA was to oblige a decision maker in making a decision to approve an application for an environmental authority, to be positively satisfied that decision achieved the objects of the EPA. However, Justice Bond held: “[17] The administering authority was obliged by s. 5 to make the final decision which I have described “in the way that best achieves the object of the Act”, namely the object of ecologically sustainable development as defined in s. 3. However, the language of s. 5 is not language which is calculated to require a particular finding or reach a particular state of positive satisfaction as a precondition to a lawful performance of the function or exercise of the power. Nor is it language which obliges the attainment of a particular objective outcome. Rather it is language which is specifically expressed at a high level of generality because it is language directed to impose a duty on the decision maker which regulates the way in which the decision maker goes about making the decision. It requires the decision maker to make the decision in the way that the decision maker conceives is the way that best achieves ecologically sustainable development.”

*Customer protection* i.e. making sure customers are not subject to unfair practices or behaviour. This recognises that power imbalances exist between customers and providers in the energy market which need to be effectively managed. Examples of how this is managed within state energy law include price control, dispute resolution and customer protections such as guaranteed service levels.

*Environmental protection* i.e. making sure energy is produced and delivered in an environmentally sustainable way. This recognises the environmental footprint of energy supply and need to encourage responsible practices. Examples of how this is managed within state energy law include via considerations in issuing licenses and obligations on energy entities to act in an environmentally sound way.

Each of these outcomes is reflected to varying degrees within the existing stated purposes of state energy law. See Figure 2.

Electricity Act, s. 3	Gas Supply Act, s.3	Energy and Water Ombudsman Act, s.3	Liquid Fuel Supply Act, long title
<ul style="list-style-type: none"> <li>• Establish framework to promote <b>efficient, economic and environmentally sound</b> electricity supply and use</li> <li>• Regulate industry</li> <li>• Establish competitive market in line with national reform process</li> <li>• <b>Protect</b> interests of <b>consumers</b></li> <li>• Take into account national competition policy requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Establish framework to promote <b>efficient and economic</b> processed natural gas supply</li> <li>• <b>Protect</b> interests of <b>customers</b> via regulation of distributor and via distribution codes</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a <b>timely, effective, independent and just</b> avenue for <b>customers</b> (and occupiers of land) to have energy and water disputes to be investigated and resolved</li> </ul>	<ul style="list-style-type: none"> <li>• Provide for the production, supply, distribution, sale, use and conservation of liquid fuel in the event of a <b>shortage of liquid fuel</b></li> </ul>

Figure 2: Stated purpose of current state energy laws<sup>13</sup>

### Assessment of current issues

A key issue relating to the current purposes of the legislation are whether they should be updated to support, or align with applied national energy laws, and/or state energy priorities.

The objectives of national energy laws express purpose in terms of outcome at a very high level. While there are three different national energy objectives (electricity, gas and retail), each share the common aim of:

*Promoting efficient investment in and efficient operation and use of energy services for the long-term interest of consumers in relation to price, quality, safety, reliability and security of supply.*

State energy priorities, such as those expressed in the Affordable Energy Plan, tend to set objectives at more of an action-based level. For example, stabilising energy prices, ensuring long-term security

<sup>13</sup> The Liquid Fuel Supply Act's long title is provided, above, as this Act does not have an objective section to set out its purpose.

of supply, supporting the transition to a low-carbon energy sector, attracting investment in Queensland's energy sector, and improving value of government activities.

There are advantages to both approaches, with many legislative instruments today setting out purpose at a high level, complemented by advice on how the legislation will achieve that purpose.

#### Adopting national energy laws

At the time state energy laws were introduced, applied national laws were not yet in place. Today, the applied national laws regulate key aspects of the energy system, including economic regulation of distribution, access arrangements, market rules and consumer protections. As outlined in Section 2.3: Interaction with applied national laws, it is important the two frameworks work well together.

Stakeholder feedback from the Australian Energy Council, the Australian Gas Infrastructure Group, Queensland Farmers Federation and Vector supported alignment of state and national objectives.<sup>14</sup>

Aligning the purpose of state energy law with national energy objectives would help promote greater integration between the relevant instruments and ensure they work to a common goal. With national energy objectives now well established and understood by decision makers and industry, adopting these as a purpose of state laws could also simplify arrangements.

However, a potential drawback of the national energy objectives is the lack of express consideration of environmental aims. While these are only currently reflected in state Electricity Act objectives, environmentally sound supply and use of energy is a key challenge facing the energy markets. This is reflected by state priorities including reducing Queensland's contribution to climate change, the State's post 2020 climate transition policy, supporting the transition to a low carbon energy sector, the Queensland Renewable Energy Target, and work being undertaken by the Just Transition Group to support workers and communities affected by the transition of our energy sector.

National energy objectives also place efficiency as a primary goal, while in current state laws efficiency is one goal among several of equal standing that need to be effectively balanced.

#### State energy priorities

While state energy law plays an important role in complementing applied national laws, the applied national laws do not apply uniformly across the state. Queensland also has particular challenges, particularly in relation to distance, which state laws need to be able to manage.

A number of stakeholder submissions recognised the need for the objectives to reflect Queensland's unique requirements. Vector's submission recommended that as well as national alignment, the legislation should be expressed to support objectives of the state government to suit the unique circumstances or requirements of the state's energy sector.<sup>15</sup> Similar sentiments were expressed by the Australian Energy Council and Redback Technologies which recognised the dual role of state legislation in supporting alignment, while providing for localised conditions.<sup>16</sup>

Stakeholders also called for state energy law to expressly consider environmental factors. These included the Queensland Conservation Council and the Environmental Defenders Office.<sup>17</sup>

---

<sup>14</sup> Australian Energy Council submission, p. 2; Australian Gas Infrastructure Group submission, p. 2; Queensland Farmers Federation submission, p. 2; Vector submission, p. 1.

<sup>15</sup> Vector Limited submission, p. 2.

<sup>16</sup> Australian Energy Council submission, p. 2; Redback Technologies submission, p. 1-2.

<sup>17</sup> Queensland Conservation Council submission, p. 1; Environmental Defenders Office submission, p.2-3.

*Any change to the energy sector must be designed to address and lessen the energy sector’s contribution to climate change and move Queensland toward carbon-free energy production and usage.<sup>18</sup>*

Energy affordability and customer choice were further highlighted as important measures by Meridian Energy and Energy Queensland.<sup>19</sup>

## Options

Key options which have been considered are:

Option	Description
<b>Status quo (option 1)</b>	No changes would be made to the existing stated purposes in Queensland energy legislation
<b>Align with national energy objectives (option 2)</b>	The purpose sections of the Electricity Act and Gas Supply Act would be updated to align with national objectives  A purpose section would be included in the Liquid Fuel Supply Act  No change would be made to the Energy and Water Ombudsman Act
<b>Align with national energy objectives and Queensland energy priorities (option 3)</b>	The purpose sections of the Electricity Act and Gas Supply Act would be updated to reflect the dual role of state energy legislation in supporting applied national laws and state priorities  A purpose section would be included in the Liquid Fuel Supply Act  No change would be made to the Energy and Water Ombudsman Act

### Option 1: Status quo

Under option 1, the existing purposes in the Electricity Act, Gas Supply Act and Energy and Water Ombudsman Act would be retained. The Liquid Fuel Supply Act would remain without a stated purpose, other than as outlined in its long title.

The advantage of option 1 is that the existing purposes, at least for electricity, are expressed in a way that support balance between promoting economic, environment and social outcomes. This presents an advantage over applied national laws. However, some ‘action-oriented’ provisions of the legislation appear outdated, which may reduce the effectiveness of the legislation, specifically the purposes of:

- establishing a competitive market in line with the national electricity industry reform process – a competitive market for generation and retail was established under national reform processes in the 1990s and 2000s and is now largely regulated via the applied national electricity laws
- taking into account national competition policy requirements – while very significant in the mid-1990s when the Electricity Act was introduced, continuing to highlight alignment with national competition policy no longer appears necessary.

<sup>18</sup> Environmental Defender’s Office submission, p. 2.

<sup>19</sup> Energy Queensland submission, p. 10; Meridian Energy Australia Pty Ltd submission, p. 1.

For the Gas Supply Act, environmental aims do not appear in the purposes of the legislation, though the objects balance economic and social objectives. Exclusion of environmental consideration was likely due primarily to the limited scope of the Act in regulating distribution pipelines only, though may no longer represent community expectations.

The purpose outlined in the Energy and Water Ombudsman Act reflects both the expected outcome of that legislation and how it will be achieved in a clear and concise way. There is unlikely to be any benefit from moving away from this approach. While Section 2.8.2: Dispute Resolution discusses alternative approaches for the Energy and Water Ombudsman legislation, even if changes are made, the current objective could still be used as a guide.

For the Liquid Fuel Supply Act, a purpose is not expressly specified with the long title highlighting the role of the Act in managing liquid fuel emergencies. This has not created any practical difficulties, though it is noted that there has not yet been a need to use emergency provisions.

Impact group	Estimated impact
Industry	Nil – status quo
Consumers	Nil – status quo
Public	Nil – status quo

#### Option 2: Align with national objectives

Under option 2, the purposes of the Electricity Act and Gas Supply Act would be updated to align with the national energy objectives, along the lines of the approach suggested by the Australian Energy Council,<sup>20</sup> i.e. to:

- promote efficient investment in and efficient operation and use of energy services for the long-term interest of consumers in relation to price, quality, safety, reliability and security of supply
- support the operation of the harmonised national energy regulatory framework.

The approach would promote greater integration between the relevant instruments, and ensure they work to a common goal. With national energy objectives now well established and understood by decision makers and industry, adopting these as a purpose of state laws could also simplify arrangements.

Key drawbacks of the approach are an emphasis on efficiency, and lack of express consideration of environmental aims. Removing the objective of environmentally sound supply and use is unlikely to reflect community expectations, and appears inconsistent with state priorities of reducing Queensland’s contribution to climate change or support the transition to a low carbon energy sector.

<sup>20</sup> Australian Energy Council submission to the issues paper, p. 2.

However, the Australian Energy Council did not see any inconsistency between national energy objectives and state energy priorities:

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... 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.<sup>21</sup>

Despite this, AEMC has made clear that while it does not ignore environmental policy in carrying out its role as advisor to governments, it does not take environmental policy into account when making rules or recommendations. In particular, the Commission has explained that the achievement of such policy objectives may potentially have broad societal impacts, rather than a more narrow, objective assessment based on technical engineering, economic or financial considerations such as those relevant to national energy objectives, noting that Governments may take other action to support environmental policy. Similarly excluding environmental objectives from the purpose section of the Electricity Act would reduce its significance as a factor for decision makers to consider under the legislation.

Under option 2, and consistent with Queensland Government drafting practice, a purpose provision would be included to reflect the aim of the Liquid Fuel Supply Act. The purpose of the Act is to make provision for state supply shortage emergencies referencing its interaction with the Commonwealth legislation.<sup>22</sup> An additional purpose would also be included in the objectives provision to recognise the Act's biofuel mandate framework. The provision would consider the objective of the amending Bill (the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015) to:

- provide assurance to existing ethanol and biodiesel producers and stimulate investment in a biofuels industry in Queensland
- contribute to regional growth and jobs creation
- reduce greenhouse gas emissions from motor vehicles
- take advantage of the emerging second generation technologies for biofuels from a range of feedstock.

No changes would be made to the Energy and Water Ombudsman Act.

---

<sup>21</sup> Australian Energy Council submission to the issues paper, p. 2.

<sup>22</sup> Further consideration can be taken at the drafting stage given the status of the Commonwealth Government's Liquid Fuel Security Review.

Impact group	Estimated impact
Industry	Improves certainty of operating environment, with aligned and well understood guiding principles for key pieces of energy legislation
Consumers	Improves emphasis on long-term consumer outcomes as key guiding factor in all decisions made under the legislation
Public	Lack of express recognition of aim to achieve environmentally sound supply and use may distort outcomes of legislation

### Option 3: Align with national objectives and include Queensland’s strategic energy objectives

Under option 3, the purposes of the Electricity Act and Gas Supply Act would be updated to align with the national energy objectives and state energy priorities in a way that balances economic and environmental aims, i.e. to:

- promote the long-term interests of consumers with regard to the price, quality, safety and reliability of electricity and gas services
- promote efficient, economic and environmentally sound energy supply and use.

This could be supplemented by detail in the legislation on how the purpose is to be achieved. For example, by reference to the legislation’s role in:

- complementing the operation of applied national energy laws
- establishing a licensing framework, works and access rights and technical regulation which promote an industry that is efficient, competitive and responsive to the social, industrial and commercial needs of the Queensland community and supports the just transition to a low carbon energy sector
- establishing price control arrangements, a customer service levels framework, concessions agreement framework and dispute resolution which provide appropriate community safeguards in relation to energy activities
- establishing a flexible and fit for purpose standards and codes framework to promote the supply of diverse and innovative energy services, including in off-grid areas
- establishing emergency provisions and powers of resumption to support access and security.

In line with s. 14 of the Acts Interpretation Act, the impact of this would be that these purposes would become relevant factors for decision makers to consider under the legislation, though not the only factors. As illustrated in *Midson Construction (Qld) Pty Ltd v Queensland Building and Construction Commission* [2018] QSC 199, the purpose section of an act will not displace the literal meaning of a clause. Key decisions currently made under the Electricity Act and Gas Supply Act relate to licensing, the decision to make a code and disciplinary action. Most of these decisions also have additional specified criteria for consideration.

Under option 3, no changes would be made to the Energy and Water Ombudsman Act. Changes would be applied to the Liquid Fuel Supply Act in line with option 2.

The advantage of the approach in option 3 is that it recognises the dual role of state-legislation in supporting the applied national laws, as well as advancing Queensland specific priorities. The disadvantage is that it adds complexity, particularly for managing competing objectives, which may create confusion.

Section 2.1: Purpose of state energy laws (i.e. the objectives of the Acts)

Impact group	Estimated impact
Industry	Adds complexity to operating environment, though aim of integration with applied national laws should improve certainty of operating environment, with aligned and well understood guiding principles for key pieces of energy legislation
Consumers	Improves emphasis on long-term consumer outcomes as key guiding factor in all decisions made under the legislation
Public	Retains existing aim of balancing environmental, economic and efficiency objectives

Comparative assessment

	Key advantages	Key disadvantages	Assessment
<b>Option 1: Status quo</b>	<p>Good balance of economic, environmental and social goals in electricity legislation</p> <p>Long standing and well understood by industry</p> <p>Relevant and up to date reflection of aims and role of Energy and Water Ombudsman Act</p>	<p>Does not sufficiently focus on outcomes for end users, or acknowledge:</p> <ul style="list-style-type: none"> <li>• current goals (e.g. integration with applied national laws)</li> <li>• challenges of future supply (e.g. transitioning to low carbon sector)</li> </ul> <p>Lack of purpose section in Liquid Fuel Supply Act does not meet contemporary drafting practice</p>	<b>Not preferred</b> as does not sufficiently focus on current and future goals of energy sector
<b>Option 2: Align with national energy objectives</b>	<p>Strong integration with applied national laws simplifies operating environment for industry.</p> <p>For Liquid Fuel Supply Act reflects contemporary drafting practice</p>	Insufficient focus on environmental objectives	<b>Not preferred</b> given insufficient focus on environmental outcomes
<b>Option 3: Align with national energy objectives and state priorities</b>	<p>Strong integration with applied national laws and support for state priorities.</p> <p>For Liquid Fuel Supply Act reflects contemporary drafting practice</p>	Provides limited guidance on competing objectives, which may create confusion	<b>Preferred</b> for Electricity Act and Gas Supply Act as focuses on current and future goals of energy sector

### Recommendation

The review is recommending option 3. Changes to the Electricity Act and Gas Supply Act are expected to improve the meaning and usefulness of the current objectives by:

- recognising the important role of applied national laws
- re-focusing the objectives on the Queensland Government's current energy priorities, including achieving balance between economic and environmental aims.

The purpose section of the Energy and Water Ombudsman Act remains unchanged and the Liquid Fuel Supply Act is amended to include a 'purpose' provision to reflect its role in liquid fuel supply emergencies and the mandating of biofuel.

### Consistency with other policies and legislation

#### Competition Principles Agreement – s. 5

Section 5 of the Competition Principles Agreement provides that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

The proposed objectives in option 3 should not have the impact of restricting competition.

#### Fundamental legislative principles

The proposed objectives in option 3 are intended to improve legislative clarity, consistent with fundamental legislative principles.

### Implementation

Implementation of option 3 would occur through legislative amendment to existing purpose sections of the legislation and be supplemented by guidance material on how the legislative objectives should be interpreted.

#### Stakeholder questions

##### Topic 1 Purpose of Legislation (i.e. Objectives of the Acts)

Q1.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q1.2 Why?

Q1.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.2 Energy efficiency and demand management

### Context

Energy efficiency and demand management initiatives aim to lower costs for consumers and reduce environmental pollution by incentivising energy conservation, reduced emissions and improved network utilisation (see Figure 3: *What is energy efficiency and demand management*).

Energy efficiency	Demand management
Energy efficiency is a form of demand management that reduces the amount of total energy consumed for a given task. Using less energy lowers costs for consumers and reduces greenhouse emissions created by the energy sector. <sup>23</sup>	Demand management describes modifications to patterns of electricity consumption that improves the management of peak demand on the network. Demand management can improve the overall productivity of the supply network by reducing the need to build infrastructure to meet peak demand or manage congestion. For consumers, demand management tools and services offer the opportunity to save money by shifting demand away from expensive to less expensive times of day. <sup>24</sup> Effective demand management delivers fixed and variable energy cost savings for consumers.

Figure 3: *What is energy efficiency and demand management*

Strategies to improve demand management and energy efficiency have recently gained momentum under the banner of improved energy productivity. These target costs associated with underutilised energy supply infrastructure and inefficient energy consumption, as well as environmental pollution caused by energy sector emissions. Figure 4 summarises current state and national energy efficiency and demand management regulations.

	State legislation	Applied national laws and Commonwealth
<b>Measures targeting electricity networks</b>	<ul style="list-style-type: none"> <li>• Distribution entities must consider demand side and supply side options for the efficient supply of electrical energy<sup>25</sup></li> <li>• Distribution businesses must prepare demand management plans annually for approval by the regulator<sup>26</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Distribution businesses must develop strategy for considering non-network options for addressing system limitations<sup>27</sup></li> <li>• Distribution businesses to publish Distribution Annual Planning Reports that including a five year plan for demand management, and summary of actions over previous year<sup>28</sup></li> <li>• Transmission businesses must consider non-network options (including demand side options) for relieving current or likely constraints or congestion points<sup>29</sup></li> </ul>

<sup>23</sup> Consumers can lower their variable energy costs by reducing their consumption through improved energy efficiency.

<sup>24</sup> Assuming other billing elements are available such as a digital meter and time of use tariffs.

<sup>25</sup> Electricity Act, s. 42(e).

<sup>26</sup> Electricity Regulation, r. 127A- 127H.

<sup>27</sup> National Electricity Rules, Clause 5.13.1, Schedule 5.9.

<sup>28</sup> National Electricity Rules, Clause 5.13.2, Schedule 5.8.

<sup>29</sup> National Electricity Rules, Clause 5.20.3.

		<ul style="list-style-type: none"> <li>• Demand Management Incentive Scheme and Innovation Allowance Mechanism</li> <li>• National Energy Productivity Plan</li> </ul>
<b>Measures targeting gas networks</b>	• n/a	<ul style="list-style-type: none"> <li>• National Energy Productivity Plan</li> </ul>
<b>Measures targeting consumers<sup>30</sup></b>	<ul style="list-style-type: none"> <li>• Registration and labelling of energy efficient equipment and products<sup>31</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Registration and labelling of energy efficient equipment and products<sup>32</sup></li> </ul>

Figure 4: Summary of state and national energy efficient and demand management regulation

### Assessment of current issues

Appropriate: the legislation addresses a social, economic or environmental need or risk

While there is broad support for energy efficiency and demand management endeavours, it is questionable whether there is a need for specific state legislative action.

#### Duplication

##### Energy efficiency

As highlighted in Figure 4, duplication exists between state and federal legislation relating to registration and labelling of energy efficient equipment and products.

State obligations were introduced first under Chapter 7 of the Electricity Regulation. These became redundant with the commencement of the Commonwealth's *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) on 1 October 2012. The GEMS Act was designed to simplify the system for manufacturers and importers of regulated appliances and equipment by replacing seven overlapping pieces of state and territory legislation and four state regulators with a single Commonwealth Act and national regulator. This framework appears to be working effectively and efficiently,<sup>33</sup> though a recent report by the Energy Efficiency Council has highlighted opportunities to introduce new appliance standards and raise standards overtime.<sup>34</sup> Nevertheless, with a national system in place, the state requirements no longer appear to serve a purpose.

##### Demand management

Duplication also exists between state and applied national legislation in relation to demand management obligations placed on electricity distribution entities.

Under the Electricity Act, holders of a distribution licence must consider demand side and supply side options for the efficient supply of electrical energy. Incentives under the applied national electricity rules also encourage distribution entities to consider demand management opportunities, but in a more targeted way.

<sup>30</sup> Note there are also mechanisms to enable consumers to shift or manage their demand of their own volition and/or encourage new business models to assist consumers to do this.

<sup>31</sup> Electricity Regulation, Chapter 7

<sup>32</sup> *Greenhouse and Energy Minimum Standards Act 2012* (Cth)

<sup>33</sup> In 2017 the net savings of GEMS regulations to the Australian economy ranged between \$862 million to \$1.64 billion, with greenhouse gas emissions savings of between 4.6 and 7.4 million tonnes (Commonwealth of Australia 2018, *The Independent Review of the GEMS Act 2012 Draft Report*, viewed 17 July 2019, <https://www.energy.gov.au/publications/greenhouse-and-energy-minimum-standards-gems-act-review-draft-report>)

<sup>34</sup> Murray-Leach, R. 2019, *The World's First Fuel: How energy efficiency is reshaping global energy systems*, Energy Efficiency Council, Melbourne, p. 31, viewed 17 July 2019, <http://www.eec.org.au/uploads/Documents/The%20Worlds%20First%20Fuel%20-%20June%202019.pdf>

For example, the:

- *regulatory investment test for distribution* process requires entities to examine non-network alternatives to new network investment
- *distribution annual planning review* obligations include obligations on distribution businesses to consider non-network options for addressing system limitations in accordance with a demand side engagement strategy
- *demand management incentive scheme* rewards distribution businesses for implementing relevant non-network options that deliver net cost savings to retail customers
- *demand management innovation allowance* provides distribution businesses with funding for research and development in demand management projects that have the potential to reduce long-term network costs.

Similarly, demand management planning and reporting measures apply to distribution businesses under the National Electricity Rules which largely duplicate state laws. The state rules require distribution entities to prepare an annual demand management plan for the Regulator including a description of existing and planned programs for demand management for the next five years, and a report on performance over the previous year. The Regulator is able to approve a plan or return the plan to the entity for additional work.

The applied national laws require distribution entities to prepare annual Distribution Annual Planning Reports including information on the entity's demand management activities over the previous year, and plans for demand management over the forward planning period. Distribution entities must also prepare a demand side engagement document which describes how the entity will investigate, develop, assess and report on potential non-network options under the applied national law.

#### Effective

Stakeholders variously called for:

- removal of existing state obligation on the basis they are duplicative of Commonwealth (energy efficiency labelling) and applied national laws (demand management)
- additional measures relating to energy efficiency and demand management to be introduced.

#### Removal of existing state obligations

While supporting energy efficiency and demand management activity, a number of stakeholders cautioned against specific regulatory schemes placing direct obligations on market participants.

The submissions of Rheem Australia and Simply Energy highlighted the potential of regulatory obligations to stifle innovation.<sup>35</sup> Rheem Australia noted the GEMS Act has provided for a more ordered and coherent set of arrangements for regulating energy efficiency, than individual state schemes.<sup>36</sup>

Energy Queensland and Simply Energy noted measures including consumer education, cost-reflective pricing, customer incentives and government schemes are potentially more effective

---

<sup>35</sup> Rheem Australia Pty Ltd submission, p. 2; Simply Energy submission, p. 1.

<sup>36</sup> Rheem Australia Pty Ltd submission, p. 1.

mechanisms to achieve energy efficiency and demand management goals than regulated obligations.<sup>37</sup> In relation to existing obligations, Energy Queensland advised that:

*State legislation to report energy efficiency and demand management is largely redundant*<sup>38</sup>

While Energy Queensland noted demand management reporting obligations under applied national laws excludes activities in the isolated networks, it recommended that instead of continuing reporting obligations for these networks, the Queensland Government should explore opportunities to enhance energy efficiency in these networks, including through the:

- installation of heat pumps as existing hot water systems fail
- introduction of energy efficiency standards within building codes for new buildings in isolated locations
- application of additional minimum energy efficiency for appliances installed in isolated networks, such as air conditioning and lighting.<sup>39</sup>

Energy Queensland noted these would directly reduce diesel consumption and customer electricity bills and suggested this approach would be more effective within a technical guideline.<sup>40</sup>

#### Additional measures

Stakeholders including the Environmental Defenders Office and Queensland Council of Social Service called for additional recognition and action in state legislation to promote energy efficiency and demand management.<sup>41</sup> The Environmental Defenders Office recommended that Queensland's energy laws be revised to provide an express policy to require and promote energy efficiency, conservation and demand response programs and services, given the benefits of these for energy reliability, affordability and efficiency.<sup>42</sup> The Environmental Defenders Office also noted that Queensland does not currently regulate the fugitive methane emissions from the gas sector.<sup>43</sup> The Queensland Council of Social Service suggested the Electricity Act should promote emissions reductions across the energy sector and accessibility to all consumers, including low-income households and renters.<sup>44</sup>

In a workshop conducted in late 2017, eminent scientists from the Royal Society of Queensland also recommended a need for greater focus in the legislation on energy productivity and efficiency. The workshop reported that action would be best focused at the local level (e.g. buildings, appliances, industrial facilities and off-grid consumer programs), rather than a top down approach.

The Australian Gas Infrastructure Group recommended a coordinated national approach to improving energy efficiency. It encouraged customer participation in state-level energy efficiency schemes which do not duplicate Commonwealth incentives, and allow high efficiency gas appliances

---

<sup>37</sup> See for example, Simply Energy submission, p. 2.

<sup>38</sup> Energy Queensland submission, p. 19.

<sup>39</sup> Energy Queensland submission, p. 23.

<sup>40</sup> Energy Queensland submission, p. 23.

<sup>41</sup> Environmental Defenders Office submission, p. 2; Queensland Council of Social Service submission, p. 4.

<sup>42</sup> Environmental Defenders Office submission, p. 4.

<sup>43</sup> Environmental Defenders Office submission, p. 3.

<sup>44</sup> Queensland Council of Social Service submission, p. 4.

to generate certificates. The submission noted the examples of the Victorian Energy Efficiency Target, and the New South Wales Energy Savings Scheme.<sup>45</sup>

However as highlighted by Origin Energy’s submission to the review, the Queensland Government Climate Transition Strategy includes a commitment to:

*Develop and implement a Queensland Demand Management and Energy Efficiency Strategy to complement the 50% renewable energy target. The strategy will include a mix of mechanisms tailored to achieving a state-wide energy efficiency goal. To determine an appropriate mix of measures, the Government will explore energy efficiency opportunities in Queensland and the potential to establish an energy efficiency obligation.<sup>46</sup>*

The Queensland Government’s Energy Management Action Plan is currently being developed and will highlight the work the Government is doing in the energy efficiency and demand management space, including the types of measures proposed by stakeholder groups above. It is not proposed to duplicate this work.

### Efficient

Stakeholder concerns in relation to the redundancy of existing measures are discussed above.

### Objectives

The objective of regulatory requirements relating to energy efficiency and demand management is to promote system efficiency and reduce environmental impacts of energy supply.

### Options

Options which have been considered are:

Option	Description
<b>Status quo (option 1)</b>	Existing regulatory obligations at a state level would remain
<b>Remove regulation (option 2)</b>	State obligations relating to energy efficiency and demand management would be removed: <ul style="list-style-type: none"> <li>• registration and labelling of energy efficient equipment and products</li> <li>• distributor obligations to report on demand management activities</li> <li>• distributor obligations to consider both demand side and supply side options for the efficient supply of energy.</li> </ul>
<b>Remove duplication (option 3)</b>	State registration and labelling of energy efficient equipment and products would be removed  The following distributor obligations would be retained only for areas not regulated under applied national laws: <ul style="list-style-type: none"> <li>• to report on demand management activities</li> <li>• to consider both demand side and supply side options for the efficient supply of energy.</li> </ul>

<sup>45</sup> Australian Gas Infrastructure Group submission, p. 5.

<sup>46</sup> Department of Environment and Heritage Protection 2017, *Pathways to a clean growth economy - Queensland Climate Transition Strategy*, Queensland Government, Brisbane, p. 18, viewed 17 July 2019 [https://www.qld.gov.au/\\_\\_data/assets/pdf\\_file/0026/67283/qld-climate-transition-strategy.pdf](https://www.qld.gov.au/__data/assets/pdf_file/0026/67283/qld-climate-transition-strategy.pdf)

### Option 1 – Status quo

Under option 1, no change would be made to existing arrangements.

While the inclusion of energy labelling and performance standards in the legislation add to legislative complexity, they have no practical effect in light of the Commonwealth GEMS Act.

Electricity distributors would continue to have reporting obligations at both a state level and under applied national laws, and would continue to be subject to a general obligation under both state and applied national laws to consider both demand side and supply side options for the efficient supply of energy. To the extent the obligations duplicate national efforts, this creates inefficiency and unnecessary complexity. However, the provisions continue to service a purpose for areas falling outside the applied national laws relating to demand management, in particular the isolated networks of Ergon Energy.

Impact group	Estimated impact
Distribution businesses	Nil – status quo
Consumers	Nil – status quo
The Regulator	Nil – status quo

### Option 2 – Remove regulation

Under option 2, state obligations relating to energy efficiency and demand management would be removed.

The key advantages is simplification of the legislative framework. Electricity distribution entities would also save costs associated preparing demand management plans and reports. The Queensland regulator would save costs associated with reviewing and approving the distribution entities' annual plans.

The disadvantage of the approach is that it would completely remove demand management obligations relating to areas of the distribution network that fall outside of national economic regulation, in particular the isolated networks of Ergon Energy. Demand management plans for these network areas ensure opportunities are identified and offered to customers. Energy Queensland's projected megavolt-ampere (MVA) savings from demand reduction have increased over time across its demand management program and while savings are not broken down by area (e.g. isolated versus grid connected), it is assumed that some of this demand reduction will have benefited isolated networks by diverting investment in infrastructure and fuel costs.

Impact group	Estimated impact
Distribution businesses	<ul style="list-style-type: none"> <li>• Cost savings associated with preparing reports under Queensland's regulatory requirements estimated at \$43,477 per annum</li> </ul>
Consumers	<ul style="list-style-type: none"> <li>• Minimal impact for grid connected customers</li> <li>• Customers in isolated networks no longer covered by existing state legislation and regulations that require distribution businesses to consider and implement non-network solutions</li> </ul>
Regulator and government	<ul style="list-style-type: none"> <li>• Minor cost savings from reviewing and approving demand management reports (approximately 8 hours)</li> <li>• Potentially higher CSO costs in isolated areas if demand management solutions in isolated networks not pursued, though requirements could be built into CSO agreements</li> </ul>

Option 3 – Remove duplication

Under option 3, state registration and labelling of energy efficient equipment and products would be removed. The following distributor obligations would be retained only for areas not regulated under applied national laws (i.e. the Ergon Energy isolated networks):

- planning and report on demand management activities
- considering both demand side and supply side options for the efficient supply of energy.

The option acknowledges the role demand side options can play to improve network efficiency, whether grid connected or otherwise. Given the significant cost to serve the isolated networks, continued encouragement of network entities to consider demand side opportunities may help to keep downward pressure on costs, the majority of which are met by the Queensland Government through CSO payments.

However, it is noted that in the AEMC’s *Review of stand-alone power systems – Priority 1 Final report*, the Commission is recommending that economic regulation including distribution annual planning reporting obligations be applied to new stand-alone power systems of distributors.<sup>47</sup> Should this occur, and be applied to existing systems (which have been excluded from the Commission’s review), the continuation of existing state arrangements may no longer be needed. Option 3 would therefore need flexibility to apply only where arrangements are not adequately addressed under the applied national laws.

Impact group	Estimated impact
Distribution businesses	<ul style="list-style-type: none"> <li>• Reduction in cost compared with status quo</li> <li>• Would continue to incur costs associated with preparing isolated communities reports under Queensland’s regulatory requirements (approximately \$21 739)<sup>48</sup></li> </ul>
Consumers	Largely status quo, however customers on isolated networks may benefit from increased focus on demand management activity, given effectively separate reporting obligation
Regulator	Largely status quo

Comparative assessment

Option	Advantages	Disadvantages	Assessment
Option 1: Status quo	Queensland Government can review and influence the distributor’s demand management plan before it is finalised and submitted to AER.	Complexity and cost (\$43 477 p.a. to for annual planning and reporting activities)	<b>Not preferred</b> Costs not commensurate with risk to be managed  Cost is greater than option 2 and option 3 (this option addresses the same risk as option 3, but at greater cost)

<sup>47</sup> Australian Energy Market Commission 30 May 2019, *Review of the regulatory frameworks for stand-alone power systems - priority 1, Final report*, p. vii, viewed 17 July 2019, <https://www.aemc.gov.au/sites/default/files/2019-05/SAPS%20Priority%201%20Final%20Report%20-%20FOR%20PUBLICATION.pdf>

<sup>48</sup> This estimate is based on the assumption that costs would be no more than half of the current preparation costs, given the reduced scope of work.

Option	Advantages	Disadvantages	Assessment
	Retain demand management oversight measures for isolated communities		
<b>Option 2: Remove regulation</b>	Simplified regulatory framework – direct cost saving to Energy Queensland of \$43 477 per annum	Removes demand management regulation for isolated communities, though this may be managed through CSO agreement	<b>Not preferred</b> Delivers lower costs at the expense of increased risk to isolated communities  This option may give isolated communities less coverage and oversight  Distribution costs are less than option 1 and option 3, however risk exposure is greater
<b>Option 3: Remove duplication</b>	Removes redundant regulations and simplifies arrangements  Greater focus on demand management in isolated networks which may benefit customers and reduce CSO costs	May be unnecessary depending on outcomes of AEMC review of stand-alone power systems  Estimated total costs: <\$21,739 + 8hrs	<b>Preferred</b> State regulation does not duplicate national and cost of regulation is commensurate to risk that distributor will not actively consider benefits of demand management in these networks, and benefits in terms of reduce cost will not be realised  Direct cost on distribution business is less than option 1 but more than option 2  Expected to generate greater net benefit than option 2, given whole of system efficiencies associated with demand management and existing high cost to serve isolated networks

**Recommendations:**

Option 3 is preferred. Under option 3, the duplication of laws relating to registration and labelling of energy efficient equipment and products will be resolved by removing redundant state legislation and regulations. The approach resolves the duplication of regulations relating to demand management planning and reporting by removing redundant state regulations but retaining demand management planning and reporting regulations for isolated communities to encourage efficiency. This specifically involves amendments.

## Consistency with other policies and legislation

### Competition Principles Agreement – s. 5

The proposed objectives in option 3 should not have the impact of restricting competition.

Maintenance of demand management obligations on Energy Queensland in relation to the isolated networks should support competition, as the distributor must factor in non-network approaches to management of supply in the isolated networks.

### Fundamental legislative principles

The proposed removal of duplicative provisions, and maintenance of demand management objectives in isolated networks under option 3 is consistent with fundamental legislative principles: no changes are proposed to the rights and liberties of individuals, or adjustments made to the powers of Parliament.

## Implementation

Implementation of option 3 would occur through legislative amendment by:

- removing duplicative legislation in relation to energy efficiency
- clarifying that obligations relating to demand management apply only in relation to areas which are not otherwise subject to AER economic regulation. This would provide flexibility, depending on the outcomes of the AEMC's review into stand-alone power systems.

The first demand management report for the isolated networks would be due in the May prior to the first full financial year of operation. A baseline of the value of demand management activity against efficiency measures should be included in the first report. Subsequent reports should detail movement against this baseline.

### Stakeholder questions

#### Topic 2 Energy efficiency and demand management

Q2.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q2.2 Why?

Q2.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.3 Interaction with applied national laws

### Context

A complex framework applies to the regulation and governance of energy in Queensland, with numerous instruments affecting energy production, supply and consumer protection. The energy laws subject to review in this Stage 2: Options Paper form a relatively modest part of this framework. Of approximately 5 500 pages of laws, rules and regulation, state-based law accounts for just over 10 per cent.

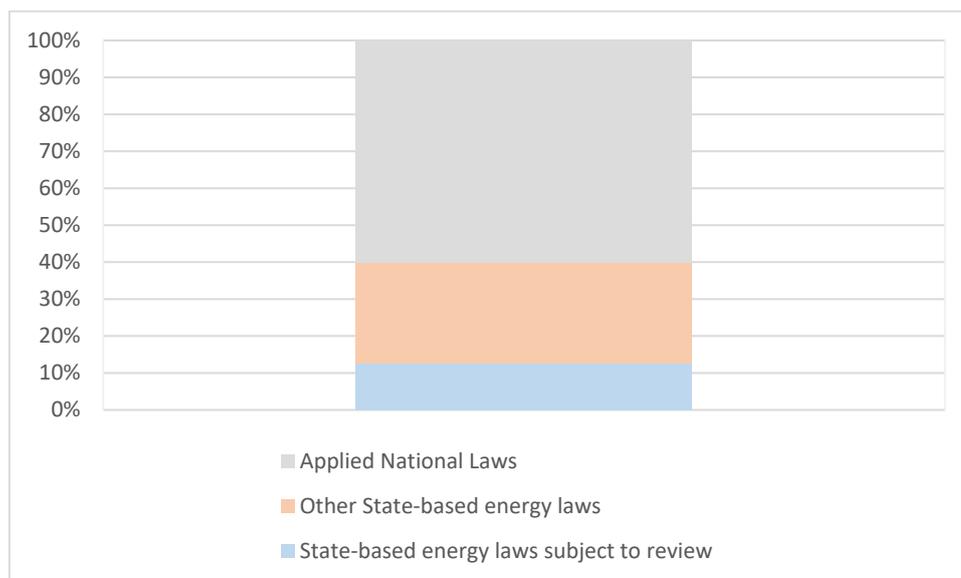


Figure 5: Key legislative instruments regulating energy in Queensland, by page count

As illustrated by Figure 5, the vast majority of energy laws are set out under the applied national law regime. Other key instruments relate to electricity and gas safety, and to upstream petroleum. The complexity of energy law comes not only from the volume of legislation but also how the various instruments interact.

Applied national laws regulate those matters in the energy industry where a harmonised approach between jurisdictions is expected to bring greatest net benefit, in terms of lower compliance costs, market security and economies of scale.<sup>49</sup>

The scope and operation of the applied national laws regime is set out in the Australian Energy Market Agreement. Under this agreement, states, territories and the Commonwealth work together to lead, develop and oversee a national energy policy framework. Specifically, the jurisdictions work through the COAG Energy Council and market bodies, in particular the AEMC to have national market rules changed. For applied national legislation to change, unanimous agreement of the COAG Energy Council is needed.<sup>50</sup>

Figure 6 illustrates the inter-relation between the applied national electricity laws and state electricity laws in terms of subject matter.

<sup>49</sup> See, e.g. COAG Energy Council 2015, *Terms of Reference*, viewed 17 July 2019, <http://www.coagenergycouncil.gov.au/publications/coag-energy-council-terms-reference-first-edition-2015>

<sup>50</sup> Australian Energy Market Agreement, s. 4, s. 6.4, s. 6.6, viewed 17 July 2019, [http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australian%20Energy%20Market%20Agreement%20-%20Dec%202013\\_1.pdf](http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australian%20Energy%20Market%20Agreement%20-%20Dec%202013_1.pdf)

Applied national electricity laws	State electricity law subject to review	
<b>FINANCIAL MARKET: Operation of the wholesale exchange market</b>		
Regulate participants bidding into and purchasing from the wholesale market Establish regional structure Set market rules (bidding, etc.)	General content	n/a – state laws do not deal with
<b>PHYSICAL SYSTEM: Operation of the electricity systems</b>		
Register generators, network service providers, metering providers and other participants	Ensure participants fit & proper	License who can undertake generation, transmission and distribution activities
Set rules re reserves AEMO operation of market and issuing directions to maintain secure and reliable power system AEMO to plan and conduct operations within the power system to achieve and maintain security	Supporting security & reliability	Emergency and rationing powers Set network technical requirements, including minimum service standards Set rules prohibiting unsafe practices, powers to monitor and take compliance action Powers of entry and resumption
Network connection and access processes and requirements Planning and expansion of networks and the national grid, including demand management planning and incentives	Network connection, planning and expansion	Set distribution areas; place obligation to connect certain parties on reasonable terms Demand management planning, powers of acquisition
Classification of services (incl. ring fencing), revenue determinations Cost allocation, tariff classes and tariffs Billing and settlements, prudential requirements Prepayments and capital contributions	Economic regulation of network services	Some restrictions on pricing of certain distribution activities
Retail and credit support arrangements between distributors and retailers with shared customers	Distributor / retailer relations	Distributor-retailer coordination agreement
Installations, Collecting data, Accuracy / maintenance of metering installations	Metering	Powers of entry to support Metering in on-supply arrangements and in isolated networks
<b>CUSTOMER INTERFACE: Connection and supply of retail services to premises</b>		
Terms and conditions of retail and supply contracts Retail authorisations Treatment of confidential information New connections policy Benchmarks for energy consumption Metering Marketing practices Retail market performance reporting		Price control – powers to fix or monitor retail electricity prices and feed in tariffs, restriction on pass through of some distribution costs Framework for distribution code with Guaranteed Service Levels Requirement retailers to administer concessions Energy and Water Ombudsman scheme

Figure 6: Subject matter dealt with under applied national electricity laws and state electricity laws

For electricity supplied in Queensland, the applied national electricity laws mainly apply to the grid-connected systems from Cairns to the New South Wales border (see shaded sections in Figure 7).<sup>51</sup> The national gas law covers gas mainly supplied by means of major transmission and distribution pipelines.<sup>52</sup>

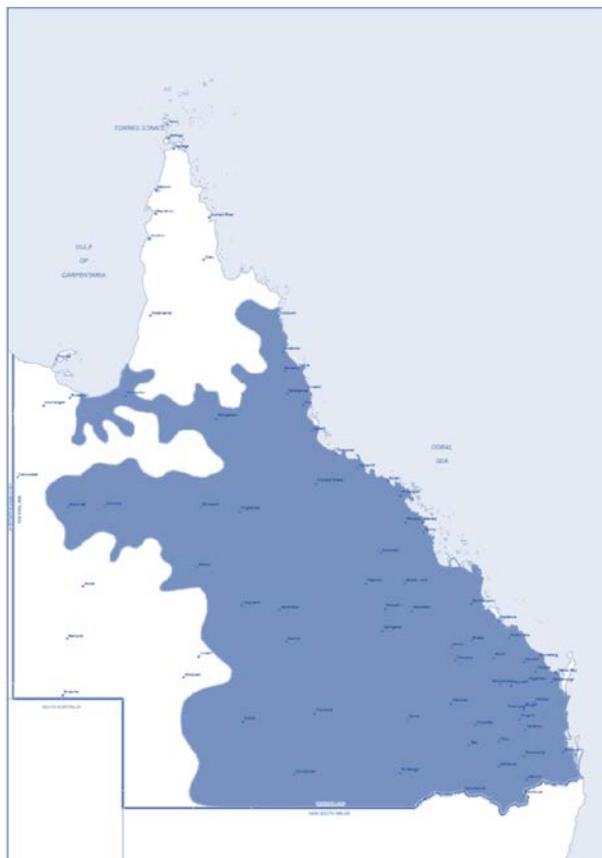


Figure 7: Application of national electricity laws in Queensland

Regulating different aspects of the same industry, it is important the state regulation and applied national laws work in a complementary way. To facilitate this, the Queensland Government needs oversight of how the system as a whole is operating in practice: e.g. in relation to emerging issues, issues where regulation is no longer required, and issues where amendments to one framework need the support of the other.

For the applied national laws, the Minister receives advice through the COAG Energy Council, supported by the Energy Security Board. The Energy Security Board was established in 2017 to provide ‘whole of system oversight for energy security and reliability to drive better outcomes for customers’.<sup>53</sup> It produces material including an annual ‘Health of the National Electricity Market’ report, focusing on electricity system risks.

<sup>51</sup> But not exclusively. For example, economic regulation of distribution extends to Mt Isa-Cloncurry network and retail regulation under NERL will apply to all retail activity in the state, except where specifically excluded.

<sup>52</sup> The gas supply systems of the Maranoa Regional Council and the Western Downs Regional Council are not included in applied national laws, except as far as they relate to the activity of selling gas to customer premises.

<sup>53</sup> COAG Energy Council Energy Security Board, viewed 17 July 2019, [www.coagenergycouncil.gov.au/market-bodies/energy-security-board](http://www.coagenergycouncil.gov.au/market-bodies/energy-security-board)

For state matters, the Government is principally informed by the Regulator and the Queensland Competition Authority. The Regulator’s focus is on monitoring compliance with state legislation. In this role, the Regulator is supported by various information gathering powers which provide that licensed entities and retailers must give the Regulator the information the Regulator reasonably requires to enable the Regulator to perform its functions.<sup>54</sup> These appear in legislation, as well as within the terms of licenses.

By contrast, the Queensland Competition Authority has a role to provide wide-ranging advice. Under the legislation, the Minister may direct the Queensland Competition Authority to conduct a review into *any matter* relating to the Queensland electricity market or reticulated processed natural gas markets.<sup>55</sup> This provides a mechanism for the Government to receive consolidated advice that may touch on matters relevant to both applied national laws and state legislation. However, no information gathering powers are provided to support the Authority in this role.

*DER Register*

The AEMC has suggested that the Distributed Energy Resource (DER) Register is a potential area where state regulation could be used to support the applied national electricity laws. A national register of DER connected to the grid is currently being established and will be operational by 1 December 2019.<sup>56</sup>

The register will include static information about distributed generation and about load that is responsive to either the demand for, or the price of, electricity: refer Figure 8. To support the register, electricity distributors will need to provide information to AEMO about installed distributed generation, primarily sourced from the connection agreement process. AEMO will populate the register with this information, and with information about responsive or ‘smart’ load, sourced from registration information for demand side participation.

	What is it?	Example	Collection
Distributed generation	<ul style="list-style-type: none"> <li>Standing data relating to a small generating unit                             <ul style="list-style-type: none"> <li>Under 30 MW</li> <li>Exempt from registering with AEMO</li> </ul> </li> </ul>	 <p>Battery storage      Rooftop solar</p>	Distribution entities
Load	<ul style="list-style-type: none"> <li>Active load – responsive to either the demand for, or price of, electricity</li> <li>Reported via the Demand Side Participation Guidelines</li> <li>Includes contract Demand Side Participation and non-scheduled load</li> </ul>	 <p>Manufacturing      Hot water load      Battery storage</p>	AEMO

Figure 8: What is DER, source AEMO<sup>57</sup>

<sup>54</sup> Electricity Act s. 120 (electricity entities and retailers); Gas Supply Act s. 271AL (retailers). See also Electricity Act ss. 120AC, 120ZE, 120ZL and 135AL which support monitoring compliance with codes.

<sup>55</sup> Electricity Act s. 120A; Gas Supply Act s. 270K.

<sup>56</sup> Australian Energy Market Commission, *Register of distributed energy resources*, viewed 17 July 2019, <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>

<sup>57</sup> Australian Energy Market Operator, November 2018, *DER Register Background Information, Reading for the pre-consultation meeting*, p. 8, viewed 17 July 2019, [https://aemo.com.au/-/media/Files/Stakeholder\\_Consultation/Consultations/NEM-Consultations/2018/DER-Register-Background-Information-Nov-2018.pdf](https://aemo.com.au/-/media/Files/Stakeholder_Consultation/Consultations/NEM-Consultations/2018/DER-Register-Background-Information-Nov-2018.pdf)

The DER Register is intended to support network planning and to improve visibility of DER on the network, given existing and projected levels of DER uptake. For example, the combined rate for installation of solar panels on Australian homes and businesses in 2017 was 6.5 panels per minute.<sup>58</sup> As at March 2019 there were around 3800 grid-connected storage batteries in Queensland with 40 MWh of storage capacity.<sup>59</sup> In Queensland, around one in three homes already have solar installed,<sup>60</sup> and recent survey results indicate that 30 per cent of these households intend to install battery storage over the next ten years.<sup>61</sup>

Visibility of where this DER is connected is important to help plan and operate the power system more efficiently. As explained by the AEMC:

- *The introduction of a DER Register will assist [network operators] with network planning by affording them improved visibility over the DER installed on their networks. Increasing visibility of DER should result in a more efficient, less conservative approach to asset investment.*
- *Improved visibility over DER should facilitate improvements in the quality of AEMO'S load forecasting and modelling. AEMO should also be able to improve its operational processes by being able to access information on certain technical characteristics of DER devices, such as trip settings. In addition, increased visibility should assist [network operators] with network operation through increasing the capability of their networks by assisting with optimising distribution network load shedding and forecasting future potential quality of supply issues.*<sup>62</sup>

Other benefits could include improved safety outcomes: potential safety issues arise when electricity workers and emergency services responders attending fire events believe power is shut off, and are unaware of an installed battery system which can remain live. The DER Register could also support customers to engage in the NEM by connecting them with service providers who are able to operate equipment on their behalf to respond to possible peak load events and optimise the use of battery-stored power.

Stakeholder responses to the Stage 1: Issues Paper noted the importance of the DER Register to support transformation of the network and contribute to safety outcomes. Master Electricians Australia indicated that the DER Register will contribute towards the network transformation and reshaping of the Australian electricity market, as well as assist emergency services in times of natural disasters such as floods or bushfires.<sup>63</sup>

Mr Trevor Berrill's submission noted:

---

<sup>58</sup> Clean Energy Regulator, March 2018, *Household solar capacity through the roof in 2017*, viewed 17 July 2019, <http://www.cleanenergyregulator.gov.au/About/Pages/News%20and%20updates/NewsItem.aspx?ListId=19b4efbb-6f5d-4637-94c4-121c1f96fcfe&ItemId=480>

<sup>59</sup> Obtained from Energy Queensland network figures.

<sup>60</sup> Source: DNRME.

<sup>61</sup> Colmar Brunton for Energy Queensland and Powerlink Queensland, 2018, *Queensland Household Energy Survey 2018, Insights report*, p 28, viewed 17 July 2019, <https://www.powerlink.com.au/sites/default/files/2019-04/Queensland%20Household%20Energy%20Survey%20Report%202018.pdf>

<sup>62</sup> Australian Energy Market Commission 2018, *Register of distributed energy resources information sheet*, p. 2, viewed 17 July 2019, [https://www.aemc.gov.au/sites/default/files/2018-09/ERC0227%20-%20DER%20register%20-%20information%20sheet%20%28final%29\\_0.pdf](https://www.aemc.gov.au/sites/default/files/2018-09/ERC0227%20-%20DER%20register%20-%20information%20sheet%20%28final%29_0.pdf)

<sup>63</sup> Master Electricians Australia submission, p 8.

*A distributed grid with lots of micro [renewable energy] generators, and medium scale and large [renewable energy] generators, with and battery banks or pumped storage systems, with bi-directional energy flows, will require monitoring and control systems to optimise the generation, transmission, use and storage of energy. This will be a far more complex system than the old centralised one way flow of energy from a few large generators to end users. This will require the collection of a lot of data.<sup>64</sup>*

### Assessment of current issues

#### Appropriate

To facilitate best outcomes, energy laws (e.g. the state laws under review, applied national laws) need to work in a complementary way, e.g. by facilitating join-up information and advice to government. This helps to minimize overlap, inconsistencies and duplication and helps achieve common goals.

#### Facilitating joined up information and advice to government.

Under the Electricity Act and Gas Supply Act, the Minister is able to request the Queensland Competition Authority to conduct a review into *any matter* relating to the Queensland electricity market or reticulated processed natural gas markets, including issues that straddle state and applied national laws. This is necessary and appropriate, given the degree of interplay between various laws regulating the energy sector.

#### Supporting common outcomes

Where relevant, supporting common outcomes is also important. Proposals under Section 2.1: Purpose of state energy laws would incorporate key elements of the national energy objective into the purpose of the Electricity Act and Gas Supply Act. At a more operational level, the AEMC has raised the issue of whether additional obligations should be placed on electrical installers under state laws to support the new DER Register on the basis that the applied national laws are unable to do this.

As noted above, the DER Register is established and operated under the applied national laws. It is not appropriate or necessary to duplicate these arrangements. However, Powerlink and Energy Queensland specifically commented in their responses to the Issues Paper on the need for more visibility and detailed data about DER on the network.<sup>65</sup> Of particular concern to Energy Queensland was the lack of current and complete information.

Distributors are responsible for collecting information about DER to place on the register and it is assumed the majority of this information will come from the network connection process. State legislation already supports this process by providing that customers must obtain a distributor's agreement to install generating plant for interconnection with the network: see s. 28 of the Electricity Regulation.<sup>66</sup> Additional requirements appear in the NERL(Q) which require customers who wish to connect a small generating unit to their premises (configured to export) to apply to their distributor,<sup>67</sup> though this is limited to low voltage inverters and it is unclear how this provision applies to inverter upgrades.

---

<sup>64</sup> Berrill, T submission.

<sup>65</sup> Powerlink Queensland submission, p 4; Energy Queensland submission, section 2.3.

<sup>66</sup> Note the actual connection process is set out under chapter 5A of the National Electricity Rules.

<sup>67</sup> NERL(Q) Clause 6.6(c), Schedule 2

At a state level, there are practical difficulties with the s. 28 Electricity Regulation obligation on customers which means it may not be functioning effectively. In particular, generating plant is not defined and it is unclear whether it extends to energy storage devices. In line with submissions made by Energy Queensland,<sup>68</sup> proposed reforms under Section 2.6: Technical Requirements would amend s. 28 of the Electricity Regulation to clarify that the obligation extends to storage devices configured to export electricity, whether generated on-site or not.

However, even with this amendment, difficulties with compliance could arise due to a lack of awareness.<sup>69</sup> For customers installing solar systems configured to export electricity, there is a natural incentive to let energy businesses know about the installation: this facilitates the payment of feed-in-tariffs. However, when a customer who already has a solar system later installs a battery, the need to tell electricity businesses is less intuitive: the company already knows that there will be exports from the customer's premises, and a battery may be seen more of an add-on device, rather than something needing its own connection application.

To address this issue, the AEMC recommended that states consider directly placing requirements on electrical installers, in addition to existing obligations on customers. Specifically, it proposed that state governments consider amending 'the data collected under electrical safety certificates for use by [distributors]' to encapsulation information to support the DER Register.<sup>70</sup>

In Queensland, electrical installers must complete a Certificate of Testing and Compliance for electrical installation work.<sup>71</sup> A copy is kept by the installer, and one provided to the customer. The Electrical Safety Office may ask to see a copy of this certificate, but there is no obligation on the installer to otherwise provide a copy of this safety certificate to the Electrical Safety Office or to the distributor, as occurs in other jurisdictions, refer *Figure 9*.

	Safety/Compliance Certificate
Queensland	<ul style="list-style-type: none"> <li>• Safety Certificate completed at the time of installation by electrical installer</li> <li>• Copy of certificate provided to customer and retained by electrical installer</li> </ul>
New South Wales	<ul style="list-style-type: none"> <li>• Certificate for Compliance for electrical work must be completed by electrical installer</li> <li>• Copy of certificate provided to the customer, electricity network provider and Office of Fair Trading.</li> </ul>
South Australia	<ul style="list-style-type: none"> <li>• Electronic Certificate of Compliance for all equipment completed by electrical installers at the time of installation.</li> <li>• Certificate must submitted to Technical Regulator before energisation</li> <li>• Networks able to access the electronic certificate database</li> </ul>
Victoria	<ul style="list-style-type: none"> <li>• Electronic Certificate of Electrical Safety to be completed upon installation</li> <li>• Certificate required to be sent to distributor but no legislative requirement exists</li> </ul>
Western Australia	<ul style="list-style-type: none"> <li>• Electrical Safety Certificate to be completed by electrical installer to the person who requested the work.</li> </ul>

<sup>68</sup> Energy Queensland submission section 2.3.

<sup>69</sup> Energy Queensland submission, p. 8.

<sup>70</sup> AEMC, 13 September 2018, *Register of distributed energy resources, Rule determination*, viewed 17 July 2019, <https://www.aemc.gov.au/sites/default/files/2018-09/ERC0227%20-%20DER%20register%20-%20Final%20Determination%20%28final%29.pdf>

<sup>71</sup> Electrical Safety Office, 2018, *Issuing certificates of compliance*, viewed 17 July 2019, <https://www.worksafe.qld.gov.au/laws-and-compliance/electrical-safety-laws/issuing-certificates-of-compliance>

Tasmania	<ul style="list-style-type: none"> <li>• Certificate of Electrical Compliance completed for all electrical work, regardless of nature, size or classification before energisation</li> <li>• Certificate must be provided to the Inspection service, which is in effect delegated as the safety regulator</li> </ul>
ACT	<ul style="list-style-type: none"> <li>• A Certificate of Electrical Safety must be submitted to the ACT Government (Access Canberra) by the licensed electrician upon completion of the installation.</li> </ul>

Figure 9: Jurisdictional comparison of electrical safety certificate requirements

Installers are also subject to a generation prohibition under the Electricity Act which provides that a person must not unlawfully connect anything to an electricity entity's transmission grid or supply network. Contravention of this attracts a maximum penalty of 40 penalty units or six months imprisonment.<sup>72</sup> This complements the specific requirement on customers under s. 28 of the Electricity Regulation.

AEMO is currently designing the DER Register and associated information collection mechanisms. The draft data collection design indicates that the installer remains the initial point of contact between the customer and the distribution entity, through the submission of the network connection application. Once the network connection agreement has been approved by the distributor, data may be submitted electronically to AEMO's digital platform by installers potentially using and existing the Clean Energy Regulator portal or other portals designed by third parties.

To encourage customers to tell their distributors about installed storage, in March 2018 the Minister for Natural Resources, Mines and Energy announced that customers registering information about battery systems with their distributors would receive a \$50 payment.<sup>73</sup> At the time, 500 battery systems had been registered. Within 12 months, this increased to 3800. However, the program only has limited life funding, and may not be financially sustainable on an ongoing basis if large numbers of customers adopt storage.

### Effective

Key issues around effectiveness concern information gathering powers to support the provision of joined-up information and advice to government, and inconsistencies between state energy law and other laws.

### Facilitating joined up information and advice to government.

The Minister is able to request the Queensland Competition Authority to conduct a review into any matter relating to the Queensland electricity market or reticulated processed natural gas markets. However, the Queensland Competition Authority has no corresponding information-gathering powers to support a review. This minimizes the effectiveness of the review function, with the Queensland Competition Authority predominantly relying on good will and publicly available information to inform reviews. While this has generally worked in practice as the Queensland Competition Authority has good relations with licensed entities, it may become more difficult with the growth in small-scale sector generation and supply businesses (e.g. micro-grids, virtual power plants). In the context of information gathering powers relating to price determinations, the

<sup>72</sup> Electricity Act 1994, s. 231

<sup>73</sup> Minister for Natural Resources, Mines and Energy, the Honourable Dr Anthony Lynham, Media Statement, *Queensland leads the way on energy storage*, 14 March 2018, viewed 17 July 2019, <http://statements.qld.gov.au/Statement/2018/3/14/queensland-leads-the-way-on-energy-storage>

Queensland Council of Social Services proposed that the Queensland Competition Authority be able to:

*gather...information on the cost of living in different parts of regional Queensland. Affordability should be a more central consideration of the [Queensland Competition Authority] in determining prices. This would also help to improve the targeting of concessions, and energy efficiency and demand management initiatives.<sup>74</sup>*

Cotton Australia similarly commented on the need for accurate information to inform price setting, while Energy Queensland opposed any expanded information gathering powers for the Queensland Competition Authority relating to regional pricing.<sup>75</sup> While information gathering powers to support price setting are dealt with separately under Section 2.7: Price Control, the sentiments of these stakeholders is likely to similarly apply to information gathering powers to support general review functions.

### Inconsistencies and duplication

This Stage 2: Options Paper identifies numerous instances of inconsistency and duplication between state energy law and the applied national laws. These areas can impact effectiveness of the legislative framework, and efficiency.

Section	Duplication or overlap considered
2.1: Purpose of the legislation (Objectives)	Alignment of purposes of state energy laws with the applied national energy laws
2.2: Energy Efficiency and Demand Management	Duplication between energy efficiency laws in the Electricity Act and Commonwealth law  Duplication between demand management rules in the Electricity Act and applied national laws
2.4: Licensing	Alignment of licensing processes to remove duplication with the applied national laws  Consistency between exemption frameworks in the Electricity Act and applied national laws
2.5: Powers of entry and resumption	The role of electricity metering coordinators in state powers of entry State support for competitive electricity metering
2.6: Technical requirements	Duplication with applied national laws, including in relation to cost obligations, and to support outcomes of AEMC work into embedded networks and stand-alone power systems  Interaction with the Electrical Safety Act
2.7: Price control	Opportunities to consider reports prepared by the Australian Competition and Consumer Commission in relation to the exercise of price control powers.  The Commonwealth Government's standing offer price cap
2.8: Dispute resolution	Duplication with obligations contained in the applied national laws for entities to be members of an Energy and Water Ombudsman scheme.  Alignment with dispute resolution processes for energy industry participants under the applied national laws

<sup>74</sup> Queensland Council of Social Service submission, p. 3.

<sup>75</sup> Cotton Australia submission, p. 2; Energy Queensland submission, p. 17.

2.9: Customer protections	Alignment of state customer protections with the NERL(Q)
2.10: Emergency	Interaction between Commonwealth laws and national processes and state laws and processes for energy and fuel supply emergency management

Figure 10: Duplication or overlap of energy laws with other laws

### Efficient

Aside from removing duplication, efficiency of the interaction between state energy laws and other laws may be improved by better alignment of definitions.

### Definitions – Electricity

State legislation and applied national laws differ in their approaches to defining that industry in terms of parties, services and infrastructure. For example, the Electricity Act licences the *operator* of a generation plant, transmission system or supply network while the National Electricity Rules also considers the person who is *owner* or *controller* of a plant, system or network to be a generator, transmission entity or distributor. The difference in relation to ownership appears to make sense, given the National Electricity Rules regulate financial as well as physical aspects of a system. Licensing owners is less appropriate for state legislation, which is more concerned with physical infrastructure.

The concept of control has become more important, particularly for distribution because of ring fencing rules. Under ring fencing rules, distributors still undertake ‘direct control services’ (which are effectively core distribution services). However, negotiated distribution services and unregulated distribution services are more contestable, and could be provided by a third party. The purpose of ring-fencing is to

*provide a level playing field for third party providers in new and existing markets for contestable services...in order to promote competition in the provision of electricity services.*<sup>76</sup>

As more services which were traditionally considered a core distribution function become ‘contestable’, the scope of infrastructure *operated* by a single authorised distribution entity narrows. This could impact the effectiveness of state electricity rules in relation to matters including powers of entry, technical requirements and emergency rules. Extending these provisions to apply to infrastructure *controlled* by a distribution entity may be needed for the continued effectiveness of these provisions in light of changes occurring at a national level.

Other differences between the instruments can create confusion. As outlined at Figure 11, key differences between how the services and infrastructure of generation, transmission and distribution are defined create further uncertainty around the treatment of energy storage services for export and network control. Uncertainty also exists for shared user assets and distribution to non-retail customers.

	Electricity Act	National Electricity Rules	Issue for Electricity Act
--	-----------------	----------------------------	---------------------------

<sup>76</sup> AER, November 2016, *Explanatory Statement: Electricity Distribution Ring Fencing Guideline (Version 1)*, p. 9, viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20Ring-fencing%20Guideline%20-%20Explanatory%20statement%20-%2030%20November%202016.pdf>

<b>Generation</b>	Focus on connecting generating plant to transmission grid or supply network  Generating plant not defined	Focus on operation of generating plant used in production of electricity and related equipment  Includes activity of supply irrespective of whether electricity actually produced by entity (i.e. storage)	Unclear treatment of storage
<b>Transmission</b>	Focus on connecting generating plant and supply networks (i.e. system of electric lines, substations and associated equipment providing connection)	Focus on conveyance of electricity  Stipulates voltage and specifically includes connection assets and certain third party connection assets	Unclear treatment of shared user assets
<b>Electricity distribution</b>	Focus on supply of electricity to customers (i.e. system of electric lines, substations and associated equipment) excluding transmission grid to distribute electricity  Customers defined as retail customers	Focus on conveyance of electricity to customers on national grid. <sup>77</sup> Includes: <ul style="list-style-type: none"> <li>• connection assets associated with network</li> <li>• equipment used to control the conveyance of electricity</li> </ul> Customer includes retail and non-retail customers	Unclear treatment of non-retail customers, and storage used for network control

Figure 11: Comparison of Electricity Act and National Electricity Rules key definitions

Other minor inconsistencies also arise. For example ‘meter’ is defined broadly in the Electricity Act as ‘a device, including any associated equipment, used for measuring electricity’. Under the National Electricity Rules, the meter must comply with Australian Standards to both measure and record the production or consumption of electrical energy.

#### *Interaction with other state legislation*

The Electricity Act interacts with a wide range of other state laws. This interaction is most visible with the *Electrical Safety Act 2002*. Each Act uses the same key terminology, e.g. electrical equipment, electrical installation, electric line and electricity entity. There are minor divergences – e.g. electrical equipment under the Electrical Safety Act includes ‘equipment that is part of an electrical installation located in an area in which the atmosphere presents a risk to health and safety from fire or explosions’. As this is specific to safety legislation, it is not incorporated into the Electricity Act. The term ‘electric line’ is not defined in the Electricity Act, but a definition is included in the Electrical Safety Act. Stakeholders responding to the review did not raise any issues in relation to these divergences, or seek better alignment of definitions, though it is noted that a number of proposed options in this paper may create the need for consequential amendments to the Electrical Safety Act to preserve intent.

<sup>77</sup> AEMC’s review of stand-alone power systems and embedded networks is proposing a number of changes to definitions, including for distribution systems. These changes are intended to ensure larger stand-alone power systems and embedded networks fall within the definition of distribution system going forward.

Around 20 other pieces of state legislation also references the Electricity Act, including the *Gladstone Power Station Agreement Act 1993*, the *Economic Development Act 2012*, the *Geothermal Energy Act 2010*, the *Economic Development Act 2012*, the *Disaster Management Act 2012*, the *Nuclear Facilities Prohibition Act 2007*, and the *Transport Infrastructure Act 1994*. Any amendments made to the Electricity Act may require consequential amendments to these other instruments to ensure intent is preserved. In general, substantive changes to other laws fall outside the scope of this review.

#### Definitions - Gas

The interactions between the Gas Supply Act and other national and state laws is different to the electricity industry.

For the purpose of comparison, Queensland’s Electricity Act is the primary state law for Queensland’s electricity sector. In terms of which instruments are the most important for the Electricity Act to align to, it is the applied national laws. This is because the national electricity laws cover almost the breadth of the electricity industry.

By comparison, Queensland’s Gas Supply Act is not the primary state law for Queensland’s gas sector – the primary law is the Petroleum and Gas (Production and Safety) Act – and while the applied national gas laws play a significant role in Queensland’s gas sector these laws do not cover as wide a breadth of the state’s gas industry as the Petroleum and Gas (Production and Safety) Act. For example, the gas supply systems of the Maranoa and Western Downs Councils are not regulated as distribution pipelines under the applied national laws, but are distribution pipelines under state legislation.

The review had identified one area where the Gas Supply Act is not aligned to either the national gas rules or the Petroleum and Gas (Production and Safety) Act. This is the definition for a distribution pipeline, where each of the three instruments defines distribution slightly differently, see *Figure 12*.

<p><b>Gas Supply Act</b></p>	<p><i>A distribution pipeline is a pipeline that transports processed natural gas as part of a reticulation system within a processed natural gas market or as a single point-to-point pipeline to a specific commercial or industrial facility</i></p> <p><i>A distribution system is a system of distribution pipelines and meters and other equipment used for, or in connection with, the supply of processed natural gas to more than one customer within a processed natural gas market</i></p>
<p><b>Petroleum and Gas (Production and Safety) Act</b></p>	<p><i>A distribution pipeline is a pipeline that transports fuel gas as part of a reticulation system, or as a single point-to-point pipeline that transports fuel gas to another pipeline or a place other than a major user facility</i></p> <p><i>A distribution system is a system of distribution pipelines and meters and other equipment used in the supply of fuel gas to more than one consumer within a fuel gas market</i></p>
<p><b>National Gas Law</b></p>	<p><i>Distribution pipeline means a pipeline that is classified in accordance with this Law or the Rules as a distribution pipeline and includes any extension to, or expansion of the capacity of, such a pipeline when it is a covered pipeline that, by operation of an applicable access arrangement or under this Law, is to be treated as part of the pipeline</i></p>

Figure 12: Different definitions for a distribution pipeline

The Gas Supply Act and Petroleum and Gas (Production and Safety) Act provisions are already very similar and no specific difficulties with the variable approaches has been identified in the review.

Considerably fewer other state laws interact with the Gas Supply Act, compared with the Electricity Act. As with electricity, any amendments made to the Gas Supply Act may require consequential amendments to these other instruments to ensure intent is preserved. In general, substantive changes to other laws fall outside the scope of this review.

### Objectives

The objective is to ensure state-energy legislation integrates with other laws applying to the energy sector, particularly the applied national laws to reduce complexity and duplication and to improve the overall effectiveness of the legislative framework.

### Options

Option	Description
Status quo (option 1)	<p>The legislation would remain as it is presently</p> <p>To support the DER Register, legislative obligations could be supported by an information and awareness targeting electrical installers and the sellers of energy storage systems</p>
Amend current legislation (option 2)	<p>The legislation would remain as it is presently in relation to definitions</p> <p>Information gathering powers would be provided to the Queensland Competition Authority to support its review functions, but only applied to licensed or exempt entities under state legislation, generators and retailers</p> <p>In relation to the DER Register, a direct obligation would be placed on electrical installers to provide information on installed distributed generation to the relevant network</p>
Alignment with other jurisdictions (option 3)	<p>Information gathering powers would be provided to the Queensland Competition Authority to support its review functions, and applied to any person with relevant information, including registered entities under the applied national laws and licensed or exempt entities under state legislation</p> <p>For the DER Register, a direct obligation would be placed on electrical installers to provide a certificate of testing and safety and/or certificate of testing and compliance (as applicable) when connecting any device to the relevant network</p> <p>Key definitions in state legislation would be adjusted for better alignment with applied national energy laws and safety legislation</p>

#### Option 1 – Status quo

Option 1 would make no regulatory amendments.

#### Facilitating joined-up information and advice

Under this option, the Queensland Competition Authority would rely on publicly available information, or information otherwise provided to it in good will to support its review functions. This minimises the impost on industry. However, going forward it is unlikely to be sustainable and may lead to misinformation provided to government and lags in identifying or responding to emerging issues.

### DER Register

The Queensland Government or electricity distributors would work with electrical installers and the sellers of energy storage systems to promote awareness of, and compliance with the rules applying to customers in relation to network connection applications. As the first point of contact, sellers and installers of energy storage systems are well placed to give customers necessary information and advice at the point which is most relevant to them, i.e. at the time of sale or installation.

More education around when a network connection application is needed could also be undertaken during electrical training apprenticeships. The distributors could further work with the sellers of energy storage systems and peak bodies, like Master Electricians Australia to disseminate information. As noted earlier, Energy Queensland has also offered direct cash incentives to customers to register information about energy storage devices, though the financial sustainability of these arrangements is unclear, particularly if there is widespread uptake of storage into the future.

Aside from cash incentives, option 1 is relatively low cost as it would leverage existing channels of communication targeting electrical installers such as regular newsletters distributed by the Electrical Safety Office. New mechanisms to connect with sellers of electrical storage devices would however be needed.

The success of the model would depend on both the ability to raise awareness within the electrical industry and with sellers, as well as willingness of these entities to encourage customer compliance. Willingness may be a key issue for sellers of storage systems particularly, who may wish to keep information provided to prospective customers as simple as possible, and who may not wish to highlight process requirements that apply to their systems after sale. There is also a likelihood that sellers may be located outside of Queensland, further reducing incentives to keep across and promote state requirements and the potential for successful communication via this avenue.

By contrast, electricians are much more likely to be Queensland-based which creates an easier communication channel. However, the vast majority of Queensland's 70 000 electricians are sole traders or work for small businesses. These businesses are unlikely to have significant capacity to keep across changes to electricity legislation, particularly where that legislation does not relate to core safety considerations. Without clear incentive, there is a potential that information and awareness campaigns about the need for connection agreements could be lost in the day-to-day. For the greatest chance of success, the rules need to be clear, easy to follow and compelling.

Proposed changes in Section 2.6: Technical Requirements would clarify that customers must obtain their distributor's agreement to connect storage systems which are configured to export to the network. While electrical installers would not be directly subject to this requirement, they – and their customers – would remain subject to the general prohibition against unlawfully connecting anything to an electricity supply network.<sup>78</sup> This attracts a potential consequence of imprisonment or 40 penalty units. An information and awareness campaign, combined with these deterrent provisions could be satisfactory to improve compliance with the network connection process for energy storage systems. As the network connection process is already well understood by electricians in relation to solar systems, with only limited non-compliance, the process should be relatively straightforward.

---

<sup>78</sup> Electricity Act s. 231

### Definitions

Under option 1, no specific adjustments would be made to existing definitions. As outlined in the assessment section, this may create difficulties with rights/obligations relating to distribution services (e.g. works and access rules, technical requirements, emergency provisions), where the authorised distributor is not the operator of the relevant infrastructure. It would also continue uncertainty in relation to the treatment of some connection assets and energy storage.

Impact group	Estimated impact
<b>Electrical installers</b>	For DER Register this group is target of education campaign: <ul style="list-style-type: none"> <li>• Currently regularly undertake network connection process on behalf of customers when installing solar panels, so information should not be overly complex to understand</li> <li>• Information aligns with duty of care to customers as part of their position as installers</li> </ul> For information gathering and definitions there is nil impact – status quo
<b>Electricity distributors</b>	For DER Register some costs associated with information and awareness: <ul style="list-style-type: none"> <li>• Not expected to be significant if existing communication channels used and work undertaken with peak bodies</li> <li>• Communication regarding network connection process forms part of ordinary business of entities</li> </ul> For information gathering and definitions there is nil impact – status quo
<b>Other energy industry participants (gas and electricity)</b>	Nil impact – status quo
<b>Government</b>	For DER Register some costs associated with information and awareness (e.g. through Electrical Safety Office communication with electrical installers) Information gathering and definitions there is nil impact – status quo
<b>Customers</b>	Supported via electrical installers to comply with obligations Information gathering and definitions there is nil impact – status quo

### Option 2 – Amend current legislation

Under option 2, the legislation would remain as it is presently in relation to definitions. Information gathering powers would be provided to the Queensland Competition Authority to support its review functions, but only applied to licensed or exempt entities, generators or retailers.

In relation to the DER Register, a direct obligation would be placed on electrical installers to provide information on installed distributed generation to the relevant network

### Facilitating joined-up information and advice

Option 2 would introduce an information gathering power providing that the Queensland Competition Authority may request information from a generator, transmission entity, electricity or gas distributor, or electricity or gas retailer (or exempt entity) to support its general review functions under s. 120A of the Electricity Act, and s. 270K of the Gas Supply Act and that it could provide this information to the Minister.

Option 2 focuses on entities subject to operation of the state law to various extents as a review may reasonably be required into the activities of these entities to identify emerging issues and ensure the legislative framework is operating as intended to support outcomes for Queensland energy users. Accurate information is critical to support a review. Without powers to support, information is often slow to be provided, or simply not provided, which undermines analysis and assessment.

A disadvantage is that as the review power is broad, the information gathering power would similarly need broad reach (albeit tied to a relevant review). This could create uncertainty for industry, and raise potential fundamental legislative principle issues if the power were not constrained to:

- provide appropriate protection for confidential information
- protect against the provision of information which may be incriminating.

These safeguards would be a necessary preconditions attached to the power under the option, based on similar protections under other information gathering powers in the legislation.

A further issue may arise for participants where they have already provided essentially similar information to, for example, AEMO, the AER or AEMC under the applied national laws, or the Regulator of the Electricity Act or Gas Supply Act. Under memorandums of understanding, it is possible for regulators and market bodies to exchange information, though without a head of power the exchange of confidential information would be prohibited.

The option would affect the current 68 licensed entities, as well as potentially hundreds of smaller exempt entities who operate under special approvals or who are proposed to become subject to registered exemptions under Section 2.4: Licensing. To minimise the impact on smaller exempt entities, information gathering powers may need to be further limited to require the Queensland Competition Authority to expressly consider cost impacts.

#### DER Register

Under option 2, a specific additional obligation would be placed on electrical installers to provide information on installed distributed generation to the relevant network. Under the approach, the network connection process would be supported in three ways:

1. Customers would continue to be subject to the s. 28 Electricity Regulation requirement to obtain their distributor's approval to install generating plant configured to export to the network. As per proposed reform in Section 2.6: Technical Requirements, this section would be amended to make clear that it applies to storage systems, as well as generating units such as solar systems, wind and other generators.
2. All persons – including customers and electrical installers – would continue to be subject to the general prohibition under s. 231 of the Electricity Act against connecting anything unlawfully to the network.
3. A new obligation would be introduced to provide that electrical installers must provide information to distributors about installed devices configured to export to the network.

These provisions would be supported by an information and awareness campaign as per option 1. The advantage of this approach over option 1 is that it would very clearly be expressed to apply to electrical installers and may improve compliance. The obligation would also overcome any difficulties which might otherwise arise for installers, e.g. in relation to privacy concerns, if a customer is reluctant to complete a network application process by giving them a direct avenue for

compliance. As noted in the background section, the AEMC is already developing a portal which may make it easy to submit information.

However, it is unlikely that an installer who has installed a device without network approval would then submit information to the distributor to comply with the new obligation. This would highlight their lack of compliance with the s. 231 prohibition against unlawfully connecting a device to the network. Where the installer has connected the device with network approval, this would merely add an additional step which seems to be of limited value, given distributors would obtain the requisite information through the network connections process.

While a new defence could be introduced to s. 231 of the Electricity Act for installers who have advised the distributor of the installation in circumstances where their customers have failed to complete an application, this would be equally problematic. In particular, it could have the unintended impact of diluting the effectiveness of s.231 overall by reducing incentives on electrical installers to complete network connection applications on behalf of their customers, which is currently common practice. That is, if it is easier just to submit information after the event, then there are fewer incentives to go through the network connection application process initially on behalf of the customer which could lead to reduced numbers of network connections overall.

#### Definitions

As per option 1, no specific adjustments would be made to existing definitions.

Impact group	Estimated impact
<b>Electrical installers</b>	<p>For DER Register:</p> <ul style="list-style-type: none"> <li>• clarified obligations</li> <li>• For electrical installers who already complete network connection applications on behalf of their customers, adds an additional process step though this should be relatively simple to complete</li> <li>• May reduce incentives on some electrical installers from completing application for their customers</li> </ul> <p>As per option 1 regarding education and awareness campaign</p> <p>Information gathering and definitions there is nil impact – status quo</p>
<b>Electricity distributors</b>	<p>For DER Register, could lead to fewer network connection processes being undertaken, in preference of information provision after installation</p> <p>As per option 1 re education and awareness campaign</p> <p>For information gathering powers, electricity distributors would be subject to information gathering powers of the Queensland Competition Authority and may incur administrative costs associated with the provision of information</p> <p>For definitions there would be nil impact – status quo</p>
<b>Other energy industry participants (gas and electricity)</b>	<p>For information gathering, would be subject to information gathering powers of the Queensland Competition Authority and may incur administrative costs associated with the provision of information</p> <p>For DER Register and definitions there would be nil impact – status quo</p>
<b>Government</b>	<p>For DER Register, increased complexity of legislation that may have unintended consequences regarding completion of network connection process</p>

	As per option 1 re education and awareness campaign For definitions there would be nil impact – status quo
<b>Customers</b>	For DER Register, may be more exposed to action if fewer installers complete application on their behalf For definitions there would be nil impact – status quo

### Option 3 – Alignment with other jurisdictions

Under option 3, the Queensland Competition Authority would be given broad information gathering powers. A direct obligation would be placed on electrical installers to provide a certificate of testing and safety and/or certificate of testing and compliance (as applicable) to support the DER Register when connecting any device to the relevant network. Key definitions in state legislation would be adjusted for better alignment with applied national energy laws.

#### Joined up information and advice

Under option 3, information gathering powers would be provided to the Queensland Competition Authority to support its review functions, and applied to any person with relevant information (tied to the review), including registered entities under the applied national laws and licensed or exempt entities under state legislation. This expands the proposal to potentially capture information held by, e.g. entities that provide network support or other functions regulated by AEMO, other market bodies and regulators. A similar power is provided to the Tasmanian regulator in relation to its information gathering powers.

The approach is broader than option 2, but would facilitate the provision of information by, for example, AEMO relating to protected information. Under section 54 of the National Electricity Law, AEMO cannot disclose protected information unless authorised. While AEMO was previously able to provide protected information to the Queensland Competition Authority under an exception created in section 54C(2) of the National Electricity Law, it has not been able to do so following the transfer of certain functions from the Queensland Competition Authority to the AER. While there is an exception under s. 255B of the Electricity Regulation in relation to pricing functions, the exception is limited.

The approach may also enable information provision from the AER. Under s. 44AAF(2) of the Commonwealth's *Competition and Consumer Act 2010*, the AER is permitted to disclose information to the extent required or permitted by a law of a State or Territory. Similarly, the AEMC is permitted to provide information as required or permitted by a law of the State under s. 24 of the *Australian Energy Market Commission Act 2004* (South Australia).

The advantage of option 3 over option 2 is that by enabling the Queensland Competition Authority to request information from market bodies and regulators, information requests to energy market participants would be reduced, and the potential for requests for duplicative information minimised. The disadvantage, similar to option 2 is that the approach may place costs on market participants and market bodies relating to the provision of information. As with option 2, safeguards in relation to the protection of confidential information and protection against self-incriminating information would need to be provided. Consideration of cost and appropriate review protections would also be a relevant factor.

## DER Register

Under option 3, obligations around the Certificate of Testing and Compliance for electrical installation work would be extended to include information about installed generation. As well as providing a copy of the certificate to the customer, the installer would also be required to provide a copy to the relevant network. To support this, the network may need to establish an online portal to capture the relevant information, or adjust the existing online portal for connection applications. A proposal of this sort by suggested by the AEMC when making the rules to establish the DER Register:

*The Commission understands that several jurisdictions (VIC, SA and NSW) have informally indicated a willingness to use a light-handed approach, e.g. by amending the data fields collected under the electrical safety certificates for use in validating information in the DER Register. South Australia, for example, has indicated in its submission to the draft determination that it is considering whether the electronic Certificates of Compliance (eCoC) system operating within South Australia is a robust, appropriate method for collecting DER related data and information during installation.*

*The Commission cannot place obligations ... on jurisdictional safety regulators. However, the Commission considers that electrical safety compliance certificates could be a useful mechanism to collect relevant DER information. As noted above, in many jurisdictions a copy of these certificates is already provided to [distributors], which could then use this information to verify the accuracy of the data collected through their own existing mechanisms (i.e. connection application processes or deemed standard connection contract).*

*Therefore, the Commission recommends that state safety regulators investigate how existing compliance mechanisms could be used to improve submission of appropriate DER information to [distributors], including whether it is appropriate to amend the data fields collected under electrical safety certificates. This data might also be shared directly with AEMO if all parties consider it appropriate.<sup>79</sup>*

However, given that the provision of safety certificates to distributors is not an existing requirement in Queensland legislation, new obligations would need to be established. This may create administrative costs for electricians in amending existing and completing new safety forms (e.g. time costs, processing costs) and costs for distribution businesses to expand existing online portals to collect information (to the extent that existing online portals do not already collect this information), which may cost millions. It would also appear to unnecessarily duplicate efforts AEMO is making in the establishment of an easy to use portal for electricians and distributors.

Moreover, the Queensland Electrical Safety Office has indicated a reluctance to amend obligations around the content of Certificates of Testing and Compliance. The purpose of these certificates is to support safety. They apply to various activities including activities unrelated to distributed generation. Extending to other requirements, such as inclusion of information for the DER Register may dilute the emphasis on safety, and increase complexity on electrical installers.

Similar problems to option 2 may also arise in terms of either duplicating the provision of information given to distribution networks (one lot in the connection agreement and a second in the Certificate of Testing and Compliance), or diluting incentives on electrical installers to complete a network connection application on a customer's behalf.

---

<sup>79</sup> AEMC, 26 June 2018, *Register of distributed energy resources, Draft determination*, p. 51-52, viewed 17 July 2019, [https://www.aemc.gov.au/sites/default/files/2018-06/Draft%20determination\\_0.pdf](https://www.aemc.gov.au/sites/default/files/2018-06/Draft%20determination_0.pdf)

## Definitions

Under option 3, key definitions would be updated to align with definitions under applied national energy laws. In particular, definitions in relation to:

- **Generation** would focus on persons operating generating plant used in the production of electricity and related equipment, and would include the activity of supply, irrespective of whether electricity is actually produced by the entity. Note, clarifying that generation includes the activity of supply or export, is also dealt with in Section 2.4: Licensing, and Section 2.6: Technical Requirements. This would clarify the treatment of storage.
- **Transmission** would focus on conveyance of electricity and stipulate voltage and certain connection assets in the same way as the National Electricity Rules. This would clarify the treatment of shared user assets. The treatment of shared user assets is also discussed in Section 2.4: Licensing.
- **Electricity Distribution** would focus on conveyance of electricity to customers, including connection assets associated with network distribution activity. It would also extend to the controller of network activity, in addition to the operator. Specifications in the applied national laws that distribution be connected to the grid would not apply, given Queensland has off-grid networks. As per Section 2.6: Technical Requirements, it would be important for the definition to also capture supply via stand-alone power systems. Recommendations in the AEMC's Review into Stand-Alone Power Systems acknowledge the importance of also capturing larger systems within the national framework. The finalisation of the AEMC's work will provide greater clarity in relation to how this is achieved in practice and could be incorporated into Stage 3: Decision RIS, if agreed. The approach would clarify the treatment of storage, and infrastructure operated by third parties on behalf of distributors.

The overarching benefits of greater alignment is to reduce complexity and ensure that the state framework works effectively with applied national laws.

No necessary changes to definitions in the Gas Supply Act appear needed, as existing provisions do not appear to be problematic or in need of greater alignment with other legislation.

Impact group	Estimated impact
<b>Electrical installers</b>	For DER Register, clarified obligations but extra complexity in completing a Certificate of Testing and Compliance. Otherwise, similar impacts as option 2 For information provision and definitions n/a – no impact
<b>Electricity distributors</b>	For information gathering there are similar impacts as option 2 (administrative cost) For DER Register, duplication of sources of information support verification of data, but increase record keeping (this may create confusion regarding source of truth for information) For definitions, greater clarity between key regulatory frameworks
<b>Other energy industry participants (gas and electricity)</b>	For DER Register, there is nil impact – status quo For information gathering, similar impacts as option 2 (administrative cost) Definitions greater clarity between key regulatory frameworks
<b>Government</b>	For DER Register decreased focus on primacy of safety in completion of safety certificate.

	For information gathering, there would be more effective review and oversight powers of energy market as a whole For definitions, more effective legislation
<b>Customers</b>	For DER Register: <ul style="list-style-type: none"> <li>An increase in costs to electricians and distributors (e.g. administrative and process costs) may be passed on to customers, though this is anticipated to be relatively minimal</li> <li>Confidence that correct documentation has been completed on their behalf</li> </ul> For information gathering and definitions there is minimal to nil impact

### Comparative assessment

	<b>Key advantages</b>	<b>Key disadvantages</b>	<b>Assessment</b>
<b>Status quo (option 1)</b>	<u>DER Register</u> no legislative change, lowest cost option  <u>Information provision</u> no impost on stakeholders  <u>Definitions</u> no costs associate with change or understanding new requirements. These costs would be minimal given national definitions are well understood	<u>DER Register</u> need for information and awareness campaign  <u>Information provision</u> not expected to effectively manage changes in market and increasing role of smaller participants  <u>Definitions</u> complexity and uncertainty relating to lack of alignment between applied national laws and state laws, particularly for generation, transmission and distribution	<b>Preferred</b> for DER Register, less complex than option 2 and 3, and lower cost than option 3, with equivalent outcomes anticipated  <b>Not preferred</b> for definitions relating to generation, transmission and distribution due to unnecessary complexity and uncertainty  <b>Not preferred</b> for information provision, as unlikely to effectively support
<b>Amend current legislation (option 2)</b>	<u>DER Register</u> greater clarity that obligations apply to electrical installers  <u>Information gathering</u> more effective review and oversight  <u>Definitions</u> as per option 1	<u>DER Register</u> unnecessary duplication with existing laws, impractical to implement  <u>Information gathering</u> administrative costs on licensed entities  <u>Definitions</u> as per option 1	<b>Not preferred</b> for DER Register as appears to be duplicative and impractical to implement  <b>Not preferred</b> for information gathering. More effective approach than option 1, but likely greater costs than option 3

			<b>Not preferred</b> for definitions as per option 1
<b>Alignment with other jurisdictions (option 3)</b>	<p><u>DER Register</u> greater clarity that obligations apply to electrical installers</p> <p><u>Information gathering</u> more effective review and oversight. Better alignment between state bodies and bodies overseeing applied national laws</p> <p><u>Definitions</u> modernisation and better integration can reduce complexity for industry participants and improve effectiveness of legislation</p>	<p><u>DER Register</u> unnecessary duplication with existing laws, impractical to implement</p> <p><u>Information gathering</u> administrative costs on licensed entities and market bodies</p> <p><u>Definitions</u> potential risk of unintended consequences – stakeholder feedback necessary to inform assessment of risk</p>	<p><b>Not preferred</b> for DER Register: More complex to implement than options 1 or 2</p> <p><b>Preferred</b> for information gathering powers. Most effective approach to integrate review/ market oversight under state and applied national laws. Greater potential administrative efficiencies than option 2</p> <p><b>Preferred</b> for definitions to reduce complexity and support better operation of framework</p>

### Recommendation

The review is recommending option 1 (Status quo) for the DER Register as there is no clear case for regulatory action. As noted in the ‘assessment of current issues’ section above, there also appears to be no need to adjust definitions under the Gas Supply Act.

In relation to information gathering powers (electricity and gas) and Electricity Act definitions, option 3 (full integration is preferred). Information gathering powers to support review functions will become increasingly important, particularly in the electricity sector as the market becomes more decentralised, with smaller participants. It is the preferred option to support information provision from key applied national law market bodies (AEMC, AER and AEMO) to ensure state laws effectively integrate with the applied national law system on an ongoing basis. It also has the potential to reduce duplicative information requests being placed on market participants. For definitions, alignment will ensure the state and applied national laws are complementary, and dealing with the same subject matters. The approach is expected to reduce complexity and confusion.

### Consistency with other policies and legislation

#### *Competition Principles Agreement – s. 5*

The proposed amendments should not have the impact of restricting competition.

#### *Fundamental legislative principles*

Proposed information gathering powers may raise concerns in relation to the treatment of confidential information, and the need to protect against information that may be incriminating. Provisions would be included to safeguard the treatment of confidential information, and to provide

that the obligation would not require a person to provide information which may tend to be incriminating. As an administrative power, information gathering could also be subject to administrative review rights, though feedback on this need is sought.

### Implementation

In relation to information gathering and definitions, implementation of option 3 would occur through legislative amendment to existing definitions in the legislation and be supplemented by guidance material.

#### Stakeholder questions

##### Topic 3 Interaction with applied national laws

Q2.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q2.2 Why?

Q2.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.4 Licensing

### Context

The Electricity Act and Gas Supply Act contain an authorisation regime for key activities in the sector. Activities requiring authorisation are:

- connecting generating plant to a transmission grid or supply network<sup>80</sup>
- operating a transmission grid<sup>81</sup>
- supplying electricity using a supply network<sup>82</sup>
- transporting processed natural gas through a distribution pipeline or providing customer connection services relating to a distribution pipeline to premises.<sup>83</sup>

Purpose of regime	<ul style="list-style-type: none"> <li>• To guard against risks</li> </ul>
When you need a licence	<ul style="list-style-type: none"> <li>• To connect generating plant to a grid or network</li> <li>• To operate a transmission grid</li> <li>• To supply electricity using a supply network</li> <li>• To transport processed natural gas through a distribution pipeline or provide related customer connection services</li> </ul>
Types of licences	<ul style="list-style-type: none"> <li>• Generation, transmission, distribution, special approval, exempt</li> </ul>

Figure 13: Overview of licensing arrangements

Currently there are 48 generation licences, three transmission licences, two electricity distribution licences and five gas distribution licences in Queensland.<sup>84</sup>

The authorisation process enables the Regulator to positively vet both proposed activity (e.g. considering relevant government policies regarding environment and energy issues), and the suitability of the proposed owner and operator of the relevant works to ensure they are fit and proper persons having regard to commercial strength, technical competence and integrity. Authorisation is given to the operator of activities, and authority holders are subject to ongoing conditions and monitoring, with the ability for the Regulator to alter, suspend or withdraw authorisation where there have been breaches of obligations.<sup>85</sup>

<sup>80</sup> Electricity Act s. 87. The term 'generating plant' is not defined.

<sup>81</sup> Electricity Act s. 88. A transmission grid is defined as being a system, or part of a system, of electric lines, substations and associated equipment providing connection between generation facilities and supply networks or customers not supplied through supply networks: Electricity Act s. 6.

<sup>82</sup> Electricity Act s. 88A. A supply network is defined as a system, or part of a system, of electric lines, substations and associated equipment, other than a transmission grid, for distributing electricity to customers. Electricity Act s. 8.

<sup>83</sup> Gas Supply Act s. 286. A distribution pipeline is a pipeline that transports processed natural gas as (i) part of a reticulation system within a processed natural gas market; or (ii) a single point-to-point pipeline to a specific commercial or industrial facility. Customer connection services include supplying premises with reticulated processed natural gas via a distribution pipeline (Gas Supply Act ss. 13 and 19).

<sup>84</sup> Advice from the Regulator 19 June 2019.

<sup>85</sup> Electricity Act s. 133

An entity undertaking activities without proper authorisation may face maximum penalties of between 500 penalty units (gas distribution) and 5000 penalty units (electricity generation, transmission or distribution) and may not recover payment for services provided as a result of the activity.<sup>86</sup>

Through positive vetting, monitoring and the potential to force exit from the market, the authorisation regime guards against risks with potentially serious consequences for the energy system, other participants, and end users. For example, risks relating to:

- *technical competence* – consequences will vary with the size of operations, but could result in lack of supply, power outages, voltage spikes, fire, electric shock and death
- *financial vulnerability* – this could lead to a loss of operations, insufficient staff and inability to pay bills or provide services in a timely way
- *abuse of power* – energy entities are entrusted with significant rights, including rights of access to works and, in the case of networks, monopoly rights for infrastructure provision. Entities are also protected from financial liability for failure to supply energy. Entities must use these powers fairly, honestly and with the utmost integrity to protect individual privacy and support the efficient operation of the sector
- *environmental harm* – electricity generation and energy network activity have the potential to cause environment damage.

In addition to risk, the authorisation process for distribution and transmission network activities performs an important role in establishing ‘distribution areas’ and ‘transmission areas’. These concepts are relied on in national economic and retail regulation as the basis for recovery of costs and establishing obligations to offer supply. Within the Electricity Act and Gas Supply Act, they are also important concepts for establishing rights and obligations, for example in relation to access to land and premises, and obligations to connect.<sup>87</sup>

Given the role of authorisations in managing risks, the authorisation process is relatively intense, with more complex applications taking four months or longer to assess from receipt of complete information. Costs to the Regulator fluctuate depending on the number of applications received. For example, in 2016-17 \$295 662 was received from industry to partially cover application and ongoing licensing functions (administration and enforcement). In 2017-18, this increased to \$324 986. As at mid-February 2019, \$435 106 had been collected from industry.<sup>88</sup> The Regulator has advised that full cost reflective fees would be even higher.<sup>89</sup>

---

<sup>86</sup> Electricity Act ss. 87 – 88A; Gas Supply Act s. 286

<sup>87</sup> See e.g. Electricity Act s. 41. This prevents a distribution entity from servicing a customer in another distribution entity’s location without permission. See also AER, July 2018, *Final framework and approach Energex and Ergon Energy Regulatory control period commencing 1 July 2020*, p. 28, viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20-%20Queensland%202020-25%20-%20Final%20framework%20and%20approach%20for%20Energex%20and%20Ergon%20Energy%20-%20July%202018.pdf>

<sup>88</sup> Advice from Regulator, 10 April 2019.

<sup>89</sup> Regulator correspondence, 26 February 2019.

For applicants, the cost of preparing an application can also be considerable. In its submission to the review, Windlab noted:

*Much of the information requested in the application is considered of minimum benefit and places a burden on both the applicant and the department.<sup>90</sup>*

A recent survey undertaken by the Regulator indicated that

- the time to prepare an application ranges from 41 to 80 business hours
- the costs to prepare an application generally range from \$10 000 to \$20 000, but can go up to \$250 000.

This is on top of application fees, which range from \$385 for a gas distribution authority to \$1691 for a transmission, distribution or generation licence.<sup>91</sup>

Considering these costs and the effort involved in applying for and assessing an application, blanket exemptions are provided for activities with less risk attached. For example, no authorisation is required where generating plant has a capacity of 30 MW or less,<sup>92</sup> where a supply network is used in an on-supply situation,<sup>93</sup> or where a gas pipeline is used in an on-supply situation or within contiguous lots.<sup>94</sup> For activities that do not fall within legislated exemption categories, but where the scale is still relatively small e.g. stand-alone power systems, operators are able to apply for a 'special approval' authorisation. The special approval authorisation entails the same considerations as a full authorisation, but comes with fewer rights, obligations and protections attached, reducing ongoing operational costs. There are currently 77 'Special Approvals' in Queensland.<sup>95</sup>

Authorisation is also needed for conveying electricity beyond a property boundary, though a different process applies.<sup>96</sup> To obtain authorisation: the line must be low voltage and permanently affixed; specified parties must have agreed in writing including any relevant supplier and the owner, lessee and occupier of the other property; and the installation and operation of the line must be done in a way that is not likely to cause a fire or a person to suffer an electric shock.<sup>97</sup>

---

<sup>90</sup> Windlab submission, p. 1.

<sup>91</sup> Gas Supply Regulation, Schedule 1; Electricity Regulation, Schedule 7. Note, cost reflective fees may be higher.

<sup>92</sup> Electricity Regulation r. 130. Other generating plant exemptions are for stand-by generating plant (Electricity Act s. 20P), Ergon Energy generating plant connected before 1 January 1995 (Electricity Regulation r. 130) and where a distribution entity connects mobile generating plant in an emergency situation (Electricity Regulation r. 129).

<sup>93</sup> Electricity Act s. 20A. This is where a person who is the owner or occupier of premises, or who has the right to use premises supplies electricity for use in the premises: see Electricity Act s.20. Other exemptions for use of a supply network are made for rail government entities, railway managers (Electricity Act s. 20Q), light rail managers and franchisees (Electricity Act s. 20QA).

<sup>94</sup> Gas Supply Act s. 286: other exemptions for gas include where a pipeline is within a single lot or contiguous lots owned by the same person, or where a pipeline is within contiguous lots and transported to one other person, and under an emergency direction.

<sup>95</sup> Advice from the Regulator, 19 June 2019.

<sup>96</sup> Electricity Act s. 127.

<sup>97</sup> Electricity Regulation r. 24.

### Assessment of current issues

**Appropriate: the legislation addresses a social, economic or environmental need or risk**

Stakeholder concerns in relation to the appropriateness of licensing arrangements focused largely on duplication of state licensing with the registration process under applied national laws. This is particularly relevant to generation licensing.

#### Duplication

A number of stakeholders raised concerns that the process appears to duplicate others and suggested there would be benefit in either reducing or eliminating the authorisation requirements, particularly for new generation where the authorisation process is not a critical function to support other rights.

For example, the Australian Sugar Milling Council, Australian Energy Council, Windlab, Meridan Energy, Energy Queensland and Origin Energy each raised concerns that the authorisation process largely duplicates the registration processes under applied national laws, particularly in relation to technical competence and financial strength.<sup>98</sup> While not directly raised by stakeholders, it further appears that environmental considerations in the authorisation process also at least partly replicate requirements in other legislation. For example, the regulation of environmental impacts of generation of over 10 MW of electricity and energy networks as environmentally relevant activities under the *Environmental Protection Act 1994*, triggering the development approvals process under the *Planning Act 2016*.

#### Generation

The changing nature of generation is also relevant to these arguments. With the growth of renewables, greater numbers of generation units are supplying the market, and units are of smaller size. Physical interconnection to the National Electricity Market also expands the number of potential generators that can be used to meet supply. Given these factors, the risks posed by a new generator to whole of system outcomes is considerably smaller than when the authorisation regime was originally introduced.<sup>99</sup>

**Effective: the legislation achieves its desired outcomes**

Stakeholders raised concerns about the effectiveness of existing licensing arrangements, particularly in relation to new technologies and the transparency of arrangements.

#### Treatment of new technologies

A key concern raised in stakeholder responses to the Stage 1: Issues Paper was the ability of the existing authorisation regime to manage new and emerging technologies. Various stakeholders suggested the authorisation or exemptions framework may need to be extended or adjusted to provide for batteries and storage technologies, micro-grids and community owned assets,

---

<sup>98</sup> Australian Sugar Milling Council submission, p. 3; Australian Energy Council submission, p. 4; Windlab submission, p. 1; Meridan Energy submission, pp. 1-2; Energy Queensland submission, p. 12; Origin Energy Limited submission, p. 3.

<sup>99</sup> See, e.g. Sood, R. of Frontier Economics for the Australian Energy Council, December 2019, NEM Structure in light of technology and policy changes, pp. 2, 12 and 33, viewed 17 July 2019, <https://www.energycouncil.com.au/media/14945/20181213-final-report-advice-on-nem-structure-in-light-of-technology-change-stc.pdf>

aggregators, and distributed energy resources.<sup>100</sup> The AEMC's current reviews of stand-alone power systems and embedded networks have suggested the need for greater oversight of both technologies.<sup>101</sup> Powerlink also raised concerns in relation to the treatment of user shared assets.<sup>102</sup>

#### Batteries and storage technologies

The treatment of storage technology was a particular issue raised by Origin Energy and Energy Queensland.<sup>103</sup> Generation licensing is concerned with the act of connecting generating plant to a network. The term 'generating plant' is not defined in the legislation, and it is not clear whether it would capture new storage technologies. These technologies store and can export electricity, but do not generally 'generate' electricity in the traditional sense. However from a network management perspective, it makes limited difference whether the electricity has been generated on a site or not: it is act of export that is most relevant. Adjusting the licensed activity to focus on export of electricity into the network, rather than connection of a generating plant could overcome these limitations.

Where storage is used purely for network management purposes, Energy Queensland submitted the legislation should make clear that it may be considered as a distribution activity.

#### Micro-grids, stand-alone power systems and community owned assets

Micro-grids which are either not connected, or only intermittently connected to the network, challenge the concept of what a distribution activity is. Models which provide supply to a single customer via an individual stand-alone power system, and models of self-supply via community owned assets are equally problematic.

Under existing rules, electricity distribution licensing is concerned with the activity of supplying electricity via a supply network, with 'supply network' defined as

*a system, or part of a system, of electric lines, substations and associated equipment, other than a transmission grid, for distributing electricity to customers, whether or not generating plant is connected to it.*<sup>104</sup>

While a micro-grid which is connected or which supplies a number of customers is likely to be considered a supply network, there is less certainty for:

- single customer supply – where the 'network' is located solely within the customer's premises, though this may be considered an 'on-supply' type arrangement
- community owned assets – where there are no 'customers' in the traditional sense.

It is more certain that the arrangements capture stand-alone power stations providing supply to a number of customers, as is the case with Ergon Energy's 33 isolated networks.

The AEMC's review of the regulatory frameworks for stand-alone power systems is suggesting changes to the licensing frameworks at a national level for stand-alone power systems. If accepted, the changes could have potential flow on consequences for state licensing.

<sup>100</sup> Energy Queensland submission (micro-grids, aggregators, batteries and storage technology); Cotton Australia submission (microgrids, community owned assets); Origin Energy submission (aggregators, distributed energy resources, batteries and storage technology).

<sup>101</sup> A new regulatory framework at a national level has been proposed by AEMC to address these types of new supply arrangements.

<sup>102</sup> Powerlink Queensland submission, p. 4.

<sup>103</sup> Origin Energy Limited submission, p. 3; Energy Queensland submission, pp. 8-9.

<sup>104</sup> Electricity Act s. 8

<b>Stand-alone power systems</b>	<p>The AEMC’s Reviews of stand-alone power systems includes a draft recommendation for a three tiered licensing framework for stand-alone power systems.</p> <p>Category 1 systems would comprise very large microgrids. Providers would be subject to economic regulatory oversight of the AER, and subject to retail competition.</p> <p>Category 2 and 3 systems would be smaller sized systems, generally vertically integrated. Providers would be subject to jurisdictional regulation, based on risk and (in the case of category 2), nationally consistent principles. The Commission’s draft recommendation is that the split between category 2 and 3, as well as requirements to apply to each system be determined on a jurisdictional basis.</p> <p>A separate framework would apply to systems run by distributors, which would largely treat systems similar to grid connected networks.</p>
----------------------------------	---

### Aggregators

The ‘batteries and storage technology’ section above noted that extension of the framework to focus on export, rather than connection, could address issues with batteries and storage technologies. This could also have the effect of capturing aggregators. Aggregators do not tend to connect individual generation units to the network, but rather coordinate export from those units to form a ‘virtual power plant’. Going forward, the export volume from virtual plants could be equivalent to or exceed larger scale single site generating plants indicating that some oversight may be needed.

However, issues in relation to ‘special approvals’ would need to be addressed. At present, a person will receive a ‘deemed special approval’ for the connection of an individual system under 30 MW, on the basis this is considered small scale and low risk activity. However, as virtual power plants can bring together the collective capacity of many systems (each under 30 MW), assessing risk on the basis of size at an individual location may no longer be appropriate.

### Distributed energy resource (DER)

DER operators are similar in nature to aggregators, though may rely solely on ‘negative’ generation – that is, reducing load to assist the network in times of high demand. They may be facilitated by large scale batteries, or by orchestrating the activities of numerous small scale batteries or the consumption of numerous individual customers. To the extent these activities involve export, they may be treated as a generator. However, to the extent these activities involve reducing demand, there is no equivalent category within state legislation.

Nevertheless, under the applied national laws, DER operators need to register with the AEMO and comply with demand side participation guidelines to receive payment for services. To this end, there is a degree of oversight, at least in their relations with the market. It is unclear if additional state licensing may be needed.<sup>105</sup>

<sup>105</sup> However, it is noted there does not appear to be equivalent oversight in relation to DER operators relations with individual customers, in the same way the relationship between retailers and individual customers is regulated. Instead, customer protections come from general protections under Australian Consumer Law. This makes sense given the relationship between customers and a DER operator is more of a voluntary nature: a customer may always opt-out. By contrast, the retail relationship is more dependent: in order to receive power, a customer must engage with a retailer. Given this, it is not clear that customer relations with DER

### Embedded Networks

Embedded networks which supply a number of customers are distribution activities within the licensing framework. However, these networks receive a ‘blanket’ exemption from licensing requirements, as long as the networks are located within premises owned, operated or controlled by the relevant entity. The blanket exemption is based on an assessment that these arrangements pose a reduced risk, given few customers are involved and those customers are likely to have a different relationship with the supplier, when compared to the relationship between a traditional customer and a distribution entity.

However, as with aggregators, the risk assessment based on operations being small scale and affecting only a small number of customers is being challenged. It is understood that almost 4 500 embedded electricity networks provide services to up to half a million people across the National Electricity Markets. As a result, the AEMC’s review of embedded networks has looked at the need for additional licensing oversight under the applied national laws, and the development of a new category of provider: an Embedded Network Service Provider.

<b>Embedded networks</b>	<p>The AEMC’s <i>Final Report: Updating the regulatory frameworks for embedded networks</i> recommends creating a new role in the national framework for Embedded Network Service Providers (ENSPs). It proposes these entities would be required to register with the AEMO and be subject to many of the existing regulatory requirements placed on distributors.<sup>106</sup></p> <p>New embedded network operators would no longer be subject to exemptions under the applied national laws.</p>
--------------------------	--

### User shared assets

Powerlink raised the need for the authorisation framework to clarify how arrangements work where the owners and operators of infrastructure are different parties, particularly in relation to user shared assets.<sup>107</sup>

As outlined in Section 2.3: Interaction with applied national laws, the authorised person under state legislation is the person who undertakes an activity, that is, the operator. For the purposes of the applied national laws, the owner or controller must also be registered. However, in assessing whether to issue an authorisation, the Regulator must also consider the suitability of the owner. In the case where an existing transmission entity takes on the operation of ‘user shared assets’ owned by a third party, it is unclear whether existing authorities should be revisited. In Victoria, South Australia and the Australian Capital Territory, change of ownership or control of an asset must be reported to the Regulator.

---

operators need greater scrutiny, in the form of state licensing and any additional necessary customer protections is likely to be better pursued under applied national law frameworks.

<sup>106</sup> See, e.g. AEMC, 20 June 2019, *Updating the regulatory frameworks for embedded networks, Final report*, p. ix, viewed 17 July 2019, <https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF>

<sup>107</sup> Powerlink Queensland submission, p. 4.

### Feedback wanted: Electric vehicle charging stations and licensing

The licensing and exemptions framework under the Electricity Act focuses on connecting generation to the network, and the activity of supplying electricity to and in premises. Since the introduction of rooftop solar the Electricity Act has been amended to provide for flows into the grid from small distributed generation.

Some electric vehicle charging stations where electricity is on-sold may be considered networks under the applied national laws. However, a specific exemption is provided under the AER's Electricity Network Service Provider Registration Exemption Guidelines for these stations. Under the Guidelines, electric vehicle charging stations within a private network (e.g. a privately owned charging station located in a public area, hotel, shopping centre, university, etc.) are exempt from registering as a network service provider.

The situation in state law is less clear. The licensing and exemptions framework under the Electricity Act currently focuses on the activity of supplying electricity to and in premises. Electric vehicle charging stations challenge this, as electricity is supplied to a vehicle, rather than premises.

As noted in the context section, licensing is primarily intended to guard against risks relating to technical competence, financial vulnerability, abuse of power and environmental harm. While the issue of technical competence is particularly relevant to commercial electric vehicle charging stations (voltage spikes, fire, electric shock, etc.), other risks are less significant. For example, unlike supply to premises, electric vehicle customers can more easily shop around. If a charging station goes out of business due to financial vulnerability of the operator, it will have a significantly reduced impact on customers, who will have other options.

*Stakeholder feedback is sought on the benefits, disadvantages and risks of licensing electric vehicle charging stations under the Electricity Act, or via the exemptions framework.*

### Transparency

A further potential issue impacting the effectiveness of the arrangements is the lack of transparency around who is authorised to undertake activity and who is not. In Queensland, only electricity and gas distribution authorisations are published. The details of special approval holders are not published. This means those customers who receive their electricity supply from special approval holders have no way to verify whether authorisation has been granted and any terms attached, e.g. in relation to reliability.

This reduces the effectiveness of arrangements supporting works and access rights, as third parties affected by those rights (for example, property owners and road authorities) may be unable to easily verify who has been granted rights over their land, and the terms of that access.

*Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost*

Efficiency concerns with the licensing framework mainly concern fees, duplication, and the treatment of on-supply. Opportunities for process improvements were also identified, particularly for licence areas and renewal processes.

## Fees

*Licence application fees*

Electricity licence application fees were introduced in 1995 when, for the first time in Queensland's history the Electricity Act divided the state's electricity supply chain into distinct segments. Fees were originally set at \$250 and remained at this rate until 2006, when fees were increased to better reflect the Regulator's costs.<sup>108</sup> Then, as now, the Queensland Government had a policy of cost reflective fees and charges.<sup>109</sup> Despite this, over time, the gap between the application fee and the cost to the Regulator has grown. Today, these fees are set well below cost and are modest when compared to the earning capacities of companies holding a licence.

The current application fees for licences set out under the Electricity Regulation and Gas Supply Regulation are set out below, see Table 1.

Table 1: Application fees under Electricity Regulation and Gas Supply Regulation (2019)

Type	Fee (excl GST)
<b>ELECTRICITY</b>	
Application for generation authority	\$1 729.00
Application for transmission authority	\$1 729.00
Application for distribution authority	\$1 729.00
Application for special approval	\$505.00
Application for transfer of a generation authority, transmission authority, distribution authority or special approval	\$160.40
<b>GAS</b>	
Application for distribution authority	\$393.70
Application to amend distribution authority	\$117.80
Application to renew distribution authority	Nil
Application to transfer distribution authority	\$393.70
Application for approval of surrender of distribution authority	Nil

These fees are set well below cost. While a precise figure is not available, the Regulator has advised the cost of assessing recent applications was between \$4000 and \$5000. These costs relate to work undertaken to assess applications according to the criteria set out in legislation and internal decision making and approval processes.<sup>110</sup> In addition, the Regulator must advertise applications in state-wide newspaper, costing an additional \$3000 to \$4000 per application.<sup>111</sup>

The application process for gas distribution authorities can be reduced significantly because the Regulator is able to grant an authority where the applicant already holds a separate gas authorisation in Queensland or in another state. However, the fee set for an application for a gas

<sup>108</sup> Electricity Regulations 2006, Regulatory Impact Statement

<sup>109</sup> The State of Queensland (Queensland Treasury), Principles for Fees and Charges January 2018, viewed 17 July 2019, <http://treasury.govnet.qld.gov.au/office/knowledge/docs/fees-and-charges/principles-for-fees-and-charges.pdf>

<sup>110</sup> Activities to assess an application include various court searches, searches with the Australian Securities and Investment Commission, confirmation that various environmental approvals have been received and connection agreements entered into. Information needs to be published and public submissions considered. General assessment of submissions and analysis of alignment with legislative requirements must also be undertaken.

<sup>111</sup> Regulator advice, April 2019.

distribution authority—\$393.70—is still considerably below the cost to assess these applications and not all applicants will already hold a corresponding authority.

The Queensland Council of Social Service submission argued that licensing application fees should be relaxed for community renewable developments which may require a ‘special approval’ licence. Special approvals attract a licensing application fee of \$505, as well as ongoing annual fees of \$372. While considerably below cost, the Queensland Council of Social Services cautioned:

*...licensing fees and the cost associated with the applications process would likely make a typical community energy project uneconomic.<sup>112</sup>*

Other jurisdictions have similarly low application fees for licensing. In Victoria, there is no charge for an application. In South Australia, applications for licences typically attract a flat \$1000 fee. In New South Wales, fees vary depending on complexity of an application and are available on a price-on-application basis. While low application fees appear to be a feature of most jurisdictions, the approach does not appear to be efficient or in line with the Queensland Government’s policy of cost reflective fees and charges, with the state bearing losses for each application received.

#### *Ongoing licence fees*

The treatment of ongoing licence fees differs between the Electricity Act and Gas Supply Act.

Under the Electricity Act, ongoing licence fees can be set in regulation or by the Regulator under the terms of an authorisation.<sup>113</sup> In practice, no fee has been set in the Electricity Regulation, and the annual licence fee payment is determined by the Regulator in accordance with authority conditions placed on licence holders, rather than via regulation. These annual fees currently range from \$372 for a special approval, \$18 641 for a distribution or transmission authority, and between \$372 and \$29 826 for a generation authority (depending on nameplate capacity). As with application fees, ongoing licence fees are well below cost.

In 2016-17 and 2017-18, \$250 000 was collected in annual licence fees from 150 electricity licensed entities (holders of full licences, and special approval holders).<sup>114</sup> A 2016 review of licence fees by the New South Wales regulator increased annual fees for distributors to between \$644 000 to \$995 000 per distributor, though this also incorporated administration of safety legislation.<sup>115</sup> The annual licence fee for the New South Wales transmission operator, Transgrid, increased to \$653 000 per annum. While the cost of Queensland administration of licensing is not directly comparable with New South Wales,<sup>116</sup> the considerable difference in the scale of annual fees indicates an adjustment to more cost reflective pricing may be timely. However, it is noted under existing arrangements (fees set by regulator under authorities), this could be achieved without regulatory amendment.

<sup>112</sup> Queensland Council of Social Service submission, p. 2.

<sup>113</sup> Electricity Act ss. 27(d), 31(1)(d), 42(d), 60(1)(d)

<sup>114</sup> Advice from Regulator, April 2019.

<sup>115</sup> IPART, June 2016, *Electricity Network Operator Licence Fees: Review of fees for Distribution Network Service Providers and Transgrid, Energy Network Regulation — Final Report*, p. 9, viewed 17 July 2019, [https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/energy-network-regulation-administrative-energy-licensing-website-documents/final\\_report\\_-\\_electricity\\_network\\_operator\\_licence\\_fees\\_-\\_review\\_of\\_fees\\_for\\_dnsps\\_and\\_transgrid\\_-\\_june\\_2016.pdf](https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/energy-network-regulation-administrative-energy-licensing-website-documents/final_report_-_electricity_network_operator_licence_fees_-_review_of_fees_for_dnsps_and_transgrid_-_june_2016.pdf)

<sup>116</sup> New South Wales costs include the cost of administering safety obligations, and the Regulator does not issue or administer special approvals or generating plants, which make up the bulk of Queensland licences.

While the Gas Supply Act also provides for annual licence fees to be set either in regulation or by the Regulator under the terms of the authority, a regulation has been made.<sup>117</sup> This provides for annual fees of \$785 for small distribution networks (total length of pipeline under 100 kilometres). Larger distribution networks pay a proportion of \$65 486.40, based on the ratio of length (in kilometres) of their pipelines to the total length of distribution pipelines in Queensland. In the last two financial years, around \$60 000 was recovered from five gas distributors. The degree of prescription in regulation prevents this from being adjusted to more cost reflective levels by the regulator. Amendment of the regulation would be needed.

#### *Duplication with national processes*

The cost of the authorisation process should be commensurate with the degree of risk involved. There was clear support from stakeholders to leverage national registration processes, and reduce processes for smaller scale activities. Given duplication with national registration arrangements, a number of applicants submitted the authorisation process for generation be removed or relaxed e.g. moving to deemed authorisations or registrations.

Meridian Energy suggested a tiered system be adopted and only large entities authorised.<sup>118</sup> The Local Government Association of Queensland expressed support for existing special approvals and exemption framework, whereas AusNet argued for a single licence category.<sup>119</sup> Origin supported a system that aligns with national categories while Powerlink noted that flexibility of the framework is critical, given the changing nature and scale of activities.<sup>120</sup>

#### *On-supply / embedded networks*

A particular area of concern raised in work by the AEMC is the treatment of on-supply. Under the Electricity Act and Gas Supply Act, all on-supply activity is subject to a blanket exemption from requirements to obtain a distribution authorisation, as long as the person responsible complies with national rules. For electricity, this includes a requirement to obtain a national registration or exemption. Where national rules for networks do not apply (e.g. privately owned off-grid networks), as long as the arrangements are considered to be on-supply, it appears there is no requirement for network registration nationally or under the Queensland authorisation framework. This was an unintended consequence of the framework's design and reduces protections available to customers.

#### *Licence area*

In relation to gas, the Australian Gas Infrastructure Group identified opportunities to reduce costs by moving to an authorisation system based on geographic area, as applies in South Australia, or on postcode, as applies in Victoria.<sup>121</sup> At present, the areas authorised for gas distribution are based on the location of existing infrastructure, and must be updated each time a new pipeline is built, creating costs for distribution businesses and the regulator.

#### *Renewal and other process improvements*

The Gas Supply Act contains a process for the renewal of authorities, which is not replicated in electricity though may present process improvements and for recognition of corresponding authorities obtained by an applicant. Process improvements and cost reductions for both electricity

<sup>117</sup> Gas Supply Act s. 40; Gas Supply Regulation r. 51

<sup>118</sup> Meridian Energy Australia Pty Ltd submission, p. 2.

<sup>119</sup> Local Government Association of Queensland Ltd submission, p. 1; Ausnet Transmission Group Pty Ltd submission, p. 5.

<sup>120</sup> Origin Energy Limited submission, p. 2; Powerlink Queensland submission, p. 2.

<sup>121</sup> Australian Gas Infrastructure Group submission, pp. 1, 4.

and gas could also be achieved by requiring the publication of applications on Government websites, rather than in newspapers.

### Objectives

The primary objective is to protect the integrity of the energy system by guarding against the risk that participants may not adhere to regulatory standards and standards of good conduct either purposely, or inadvertently due to lack of requisite skill. A secondary objective is to support the efficient operation of national systems in relation to economic regulation and retail rules, and obligations in relation to network connection in an area.

### Options

Key options which have been considered are:

Option	Description
Status quo (option 1)	The existing authorisation process would be retained, with minor process improvements and introduction of cost reflective application fees
National alignment (option 2)	<p>The scope of state authorisations and exemptions would be adjusted to:</p> <ul style="list-style-type: none"> <li>incorporate the activity of exporting electricity, rather than connecting generating plant to a network</li> <li>clarify that the framework applies to the commercial operation of a stand-alone power system (i.e. by a third party, not self-supply)</li> <li>align with the applied national laws registration and exemption system.</li> </ul> <p>Duplication between assessment criterion under applied national laws and in the state framework would be removed. The full suite of criteria would continue to apply to off-grid systems. Cost reflective fees would also be applied</p>
Remove authorisation scheme (option 3)	The existing authorisation system would be removed

#### Option 1 – Status quo

Option 1 involves retention of existing arrangements, with minor process enhancements, including:

- The adjustment application fees for licences to cost reflective levels. This would result in an increase in fees. As noted above, the direct costs of assessing recent applications have been around \$4 000 to \$5 000 per application, with an additional \$3 000 to \$4 000 in advertising costs, as well as costs associated with the approval process. However, the amount can vary due to the complexity of arrangements. Under the option, the dollar value of an application would not be specified in legislation, but rather expressed as an amount that the Regulator considers to be reasonable, and that is not more than the reasonable cost of assessing an application. The Regulator would have discretion to waive payment of the fee.
- The introduction of a renewals process for electricity authorisations, similar to gas. This would reduce time and cost for applicants and the regulator.
- Relaxation of newspaper publication requirements. The Regulator would only be required to publish information about a new application on an appropriate Government website, rather than in a state-wide newspaper. This would be expected to expand the potential reach of information. For those who rely on newspapers, it is noted that stakeholder land impacts for

generation licences would be covered by planning development applications (with public notice requirements).

- The introduction of a requirement on the Regulator to publish basic information about authorised activities—the Regulator would be required to maintain a public register of authorised activities, available on an appropriate Government website to improve transparency of arrangements.
- The introduction of gas distribution authorisations based on area or postcode as per South Australia or New South Wales to reduce the need for gas distributors to apply for alterations to authorities for minor expansions in area. This would reduce time and costs for applicants and the Regulator. While it may result in unintended consequences if it resulted in more than one gas distribution authority in a given area, the approach is already effectively managed in other states which have a much greater gas footprint than Queensland.
- The introduction of a definition for ‘generation’ and generating plant’, aligned with the National Electricity Rules to improve certainty for stakeholders as to the treatment of generation.
- Clarification that authority holders notify the Regulator of a change in ownership or control of relevant assets to ensure the framework continues to meet its original intent of ensuring owners, as well as operators, are fit and proper persons.

The overall approach of retaining existing authorisations would align with the approach adopted in South Australia and Victoria. It also ensures that State energy and environmental policies are properly considered, as well as assisting with enforcement. Entities and the Regulator would continue to incur costs associated with the duplication of processes.

The approach would have limited impact on existing authorised activities, though would reduce costs slightly in relation to renewals. For new applicants, there would be no strong advantages to the approach, and they would continue to incur costs and spend time to obtain the necessary authorisations for activity. With fees increased to cost-reflective levels, the cost to applicants would rise.

While the approach may dampen investment in new generation, compared with states such as New South Wales where there are no generation authorisations, the impact is not expected to be significant for the majority of proponents—that is, while it is a factor, the application process is not expected to be key determinant of whether to proceed with new generation investment in Queensland. It is understood these decisions are more influenced by national grid connection processes and the capacity of local networks to support new projects. As submitted by the Queensland Council of Social Service however, retention of existing arrangements could disproportionately impact local community renewable groups, which have relatively limited funding and resources to support authorisation processes,<sup>122</sup> which are assumed to cost applicants between \$10 000 and \$20 000 to complete (plus 40 to 80 business hours). To address these issues, the Regulator would have discretion to lower application fees for less complex applications.

---

<sup>122</sup> Queensland Council of Social Service submission, p. 2.

Impact group	Estimated impact
<b>New generators, distribution entities and transmission entities</b>	<p>Would continue to need to apply for registration with the AEMO and authorisation from State Regulator</p> <p>The authorisation process takes up to four months or longer for more complex applications and is assumed to cost between \$10 000 and \$20 000 to complete (40 to 80 business hours).</p> <p>Applicants would also face increases in application fees for licensing as they move to cost reflective levels. Fees are currently set at:</p> <ul style="list-style-type: none"> <li>• <u>Electricity</u> \$505 for a special approval and \$1729 for a generation, transmission or distribution authority</li> <li>• <u>Gas</u> \$393.70 for a distribution authority</li> </ul> <p>Increasing fees to cost reflective levels could increase the cost of new applications to between \$4 000-\$5 000, noting:</p> <ul style="list-style-type: none"> <li>• this would need to be confirmed by a study to be undertaken by the entity responsible for assessing applications</li> <li>• the number of new applications varies each year, predominantly driven by electricity generation projects</li> <li>• few applications are received for network licences for electricity or gas, though the number of special approvals may increase in future years with the development of micro-grids</li> </ul> <p>Successful applicants would need to pay ongoing annual fees as set by the Regulator which is not more than the reasonable cost of administering the licence (i.e. including covering cost of compliance)</p> <p>As the costs associated with preparing an application and timeframe to gain an application are relatively fixed (legal, process) the impact of obtaining authorisations would be proportionally higher for smaller projects, such as community renewable energy projects</p>
<b>Existing authority holders</b>	<p>Existing authority holders would continue to hold authorisations and be required to pay annual authorisation fees, ranging from \$372 per annum for a special approval or generation authority (up to 50 MW) to \$29 826 per annum for a generation authority over 3000 MW</p>
<b>Other market participants</b>	<p>The approach would not directly impact other market participants not currently required to obtain authorisation for an activity in Queensland, e.g. those subject to a blanket exemption</p>
<b>Regulator</b>	<p>The Regulator would recover costs associated with assessing applications</p> <p>The Regulator would see a small increase in costs associated with maintaining a public register of authority holders, however this would not be material</p>
<b>Users and other public</b>	<p>Users would not be directly affected by this option, with existing exemptions continuing. Users would benefit from increased transparency around who has been authorised to undertake activities and conditions applying to those activities. Given the essential nature of energy supply, the option would continue to provide confidence to users and the public generally that the State is actively vetting key participants in the sector, and having regard to relevant environmental policies.</p>

Option 2 – National alignment

Option 2 involves retaining an authorisation and exemptions process, but adjusting the process in line with the applied national laws to remove duplication and to clarify treatment of new and emerging technology.

Removing duplication

To remove duplication, changes could be made to the assessment criterion for grid-connected activity. In particular, criterion would be removed which require the Regulator to be satisfied:

- The applicant will undertake the proposed activity. This requirement is unnecessary as it is adequately dealt with under the applied national laws.
- The technical quality of the proposal is satisfactory. This requirement is unnecessary as it is adequately dealt with under the applied national laws.
- That the proposed operator and the owner are competent. This requirement is unnecessary as it is adequately dealt with under the applied national laws.

As outlined in *Figure 14*, the criterion remaining once these factors are removed are:

- An assessment that the proposed operator and owner are each suitable to be a licensed entity and owner, considering honesty and integrity.
- Consideration of the purpose section of the Act and relevant government policies about environmental and energy issues, and the likely environmental effects of proposed activities.

Suitability criterion	Electricity Generation	Electricity Transmission and Distribution	Gas Distribution
<b>Administrative</b>	Regulator satisfied applicant will undertake activity   <b>Remove</b> – adequately dealt with in National Electricity Rules (NER) 2.2.1 and NER 2.4.2(a)-(c) and (e)	Regulator satisfied applicant will undertake activity   <b>Remove</b> – adequately dealt with in NER 2.4.2 and NEM Network Service Provider Registration Guide, cl 3.1(b), 3.3(a), 3.4.1.1	n/a Nil criterion
<b>Technical</b>	Regulator satisfied that plant will be able to provide electricity of a quality suitable for grid / network   <b>Remove</b> - adequately addressed by detailed technical requirements of National Electricity Law (NEL)/NER	n/a Nil criterion	Ability to provide adequate level of customer connection services   <b>Remove</b> – adequately addressed by detailed technical requirements of National Gas Law (NGL)/National Gas Regulation (NGR)

<b>Qualities of applicant / owner</b>	Regulator satisfied that applicant and owner are each suitable to be licensed entity and owner (e.g. considering competence, and honesty and integrity in commercial dealings)		
			
	<b>Remove</b> assessment relating to competence. Addressed by NEM Generator registration guideline 3.2.1.2	<b>Remove</b> assessment relating to competence. Addressed by NEM Network Service Provider registration guideline 3.1(b)(4)	<b>Remove</b> assessment relating to competence. Addressed by s. 135AC NGR
	<b>Retain</b> assessment relating to honesty and integrity.	<b>Retain</b> assessment relating to honesty and integrity.	<b>Retain</b> assessment relating to honesty and integrity.
<b>Discretionary / policy based criteria</b>	Regulator must consider the objects of the Act and relevant government policies about environmental and energy issues, and the likely environmental effects of proposed activities		Regulator must consider any relevant government policies about energy issues
			
	<b>Retain</b> , no equivalent	<b>Retain</b> , no equivalent	<b>Retain</b> no equivalent

Figure 14: Process changes under option 2

The approach could be further streamlined by providing for a registration approach for electricity similar to that which currently appears in the Gas Supply Act. Under s. 32 of the Gas Supply Act, the Regulator may grant an application without regard to suitability criteria where the applicant already holds a corresponding authority (being a gas distribution authority or licence under legislation of another state). Under the approach, where an applicant already holds an AEMO registration, a standing authorisation or registration process could be applied with the Regulator retaining the ability to have a “final say” for major energy market activity occurring in Queensland. However, an approach which requires express consideration of a reduced number of criterion is preferred to clearly maintain oversight of more discretionary or policy based criterion i.e. the purpose sections of the Act, relevant government policy about environmental and energy issues, and the likely environmental effects of proposed activity.

The full suite of conditions would continue to apply for off-grid electricity activity, which do not fall under the applied national laws.

#### Fees

Under option 2, application fees for licensing would be set at cost reflective levels as determined by the Regulator (as per option 1).

As outlined above, for grid-connected activities and gas distribution activity, the Regulator would only be required to consider two aspects of a proposal:

- that the applicant and owner are each suitable to be a licensed entity and owner in relation to honesty and integrity in commercial dealings

- whether the proposal aligns with the purpose section of the Act and relevant government policies about environmental and energy issues, and the likely environmental effects of proposed activities.

As much of the existing cost of assessing a license application concerns technical matters (which will no longer be assessed by the Regulator under this option), the cost of assessing an application could reasonably be expected to reduce. However, as fees are currently well below cost reflective levels, applicants, particularly for electricity (currently set around \$1729), may not see much movement in fees. For gas distribution however, fees could reasonably be expected to increase from \$393.70 to better align with fees under the Electricity Act, given the same considerations would apply. This would still be considerably lower than equivalent fees for petroleum pipeline and facility licences (i.e. gas transmission licences) under the Petroleum and Gas (Production and Safety) Act which are currently set at \$4687 (excl. GST).<sup>123</sup>

With the potential for future government policies about environmental and energy issues still being determined through work such as the Queensland Climate Transition Strategy, post 2020-climate transition policy and Queensland Renewable Energy Target, future costs of assessing applications could vary further. To provide flexibility to accommodate these changes, the option would remove express applications fees for electricity and gas from regulation, and also remove prescription in regulation around annual gas licensing fees. Instead, the Regulator would be able to charge application fees and annual licensing fees on a cost reflective basis.

#### Treatment of new and emerging technology

To clarify treatment of new and emerging technology, option 2 would:

- change the licensed activity for generation from ‘connecting generating plant to a transmission grid or supply network’ to focus on the act of export of electricity to a network
- adjust the licensed activity in relation to electricity distribution to ensure that commercial operators of stand-alone power systems are included, whether supply is provided to an individual customer or many customers, and
- adjust the distribution licence requirements to enable a license to be issued for a specified activity throughout Queensland (e.g. a series of stand-alone power systems).

To provide further certainty to applicants and the Regulator, option 2 would involve adjustment of the existing special approvals and exemption arrangements for greater consistency with national approaches. This is expected to address two issues with the current framework.

The first issue is that, if a person seeks a special approval to engage in generation or network activity, the same criteria are applied to the assessment as if they were applying for a full authorisation. While the criteria are applied proportionately depending upon the scope and nature of activities that the special approval is sought for, the distinction between full authorisation and special approvals is not clear on the face of the legislation. This makes it difficult to understand how new energy models and technologies fit into the current licensing and special approval frameworks.

The lack of distinguishing aspects between a ‘full authorisation’ and ‘special approval authorisation’ is not best legislative or administrative practice. Option 2 would improve the flexibility of the special

---

<sup>123</sup> Queensland Government 2017, Brisbane, viewed 17 July 2019, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/petroleum-energy/authorities-permits/applying/petroleum-gas-authorities/pipeline-licences#PPL>

approval and exemption regime to ensure certain categories of activities benefit from a blanket exemption and for those that do need to go through the individual process, the timeframe is clearer. This would be achieved by adopting an exemption regime consistent with the applied national laws.

#### Current national exemption framework for network activities

Under the National Electricity Law and the National Electricity Rules, anyone who engages in the transmission, distribution or retail of electricity must either be registered with the AEMO, or gain an exemption from the AER. The exemptions available fall into three categories—deemed, registrable and individual.

A **deemed exemption** applies automatically to certain classes of people and is designed for small-scale arrangements where the costs associated with the exemption registration would outweigh the benefits of increased regulation. Parties covered by a deemed exemption do not need to either apply or register with the AER or AEMO, however conditions generally apply.

A **registrable exemption** applies to certain classes of people that require greater transparency and regulatory oversight, usually because the scale of the activities are larger and the impact on the electricity market and customers is greater. Parties that fall into a registrable exemption category are required to register with the AER.

An **individual exemption** is required in circumstances where an applicant is unable to meet the conditions applicable to a relevant class of registrable exemption, or where no class exists which covers the activities for which the applicant seeks exemption. Where no class covers the activities to be undertaken, an individual exemption will be tailored to the specific circumstances of the person seeking the exemption and the activity they are seeking to undertake.

#### Summary of the national registration framework administered by the AEMO

The National Electricity Law and National Electricity Rules require anyone engaging in the generation or export of electricity to register as a generator, or to gain an exemption from the AEMO. The exemptions available include standing, registrable, temporary notifiable and intermediary exemptions. Whilst standing and registrable exemptions operate in a similar fashion to the deemed and registrable exemptions available for network operators and retailers, temporary notifiable exemptions and intermediary exemptions are more discrete.

**Temporary notifiable exemptions** are available to persons who are required, and have applied, to register as a generator, but wish to perform limited commissioning tests before their registration is complete.

**Intermediary exemptions** enable a person that would ordinarily be required to register as a generator to apply for an exemption if an intermediary is to be registered in their stead.

Replacing the existing exemptions and special approvals in the legislation itself with the ability for the Regulator to issue exemptions pursuant to guidelines and consistent with national arrangements would offer more flexibility to amend categories in the future as the risk and impact of new technologies emerge. The approach would also allow different criterion to be applied to different categories of activity and guidelines to set out clearer expectations and timeframes, subject to an assessment of costs and benefits. This is discussed in more detail at Section 2.6: Technical Requirements.

The second issue with the existing framework is ambiguity surrounding the application of the current special approval arrangements to new energy service models and technologies. Option 2 would address this and provide greater flexibility for their inclusion in the authorisation framework. While a number of exemption categories under the network exemptions framework remain location

specific,<sup>124</sup> the AEMC's *Final Report: Updating the regulatory framework for embedded networks* recommends revising the treatment of these.<sup>125</sup>

The AEMC similarly recommends changes to the licensing and exemption framework applying to stand-alone power systems, with finalised framework to be presented in October 2019.

Figure 15 outlines how the changes under option 2 would work under both the current applied national law framework, and the proposed applied national law framework.

Figure 15: Category changes, option 2

<i>Current arrangements in the Electricity Act and Gas Supply Act and regulations</i>	<i>Revision if current applied national law framework retained</i>	<i>Revision if AEMC proposed changes to applied national law framework are accepted</i>
<i>Exempted activities in the Electricity Act, Gas Supply Act and Regulation (e.g. on-supply and embedded networks, rail)</i>	Would become either deemed or registrable exemption in a Guideline issued by the Regulator pursuant to the state legislation, and consistent with national approaches.	Would become licensed entity, or either deemed or registrable exemption in a Guideline issued by the Regulator pursuant to the legislation, and consistent with national approaches. New embedded network operators would no longer be subject to exemptions under the applied national laws. <sup>126</sup>
<i>Common examples</i>		
<i>Short term accommodation</i>	Becomes deemed exempt	Becomes registered exempt
<i>Small commercial and residential complexes &lt;10 customers</i>	Becomes deemed exempt	Becomes licenced in potential new embedded network distribution category
<i>Large commercial and residential complexes &lt;10 customers</i>	Becomes registered exempt	Becomes licenced in potential new embedded network distribution category

<sup>124</sup> See, e.g. Category ND1 (deemed exemption): person supplying metered or unmetered energy to fewer than ten small commercial / retail customers within the limited of a site they own, occupy or operator, and Category NR2 (registrable exemption) person supplying metered or unmetered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.

<sup>125</sup> See, e.g. AEMC, 20 June 2019, *Updating the regulatory frameworks for embedded networks, Final report*, p. ix, viewed 17 July 2019, <https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF>

<sup>126</sup> Note: exemptions would continue for a small sub-set of network service providers where the need for regulatory oversight is low, such as supply to some infrastructure sectors and temporary accommodation. Exemption for individual parties would also be available in special circumstances, subject to assessment by the AER.

<i>Retirement villages</i>	Becomes registered exempt	Becomes licenced in potential new embedded network distribution category
<i>Long term holiday accommodation</i>	Becomes registered exempt	Becomes licenced in potential new embedded network distribution category
<i>Shopping malls</i>	Become registered exempt	Becomes licenced in potential new embedded network distribution category
<i>Gas embedded networks</i>	Not currently overseen in national framework. Become deemed exempt at state level.	Not proposed to be overseen in national framework. Become deemed exempt at state level
<i>Blanket Special Approvals in the Electricity Act and Regulation (e.g. &lt;30 MW generation)</i>	Would become categories of deemed or registrable exemption in a Guideline issued by the Regulator pursuant to the state legislation, and consistent with national approaches for electricity.	Would become categories of deemed or registrable exemption in a Guideline issued by the Regulator pursuant to the state legislation, and consistent with national approaches for electricity.
<i>Individual Special Approvals, granted by the Regulator (e.g. stand-alone power systems, generation supplying mining or industrial activity)</i>	Would become a combination of registrable exemptions and individual exemptions granted pursuant to a guideline issued by the Regulator pursuant to the Electricity Act, and consistent with national approaches.	Regulated under three tiered framework: <ol style="list-style-type: none"> <li>1. Large stand-alone power systems become licensed distributor</li> <li>2. Smaller stand-alone power systems become licensed at state level</li> <li>3. Very small stand-alone power systems become licensed or registered exempt</li> </ol>

To reduce cost to smaller entities who are currently considered exempt in State legislation but under the proposal would move to a category of ‘registrable exemption’, the arrangements would provide for automatic registration. Once an entity registers under national exemptions, the entity would be automatically classified as having registered under state exemptions. Off-grid on-suppliers however would need to register as they are not subject to the applied national laws.

The overall approach of reducing the requirements for the authorisation process to minimise duplication, and adopting consistent approaches to national exemptions aligns with best legislative practice. As with option 1, it also ensures that State energy and environmental policies are properly considered, enables the Regulator to have a final say about who participates in the industry and how, as well as assisting with enforcement and supporting economic regulation of distribution and retail regulation (in relation to nominations of responsible ‘areas’). Entities and the Regulator would benefit from reduced costs associated with the duplication of processes, increased clarity around the treatment of new technology and simplification achieved with greater alignment.

Impact group	Estimated impact
<b>New generators, distribution entities and transmission entities</b>	<p>Would continue to need to apply for registration with the AEMO and authorisation from State Regulator. Noting:</p> <ul style="list-style-type: none"> <li>• The authorisation process would be reduced as fewer criterion are considered</li> <li>• Based on savings achieved by gas distributors using the ‘comparative licensing’ approach under s. 32 of the Gas Supply Act, the approach could reduce costs to an applicant (in terms of preparing an application) and Regulator</li> <li>• Applicants would continue to be required to pay application fees and pay ongoing annual fees as set by the Regulator e.g. for monitoring compliance</li> <li>• Gas distribution fees would increase in line with electricity licensing, and regulation prescribing the value of annual licence administration fees would be removed</li> </ul> <p>For applicants seeking an individual exemption (formerly a special approval), a cost reflective application fee would be applied, as determined by the Regulator based on complexity (including risk). Noting:</p> <ul style="list-style-type: none"> <li>• The fee is currently \$505, though this may increase</li> <li>• Some of these entities would become eligible for a registrable exemption, e.g. small scale community projects or supply to self/related company</li> <li>• As these exemptions would no longer require an application or payment of a fee, proponents would benefit from significantly reduced administrative costs</li> </ul> <p>As the remaining costs associated with preparing an application where required and timeframe to gain an application are relatively fixed (legal, process), the impact of obtaining authorisations will remain proportionally higher for smaller projects, though lower than under option 1</p>
<b>Existing authority holders</b>	<p>Existing full authority holders would continue to hold authorisations and be required to pay annual authorisation fees of up to \$29 826 per annum for a generation authority over 3000 MW, though the Regulator may wish to review these fees to reflect cost</p> <p>Special approval holders would be transferred to either individual exemptions along with existing conditions and rights, or registrable exemptions (most holders are estimated to be affected by this)</p>
<b>Other market participants</b>	<p>The approach would provide clarity to other market participants, e.g. large scale battery entities, that they would be treated as a generator under existing arrangements. Noting:</p> <ul style="list-style-type: none"> <li>• Clarity will also be provided to electric vehicle charging stations, transmission networks in respect of shared user assets, and providers of metering installations about how the authorisation process in Queensland applies to them, as the national exemption framework already provides for each of these activities</li> <li>• As these become registrable exemptions (with registration automatically conferred where grid connected) or deemed exemptions, there would be no impact on the affected parties, aside from clarification</li> </ul>

	<ul style="list-style-type: none"> <li>• Off-grid on-supply networks would incur costs associated with registration, as the automatic process would not apply (only one currently exists in Queensland)</li> <li>• The registration process would be relatively simple, with basic information required which should take no longer than one hour to complete</li> </ul>
<b>Regulator</b>	<p>Regulator costs associated with assessing applications would be reduced and costs of assessment would be recovered</p> <p>The Regulator would also receive fewer applications and queries due to the alignment with national exemption frameworks</p> <p>Minimal annual costs would be associated with keeping an individual and registrable exemption register up to date</p>
<b>Users and other public</b>	<p>Users would not be directly affected by this option but would benefit from increased transparency around who has been authorised to undertake activities and conditions applying to those activities</p> <p>Continued confidence to users and the public generally that the State is actively vetting key participants in the sector, and having regard to relevant environmental policies</p>

### Option 3 – Remove authorisation scheme

Under option 3, the existing authorisation system would be removed, with any conditions or rights currently attached to entities applied directly to entities that meet the definition for that activity. To preserve the powers of the state to step in where proposed activity would have an adverse environmental impact, or would be inconsistent with state energy policy, the Minister would have a reserve power to intervene in the planning and development approvals stage of an activity. Requirements for intervention could include where:

- the environmental impact of a proposed activity outweighs public benefits of the activity, or
- the proposed activity is inconsistent with state energy policy e.g. would raise overall emissions levels for the energy sector above a target goal.

For generation, the approach recognises the reduced risks generation activity poses to the State, given the relatively smaller size and overall impact of newer generation activities, and the regulatory functions played by other bodies. There are however two difficulties.

1. It would be problematic to confer positive rights on 'proposed' generation activity e.g. to support early stages of a project, as the proponent would not yet be registered with AEMO. The approach should however be manageable, given the experience in New South Wales where generators receive no express powers of entry or resumption and where access is negotiated directly with affected landowners.
2. Large scale off-grid generation would not be positively vetted by any regulator, and the Regulator may not even be aware of the activity. At present, large scale (above 30 MW) generation activity requires express authorisation, with activities below that level receiving a deemed special approval. Under option 3, neither national registration nor state authorisation would apply upfront to large scale generators, though technical

requirements may be placed on operators under the Standards and Codes framework proposed in Section 2.6: Technical Requirements. A standing obligation would be placed on relevant networks to report the connection of generating plant to an off-grid network.

The approach to managing distribution and transmission could be more complex, given the reliance on concepts of distribution areas in national scheme arrangements and in powers relating to works and access. This could be managed by distributors and transmission entities nominating or registering an area. However, given the importance of these concepts to economic regulation and retail law and rights and powers of a distributor or transmission entity, more formality is appropriate. Given this, under option 3, while positive vetting of the proposed operator would be removed, a process for approving distribution and transmission areas would be retained.

The key benefit of the approach is that it is simple, and would reduce barriers to investment in the energy sector. However, considerable risks are attached to the complete removal of authorisations for individual networks, given the impact they have on the system and supply to individual users. For instance, the behaviour of one network entity has the potential to significantly impact the entire electricity grid and directly affect large numbers of customers. Network service providers are also required to play a greater coordination and planning role than generators. It is thus important they are subject to scrutiny to ensure their suitability to take on these responsibilities. Networks are also not subject to the same commercial pressures or incentives of an open market, creating the need for a high level of regulation.

Impact group	Estimated impact
<b>New generators, distribution entities and transmission entities</b>	<p>Would continue to need to apply for registration with the AEMO if connected to the grid however no application would be needed at a state level (similar to New South Wales and the Australian Capital Territory in relation to generation). Noting:</p> <ul style="list-style-type: none"> <li>• To address difficulties with identifying proposed proponents, rights of access to support proposed activity would be removed and proponents would need to rely on agreement with affected landowners</li> <li>• As the majority of proposed generators do not apply for or receive licence until later in the construction process, this largely retains the status quo and reflects best practice</li> </ul> <p>To preserve existing rights of the state to intervene on environmental grounds or where a project is inconsistent with Government policy, there would be a reserve right of the Minister to intervene at the planning / development stage of a project. However, as the existing powers of intervention currently do not apply until much later in the development stage (once a licence is granted) this approach would provide greater certainty to new proponents than existing arrangements</p>
<b>Existing authority holders</b>	<p>The approach would provide greater certainty and reduced costs for existing authority holders</p> <p>Entities would no longer be required to pay annual licence fees</p> <p>Existing rights and obligations would be transitioned to new arrangements, minimising any negative impact on these providers</p>

<b>Other market participants</b>	The approach would not directly impact other market participants
<b>Regulator</b>	<p>Administration costs associated with assessing applications and administering authorities would be eliminated</p> <p>Oversight of new developments and the ability to enforce or amend conditions would become more complex and difficult to recover costs associated with this work from industry, though information on national registrations is publicly available</p> <p>Developing arrangements for, and enforcing requirements of off-grid activities would be particularly problematic</p>
<b>Users and other public</b>	<p>Removing licensing altogether could reduce confidence in the energy sector in Queensland, and create risks particularly in relation to the abuse of power</p> <p>Risks would be more pronounced for off-grid communities (though the number of users affected would be smaller) and in relation to the treatment of network activities, which have a more significant impact on the system and individual users, than generation</p>

### Comparative assessment: Licensing

Figure 16 compares the indicative fee structures that would apply under each of the three options.

Type	Current fee (excl GST)	Current costs incurred by Regulator	Indicative fees proposed under option 1	Indicative fees proposed under option 2	Indicative fees proposed under option 3
<b>ELECTRICITY and GAS</b>					
<b>Applications (all types)</b>	\$0 – \$1729	<ul style="list-style-type: none"> <li>Cost to assess application: &lt;\$4000-\$5000 per application.</li> <li>Cost to advertise in newspaper: \$3000-\$4000 per application.</li> </ul> <p><b>TOTAL costs: \$8000-\$10 000</b></p>	<ul style="list-style-type: none"> <li>No newspaper publication requirements</li> <li>Fees commensurate to complexity</li> </ul> <p><b>INDICATIVE fees: \$4000-\$5000</b></p>	<ul style="list-style-type: none"> <li>No newspaper publication requirements</li> <li>Fees commensurate to complexity</li> <li>For grid connected activity, no technical matters to consider (estimated to halve cost of regulator)</li> </ul> <p><b>INDICATIVE fees: \$2000-\$2500 (grid connected) \$4000-\$5000 (off grid)</b></p>	<ul style="list-style-type: none"> <li>the existing authorisation system would be removed</li> </ul>

Figure 16: Current fee structure compared with (indicative) fee structure proposed under options

	Advantages	Disadvantages	Assessment
Option 1 (Status quo plus process improvements)	Continues confidence in and oversight of major participants in sector Provides certainty for new and existing participants	Unnecessarily costly to applicants and regulator Does not provide flexibility to manage new technological developments	Higher cost than options 2 and 3 Cost of maintaining existing arrangements not commensurate with risk to be managed
Option 2 (National alignment)	Provides greater certainty for new and existing proponents compared to option 1 Provides more flexibility than option 1 to manage new technologies and reduces costs for industry (grid-connected systems) and Regulator while maintaining oversight	Appears unnecessarily costly for new generation, given reduced risks involved. Would result in some additional costs to regulator, and introduce registration requirements for some currently exempt activities Costs of application process for off-grid activity higher than grid-connected activity	<b>Preferred for network activity</b> Lower cost and more flexible than option 1 but higher cost than option 3 More proportionate risk management for network activities, compared with option 1 or 3 Oversight of generation may not be considered commensurate with risk to same degree as option 3
Option 3 (remove licensing)	Reduces costs for industry and regulator Step in powers at planning stage provide greater and earlier advice to proponents regarding environment and energy policy decisions	Does not appropriately manage higher risk (network) activities Would result in the removal of some rights for proposed new generation activity, though this could potentially be managed via bilateral contracts	Lower cost than option 1 or 2 Potentially more proportionate risk management for generation activities, compared with option 1 or 2. Oversight of network activity not commensurate with risk

### Recommendations

It is recommended that electricity network (transmission/distribution) and gas distribution licensing be preserved, but aligned with national arrangements (option 2). Network activity has a high impact on end user outcomes, and pre-vetting of applicants remains appropriate. However, there is opportunity to reduce costs to providers and the Regulator by reducing duplicative activity (e.g. assessment of financial and technical provisions) with applied national laws. Aligning exemption arrangements with applied national laws should also provide a more certain operating environment for entities and facilitate the appropriate management of new business models. This option reduces duplication and offers greater flexibility without diminishing the capacity of the State Government to regulate energy generators and distributors.

A preferred approach has not been identified in relation to generation licensing. Stakeholder feedback on the respective benefits of the options is sought.

Type	Current fee (excl GST)	Current costs incurred by Regulator	Indicative fees under option 2
<b>Electricity and Gas</b>			
Applications (all types)	\$0 – \$1729	<ul style="list-style-type: none"> <li>• Cost to assess application: &lt;\$4000-5000 per application</li> <li>• Cost to advertise in newspaper: \$3000-\$4000 per application</li> </ul> <p><b>TOTAL costs: \$8 000-\$10 000</b></p>	<ul style="list-style-type: none"> <li>• No newspaper publication requirements.</li> <li>• Fees commensurate to complexity</li> <li>• For grid connected connections, no technical matters to consider (estimated to halve cost of regulator)</li> </ul> <p><b>INDICATIVE fees: \$2000-\$2500 (grid connected), \$4000-\$5000 (off grid)</b></p>

Figure 17: Current fee structure compared with (indicative) fee structure proposed under option 2

### Consistency with other policies and legislation

#### Section 5 of the Competition Principles Agreement

The proposed alignment of electricity and gas network licensing (option 2) will support competition by simplifying the operating environment.

#### Fundamental legislative principles

Aligning network licensing with national arrangements could potentially raise concerns with Parliament’s sovereign power to make laws for Queensland. However, while categories of exemption would be aligned, the rules that apply to each category would remain within the sovereign power of Queensland. Alignment would be more for administrative ease and clarity for exempt networks, rather than substantive obligation.

The option of moving to cost-reflective fees, with the value to be determined by the administrator of licensing based on cost could raise issues with the fundamental legislative principles if not subject to administrative or merits review. To address this, it is proposed that decisions of the administrator to set fees will be administrative decisions subject to review.

### Implementation

Implementation of recommendations in relation to licensing would be undertaken in a number of stages. Existing exemptions and special approvals would transition to the proposed new tiered exemption scheme on the cross over date. Affected entities would be contacted in advance in relation to proposed categorisation under the new framework. In the lead up to the changeover, the administrator of licence arrangements would work with:

- affected parties on which conditions apply to different categories
- the AER to support the proposed automatic registration proposal
- AEMO to facilitate the sharing of information about licensed and exempt activities in Queensland.

## Stakeholder questions

### Topic 4 Licensing

Q4.1.1 For generation, of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank - I have no interest in this topic

Q4.1.2 Why?

Q4.1.3 For generation, thinking of your preferred option, would you like to suggest any improvements?

Q4.2.1 For network businesses, of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank - I have no interest in this topic

Q4.2.2 Why?

Q4.2.3 For network businesses, thinking of your preferred option, would you like to suggest any improvements?

Q4.3 FEEDBACK WANTED on electric vehicle charging stations and licensing. Stakeholder feedback is sought on the benefits, disadvantages and risks of licensing electric vehicle charging stations under the Electricity Act, or via the exemptions framework.

- I would like to provide feedback

Blank (I have no interest in providing feedback)

## Section 2.5 Powers of entry and resumption

### Context

The supply of energy in Queensland is infrastructure intensive. In the electricity sector, generation plants are located on over 200 sites, there are more than 15 000 circuit kilometres of transmission lines, over 220 000 kilometres of distribution lines, 1.7 million power poles and 3.3 million meter installations servicing over 2.2 million customers. While the gas network is not as extensive, pipelines run for thousands of kilometres through the state.

In recognition of this, the state legislation gives energy entities various powers of entry and resumption to support the sector to manage this infrastructure—to build it, operate and maintain it—and to remove it when no longer needed (see *Figure 18*). Powers range from accessing or passing through land to compulsory acquisition of land or easements, with different rules applying depending on who the party exercising the right is, the purpose for which the right is granted, and the type of property affected.



Figure 18: Overview powers of entry and resumption

### Powers to support build / installation of new infrastructure

To support new infrastructure, the legislation empowers the Minister to confer rights on electricity generators and electricity networks to i) enter onto and remain on land to decide suitability of the land for proposed works, and ii) acquire land or easements for proposed works.<sup>127</sup> These powers are reserved for infrastructure with a public purpose, and generally only relied on as a last resort where agreement cannot be reached with an affected landholder. Similar powers do not exist for gas companies in the Gas Supply Act.

To support new installations for individual customers, the Electricity Act provides that customers must give distributors access to their land to install service lines. Customers must also give retailers,

<sup>127</sup> See Electricity Act ss. 115 and 116. Section 116A enables the Governor in Council to authorise the creation of an easement for an entity over forest land. Rights for the acquisition of land are subject to the *Acquisition of Land Act 1967*. The legislation deems Ergon Energy, Energex and Powerlink as constructing authorities for the Acquisition of Land Act.

metering coordinators (under Electricity Regulations, though not the primary Act), distributors and special approval holders access to install other necessary infrastructure for supply (e.g. meters). Larger customers may be required to provide access to distributors to install substations.<sup>128</sup> Under the Gas Supply Act, distributors are permitted to enter a place to install gas infrastructure.<sup>129</sup>

For publicly controlled places (e.g. roads), both electricity entities and gas distributors have broad rights. These include the rights for electricity entities to build electric lines or other works on a road or railway, and for gas distributors to build infrastructure on publicly controlled places.<sup>130</sup>

[Powers to support operation, maintenance and repair of existing infrastructure](#)

The majority of access rules under state legislation support the day-to-day operations of energy entities—operation, maintenance and repair of works and infrastructure. The electricity legislation expresses the rules in greater detail and covers additional matters not included in gas legislation.

Access rule	Electricity	Gas
Enter and pass through land to access own works <sup>131</sup>	Electricity entity (generator, transmission, distribution entity)	Nil equivalent
Enter place to inspect, operate, change, maintain, repair or replace works or an electrical installation <sup>132</sup>	Electricity entity	Distributor
Enter place to read meters <sup>133</sup>	Electricity entity, retailer, special approval holder, meter coordinator <sup>134</sup>	Distributor
Enter place to disconnect supply <sup>135</sup>	Electricity entity, retailer	Nil equivalent
Enter place to protect works <sup>136</sup>	Electricity entity	Nil equivalent
Enter place to carry out urgent remedial work or emergency, <sup>137</sup> fix damage/harm in connection with works <sup>138</sup> and make works safe <sup>139</sup>	Electricity entity	Distributor

<sup>128</sup> Electricity Regulation rr. 15 (service line), 46 (install, test, maintain or take away suppliers works) and 59 (substation)

<sup>129</sup> Gas Supply Act s. 138. Excludes entry to residential premises.

<sup>130</sup> Electricity Act ss. 102 and 107, Gas Supply Act s. 78. Subject to obtaining the written agreement of the relevant public entity.

<sup>131</sup> Electricity Act s. 98. Entitlement to unrestricted access to the works at any reasonable time.

<sup>132</sup> Electricity Act s. 136. Include entry to place where someone else has an electrical installation to which electricity is supplied by the entity. Gas Supply Act s. 138. Excludes entry to residential premises.

<sup>133</sup> Electricity Act s. 137; Electricity Regulation r. 46, Gas Supply Act s. 138. Excludes residential premises.

<sup>134</sup> NB. metering coordinator rights are only established under the Electricity Regulations, not the primary Act.

<sup>135</sup> Electricity Act s. 139

<sup>136</sup> Electricity Act s. 140; includes entry to the place to remove vegetation. This can only occur with consent, or where the entity has given the occupier at least 7 days’ notice.

<sup>137</sup> Electricity Act s. 140B. Where damage, harm or risk is serious with an urgent need to fix, no notice is required. Excludes residential premises. Gas Supply Act s.140.

<sup>138</sup> Electricity Act s. 140A. Owner consent, or 7 days written notice required. Excludes residential premises. Gas Supply Act s. 139. Excludes residential premises and 48 hours notice must be given

<sup>139</sup> Electricity Act s. 141. Power may be exercised at any reasonable time. Gas Supply Act s. 139.

Access rule	Electricity	Gas
Deemed consent of future owners and ongoing ownership <sup>140</sup>	Electricity entity	Distributor
Action in publicly controlled place if necessary to provide / supply electricity or gas <sup>141</sup>	Electricity entity	Gas distributor
Action on road including maintain, repair or alter electric lines or other works <sup>142</sup>	Electricity entity	As above

Figure 19: Powers to support operation, maintenance and repair

These powers of entry are supported by safeguards, including notice periods. Most powers cannot be exercised to enter residential premises. When dealings are with public entities, written agreement or consultation is also generally required, except where the activity is to maintain and repair works for electricity.

#### Remove old infrastructure

Both electricity and gas legislation provide access rules for removing infrastructure. For example, s. 15 of the Electricity Regulation provides a customer must provide access to an electricity entity to take service lines away without hindrance or obstruction. Section 46 of the Electricity Regulation similarly provides customers must provide safe access to a distributor, special approval holder, metering coordinator or retailer to take the supplier's works away. Section 136 of the Electricity Act provides an electricity entity may at any reasonable time enter a place where the entity has works to remove the works. Section 138 of the Gas Supply Act gives general powers of entry to a distribution entity to enter a place to take away the distributor's gas infrastructure.

#### Assessment of current issues

##### Appropriate: the legislation addresses a social, economic or environmental need or risk

The vast majority of infrastructure needed to provide electricity and gas services under the legislation is located on land not owned by energy businesses. To provide safe and reliable supply, energy businesses must be able to access this infrastructure, as well as build infrastructure to support new developments. The ultimate beneficiaries of these arrangements are users of the energy services. The importance of powers of entry and resumption was generally accepted in stakeholder responses to the Issues Paper:

*The right to enter land to access works/assets is fundamental to the safe and secure operation of any electricity network.<sup>143</sup>*

*In order to provide safe, reliable and cost effective transmission services it is essential that Powerlink has rights to enter land to construct, operate and maintain the network. The current powers in the Electricity Act 1994 are critical because electricity transmission is an essential service in a similar way as roads, water supply etc.<sup>144</sup>*

<sup>140</sup> Electricity Act ss. 112 and 113; Gas Supply Act s. 100.

<sup>141</sup> Electricity Act s. 101. Includes breaking up soil and pavement, cutting, lopping or removing trees, temporarily stopping or diverting traffic. Some process requirements attach to this right. Gas Supply Act Division 2.

<sup>142</sup> Electricity Act s. 102.

<sup>143</sup> Energy Queensland submission, p. 15.

<sup>144</sup> Powerlink submission, p. 3.

*For [Australian Gas Infrastructure Group], safe and unhindered access to our customer properties is essential for reading customer meters, and for the safe and reliable operation of our gas networks in Queensland.<sup>145</sup>*

Stakeholder concerns in relation to the appropriateness of access rules generally extended to the need for additional rules and additional safeguards, rather than the appropriateness of existing arrangements.

#### Additional access rules

##### *Remediate land*

With the planned closure of a number of large generation sites over the next 20 years, Energy Queensland Limited indicated it would be timely to establish rules around remediation of sites following closure of power stations, including requirements to remove connection assets.<sup>146</sup> As noted in T6: Technical Requirements, whole-of-life cycle planning is a critical issue in the transition of the energy sector, encompassing not only generation but also storage technologies and network infrastructure.

Separate work programs are underway which will consider whether, and if so the extent to which energy entities would be obliged to remediate land following the removal of works. This review does not duplicate that work. However, even in the absence of direct obligations on entities to remediate land, it would appear beneficial to extend rights of access to remove infrastructure to include rights to remediate land. At present, there is an obligation on entities to compensate for damage caused in the exercise of powers of entry.

##### *Neighbouring properties*

Energy Queensland's submission requested the rules to access operating works be clarified or expanded to expressly capture properties neighbouring those where infrastructure is housed. First, it recommended the legislation expressly permit networks to cross privately owned land to access their operating works in an emergency event. Networks generally exercise access to operating works via the benefit of an easement.<sup>147</sup> Energy Queensland noted as easements to access works can be of considerable length, having to access works from one end of an easement can result in significant delays in responding to an emergency event. It argued the ability to cross private land to access its network in emergency situations would allow for faster response, particularly on the Ergon Energy network.<sup>148</sup>

In a similar vein, Energy Queensland also recommended 'the ability to access operating works via a neighbouring property (for example, where assets are land-locked) for all network electricity entities should be made clear'.<sup>149</sup> At present, s. 98 of the Electricity Act provides a right to enter or pass through land to access operating works on that land. However, the rule is silent on whether companies are able to cross land where works are not located (i.e. neighbouring properties) to access their works. While a blanket power to cross any land appears excessive to need, there seems merit in enabling entities to cross neighbouring properties where assets are land-locked.

---

<sup>145</sup> Australian Gas Infrastructure Group submission, p. 4.

<sup>146</sup> Energy Queensland submission, p. 6.

<sup>147</sup> An easement gives another party the right to use the land for a specific purpose even though they are not the land owner.

<sup>148</sup> Energy Queensland submission, p. 19.

<sup>149</sup> Energy Queensland submission, p. 15.

### Power industry locks

The Australian Energy Council, and Red Energy and Lumo Energy argued energy retailers be given access to ‘power industry locks’.<sup>150</sup> Power industry locks are master key systems that allow home owners to lock access to their meter while still allowing meter reader access. The use of these locks minimises risks associated with unauthorised access to a meter e.g. criminals disabling security systems by turning off the power at the meter. Power industry locks avoid the use of ordinary locks which could otherwise result in electricity bills being based on estimates rather than actual readings of the meter.

Issues arise where a metering provider is unable to access a meter locked by a distributor using a power industry lock. Responsibilities for metering changed from distributors to retailers under Power of Choice reforms in December 2017. While distributors act as the default metering coordinator for older style meters unless the retailer appoints a different entity, distributors cannot be the metering coordinator for newer style meters. Red Energy and Lumo Energy have raised concern that arranging access with distributors adds unnecessary time and cost given keys are strictly controlled:

*Power industry locks are blocking access to meters, with only distributors able to obtain a key. This is resulting in customer locks having to be cut by market participants in order to undertake critical works or replacements.<sup>151</sup>*

### Additional safeguards

Powers of entry and resumption interfere with fundamental property rights. This can create stress for landowners. As recognised by Energy Queensland, ‘future access provisions and safeguards must target the delivery of sufficient, effective and socially acceptable outcomes which balance the needs of all parties’.<sup>152</sup> Similarly, Powerlink’s submission recognised the ‘need to ensure [entry and resumption] rights are exercised in a way that respects landowners’ property rights.’<sup>153</sup> The Acts have a number of safeguards to restrict interference with fundamental property rights, however a number of stakeholders recommended these be strengthened.

### Land Access Codes

Meridian Energy’s submission expressly highlighted the importance of codes of practice:

*access rights should only be used as last resort to ensure safety and security. Rights holders should be required to comply with a code of practice covering matters such as communication with affected land holders, minimising unnecessary impacts, protecting the safety and security of any affected property, coordinating access with other access seekers and insurance and indemnity obligations.<sup>154</sup>*

For the mining sector where activities on land can be more intrusive, the Queensland Government has developed a Land Access Code.<sup>155</sup> This code sets out best practice guidelines for communication between resource companies and landholders and includes mandatory conditions for how

---

<sup>150</sup> Australian Energy Council submission, p. 4; Red Energy and Lumo Energy submission, p. 2.

<sup>151</sup> Red Energy and Lumo Energy submission, p. 2.

<sup>152</sup> Energy submission, p. 17.

<sup>153</sup> Powerlink Queensland submission, p. 3.

<sup>154</sup> Meridian Energy submission, p. 2.

<sup>155</sup> Department of Natural Resources Mines and Energy, 2016, *Land Access Code September 2016 v 2*, Queensland Government, Brisbane, viewed 17 July 2019, [www.dnrm.qld.gov.au/data/assets/pdf\\_file/0004/442633/land-access-code-2016.pdf](http://www.dnrm.qld.gov.au/data/assets/pdf_file/0004/442633/land-access-code-2016.pdf)

authorised activities are carried out on private land to minimise interference and potential disputes. Energy Queensland and Powerlink noted their work with landowners to ensure land access and engagement practices align with landholder expectations, with each business operating under a Land Access Protocol<sup>156</sup> designed to ensure consistency with expectations set under the Land Access Code.

The Clean Energy Council has also developed a Best Practice Charter for Renewable Energy Developments, requiring signatories to engage respectfully with the communities in which they plan and operate projects.<sup>157</sup> The Wind Farm State Code and guideline, and Queensland Solar Farm Guidelines also contain guidance to minimise impact on landowners and promote community engagement.

#### *Land compensation*

AusNet Services submitted that an effective approach to ensure property rights are protected would be to encourage electricity entities to negotiate and enter into upfront tenure agreements with relevant landholders for land access. It considered this could be encouraged by the inclusion of a regulated land compensation regime as part of the exercise of compulsory land acquisition processes.<sup>158</sup> However, as noted in the background section, any exercise of compulsory land acquisition is already subject to Queensland's *Acquisition of Land Act* processes which include compensation processes. Additional regulated land compensation regimes appear unnecessary.

AusNet Services further argued that to support competition, the deemed approvals contained in the legislation for Energex Limited, Ergon Energy and Powerlink to compulsorily acquire land should be wound back.<sup>159</sup> That is, the businesses would need the Minister to make a gazette notice authorising them to compulsorily acquire land, in the same way as other authorised entities. This would appear to add unnecessary cost. Section 116 of the Electricity Act requires electricity entities to meet specified criteria before the Minister is able to give constructing authority status. In introducing deemed approvals for Energex, Ergon Energy and Powerlink in 2003, Parliament explained these businesses have 'already demonstrated their abilities in this area of land acquisitions'.<sup>160</sup> Given this, an additional process seems unwarranted. Any entity with conferred constructing authority status whether by the Minister or by statute must still satisfy Acquisition of Land Act processes in order to exercise land acquisition powers.

#### *Powers of entry and dealings on roads*

Discussions with the Department of Transport and Main Roads (TMR) highlighted concerns about the adequacy of consultation, notice and compensation safeguards in the legislation concerning activities on roads and in road corridors roads. TMR's main concerns relate to the need for road safety to be adequately considered in all work undertaken on roads and in road corridors.

---

<sup>156</sup> See, e.g. Ergon Energy Limited, 2017, Land Access Protocol, viewed 17 July 2019, [https://www.ergon.com.au/\\_data/assets/pdf\\_file/0009/216567/Land-Access-Protocol.pdf](https://www.ergon.com.au/_data/assets/pdf_file/0009/216567/Land-Access-Protocol.pdf); Powerlink, August 2014, *Land access protocol, Our standards and commitments when entering and using land*, viewed 17 July 2019, <https://www.powerlink.com.au/sites/default/files/2017-12/Land%20Access%20Protocol.pdf>; Energex Limited 2017, Land access protocol, viewed 17 July 2019, [https://www.energex.com.au/\\_data/assets/pdf\\_file/0009/343908/Land-Access-Protocol-Form-8579.pdf](https://www.energex.com.au/_data/assets/pdf_file/0009/343908/Land-Access-Protocol-Form-8579.pdf)

<sup>157</sup> Clean Energy Council, Best Practice Charter for Renewable Energy Developments, viewed 17 July 2019, <https://www.cleanenergycouncil.org.au/advocacy-initiatives/community-engagement/best-practice-charter>

<sup>158</sup> AusNet Services submission, p. 4.

<sup>159</sup> AusNet Services submission, p. 2.

<sup>160</sup> Electricity and Other Legislation Amendment Bill 2003, Explanatory Notes, p. 2

*Consultation and agreement*

Electricity entities are only permitted to build, remove or alter electric lines or other works with the written agreement of a road authority. The chief purpose of this is to ensure appropriate regard is given to road safety matters when energy infrastructure is located on roads. However, no written agreement is needed to maintain, repair or alter for maintenance or repair, an electricity entity's lines or works.<sup>161</sup>

It is understood the lack of an agreement mechanism for maintenance and repair work has created practical difficulties for TMR in ensuring that when power poles are replaced, they are located in a safe position that aligns with modern safety standards. Section 103 of the Electricity Act does require entities to consult road authorities before replacing 'the whole or a substantial proportion of its electricity lines or other works', but consultation need only extend to identifying mutually beneficial arrangements for the replacement of works having regard to existing development plans, rather than matters such as modern requirements for the safe placement of power poles.

A power pole can last for decades, and in the intervening period, road safety practice may shift. Unnecessary safety risks may arise where, in replacing a pole, an energy entity only has regard to an agreement on placement that was given decades ago, rather than modern standards.

Preliminary analysis by the Land Transport Safety branch of TMR indicates over the four year period 2014-2017, there were 43 fatal road crashes and 1001 injury crashes, including 602 serious injury crashes, in Queensland involving electricity poles. It estimated the economic cost of these crashes at over \$870 million, though indicated additional work would be needed to confirm the extent to which power pole placement played a role.

With an estimated 10 000 poles replaced per year, the cost of reassessing safety requirements may be considerable. It is understood that risk assessment activity alone to assess each pole is approximately \$2000 to \$4000.

*Notice requirements*

Under s. 18 of the Electricity Regulation, electricity entities must give at least 14 days written or oral notice of their intent to undertaken actions in a publicly controlled place, including a road. Captured actions include opening or breaking up soil or pavement, clearing, lopping or pruning trees, and temporarily stopping or diverting traffic. The only exception to notice requirements is where, in the electricity entity's opinion, there is an emergency which poses actual or potential danger to persons or property, or the supply of electricity to a customer has been interrupted. In these circumstances, notice must be given as soon as practicable.

Under the Gas Supply Act, gas distributors are only permitted to carry out gas infrastructure work on a publicly controlled place if the public entity has given its written approval. If work is carried out because of an emergency, notice must be given as soon as practicable.

It is understood the lack of a time limit on notification has led to situations where notice is not provided until a considerable period has passed. To address these situations, TMR recommended the implementation of a 20 working day time period for notice in emergency arrangements. To simplify rules relating to electricity entities, it recommended similar wording to the gas provisions be adopted (though relating to notice, rather than written approval). Each of these recommendations appears useful for clarity and simplification.

---

<sup>161</sup> Electricity Act, s. 102

### Compensation

Under the Electricity Act and Gas Supply Act, energy entities must compensate the relevant public entity where they fail to comply with directions, or where they have caused damage. TMR recommended the inclusion of additional cost provisions to address the impact of rescheduling road works when timeframes agreed with energy entities are missed.

Energy infrastructure is located throughout the road network and many road work projects require infrastructure to be moved. Given this, the Electricity Act and Gas Supply Act place requirements on entities to alter the position of their works in particular circumstances, with the cost of relocation to be met by the relevant road authority.<sup>162</sup> The overall cost associated with electricity and gas work can reportedly account for up to 10 per cent of a project budget for road works.<sup>163</sup> While most of this cost is likely directed to the activity of relocation, TMR reports some is also attributable to the cost of rescheduling works when timeframes agreed with energy entities are missed. It noted that difficulties associated with waiting for energy providers to undertake relocation works during transport infrastructure delivery projects could incur costs of up to \$2 million per project, and extensive delays. However, it is noted the cause of delay may be unavoidable (force majeure events) and energy entities also provide essential infrastructure, such that a delay in attending road works on schedule could be due to the need to provide a greater public good in terms of supplying electricity and gas. TMR recommended energy entities either be expressly required to meet the cost of rescheduling road works when they fail to meet agreed timeframes, or entities allow appropriately qualified TMR staff to undertake energy works as part of road projects, as reportedly occurs in the New South Wales gas sector.

### Effective: the legislation achieves its desired outcomes

As highlighted in *Figure 19*, the majority of access rules and resumption powers apply to electricity entities (generation entities, transmission entities, and distribution entities), as well as gas distributors. However, there is a question as to whether the powers are effectively targeted.

### Generation entities

The Electricity Act gives generation entities broad access powers. For example, a generation entity may apply to the Minister:

- for approval to be enter onto land to decide suitability for proposed works
- to be treated as a 'constructing authority' under the Acquisition of Land Act in order to acquire land or easements for proposed works access.

However, the review was unable to locate an instance of these powers being exercised for a generation entity in the 25 years since the Electricity Act commenced. It is understood generation entities have been able to negotiate access to land for proposed works, rather than rely on legislative powers.

Other powers of minimal apparent value to generators include rights to enter a place to read meters, enter a place to disconnect supply, and undertake works on a road. These rights do not appear relevant to the infrastructure or role of generators. Further, unlike networks which run over many hundreds of kilometres, generation plants are generally located in single locations. In situations where the land is not otherwise owned by the generation entity, best practice would dictate the generator should enter into individual agreements with affected landholders, rather than

---

<sup>162</sup> See for example, Electricity Act s. 106 (public entity may require electricity entity to alter the position of works); Gas Supply Act ss. 92-93 (power to require consequential work; compliance with consequential work requirement).

<sup>163</sup> Discussions with TMR, January 2019.

rely on statutory powers for access that supports day to day operation and maintenance of the generator.

### Metering

The Australian Energy Council argued that powers of entry and resumption should be extended broadly, and in particular afforded to metering providers.

*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.<sup>164</sup>*

Under the December 2017 Power of Choice reforms, responsibility for metering shifted from distributors to retailers, with retailers required to appoint a metering coordinator to look after metering functions. The National Electricity Rules now provide just reason for a range of entities to access a meter—a metering coordinator, a metering provider, a metering data provider, and AEMO.<sup>165</sup> Of these bodies, the metering coordinator is responsible for the security of a meter, and access to a metering installation under the National Electricity Rules.<sup>166</sup> The default metering coordinator for traditional meters is the distributor, though retailers are able to appoint other parties, and cannot appoint a distributor to be a metering coordinator for digital meters. In recognition of this responsibility, the Electricity Act provides certain powers for retailers, including:

- enter a place at a reasonable time to which electricity is being supplied by the retailer to (among other things) read a meter, check electrical equipment at the meter and replace meters<sup>167</sup>
- enter a place at a reasonable time to disconnect supply (where disconnection is allowed).<sup>168</sup>

Additional powers are provided for retailers under the NERL(Q). These provide it is a pre-condition to the formation of a standard retail contract that customers ensure there is safe and unhindered access to the meter at the premises to which electricity is proposed to be supplied.<sup>169</sup> Model terms and conditions for standard retail and deemed standard connection contracts require customers to provide safe and unhindered access to premises for the purposes of (where relevant) reading, testing, maintaining, inspecting or altering any metering installation at the premises, calculating or measuring energy supplied or taken at the premises, checking accuracy of metered consumption at the premises, and replacing meters.<sup>170</sup>

While those rules are specific to retailers, some powers under the Electricity Regulation extend directly to metering coordinators. For example, s. 46 of the Electricity Regulation provides remedies for metering coordinators where safe access to read a meter and install, test, maintain or take away works is not given.

---

<sup>164</sup> Australian Energy Council submission, p. 4.

<sup>165</sup> National Electricity Rules clauses 7.3.1, 7.3.2, 7.8.1, 7.9.1 and 7.10.1

<sup>166</sup> National Electricity Rules clauses 7.3.2(i) and 7.15.4

<sup>167</sup> Electricity Act s.137

<sup>168</sup> Electricity Act s. 139

Where metering coordinators do not have direct rights, they must rely on rights conferred by the retailer who has appointed them (and in turn under the National Electricity Rules, to provide access to other parties). Under the Electricity Act, the Chief Executive of a retailer is able to appoint a person to be an electricity officer for the retailer, where the chief executive considers the person to have expertise or experience approved by the Regulator to be an electricity officer, or the person has otherwise satisfactorily finished training approved by the regulator.<sup>171</sup> It is not necessary that the metering coordinator is an employee of the retailer, though the retailer will be liable for the metering providers' actions. While this is an effective work-around and reflects the customer's direct relationship with retailers (rather than metering providers), it may add unnecessary cost.

#### Non-traditional suppliers

Extension of powers to non-traditional suppliers was raised for comment by the Issues Paper for the legislation review:

*With the decentralisation of supply and emergence of new service arrangements (e.g. energy management services, microgrids), non-traditional suppliers may also require access to their works for similar reasons as traditional entities. However, the degree of public interest in granting these powers—and in particular whether the public interest involved outweighs the fundamental legislative principle of preserving property rights—may not be as strong.<sup>172</sup>*

Few stakeholders commented on the benefit of expanding access powers to non-traditional suppliers. Red Energy and Lumo Energy noted non-traditional suppliers should build access rights into contracts with customers, rather than benefit from statutory powers.

*Non-traditional energy providers are unlikely to require a blanket right to access. These organisations will most likely have entered into an agreement with a customer, where they provide the customer with a service, and could include a contractual right of entry if necessary. Allowing access for a customer who has not entered into an agreement with an organisation of this nature does not appear to be in the public interest.<sup>173</sup>*

Nevertheless, a number of access provisions appear important for these services, particularly where they provide energy to a large number of customers. For example, amendments have been made to the Electricity Act to provide powers of entry to RTA Weipa Pty Ltd, under its special approval to run an electricity network in Weipa. Schedule 3 of the Electricity Regulation provides that RTA Weipa Pty Ltd:

- is able to appoint electricity officers
- is entitled to enter or pass through land to access its works
- may undertake works on public places (other than railway land and protected areas)
- is taken to have the consent of future owners / occupiers of a place to the building of works
- is taken to retain property of works, has authority to supply electricity over land
- must pay compensation for damage.

All operational powers also apply. In granting these rights, safety and reliability considerations were key, in a similar way that these issues are important for other networked services.

---

<sup>171</sup> Electricity Act s. 65

<sup>172</sup> Department of Natural Resources, Mines and Energy, May 2108, *Legislation Review Issues Paper*, p. 18, viewed on 17 July 2019, [https://www.dnrme.qld.gov.au/\\_\\_data/assets/pdf\\_file/0005/1393943/review-energy-legislation.pdf](https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0005/1393943/review-energy-legislation.pdf)

<sup>173</sup> Red Energy and Lumo Energy submission, p. 2.

At a minimum, if services are provided on any scale, rights to entry to read a meter, maintain or repair works particularly where they present a safety hazard, and privileges such as assumed consent of future owners / occupiers of a place to the building of works and retention of property of works appear necessary to minimise risks and cost to existing and future owners.

Feedback wanted: Electric vehicles and powers of entry

A number of powers of entry extend to electrical installations owned by a customer. For example, the power of entry to make works or an electrical installation safe. However, electric vehicles are unlikely to be considered as electrical installations under the Electricity Act:

- vehicles are unlikely to be considered ‘electrical equipment’ under current definitions,
- the connection is not permanent connection, and
- the vehicle itself may not belong to the relevant customer where it is connected.

By contrast, the charging unit for an electric vehicle would fall within relevant definitions.

As noted in the context section, powers of entry and resumption are primarily about supporting the sector to manage its own infrastructure—to build it, operate and maintain it safety and reliability to provide supply to customers. Powers of entry to deal with customer electrical installations (within the Electricity Act as opposed to the Electrical Safety Act) must be considered in this context. Unsafe or hazardous installations can impact network services, as well as creating significant safety risks for customers and electrical workers.

Whether or not electric vehicles themselves are considered electrical installations is not expected to make a significant difference to the effectiveness of powers of entry in the case of a faulty vehicle. If, for example, the fault is impacting on the permanent electrical installation within the premises including the charger, the powers of entry would enable work to make the installation safe. If the fault is not impacting the electrical installation (including charger) in any way, there is unlikely to be a reason for network operators to be involved.

*Stakeholder feedback is sought on the benefits, disadvantages and risks of classifying electric vehicles connected at premises as part of an electrical installation for powers of entry.*

Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

Joint use of easement

Ausnet Services suggested the introduction of a joint use of easement provision in the legislation. It pointed to s. 91 of the *Electricity Industry Act 2000* (Vic) as an example.<sup>174</sup> This provides for ‘two or more electricity corporations to enter into an agreement in respect of rights and obligations in respect of any easement to which another party to the agreement is entitled’.

The recommendation may be conducive to encouraging better coordination between parties to minimise impacts on landowners. However, it reduces the control of landowners over access decisions and further reduces transparency. As multiple easements can already be created on a property, there appears to be no strong rationale for the change, particularly when considered in the context of fundamental property rights.

<sup>174</sup> Ausnet Transmission Group Pty Ltd submission, p. 4.

## Objectives

The desired outcome is a framework that enables entities to efficiently deliver reliable and safe energy, while also protecting the rights and liberties of land holders and occupiers, both public and private.

## Options

Option	Description
Status quo (option 1)	<ul style="list-style-type: none"> <li>Existing arrangements including the ability to give access rights to 'special approval holders' via regulation retained</li> <li>Road safety issues managed via agreements</li> </ul>
Partial adjustment (option 2)	<ul style="list-style-type: none"> <li>Direct rights conferred on exempt networks—limited to essential matters in public interest</li> <li>Rights of generators reduced</li> <li>Road safety rules strengthened</li> </ul>
Full adjustment (option 3)	<ul style="list-style-type: none"> <li>Traditional and non-traditional networks given equivalent rights</li> <li>Generator rights removed</li> <li>Networks subject to high level obligation to consider road safety matters</li> </ul>

### Option 1 – Status quo

Under this option, no amendment would be made to the legislation or regulation and identified issues would be addressed under existing provisions, or via alternative means.

### Neighbouring properties

To deal with the need to pass through neighbouring properties to access land locked assets, distributors could individually agree access rights with affected landholders. This is the best practice approach and should be the first avenue sought to resolve these issues. Energy Queensland has not provided information on the number of assets on land locked areas where it has had difficulty obtaining access rights, though in areas of strong development (property subdivisions etc.), the occurrence rates may be increasing. However, the approach does not guarantee an outcome as some landholders may be unwilling to provide access rights where not otherwise compelled. Any resultant inability to access infrastructure – even in an emergency - may lead to unnecessary safety and operational risks.

### Power industry locks

To access power industry locks, retailers could rely on general provisions under the Electricity Act and applied national laws which require distributors and retailers to coordinate their efforts, particularly with respect to shared customers. For example, s. 55H of the Electricity Act provides the parties may negotiate a coordination agreement about protocols under which they agree to help each other perform their functions. However, where the parties have a shared customer, they are taken to have agreed terms of the standard coordination agreement under the Distribution Network Code, which stipulates the parties agree to coordinate with each other the performance of their functions and obligations in order to avoid duplication, encourage efficiency and streamline their respective relationship with customers. This would appear to extend to the issue of power industry locks. Similar rules to encourage coordination and retail support appear in part 5 of the National Energy Retail Rules.

### Land Access Code

Entities with powers of entry under the legislation could be encouraged to develop and adopt their own land access protocols. Major entities already have land access protocols in place and renewable developments are guided by the Queensland Solar Farm Guidelines and the Wind Farm State Code. The Clean Energy Council has also developed a Best Practice Charter, signed by a range of providers including Windlab, AGL, Origin Energy and Powerlink.

### Road issues

Road issues, including safety, notification of works and meeting the cost of rescheduling works could be dealt with via memorandums of understanding between the energy entities and relevant road authorities, or relevant contracts between parties.

The energy entities have an incentive to reduce safety risks, including road safety risks associated with their works from both a legal and social license perspective. Coming to an agreement on safe practices with the road authority, including in relation to the placement of power poles would be the simplest mechanism for energy businesses to minimise road safety risks and provide flexibility to deal with new risks as they arise. A memorandum could also deal with matters such as timeframes for notices, and for compensation where agreed timeframes for works are not met. Alternatively, cost arrangements could be directly specified within agreements to alter the position of specific energy infrastructure to accommodate a road project. These contracts could include force majeure provisions.

However, it is noted electricity businesses have previously indicated that memorandums of understanding in relation to road issues are not legally binding and have indicated they do not consider these instruments useful to address matters not otherwise specifically provided for in legislation. Given this position, it is unclear whether a memorandum of understanding would be satisfactory on its own to address road safety concerns in particular.

### Who access rules are conferred on

Existing arrangements already enable retailers to appoint a metering coordinator as an electricity entity under the Electricity Act. These arrangements could continue.

Powers of entry for non-traditional suppliers are able to be individually specified in regulation under existing arrangements, where agreements cannot otherwise be made with affected customers. This is the process that was followed for RTA Weipa Pty Ltd in relation to the Weipa township. While the arrangements involve administrative and legal costs, they ensure any powers conferred are targeted to the particular needs of the supply network.

Adjusting powers of entry and resumption has the potential to affect a large number of customers, and lead to significant costs for industry if poorly managed. As the status quo option retains existing arrangements, it has no impact on stakeholders. Any measures, as outlined above to address issues would confer benefit, with minimal risk. The option is unable to address access to neighbouring properties in emergency situations.

Impact group	Estimated impact
Energy industry participants	Nil – maintain status quo
Regulator	Nil – maintain status quo

TMR	Nil – maintain status quo
Users and other public	Nil – maintain status quo

### Option 2 – Partial adjustment

Under option 2, adjustments would be made in legislation to address identified issues:

#### Right to remediate

Existing rights of entry to remove infrastructure would be extended to include a right of entry to remediate land. This recognises the scheduled retirement of major generation infrastructure over coming decades as well as the potential movement towards stand-alone power systems. While remediation of land could potentially be considered part of the process of infrastructure removal (e.g. to make an area safe after excavation), this is unclear. The practical effect would be to allow entities to remove their infrastructure and then remediate any land damage caused by the infrastructure (e.g. fill in holes and undertake vegetation planting). A time limitation on remediation may be necessary to provide certainty to landowners, for example six months, after which entities would need to rely on individual agreements.

#### Neighbouring properties

The legislation would be adjusted to provide that network entities may pass through neighbouring properties to access operating works in:

- Emergency situations, being where there is an actual or a potential danger to persons or property or where supply of electricity to large number of customers has been interrupted.

This would support faster response times to deal with emergencies, minimising risk and potential cost of outages. Applying only in emergency situations, the impost on affected landholders is not expected to be significant: it would be a one off requirement, rather than repeated. Further, the requirement would only be to pass through a property, rather than undertake any works on it, which should be a relatively minor inconvenience, compared to the benefit of addressing emergencies as soon as practicable.

- Land-locked areas where no other reasonably feasible access arrangements exist.

This rule of access could be expected to have a larger impact on affected landholders than in the emergency situation described above. The emergency situation is likely to be a one off, while an ability to pass through neighbouring properties to access land locked infrastructure would occur more frequently e.g. to deal with routine maintenance and inspections.

However, the rule would only apply where there are no other reasonably feasible options, and would only extend to passing through land, rather than undertaking any activities on it. Notice would be required and compensation provisions for damage applied to minimise the impact on affected landholders.

These rights would be subject to other legislation. For example, other laws that preclude a general right of access to certain public land would be maintained. Further, entities would be restricted to exercising these rights only where passing through is physically possible without additional works (e.g. without undertaking clearing or earthworks, or cutting fences).

### Power industry locks

Under option 2, the coordination agreement administered by the Queensland Competition Authority under s. 551 of the Electricity Act would be amended to deal with access by retailers to power industry locks under the control of distribution entities.

The practical impact of this would be to require distribution entities to provide access to power industry locks to retailers or metering coordinators. This would reduce delays associated with retailers or metering coordinators obtaining access to power industry locks for the purposes of meter reading and meter works. The proposal is expected to clarify arrangements and reduce costs for both distributors and retailers by clarifying obligations in relation to shared customers. On an individual basis, the anticipated efficiency gain is relatively modest, chiefly associated with minimising negotiations between parties for access, and avoiding the situation where (if access is not granted by a distributor) meter readers either cut locks, or rely on estimations for calculating bills. It is unclear how many customers have power industry locks installed, however it is understood that Energex has around 50 locksmiths providing power industry lock services to customers, with the cost of a lock ranging from \$35 to \$500.

As retailers already have a right to access meters for the purpose of meter reading, customers are not anticipated to be disadvantaged. Rather, the amendment would ensure that the purpose for which power industry locks are installed (permitting access to the meter reader to avoid bill estimations etc., but otherwise keeping access to a meter secure) continues to operate effectively, following the Power of Choice reforms.

### Land Access Code

Option 2 would provide that the standards and codes framework as outlined in T6: Technical Requirements could also deal with principles for entities exercising powers of entry in relation to operating works under the legislation. The option would enable industry to develop a land access code and register the code with the Queensland Competition Authority. Alternatively, the Queensland Competition Authority would be able to make a standard setting out overarching principles in the event a code does not exist, or is otherwise deficient. The Queensland Competition Authority would have to decide however that a standard would provide a net benefit.

The advantage of the approach is it would enable industry to develop principles tailored to the types of access required and works they undertake, backed by a safety net of potential intervention in the event the principles are not being adhered to, or are inadequate to address sensitive land access matters. As major industry participants already have access protocols, the impost is not expected to be significant, but rather provide assurance to the community that commitments to minimise the impact on affected landholders are taken seriously by industry and can be addressed when they fall short of community expectations.

### Road issues

To address road safety issues, option 2 would:

- Expand consultation obligations on electricity entities, when replacing work on a road, including power poles, to include identifying mutually beneficial arrangements for the replacement, having regard to road safety, in addition to existing considerations in relation to future development plans for a road. Under this option, s. 103 of the Electricity Act would be amended to provide an additional purpose of consultation between electricity entities and the road authority when the whole or substantial amount of assets, including power poles, are replaced is to identify opportunities to improve road safety.

- Expand s. 81 of the Gas Supply Act to enable the public entity to consider road safety when making a condition about an alignment for gas infrastructure on, or proposed to be built on a road, in addition to protection for the infrastructure and placement where practical on a footpath or verge. The detail regarding placement could also potentially be removed, however feedback on the impacts of this would be needed.

It is likely the community would expect energy entities who place or replace infrastructure on roads under statutory rights would already place a high priority on road safety and work to minimise the impact of their operations. Expressly requiring consideration of road safety would clarify this expectation. Around half of an estimated 10 000 pole replacements undertaken annually could be located in the road reserve, and likely in the clear zone. Under Australian Standards, it is understood that non-frangible infrastructure (such as power poles) in clear zones should be minimised and subject to a risk assessment. Assuming the cost of risk assessment of each power pole is between \$2000 and \$4000, the annual cost of assessments could be in the order of \$10 million to \$20 million. Any directed remedial works, such as barriers, re-alignment of assets or other measures could also run into the millions of dollars over the course of a year. This is a very significant cost. However, the expectation that road safety is considered as a normal part of undertaking works on roads appears reasonable.

To address notification issues, option 2 would provide a timeframe (e.g. within 20 business days after the emergency work) for energy entities to notify road authorities of emergency works undertaken on roads, rather than as soon as practicable. This would provide additional clarity to both energy businesses and road authorities about expectations of notice.

In relation to compensation, option 2 would provide that energy entities who fail to meet agreed timeframes for works on roads must compensate road authorities for costs associated with rescheduling works (excluding force majeure). This approach would incentivise energy businesses to meet their commitments and reduce unnecessary delays in road infrastructure projects. Costs of failing to meet agreed timeframes reportedly cost up to \$2 million per project, placing pressure on the road budget. These are unnecessary costs which should be avoided by all parties.

#### *Who access rights are conferred on*

##### *Generation entities*

Under this option, access rules would be better targeted to the needs of energy entities—rules which are not practically required by an entity would be removed, and rules needed by new entities would be conferred. Existing safeguards, including notice requirements and compensation provisions would remain. In particular, rules which enable generation entity rights of access to a place to disconnect supply or read meters would be removed. These are not functions of generation entities. Similarly, the option would remove powers to undertake action in relation to works in publicly controlled places, such as roads. As there have been no recorded exercise of the power to enter onto land to determine suitability for proposed works, or to be considered a constructing authority for the purposes of the Acquisition of Land Act, further consideration should be given to removing these powers also.

##### *Metering coordinators*

Rules within the Electricity Act which give retailers meter access would be expanded to also apply to metering coordinators, noting the responsibility of metering coordinators under the National Electricity Rules to be responsible for the security of and access to a meter. The Electricity Regulation separately already does this for powers under that instrument, so no changes to the Electricity Regulation are proposed. This would improve the efficiency of arrangements and better aligns the

Electricity Act and Electricity Regulation. It is not anticipated to have any practical impact on customers (metering coordinators are already given rights via delegation from retailers), other than improving transparency around who rights of access are conferred on.

*Non-traditional suppliers*

Rights would be conferred on non-traditional suppliers (exempt networks) who supply work that is in the public interest to:

- (i) enter a place to inspect, operate, change, maintain, repair or replace works
- (ii) enter or pass through land to access operating works
- (iii) enter a place to read meters and protect works
- (iv) enter a place to carry out urgent remedial works and to make works safe.

Deemed consent provisions for future owners would also apply.

While some stakeholders have argued these matters should be able to be dealt with in individual customer agreements for supply, non-traditional suppliers are likely to experience similar difficulties and inefficiencies as traditional suppliers in negotiating individual agreements. Safety and reliability considerations are not expected to be any less for non-traditional suppliers and the arrangements would support any potential standards made by the Queensland Competition Authority in relation to reliability and other technical matters.

To limit the impact of these rules, new rights would only extend to physical locations where operating works are located, and would be subject to notification requirements and compensation provisions. Rights to undertake works on public roads would not be provided. The approach recognises the role new providers can play in the market. The impact on customers would be no greater than it is for other customers connected to the grid, and may improve safety and reliability outcomes while reducing administrative costs of negotiating arrangements for individual customers.

Impact group	Estimated impact
<p><b>Energy industry participants</b></p>	<p>Provisions to enable access to neighbouring properties in emergencies would reduce delays in rectifying works or making works safe:</p> <ul style="list-style-type: none"> <li>• Access rights to land locked infrastructure will improve safety and reliability of networks</li> <li>• No efficiency gains as attempt to reach individual access agreements must first be attempted</li> </ul> <p>For power industry locks, efficiency gains for retailers and distributors (in relation to shared customers and meter readings) and reduced reliance on estimations for calculating bills</p> <p>For land access protocol, potential for standards to be made will increase compliance with land access protocols that exist. Entities without protocols may incur some costs if incentivised to develop protocols as a consequence of potential exercise of powers</p> <p>For road access issues, additional costs likely to be incurred by Energy Queensland to assess contemporary road safety (estimated \$10 million to \$20 million p.a.)</p>

	For who rights are conferred on, minimal impact on generators, increased efficiency for retailers and metering coordinators and increased efficiency, safety and reliability for non-traditional suppliers
<b>Regulator / Queensland Competition Authority</b>	<p>Minimal impacts. Noting:</p> <ul style="list-style-type: none"> <li>• Potential for reduced dispute resolution role in relation to road matters</li> <li>• May incur some costs assessing any proposed land access costs or proposal to make standards</li> <li>• Ability to consider existing land access protocols should reduce costs</li> </ul>
<b>TMR</b>	<p>For road access issues:</p> <ul style="list-style-type: none"> <li>• Better ability to promote road safety outcomes and greater certainty in relation to notification periods</li> <li>• Stronger incentives on energy entities to meet agreed timeframes should reduce potentially avoidable delays in road projects, which can cost up to \$2 million per project</li> </ul>
<b>Users and other public</b>	<p>Neighbouring landholders to energy assets affected by emergency and 'land lock' provisions. Noting:</p> <ul style="list-style-type: none"> <li>• Emergency access likely to be one off and have minimal impact as would be right to pass through land only</li> <li>• Larger impost on neighbours of land lock property (in terms of frequency), but right minimal and confined to passing through land</li> <li>• Right to notice and compensation for damages will minimise impact</li> </ul> <p>For power industry locks:</p> <ul style="list-style-type: none"> <li>• Fewer instances of locks being cut (individual value \$35 to \$500) or bills being estimated</li> <li>• Use of locks would continue to be effective where responsibility for meter reading changes from distributor to another entity</li> </ul> <p>For land access protocol, where energy entities do not have or comply with access protocols, may make application to Queensland Competition Authority to issue protocols. Stronger incentives to adhere to existing protocols likely to benefit affected landholders</p> <p>For road access issues:</p> <ul style="list-style-type: none"> <li>• Stronger incentives to consider road safety in energy works on roads benefits all road users</li> <li>• Costs of considering safety matters may be passed onto customers</li> <li>• Road users would also benefit from fewer delays to road works if cost arrangements incentivise better adherence to agreed timeframes for relocation of works on roads</li> </ul> <p>For who rights are conferred on:</p> <ul style="list-style-type: none"> <li>• Extending access rules to non-traditional suppliers should improve safety and reliability outcomes</li> <li>• However, they also infringe on fundamental property rights (minimised by adopting notice requirements and compensation provisions)</li> <li>• The infringement on rights is no greater than that of users of transitional energy supply services</li> </ul>

### Option 3 – Full adjustment

#### Right to remediate

Option 3 would adopt the same approach to a right of entry to remediate land as Option 2.

#### Neighbouring properties

Under option 3, electricity networks would be given a general right to pass through any land to access operating works. The option provides maximum efficiency for electricity businesses and would reduce administration costs associated with option 2 in terms of considering whether passage through a neighbouring property met the definition of an emergency or whether passage to access land locked assets could be achieved through other feasible means. By improving accessibility to infrastructure which would otherwise be landlocked, electricity businesses could make more efficient decisions regarding placement. This would however be a very significant impost on fundamental property rights.

#### Power industry locks

Option 3 would adopt the same approach to power industry locks as option 2.

#### Land access protocol

Option 3 would restrict entities from exercising general access rights under the Electricity Act and Gas Supply Act unless the relevant entity complies with a standard made by the Queensland Competition Authority in relation to land access under the proposed Standards and Codes framework. If there is no standard in effect, the entity would be required to:

- develop and comply with a land access protocol to guide the exercise of its activities
- undertake to comply with a Land Access Code registered with the Queensland Competition Authority under the proposed Standards and Codes framework.

The restriction would not apply to access relating to supply to an individual customer premise (e.g. for reading meters or installing a new service line to connect the customer) as these types of matters are better addressed within Customer Charters and connection agreements.

The approach would encourage industry to adopt a best practice approach in exercising land access powers. It strengthens recognition of fundamental property rights and gives affected landholders greater input to standards and processes that impact their land.

As major energy entities have already developed land access protocols and/or committed to the Clean Energy Council's Best Practice Charter for Renewable Energy Developments, the option is not expected to have a significant cost impact for those businesses. Entities that do not have protocols in place would incur a cost impact. How significant that cost is would depend on the extent of powers exercised, but could attract an initial development cost of \$100 000 for entities who exercise powers in relation to a modest number of landholders. However, as most entities that exercise powers in relation to a large number of landholders already have protocols in place, it would only be entities such as generators (or non-traditional networks where powers are extended) who would be impacted by the arrangements. These entities have smaller footprints, reducing the development costs of a protocol. The entities also have access to guidance in the Wind Farm Code, the Solar Farm Guidelines, and the Clean Energy Council's Best Practice Charter for Renewable Energy Developments, further minimising cost.

#### Road access issues

Under option 3, s. 102 of the Electricity Act would be amended so that electricity entities would require the written agreement of the road authority for maintenance and repair works. This would ensure any road safety matters are adequately taken into account as part of maintenance and repair programs and align arrangements with the gas sector. The strengthened requirements would however accrue significant administrative costs and time delays to network businesses and the road authority, compared with option 2 for minimal additional benefit.

Option 3 would adopt the same approach to 20 day timeframe for notification of emergency works as option 2.

To reduce the potential delays of energy work on road infrastructure projects, authorised officers of road authorities would be expressly permitted to undertake electrical and gas works on energy infrastructure. Notice would need to be provided to the relevant energy businesses and the energy businesses would need to certify work was undertaken to an acceptable standard following completion. This approach is understood to have been adopted in the New South Wales gas sector, though via agreements with relevant entities, rather than statutory mandate. It provides increased flexibility for road authorities to manage road infrastructure projects, reducing overall costs associated with the potential for delay. Risks to the network businesses are managed via a requirement that work be certified following completion.

#### Who rights are conferred on

Under option 3, access rights for:

- New generation projects are removed (the rights of existing generators would be maintained). In New South Wales, where generation entities are not licensed, generators have no access rights and must negotiate with affected landholders directly. This minimises impacts on landholders and encourages best practice outcomes in all dealings. However, the approach creates risks in relation to safety and reliability in managing operating works.
- Metering coordinators as set out in option 2.
- Non-traditional networks are extended to be equivalent to those conferred on licensed transmission entities and distributors. This differs from option 2 in providing that ownership of assets survives a change in property, enables entry to a place to manage issues associated with the customer's electrical installation, and enables action to be undertaken in public places, including roads. This would place non-traditional networks on equivalent footing to networks, in terms of their ability to build, manage and remove infrastructure. However these powers are extensive, and present a difficulty in that the character of non-traditional suppliers is not positively vetted as part of a licence process before rights are exercised. Similarly, technical competence is not assessed. Matters such as the power to enter a place to deal with a customer's electrical installation go beyond what non-traditional suppliers are expected to provide and would create significant risk to the community where a supplier does not have the requisite skills. Taking action on a public road can create significant safety risks, which is a key disadvantage of this option if entities are not otherwise pre-vetted for good character and for technical competence.

Impact group	Estimated impact
<p><b>Energy industry participants</b></p>	<p>For provisions to enable access to neighbouring properties in any circumstance would create efficiency gains for network businesses</p> <p>For power industry locks – as per option 2. Efficiency gains for both retailers and distributors in relation to shared customers and meter readings</p> <p>For land access protocol:</p> <ul style="list-style-type: none"> <li>• Entities without protocols in place would incur costs in developing appropriate arrangements in order to exercise rights (could be in the order of \$20 000 to \$100 000, depending on how many landholders are affected), however, a smaller cost is more likely as most entities with significant infrastructure holdings on other people’s land already have protocols in place</li> </ul> <p>For road access issues:</p> <ul style="list-style-type: none"> <li>• Similar costs to option 2, plus administrative costs and time delay of obtaining road authority agreement to maintenance and repair work</li> <li>• Risks associated with road authority undertaking works on energy infrastructure</li> </ul> <p>For who rights are conferred on:</p> <ul style="list-style-type: none"> <li>• New generators incur costs associated with negotiating with affected landholders, rather than relying on statutory rights</li> <li>• Equivalent efficiency gains for retailers and metering coordinators as per option 2</li> <li>• Increased efficiency, safety and reliability for non-traditional suppliers</li> </ul>
<p><b>Regulator / Queensland Competition Authority</b></p>	<p>Minimal impacts as per option 2.</p>
<p><b>TMR</b></p>	<p>For road access issues:</p> <ul style="list-style-type: none"> <li>• High degree of influence over road safety outcomes and greater certainty in relation to notification periods</li> <li>• Better able to manage energy work required for roadworks, reducing cost and delays</li> <li>• Incurs liability for work undertaken if not up to standard</li> <li>• Potential activities of non-traditional suppliers on roads may increase road safety risks, particularly as technical competence of non-traditional suppliers are not positively vetted under licence reform proposals</li> </ul>
<p><b>Users and other public</b></p>	<p>Neighbouring landholders would be generally affected by increased use of land as right of way to access infrastructure (right to notice and compensation for damages will minimise impact)</p> <p>Remediate land and power industry locks – as per option 2</p>

	<p>For land access protocol, landholders expected to benefit from requirement for all entities have or comply with land access rules / principles encouraging best practice outcomes</p> <p>For road access issues:</p> <ul style="list-style-type: none"> <li>• Stronger incentives to consider road safety in energy works on roads benefits all road users</li> <li>• Costs would be passed through to customers</li> <li>• Road users would benefit from fewer delays to road works</li> </ul> <p>For who rights are conferred on:</p> <ul style="list-style-type: none"> <li>• Extending access rules to non-traditional suppliers should improve safety and reliability outcomes but may create risks in relation to customer electrical installations and road safety</li> <li>• Would infringe on fundamental property rights to a greater degree than option 2 (infringement would be minimised by adopting notice requirements and compensation provisions)</li> <li>• The infringement on rights is no greater than that of users of transitional energy supply services</li> </ul>
--	--

Comparative assessment

	Key advantages	Key disadvantages	Assessment
Status quo (option 1)	High degree of scrutiny as only those positively vetted (via licence or regulation) receive access rights Road and energy considerations can be adjusted to reflect needs of each entity	Cost and complexity for new participants, particularly networks to negotiate and maintain access to works, which may compromise safety and reliability Inefficient approach to integrate meter coordinators Power imbalance between energy entities and road authorities may affect negotiation outcomes	<b>Not preferred</b> It is less efficient than other options and does not adequately recognise changing roles in the sector
Partial adjustment (option 2)	Better operating environment to support new network configurations Reduces costs of retailers and metering providers	Heightened risk as rights conferred without positive vetting, though mitigated by remedies Cost, uncertainty to generators of	<b>Preferred</b> The proposed framework provides flexibility to recognise the roles of new participants in the sector

	Increased focus on road safety protects community	negotiating access rights Cost to networks of considering road safety matters more comprehensively	Provides a fair balance between the rights of road authorities and entities, to encourage better coordination and public outcomes over shared resources
Full adjustment (option 3)	Simple operating environment with all necessary rights to support safe and reliable network operation, irrespective of whether distributor run or otherwise Increased focus on landowner issues for new generators and road safety to protect community	Excessive interference with individual landowner rights, where potentially limited or no public value Difficulty for generators where land on which infrastructure placed is sold Potential network cost increases to better manage road safety considerations	<b>Not preferred</b> The measures not proportionate to need and do not adequately balance fundamental property rights. The prescriptive approach would lead to higher costs than options 1 or 2 and could have unintended consequences (e.g. where road authorities perform electrical and gas works)

### Recommendations

The review is recommending option 2: Partial adjustment. This option recognises the need to provide support for new networks to maintain reliable systems, but only to the extent necessary and with appropriate consideration given to public interest matters. Similarly, the option ‘right sizes’ access rights for new generation, encouraging participants to negotiate commercial agreements with land owners and addresses ‘land lock’ issues which have the potential to increase with subdivision of land. Given the small number of affected landowners per generation plant, and the commercial nature of generation activity, reducing access rights for generators is an appropriate arrangement, though existing rights would be grandfathered. Encouraging energy entities to consider safety in a more holistic way maximises community safety.

### Consistency with other policies and legislation

#### Section 5 of the Competition Principles Agreement

The proposed approach (option 2), including extending certain rules around access to newer service providers should help to promote competition. AusNet Services concerns about the impact on competition of deemed approvals in the legislation for Energex, Ergon Energy Distribution and Powerlink to be given ‘constructing authority status’ under the Acquisition of Land Act have been assessed in this paper.<sup>175</sup> It is unlikely this arrangement has any substantive impact on competition.

<sup>175</sup> Ausnet Transmission Group Pty Ltd submission, p.2.

### Fundamental legislative principles

Powers of entry and resumption can have significant impact on the rights and liberties of individuals. Existing powers have been justified based on safety and efficiency considerations from a system-wide perspective. From an individual perspective, the powers support quality, safe and reliable energy, and facilitate accurate billing. Most powers do not extend to entry to premises, and of those that do, residential premises are generally excluded.

Option 2 proposes a number of additional powers for energy entities, including:

- Network access to neighbouring properties to access works in an emergency, or where works are otherwise land-locked. This power would be limited to very specific circumstances and normal requirements including the duty to minimise damage and pay compensation for any damage, would apply. The benefit of faster response times to emergencies and enabling access to works, in terms of increased safety and reliability, would outweigh the impact on the small number of properties anticipated to be affected.
- Conferring powers on exempt networks, but limited to essential matters in the public interest. As noted by a number of stakeholders, these matters could be dealt with in individual customer agreements. However, exempt network operators are likely to experience similar difficulties and inefficiencies in negotiating individual agreements as traditional providers. Given safety and reliability considerations are anticipated to be similar to traditional suppliers, the benefits of conferring these powers where they serve a public interest outweighs individual cost. All existing safeguards that apply to traditional networks would continue to apply.

Providing a head of power for the Queensland Competition Authority to make a standard in relation to land access issues could affect rights and liberties of energy entities. Under the head of power, the Queensland Competition Authority would not be permitted to extend powers of energy entities, but rather specify how powers conferred in the legislation are exercised, in a way that balances the needs of energy entities and fundamental property rights of land holders. Given the importance of protecting fundamental property rights, this potential infringement on the rights of energy entities is considered appropriate. Before making any standard in relation to land access, the Queensland Competition Authority would need to undertake an open and transparent consultation process. A standard could not be made unless a clear net benefit existed.

### Implementation

The option would be implemented by amending the legislation to:

- expand the right to remove infrastructure to include the right to remediate land for six months following removal
- provide networks the right to access neighbouring properties to access works in emergency situations and where works are otherwise land locked
- provide a head of power for the Queensland Competition Authority to make a standard in relation to the exercise of land access powers under the legislation—this would be subject to a legislated standard making process
- provide that an additional purpose of consultation under s. 103 of the Electricity Act is to consider road safety matters and expand s. 81 of the Gas Supply Act to enable the public entity to consider road safety

- provide a timeframe for energy entities to notify road authorities of emergency works and provide that energy entities who fail to meet agreed timeframes for works must compensate road authorities for costs associated with rescheduling works
- better target access rules to the needs of energy entities, e.g. by removing certain generation rights (supported by grandfathering provisions for existing entities), and providing access rights for metering coordinators, and exempt networks under specified conditions.

Training requirements for electricity officers to support access rules would also need to be adjusted by the Regulator to reflect these changes before they came into effect. Additional support would be required for exempt network operators.

In relation to road safety issues, the legislation should be supported by TMR entering into Memorandums of Understanding with relevant energy parties outlining an agreed standard approach for road safety to be incorporated into relevant decision making.

The Queensland Competition Authority would also be requested to update the coordination agreement made under s. 55I of the Electricity Act to address access by retailers to power industry locks under the control of distribution entities.

#### Stakeholder questions

##### Topic 5 Powers of entry and resumption

Q5.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q5.2 Why?

Q5.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.6 Technical requirements

### Context

Technical regulation aims to support an energy system and individual connections which are safe, reliable, secure and of high quality.<sup>176</sup>

The bulk of technical regulation in the energy sector can be found in Australian Standards, safety legislation and applied national energy laws. However, there are still some technical provisions contained in the Electricity Act and Gas Supply Act.

For example, the electricity and gas supply legislation places general obligations on network entities to operate, maintain and protect their networks to ensure adequate, reliable and safe supply.<sup>177</sup> Electricity generators must provide electricity of a suitable quality and comply with the technical conditions of networks.<sup>178</sup> These high-level obligations are supported by an array of more detailed provisions which set out various rights and obligations on parties to support safety, reliability and security of supply.

Broadly, the provisions fall into four categories, as outlined in *Figure 20*. These are:

- standards of technical performance and industry behaviour – expected outcomes the industry must achieve
- offences – prohibitions against conduct which might undermine the achievement of standards
- powers conferred on industry – powers to support industry to fulfil expected standards
- restrictions placed on end-users – restrictions to ensure safe and reliable supply at the point of connection.

---

<sup>176</sup> Environmental outcomes are also a key consideration though are largely unaddressed in existing rules under the Electricity Act and Gas Supply Act. work is under way in the Department of Environment and Science on the state's Climate Transition Strategy and post-2020 climate transition policy.. The outcomes of that work will be integrated into the Electricity Act and Gas Supply Act technical regulation as appropriate in later stages of this review, if timing permits.

<sup>177</sup> Electricity Act ss. 34 and 42; Gas Supply Act s. 42

<sup>178</sup> Electricity Act s. 27

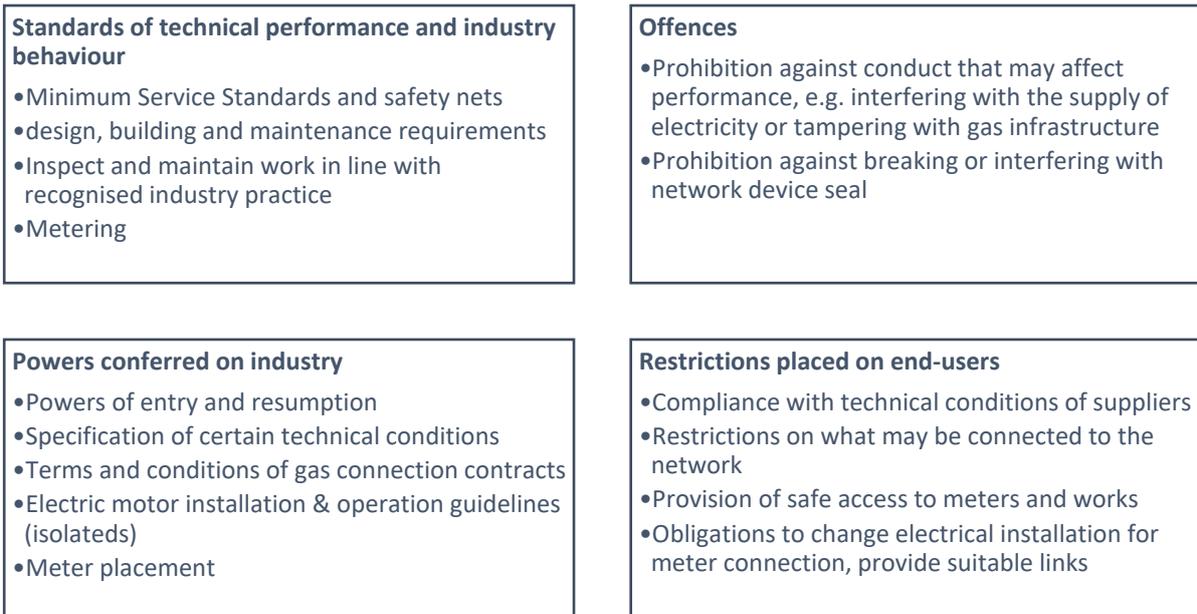


Figure 20: Technical requirements framework

#### Standards of technical performance and industry behaviour

Electricity distribution entities are the main industry participants on which technical standards are placed at a state level, given distribution reliability standards are a state responsibility under the Australian Energy Market Agreement. The reliability standards, known as Minimum Service Standards (MSS) are principally set by the Regulator as bespoke conditions within distribution licenses. The Regulator reviews the MSS at five yearly intervals to remain current and to provide timely input into economic determinations for the networks made by the AER. The licences also include safety net targets that require distributors to identify and remediate the worst performing individual lines.

No equivalent reliability standards apply to embedded electricity networks, isolated electricity networks or gas distribution networks. Information on any reliability obligations contained in transmission and generation authorities is not publicly available.

The most detailed technical requirements under the legislation appear in the Electricity Regulations, and the Electricity Distribution Network Code. These are set at a high level. Under the Electricity Regulation, electricity entities must comply with:

- certain earthing, frequency and voltage requirements
- recognised practice in the electricity industry when providing or installing service lines (e.g. route, termination point, number of phases, lengths, type and size or service lines).

By contrast, the Electricity Distribution Network Code contains very detailed metering requirements for off-grid electricity networks operated by Ergon Energy. These meters are not subject to national rules.

Comparatively few technical requirements apply under the Gas Supply Act. Those that do, are of a general nature, e.g. requiring the provision of a meter and considerations in meter placement concern. The Gas Distribution Network Code similarly contains few technical requirements.

### Powers of industry

Industry, and in particular electricity distribution networks, are afforded extensive powers to support the provision of safe, reliable and secure supply. The majority of these powers relate to powers of entry and resumption. For example, s. 136 of the Electricity Act confers powers to:

*enter a place where the electricity entity has works or an electrical installation to inspect, operate, change, maintain, remove, repair or replace the works or installation.*

T5: Powers of Entry and Resumption deals with access powers for electricity and gas networks.

Other powers include the ability for entities to specify requirements relating to circuit breakers, power factor of electrical installations, characteristics of a protection device, use of an electrical article, and provision of links for connecting meters or space for a substation. For the isolated networks, Ergon Energy may also publish guidelines specifying electric motor installation and operational requirements.

Certain gas distributors (Maranoa and Western Downs) who are not subject to applied national laws in relation to connections may state the terms on which they will provide connection services. Otherwise, gas distributors may specify requirements for meter placement.

### Restrictions placed on end-users

Multiple technical provisions apply to end-users of energy, and in particular, electricity services. These include requirements to:

- comply with any requirement of supplier about power factor of electrical installation
- not use electricity or an electrical article in a way that unreasonably interferes with the supply of electricity to other customers
- only install generation where there is an agreement detailing the conditions for securing safe and stable parallel operation of the supply network
- have a circuit-breaker installed if required by the relevant electricity supplier
- provide space, housing, mounting and connecting facilities for each electricity or gas meter and network device, and maintain the facilities in a safe and sound condition
- provide space for a substation and maintain floor or foundation, walls or enclosure, ceiling and access in sound condition and repair damage to or deterioration of the space.

Additional restrictions are also placed on end-users in isolated networks operated by Ergon Energy. These end-users are not permitted to use electric motors over a prescribed size, use instantaneous water heaters with a rating of more than 2.4 kilowatts (kW) or welding power sources.

### Offences

A number of offences directly support safe, reliable and secure supply, including prohibitions against breaking a meter seal, unlawfully being in or on premises or enclosures where works are situated, protecting an object or discharging a weapon near an electric line or associated equipment, and interfering or tampering with works. T11: Offences and Enforcement addresses these and other offences in more detail.

### Assessment of current issues

*Appropriate: the legislation addresses a social, economic or environmental need or risk*

Technical requirements can have significant impacts on end-users in terms of the service they receive, and the cost of that service. If too conservative, they can undermine innovation in the sector. If not kept up-to-date, requirements can exacerbate or prolong safety or reliability risks, or add significant unnecessary costs to network operations. As such, technical requirements was a topic of significant comment from stakeholders in response to the Issues Paper. Comments ranged from stakeholders who saw no role for state regulation in this area, to those concerned with the ability of the legislation to effectively manage risks and safety issues posed by transition of the sector and introduction of new technology.<sup>179</sup>

While a number of stakeholders argued against state intervention in relation to technical requirements, these arguments tended to be based on efficiency grounds i.e. requirements would be better contained in industry codes and standards where they are able to be easily adjusted in line with technical advancements. These arguments are addressed in the ‘efficient’ section below.

The theme of technological advancement and transition of the sector arose in a number of submissions.

*Site remediation by generation entities, and obligations to remove connection assets*

With the planned closure of a number of large generation sites over the next 20 years, Energy Queensland indicated it would be timely to establish rules around remediation of sites following closure of power stations, including requirements to remove connection assets.<sup>180</sup> Whole-of-life cycle planning is a critical issue in the transition of the energy sector, encompassing not only generation but also storage technologies and network infrastructure. Issues affecting the transition of large-scale generation are currently being examined as part of the development of the analysis underpinning the Queensland Renewable Energy Target, whereas battery technology and network infrastructure is being examined under national reviews. This review will not duplicate that work, but look to incorporate outcomes as appropriate. T5: Powers of Entry and Resumption discusses extending rights of entry to remove works to include rights to remediate land.

*Storage technologies*

*Clear rules requiring end users to seek consent to install batteries*

Under s. 28 of the Electricity Regulation, customers must obtain their distributor’s consent to ‘install generating plant for interconnection’ with the distribution network. As outlined in Section 2.3: Interaction with applied national laws and Section 2.4: Licensing, the term ‘generating plant’ is not defined and it is unclear whether it would capture newer storage technologies, such as batteries. One of the options proposed under Section 2.4: Licensing is adjusting the licensing of generation activity to focus on export of electricity to a network, rather than connecting a generating unit. This would capture storage systems. While no option is recommended for generation, the arguments in favour of a shift to the activity of export are also relevant to s. 28 of the Electricity Regulation.

While most inverters are by default ‘export capable’ (i.e. can alter wave form between DC and AC), there would be no overarching benefit to require a customer with an inverter which has not otherwise been configured to actually export to seeking a distributor’s approval. Distributors certainly benefit from knowing when a customer’s load pattern may decline, however there is

<sup>179</sup> Submissions by Meridian Energy, Master Builders and Energy Queensland.

<sup>180</sup> Energy Queensland submission, p. 6

already a standard obligation placed on customers under the NERL(Q) to inform their distributor or retailer of ‘any permanent material change to the energy load or patterns of usage at the premises’.<sup>181</sup> Adding an additional requirement for customers to seek their distributor’s permission to install storage (or solar) which is not configured to export appears unnecessary costly and time consuming for both distributors and affected customers. However, where the device is configured to export, an appropriate network agreement is important, due to the direct impact of these devices on network operations. As noted in T3: Interaction with applied national laws and T4: Licensing, as ‘generating plant’ is not defined, there is a lack of clarity around whether a network connection agreement for these devices is required.

Feedback wanted: electric vehicles and network connection agreements

As take up of electric vehicles increases, electric vehicle charging technology will become widespread. Achieving the correct authorising environment is important.

Newer models of electric vehicles enable a two way flow of electricity. Vehicles are able to receive and export electricity. Placing requirements on owners of electric vehicles to obtain the consent of network operators to install an electric vehicle charger which export at premises may impose unnecessary costs on vehicle owners and dampen uptake of this technology.

However, similar to other battery systems and traditional generation, it important for distributors to know and be able to manage energy entering the network. Energy Queensland’s submission to the review requested access to registration data from the Department of Transport and Main Roads.<sup>182</sup>

*Stakeholder views are sought on the advantages, disadvantages and risks of requiring electric vehicle owners to seek network approval under the Electricity Act to install an electric vehicle charger which is configured to export, or to otherwise inform the network of their purchase.*

#### *Definition of ‘electrical installation’*

Extra-low voltage batteries are currently excluded from the definition of ‘electrical installation’ under the Electricity Act. However, batteries which operate at extra-low voltage (i.e. under 50 volts AC or 120 volts ripple-free DC) are becoming more common for end-user storage. For example, a number of battery systems including the current market leader (LG Chem) for lithium ion batteries are run at extra-low voltage. This has a number of implications. A battery installation of an extra-low voltage battery would not require an application to the relevant distributor (for export), powers of works and access may not extend to rectification of problems associated with these batteries and restrictions in the event of emergencies may not apply, creating an unintended regulatory gap.

<sup>181</sup> National Energy Retail Rules, Clause 6.2 (Model Terms and Conditions for Deemed Standard Connection Contract)

<sup>182</sup> Energy Queensland submission, p. 12.

## Feedback wanted: electric vehicles and definition of ‘electrical installation’

As outlined in T5: Powers of Entry and Resumption, electric vehicles are likely currently excluded from the definition of ‘electrical installation’ under the Electricity Act, due in part to exclusions for vehicles under the definition of ‘electric equipment’. There is the potential that the exclusion of electric vehicles may impact on broader provisions in the Act apply—e.g. in relation to network control, and powers of entry and resumption. However, this may not be key issue as electric vehicle chargers are likely to be considered an electrical installation, with relevant powers attaching to them.

*Stakeholder views are sought on the advantages, disadvantages and risks of extending the definition of electrical installation to apply to electric vehicles.*

## Stand-alone power systems, including off-grid networks

*Compliance with the Behind the Meter Code*

The Australian Energy Council recommended requirements be placed on off-grid networks to comply with the *Behind the Meter Code*.<sup>183</sup> The Behind the Meter Code is being developed by industry to set out expected levels of conduct in relation to ‘behind the meter’ products—e.g. solar, batteries, electric vehicle charging products, and home energy management systems—enhancing confidence in the sector and promoting consumer outcomes. Given mandating compliance with the code would undermine its voluntary nature, and considering work underway by the AEMC to provide appropriate customer protections in stand-alone energy systems, there does not appear to be a strong rationale to mandate compliance at this stage.

*Sensitivity of isolated networks to solar systems*

The introduction of Distributed Energy Resources (DER) including small scale solar PV, on networks designed for synchronous generation and one-way electricity flow can affect voltage management and local network capacity. To keep systems safe and reliable, as DER penetration increases, networks will need to invest either in network capacity upgrades or sophisticated equipment to manage, or restrict further installations.<sup>184</sup> At present, integration of additional generation is generally managed through a combination of planning material, which identifies capacity constraints, and individual connection agreements. However, as this is unlikely to present a satisfactory solution going forward, the AEMO has partnered with Energy Networks Australia at a national level to develop a longer-term comprehensive framework. That is, work should consider opportunities to incentivise networks to host distributed generation, for example in partnership with technology companies, to deliver better outcomes. However, this is not anticipated to capture off-grid systems which may need a complementary state response. With stand-alone power systems, including Ergon Energy’s 33 isolated networks generally powered through high emissions diesel generation, establishing rules to manage greater uptake of solar PV in isolated networks, without compromising network integrity, is timely.

<sup>183</sup> Australian Energy Council submission, p. 4.

<sup>184</sup> Australian Energy Market Operator and Energy Networks Australia 2018, *Open Energy Networks consultation paper*, pp. 14-15, viewed on 17 July 2019, <http://www.aemo.com.au/-/media/Files/Electricity/NEM/DER/2018/OEN-Final.pdf>

*Distributor barriers*

The submissions of Energy Queensland and Redback Technology called for the removal of restrictions which prevent electricity distributors from providing supply via alternative supply models.<sup>185</sup> The AEMC's *Final Report: Review of the Regulatory Frameworks for Stand-alone Power Systems* sets out a proposed a framework that would permit distribution businesses to provide supply via alternative supply models, for example individual stand-alone power systems or small off-grid networks.<sup>186</sup> Enabled by small-scale renewables and storage technologies, these systems may provide a cost-effective approach to supply in more remote areas, and more reliable outcomes than a grid connection.

The AEMC's work has comprehensively examining consumer protections, economic rules and technical framework appropriate for new stand-alone systems. This review has not duplicated that work, but presents an opportunity to remove barriers under state legislation to enable stand-alone supply by networks.

---

<sup>185</sup> Energy Queensland submission, p. 7; Redback Operations Pty Ltd submission, p. 2.

<sup>186</sup> See AEMC, 30 May 2019, *Review of the regulatory frameworks for stand-alone power systems - priority 1, Final report*, viewed 17 July 2019, <https://www.aemc.gov.au/sites/default/files/2019-05/SAPS%20Priority%201%20Final%20Report%20-%20FOR%20PUBLICATION.pdf>

## Feedback wanted: Excluded customers

State arrangements currently prevent any person other than the retailer for an area from selling electricity to customers supplied via distributor run stand-alone power systems. Under s. 19A of the NERL(Q), only a 'designated retailer' for premises may sell electricity to an 'excluded small customer'. This is a modified Queensland provision. Excluded customers are defined in the Electricity Act as small customers whose premises are connected (or to be connected) to a distribution entity's supply network that is not connected to the national grid. These customers were originally excluded from full retail competition in 2007 on the basis that the benefits of competition were not expected to outweigh the cost of developing technical systems to support retail competition.

However, as solar and storage technology has advanced, this has had the practical effect of preventing customers on Ergon Energy's 33 isolated networks from being able to enter agreements with any electricity sellers (e.g. solar power purchase agreements) other than Ergon Energy Queensland, which is the designated retailer for these systems. It is understood Ergon Energy has indicated it does not enter into these types of arrangements with customers, leaving affected customers with limited choice but to purchase systems outright if they wish to take advantage of solar resources.

As a result of removing barriers on distributors from providing supply via stand-alone power systems, there is the potential for new stand-alone systems to be installed both in the Ergon Energy and Energex networks. Without legislative adjustment, customers on these new stand-alone power systems would automatically be considered 'excluded customers'. As the existing restriction is based on legacy constraints with the 33 isolated networks, its continued application to newer systems may not be warranted. The AEMCs review into stand-alone power systems has highlighted the importance of making retail competition available to customers on larger stand-alone power systems.

No stakeholder commented on the practical effect of Queensland restrictions in the 33 isolated networks in response to the NERL(Q) review discussion paper.

*Stakeholder feedback is sought on whether any adjustment may need to be made to either the NERL(Q) or the definition of 'excluded customer' in the Electricity Act to account for new technology (e.g. solar and batteries) or new stand-alone power systems (noting the AEMC is also considering this issue).*

*Motor size limitations*

Few industry standards apply to the operators of existing isolated and embedded networks. For the isolated networks, current provisions generally focus on end-user behaviour, e.g. through motor size limitations placed on end-users on Ergon Energy systems. The Queensland Farmers Federation recommended these restrictions be removed, and network performance requirements be aligned between isolated and grid-connected systems.<sup>187</sup> The AEMC's current investigation into stand-alone power systems is examining equivalent-to-grid performance standards which could apply in new off-grid networks and systems. As noted above in relation to Energy Queensland's proposal to introduce technical standards for solar PV in isolated networks, a framework that provides greater support for managing issues which affect isolated networks appears warranted.

<sup>187</sup> Queensland Farmers' Federation submission, p. 3.

### Metering provider rights

The national Power of Choice reforms moved responsibility for metering from distribution entities to metering providers.

To undertake metering work safely, Vector called for metering providers to be given the power to isolate supply in order to carry out their responsibilities.<sup>188</sup>

This appears to be a necessary amendment to support the changeover in responsibility.

### Embedded networks

Work currently being undertaken by the AEMC in its embedded network review has raised technical standards applying to embedded networks as a key issue for State Governments. In relation to this, the Commission is focussing on opportunities for State Governments to introduce requirements in relation to both reliability and technical standards i.e.:

- design—including design standards relating to overhead lines, underground lines, substations, generators, services and customer installations
- quality of supply obligations for voltage range, frequency, and disturbances for distribution networks.

Feedback wanted: electric vehicle charging stations and technical regulation

Technical regulation aims to support an energy system and individual connections that are safe, reliable, secure and of a high quality. There are already national codes that deal with some aspects of electric vehicles and charging, such as the national metering code. It is likely that further Australian Standards or codes for electric vehicles and chargers will be developed with reference to international codes and standards.

However, until the electric vehicle market and regulatory environment matures, there may be a need for some technical regulation to support reliable, secure and quality supply via commercial electric vehicle charging stations, for example in relation to standards of technical performance and industry behaviour.

*Stakeholder feedback is sought on whether the framework for technical standards under the Electricity Act should apply to electric vehicle charging stations.*

### Effective: the legislation achieves the desired outcomes

A number of stakeholders commented on opportunities to improve the effectiveness of existing arrangements.

### Restrictions in isolated networks

Energy Queensland indicated the restrictions on the use of instantaneous water heaters with a rating of more than 2.4 kW in isolated networks could be combined with an express requirement on end users to only install heat pumps.<sup>189</sup>

Energy Queensland also noted motor size restrictions in many isolated networks are unnecessarily confined and could be expanded in line with *Table 2*, though as noted in the ‘appropriate’ section, its

<sup>188</sup> Vector Limited submission, p. 3.

<sup>189</sup> Energy Queensland submission, p. 23.

preference was a general right to determine motor size restrictions.<sup>190</sup> The Queensland Farmers Federation recommended motor size limitations be removed completely.<sup>191</sup>

Table 2: Proposed changes to motor size restrictions, as suggested by Energy Queensland

Locality	Existing Restriction	Proposed Change	
Aurukun	16 kW	37 kW	Increase
Badu Island	13 kW	24 kW	Increase
Bamaga	46 kW	90 kW	Increase
Boigu	10 kW	10 kW	N/a
Boulia	16 kW	30 kW	Increase
Burketown	16 kW	21 kW	Increase
Camooweal	16 kW	20 kW	Increase
Coconut Island (Poruma)	10 kW	10 kW	N/a
Coen	13 kW	13 kW	N/a
Darnley Island (Erub)	8 kW	8 kW	N/a
Dauan Island	7 kW	8 kW	Increase
Doomadgee	37 kW	33 kW	Decrease
Gununa (Mornington Is)	37 kW	37 kW	N/a
Hammond Island	5 kW	6 kW	Increase
Kowanyama	37 kW	41 kW	Increase
Lockhart River	16 kW	18 kW	Increase
Mabuiag Island	7 kW	8 kW	Increase
Mapoon	12 kW	16 kW	Increase
Moa Island (Kubin & St Pauls)	10 kW	15 kW	Increase
Murray Island (Mer)	13 kW	15 kW	Increase
Palm Island	38 kW	46 kW	Increase
Pormpuraaw	16 kW	18 kW	Increase
Saibai Island	8 kW	8 kW	N/a
Stephen Island (Ugar)	4 kW	5 kW	Increase
Warraber Island	7 kW	8 kW	Increase
Wasaga	37 kW	37 kW	N/a
Yam Island (Iama)	10 kW	10 kW	N/a
Yorke Island	10 kW	10 kW	N/a

### Capacity constraints

Improving the effectiveness of arrangements in relation to capacity constraints was a key issue raised by Cotton Australia and the Australian Sugar Milling Council. Cotton Australia encouraged the review to look at opportunities for distribution networks to make information on capacity constraints more available.<sup>192</sup>

Information on capacity constraints is currently made available by both Ergon Energy and Energen via interactive maps on the entity's websites and it is anticipated that work being undertaken in

<sup>190</sup> Energy Queensland submission, p. 24.

<sup>191</sup> Queensland Farmers' Federation submission, p. 3.

<sup>192</sup> Cotton Australia Limited submission, p. 3.

partnership between AEMO and Energy Networks Australia under the Open Energy Networks project will further improve arrangements for integration of distributed energy resources.

The Australian Sugar Milling Council noted issues with the ability of AEMO to constrain non-shedding generation load, and argued Energy Queensland should be required to guarantee agreed export capacities in connection agreements.<sup>193</sup> However, this would represent a fundamental change to the national network connection and access regime. This a matter for applied national laws and falls outside the scope of this review.

Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

Flexible framework

A number of stakeholders called for technical standards to be placed in standards, codes, policies or guidelines rather than in principal legislation or regulation.

The main reason was efficiency—keeping standards up to date and responsive to changes in conditions, technologies and market models is difficult when legislative or regulatory change is needed.

Keeping standards up to date can also produce significant savings. For example, high penetration of solar PV in Queensland has caused network voltage rise that can affect the efficiency and shelf life of electrical appliances and equipment. Changes to voltage limits under the Electricity Regulation made in 2017 significantly improved the efficiency of how network voltage rises are managed (with forecast savings over \$50 million). Voltage limits are now aligned with Australian and international standards (AS 60038 and AS 61000) and as a result has decreased capital expenditure on network upgrades that would have otherwise resulted in costs flowing through to customers via increased electricity prices. This has also eased restrictions on solar connections and exports, making it easier and more cost-effective for customers to install solar PV. Despite the importance and impact of voltage limits, keeping them up to date required an amendment to the Regulation, which was an extensive task. In the interim, unnecessary costs were incurred for industry and ultimately customers.

Similar to the voltage limits, as electric motors become increasingly efficient, limits on motor sizes in isolated communities included in Regulation have become outdated and unnecessarily restrict the use of possibly larger electrical appliances or equipment such as agricultural or industrial equipment. Given these limits are contained in a Regulation, amendments can take a considerable amount of time. This in turn has implications for the local economy.

Metering

Both the Electricity Regulation and Gas Supply Act specify requirements on meter placement.

These place an obligation on the customer to provide space and housing for meters to the reasonable requirements of the metering provider or distributor. The Gas Supply Act goes further to provide that a distributor may also consider safe access, aesthetics and protection from weather or corrosive atmosphere (among other things) when deciding the placement of a meter.

The applied national law simply requires meters be placed as close as practicable to the connection point, but otherwise giving metering providers and distributors discretion regarding placement

---

<sup>193</sup> Australian Sugar Milling Council submission, p. 3.

subject to other technical requirements. Given this, requirements for meter placement under state legislation appear unnecessary.

Another issue with the current customer meter placement obligations is they're consistent with applied national laws about metering contestability and competition. Since 1 December 2017, changes to the National Electricity Rules and National Energy Retail Rules have introduced competition to advanced meters and metering services by making those services contestable. The establishment of new roles and responsibilities now mean that anyone can become a metering provider subject to registration requirements.

The existing state meter placement obligations are not consistent with the sentiment of competition. In a competitive market, the cost to consumers to upgrade their meters would be a key ground on which providers would compete for business. Competitively priced upgrades would drive demand for the new technology and facilitate innovation and competition in the provision of those services as envisioned under the Power of Choice reforms. However, ss. 44 and 45 of the Electricity Regulation may restrict how the installation costs could be competitively packaged by requiring the *customer to provide at their expense*, space, housing, mounting and connecting facilities for meters in a manner that meets the reasonable requirements of the metering coordinator or distributor as it relates to a meter or network device respectively.

In situations where a customer has requested an advanced meter, these associated costs are appropriately borne by that customer. However, the Regulation also provides that the customer bear this cost even if the new meter installation is at their retailer's request: this degree of prescription appears unnecessary and appears to remove the ability of a retailer to offer to cover the customer's costs. While each installation is different, anecdotal evidence suggests it costs around \$1000 for a basic installation, not including any additional remedial work that may be required for older mounting and connection facilities such as the removal of asbestos.

The Gas Supply Act also imposes metering requirements at the customer's expense. While equivalent national gas law reform has not been implemented to introduce gas metering contestability and competition, removal of this positive obligation on customers to pay for the associated costs of metering installation could also facilitate greater flexibility in how those costs could be more competitively packaged.

The practical impact of removing the positive obligation on the customer to meet costs in all instances would enable a degree of flexibility for retailers to cover those costs, where there is a net benefit to the retailer.

### Objectives

The objectives of technical regulation are to support safe, reliable and secure supply to individuals and to promote overall system safety, reliability and security. As noted in the background section, environmental outcomes are also a key consideration, though are being addressed through other channels initially. Outcomes of that work will be integrated into this process at a later stage, as appropriate.

### Options

Key options which have been considered are:

Option	Description
Status quo (option 1)	Existing arrangements would be retained

<b>Adjust legislation in response to identified concerns (option 2)</b>	Existing regulation would be updated to address individual issues raised by stakeholders
<b>Standards and codes framework (option 3)</b>	Industry standards currently in legislation, regulation, the Distribution Network Code and licence conditions would be moved to a standards and codes framework administered by the Queensland Competition Authority and supported by an appropriate technical panel

### Option 1 – Status quo

Option 1 retains the technical provisions as they are.

Changes could still be progressed through Parliament or the Governor in Council once sufficient evidence of the need for change and impact on stakeholders is collected. For more urgent changes, the Regulator would implement new obligations on authority holders directly through licence conditions.

The disadvantage of the existing approach is the length of time needed to make changes through legislative and regulatory mechanisms in light of the fast pace of industry change.<sup>194</sup> As the pace of change increases, it may incentivise greater reliance on adjustments made by the Regulator through individual licence conditions. This is not best practice, and while the Regulator aims to consult affected parties, including community members, public consultation is not guaranteed.<sup>195</sup> Moreover, there is no process for individuals other than entities to commence a review into conditions set by the Regulator.

The majority of amendments proposed by stakeholders<sup>196</sup> could reasonably await the outcomes of other work programs, with amendments progressed through Parliament or the Governor in Council following completion of those work programs. However, this could add up to two years to those processes.

In addition, the approach would not address known difficulties with existing regulation, including out-dated motor restrictions that apply in the isolated networks or access for metering providers to isolate supply.

Impact group	Estimated impact
<b>End users and community</b>	May inhibit the development / roll out of new technologies, or restrict access to solar systems or other DER, particularly in isolated and/or embedded networks

<sup>194</sup> For example, as noted in problem section, around two years to progress an amendment to voltage standards.

<sup>195</sup> Note: the Act required the Regulator to allow licence holders to respond to amendments if the Regulator does not have their agreement.

<sup>196</sup> For example, removing barriers to networks providing alternative supply, providing for better integration of renewables and other DER in isolated and weak networks including through better information about capacity constraints, and addressing Australian Energy Market Commission concerns in relation to embedded networks.

	<p>Places decisions affecting new technologies in hands of network businesses, which may be driven by different incentives</p> <p>Reduces ability to participate in amendment processes (where progressed through licence conditions)</p> <p>Unnecessarily restricts access to motor size increases in at least 18 remote communities</p>
<b>Authority holders</b>	<p>Minimal impact, other than potential incentive for Regulator to rely on powers to adjust licence conditions without agreement</p> <p>Less certainty in relation to rights and responsibilities not regulated</p>
<b>Other industry participants</b>	<p>May inhibit development of new technologies and business models, with reliance placed on network businesses to make decisions in the absence of regulation</p> <p>Metering providers exposed to potentially unsafe work environment from inability to isolate supply when working on a meter</p> <p>Retailers restricted from measures that could potentially increase the roll out of digital metering technology</p>
<b>Government and regulator</b>	<p>Minimal impact, though pace of change may increase number of regulatory and legislative adjustments going forward</p> <p>Greater pressure on regulator to adjust authority conditions to manage transition, though this could only occur on a bespoke basis (i.e. authority by authority)</p>

#### Option 2 – Adjust legislation in response to identified concerns

Option 2 would retain the status quo, but with enhancements to improve the performance of technical regulation, in line with feedback received through the Issues Paper.

Proposed changes under option 2 are:

- a) Remove barriers to network businesses providing supply via stand-alone power systems for connections, where more cost effective and equivalent or better reliability outcomes could be expected. This would not address barriers that remain at a national level (e.g. via economic regulation or under ring fencing rules), but would prepare the Queensland system in advance of national rules being amended.
- b) Expand the existing Distribution Network Code to be able to comprehensively address issues in existing isolated networks. At present, the Queensland Competition Authority's Distribution Network Code deals with metering in the isolated networks, but does not deal with other technical aspects of supply. Under option 2 the jurisdiction of the Queensland Competition Authority to make a code would extend to rules guiding the integration of DER, including solar systems in existing isolated networks, and rules relating to other network connections, including motor size restriction in isolated networks if appropriate.
- c) Adjust the definition of electrical equipment to include extra-low voltage storage systems. This would allow the framework, including works and access powers and emergency provisions (e.g. rationing), to be extended to these newer and popular forms of storage.

However, it would be important to target the definition to storage system. To make a broad change to the definition to remove the central concept of a voltage threshold may be problematic, and have significant flow-on effects for how electrical work is currently defined and regulated. Option 2 would maintain the concept of the extra-low voltage threshold but define storage systems as “electrical installations”.

- d) Clarify that end-users who install batteries for interconnection to a network (i.e. capable of export) need to lodge an application with the relevant network. This will ensure system risks can be appropriately considered through connection applications, as well as support information provided to the DER Register, as outlined in Section 2.3: Interaction with applied national laws. Some administrative costs are associated with the network connection application process. For example, the costs of completing the application form which requires information about the customer’s National Metering Identifier, technical details of the system including the reactive power control settings of inverters, and the number of electric phases the system will be connected to. Customers will also need to pay an application fee. In the Ergon Distribution area, the fee for a basic connection application is \$56.39 (inc. GST). If a technical assessment is needed, this can increase to \$256 (inc. GST).<sup>197</sup> Both Energex and Ergon distribution prices for connection applications are overseen by the AER. Once an application is assessed, the distributor will make a connection offer which needs to be accepted. The process is generally well understood by electrical installers who commonly lodge application on a customer’s behalf.
- e) Remove provisions relating to meter placement and customer obligation to provide housing, space etc. for meters to the reasonable requirement of distributors and metering providers. Meter placement provisions appear to duplicate applied national laws. The customer obligation to meet the costs of meter installation appears to restrict retailers who may wish to cover these costs to encourage customers to install more advanced metering.
- f) Allow meter providers to isolate supply when working on meters. This is a safety measure that recognises distributors are no longer exclusively responsible for metering services, following the December 2017 Power of Choice reforms. It is not expected to impact on customers or distributors but will help ensure a safe operating environment for metering entities.

The advantage of option 2 is it will bring the framework up to date with developments in the sector. Further amendments going forward will be considered on a case-by-case basis as per option 1 (i.e. under legislation, regulation or via amendments to licence conditions).

Going forward, option 2 brings similar risks as option 1.

---

<sup>197</sup> Ergon Energy, 2019-20 Network Tariff Tables.

Impact group	Estimated impact
<b>End users and community</b>	<p>Addresses immediate concerns in relation to the adequacy of technical standards.</p> <p>Greater certainty regarding treatment of motor sizes and integration of DER in existing isolated networks.</p> <p>Clarification of treatment of storage technology, and potential additional administrative costs and delays associated with application for connection process. Noting:</p> <ul style="list-style-type: none"> <li>• These timeframes could be minimised by the distribution businesses adopting a form of standard connection contract to deal with routine connection requests</li> <li>• The process is commonly facilitated by electrical installers, who are familiar with the connection application process</li> </ul> <p>Potentially more attractive offers from retailers to cover the costs of new meter installations</p>
<b>Authority holders</b>	<p>Minimal impact, other than potential incentive for Regulator to rely on powers to adjust licence conditions going forward without agreement.</p> <p>Greater certainty regarding integration of DER in isolated networks.</p>
<b>Other industry participants</b>	<p>May inhibit development of new technologies and business models, with reliance placed on network businesses to make decisions in the absence of regulation</p> <p>Improves operating environment for metering providers</p> <p>Retailers given more options to support the roll out of digital metering technology</p>
<b>Government and regulator</b>	<p>Minimal impact, though pace of change may increase number of regulatory and legislative adjustments going forward</p> <p>Greater pressure on regulator to adjust authority conditions to manage transition, though this could only occur on a bespoke basis (i.e. authority by authority)</p>

#### Option 3 – Standards and codes framework

Option 3 would see industry standards – which currently sit in legislation, regulation, the Distribution Network Code and licence conditions – moved to a new standards and codes framework administered by the Queensland Competition Authority and supported by an appropriate technical panel if required.<sup>198</sup>

<sup>198</sup> A technical panel is a panel of independent technical experts appointed by the Minister. Experts would have the necessary skills and contemporary knowledge of technical matters to inform the Queensland Competition Authority's consideration of proposed codes and standards. Under the option, up to six Panel members would be appointed at an estimated annual cost of \$47 500.

Under this new framework:

An initial standard would be made to reflect the majority of existing rules, with the exception of current rules applying to isolated networks. In the lead up to implementation, the Queensland Competition Authority would be required to develop an appropriate standard for existing isolated systems run by Ergon Energy, to replace existing motor size restrictions and provide for the effective integration of DER. Reliability standards for electricity network businesses arising from the current MSS review (e.g. in relation to SAIDI and SAIFI would be incorporated into the initial standards).<sup>199</sup>

In addition to standards, industry would be able to develop technical codes for various technologies as they develop going forward. For example, codes to address different kinds of embedded networks, developed by operators of those systems in consultation with others as appropriate, and considering the outcomes of the AEMC's embedded network review. These codes would be lodged with the Queensland Competition Authority for approval and routine review. In the event a proposed technical code is deficient or where there is non-compliance, the Queensland Competition Authority would be able to set a minimum standard.

Standards would be managed in much the same way as existing Distribution Network Code provisions apply now, though would deal with a broader subject matter. Any person would be able to apply to the Queensland Competition Authority to make or vary a standard (as per the existing amendment process) and the Queensland Competition Authority would need to follow a public consultation process in order to make a standard. Under existing code making practices, a final decision is made by the Minister on whether a code is made or not and this process would be retained for standards to ensure appropriate government oversight.<sup>200</sup> Considerations the Queensland Competition Authority would need to have regard to include good industry practice, the value of customer reliability, the potential impact on competition and innovation, whether the subject is already dealt with in other legislation and the objectives of legislation. It could only make a standard where there is a net benefit: for example, it should not make a standard if technical rules already exist under the applied national laws as this would be duplicative. The Queensland Competition Authority would be supported by a technical panel, comprising representatives from industry, consumer groups and government.

The approach would help reduce the difficulties of amending legislation, allowing new types of technology, networks and business models to be addressed in a manner that is flexible, relevant and transparent. It would also enable the removal of standards and codes where they are captured through other processes. The approach would also place the onus of establishing appropriate technical standards on industry that are commensurate with individual systems, while having regard to established technical norms and having the Queensland Competition Authority supported by a technical panel as a safety net to intervene where appropriate.

Transitioning to a codes and standards framework would involve costs associated with a technical panel, estimated at approximately \$47 500 per annum. As the Queensland Competition Authority operates on a cost recovery basis, costs associated with keeping the framework relevant and up to date would be passed through to industry participants. The role of the Queensland Competition Authority under the approach would align more with other states, which have specific technical regulators established, for example New South Wales' Independent Pricing and Regulatory Tribunal (IPART) and Victoria's Essential Services Commission.

---

<sup>200</sup> Electricity Act, s. 120I.

Despite the cost a codes and standards framework would offer greater flexibility to adapt to change, as well as accommodate new and emerging technology and supply arrangements to suit customers' needs, expectations and willingness and ability to pay. This is expected to benefit industry, as well as consumers.

Option 3 would also include the following changes from option 2:

- Remove barriers to stand-alone power systems.
- Define extra-low voltage batteries as electrical installations.
- Clarify that end-users who install batteries for interconnection to a network (i.e. capable of export) need to lodge an application with the relevant network.
- Remove provisions relating to meter placement and customer obligation to provide housing, space etc. for meters to the reasonable requirement of distributors and metering providers.
- Allow meter providers to isolate supply when working on meters. This is a safety measure that recognises distributors are no longer exclusively responsible for metering services, following the December 2017 Power of Choice reforms. It is not expected to impact on customers or distributors but will help ensure a safe operating environment for metering entities.

Impact group	Estimated impact
<b>End users and community</b>	<p>Addresses immediate concerns in relation to the adequacy of technical standards and provides forward framework to address new technologies, business models and issues affecting the sector</p> <p>Provides a quick and easy avenue to propose or provide input to technical standards. Increases accessibility of state rules as these will be publicly available and in one place</p> <p>New framework for isolated networks to support safe, reliable and economic DER integration and reduce restrictions on motor sizes</p> <p>As per option 2:</p> <ul style="list-style-type: none"> <li>• clarification of treatment of storage technology, and potential additional costs / time delays associated with application for connection process</li> <li>• potential for more attractive offers from retailers to cover the costs of new meter installations</li> </ul>
<b>Authority holders</b>	<p>More flexible framework and review process to deal with technical advancement</p> <p>Less direct control over technical decisions, particularly for distribution networks in relation to isolated systems</p> <p>Costs associated with Queensland Competition Authority cost-recovery process</p>
<b>Other industry participants</b>	<p>Support the roll out of new technologies and business models, with more flexible framework and review process (i.e. improves competitive environment)</p>

	<p>Retailers given more options to support the roll out of digital metering technology</p> <p>Costs associated with Queensland Competition Authority cost-recovery arrangements</p>
<b>Government and regulator</b>	<p>Overall reduces costs and timeframes to develop rules, though rule changes may occur more frequently</p> <p>Moderate impact on Queensland Competition Authority, though natural extension to existing role in administration of Electricity Distribution Network Codes</p>

### Comparative assessment

	<b>Key advantages</b>	<b>Key disadvantages</b>	<b>Assessment</b>
Option 1 (Status quo)	High degree of scrutiny applied to technical rules that could have potentially significant cost impacts	Process for change slow and not responsive to pace of change in industry Framework is not responsive to emerging issues	<b>Not preferred for electricity or gas</b> Inappropriate for regulation of the sector going forward
Option 2 (Individual amendments)	Addresses existing problems and most suitable approach for gas given slow changes in market, and extensive Code making powers that can already be deployed in relation to gas market	Not flexible to respond to pace of change in electricity market going forward	<b>Not preferred for electricity</b> <b>Preferred for gas</b> where existing code arrangements provide considerable flexibility, pace of change is slower and only minor amendments identified
Option 3 (Standards and Codes framework)	Addresses existing problems and provides a framework for the future for the electricity market	Highest implementation cost, given need for technical panel Cost for gas market not justified	<b>Not preferred for gas</b> <b>Preferred for electricity</b> as a framework that is responsive to change and supports transparency

### Recommendation

It is recommended option 2 be implemented in relation to gas networks – i.e. specific metering difficulties be addressed through amendment.

For electricity a move to a standards and codes framework administered by the Queensland Competition Authority and supported by a technical panel is preferred (option 3).

While there is no immediate urgency to transition, doing so sooner rather than later will ensure the risk of technical requirements becoming outdated or obsolete (and the associated likely cost increases to industry and ultimately customers) are minimised.

A codes and standards framework will allow greater flexibility. Technical requirements can change in time with technological standards and industry and consumer expectations. And will be better able to accommodate and encourage new, emerging and alternative technology and supply arrangements. In turn, providers will be able to tailor their offerings to suit user needs, expectations and ability/willingness to pay for a particular level of reliability or safety.

### Consistency with other policies and legislation

#### Section 5 of the Competition Principles Agreement

The proposed adoption of a standards and codes framework (option 3) seeks to provide greater flexibility for technical requirements to accommodate the nuances of and encourage new, emerging and alternative technology. This approach recognises that from a technical perspective, a one-size fits all approach has the potential to dampen innovation. The approach should support the development of competition, while managing safety and technical risks.

#### Fundamental legislative principles

The proposed standards and codes framework could be perceived as an inappropriate delegation of legislative power. A code making power was originally introduced to the Electricity Act and Gas Supply Act in 2006. At that stage, the range of subjects which could be provided for in such codes included matters such as:

- the rights and obligations of entities and customers about customer connection services and customer retail services
- minimum service standards and service levels
- the terms of standard connection contracts, standard retail contracts and standard coordination agreements.

While the subject matter for codes was later rolled back with the introduction of the NERL(Q), the Scrutiny of Bills Committee commented on the original scope of code making powers:

*The significance of providing for matters to be dealt with by such alternative processes is that the relevant instruments, not being 'subordinate legislation', are not subject to the tabling and disallowance provisions of Part 6 of the Statutory Instruments Act 1992.*

*In determining whether in a particular case the use of such alternative processes is acceptable, the committee has regard to a number of factors. These include the significance of the subject matter, whether it is technical in nature or is otherwise not suitable for incorporation in regulations, and whether it needs to be capable of amendment at short notice.<sup>201</sup>*

At the time, the proposed code making powers for the Queensland Competition Authority were accepted by Parliament on the basis they would cover a high degree of technical subject matter, the code subject matter was specifically enumerated in the legislation, and objectives prescribed within which codes must operate. The code arrangements were considered to facilitate independent regulation and give regulators a 'flexible and timely mechanism' to deal with issues. The standards and codes framework proposed in this review has an even stronger focus on technical subject matter than the 2006 scheme. Similarly, subject matter and objectives will be enumerated in the legislation. There is also now stronger need than in 2006 for regulators to have a flexible and timely mechanism to deal with issues, given the pace of technological change occurring.

---

<sup>201</sup> *Electricity and Other Legislation Amendment Bill 2006*, Alert Digest No 10 of 2006, p. 5 [paragraphs 14-15]

## Implementation

Under the proposed option, existing technical regulation would move from legislation, regulation, licence conditions and technical codes into a new industry standard, to be administered by the Queensland Competition Authority. The broad scope of standard making powers would need to be specified in legislation, see *Table 3*.

*Table 3: Standard making powers needed in legislation*

Activity	Subject matter
Export of electricity (generation and storage)	Technical requirements Land access protocol
Network operation (distribution and transmission)	Technical requirements Land access protocol Customer service standards (distribution)

Standards and codes could vary based on risk, technology type, provider category (e.g. whether licensed or exempt) and depending on whether or not the service is connected to the grid.

The Minister would make the initial industry standard. In the lead up to implementation, a review would be undertaken into the initial technical conditions that should apply to isolated networks, in relation to solar systems and motor size restrictions.

The process for applying for a standard or registering a code would be set out in legislation. The existing template requirements for amending a Distribution Network Code appear an appropriate base for Standard Making.

For other changes, e.g. in relation to storage systems and need for consequential amendment, or the definition of electrical installation, legislative amendment with transitional support may be needed. This may also involve some consequential legislative amendments, for example relating to the common definition of electrical equipment under the Electrical Safety Act.

### Stakeholder questions

#### Topic 6 Technical requirements

Q6.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- The recommended hybrid option
- I do not like any of the options
- Blank (I have no interest in this topic)

Q6.2 Why?

Q6.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.7 Price control

### Note

Through the Queensland Productivity Commission (QPC) Inquiries into electricity prices, and a fair price for solar, the Government comprehensively examined electricity retail prices and feed-in tariff arrangements, including the Solar Bonus Scheme. Pricing policy decisions such as the 2016 deregulation of retail prices in South East Queensland in response to the QPC, and funding arrangements for the Community Service Obligation are excluded from the scope of this review.

The issues paper also sought comment about the role, benefits and disadvantages of Schedule 8 of the Electricity Regulation which sets maximum amounts customers pay for some activities. However, there was insufficient feedback to inform the development of options. To ensure this issue is fully addressed, the government will separate it from this consultation process and refer it to the Queensland Competition Authority (QCA) for further investigation.

### Context

Price controls are generally used to address power imbalances between customers and providers which could lead to unfair price practices, for example when there is insufficient competition in a market.

A variety of price controls exist within state legislation for electricity, including in relation to fixing or otherwise monitoring retail prices, restricting feed-in tariffs and setting price caps for certain services, see Figure 21: *Regulation restricting price under state legislation*. Comparatively few controls apply under the Gas Supply Act.

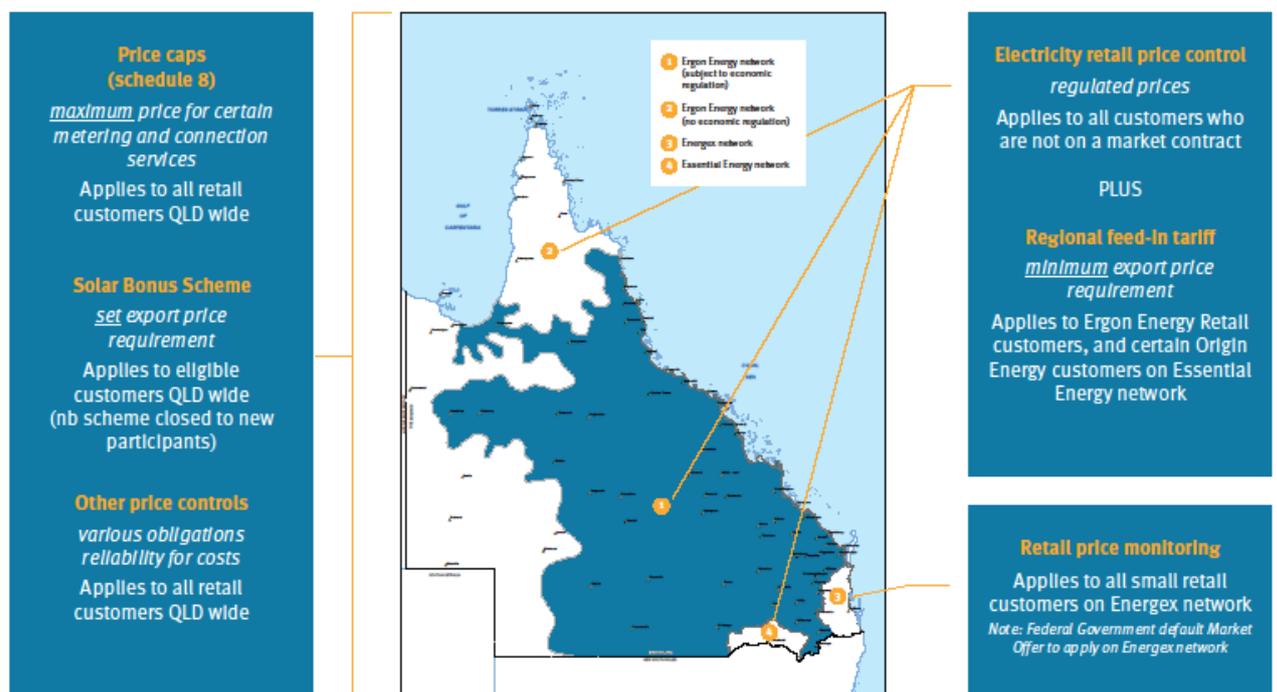


Figure 21: Regulation restricting price under state legislation

## Regional retail price control – notified prices

Division 3, Chapter 4 of the Electricity Act sets out a process for fixing the prices electricity retailers must charge particular customers on standard retail contracts. Included prices and affected customers are listed at *Figure 22*.

<b>Goods / services subject to notified prices</b>	<p><i>Customer retail services</i>, including the costs of making, producing and supplying electricity</p> <p><i>Related fees and charges</i>, including matters such as late payment fees and credit card surcharges, but excluding individualised network costs e.g. the price of a new physical connection</p> <p><i>Other prescribed goods and services</i>. None are currently prescribed</p>
<b>Customers protected by controls</b>	<p>Customers on standard retail contracts, physically located outside a 'designated retail market area'</p> <p>This includes most Ergon Energy retail customers, as well as small customers outside of south-east Queensland (SEQ) with other retailers who have not otherwise entered into market contracts<sup>202</sup></p>
<b>Retailers subject to controls</b>	<p>Controls apply to all retailers offering customer retail services under standard retail contracts outside of SEQ</p>

*Figure 22: Application of notified prices under Electricity Act*

Under the arrangements, the entity responsible for setting prices is the Minister, though in practice this function is routinely delegated to the Queensland Competition Authority. To set prices, the Queensland Competition Authority goes through an annual process, considering (i) the costs of making, producing or supplying goods or services and (ii) the effect that fixing prices may have on competition. It must also consider any matter specified by the Minister in the instrument of delegation. Typically, this covers matters such as:

- the Uniform Tariff Policy, which provides that wherever possible, customers of the same class should pay no more for their electricity, regardless of their geographic location
- use of the Network (N) plus Retail (R) cost build-up methodology when working out the notified prices. Under the methodology, N (Network Cost) is treated as a pass-through and R (energy and retail cost) is determined by the Queensland Competition Authority.

The Queensland Competition Authority may also consider any other matters it deems relevant.

The arrangements produce a variety of price options for customers. For example, in the Queensland Competition Authority determination for 2019-20, four primary tariff options and two secondary

<sup>202</sup> The standard retail control is a default contract that applies where customers have not willingly entered into a different contract. It generally only applies to small customers. However, an exception has been made for Ergon Energy's retail business, which offers standard retail contracts to large customers as well. This is because under the NERL(Q), Ergon Energy cannot enter into any other type of contract except under limited circumstances, so in practice the prices of most Ergon Energy retail customers (large and small) are controlled.

tariffs are available to residential customers (see *Table 4: Tariff options for residential customers, draft notified prices 2019-20*), four primary tariffs and two secondary tariff options are available to small business customers and another four for large business customers. Multiple options are available for very large business customers.

*Table 4: Tariff options for residential customers, draft notified prices 2019-20*<sup>203</sup>

	Fixed charge (cents (c)/day)	Usage charge (c/kilowatt hour (kWh))	Demand charge (\$/kW/month)	Top up charge (\$/kWh/month)
Flat rate	Flat	Flat	N/a	N/a
Time of use	Flat	Variable: peak/off peak	N/a	N/a
Time of use demand	Flat	Flat	Flat	N/a
Lifestyle	Variable	Flat	N/a	Flat

While a mechanism exists for setting notified prices under the Gas Supply Act, it has not been used. Under the Act, the Minister (or the Queensland Competition Authority if delegated) may fix standing offer prices and charges of a retailer for or relating to the sale of processed natural gas to a small retail customer. The power may only be exercised initially if the Queensland Competition Authority or the AEMC gives the Minister a report about a pricing investigation or effectiveness or retail competition in the gas market. The Minister then has six months to exercise the price fixing power.

#### Regional electricity feed-in tariff

Feed-in tariffs are the prices retailers pay to retail customers for exported electricity. Under Part 2A of the Electricity Act, the Minister must direct the Queensland Competition Authority to decide the regional feed-in tariff annually. In determining the feed-in tariff, the Queensland Competition Authority must consider the effect of the tariff on competition in the Queensland electricity retail market.

Affected retailers must reduce electricity charges by the regional Feed-in tariff (FiT) amount. If, after a year, a customer has a positive balance (i.e. has more credits built up than the cost of their electricity), the retailer must pay them. The arrangements are intended to operate as a minimum export price for a specified customer class and are set on a cost-neutral basis.

<sup>203</sup> Note: customers may also choose a 'night rate' or 'controlled supply' tariff to supplement these primary tariffs. However night rate and controlled supply are only available for particular installations, e.g. hot water systems and pool pumps directly connected to the network.

<b>Goods / services subject to regional FiT</b>	<p><i>Electricity produced by one small PV generator and exported to network</i></p> <p>This is a price set at cents per kilowatt hour and applies to electricity produced by PV systems with a total rated inverter capacity up to 30 kilowatts<sup>204</sup></p> <p>The price does not include consideration of other factors, such as solar metering costs</p> <p>The price only applies to electricity produced by one system at the premises and excludes electricity that has been stored before export</p>
<b>Customers subject to regional FiT</b>	<p><i>Regional retail customers</i></p> <p>The FiT applies to retail customers with one small PV generator connected at the premises to a network, who are located outside of the Energex distribution network in SEQ and who do not otherwise receive FiT payments under the Solar Bonus Scheme</p>
<b>Retailers subject to regional FiT</b>	<p><i>Local area retailers (for areas outside of the Energex distribution network in SEQ)</i></p> <p>These are Ergon Energy Retail, for customers on the Ergon distribution network, and Origin Energy, for customers on the Essential Energy distribution network</p>

Figure 23: Regional feed-in tariff arrangements

### Retail price monitoring

Retail price controls have not applied in the gas market since 2007, or to electricity customers in south-east Queensland since July 2016.<sup>205</sup> Instead, gas retail prices and south-east Queensland electricity prices may be subject to monitoring. If prices are found to be anti-competitive by the Queensland Competition Authority or under a report of the AEMC, there is a reserve power to introduce retail price controls.

### Solar Bonus Scheme – premium feed-in-tariff

The Solar Bonus Scheme was designed to encourage the installation of solar PV in Queensland. Under the Scheme, eligible customers receive a premium feed-in tariff for electricity exports under certain conditions. The Scheme is closed to new participants and is set to expire in 2028. Solar Bonus Scheme policy falls outside the scope of this review.

### Other price controls

Additional discrete forms of price controls appear under the Electricity Act and Regulation. These are generally directly tied to powers or obligations placed on electricity entities, in particular networks (i.e. [entity A] must do [specified thing] if the costs are met by [person B]). For example:

- an on-supplier must allow an on-supply customer to install a meter, if the on-supply customer meets the installation cost

<sup>204</sup> Note: originally set at 5 kW to align with the Solar Bonus Scheme. The size was subsequently increased to 30 kW to align with the joint connection standard.

<sup>205</sup> Note: the Commonwealth Government has introduced a standing offer price cap for retail electricity standing offers. This came into force on 1 July 2019 in SEQ. It is made under the *Competition and Consumer Act 2010* (Cth).

- a transmission or distribution entity must enable certain persons to connect to their networks, where those persons pay the reasonable cost of connection
- an electricity entity must alter the position of works if needed to support the functions of a public entity—in this case, the public entity is only responsible for the cost of altering the position of the works
- an electricity entity must remove and relocate works on request of the owner or occupier of premises, if the owner or occupier pays the cost of removal and relocation<sup>206</sup>
- an electricity entity must provide and install a service line on premises if requested by a customer—if the line is a standard control service, the electricity entity must meet the cost,<sup>207</sup> but if the line is not a standard control service, the obligation only applies where the customer pays the cost.

No equivalent cost controls of this nature appear in the Gas Supply Act.

#### Assessment of current issues

*Appropriate: the legislation addresses a social, economic or environmental need or risk*

Only minimal price controls exist in relation to gas. These are:

- the power to direct the Queensland Competition Authority to undertake a pricing investigation, and
- the power to set retail prices for small customers.

The last gas pricing investigation was undertaken in 2008. The Queensland Competition Authority found while competition in the market was in its infancy, competitive signs were emerging.

The power to fix retail prices was last exercised in 2007 and no stakeholder comment was received in relation to this power, or the power to undertake a pricing investigation.

*Effective: the legislation achieves the desired outcome*

The main aim of price controls is to guard against unfair price practices, for example, when there is insufficient competition in a market. This section examines the effectiveness of existing price controls in achieving this objective.

#### Electricity retail price control

Multiple stakeholders commented on opportunities to improve the effectiveness of electricity retail price controls.

#### *Choice available to customers*

Stakeholder comments mainly focused on Queensland Competition Authority considerations in setting notified prices. These included suggestions to promote innovation, remove headroom, consider affordability, consider energy efficiency and demand management, link to competitive

---

<sup>206</sup> Note: an exception is provided for substations. If a substation is no longer needed, an electricity entity must remove the substation if requested by the customer and take away at its own cost the lines, cables and equipment.

<sup>207</sup> To a maximum of 20 metres for an overhead line, or seven metres for an underground line. The line must also be an initial service line to the customer's premises.

outcomes in the SEQ market, and link prices to the nature of use or performance rather than cost.<sup>208</sup> A number of stakeholders also suggested ways for the community service obligation (CSO) to be used to facilitate the development of regional competition. CSO reform is outside the scope of this review.

The key theme arising from these submissions was choice—making available retail tariff and product options that work for different customers in a real way. As recognised in the legislative criterion for setting prices, considering actual costs is critical to guard against unfair price practices. However, it is not the only consideration. The legislation also requires the Queensland Competition Authority to consider the effect of a price determination on competition in the retail market. The cover letter to this year’s price delegation further emphasised the importance of developing choice for customers in terms of (i) tariffs and (ii) products.

#### Tariff options

In relation to *tariff options*, the range available within regional Queensland under the notified prices (i.e. flat, time of use, demand and the newly proposed lifestyle tariff) is already broader than that generally available to customers in deregulated areas. While retailers in deregulated areas have more flexibility to determine the form of tariff available to customers, the AER has observed that in practice retailers only make flat and time-of-use tariffs available. Demand tariffs, which can result in lower prices for people who do not use energy intensive devices at peak times, are rarely offered to customers who do not have access to notified prices.

Despite this range of tariff options in regional Queensland, in practice almost all residential customers choose the ‘flat rate’ option. Only 0.06 per cent are on other primary tariffs (time of use, or time of use demand) (refer to *Table 5*).

*Table 5: Residential customers on different tariffs, regional Queensland 2017-18*

Tariff	Number of residential customers on tariff	Percentage of residential customers on tariff
Flat rate	615 463	99.94
Time of use	267	0.04
Time of use demand	96	0.02

This is likely due to a combination of technical barriers, and complexity. A digital meter is required to access time of use or demand tariffs. Digital meters only started to be rolled out on a new and replacement basis in regional Queensland in late 2017. The overwhelming majority of regional customers do not have them installed<sup>209</sup> and cannot access broader tariff structure options until this occurs. This may take some time, depending on the remaining useful life of existing meters. Moreover, once a digital meter is installed, it is likely a customer would want to collect usage information over a period of time to make sure that time of use, or demand tariffs were right for them. A demand tariff can be more beneficial for customers with solar and storage, as they have greater control to shift their load on the network.

<sup>208</sup> See for example, submissions by Queensland Farmers’ Federation, Queensland Council of Social Service, Energy Queensland, Chamber of Commerce and Industry Queensland, Australian Sugar Milling Council, Cotton Australia, and Financial Counsellors’ Association of Queensland Inc.

<sup>209</sup> On the Ergon Energy network, around 60 000 digital meters have been installed. 1.1 million traditional meters remain on the network: AEMO, Metering Type by Distribution Area Report (July 2019).

### Product options

The technical barriers that apply to tariff options do not apply to *product choice*. The notified prices have a small number of product options including

- the purchase renewable or green energy
- the EasyPay Rewards scheme. Under EasyPay, customers receive credit for complying with specified conditions that reduce overall retail costs, such as payment of bills by direct debit.

It is available to any residential customer irrespective of underlying tariff choice.

These are essentially ‘add ons’ to primary tariffs, however they are limited in scope and there appears to be opportunity to expand the availability of these types of products.

This could be achieved by adding an additional explicit item that the Queensland Competition Authority must consider when setting notified prices, along the lines of a requirement to consider choice of tariffs and additional service offerings that improve customer outcomes.

The Queensland Competition Authority would still need to consider cost, competition and any other matters listed in the Ministerial determination.

#### Feedback wanted: electric vehicles

Current price controls framework is based on sale of electricity to premises under a customer retail contract. This controls the price at which electricity is sold to premises, but would not include the price at which electricity is sold by a commercial charging station to a customer for their electric vehicle.<sup>210</sup>

As electric vehicle customers are more easily able to shop around (and would have the option of charging their vehicle at home in which case protections would apply), it may be inappropriate to extend price control arrangements to commercial electric vehicle charging stations. However, in more remote regional areas, a lack of competition may incentivise unfair price practices.

*Stakeholder views are sought on the advantages, disadvantages and risks of extending price protections to operators of commercial electric vehicle charging stations.*

<sup>210</sup> Which is not otherwise connected to their premises.

### Feedback wanted: retail products, services and innovation

New technologies are and will continue to challenge the framework for notified prices going forward. Rooftop solar systems can already meet 40 per cent of customer load, the impact of which is not currently taken into account in the price setting process, which is largely based on volume based pricing. Demand pricing responses to volume based pricing can in turn be undermined by battery technologies reducing demand. There appears to be limited flexibility to support different business models to supply power such as stand-alone power systems and other related services such as energy management.

A number of stakeholders commented on the need to build flexibility into tariffs that promote innovation and provide for changes in the sector. For example, Master Electricians Australia noted *...lack of reform and flexibility in the tariff structure can stymie innovation. The tariff structure in place in the Queensland electricity market has been largely unchanged for 50 years or more. Master Electricians Australia firmly believes a more flexible tariff structure would generate greater innovation in the sector.*<sup>211</sup>

The Australian Sugar Milling Council similarly recommended more flexible retail price controls in the absence of retail competition.<sup>212</sup>

The AEMC's *Draft Report: Review of the Regulatory Frameworks for Stand-alone Power Systems – Priority 2* includes a draft position to apply retail price regulation to larger third party stand-alone power systems located in areas where price regulation already applies (i.e. in regional Queensland). It does not propose retail price regulation for smaller third party stand-alone power systems.

*Stakeholder views are sought on the value of building greater flexibility into retail products and services for regional customers to address new technologies, and how this could be achieved.*

### Regional electricity feed-in tariff

The regional electricity feed-in tariff applies to electricity exports from single solar systems in regional Queensland with an inverter capacity of under 30 kW. Any energy stored (e.g. in a battery system) is not eligible to receive the regional feed-in tariff. Instead, it must be immediately exported.

When the regional feed-in tariff was introduced, it was not anticipated that small customers with solar and battery systems would benefit from the regional feed-in tariff—it was assumed it would always be more cost-effective to self-consume electricity. However, the emergence of virtual power plants gives rise to the potential for stored power to export to the grid.

Queensland has significant solar resources, with solar systems installed on around one out of every three homes. There is no significant benefit in requiring the immediate export of solar systems given the large number of solar systems attached to the grid.

A more efficient overall system outcome would be achieved with an ability for households to export from a range of renewable and enabling technologies at different times of the day, either as part of a virtual power plant, or independently. This could be facilitated by storage (battery) technology.

<sup>211</sup> Master Electricians Australia submission, p. 8.

<sup>212</sup> Australian Sugar Milling Council submission, p. 1. Note however large users of electricity on the east coast in regional Queensland have access to retail competition, and many large users have switched to market contracts.

While it will still be cost effective for some customers with storage (battery) technology to use their generated power to service their own needs before export, in cases where generation exceeds demand, it would be useful to encourage more efficient exports.

A *technology neutral FiT* would be more effective at encouraging the further adoption and use of renewable technologies, and achieve this more efficiently, though it would be beneficial to exclude more polluting technology such as diesel generation.

Feedback wanted: electric vehicles and regional feed-in tariff

All electric vehicles include a battery which can be charged from the grid or domestic renewable energy, fuel cells or by an internal combustion engine if it is a hybrid vehicle. The electric vehicle is connected to the grid or a battery via a charger, for which there are different designs, including high-speed DC chargers and slower AC chargers which allow for a vehicle to be charged from the grid.

Shortly chargers may become available which will also allow for two-way flow from grid-to-vehicle and vehicle-to-grid. The vehicle-to-grid flows are analogous to solar energy fed into the grid. A technology-neutral regional feed-in tariff could reasonably include exports from electric vehicles.

*Stakeholder views are sought on the advantages, disadvantages and risks of facilitating feed-in tariff payments in regional areas for exports from electric vehicles*

Technology advancements and reduced costs mean the existing size restriction of 30 kW may also no longer be appropriate. *Increasing the 30 kW threshold to 100 kW*—being the federal definition of small scale—would enable more small customers in regional Queensland to receive fair payment for any excess energy exported from their solar PV system, and this, combined with a technology neutral FiT, supports the development of virtual power plants.

Just over 5500 solar PV systems on the Ergon Energy Distribution network do not receive either Solar Bonus Scheme or regional FiT payments and it is expected many of these would fall into the 30 kW to 100 kW band. Increasing the threshold would mean these customers would become eligible to receive the regional FiT. Similarly, new solar customers who meet the customer eligibility criteria in the Act and install a solar PV system with total rated inverter capacity up to 100 kW would become eligible to receive the regional FiT.

At present, it is understood Ergon Energy Queensland does not pay for solar energy exported from solar PV systems between 30 kW and 100 kW as it is not obliged to do so. This adjustment would require Ergon Energy to pay for this energy, with an indicative value of \$5000 to a customer with a 100 kW system exporting around 30 per cent of solar generated.

Solar Bonus Scheme

In 2018, the Electricity Act was amended to clarify that a Solar Bonus Scheme customer may not install additional generation systems and/or electricity storage devices in a way that allows them to export electricity to the network. Due to premium payments available, the Solar Bonus Scheme raises different issues to the regional feed-in-tariff. The above proposals would not apply to the Solar Bonus Scheme

Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

A number of opportunities have been identified to improve the efficiency of price control arrangements. Key opportunities are outlined below.

#### Consolidating regional pricing and regional FiT process

At present the Queensland Competition Authority must undertake separate processes to determine the price for electricity in regional Queensland and the regional FiT. As the matters are closely related, and affect the same stakeholders, it would be more efficient for both stakeholders and the Queensland Competition Authority to undertake the processes together. The process for commencing this work are currently different, though the processes are otherwise substantively similar. In particular, the Queensland Competition Authority's work on price determinations must be delegated by the Minister under s. 90AA of the Electricity Act, and while this routinely occurs, it is not definite. By contrast, the Minister must direct the Queensland Competition Authority role in setting the regional FiT under s. 93 of the Electricity Act. Combining the processes would require changing the commencement arrangements for either price determinations or the regional FiT. The Queensland Competition Authority has indicated a preference for arrangements similar to the regional FiT to increase certainty. This would not remove the Minister's existing powers to set terms of reference for the Queensland Competition Authority's work, or the Minister's reserve powers to decide prices under s. 90. Rather, it would provide that the Queensland Competition Authority is body with default responsibility for setting prices and the regional FiT, with reserve step in powers able to be exercised.

#### Giving pricing entity access to information

For its price setting functions, the Queensland Competition Authority requires access to information from retailers. At present, it is restricted to requesting information from retailers affected by regional price determinations, predominantly Ergon Energy Queensland. To improve the efficiency of its price setting it should be able to access information from any party which is relevant to its functions. Similar powers are conferred on other pricing entities, including the Tasmanian economic regulator.

At present, the Queensland Competition Authority is only able to direct requests for information to retailers who are subject to price determinations. Since prices were deregulated in south east Queensland in 2016, information can only be requested from the small number of retailers operating in regional areas. This creates difficulties for the Queensland Competition Authority in gathering enough information about south east prices to effectively consider the Uniform Tariff Policy in setting regional price. While the Queensland Competition Authority can gather information about south east Queensland under its 'price monitoring powers' under s89B of the Electricity Act, those powers are principally intended to be used for different purposes.

Expanding price gathering powers has the advantage of being more 'future proof' and better able to respond to changes in the market (e.g. introduction of new entities and bodies, such as metering-coordinators and embedded network operators). Improved information gathering to support pricing powers was supported in submissions by the Queensland Council of Social Services<sup>213</sup> and Cotton Australia.<sup>214</sup> While expanded information gathering powers were opposed by Energy Queensland<sup>215</sup>,

<sup>213</sup> Queensland Council of Social Service submission, page 3.

<sup>214</sup> Cotton Australia submission, page 2.

<sup>215</sup> Energy Queensland submission, page 17.

the proposal is unlikely to affect Energy Queensland, given its retail entity – Ergon Energy Queensland – is already subject to information gathering powers.

#### Expanding the regional FiT to take into account associated costs

At present, in setting the regional FiT, the Queensland Competition Authority is unable to have regard to associated costs, such as the cost of solar metering. These costs are instead determined by the relevant retailer as a result of metering competition reforms introduced in late 2017. No price restrictions are attached. To reduce the potential for unfair price outcomes, the Queensland Competition Authority regional FiT responsibilities could be expanded to include consideration of solar metering costs. The Queensland Competition Authority already sets metering costs for customer retail services as part of its regional price determination process and it is understood that Ergon Energy, as the main party restricted by these provisions, already charges solar metering at equivalent rates to other forms of metering. Expanding the regional FiT to take into account these costs is not expected to have any material impact on customers or Ergon Energy, but provides more holistic protection.

#### Clarifying that the regional FiT is intended to operate as a minimum export price and size restriction

It is understood there is some drafting uncertainty which has led Ergon Energy Queensland to adopt a conservative approach (i.e. advising customers that the regional FiT prevents it from offering a FiT to more customers). Clarification that the provisions operate as a minimum requirement, but do not prevent more favourable offers or offers to larger sized systems would improve effectiveness of measures to further promote renewables.

#### Enable consideration of Australian Competition and Consumer Commission recommendations

Before exercising his or her reserve powers to reintroduce retail price restrictions in south-east Queensland, or for small retail gas customers, the Minister may consider a report prepared by either the AEMC or the Queensland Competition Authority into the effectiveness of competition. Given the Australian Competition and Consumer Commission (ACCC) has now begun undertaking regular retail competition and price monitoring across national energy markets, it would be efficient to include reports by the ACCC as among those which may be considered by the Minister in deciding whether to reintroduce retail price control.

#### Adjustments to account for standing offer price cap

The Commonwealth Government has introduced a standing offer price cap price for retail electricity standing offers to apply from 1 July 2019 in distribution regions where there is no retail price regulation (e.g. in south-east Queensland). While the Commonwealth's standing offer price cap creates the potential for overlap with the reserve powers within state law to re-introduce retail competition in south-east Queensland, no amendments to Queensland legislation relating to the reserve powers are anticipated at this stage.

#### Supporting powers re terms and conditions

In making price determinations, the Queensland Competition Authority necessarily also needs to establish the terms and conditions which apply to each kind of tariff. These terms and conditions are routinely included in the price determinations as a necessary incidental requirement. Best practice indicates that these powers should be clarified in the legislation.

#### Alignment with applied national laws

As noted in the background section, many provisions in the Electricity Act contain direction around costs i.e. who is liable to pay the costs of various services. In some cases, these directions duplicate cost rules under the applied national laws. For example, under s14 of the Electricity Regulation,

distributors are not permitted to charge customers for new connections which are considered Standard Control Services, but are permitted to charge customers for connections which are not Standard Control Services. As the AER economic regulatory process and connections framework already comprehensively deal with charging arrangements for new connections, the provisions in the Electricity Regulation appear unnecessary and should be removed.

In some cases, the State law differs from applied national arrangements. For example, section 20H of the Electricity Act provides that an on-supplier must allow an on-supplier customer to install a meter, if the on-supply customer meets the installation cost. However, the AER's *Electricity Network Service Provider – Registration Exemption Guideline*, version 6 March 2018 places express requirements on some on-suppliers to install meters for their customers and meet relevant metering costs. Better alignment between the State-legislation in relations to costs and AER exemptions would reduce confusion.

Part 4 of Schedule 8 price caps also requires an update to reflect that the AER is now responsible for economic regulation of the Ergon Energy distribution area. Wording within the schedule still refers to this role being undertaken by the Queensland Competition Authority.

### Objectives

The overall objective of price control is to protect consumers against unfair price practices. Where possible, this should be done in a way that promotes competition, or otherwise improves overall system efficiency (e.g. where competition is not likely to emerge).

### Options

Option	Description
Status quo (option 1)	Under this option, no changes would be made to the regulation  A range of non-legislative action would be undertaken to drive efficiencies and guard against risk
Targeted reform (regional FiT) (option 2)	Under this option, the legislation would be adjusted to address issues that cannot be addressed via non-legislative measures. Principal changes are adjustments to the regional FiT to increase size and make technology neutral.
Improve efficiency and effectiveness (option 3)	Under this option, measures in option 2 would be introduced, alongside changes to improve efficiency and the effectiveness of price controls.  A legislative requirement would be placed on the Queensland Competition Authority to consider options that improve system efficiency and meet customer need.

#### Option 1 – Status quo

Option 1 would not make any regulatory adjustments to existing arrangements, aside from minor drafting improvements. There are a number of benefits to this approach. Principally, the option would attract no implementation costs.

The option also recognises that there are already non-legislative solutions to a number of issues identified. For example, to expand choice for regional customers in relation to tariff structures and products that meet their needs, the Minister would be able to include this as an element for

Queensland Competition Authority consideration as part of his or her annual delegation. A key advantage of this is that it provides flexibility to adjust directions should any perverse outcomes appear from the direction.

Efficiency improvements, including better aligning timing and process for setting regional pricing and regional FiTs could also be achieved non-legislatively, for example through aligning timeframes in instruments of delegation. The Regulator could publish advice clarifying the application of the regional FiT as a minimum export price without any legislative change. In relation to reserve pricing powers, advice from the ACCC could be specified as a consideration under the terms of reference provided to the Queensland Competition Authority to conduct a competition review – though this does not remove the requirement for a separate process.

Option 1 would not be able to fully address:

- Restrictions in regional FiT size and inefficiencies of the regional FiT's focus on solar to the exclusion of other technologies. However, the government could work with industry to encourage retailers to consider making offers available to customers with larger system sizes or with storage technology.

Option 1 is less certain than other options, and relies on additional administrative action and will. It cannot achieve the same efficiencies of public benefit as other options.

Impact group	Estimated impact
Energy industry (retailers and distributors)	Minimal impact – status quo
Customers	Minimal impact – status quo
Queensland Competition Authority	Minimal impact – status quo
Government	Minimal impact – status quo
Public and other	Minimal impact – status quo

#### Option 2 – Targeted reform (regional FiT)

Option 2 involves implementing reforms to address matters that cannot be addressed via non-legislative means. Principally, these are:

- Expanding the regional FiT size from 30 kW to 100 kW. This would restrict commercial flexibility for Ergon Energy Queensland, and Origin Energy in relation to customers on the Essential Energy network. It is understood that customers on the Ergon Energy network with larger size systems reportedly receive no payment for electricity exported. The reform would be cost neutral for Ergon Energy Queensland and Origin Energy, as the FiT price is set to reflect the value of energy to those businesses. It would result in around 5 500 customers who currently do not receive any payment for the regional FiT receiving credits of up to \$5 000 p.a. (for 100 kW systems).

Assuming these systems provide around 180 MW of capacity<sup>216</sup> generate 4.2 kWh/kW/day, and export 50 per cent at the regional FiT rate, the aggregated cost would be around \$13 million per annum.

- Making the regional FiT technology neutral (excluding diesel). This would reduce complexity of administering arrangements for customers and retailers, and encourage more exports at times where the system benefits. It opens the potential for regional customers to participate in virtual power plant arrangements.

Impact group	Estimated impact
Energy industry (retailers and distributors)	For regional FiT: <ul style="list-style-type: none"> <li>• Less flexibility for Ergon Energy Queensland and Origin Energy (in relation to customers on Essential Energy network) to determine commercially optimal arrangements</li> <li>• Assuming no payment is currently made for large systems, could cost approximately \$13 million per annum.</li> </ul>
Customers	For regional FiT: <ul style="list-style-type: none"> <li>• Regional customers benefit from expanded technology neutral FiT (up to \$5000 per annum for 100 kW systems for customers who currently receive no payment, though most affected customers are likely to have smaller systems)</li> <li>• Around 5500 “Other/Large” systems are currently on the Ergon Energy’s network which do not receive either the Solar Bonus Scheme or regional FiT</li> </ul>
Queensland Competition Authority	Minimal impact – status quo
Government	Decreased revenue from expanding regional FiT
Public and other	For regional FiT, better system efficiencies from encouraging use of storage + solar exports

### Option 3 – Improve efficiency and effectiveness

Under this option, measures in option 2 would be introduced, alongside a series of reforms to improve effectiveness and efficiency of arrangements.

Option 3 would include a new legislative requirement that the Queensland Competition Authority consider options that improve system efficiency and meet customer need – this approach gives statutory recognition to importance of choice for regional Queenslanders. While the approach does not address concerns about the availability of provider choice in regional areas (as options to achieve this are outside the scope of this review), it is expected to support tariff and product options that respond to customer need. The practical impact is to give customers more choices that meet their needs. Should retailer competition develop in the regional market, the reform may limit options for competitors to differentiate. However, as market offers are not subject to the high degree of protection available to standard retail customers, it is expected that price differentiation

<sup>216</sup> DNRME estimate based on Energy Queensland data.

would still be viable. Moreover, the requirement on Queensland Competition Authority to consider the impact of notified prices on the development of competition would remain, enabling this to be taken into account in the process of setting various tariff and product options.

Other reforms under option 3 are efficiency measures aimed at reducing administrative cost and improving system efficiencies. Reduction in administrative costs is expected to result from setting regional prices and regional FITs within a single process, and enabling considerations of contemporary ACCC reports should competition be found lacking, rather than commissioning duplicate reports from the Queensland Competition Authority. Removal of duplication between AER instruments and Electricity Act provisions in relation to connections and on-supply metering obligations would reduce complexity for the Regulator, customers and industry. Measures to improve system efficiencies include, basing price determinations on a broader range of more accurate information (that is, expanding the information gathering power for the Queensland Competition Authority to include the collection of information sourced from retailers operating in south-east Queensland market

There are some disadvantages to these measures, including:

- Potential restrictions on the price retailers may charge for services such as solar metering. However, as charges are generally set at equivalent prices to meters for customer retail services, this is not expected to disadvantage retailers.
- Costs associated with the provision of information to the Queensland Competition Authority to support price determinations. Retailers responding to the Issues Paper generally opposed an expansion in Queensland Competition Authority price gathering powers. However, better information is likely to lead to more efficient price outcomes for customers, which is likely to significantly outweigh any burden on individual retailers responding to information requests.

Impact group	Estimated impact
<b>Energy industry (retailers and distributors)</b>	As per option 2 Service differentiation potentially more difficult for retail competitors in regional areas, noting minimal competition currently exists Giving financial acknowledgement of service benefits (e.g. price smoothing) to customers may reduce profit, though it is expected this would be set on a cost-neutral basis Costs associated with providing information to the Queensland Competition Authority to support price determinations
<b>Customers</b>	As per option 2 More choice of retail offerings that reflect need.
<b>Queensland Competition Authority</b>	Small reduction in administrative costs, associated pricing and regional FIT processes Access to greater information to support price determination function
<b>Government</b>	As per option 2, plus small reduction in administrative costs and ability to respond in more timely way in event ACCC finds need to re-introduce pricing powers in SEQ, e.g. in being able to consider ACCC reports directly in exercise

	of reserve powers rather than requesting duplicate process be undertaken by Queensland Competition Authority
<b>Public and other</b>	Support for renewables

## Comparative assessment

	<b>Key advantages</b>	<b>Key disadvantages</b>	<b>Assessment</b>
<b>Status quo (option 1)</b>	Flexible administrative approach Low cost to implement Preserves commercial flexibility	More complex and less certain approach to reducing cost and managing risk Unable to achieve solar system efficiencies, and potentially unfair price outcomes where customers receive no payments for exports	Not preferred given uncertainty, compared with option 3 and inability to drive solar system efficiencies, compared with option 2
<b>Targeted reform (regional FiT) (option 2)</b>	Encourages greater adoption of solar PV in regional areas and use of efficient complementary storage technology Estimated 5 500 customers with solar systems between 30 kW and 100 kW receive payment for exports (100 kW system customers \$5 000 p.a.)		<b>Not preferred</b> better approach to drive solar system efficiencies compared with option 1, however less focus on choice outcomes for regional customers than option 3
<b>Improve efficiency plus effectiveness (option 3)</b>	More retail product choice for regional Queenslanders Administrative efficiencies and more accurate information reduce price control risks	As per option 2, plus potential to undermine future regional competition growth if market contracts cannot be adequately differentiated	<b>Preferred</b> over option 2 as provides more focus on importance of choice in regional areas Greater potential to achieve system efficiencies than options 1 or 2

### Recommendation

Option 3 is the preferred option to improve the effectiveness and efficiency of price controls.

Changes to price regional considerations will emphasise the importance of service choice to regional customers. The regional FiT option benefits regional customers with solar systems between 30 kW and 100 kW who currently may not be guaranteed any export payments. Further the move to a technology neutral regional FiT (excluding diesel) supports demand management participation.

Efficiency improvements should reduce the administrative costs of price setting and regional FiT determinations.

### Consistency with other policies and legislation

#### Competition Principles Agreement – s. 5

The proposed adjustment to require the Queensland Competition Authority to consider options that improve system efficiency and meet customer need could be perceived as potentially impacting on the development of retail competition in areas where notified prices apply. That is, if notified prices under standard retail contracts provide choice in a way that better meets customer need, customers may have fewer imperatives to enter the competitive market. However, the change is relatively small and is not anticipated to prevent or dampen the growth of competition in regional Queensland.

Expansion of the regional FiT to 100 kW, and the adoption of a technology neutral approach could potentially dampen competition in the small-scale renewables market. At present, customers who are unable to receive payment for systems over 30 kW or for stored energy may turn to other providers. However, in practice this does not appear to be occurring, to the detriment of customers. In the absence of a vibrant market, the proposal provides an alternative to support customer outcomes.

The proposals under option 3 are consistent with fundamental legislative principles: they are not expected to materially affect the rights and liberties of individuals, or require adjustments made to the powers of Parliament.

### Implementation

To reduce disruption, implementation of the majority of new requirements for price control would commence at the beginning of a financial year following passage of the legislation. In preparation, the Queensland Competition Authority would be requested to undertake public consultation on:

- the value of technology neutral feed-in tariff and associated fees and charges (e.g. relating to solar metering)
- tariff and product options which improve choice for customers and overall efficiency.

Provisions commencing immediately to support this work would include streamlining of process and extended information gathering powers. Transitional arrangements would also be needed where services were requested before the commencement date.

Stakeholder questions

**Topic 7 Price control**

Q7.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q7.2 Why?

Q7.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers

### Context

The term ‘embedded networks’ refers to privately owned infrastructure that delivers energy<sup>217</sup> to customers. The owner of a site with an embedded network usually buys energy from an energy retailer and then ‘on-sells’ the energy to the various customers (e.g. residents or businesses) at the site. Current estimates for embedded networks in Queensland are as high as 1,800.<sup>218</sup>

Examples of embedded networks include traditionally low-cost accommodation, including caravan parks, manufactured homes parks, boarding houses, and aged and supported care homes, and may also include residential apartments and shopping centres.<sup>219</sup> For this reason, many residential customers whose energy is supplied via an embedded network (embedded network customers) may be more vulnerable to financial hardship as a result of their energy and other household costs.

At present, embedded network customers in Queensland do not have access to the free, independent, energy-specific dispute resolution services provided by the Energy and Water Ombudsman as they have no direct relationship with an energy retailer (i.e. a ‘scheme participant’).<sup>220</sup> By contrast, an ‘exempt seller’, as a direct customer of a retailer, is able to access to the services of the Energy and Water Ombudsman, provided they use less than 160 megawatt hours (MWh) per annum.<sup>221</sup>

Although embedded network customers can seek dispute resolution assistance from the Queensland Civil and Administrative Tribunal (QCAT), as well as a range of other dispute resolution mechanisms, there can be a cost involved and decisions may not be binding. As a result, a number of consumer groups have long advocated for an extension to the Energy and Water Ombudsman scheme to cover embedded network customers.

Over the past few years, there have been a number of embedded network reform and consultation processes undertaken by the AEMC and the AER. As a result, there is now a clear policy direction

---

<sup>217</sup> The term ‘energy’ refers to both electricity and gas.

<sup>218</sup> Cameron, Ralph, Khoury (, June 2018), Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform.

<sup>219</sup> AER, March 2018, (Retail) Exempt Selling Guideline, version Version 5 (March 2018),, section 2., viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

<sup>220</sup> This is due to the limitations set out in the Energy and Water Ombudsman Act 2006, i.e. ‘exempt sellers’ must be ‘scheme participants’ for the purpose of the Act.

<sup>221</sup> Energy and Water Ombudsman Act 2006

(supported by the COAG Energy Council) that embedded network customers should be given the same access to the services of the Energy and Water Ombudsman as other small energy customers.

This Stage 2: Options Paper seeks stakeholder feedback on a number of different fee options and approaches that could be applied to 'exempt sellers' in order to give residential embedded network customers in Queensland access to the Energy and Water Ombudsman.

### Existing arrangements for embedded networks

#### Regulatory framework

Embedded networks are regulated under the NERL – the regulatory framework for the sale and supply of energy to customers. Under the NERL, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption.<sup>222</sup> If a person is successful in obtaining a retail exemption, they are referred to as an 'exempt seller'. Usually, the selling of energy for an 'exempt seller' is incidental to the main activities being undertaken, as is the case with most embedded networks (e.g. the running of a caravan park).

There are three types of exemption that an 'exempt seller' may obtain: 'deemed', 'registerable' and 'individual'.<sup>223</sup> 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the AER. An 'exempt seller' who is eligible for a 'deemed' exemption does not need to apply for an exemption or be registered with the AER as long as they comply with the conditions set out in the (Retail) Exempt Selling Guideline (March 2018) (the Retail Guideline).

The Retail Guideline explains how to register or apply for, a retail exemption. It also discusses the factors that the AER will consider in assessing individual exemption applications. The Retail Guideline sets out the various classes of deemed and registrable exemptions, and the conditions attached to each exemption class.<sup>224</sup>

Embedded network customers who buy their energy from an 'exempt seller' have similar rights and protections as customers who buy their energy from an authorised energy retailer. These are part of the 'exemption conditions' that the 'exempt seller' must comply with in order to sell energy in an embedded network.<sup>225</sup>

In addition, under the National Electricity Rules, 'exempt sellers' are also required to obtain an exemption from the requirement to be registered as a network service provider, where the network is connected to the grid. There are three types of exemption that an 'exempt seller' may obtain: 'deemed', 'registerable' and 'individual'. 'Registered' and 'individual' exemptions must be assessed and decided by, and then registered with, the AER. Similar to the retail exemption, exemption holders must comply with the conditions set out in the Network Service Provider Registration

---

<sup>222</sup> AER, March 2018, (Retail) Exempt Selling Guideline Version 5, section 1, viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

<sup>223</sup> NERL(Q), s. 110(2)

<sup>224</sup> AER, March 2018, (Retail) Exempt Selling Guideline Version 5, viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

<sup>225</sup> Refer AER website for more information on the rights and protections for embedded network customers.

Exemption Guideline (Network Guideline), which are broadly consistent with the conditions set out in the Retail Guideline.<sup>226</sup>

It is also worth noting that even though the AER investigates instances of non-compliance with the rules, it is not a dispute resolution service.

#### Queensland dispute resolution mechanisms

The current dispute resolution mechanisms available to embedded network customers are summarised in *Figure 24*. The diagram indicates whether the dispute resolution service is provided free of charge, the types of embedded network customers who can access the service, and whether decisions are binding on the parties involved in the dispute.

Across Queensland, embedded networks are growing in number and type.<sup>227</sup> This growth means an increasing number of energy customers are being regulated under Queensland specific frameworks (e.g. Residential Tenancies Authority (RTA) and *Manufactured Homes (Residential Parks) Act 2003*) that are different to those that apply to customers who buy their energy from an authorised energy retailer, and are supplied via a standard energy network connection.

In addition, while a dispute resolution service may be free to access, in some cases the recommendation or advice given is not binding e.g. Dispute Resolution Centre (DRC), Department of Justice and Attorney General which may create enforcement difficulties for customers.

Providing embedded network customers access to a free, energy-specific dispute resolution service such as that provided by the Energy and Water Ombudsman should resolve many of the issues detailed above for those embedded network customers who have an energy-related complaint.

---

<sup>226</sup> AER, March 2018, Electricity Network Service Provider - Registration Exemption Guideline Version 6, viewed 17 July 2109, <https://www.aer.gov.au/system/files/AER%20electricity%20NSP%20Registration%20Exemption%20Guidelin%20-%20Version%206%20-%201%20March%202018.pdf>

<sup>227</sup> AEMC, 31 January 2019, Updating the regulatory frameworks for embedded networks, Draft report, viewed 17 July 2109, <https://www.aemc.gov.au/sites/default/files/2019-01/Draft%20report.pdf>

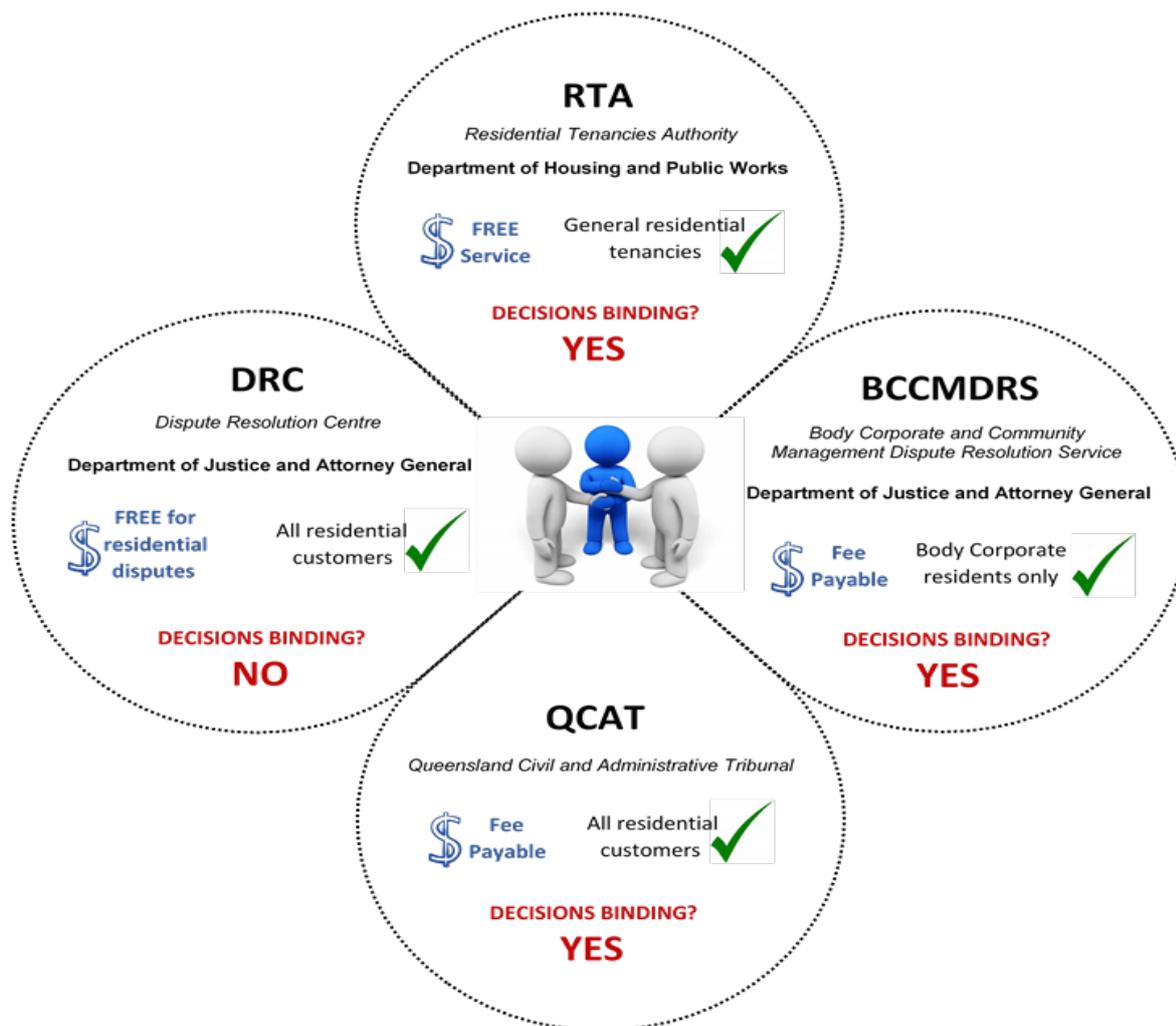


Figure 24: Current complaint and dispute resolution mechanisms available to embedded network customers

### Stakeholder questions

#### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.1 What type of energy disputes are likely to arise between 'exempt sellers' and their customers?

Q8.1.2 What dispute resolution mechanisms do embedded network customers currently use in order to have their energy disputes settled? Are customers aware of and successfully using existing mechanisms? Are there any issues with the current mechanisms?

### Energy and Water Ombudsman Queensland

An Ombudsman is an independent official who represents the interests of the public by investigating and addressing complaints reported by individual citizens.<sup>228</sup>

<sup>228</sup> Energy and Water Ombudsman Queensland, 2019, *About EWOQ*, viewed 17 July 2109, <https://www.ewoq.com.au/about-ewoq/>

Following the introduction of full retail contestability in the retail energy market on 1 July 2007, the Energy and Water Ombudsman was established under the Energy and Water Ombudsman Act to assist residential and small business energy customers to resolve their disputes with suppliers, and was expanded to cover water disputes on 1 January 2011. The Energy and Water Ombudsman Act also provides for the establishment of an Advisory Council to provide independent advice to the Energy and Water Ombudsman on a range of matters.

At present, all residential customers and all small business customers consuming up to 160 MWh per annum, and who purchase their power from an energy retailer (recognised as a 'scheme participant'), have access to the Energy and Water Ombudsman's dispute resolution services. The Energy and Water Ombudsman also provides guidance on:

- appropriate complaint policies and procedures
- information about internal complaint and dispute resolution requirements
- mediation and conciliation activities.

In the 2017-18 financial year, the Energy and Water Ombudsman closed 10,211 cases, of which 7,173 were related to electricity (approximately 70 per cent) and 395 were related to gas (approximately four per cent). Residential customers made up 95.3 per cent of all complaints with the remainder from business and government.

Total Ombudsman income for 2017-18 was \$6.282 million (including energy complaints). Annual (participation) fees made up \$199,477<sup>229</sup> and user-pays fees made up \$6.041 million (other revenue makes up \$42,612).<sup>230</sup> Average user-pays case fees are presented in *Table 11*. The Energy and Water Ombudsman receives no funding from government.

Total Ombudsman expenditure for the 2017-18 financial year amounted to \$6.278 million; 71.2 per cent related to employee expenses (approximately \$4.472 million). The Energy and Water Ombudsman had 45 staff during 2017-18, 13 per cent of which worked part-time.

Energy retailers in Queensland had approximately 2.2 million small customers in 2017-18 (88 per cent of which are residential, 75 per cent in South East Queensland).

#### Results of previous consultation

In April 2015, the department convened a reference group of industry and consumer advocates and consulted with this group on a range of embedded network issues. Reference group members noted that current complaint and dispute resolution mechanisms are complicated and that access to the Energy and Water Ombudsman may be more beneficial for embedded network customers in resolving issues before they escalate.

In late 2015, the department released a consultation regulatory impact statement to assess options to improve embedded network customer access to complaint and dispute resolution services

---

<sup>229</sup> Up to \$50,000 of these participation fees is from water entities (~\$10,000 per retailer and/or distributor), the remainder from energy entities (~\$5,000 per retailer and/or distributor, gas and/or electricity) (EWOQ Annual Report 2017-18).

<sup>230</sup> "EWOQ receives bank interest and is legislated to charge scheme participants interest on unpaid fees. Both of these are recognised when due." Energy and Water Ombudsman Queensland Annual Report 2017-18, p.71.

provided by the Energy and Water Ombudsman.<sup>231</sup> Stakeholder responses were mixed with no clear position, for or against. One of the factors in relation to the case against expansion is the Energy and Water Ombudsman's 'user-pays' structure, which works well for large energy retailers but could be difficult to administer for multiple smaller 'exempt sellers'. Also, while the Energy and Water Ombudsman is considered user friendly (especially for smaller customers), the existing complaint and dispute resolution mechanisms available to embedded network customers were considered adequate by some stakeholders. Other stakeholders supported the expansion of the Energy and Water Ombudsman's jurisdiction as the Energy and Water Ombudsman presents a cheaper and more efficient complaint and dispute resolution body, and consider existing complaint and dispute resolution mechanisms out of reach in terms of cost for most vulnerable embedded network customers. There was no decision prepared for the 2015 consultation regulatory impact statement.

In December 2016, the AEMC began a review of the regulatory arrangements for embedded networks (as outlined in the NERL and National Energy Retail Rules).<sup>232</sup> The review identified that the potential still existed for embedded network customers to receive lesser consumer protections than standard supply customers. Stakeholder submissions indicated general agreement that embedded network customers should be afforded similar (if not the same) consumer protections as energy users supplied by a standard energy network connection. This should include access to an appropriate free energy specific dispute resolution service such as that provided by an energy Ombudsmen scheme. As a result, one of the key recommendations of the AEMC final report, published in November 2017, is "for jurisdictions... to work with Ombudsmen to continue to develop required changes to state instruments to increase access to energy specific, independent dispute resolution services for exempt customers [i.e. embedded network customers]".

The other added benefit of utilising Ombudsmen schemes is the potential for coordinated complaint and dispute resolution when there are multiple affected parties / interests. Appropriate fees and charges were also raised during the 2016 AEMC consultation process and it was noted that fees should match an 'exempt seller's' ability to pay.

#### Subsequent changes to existing arrangements

In order to improve dispute resolution arrangements for embedded network customers, the AER published an Issues Paper in June 2017 titled, *Access to dispute resolution services for embedded network customers*. The AER sought stakeholders' views on expanding embedded network customer access to Energy and Water Ombudsman schemes.

After considering stakeholder submissions, the AER finalised its policy position in November 2017 and in March 2018, amended both the retail and network exemption guidelines to improve dispute resolution arrangements for embedded network customers. New and amended core exemption conditions now require 'exempt sellers' to have appropriate complaints and dispute handling processes, and, 'exempt sellers' with residential customers must be members of, or subject to,

---

<sup>231</sup> Department of Energy and Water Supply, November 2015, Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland, Queensland Government, Brisbane, viewed 17 July 2019, <https://qpc.blob.core.windows.net/wordpress/2017/10/On-supply-EWOQ-Consultation-RIS.pdf>

<sup>232</sup> AEMC's Review of regulatory arrangements for embedded networks, for more information see <https://www.aemc.gov.au/markets-reviews-advice/review-of-regulatory-arrangements-for-embedded-net>

Energy and Water Ombudsman schemes where the scheme allows.<sup>233</sup> Table 6 briefly summarises the categories of ‘exempt sellers’ that the new requirements apply to.

Table 6: ‘Exempt seller’ class types eligible for membership of the relevant Ombudsman scheme where permitted (Note: eligible membership for similar class types is contained under the Network Guideline)

Class Type	Description
Deemed exemption class	
Class D2	Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate
Class D5	Persons selling unmetered gas to individual premises where gas is used for limited purposes
Class D6	Persons selling unmetered electricity to residential customers in Queensland
Registrable exemption class	
Class R2	Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate
Class R3	Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate
Class R4	Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long term residents)

(Source: [Australian Energy Regulator \(Retail\) Exempt Selling Guideline](#))

There have been many different consultation and reform processes undertaken in the past few years addressing various issues applicable to embedded networks. As there is now a clear policy direction from both the AEMC and the AER (supported by the COAG Energy Council), it is an opportune time to consider how best to provide residential embedded network customers access to the free, energy-specific dispute resolution service that the Energy and Water Ombudsman provides.

#### Potential options for extending access to the Energy and Water Ombudsman for embedded network customers

The two options that are considered in this section are:

- 1) do not extend access to the Energy and Water Ombudsman
- 2) extend access to the Energy and Water Ombudsman.

#### Do not extend access to the Energy and Water Ombudsman

This option involves maintaining the status quo whereby embedded network customers are not able to access the services of the Energy and Water Ombudsman. Table 7 outlines the predicted stakeholder impacts and opportunities of not extending access to the services of the Energy and Water Ombudsman to embedded network customers (i.e. no change is made and the existing dispute resolution framework continues to apply).

<sup>233</sup> AER, March 2018, (Retail) Exempt Selling Guideline Version 5, viewed 17 July 2019, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

Table 7: Summary of predicted impacts for stakeholders if no change is made

Stakeholder Group	Predicted impacts
Embedded network customers	<p>Without access to the services of the Energy and Water Ombudsman, residential embedded network customers would continue to rely on existing complaint and dispute resolution mechanisms, and will not enjoy the same access to the Ombudsman's free, energy-specific dispute resolution services that all other small and/or residential customers currently do.</p> <p>A key risk of this approach is that existing complaint and dispute resolution mechanisms may not address disputes that can emerge from misunderstandings or simple problems (which could be quickly resolved by an energy specific complaint body) resulting in ongoing dissatisfaction by embedded network customers.</p>
'Exempt sellers' (industry)	There are no expected impacts on 'exempt sellers'.
Energy retailers (industry)	There are no expected impacts on energy retailers as existing Energy and Water Ombudsman scheme participants.
Energy and Water Ombudsman	No impacts are expected on the Energy and Water Ombudsman. Complaints from embedded network customers would continue to be referred to alternate dispute resolution mechanisms.
Government	<p>If no action is taken, Queensland would potentially be the only jurisdiction that does not allow 'exempt sellers' (and therefore their customers) to be members of an Ombudsman scheme.</p> <p>This is inconsistent with the AER's Retail Guideline and does not meet the policy objective of ensuring residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.</p>

#### Extend access to the Energy and Water Ombudsman

This option involves extending access to the Energy and Water Ombudsman for embedded network customers. The predicted stakeholder impacts and opportunities associated with this option are outlined in *Table 8*.

Table 8: Summary of predicted impacts and opportunities on different groups if embedded network customers are given access to the Energy and Water Ombudsman

Group	Predicted impacts and opportunities
Embedded network customers	<ul style="list-style-type: none"> <li>• Opportunity to access a free, energy-specific dispute resolution service that can better meet their needs.</li> <li>• May have positive financial impacts for small customers if it assists them in resolving disputes over energy bills or rebate delivery with their energy suppliers.</li> <li>• While there would be impacts for these customers seeking to bring disputes before the Energy and Water Ombudsman, they are not considered to exceed the existing regulatory burden that exists for these customers bringing a dispute before QCAT or in using other existing dispute resolution mechanisms</li> </ul>

Section 2.8.1: Dispute resolution - EWOQ fee options for complaints by embedded network customers

	<ul style="list-style-type: none"> <li>• The Energy and Water Ombudsman can provide a coordinated complaint and dispute resolution service when there are multiple affected parties and/or interests.</li> </ul>
'Exempt sellers' (industry)	<ul style="list-style-type: none"> <li>• Could help to encourage and strengthen awareness of 'exempt sellers' obligations to customers, and as a result complaint numbers may decrease further.</li> <li>• Would provide further incentive for 'exempt sellers' to resolve customer disputes in the first instance rather than triggering referral to the Energy and Water Ombudsman.</li> <li>• The Energy and Water Ombudsman could provide a useful support service for smaller sellers of energy.</li> <li>• Possibility for 'exempt sellers' to avoid potential drawn out processes relating to other dispute resolution mechanisms available to embedded network customers (e.g. QCAT).</li> <li>• Will have to pay (in full or in part) the relevant Energy and Water Ombudsman fee if their customers access the Energy and Water Ombudsman's services (assuming 300 complaints, the total cost to the Energy and Water Ombudsman has been estimated at approximately \$138,000).</li> </ul>
Energy retailers (industry)	<ul style="list-style-type: none"> <li>• No (or minimal) impacts are expected on energy retailers, as existing Energy and Water Ombudsman scheme participants.</li> <li>• May have to subsidise (in part) participation of embedded network customers in the Ombudsman scheme if the fee schedule for exempt sellers is not based on full cost recovery. However, this amount is expected to be low and have minimal impact (if any) on retailers or their customers.</li> </ul>
Energy and Water Ombudsman	<ul style="list-style-type: none"> <li>• Minimal impacts on administrative processes and complaint management system requirements are expected due to the estimated low numbers of complaints.</li> <li>• Additional training (e.g. covering the national and state regulatory frameworks) and resources for the Energy and Water Ombudsman may be required as a result of extending coverage to embedded network customers, but it is anticipated the use of online training platforms will assist to minimise any additional cost.</li> </ul>
Government	<ul style="list-style-type: none"> <li>• No direct impacts on government have been identified for this option.</li> <li>• Possibility exists of a reduction in the workload for other government-based dispute resolution mechanisms (e.g. RTA, QCAT).</li> <li>• Delivers access to the Energy and Water Ombudsman for small embedded network customers in a way that is compatible with government's commitment to supporting small business (e.g. caravan park owners and other residential complexes).</li> </ul>

Given the predicted impacts listed in *Table 7*, the predicted impacts and opportunities listed in *Table 8*, and the clear policy direction accepted by the government and reflected in the AER (Retail) Exempt Selling Guideline, the department believes that maintaining the status quo is not a viable option and recommends that access to the Energy and Water Ombudsman be extended to embedded network customers.

The proposal to extend access to embedded network customers is also consistent with the Queensland Government's policy commitments to 'reduce community disadvantage by encouraging vibrant and prosperous communities.'<sup>234</sup>

The remainder of this section explores a range of options for establishing a suitable approach, including a fee framework, to enable embedded network customers access to the Energy and Water Ombudsman.

#### Stakeholder questions

##### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.3 Are there any stakeholder groups that the department should consider, and consult with, when assessing potential options for embedded network customers?

#### Estimating the number of complaints and cost to the Energy and Water Ombudsman

In order to develop options for extending access to the Energy and Water Ombudsman, the review has undertaken analysis to estimate the number of complaints the Energy and Water Ombudsman could expect to receive if residential embedded network customers are able to access their services.

The exact number of embedded network customers is unknown and a definitive number is difficult to quantify due to a lack of data. However, it is estimated that there are somewhere between 60,000 and 187,000 embedded network customers in Queensland.

The lower estimate is based on data obtained from the implementation of the 2018 Queensland Government Asset Ownership Dividend where 60,000 residential embedded network customers claimed the dividend payment.<sup>235</sup> This figure is also consistent with AER estimates on the average number of residents per residential site in the exemption categories presented in *Table 9*.

---

<sup>234</sup> State of Queensland, 2014, *The Queensland Plan: Queenslanders' 30-year vision*, viewed 17 July 2019, <https://www.queenslandplan.qld.gov.au/assets/images/qld-plan.pdf>

<sup>235</sup> Under the Queensland Government Asset Ownership Dividend, all residential embedded network customers were eligible for this payment.

Section 2.8.1: Dispute resolution - EWOQ fee options for complaints by embedded network customers

Table 9: Estimated number of residential embedded network customers in Queensland based on exemption category

Exemption Category	AER registered sites in Qld (June 2018)	Average number of customers per site	Total
R2 – persons selling metered energy to ten or more residential customers	602	68	40,936
R3 – retirement villages selling metered energy to residential customers	68	60	4,080
R4 – persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there	168	80	13,440
Totals	838	N/a	58,456

The upper estimate of 187,000 is based on the data presented in Table 10.

Table 10: Data underpinning the maximum estimate of residential embedded network customers in Queensland

Sector	Estimated occupants	Data Source	Assumptions
Flats, apartments and retirement villages	164,000	Land Titles Office Qld (246,000 lots x 66 per cent = 164,000)	Only captures retirement villages that are structured as a body corporate scheme Strata Communities Qld estimate 66 per cent of lots are likely to be part of an embedded network <sup>236</sup>
Caravan Parks	8,933	2016 Australian Census	All caravan park residents are (likely) to be part of an embedded network, noting only those residents that are billed separately for their energy costs would be able to access the Energy and Water Ombudsman
Manufactured Homes Parks	14,000	Dep't of Housing & Public Works RIS 2016	All manufactured home residents are part of an embedded network (the department knows this is not the case as many have a direct relationship with a retailer)
<b>Total estimated residential customers</b>	<b>187,000</b>		

To determine the estimated number of complaints from embedded network customers that the Energy and Water Ombudsman is likely to receive, the department has considered data from a range

<sup>236</sup> [Australian Energy Market Commission, Review of regulatory arrangements for embedded networks](#)

of sources, including the RTA, BCCMDRS (see *Figure 24: Current complaint and dispute resolution mechanisms available to embedded network customers*) and the Energy and Water Ombudsman New South Wales (EWON).

Anecdotal evidence provided by the RTA and the BCCMDRS suggests that the facilitation of energy related disputes concerning 'exempt sellers' is minimal, if any (e.g. 13 complaints were received from residential park customers in 2018, and two from retirement park customers: based on recent advice from the Department of Housing and Public Works). While the BCCMDRS has stated that energy related disputes are on the increase (accounting for a maximum of 5 per cent of 500 cases received in a week), it is unknown what proportion of these are related to embedded networks. Further anecdotal evidence provided by the Caravan Parks Association of Queensland suggests that it fields one to two energy enquiries from its members each week. QCAT has only heard around 30 energy-related matters in its minor civil disputes jurisdiction since its establishment in 2009 (mostly related to large customers).

In the absence of any detailed Queensland data, the most relevant information source is an equivalent Energy and Water Ombudsman scheme to provide jurisdictional evidence to support these conclusions, in this case EWON.

In New South Wales, embedded network customers have been able to access the dispute resolution services of EWON since 2015.<sup>237</sup> In 2017-18, EWON received 109 complaints from embedded network customers, which represents 0.5 per cent of the estimated number of embedded network customers in New South Wales. Applying this 0.5 per cent to the lower estimate of embedded network customers in Queensland (60,000) results in a predicted 300 complaints per year.<sup>238</sup> Applying the same percentage to the higher estimate (187,000) results in a predicted 935 complaints per year. However, the department believes the high range (935) is likely to be overstated and not realistic because:

- not all of the 187,000 customers will be supplied energy via an embedded network (e.g. some apartment blocks and manufactured home parks are not embedded networks and in recent advice provided by Caravanning Queensland, they estimate that a little over 100 out of their 339 members are embedded networks)<sup>239</sup>
- generous pricing protections in Queensland ensure embedded network customers receive the benefit of any bulk pricing discounts, and therefore billing disputes, which make up 51 per cent of total complaints raised with the Energy and Water Ombudsman (2017-18 Annual Report), are less likely to be raised by embedded network customers
- some embedded network customers, particularly those who rent, are likely to be disincentivised to make a complaint for fear of reprisal from their 'exempt seller'.

The lower range of predicted embedded network customer complaints is also supported by recent data collected by the Energy and Water Ombudsman. In the 2017-18 financial year, the Energy and Water Ombudsman received 160 queries / complaints relating to embedded networks,<sup>240</sup> which had

---

<sup>237</sup> However, EWON have only been able to legally compel embedded network customers' energy providers to work with EWON to resolve disputes / complaints since 1 July 2018 (EWON Annual report 2017-2018).

<sup>238</sup> Please note that this figure is less than the figure from the 2015 RIS (~1,600) due to an improvement in the quality and quantity of data that is now available.

<sup>239</sup> Official correspondence from Caravanning Queensland, dated July 2018.

<sup>240</sup> Data provided by the Energy and Water Ombudsman to the department as a part of a special data request.

to be referred to other agencies given the current limitations of the Energy and Water Ombudsman's jurisdiction.

#### Stakeholder questions

##### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.4 Is the predicted number of complaints reasonable based on the information available?

Based on the expected complaint numbers, a cost to the Energy and Water Ombudsman can be estimated.

In order to cover all the potential costs incurred by the Energy and Water Ombudsman in managing a single complaint received from an embedded network customer (including staff pay, resourcing and overheads), a maximum hourly rate of \$200 per hour has been calculated. This figure is based on data contained in the Energy and Water Ombudsman's 2017-18 annual report.<sup>241</sup> However, the approach used to develop an hourly rate for embedded network complaints differs from the way in which the Energy and Water Ombudsman calculates scheme participant fees, and therefore cannot be applied to the existing fee framework.

Using this maximum hourly rate (\$200/hour), complaint ratios stated in the Energy and Water Ombudsman's annual report, and the maximum amount of time each case type (see *Table 11* for more information) can take,<sup>242</sup> it has been calculated that addressing 300 complaints could potentially cost the Energy and Water Ombudsman approximately \$138,000.<sup>243</sup> If this cost was to be passed to retailers, initial estimates suggest that energy consumer bills may increase by approximately 6 cents per customer per year.<sup>244</sup>

#### Establishing a suitable fee framework for 'exempt sellers'

##### Policy objectives

The following options for establishing a suitable framework to extend access to the Energy and Water Ombudsman for residential embedded network customers, seek to balance the following policy objectives:

- ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services
- ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay

---

<sup>241</sup> Approximate hourly rate = total expenses / (maximum time taken per case type multiplied by number of cases). Figures used were sourced from the EWOQ Annual Report 2017-18.

<sup>242</sup> Energy and Water Ombudsman, February 2019, *Scheme participant manual*, viewed on 17 July 2019, [https://www.ewoq.com.au/userfiles/files/Scheme-participant-manual-February-2019-V2\\_0.pdf](https://www.ewoq.com.au/userfiles/files/Scheme-participant-manual-February-2019-V2_0.pdf)

<sup>243</sup> Total cost = \$200/hour multiplied by (per cent proportion of complaint/case type multiplied by maximum amount of time each case type may take). Maximum times, including handling the complaint, and associated processing and record management activities (and relative per cent proportion): general enquiry <15 minutes (14 per cent), referrals <15 minutes (16 per cent), refer backs 2 hour (48 per cent), level 1 investigations 4 hours (16 per cent), level 2 investigations 8 hours (5 per cent), Level 3 investigations 20 hours (1 per cent). If the Energy and Water Ombudsman was to receive 935 complaints (albeit highly unlikely) it could cost the Energy and Water Ombudsman approximately \$430,000.

<sup>244</sup> Spread out over retailers' customer base (section 2.3). This estimate increases to 18 cents per customer per year if the complaint range of 935 is used.

- recognise that the delivery of the Energy and Water Ombudsman’s high quality service incurs a cost
- do not increase the financial burden of existing ‘scheme participants’
- do not increase the regulatory burden of ‘exempt sellers’, existing ‘scheme participants’, the Energy and Water Ombudsman and government
- support the principle of evidence-based decision making.

#### Applying the existing Energy and Water Ombudsman fee structure to ‘exempt sellers’

One option could be to simply apply the existing fee framework that the Energy and Water Ombudsman uses for scheme participants (i.e. energy retailers).

The Energy and Water Ombudsman currently receives no funding from the Queensland Government. Rather, it receives funding through participation (or membership) and user-pays fees. Once the Energy and Water Ombudsman’s budget for each financial year is approved by the Minister administering the Energy and Water Ombudsman Act, funds can be collected from scheme participants.

Current participants providing connection and/or retail services to small customers pay a \$5,000 per year participation (membership) fee. This fee is prescribed by the Energy and Water Ombudsman Act.

User-pays fees are currently collected from participants in advance of each financial quarter and are based on complaint / dispute numbers from the previous quarter (i.e. for every complaint the Energy and Water Ombudsman receives, the retailer must pay the appropriate fee). For embedded networks, it would be the ‘exempt seller’ who pays this fee, not the ‘exempt seller’s’ energy retailer.

User-pays fees vary depending on the level of investigation (or effort) required to resolve a given complaint / dispute (the more complicated the case, the higher the fees). Discrepancies between the two figures (pre and post financial quarter) are reconciled quarterly. *Table 11* describes the average cost of each case type (user-pays fees) for 2017-18 across all sectors that the Energy and Water Ombudsman deals with (electricity, gas and water).

*Table 11: Summary of all Energy and Water Ombudsman case types, descriptions and average cost per case type (electricity, gas and water)*

Case Types	Case description	User fees (average cost per case type)
General Enquiry	An enquiry received about electricity, water, gas or other issue that is not a complaint which relates to a scheme participant.	\$ 0
Referral	An enquiry is referred to another organisation with whom the Energy and Water Ombudsman has an agreement because the complaint is outside the Energy and Water Ombudsman’s jurisdiction.	\$ 0
Refer Back	The matter is referred back to the scheme participant for action.	\$298

Section 2.8.1: Dispute resolution - EWOQ fee options for complaints by embedded network customers

Refer back to higher level	The matter is referred to a higher level within the scheme participant's organisation.	\$685
Level 1 Investigation	Energy and Water Ombudsman staff commence investigation and matter is resolved within four hours.	\$1,363
Level 2 Investigation	Energy and Water Ombudsman staff spend in excess of four hours but not more than eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the Energy and Water Ombudsman Act.	\$ 3,006
Level 3 Investigation	Energy and Water Ombudsman staff spend in excess of eight hours on the matter, or the participant has not provided timely or adequate responses or breaches section 32 of the Energy and Water Ombudsman Act.	\$ 4,146
Final order	If a matter cannot be resolved, the Energy and Water Ombudsman may consider the matter and either make a binding order against the 'scheme participant' or dismiss it. A matter can be referred to this level from any other level in the investigation process.	Applicable level when case ceased + one off fee of \$4,500

Table 12 details the potential impacts that applying the current Energy and Water Ombudsman fee structure to 'exempt sellers' may have on stakeholders. In addition, no specific impacts on competition have been identified if the current Energy and Water Ombudsman fee structure is applied to 'exempt sellers'.

Table 12: Summary of predicted impacts if existing Energy and Water Ombudsman fee structure is applied

Stakeholder Group	Predicted impacts
Embedded network customers	This option may result in impacts if their 'exempt seller' seeks to recover any Ombudsman-related costs (e.g. through site or other fees that are not energy-specific).
'Exempt sellers' (industry)	This option could see 'exempt sellers' potentially pay the same annual and user fees as Tier 1 energy retailers, even though some of these 'exempt sellers' (such as body corporates) have limited ability to recover these costs. This (rightly) could be seen as disproportionate, unfair and therefore inconsistent with the NERL. It is also doesn't meet the following policy objectives:  <i>(ii) Ensuring the service provided is value for money and considers 'exempt sellers' ability to pay.</i>  <i>(v) Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy and Water Ombudsman and government.</i>
Energy retailers (industry)	Minimal impacts are expected on energy retailers as existing Energy and Water Ombudsman scheme participants. There would be no cross-subsidisation by retailers for 'exempt sellers'.
Energy and Water Ombudsman	If the administrative burden in managing 'exempt sellers' is sufficiently large it may start impacting on the Energy and Water Ombudsman's

	<p>capacity to deliver an efficient and effective service to existing ‘scheme participants’ if the Energy and Water Ombudsman does not also have access to the additional resources required to successfully address the increase in administrative workload.</p> <p>It may also result in unnecessary regulatory burden for the Energy and Water Ombudsman if faced with compliance issues around non-payment of mandatory annual fees.</p>
Government	<p>An increase in administrative burden may result if the Energy and Water Ombudsman requires assistance from the department to deliver their complaint and dispute resolution service (e.g. financial assistance).</p>

Given the overall expense of the current fee structure for ‘scheme participants’ (i.e. \$5,000 participant fee plus user-pays fees – average costs set out in *Table 11*), the use of the current framework for ‘exempt sellers’ is not recommended. Applying the current framework does not take account of the regulatory limitations placed on some ‘exempt sellers’ (such as owners of manufactured home parks and caravan parks) which restricts their ability to recover these costs and could be seen as disproportionate and unfair. This option appears inconsistent with policy objective (ii) – ensure the dispute resolution service provides value for money and considers an ‘exempt seller’s’ ability to pay – and is not recommended.

#### Establishing an alternative approach for ‘exempt sellers’

While the current Energy and Water Ombudsman fee structure is not recommended for ‘exempt sellers’, this does not preclude considering a more suitable fee structure for ‘exempt sellers’ given the benefits for ‘exempt sellers’ and their customers.

A fee scheme for ‘exempt sellers’ would be appropriate given that a complaint to the Energy and Water Ombudsman about an ‘exempt seller’ would be related to the ‘exempt seller’s’ business activity (e.g. billing practices, management of rebates and refunds, maintenance of the embedded network, etc.), and therefore a fee to investigate such activity is appropriate. However, in setting a suitable fee scheme, there are other considerations that must also be taken into account.

Pricing protections exist in Queensland with a number of pieces of legislation limiting what fees and charges ‘exempt sellers’ can pass through to their customers as part of their energy bill.<sup>245</sup> Any fee scheme for ‘exempt sellers’ must therefore recognise that their capacity to pay may be limited, for example:

- Legally an ‘exempt seller’ may be limited in their ability to recoup costs associated with providing energy to their embedded network customers<sup>246</sup>

*... section 99A(2) of the MHRP Act states that the park owner must not charge the home owner, or arrange for the home owner to be charged, an amount for the use of a utility that is more than the amount charged by the relevant supply entity for the quantity of the service supplied to, or used at, the site...*

*... section 167(2) of the Body Corporate and Community Management (Accommodation Module) Regulation 2008 states that the body corporate*

<sup>245</sup> *Body Corporate and Community Management Regulation 2008 (Qld), Manufactured Homes (Residential Parks) Act 2003, Residential Tenancies and Rooming Accommodation Act 2008 (Qld), Electricity Act 1994.*

<sup>246</sup> [Section 99A](#), *Manufactured Homes (Residential Parks) Act 2003 (MHRP Act)*

*may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services...*

- An 'exempt seller' may be supplying traditionally low cost housing (e.g. caravan parks), where the profit margins for such an enterprise can be quite low

*...our sector has been defined as Residential Parks. Our representation is largely those mixed-use parks, which is parks that cater to both the tourist sector as well as offering permanent sites. The on-supply of electricity in these mixed-use parks is an incidental part of our member's business which they do not act to profit.<sup>247</sup>*

*The type of accommodations that are generally set up as on-supply [embedded network] arrangements include retirement villages, apartment complexes, social housing, caravan parks and boarding houses. Residents of these accommodations are frequently people on low incomes who may be vulnerable and have less opportunity to exercise choice about where they live. This means it is unlikely that these customers have actively chosen to receive their energy via an on-supply arrangement – rather, that is simply the arrangement in place at the accommodation option they could afford and was available to them.<sup>248</sup>*

- Selling energy is often not the primary activity of the 'exempt seller' (i.e. running caravan parks, retirement villages (including gated communities), apartment blocks, etc.).

Given this, the current user-pays fees collected from scheme participants are not appropriate for 'exempt sellers' and would likely cause significant financial hardship for some, particularly given many 'exempt sellers' are prevented by legislation from passing these costs onto their residents via energy bills.

In addition, given the expected low numbers of complaints that the Energy and Water Ombudsman could expect to receive, it would not be reasonable for all embedded network 'exempt sellers' to be subject to mandatory paid scheme participation. In particular, there is no sound policy rationale for enforcing paid membership for all 'exempt sellers', many of whom may never have a complaint made against them.

Further, requiring all 'exempt sellers' in Queensland (of which estimates are as high as 1,800) to pay a mandatory membership fee is likely to be administratively onerous for the Energy and Water Ombudsman.<sup>249</sup> This could impact the Energy and Water Ombudsman's capacity to deliver an efficient and effective service to existing 'scheme participants', especially if the Energy and Water

---

<sup>247</sup> Caravan Parks Association of Queensland Ltd (CPAQ), 28 January 2016, Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland.

<sup>248</sup> Queensland Council of Social Service, January 2016, Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland.

<sup>249</sup> Cameron, Ralph, Khoury (June 2018) Energy and Water Ombudsman Qld (EWOQ) – Outcomes of review of EWOQ: embedded network reform.

Ombudsman does not have access to the additional resources required to successfully address the increase in workload.

The previous Energy and Water Ombudsman also recognised that a fixed participation (membership) fee “will not be appropriate for some small on-suppliers... given their size and likely use of the scheme”.<sup>250</sup>

As an alternative, an amendment to the Energy and Water Ombudsman Act is proposed to enable all residential ‘exempt sellers’ to be automatically deemed to be scheme participants, thereby giving all residential embedded network customers access to the services of the Energy and Water Ombudsman. However, it is not proposed to require ‘exempt sellers’ to pay an annual membership fee given their limited capacity to recover this cost and the estimated low number of complaints likely to be received.

In this way, any user-pays fees related to the Ombudsman scheme would only be required to be paid by an ‘exempt seller’ once the Energy and Water Ombudsman receives a valid complaint. This approach will reward those sellers who are operating in a way that meets the needs and standards of their customers, and meets one of the key policy objectives of minimising administrative costs for both the Energy and Water Ombudsman and ‘exempt sellers’.

Given this and the issues discussed above, it is recommended that ‘exempt sellers’ not be required to pay an annual participation (membership) fee in order to give their customers access the Energy and Water Ombudsman’s services. However, consideration should be given to the establishment of a suitable user-pays fee framework (to cover actual work undertaken by the Energy and Water Ombudsman in responding to complaints).

#### Stakeholder questions

##### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.5 Do you agree with the proposal for all residential ‘exempt sellers’ to be automatically deemed to be Energy and Water Ombudsman scheme participants?

Q8.1.6 Do you agree with the proposal NOT to require ‘exempt sellers’ to pay an annual participation (membership) fee? If not, why.

#### Options for establishing a user-pays fee scheme

In developing options for a user-pays fee scheme for ‘exempt sellers’, the policy objectives (in particular an ‘exempt seller’s’ capacity to pay (objective (ii)) have been considered.

Efforts have also been made to limit cross-subsidisation by existing scheme participants, particularly given any subsidisation would eventually be borne by the remainder of the Queensland energy customer base. However, while cross-subsidisation of ‘exempt seller’ fees is not desirable (and every effort should be taken to not increase the financial burden of Queensland energy customers), the proposed options seek to minimise any potential cross subsidisation (estimated \$100,000-135,000 depending on option).

---

<sup>250</sup> Energy and Water Ombudsman Queensland, 18 December 2015, Submission to Regulatory Impact Statement: On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland.

In addition, the Energy and Water Ombudsman's existing administrative process and complaint management systems appear sufficient to cater for the relatively small number of complaints expected to be received from embedded network customers annually (i.e. 300-935). According to figures presented in the Energy and Water Ombudsman's 2017-18 annual report,<sup>251</sup> the Energy and Water Ombudsman received 10,328 cases in 2017-18 and closed 10,211 cases with a workforce of 45 staff members (of which 13 per cent work part-time).<sup>252</sup>

When considering options for a user-pays fee framework, the review has been cognisant of the potential for any proposed fee structure to provide a potential disincentive for 'exempt sellers', instead encouraging them to make every effort to satisfactorily resolve customer disputes in the first instance rather than triggering referral to the Energy and Water Ombudsman (thereby incurring additional expense).

In determining the relevant case types, seven of the eight Energy and Water Ombudsman case types are applicable to embedded network customers for which user-pays fees would need to be established. The full list of case types are described in *Table 11*. The 'refer to higher level' case type is not considered relevant for embedded network customers. Given the nature of many (if not most) embedded networks, and their relatively small corporate structure (especially when compared with a large energy retailer), this case type is likely to be redundant as there is, in all likelihood, no higher management level to refer a case to.

Based on the estimated cost the Energy and Water Ombudsman, the following three user-pays fee options have been developed for each applicable case type for embedded network 'exempt sellers':

- 1) maximum price per complaint applying full cost recovery fees
- 2) maximum price per complaint based on capped fees (less than full cost recovery)
- 3) maximum price per complaint based on a sliding scale that relates to the number of customers that the embedded network 'exempt seller' has (less than full cost recovery).

The proposed fees for each case type under **option 1** are outlined in *Table 13*. These fees have been set to fully recover the cost of each case type (i.e. the estimated cost of energy-specific complaints and the approximate, maximum length of time each case type takes to process, as stated in the Energy and Water Ombudsman's annual reports). A maximum length of time was chosen, instead of an average, so that a 'worst-case scenario' could be presented for consideration. A worst-case scenario was chosen because given the lack of information about the key concerns for embedded network customers as there is no way of knowing exactly whether the average time per case type for embedded network customers will be the same as for other residential energy customers, and average times cannot be calculated as case revenues are reported on across the entire Ombudsman's business (electricity, water and gas).<sup>253</sup>

In order to make fees more affordable, **option 2** proposes to cap the fees while still recognising that the issue requires investigation by the Ombudsman. The proposed capped fees are approximately 50 per cent of the full cost recovery fees and are also outlined in *Table 13*.

---

<sup>251</sup> [Energy and Water Ombudsman Queensland, Annual Report 2017-2018](#).

<sup>252</sup> 8,838 of these related to energy.

<sup>253</sup> Please note that if the complaint takes less than the maximum time, the resultant fee will also be less.

Under **option 3**, the maximum fees are set on a sliding scale based on customer numbers (see *Table 13*), similar to the approach taken by EWON.

When considering the proposed fees outlined in *Table 13*, it should be noted that there have been no 'Final Orders' issued by the Energy and Water Ombudsman for the past three financial years,<sup>254</sup> and the majority of embedded network-related case types that the Energy and Water Ombudsman is expected to receive are 'Refer Backs' (i.e. almost half), for which there would be no fee under options 2 and 3.<sup>255</sup>

*Table 13: Options for the proposed user-pays fee scheme*

Case Types	OPTION 1 Maximum price / complaint uncapped	OPTION 2 Maximum price / complaint capped	OPTION 3 <sup>256</sup> Maximum price/complaint based on customer numbers				
			Up to 50	51-100	101-500	501-2,000	>2,000
General Enquiry	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Referral	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Refer Back	\$ 416	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Level 1 Investigation	\$ 832	\$400	\$ 40	\$ 100	\$ 200	\$ 300	\$400
Level 2 Investigation	\$ 1,664	\$800	\$ 80	\$ 200	\$ 400	\$ 600	\$800
Level 3 Investigation	\$ 4,160	\$2,000	\$ 200	\$ 500	\$ 1,000	\$ 1,500	\$2,000
Final Order	Applicable level when case ceased + one off fee of \$4,000	Applicable level when case ceased + one off fee of \$1,500	Applicable level when case ceased + one off fee of \$150	Applicable level when case ceased + one off fee of \$375	Applicable level when case ceased + one off fee of \$750	Applicable level when case ceased + one off fee of \$1,125	Applicable level when case ceased + one off fee of \$1,500

### Analysis of options for a user-pays fee scheme

*Table 14* indicates how well the proposed user-pays fee options meet the stated policy objectives.

<sup>254</sup> Energy and Water Ombudsman Queensland, 2017-2018 Annual Report.

<sup>255</sup> Ibid.

<sup>256</sup> The Option 3 sliding scale has 100 per cent cost recovery for the 'exempt sellers' with large customer numbers (>2,000) and at 10 per cent of full cost recovery figure for the 'exempt sellers' with small customer numbers (up to 50). This approach is attempting to strike a balance between charging an appropriate fee and the ability of the 'exempt sellers' to pay.

Table 14: Analysis matrix of user-pays fee options against policy objectives

Policy objectives		Option 1	Option 2	Option 3
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.			
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.			
(iii)	Recognise that the delivery of the Energy and Water Ombudsman's high quality service incurs a cost			
(iv)	Does not increase the financial burden of existing 'scheme participants'.			
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy and Water Ombudsman and government. <sup>257</sup>			
(vi)	Supports the principle of evidence-based decision making			

Achieves policy objective

Partially meets policy objective

Does not meet policy objective

Table 10 details the potential impacts that the user-pays fee options may have on stakeholders, including embedded network customers, exempt sellers and retailers. No specific restrictions on competition have been identified with any of the options presented in Table 13 and assessed in Table 15.

Table 15: Summary of predicted impacts for user-pays fee options

Stakeholder Group	Predicted impacts
Embedded network customers	There may be an impact on customers associated with option 1 if their energy suppliers seek to recover any additional costs from them (e.g. through site or other fees that are not energy-specific). This impact should be mitigated by either capping the fees (option 2) or more so by applying a sliding fee scale (option 3), as the expense to the 'exempt seller' is lowered.
'Exempt sellers' (industry)	The application of the fees set in option 1 may result in 'exempt sellers' experiencing financial hardship if they have a complaint made against them as they may not be in a position to easily cover any fees. The department considers the fees under option 1 are unreasonable given an 'exempt seller's' limited capacity to recover these costs. This impact should be mitigated by either capping the fees (option 2) or more so by applying a sliding fee scale (option 3).

<sup>257</sup> The preferred option will not result in an increase in regulatory burden due to the utilisation of the existing processes of the Energy and Water Ombudsman and by having the complaint framework only apply to those 'exempt sellers' who have a complaint made against them. Given the expected low numbers of complaints and the predicted total number of 'exempt sellers', the expectation is that the impact overall will be negligible.

Section 2.8.1: Dispute resolution - EWOQ fee options for complaints by embedded network customers

	<p>Option 3 is considered preferable given that larger ‘exempt sellers’ are likely to have a greater capacity to pay for the services an Ombudsman can provide and a smaller ‘exempt seller’ could be very hard pressed to recover any sort of expense. Larger ‘exempt sellers’ may also have more of an opportunity to have complaints ‘bundled’ by the Energy and Water Ombudsman in the event that a number of similar or the same complaints are raised by their embedded network customers.</p> <p>There may be some regulatory duplication for those ‘exempt sellers’ who have a complaint made against them to the Energy and Water Ombudsman. This will not be the case for those ‘exempt sellers’ who have no complaints made against them.</p>
Energy retailers (industry)	<p>No financial impacts are expected if option 1 is adopted as full costs are borne by the ‘exempt seller’.</p> <p>However, minimal impacts are still expected if options 2 or 3 are adopted as cross-subsidisation may occur. The level of cross-subsidisation required would depend on the Energy and Water Ombudsman’s ability to absorb these costs without negatively impacting on their ability to deliver their services, but is estimated to be between 5-6 cents per year per customer (assuming 300 complaints).</p>
Energy and Water Ombudsman	<p>No financial impacts are expected if option 1 is adopted, as the fees are set for full cost recovery.</p> <p>Minimal financial impacts (if any) are expected if options 2 or 3 are adopted due to the estimated low numbers of probable complaints. The minimum estimated cost to the Energy and Water Ombudsman (which may result in minor cross-subsidisation by retailers) is around \$100,000 for option 2 and \$100,000<sup>258</sup> to \$135,000<sup>259</sup> for option 3<sup>260</sup> (assuming 300 complaints).</p>
Government	No impacts on government are expected for any option.

At this stage, given the amount of information available and the analysis against the policy objectives, option 3 (price per complaint based on a sliding scale that relates to the number of customers that the embedded network ‘exempt seller’ has) is the preferred option.

<sup>258</sup> Option 3 cross-subsidisation amount if all complaints are from customers of larger scale ‘exempt sellers’ (>2,000 customers).

<sup>259</sup> Option 3 cross-subsidisation amount if all complaints are from customers of smaller scale ‘exempt sellers’ (up to 50 customers).

<sup>260</sup> Note that if the expected complaint rate is at the higher end (935), the cost to the Energy and Water Ombudsman is estimated to be \$313,000 for Option 2 and \$313,000-\$419,000 for Option 3. However, please note, for the reasons stated in section 4, the department believes that the lower estimates (included in Table 10) are far more likely.

Formula used: Cost to the Energy and Water Ombudsman = Revenue raised from full cost recovery – revenue raised by option [stated fee per case type multiplied by ratio of predicted case numbers]

### Stakeholder questions

#### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.7 Do you agree that the proposed fees for 'exempt sellers' under option 3 are fair and reasonable, and proportionate to the level of impact the issue or complaint may have on the 'exempt sellers' customer? If not please explain why.

Q8.1.8 Are there any other user-pays fee options the department should consider?

### Timing of commencement of a user-pays fee scheme

As noted above, the department proposes to implement a user-pays fee scheme for 'exempt sellers' that is structured around a sliding scale based on the number of customers the 'exempt seller' has (refer option 3).

In relation to the timing of the commencement of the user-pays fee scheme, there are two potential approaches being considered:

- 1) extend access to the Energy and Water Ombudsman for residential embedded network customers but defer commencement of the fee scheme for at least 12 months to allow time for data collection on actual complaint numbers and dispute types, or
- 2) commence the fee scheme from the day embedded network customers are given access to the services of the Energy and Water Ombudsman (i.e. no delay).

Deferral of the fee scheme will still ensure all embedded network customers have access to a free, energy-specific dispute resolution service such as that provided by the Energy and Water Ombudsman. It will also enable the Energy and Water Ombudsman to collect sufficient data to be able to determine whether or not the inclusion of embedded network customers will have a longer-term resourcing impact on the Energy and Water Ombudsman and therefore support the introduction of the preferred fee approach (i.e. option 3). Data collected during the 12 months will help inform the final fee structure to be implemented.

In addition, this approach will lessen the potential financial impact on 'exempt sellers' in the first year and provide time for them to get the necessary procedures in place that will reduce the likelihood that their customers will need the services provided by the Energy and Water Ombudsman. This approach is also expected to have minimal impacts on energy retailers.

Table 16 shows how well the two implementation options meet the policy objectives.

Table 16: Analysis matrix of options against policy objectives

Policy objectives		Minimum 12 month delay	No delay
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services.		
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay.		
(iii)	Recognise that the delivery of the Energy and Water Ombudsman's high quality service incurs a cost		
(iv)	Does not increase the financial burden of existing 'scheme participants'.		
(v)	Does not increase the regulatory burden of 'exempt sellers', existing 'scheme participants', the Energy and Water Ombudsman and government.		
(vi)	Supports the principle of evidence-based decision making		

Achieves policy objective

Partially meets policy objective

Does not meet policy objective

Delaying the implementation of the fee scheme for at least 12 months meets the majority of the policy objectives, compared to an immediate commencement of the fee scheme. Given this, and the issues discussed above, the department's preferred approach is to delay the implementation of the fee scheme for at least 12 months to allow for data collection and to ensure the fees are appropriate.

#### Stakeholder questions

##### Topic 8.1 EWOQ: Embedded network customer fee options

Q8.1.9 Do you see any issues with delaying the implementation of the user-pays fee scheme for at least 12 months in order to gather data to increase awareness and understanding of the Energy and Water Ombudsman services before fees are payable?

#### Conclusion and recommended options

At this stage, given the amount of information available and the analysis against the policy objectives, option 3 is more closely aligned to the six policy objectives, compared to options 1 and 2. It is recommended that:

- residential embedded network customers in Queensland be allowed access to the services of the Energy and Water Ombudsman, with 'exempt sellers' (who use less than 160 MWh per annum) automatically deemed to be 'scheme participants'
- the Energy and Water Ombudsman establish a 'user-pays' fee structure for 'exempt sellers', which consists of a price per complaint based on a sliding scale that relates to the number of customers the 'exempt seller' has

- the application of these user-pays fees be delayed for at least 12 months
- there should be no annual membership fee for 'exempt sellers'.

Implementing these options:

- ensures all embedded network customers have access to a free, energy-specific dispute resolution service such as that provided by the Energy and Water Ombudsman
- lessens the potential financial impact on 'exempt sellers' and provides time for them to get the necessary internal procedures in place to reduce the likelihood that their customers will need the services provided by the Energy and Water Ombudsman
- gives the Energy and Water Ombudsman time to collect sufficient data to be able to determine whether the inclusion of embedded network customers will have any longer-term resourcing impacts on the Energy and Water Ombudsman and therefore support the introduction of the preferred fee approach
- is expected to have minimal impacts on energy retailers and the government.

#### Implementation and evaluation strategies

The following strategies are proposed as a part of implementing and evaluating the preferred option.

#### Implementation strategies

Implementation would occur in two stages, through:

- 1) amendments to the Energy and Water Ombudsman legislation to allow embedded network customers to access the Energy and Water Ombudsman's services
- 2) Information campaign aiming to educate and inform embedded network users of Energy and Water Ombudsman scheme.

Stage 1 would involve amendment to the Energy and Water Ombudsman Act to enable customers of embedded networks access to the Energy and Water Ombudsman scheme in the most cost effective and efficient way possible. The specific details of the amendments would be consulted upon with the Energy and Water Ombudsman.

It is anticipated that Stage 2 would involve the development of material that would assist customers using embedded networks in understanding the Energy and Water Ombudsman functions, what the Energy and Water Ombudsman can do to help and how embedded network customers can access it.

#### Evaluation strategies

Evaluation would be ongoing, based on monitoring of indicators such as the number of embedded network customers accessing the Energy and Water Ombudsman complaint and dispute resolution services, or direct correspondence with the department, costs to 'exempt sellers' and/or retailers (depending on preferred option) and complaint and dispute outcomes.

Evaluation will be done using a number of different measures that relate to the policy objectives listed in *Table 17* lists the policy objectives, proposed measures, and other steps required for successful implementation.

Table 17: Evaluating proposal success: policy objectives, proposed measures and implementation steps

Policy objectives		Proposed Measures	Implementation Steps
(i)	Ensure residential customers of embedded network 'exempt sellers' have access to free and timely energy complaint and dispute resolution services	Number of embedded network customers who access the Energy and Water Ombudsman	Ensure the Energy and Water Ombudsman collects this data  <i>If complaint numbers exceed 300 and move towards 935 (albeit unlikely) within the fee-free trial period, the department will work with the Energy and Water Ombudsman and key stakeholders to determine the best way forward, including whether the trial period should be suspended</i>
(ii)	Ensure the dispute resolution service provides value for money and considers an 'exempt seller's' ability to pay	Indication of whether fees set provide value for money	Seek feedback from 'exempt sellers' on value for money once fees become payable
(iii)	Recognise that the delivery of a high quality service incurs a cost	Fees set	Seek feedback from the Energy and Water Ombudsman to confirm the fees are sufficient to cover their costs
(iv)	Does not increase the financial burden on existing 'scheme participants'	Fees set	Existing 'scheme participants' do not note an increase in their Ombudsman fees as a result of embedded network customers accessing the Energy and Water Ombudsman
(v)	Does not increase the regulatory burden on 'exempt sellers', existing 'scheme participants', the Energy and Water Ombudsman and government	Regulatory requirements do not increase	Regulation as a consideration of Energy Legislation review
(vi)	Supports the principle of evidence-based decision making	Decision based on clear evidence	Documentation of evidence used to support decisions made

## Section 2.8.2 Dispute resolution - Energy and Water Ombudsman

### Context

As outlined in Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers, the primary role of the Queensland Energy and Water Ombudsman is to give landholders and smaller energy and water customers a timely, effective, independent and just way to have their disputes with energy and water entities investigated and resolved.<sup>261</sup> Given both the complex legal framework that governs the energy sector and the size of entities involved, the scheme presents a good alternative for individuals and small businesses without the resources or expertise to mount court or tribunal action where disputes arise.

The enabling legislation sets the scope of the scheme, and the rules for how it operates (*Figure 25*).

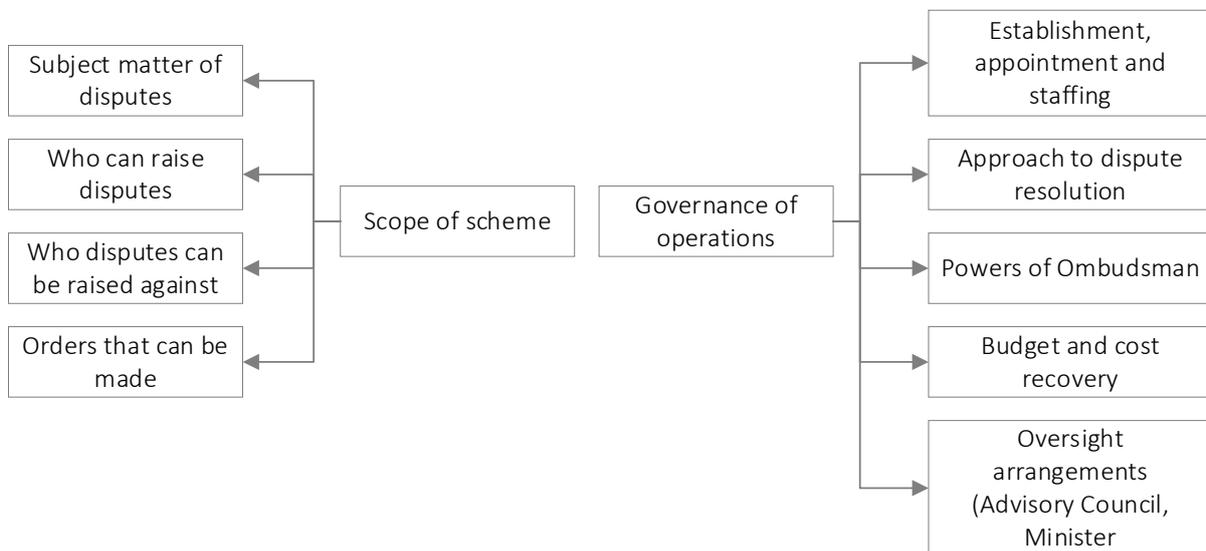


Figure 25: Overview of framework of Ombudsman legislation

### Scope of scheme

The Ombudsman’s functions include resolution of:

- disputes relating to an energy or water entity’s functions. For energy, disputes include whether the entity must provide customer connection services or customer retail services
- disputes between energy entities and occupiers of land relating to the exercise of a ‘works and access’ power.

Matters falling within scope generally concern the way an energy or water entity performs its regulated responsibilities. Matters falling outside the Ombudsman’s jurisdiction generally concern functions or activities not regulated by energy laws or which are commercial decisions of an entity.

<b>IN SCOPE</b>	Problems with payment	Supply quality and reliability
	Account disputes	Extensions to supply
	Disconnections	Connection of supply

<sup>261</sup> Energy and Water Ombudsman Act s. 3

	Damages and loss Energy marketing Energy contract issues Vegetation management	Customer service issues Guaranteed service levels Equipment issues Interference with privacy
<b>OUT OF SCOPE</b>	Prices/tariffs Capital contributions to the cost of works Eligibility for concessions/rebates The purchase of energy goods (e.g. solar panels)	Fairness/reasonableness of contract terms Bulk hot water Home electrician services On-selling (e.g. to multi-unit dwellings) Bottled LPG Trivial, frivolous or vexatious matters

Figure 26: Subject matter of disputes, Energy and Water Ombudsman<sup>262</sup>

Disputes can be raised by residential customers of particular energy entities, and small business customers consuming up to 1 TJ gas or 160 MW of electricity per annum. The energy entities subject to the legislation are electricity and gas distributors and retailers, as well as special approval holders who provide connection services.<sup>263</sup> The scheme also provides for:

- those in on-supply arrangements who have a direct relationship with a retailer
- off-grid customers of Ergon Energy
- gas customers of the Maranoa and Western Downs Regional Councils.

Customers who receive their energy in ‘non-traditional’ ways, e.g. through an embedded network or who receive retail services via ‘off-grid’ systems, cannot raise complaints with the Ombudsman.

Orders against energy entities can be made up to the value of \$20 000, or where agreed by the energy entity up to \$50 000.<sup>264</sup> Orders can include the payment of compensation, the provision of goods or services, corrective action or work, or ending a negotiated contract.<sup>265</sup> An order cannot be made against a customer, and the customer may elect not to accept the order.<sup>266</sup> Where an order is accepted by the customer, it becomes binding.

The Ombudsman can also identify ‘systemic’ issues relating to patterns of complaints or supplier behaviour. In such cases, the Ombudsman may share findings with relevant regulators.

#### Governance and operations

The Ombudsman is appointed by the Governor in Council and supported by an office staffed by public servants.<sup>267</sup> He or she must act independently, impartially and in the public interest, and is bound by the rules of natural justice.<sup>268</sup>

<sup>262</sup> Adapted from Energy and Water Ombudsman Queensland website. See also Ombudsman Act ss. 12, 18-18B

<sup>263</sup> Ombudsman Act, ss. 7 and 7B

<sup>264</sup> Or an amount specified in regulation Ombudsman Act s. 37

<sup>265</sup> Ombudsman Act s. 35

<sup>266</sup> Ombudsman Act ss. 40 – 42

<sup>267</sup> Ombudsman Act Part 7 and ss. 59-63

<sup>268</sup> Ombudsman Act s. 14

The Act gives the ombudsman significant powers and rights, including the ability to require documents and information from an energy entity which exclude the privilege against self-incrimination, make binding orders that may not be appealed or reviewed by a court except under the *Judicial Review Act 1991*, and protection against civil liability where acting honestly and without negligence.<sup>269</sup> The first two rights have been identified as potentially inconsistent with fundamental legislative principles, but deemed appropriate given the status of energy entities as corporations, and their effect in protecting small customers.

The Ombudsman's functions are funded entirely by industry, rather than from consolidated revenue. Entities are required to pay:<sup>270</sup>

- **Annual participation fees** – these are fixed in legislation and require most energy retailers and distributors to pay \$5000 per annum, and water entities to pay \$10 000 per annum. The participation fee is the same regardless of an entity's customer numbers or size. These participation fees contributed around 3 per cent of revenue in 2017-18 (\$199 477).
- **User pay fees** – these are levied in advance each quarter considering the approved budget and prior usage of the scheme by entities. Reconciliation is then undertaken each 6 months, based on actual expenditure and use of the scheme by each entity. These fees are set by the Ombudsman. The reconciliation arrangement is required by legislative rules which provide that entities are only charged the actual costs required to operate the scheme. User pay fees contributed around 97 per cent of revenue in 2017-18 (\$6.041 million).
- **Supplementary fees** – these are levied where the approved budget is insufficient to meet operating costs. They have only been levied once in 2008-09 and must be approved by regulation.

The annual budget is prepared by the ombudsman and submitted to the Minister for approval and tabling in Parliament.<sup>271</sup>

Independence of the Ombudsman is a key feature of the regime, with the Minister and others unable to direct the Ombudsman or its office in relation to its work. An Advisory Council consisting of industry and consumer members is appointed by the Minister to monitor the Ombudsman's independence, advise the Minister and the Ombudsman on the effective and efficient operation of the Ombudsman scheme, and advise on the annual budget.<sup>272</sup>

#### Assessment of current issues

[Appropriate: the legislation addresses a social, economic or environmental need or harm](#)

Consumer stakeholders see a continuing and central role for the Ombudsman scheme in providing for consumer protection in the Queensland energy market. This was reflected in comments made by the Queensland Council of Social Service and the Queensland Consumers Association in consultations undertaken for the review.<sup>273</sup> Industry participants in the Ombudsman scheme also

---

<sup>269</sup> Information gathering extends to some forms of self-incriminating documents, Ombudsman Act s. 29. Effect of orders, Ombudsman Act s. 41. Protection from civil liability, Ombudsman Act s. 81.

<sup>270</sup> See generally Ombudsman Act ss. 64-73 and 75. Energy and Water Ombudsman Queensland, Annual Report 2017-18, pp. 60-61.

<sup>271</sup> Ombudsman Act s.74 and 77.

<sup>272</sup> See Ombudsman Act Part 6. The Council also advises on policy and process relating to the Act, the operation of the Act for eligible customers, on guidelines, annual budget and annual reports.

<sup>273</sup> Queensland Council of Social Service submission, p. 5; Queensland Consumers' Association submission, p. 2

appear to broadly accept the ombudsman serves an essential reputational purpose for the industry, with benefits in terms of industry integrity and customer goodwill.<sup>274</sup>

In the five financial years to 2017-18, the Ombudsman has resolved over 45 000 electricity disputes, around 3700 gas disputes, and around 2700 water disputes. The top complaints for 2017-18 related to billing, credit and provision of services, which is consistent with other jurisdictions. Customer satisfaction is also high, at around 87 per cent. While energy complaints generally trended downward between 2013-14 and 2016-17, a sharp upturn was recorded in the 2017-18 financial year with electricity and gas cases increasing by 33 per cent, indicating a continued need for the service. Water disputes have remained relatively flat.<sup>275</sup>

The main concerns raised in relation to appropriateness of the Ombudsman scheme concerned the need to broaden the scope matter of disputes which can be considered, and the need to give the Ombudsman additional powers to investigate and resolve systemic issues.

#### Subject matter of disputes

The scope matter of disputes which can be dealt with by the Ombudsman is set in legislation. The legislation has only been amended twice in relation to energy, once to enable electricity businesses consuming between 100 and 160 MW per annum to access services, and once to enable customers in on-supply situations being directly served by a retailer to access services.<sup>276</sup>

While only minimal amendments have been made to the Ombudsman jurisdiction in recent years, the energy sector itself has undergone rapid change in the same period. This is anticipated to continue. New products such as energy storage systems (e.g. home batteries), digital metering and smart appliances are becoming more commonplace as technology advances and costs fall.

This has resulted in new energy services and business models such as power purchase agreements, solar leases, and remote control and management of home energy which currently fall outside the jurisdiction of the Ombudsman. A number of stakeholders argued for the need to expand jurisdiction of the Ombudsman to be able to address these new types of services, including micro-grids, off-grid areas, peer-to-peer trading, home area management systems, and power purchase agreements.<sup>277</sup> The Ombudsman and Queensland Council of Social Service argued that given the pace of change, the Ombudsman should either become a 'one stop shop' for all energy disputes in future, or be enabled to set its own jurisdiction.

Stakeholders also argued for the need to expand jurisdiction to deal with well established, but currently excluded areas for disputes, including bulk hot water, unmetered gas and LPG, landholder disputes against transmission entities, and on-supply or embedded networks.<sup>278</sup>

---

<sup>274</sup> Meridian Energy submission, p. ; Energy Queensland submission, p. 27; Red Energy/Lumo Energy submission, p. 1

<sup>275</sup> Energy and Water Ombudsman Queensland Annual Report 2017-18, pp. 2, 4-5.

<sup>276</sup> Amendments were also made in 2014 to implement the NERL(Q), however the changes were consequential.

<sup>277</sup> Queensland Council of Social Service submission (micro-grids, off-grid areas), p. 5; Energy Queensland submission (micro-grids, peer to peer trading), p. 28; Energy and Water Ombudsman submission (off-grid areas, home area management systems, power purchase agreements), pp. 2, 4, 5; Advisory Council to the Energy and Water Ombudsman Queensland submission (micro-grids), p. 3; Origin Energy Limited submission (power purchase agreements), p. 9.

<sup>278</sup> Submissions by Queensland Council of Social Service (bulk hot water, unmetered gas and LPG, on-supply), Queensland Consumers Association (bulk hot water, on-supply), Origin Energy (on-supply, bulk hot water),

While limited information was provided to the review about the scale of disputes currently falling outside arrangements or the number of customers or industry providers potentially affected if jurisdiction was to be expanded, statistics from the Ombudsman indicated that almost 7 700 cases lodged with the Ombudsman have been referred to other organisations between 2013-14 and 2017-18 due to jurisdictional restrictions.<sup>279</sup> In 2017-18, the majority of cases referred to other agencies concerned small-scale solar complaints, bottled gas, bulk hot water and on-selling, see *Figure 27*. On-selling, through embedded networks is discussed below.

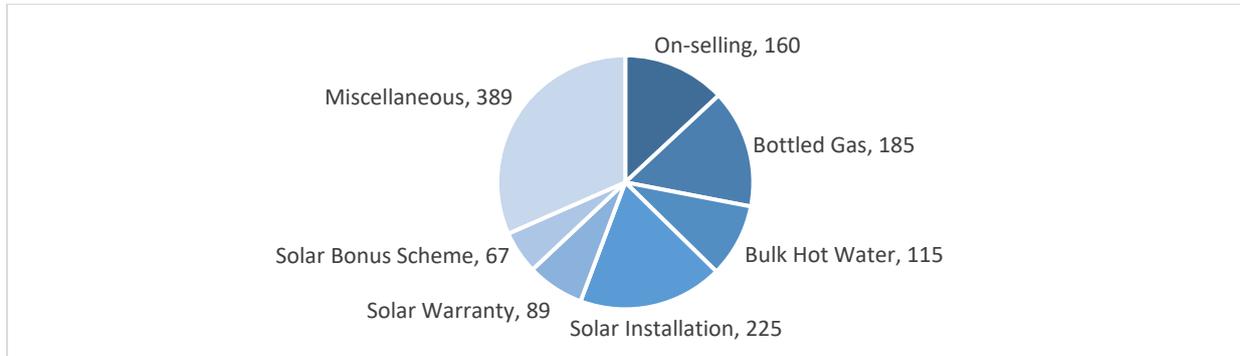


Figure 27: Ombudsman cases referred to other agencies

#### Embedded networks

Extension of Ombudsman arrangements to apply to ‘embedded networks’ is dealt with in Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers

#### Systemic issues

While the core business of the Ombudsman is actioning the complaints it receives from energy and water users, it also has a role to identify ‘systemic’ issues. These are matters affecting more than one customer or supplier which have the potential to be resolved holistically rather than complaint by complaint, saving money for industry and improving outcomes for consumers. The Ombudsman is uniquely placed to identify potential service deficiencies on a systemic level, or organisational practices and procedures that may require change.

The Ombudsman’s submission noted that it currently has no authority to actively investigate these systemic issues under its own motion, or request that a scheme participant or the industry as a whole make necessary changes to rectify problems. It can only observe and report to the relevant regulator, or include in publications.

The Queensland Consumers Association and Ombudsman each argued the limitation on the Ombudsman’s ability to investigate and work with entities to resolve systemic issues creates unnecessary customer detriment. Between 2013-14 and 2017-18, the Ombudsman identified 409 potential systemic issues, mainly relating to billing, customer service and marketing (see *Table 18*).

---

Energy and Water Ombudsman Queensland (bulk hot water), Energy and Water Ombudsman Queensland Advisory Panel (on-supply). Extension to commercial on-supply and micro-grids was opposed by the Shopping Centre Council and the EWOQ advisory panel opposed expanding jurisdiction to pick up landholder disputes against transmission entities.

<sup>279</sup> Energy and Water Ombudsman Queensland Annual Report 2017-18, p 18. The other jurisdictions referred to include: Office of Fair Trading (757), the Queensland Energy and Water Regulator (203), the AER (181), the Queensland Ombudsman (78), the Queensland Competition Authority (5), and the Australian Competition and Consumer Commission (4). Figures in brackets are cases referred in 2017-18.

Table 18: Potential systemic issues identified by Ombudsman, 2013-14 to 2017-18

Issue	2013-14	2014-15	2015-16	2016-17	2017-18
Billing	53	43	34	35	41
Customer Service	15	17	14	13	35
Provision	0	1	2	2	17
Marketing	13	6	2	2	12
Transfer	3	5	1	1	11
Metering	1	0	0	2	3
Other	6	2	3	5	1
Credit	2	0	1	1	0
Supply	1	0	1	1	0
Water	0	0	1	0	0
<i>TOTAL</i>	<i>94</i>	<i>74</i>	<i>59</i>	<i>62</i>	<i>120</i>

Of these, only four were referred to the appropriate regulator for action, given:

- a lack of investigative powers, meaning the Ombudsman is unable to confirm whether the systemic issues were regulatory breaches
- the limited scope of subject matter a regulator can deal with i.e. breaches of regulatory rules, rather than for example poor commercial practices, meaning there often is no clear regulator to refer an issue to.

#### Effective: the legislation achieves the desired outcome

As noted above, the majority of stakeholders were supportive of the Ombudsman and the role it plays in resolving disputes. In 2017-18, of a total 10 328 cases received, 10 211 were closed, resulting in \$912 713 in outcomes for customers. The majority of those assisted were residential customers (95.3 per cent) located in South-East Queensland (86 per cent). Cases were resolved relatively quickly, with 83 per cent resolved within 28 days.<sup>280</sup>

Aside from jurisdictional issues, only one stakeholder raised concerns in relation to effectiveness of arrangements. Energy Queensland's submission requested "*greater clarity in respect to [Ombudsman] reporting, particularly relating to 'refer-back' customers*".<sup>281</sup> Where the Ombudsman refers a customer to an energy entity, little information is supplied to the entity in relation to the customer or their issue, making it difficult for businesses to take the initiative to contact the customer directly. The Ombudsman has advised it would need to obtain the customer's consent to provide their details to an entity, adding cost and complexity for both industry and customers.

#### Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

Efficiency, and in particular cost, was a major concern raised by stakeholders including Meridian Energy, Origin Energy, the Energy and Water Ombudsman Queensland, Red Energy and the Australian Energy Council.<sup>282</sup> There is evidence that participation in the Queensland Ombudsman

<sup>280</sup> Energy and Water Ombudsman Queensland Annual Report 2017-18.

<sup>281</sup> Energy Queensland submission, p. 28.

<sup>282</sup> Meridian Energy Australia Pty Ltd submission, p. 4; Origin Energy Limited submission, p. 9; Energy and Water Ombudsman Queensland submission, p. 7; Red Energy / Lumo Energy submission, p. 1; Australian Energy Council submission, p. 3.

scheme is considerably more expensive than participation in schemes in comparable jurisdictions (refer *Table 19*). The average expenditure for complaints in Queensland is more than the average in other National Energy Market jurisdictions.

*Table 19: Average expenditure for complaints, New South Wales, South Australia, Victoria and Queensland<sup>283</sup>*

Jurisdiction	2017-18 complaints finalised	2017-18 operating expenditure \$'000	2017-18 employee expenditure \$ '000	Average operating expenditure per complaint finalised \$	Average employee expenditure per complaint finalised \$ (proportion of operating expenditure)
Energy and Water Ombudsman New South Wales (EWON)	26 205	11 634	8828	444	337 (76%)
Energy and Water Ombudsman South Australia (EWOSA)	9905	3222	2004	325	202 (62%)
Energy and Water Ombudsman Victoria (EWOV)	30 483	8674	6461	285	212 (74%)
Average for NSW, SA and Victoria				351	250 (71%)
Energy and Water Ombudsman Queensland (EWOQ)	10 211	6278	4472	615	438 (71%)

Causes for this disparity are unclear. For example, while employee expenses are the most significant component of operating expenditure for Ombudsman schemes, Queensland's employee expenses as a proportion of total operating expense are not significantly higher than others. Nevertheless, when compared with complaint finalised numbers, Queensland employee arrangements cost an additional

<sup>283</sup> Energy and Water Ombudsman Queensland, Annual Report 2017–2018; Energy and Water Ombudsman Victoria, EWOV 2018 Annual Report; Energy and Water Ombudsman South Australia, 2017-18 Annual Report; and Energy and Water Ombudsman New South Wales, Annual Report 2017-2018. This options paper uses data from the 2017-18 financial year, for the purposes of comparison, because that was the latest available from all jurisdictions at the time of publication.

\$187.57 per complaint finalised. Averaged over the number of complaints finalised in 2017-18, this equates to an additional \$2.5 million expenditure.

The additional expenditure does not appear to have had a significant bearing on non-financial performance. To the extent that non-financial performance measures reported by agencies are comparable, *Table 20* shows no significant disparities in performance.

*Table 20: Non-financial performance measures for Ombudsman, New South Wales, South Australia, Victoria and Queensland<sup>284</sup>*

Jurisdiction	Time taken to resolve complaints		Customer satisfaction outcome
	Within 28-30 days	Within 90 days	
EWON	90 per cent (within 30 days)	96 per cent	77 per cent
EWOSA	85 per cent (within 30 days)	97 per cent	96 per cent (2017-18) <sup>285</sup>
EWOV	95 per cent of Stage 1 complaints resolved within 28 days	n/a (98 per cent resolved within 180 days)	78 per cent
EWOQ	83 per cent (within 28 days)	99 per cent	87 per cent (2015-16)

One cause of the cost disparity may be the geographic spread covered by the Ombudsman, compared with other jurisdictions. Servicing the entire state, the Ombudsman has established three offices throughout Queensland in Brisbane, Rockhampton and Cairns. By necessity, some economies of scale are lost to provide these regional touchpoints. For example, the average total cost (operating costs plus employee expenditure) per resolution in south-east Queensland is \$256.25. In Rockhampton, the cost is \$422.55 per resolution and in Cairns the cost is \$418.56.<sup>286</sup> Ombudsmen in New South Wales, South Australia and Victoria each only have one physical presence in the capital city.

However, the Energy and Water Ombudsman has advised that maintaining regional offices has no significant bearing on cost. Regional officers undertake significant outreach and stakeholder engagement which could not be replicated by Brisbane based staff without, for example, increasing travel expenditure. Locating additional staff in Brisbane would also increase rental costs. Overall, it is estimated to be around \$22 500 less expensive per annum to operate regional offices. These also have flow on benefits to regional communities, with greater employment and greater understanding of local need.

During preliminary consultations for the review, a number of industry and consumer stakeholders indicated the cause of the disparity may relate to governance arrangements. The Queensland Ombudsman is a statutory body, with the office staffed by public servants. Other Ombudsmen have been established as companies limited by guarantee with offices staffed by non-public sector employees. It was suggested that the Ombudsman may be hindered by this legal status and that it

<sup>284</sup> Ibid.

<sup>285</sup> Up 1 per cent from 2016-17 figures.

<sup>286</sup> Advice from Energy and Water Ombudsman, May 2019.

could provide a more flexible and cost-effective service if it were constituted as a company limited by guarantee.<sup>287</sup>

However, a comparison of complaint trends against employee numbers indicates Ombudsman resourcing has been generally responsive to changes in case load on an annual basis—see *Figure 28*. This has also been complemented by changes in expenditure for contractors and consultants. For example, between 2013-14 and 2014-15 case numbers declined sharply. While employee numbers did not decline as significantly in that period, the Ombudsman was able to cut contractor and consultant expenditure from \$217 000 to \$19 000. This indicates the Ombudsman has a number of options available and is actively utilising them to deal with fluctuations in complaint volumes.



*Figure 28: Resourcing adjustments, Queensland Ombudsman 2013-14 to 2017-18 (percentage trend)<sup>288</sup>*

A further potential area of disparity is the difference in the number of complaints received by the Energy and Water Ombudsman in Queensland. As demonstrated in *Figure 29* and *Figure 30*, Queensland complaint levels as a percentage of small customer numbers are considerably lower in both the electricity and gas sectors. This is a positive outcome for Queensland. However, it also reduces the ability to achieve economies of scale.

<sup>287</sup> Advisory Council for the Energy and Water Ombudsman Queensland submission, p. 4; Energy and Water Ombudsman Queensland submission, p. 6; Queensland Consumers Association submission, p. 2; Meridian Energy submission, p. 4; Origin Energy submission, p. 2; Red Energy and Lumo Energy submission, p. 1; Australian Energy Council submission, p. 3.

<sup>288</sup> Energy and Water Ombudsman Queensland, Annual Report 2017–2018, 2016–2017, 2015–2016, 2014–2015, 2013–2014.

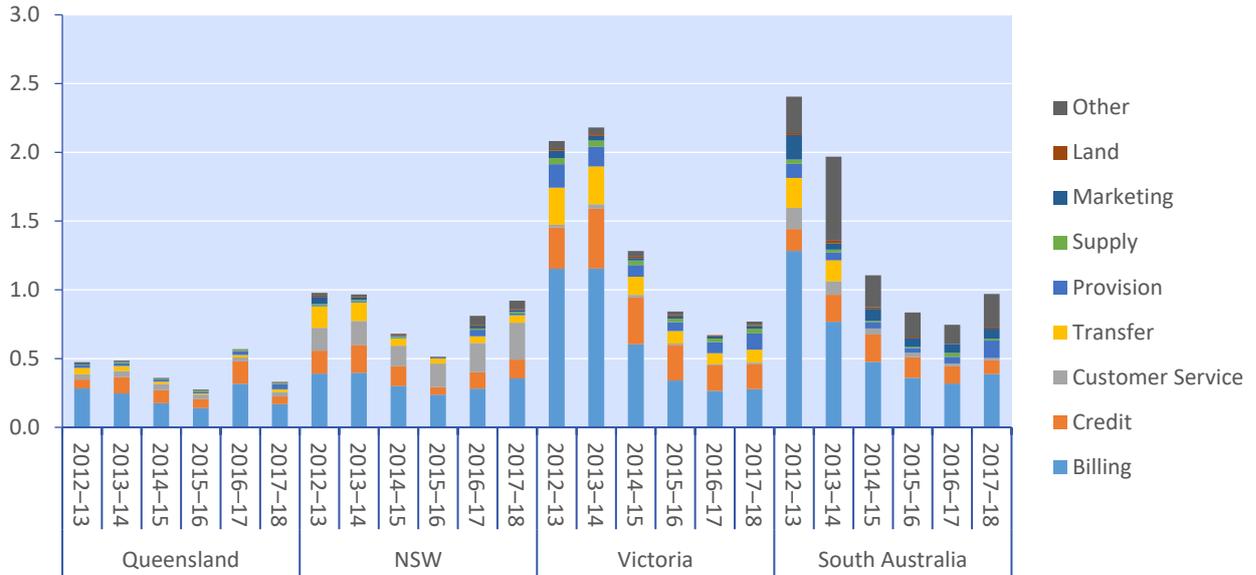


Figure 29: Complaints to Ombudsman schemes in relation to electricity services<sup>289</sup>

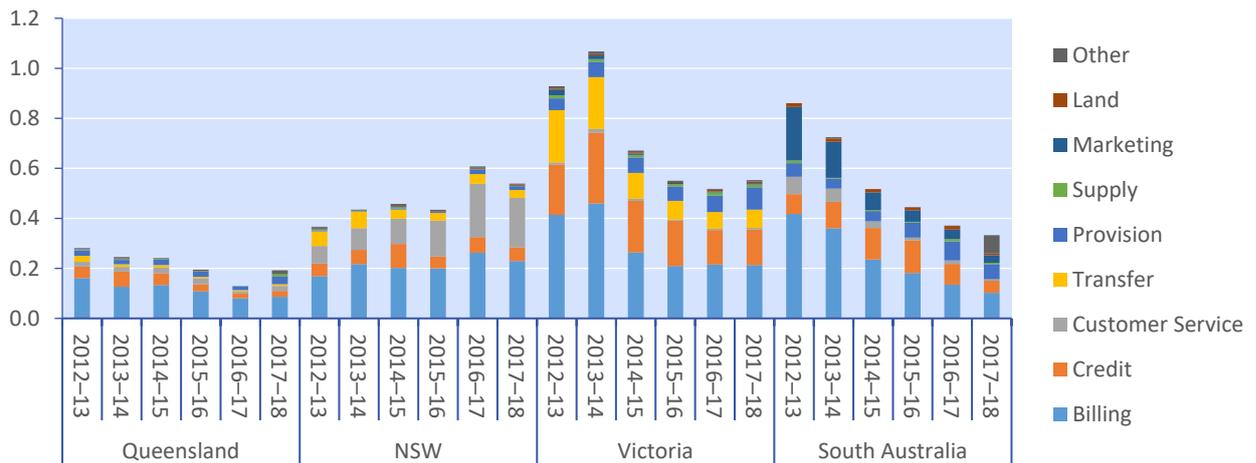


Figure 30: Complaints to Ombudsman schemes in relation to gas services<sup>290</sup>

One difficulty raised by the Energy and Water Ombudsman was the need to make quarterly estimates about complaint numbers on a planned budget, and either levy further user-pays fees if too little has been forecast (subject to a regulation being made) or reimburse participants if too much has been forecast.<sup>291</sup> This constraint is intended to support greater accuracy in cost-recovery. However, given difficulties and delays in obtaining a regulation to levy further user-pays fees if too little has been forecast, the arrangements tend to incentivise over-estimation of forecast costs. That is, contingencies are built in which are not always realised. This is administratively simpler to manage than underestimation. Statistics from the Ombudsman bear this out.

<sup>289</sup> Australian Energy Regulator, 2018, *State of the Energy Market*, viewed 17 July 2019, <https://www.aer.gov.au/publications/state-of-the-energy-market-reports/state-of-the-energy-market-2018>

<sup>290</sup> Ibid.

<sup>291</sup> Energy and Water Ombudsman Queensland submission, p. 6.

The Ombudsman has only ever needed to levy additional fees once, in 2008-09. Over the past five years, reimbursements have needed to be made every year, ranging from a quarter of a million dollars in 2013-14 to almost \$900 000 in 2015-16 and 2016-17: see *Table 21*. This is inefficient for the Ombudsman, and inefficient for industry. These arrangements also make it difficult for the Energy and Water Ombudsman to plan for and implement information technology system improvements.

*Table 21: Amount refunded to industry and rationale, 2013-14 to 2017-18<sup>292</sup>*

Financial Year	Planned Budget \$'000	Re-imburement to industry		Cause
		\$ '000	% of planned budget	
2013-14	6420	230	3.58	Held vacancies
2014-15	6560	671	10.24	Deferral of planned systems upgrade, minimisation of travel
2015-16	7061	891	12.62	Savings strategies implemented in light of decreased case load
2016-17	6523	882	13.52	Reduced business activities and staff vacancies, given continuing low case load
2017-18	6586	348	5.28	Delay in planned activities

The split between annual participation fees and user pays fees was also raised as a concern by the Ombudsman. Around 3 per cent of revenue is collected from annual participation fees, which are set in regulation, and 97 per cent collected through user pays case fees. This introduces some distortions in that the cost of all activity not directly related to complaints is loaded onto case fees as an undeclared overhead. This produces what appears to be very high case fees compared to other schemes.<sup>293</sup>

A further efficiency consideration is the duplication between Ombudsman provisions which set out who may lodge and receive a complaint, and applied national laws. The NERL(Q) and the Energy and Water Ombudsman Act each set out who must be a member of the Ombudsman scheme. This creates duplication of process and unnecessary delay—changes made at a national level based on extensive consultation will not take effect in Queensland unless a duplicate process also involving extensive consultation is undertaken. A recent example is work underway to enable the Ombudsman to hear complaints about exempt sellers which, by the time it is finished, will have taken more than two years and two rounds of public consultation and analysis. This is inefficient in a fast changing sector.

### Objectives

Reform of the Ombudsman scheme would seek to improve 'customer value' and 'government effectiveness.' A more focused set of objectives for this specific area of reform would be to:

1. ensure the scope of the Ombudsman's jurisdiction is adaptive to changing patterns of energy service provision and consumption, including those based on new technologies

<sup>292</sup> Correspondence from Energy and Water Ombudsman, December 2018.

<sup>293</sup> Energy and Water Ombudsman Queensland, *Ibid*, p. 7.

- ensure the Ombudsman service achieves the best value for money for its members and the public.

### Options

Key options which have been considered are:

Option	Description
Status quo (option 1)	Existing arrangements would be retained
Adjust legislation to include embedded networks and provide greater flexibility (option 2)	<ul style="list-style-type: none"> <li>The Ombudsman’s jurisdiction would be extended to specifically include residential customer disputes about sale and supply in embedded networks, supported by special fee arrangements</li> <li>Enabling legislation would be amended to provide more flexibility in relation to the subject matter for complaints, and for fees generally (excluding embedded network customers)</li> <li>Duplication between national and state processes would be removed</li> </ul>
Company limited by guarantee (option 3)	The Ombudsman’s status as a statutory entity would be discontinued, and it would transition into a company limited by guarantee, subject to high level principles in enabling legislation

#### Option 1 – Status quo (Energy and Water Ombudsman)

Option 1 involves retention of existing arrangements, under which the scope of disputes, power of the Ombudsman and governance arrangements are closely controlled by government. Advantages of the existing approach include:

- The preservation of existing Ombudsman powers to gather information and make binding, non-appealable decisions against entities. This provides confidence to customers that where a decision is made, it will be adhered to. By comparison in Victoria where the Ombudsman scheme does not have the same regulatory backing, around four per cent of ‘Stage 1’ investigations did not stay closed, and two per cent of ‘Stage 2’ investigations did not stay closed in 2017-18.<sup>294</sup> Retaining existing powers to scrutinise who is subject to these powers also ensures appropriate regard is given to fundamental legislative principles.
- The maintenance of arrangements for employees of the Energy and Water Ombudsman. At the end of 2017-18, the Ombudsman’s office had 45 staff (42.5 FTE) servicing both energy and water disputes and employed under the *Public Service Act 2008*.
- The preservation of powers to compel particular parties, including those currently falling outside the NERL(Q), to be scheme members.
- The preservation of powers to ensure customers consuming between 100 MW and 160 MW per annum can access Ombudsman services. The NERL(Q) does not require retailers providing services to these customers to be scheme members.
- Detailed cost recovery arrangements which ensure entities pay proportionate amounts based on the costs for which they are responsible, and no more.
- Government oversight of expenditure to ensure any cost reductions are not made at the expense of customer outcomes and regional support.

<sup>294</sup> Energy and Water Ombudsman Victoria Annual Report 2017-18, p. 12.

However, option 1 does not address the disadvantages or risks of existing arrangements outlined in the problem section including:

- difficulties in keeping up to date with technological developments and new products and services, which contributed to over 7500 customers being referred to different agencies for support over the last five years
- difficulties in addressing systemic issues identified by the Ombudsman, which has left over 400 potential system issues identified in the last five years with no clear mechanism for review and resolution
- difficulties with budgeting arrangements, which entail an inefficient process of excess revenue collection and reimbursement to the value of about \$3 million over five years.

This creates risks, including the risk:

- customers of newer products and services will need to rely on dispute resolution under the Office of Fair Trading for longer, which does not provide specialised provisions for many energy based products/services<sup>295</sup>
- a potential slowdown in the uptake of new products and services due to the lack of consumer confidence that they will receive adequate protections, thus inhibiting innovation in the sector.

Under option 1, the Ombudsman would not be able to actively investigate systemic issues and approach scheme participants with requests to address such issues.

Impact group	Estimated impact
Users and other public	Nil – status quo
Entities currently subject to scheme	Nil – status quo
Other entities (e.g. embedded network operators)	Nil – status quo
Ombudsman	Nil – status quo
Ombudsman office	Nil – status quo
Government and regulator	Nil – status quo

<sup>295</sup> The Office of Fair Trading (OFT) and the Queensland Civil and Administrative Tribunal (QCAT) are other bodies with responsibilities that extend to disputes between consumers and suppliers. However, the OFT as a government funded agency without a fee paying membership is not able to refer or investigate every consumer complaint it receives. It can either advise consumers directly or undertake compliance and enforcement action on a strategic basis. QCAT can hear individual consumer matters. However, a consumer is required to pay a fee or apply for a fee exemption in order to lodge a complaint, making QCAT less accessible than an Ombudsman model. Furthermore, neither OFT nor QCAT have specific energy sector expertise. These bodies, while serving essential complementary purposes, are therefore not general substitutes for the Energy and Water Ombudsman Queensland.

Option 2 – Adjust legislation to provide greater flexibility (Energy and Water Ombudsman)

Under option 2, the Ombudsman would remain a statutory authority with legislative backing, but adjustments would be made to

- specifically apply the Ombudsman scheme to embedded networks operators as set out in Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers
- provide greater flexibility for the Ombudsman to otherwise expand the subject matter of disputes by agreement with energy and water entities
- provide stronger powers to investigate systemic issues
- provide flexibility around cost recovery arrangements (except for embedded networks).

Retaining the Energy and Water Ombudsman as a statutory authority is similar to the Queensland Government’s approach to other Ombudsman, including the Health Ombudsman, the Land Access Ombudsman and the Queensland Ombudsman, though those schemes are predominantly government rather than industry funded.<sup>296</sup>

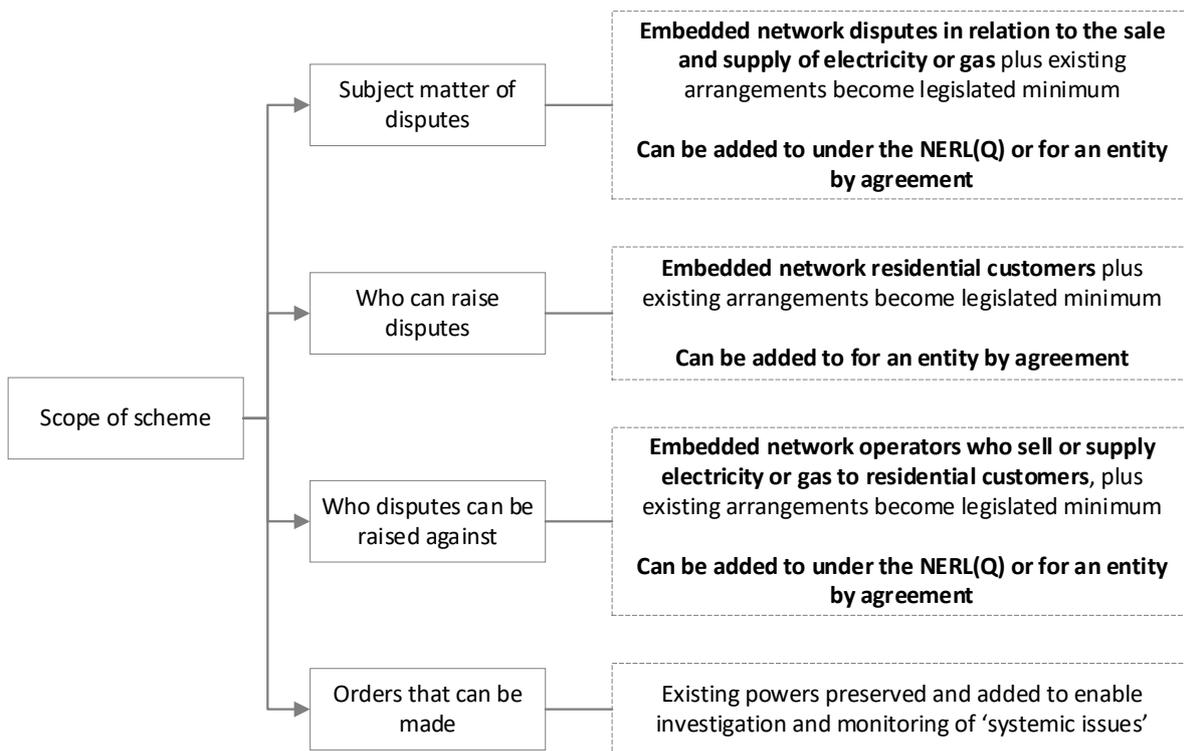


Figure 31: Option 2, changes relating to scope of scheme

<sup>296</sup> The Health Ombudsman receives most of its funded from Queensland Health (\$11.037 million) and further grant funding from the Queensland Government (\$9.868 million). Out of Queensland Health funding, \$6.5 million comes from Queensland health practitioner registration fees: see Annual Report 2017-18, Health Ombudsman, pp. 66 and 67. The Land Access Ombudsman and Queensland Ombudsman are funded by government.

### Application of Ombudsman scheme to embedded network operators

Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers addresses the rationale and advantages to extending application of the Ombudsman framework to embedded networks customers.

### Greater flexibility for the Ombudsman to expand the subject matter of disputes

Under option 2, adjustments would be made to the Ombudsman's enabling legislation to provide greater flexibility generally to expand the subject matter of complaints that may be heard. Under the arrangements, the existing scope of the scheme would be retained as a minimum requirement (with new embedded network rules added). However, the jurisdiction would be able to be expanded:

- Where obligations are placed on a provider under the NERL(Q). For example, changes that were made under the national framework which required certain exempt sellers to become members of an Ombudsman scheme would have automatically had effect in Queensland, without a duplicative process being undertaken. This provision would support future changes to the NERL(Q).
- Where existing members agree to additional subject matter being considered, for example disputes about power purchase agreements or bulk hot water, or disputes from larger customers.
- To cover new industry participants who sign up to the scheme. For example, if embedded network operators with small business customers, or providers of new services wished to take advantage of Ombudsman services to build credibility with new and potential customers. For water providers, this would enable additional Regional Councils to sign up to the service where this benefited constituents. Six councils are subject to the scheme currently.

While a number of stakeholders argued for the minimum jurisdiction to be expanded to capture a broader range of subject matter, insufficient information on the potential impact of this (beyond that for embedded networks) has been provided to justify a legislative change (e.g. scale of existing problems, number of new entities that would be affected and impact on those entities, etc.). Under option 2, an enabling framework would instead allow voluntary participation. This may lead to customers pressuring their providers to sign up to the arrangements.

Option 2 has the potential to create complexity for customers and Ombudsman staff. However, this is not expected to be particularly greater than current complexity, where only one of two customers receiving essentially the same service is able to access the Ombudsman, or where customers can bring complaints about some services of their providers but not others to the Ombudsman's attention. Flexibility is the option's key strength.

This is important to help ensure the legislation remains 'fit for purpose' in providing small customers with an avenue for dispute resolution given the rapid technological developments in the energy space. The risks associated with the Ombudsman continuing in its current state are likely to increase in the future.

However, risks also accrue from enabling the Ombudsman to expand its scope. In particular there is a risk that a degree of focus on core, essential business of the Ombudsman may be lost to the detriment of customers if jurisdiction is expanded too far.

### Systemic issues

Option 2 would also extend the Ombudsman's powers to investigate systemic issues and work with providers to resolve issues. The Ombudsman would retain the ability to refer systemic issues to the relevant regulator. This is similar to powers of the Victorian Ombudsman in relation to water complaints, which enables the Ombudsman to identify, investigate and seek redress for affected customers – with a report to the [relevant Department] on the outcome and whether the company has co-operated...to resolve the issue appropriately'.<sup>297</sup> The new Australian Financial Services Complaints Authority similarly has powers to identify and resolve systemic issues. Once a dispute is identified, it assesses and refers the issues to the relevant firms for an initial response. On review of the response, and where the issue is systemic, it must be reported to the relevant regulator, or other appropriate body.<sup>298</sup>

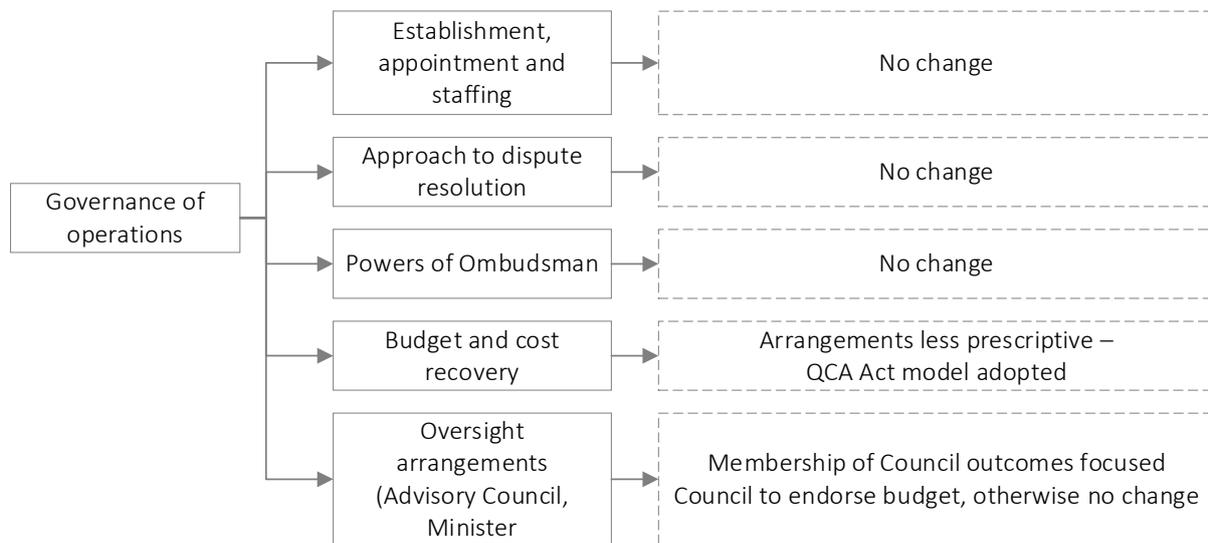


Figure 32: Option 2, changes relating to governance and operations

### Cost recovery

Corresponding with potential changes to jurisdiction, option 2 involves providing the Ombudsman with greater flexibility to manage its budgetary arrangements. Detailed legislative provisions around membership fees, user pay fees and supplementary fees would be replaced with a general power to levy fees for providing a service or performing a function under the legislation. Section 3 of the *Queensland Competition Authority Regulation 2018* provides a useful model:

- (1) For section 245(2) of the Act, the fee payable to the authority for providing a service or performing a function mentioned in schedule 1 is the amount—
  - (a) the authority considers to be reasonable; and
  - (b) that is not more than the reasonable cost of providing the service or performing the function.

<sup>297</sup> EWOV, 2019, *Systemic Issues*, viewed 17 July 2019, <https://www.ewov.com.au/reports/systemic-issues>.

<sup>298</sup> See *Australian Financial Complaints Authority, 2019, Systemic Issues*, viewed 17 July 2019, <https://www.afca.org.au/about-afca/systemic-issues/>.

The approach would provide flexibility for the Ombudsman to manage its budget, particularly as jurisdictional arrangements expand. Corresponding adjustments would be made to oversight arrangements to reduce any inconsistency with fundamental legislative principles. In particular, the Ombudsman’s advisory panel functions would be broadened to require it to comment on the Ombudsman’s fee structures, and to include in its budget advice to the Minister whether or not it endorses the annual budget of the Ombudsman. To account for expanded jurisdiction, adjustments would be made to panel membership rules to require fair representation of different parts of industry.

The one exception to this would be for embedded network operators, which is needed to ensure that fees should match an exempt seller’s ability to pay. This was a specific issue raised during the AEMC’s 2016 consultation process. Options for appropriate fees and charges for embedded networks operators are set out in Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers, which includes a detailed assessment of options for implementation of Ombudsman arrangements applying to embedded network operators.

Impact group	Estimated impact
<b>Users and other public</b>	Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers Other: <ul style="list-style-type: none"> <li>• Continued access to Ombudsman services for traditional service and supply issues, with potential access to dispute resolution for newer services and business models</li> <li>• Some additional complexity, though due to expansion rather than contraction of Ombudsman jurisdiction</li> <li>• Expected to result in greater protection over time</li> <li>• Greater potential for resolution of systemic issues at early stages may prevent unnecessary customer detriment</li> </ul>
<b>Entities currently subject to scheme</b>	Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers Other: <ul style="list-style-type: none"> <li>• Able to sign up to enable Ombudsman to resolve additional areas of dispute e.g. power purchase agreements or bulk hot water disputes</li> <li>• Complexity of cost recovery arrangements reduced, with greater oversight through advisory panel of annual budgets and fee structures</li> </ul>
<b>Other entities (e.g. embedded network operators)</b>	Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers Other: <ul style="list-style-type: none"> <li>• Provides ability to sign up to Ombudsman scheme to enhance consumer confidence in services</li> </ul>
<b>Ombudsman</b>	Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers Other: <ul style="list-style-type: none"> <li>• Moderate impact. Stronger powers to investigate and work with industry to resolve systemic issues</li> <li>• This may incur some costs, but greater flexibility to manage budget on an ongoing basis with reduced administrative complexity</li> </ul>

Ombudsman office	Minimal impact.
Government and regulator	<p>Embedded network: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers</p> <p>Other:</p> <ul style="list-style-type: none"> <li>• Some reduction in costs associated with duplication of national process</li> <li>• Greater access to information about systemic issues to inform policy decisions</li> </ul>

### Option 3 Company limited by guarantee

Under option 3, the Energy and Water Ombudsman would become a company limited by guarantee. Its establishment and governance would largely fall under Commonwealth legislation, for example, the *Corporations Act 2001* and regulated by the Australian Securities and Investments Commission and Commonwealth workplace. State legislation to establish the Ombudsman as a statutory authority would be greatly reduced in scope, and reorganised to nominate a company limited by guarantee to serve the Ombudsman function. The company would be overseen by an independent board serving a similar function to the current Advisory Council. The company would be subject to federal workplace laws (as opposed to the Public Service Act) and commercial standards for financial management and reporting. Legislative provisions to support option 3 would be limited to the following matters.

#### Requirements on members

Members would be required to comply with the scheme to ensure information requests and any orders made are enforceable.

Certain existing water and energy entities which fall outside NERL(Q) requirements for example, distribution elements of off-grid systems would also be required to remain members of the scheme, so the arrangements would not result in reduced protection.

The arrangements would also provide increased protection for embedded network customers. In March 2018, the AER amended requirements placed on embedded networks. New and amended core exemption conditions now require 'exempt sellers' with residential customers to be members of, or subject to, Ombudsman schemes where the scheme allows.<sup>299</sup> Under a Company Limited by Guarantee model, exempt sellers and embedded network operators would be allowed to be members.

#### Requirements on the Ombudsman

Under option 3, requirements would be placed on the company to:

- Maintain a regional presence and customer representation and input into decision making. This will ensure the Ombudsman continues to provide targeted support to meet the needs of Queenslanders, including those in regional areas.
- Investigate, make determinations, and give directions relating to complaints about energy and water services by end users of those services. This preserves the existing core function of the Ombudsman.

<sup>299</sup> AER, March 2018, *(Retail) Exempt Selling Guideline Version 5*, viewed 17 July 2019, <https://www.AustralianEnergyRegulator.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>

- Investigate and report to the relevant regulator or (where no relevant regulator exists), Government department on any unresolved systemic issues. Similar to option 2, this provides greater scope for earlier intervention into systemic issues and has the potential to reduce customer detriment.
- Ensure an end user of an energy or water service is not liable to pay any fee or charge in respect of a complaint made by the end user about the energy or water service. This preserves one of the existing core benefits of the Ombudsman scheme.
- Comply with any standards determined by the Minister. In making a standard, the Minister must have regard to accessibility, independence, fairness, accountability, efficiency and effectiveness. The Minister must also consult the Ombudsman, its board, end-user representatives and the Queensland Competition Authority.
- Maintain a public register of the names of members. This reduces transaction costs for customers wishing to verify whether they are able to access the Ombudsman services.
- Provide for reviews into the operation of the scheme to be conducted, with first review to be completed within three years and subsequent reviews at five year intervals. This would provide an appropriate level of oversight for government to ensure the arrangements are continuing to provide public value, and are responsive to developments in the sector.

The option would also include solutions to maintain entitlements of affected Energy and Water Ombudsman employees in line with existing Government commitments for organisational change.

The option preserves a degree of government oversight, but gives industry greater scope to flexibly manage developments in the sector on an ongoing basis. The scheme remains subject to review and government intervention in the form of standards can be undertaken if arrangements become unsatisfactory. The Ombudsman's independence and accountability are also guaranteed by core legislative requirements to no lesser an extent than the existing statutory authority framework and the proposed structure is supported by a number of industry.<sup>300</sup>

The approach is similar to that adopted by the energy and water ombudsmen of New South Wales, Victoria and South Australia, which have demonstrated an ability to achieve equivalent levels of non-financial performance at reduced cost.

Overall, the efficiencies to be gained from restructuring the Ombudsman as a company limited by guarantee could be expected to include:

- Greater flexibility to respond to changes in the market, similar to the approach under option 2 – this benefits customers and industry.
- Greater flexibility to plan and resource a casual labour strategy to respond to variable demand and activity—this reduces operating costs, which are ultimately borne by energy and water customers.

---

<sup>300</sup> Advisory Council for the Energy and Water Ombudsman Queensland submission, p. 4; Energy and Water Ombudsman Queensland submission, p. 6; Queensland Consumers Association submission, p. 2; Meridian Energy submission, p. 4; Origin Energy submission, p. 2; Red Energy and Lumo Energy submission, p. 1; Australian Energy Council submission, p. 3.

- Reducing financial management costs by removing government agency budgeting requirements.<sup>301</sup> Instead, cost recovery arrangements would be determined in constitutional material, as occurs in other states.

The principal risks associated with the approach relate to the treatment of Ombudsman employees. Legislative provisions are necessary to ensure the entitlements of existing employees are not reduced as a result of the option, and that decisions made by the Ombudsman are binding.

As with option 2, there is also a risk that by enabling the Ombudsman to expand its scope, a degree of focus on core, essential business may be lost to the detriment of customers. However, this does not appear to have occurred in other jurisdictions.

The approach would also make the Energy and Water Ombudsman different to other Ombudsman schemes in Queensland, which are established by legislation. However, it is noted that the Energy and Water Ombudsman already differs from other Queensland statutory Ombudsman, in that it is not funded by government whereas others are. The approach would bring the Energy and Water Ombudsman in line with the approach adopted in telecommunications.

Impact group	Estimated impact
<b>Users and other public</b>	<p>Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers</p> <p>Continued access to Ombudsman services for traditional service and supply, with potential access to dispute resolution for newer services and business models (expected to result in greater protection over time)</p> <p>Greater potential for resolution of systemic issues at early stages may prevent unnecessary customer detriment</p>
<b>Entities currently subject to scheme</b>	<p>Able to sign up to enable Ombudsman to resolve additional areas of dispute e.g. power purchase agreements or bulk hot water disputes.</p> <p>Complexity of cost recovery arrangements reduced, with greater oversight through management board</p> <p>Implementation costs for legal and accounting advice, covering development of constitutional materials, establishment of company and board, and obtaining relevant tax decisions (based on previous transactions of a similar nature, this could be up to \$500 000)</p>
<b>Other entities (e.g. Embedded network operators)</b>	<p>Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers</p> <p>Provides ability to sign up to Ombudsman scheme to enhance consumer confidence in services</p>
<b>Ombudsman</b>	<p>Embedded networks: see Section 2.8.1 Dispute resolution - Energy and Water Ombudsman fee options for complaints by embedded network customers</p> <p>Moderate impact:</p>

<sup>301</sup> Energy and Water Ombudsman Queensland submission, p. 6 (Ombudsman’s own analysis of these constraints).

	<ul style="list-style-type: none"> <li>• Need to work more closely with industry, consumer groups and board to ensure services remain effective and responsive to customer need</li> <li>• Stronger powers to investigate and work with industry to resolve systemic issues, involving some costs, but greater flexibility to manage budget on an ongoing basis with reduced administrative complexity</li> </ul>
<b>Ombudsman office</b>	Moderate impact, but solution to be developed that best maintains entitlements of affected employees
<b>Government and regulator</b>	<p>Over longer term:</p> <ul style="list-style-type: none"> <li>• reduction in costs associated with duplication of national process and governance / oversight of Ombudsman, including setting remuneration, reviewing budgets, appointing the Ombudsman and advisory council members</li> <li>• Greater access to information about systemic issues to inform policy decisions</li> </ul> <p>Implementation costs:</p> <ul style="list-style-type: none"> <li>• In the order of \$500 000 for the transfer of existing authority assets and liabilities for materials, leases etc.</li> <li>• This is an expected cost estimate based on previous transactions of a similar nature and valuation of assets</li> </ul>

Comparative assessment

	<b>Key advantages</b>	<b>Key disadvantages</b>	<b>Assessment</b>
Option 1 (Status quo)	High degree of oversight and certainty	Not flexible or responsive to changes in sector Duplicates national arrangements. Unduly complex cost recovery and budgeting	<b>Not preferred</b> Not responsive or adaptable enough to manage changes in sector
Option 2 (Statutory authority with greater flexibility and applied to embedded network operators)	Flexibility combined with safeguards to preserve existing jurisdiction Greater resourcing flexibility	Relatively high level of regulatory intervention compared with other jurisdictions May create confusion / complexity for customers	<b>Preferred</b> More efficient and lower cost than option 1, but more restrictive over long term compared with option 3
Option 3 (Company Limited by Guarantee)	Flexibility combined with high-level safeguards to preserve existing jurisdiction Significantly greater resourcing flexibility. Board structure provides greater incentive for cost reductions General stakeholder support	Impact on employees, though Government would pursue best solution to maintain entitlements for affected employees Initial implementation costs	<b>Not preferred.</b> Flexible and efficient approach to support change in sector going forward. Greater consistency with other states However, greater impact on employees than option 1 or 2 and high cost to implement

### Recommendation

Option 2 is preferred. Stakeholder feedback from a range of parties indicates there is a clear case to improve the flexibility of the Ombudsman to consider new subject matter and to manage budget issues. Option 2 is less disruptive than option 3, with lower implementation costs. It also maintains continuity for Ombudsman employees.

### Consistency with other policies and legislation: Energy and Water Ombudsman

#### Section 5 of the Competition Principles Agreement

None of the options presented should adversely impact on competition.

#### Fundamental legislative principles

The Scrutiny of Legislation Committee has previously examined potential inconsistencies in the Energy and Water Ombudsman Act with the requirement that legislation is to have sufficient regard to the rights and liberties of individuals. One consideration in assessing this is whether the legislation provides appropriate protection against self-incrimination.

The Scrutiny of Legislation Committee raised concerns that under s. 29 of the Energy and Water Ombudsman Act, the Ombudsman may compel an energy entity to provide information, even if the giving of the relevant material might tend to incriminate the relevant entity. The Committee considered this justifiable on the basis that existing energy entities at the time were corporations. These issues are likely to remain under option 2, though would lessen with the voluntary 'opt-in' arrangements.

#### Implementation

Implementation of option 2 requires legislative amendment, including transitional provisions particularly in relation to cost recovery. The Ombudsman will need to undertake a review of fee arrangements (excluding embedded network fees) to determine an appropriate fee structure to recover efficient costs from industry participants.

Overall, the success of arrangements will be evaluated based on cost to industry and customer satisfaction compared against existing baselines and other jurisdictions.

#### Stakeholder questions

##### Topic 8.2 EWOQ: general

Q8.2.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q8.2.2 Why?

Q8.2.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.8.3 Dispute resolution - Regulator

### Context

Under s. 88 of the Electricity Regulation, disputes between energy entities, including special approval holders, may be referred to the Queensland Competition Authority for resolution. These disputes are in relation to whether something has been done on 'fair and reasonable terms' or on a 'fair and reasonable basis'.

Under the legislation, the only matters which need be undertaken with regard to fairness and reasonableness are obligations on transmission and distribution entities to allow, as far as technically and economically practicable, a person to connect supply to a transmission grid or supply network, or take electricity from the grid or a supply network on fair and reasonable terms.<sup>302</sup>

Where a party raises a dispute with the Queensland Competition Authority, it may:

- give instructions about procedures the parties must follow to attempt to resolve the dispute before the Queensland Competition Authority takes steps to resolve it
- require a party to provide information necessary to enable the dispute to be resolved.

In resolving a dispute, the Queensland Competition Authority must give parties a reasonable opportunity to make representations. Decisions are reviewable by the Queensland Civil and Administrative Tribunal.

Section 117 of the Electricity Act also establishes a process for the Regulator to help resolve disputes between electricity entities. However, the Regulator may only assist to resolve disputes about matters not regulated by the Queensland Competition Authority or under the National Electricity Rules. In practice, this limits the Regulator's dispute resolution role to a very narrow range of actions; potentially only disputes relating to the technical conditions of a connection.<sup>303</sup> Given exclusion of disputes which may be heard under the National Electricity Rules, the type of disputes for the Regulator are likely to be around off-grid scenarios and disputes between entities not covered by other dispute resolution arrangements under the National Electricity Rules.

In addition to electricity entity disputes, s. 117 also provides for the Regulator to resolve disputes between electricity entities and public entities (e.g. road authorities)—this might include disputes over notification or consideration of conditions or requests of a public entity or electricity entity.<sup>304</sup>

Where the Regulator is unable to resolve a dispute, it may be referred to the Governor in Council for consideration. The Governor in Council may make a binding decision.<sup>305</sup>

The Regulator's dispute resolution powers under Chapter 5 of the Gas Supply Act are similar, but restricted to resolving disputes about gas infrastructure work or proposed gas infrastructure work between a distributor and a public entity or an LPG distributor and a public entity. This may include disputes in relation to gas infrastructure on a publicly controlled place which interferes with the use of the place by the public entity.<sup>306</sup> Disputes between distribution entities are excluded and there is no corresponding role for the Queensland Competition Authority to hear disputes between distribution entities in relation to questions of fairness and reasonableness.

---

<sup>302</sup> Electricity Act ss. 32, 35, 43 and 44

<sup>303</sup> See for example, Electricity Act ss. 27 and 32

<sup>304</sup> See for example, Electricity Act Part 4

<sup>305</sup> Electricity Act ss. 117(6)-(8)

<sup>306</sup> See for example, Gas Supply Act s. 95 (for notification requirements)

### Assessment of current issues

#### Appropriate: the legislation addresses a social, economic or environmental need or risk

The role of the Regulator as defined in the Electricity and Gas Acts in relation to dispute resolution is to provide guidance to disputing entities as to the course of action for resolution, before it intervenes in resolving the issue. The current role of the Regulator often results in a default liaison role in disputes, whether or not a formal dispute has been lodged. Electricity, gas, and public entities have the ability to negotiate between themselves using their own legal facilities, however, if these negotiations reach an impasse there is a role for either the Queensland Competition Authority (in relation to electricity entity disputes) or the Regulator to mediate. This provides a safety net to enable different market players to participate on an equal footing in the fluxing energy landscape, especially for smaller electricity entities entering the diversifying energy market.

Energy Queensland was the only stakeholder to comment on dispute resolution arrangements in response to the Issues Paper and supported continuation of a dispute resolution mechanism.<sup>307</sup> Informal discussions with the Department of Transport and Main Roads and the Regulator also indicated continued support.

#### Effective: the legislation achieves the desired outcome

Precedents for the Queensland Competition Authority's or the Regulator's intervention in disputes between a public entity and an energy entity are very rare. Anecdotal evidence indicates approximately three or four interventions in disputes over the past ten years by the Regulator. These disputes have varied in their nature. The Regulator has acted as a conciliator rather than undertaking a traditional dispute resolution role.

While the Gas Supply Act is more structured, limited guidance is provided in the Electricity Act and under the Electricity Regulation as to how disputes may be initiated and resolved. Further, the Electricity Act is silent on whether resolutions made by the Regulator are binding.

The lack of structure was raised as an issue by both Energy Queensland and the Department of Transport and Main Roads.

For the Electricity Act, Energy Queensland proposed that a dispute resolution mechanism be established and aligned with Chapter 8 of the National Electricity Rules (NER).<sup>308</sup> Chapter 8 of the NER sets out a comprehensive framework, involving:

- requirements on businesses to implement dispute management systems and processes and attempt to resolve disputes between themselves. A framework of timeframes and notice requirements is included to support this.
- an escalation process, whereby matters can be referred to an independent dispute resolution advisor appointed by the AER and potentially a dispute resolution panel for investigation and resolution. This is again supported by a framework of timeframes and notice requirements, as well as rules of conduct (e.g. observance of the rules of natural justice) and powers for a dispute resolution to make a final and binding decision, including in relation to the allocation of costs.

---

<sup>307</sup> Energy Queensland submission, pp. 13, 27.

<sup>308</sup> Energy Queensland submission, p 10.

The Department of Transport and Main Roads similarly indicated a preference for formal dispute to be subject to a requirement on parties to first attempt to reach agreement in accordance with processes agreed under Memorandums of Understanding. Only where these attempts fail should a dispute progress to a formal body.

The Department of Transport and Main Roads also raised concerns with the Regulator being given responsibility for resolving disputes, given the role of dispute resolution is very different from the role of compliance and enforcement. In particular, it considered that escalation to a Regulator should be reserved for serious cases only, or breaches of the legislation, rather than the types of operational disputes that would arise under these sections. These arrangements could potentially discourage parties from using the framework. The importance of separating dispute resolution from Regulator functions is also a feature of the NER Chapter 8 framework, which excludes the AER from actively participating in dispute resolution.

Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

Currently, there is confusion between the role of the Queensland Competition Authority and the role of the Regulator in resolving disputes between electricity entities, with the Regulator only responsible for a very limited types of dispute. Further, there is no provision for the costs of dispute resolution by the Regulator to be recovered. The small amount of dispute resolutions undertaken by the Regulator have been subsumed into the normal hours of a full time employee, and on the rare occasion of a complex dispute, an external consultant has been engaged. Currently the Regulator has no power to recover costs of an external consultant.

In the event the Regulator instructs parties to engage in a formal dispute resolution process, costs to parties involved would be incurred. The estimated costs to parties involved in dispute can range anywhere between \$50 000 and \$2 million for the instruction of Queens Council and lawyers from external dispute resolution services. Three options for are available for formal dispute resolution processes, in order of cost and complexity: mediation, expert determination, arbitration.<sup>309</sup>

The Queensland Civil and Administrative Tribunal could be used for civil dispute resolution, which would attract an application lodgement fee of approximately \$338.20,<sup>310</sup> plus any additional costs for legal representation and resourcing.

#### Objective:

The objective is for energy and public entities to be able to access dispute resolution which:

- is clear, simple, quick and inexpensive
- preserves or enhances the relationship between the parties to the dispute
- takes advantage of the skills and knowledge that are required for the relevant procedure
- observes the rules of natural justice
- places emphasis on conflict avoidance

---

<sup>309</sup> Information provided by Joshua Henderson, Special Council, Norton Rose Fulbright, 14 January 2019

<sup>310</sup> QCAT, July 2019, Fees and Allowances, viewed 17 July 2019, <https://www.qcat.qld.gov.au/resources/fees-and-allowances>

- encourages resolution of disputes without formal legal representation or reliance on legal procedures.

### Options

Key options which have been considered are:

Option	Description
Status quo (option 1)	Under this option, existing arrangements would be retained, supplemented by guidance material published by the Regulator
Adjust (option 2)	Under this option, responsibility for dispute resolution would be given to the Queensland Competition Authority and supplemented by high level principles
Remove (option 3)	Under this option, industry dispute resolution functions would be removed from the legislation

#### Option 1 – Status quo

The Regulator indicated that rather than having a legislated process for clarity and consistency, existing arrangements could be retained and supplemented by an internal set of guidelines. These guidelines would set out the dispute resolution process and be published on the Regulator’s website—this is option 1. The Queensland Competition Authority would retain its role in resolving disputes between electricity entities in relation to fairness and reasonable of terms or whether something has been done on a fair and reasonable basis.

Option 1 addresses process concerns of both Energy Queensland and the Department of Transport and Main Roads. This option could specify that parties are expected to have attempted to resolve a matter before seeking formal dispute resolution from the Regulator, and set out timeframes and processes for raising a dispute. It may involve the appointment of an independent advisor or mediator similar to Chapter 8 of the NER, and clarify the difference between dispute resolution and compliance and enforcement action.

Cost orders could not be made under the framework as there is no head of power.

Impact group	Estimated impact
Energy entities	Addresses concerns in relation to process Would increase accessibility of dispute resolution framework for smaller entities in particular (e.g. generators connecting to off-grid systems)
Public entities	Addresses concerns in relation to process, and can potentially address concerns in relation to raising disputes with Regulator Would increase accessibility of dispute resolution framework
Regulator	Greater information / accessibility could result in a higher number of disputes brought before the Regulator The use of independent advisors or mediators could create additional cost which may be difficult to recover from parties to the dispute

Queensland Competition Authority	Maintains existing arrangements
----------------------------------	---------------------------------

#### Option 2 – Transfer of Function to Queensland Competition Authority, with guidance

Option 2 involves the transfer of dispute resolution functions under the Acts to the Queensland Competition Authority. The Queensland Competition Authority already has a role in resolving disputes between electricity entities in relation to what is fair and reasonable. Extending this role to pick up the remaining limited types of disputes that may arise under the legislation, and to encompass disputes between energy entities and public authorities would align with the essential role of the Queensland Competition Authority in promoting competitive outcomes in the provision of essential services (including energy and transport) where competition forces may be limited due to monopoly characteristics. This would also take advantage of economies of scale. While access disputes under the Queensland Competition Authority Act involve different subject matter to the types of disputes that would arise under the Electricity Act and Gas Supply Act, the types of considerations are similar to disputes that would arise under the Electricity Act and Gas Supply Act. That is, the disputes involve difficulty accessing or dealing with physical infrastructure.

The advantage of the approach is it reduces party concerns or tensions about raising operational disputes with the Regulator. The Queensland Competition Authority also has established mechanisms for dispute resolution and is able to recover the costs of providing services.

Impact group	Estimated impact
Energy entities	Addresses concerns in relation to process  Would increase accessibility of dispute resolution framework, but increase cost of accessing dispute resolution for disputes with public entities which may disproportionately affect smaller parties wishing to raise disputes
Public entities	Addresses concerns in relation to process and dispute resolution entity  Would increase accessibility of dispute resolution framework, but also involve cost recovery
Regulator	Reduced costs
Queensland Competition Authority	The Queensland Competition Authority would incur some costs to develop procedures to resolve disputes (the costs of dispute resolution would be met by the parties)

#### Option 3 – Repeal dispute resolution arrangements

Option 3 involves repeal of existing legislated dispute resolution mechanisms. As noted earlier, disputes are very rare and few stakeholders made any comment in relation to the provisions, though those that did supported its continuation. Under option 3, parties to a dispute would need to employ private dispute resolution services as needed to resolve disputes.

While the option is low cost, it does not adequately recognise the power disparities between likely parties to a dispute, and has no formal means to break an impasse which could affect the provision of electricity and gas supply, or road safety. It could also disadvantage smaller parties to a dispute, for example generators seeking access to an isolated distribution network operated by a monopoly distributor.

Impact group	Estimated impact
Energy entities	Minimal given current low use of mechanism, though removes avenue to break impasses on matters of public interest. Potentially disadvantages smaller entities.
Public entities	Minimal given current low use of mechanism, though removes avenue to break impasses on matters of public interest, including road safety.
Regulator	Reduced costs
Queensland Competition Authority	Reduced costs

#### Comparative assessment

	Key advantages	Key disadvantages	Assessment
<b>Option 1 (Status quo with published guidelines)</b>	Minimal cost to implement. Addresses process concerns Likely to improve effectiveness of arrangements, particularly for smaller parties who will not bear cost reflective fees	Does not address concerns in relation to inconsistency between dispute resolution and core regulator functions Not cost reflective	<b>Not preferred</b> Lower cost than option 2, but less efficient and accessible framework due to complexity between roles of Queensland Competition Authority and regulator
<b>Option 2 (Give Queensland Competition Authority jurisdiction, with high level principles)</b>	Addresses stakeholder concerns and aligns with Queensland Competition Authority skill set Likely to improve effectiveness of arrangements Efficiency gains from cost reflective fees	Some implementation costs and introduction of cost reflective fees, which may be an impediment to smaller parties	<b>Preferred</b> Highest cost option for industry (due to move from free dispute resolution to cost reflective fees) The approach is most likely to achieve overall objectives of dispute resolution.
<b>Option 3 (Remove)</b>	Lower costs for regulator	Less likely to be able to resolve impasses which may affect the provision of public or essential services	<b>Not preferred</b> Lowest cost option, but could result in detriment in provision of public and essential services

### Recommendation

Option 2 is the preferred option. It provides the greatest clarity for parties to disputes and is most likely to achieve the objectives of dispute resolution. While it is the highest cost option for complainants (due to a move from free dispute resolution to cost reflective fees), this is appropriate for industry disputes and does not prevent parties from seeking alternative dispute resolution services.

### Consistency with other policies and legislation

#### Section 5 of the Competition Principles Agreement

The preferred option supports competition, particularly for smaller entities wishing to connect services in off-grid areas. It does this by providing accessible dispute resolution between parties where power imbalances exist.

### Fundamental legislative principles

No inconsistencies with fundamental legislative principles have been identified. Specific principles that would guide dispute resolution would be applied, including requirements to adhere to principles of natural justice.

### Implementation

In preparation for implementation of the preferred option, current Queensland Competition Authority guidelines to support dispute resolution would be reviewed and adjusted if necessary for energy disputes. Any existing disputes being considered by the Regulator at the time of transition would remain with the Regulator until finalised.

### Stakeholder questions

#### Topic 8.3 Dispute resolution for public and energy entities

Q8.3.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q8.3.2 Why?

Q8.3.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.9 Customer protections

### Context

The majority of customer protections in the energy sector are provided under the (NERL(Q)) and the Australian Consumer Law. Broadly, NERL(Q) protections cover the sale and supply of energy as a service. Australian Consumer Law protections cover both the sale of energy as a service, as well as the sale of consumer goods which produce energy e.g. solar systems, storage.

Given the primary role of the NERL(Q) and Australian Consumer Law in establishing customer protections, only limited measures are contained in State law. These are:

- Price control protections to guard against unfair pricing practices. These measures are discussed at Section 2.7: Price control.
- The Energy and Water Ombudsman to investigate and resolve customer disputes with energy distributors and retailers. This measure is discussed at Section 2.8: Dispute Resolution.
- A framework for customer standards, including guaranteed service levels setting out what customers may expect of distributors in terms of connection timeframes, reliability and windows for appointments.
- Requirements on retailers to enter into community service agreements with the Minister to administer concessions.

This attachment deals with the framework for customer standards including guaranteed service levels, and concessions.

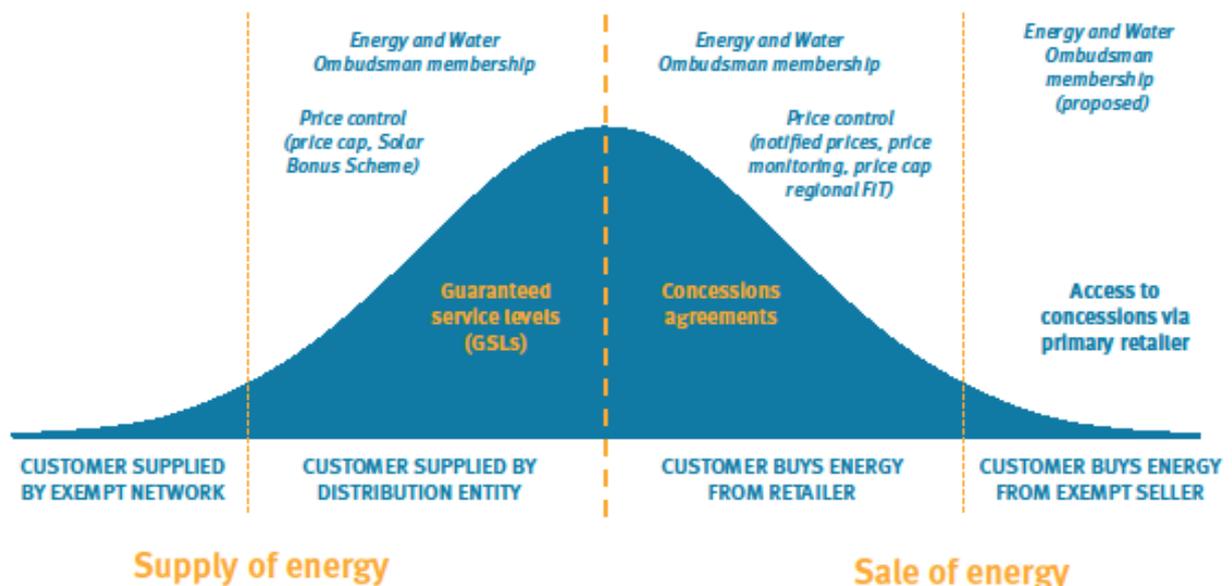


Figure 33: State customer protections, by service provider type

### Guaranteed service levels (GSLs)

GSLs are customer service levels set out within the Distribution Network Codes in line with heads of power under the Electricity Act and Gas Supply Act.

In particular, the Electricity Act provides that the Electricity Distribution Network Code may deal with the service levels outlined in the Code to be provided to customers, and monetary payments to affected customers for failure to provide the service levels stated in the Code. The legislation gives scope for GSLs to be made to apply to energy entities (i.e. generators, transmission entities, distribution entities) and special approval holders. In practice however the GSLs have been made to apply to distribution entities only. The current Electricity Distribution Network Code establishes rules for wrongful disconnections, connection and reconnection timeframes, appointments, planned interruptions, and the duration and frequency of interruptions to supply.

The Gas Supply Act provides that the gas Distribution Network Code may set out the rights and obligations of distributors and customers about customer connection services. No other entities are subject to these rules. The current gas Distribution Network Code establishes rules for disconnections and reconnections.

#### Concessions agreements

The Electricity Act and Gas Supply Act each restrict retailers from providing customer retail services unless they have entered into an agreement with the State for at least five years to provide community services. In practice, these agreements are about the administration of Government-funded energy concessions and rebates. Retailers must administer concessions and rebates for:

- their own residential customers
- the residential customers of other entities who ‘on-sell’ the retailer’s services, known as ‘exempt sellers’.

Complementary obligations are placed on exempt sellers under the AER (Retail) Exempt Selling Guidelines, established under the NERL(Q). Those effectively require exempt sellers to act as intermediaries for eligible customers to help them access concession payments e.g. apply to retailers for the relevant concession on the customer’s behalf.<sup>311</sup>

In addition to these arrangements, the Minister separately gazettes arrangements for drought relief. These are administered by Ergon Energy Queensland for its own customers. Eligible customers of other retailers apply to the Government for payment.

#### Assessment of current issues

##### Appropriate: the legislation addresses a social, economic or environmental need or risk

Few stakeholders commented specifically on GSLs or concession agreements. GSLs were supported in QCOSS’ submission, and concessions agreements were supported in Energy Queensland’s submission.<sup>312</sup>

More generally though, stakeholders recommended the State avoid putting customer protections in legislation outside of the NERL(Q) arrangements. For example, the Shopping Centre Council of Australia advised:

---

<sup>311</sup> AER, April 2018, *(Retail) Exempt Seller Guidelines version 5*, See condition 13 – Concessions and rebates, p. 41, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

<sup>312</sup> Queensland Council of Social Service submission, p. 5; Energy Queensland submission, p. 26.

*We don't believe that there should be a separate suite of energy-specific customer protections developed under state legislation. The AER's framework already provides a comprehensive set of core customer protections, which have evolved over time.*<sup>313</sup>

This aligns with other stakeholder feedback encouraging better integration between state and applied national laws.

#### Guaranteed service levels

In a recent review of the GSL arrangements that apply to electricity distributors, the Queensland Competition Authority noted:

*Stakeholders generally agreed that the purpose of the GSL scheme should be to provide financial recognition of poor reliability and customer service to small customers.*<sup>314</sup>

Submissions to the Queensland Competition Authority review provided significant commentary on opportunities to improve the content and application of the GSLs. However, there was no general call – either from industry or consumer interest groups – for the arrangements to be removed, indicating an ongoing need and support for the arrangements.

#### Concessions

The rules relating to administration of concessions support an important Government social policy. While few stakeholders commented on the legislation to enable concessions support, there is broad support in the community for concessions to be made available to those in need. At present, around 30 per cent of residential electricity customers receive the electricity rebate, and 20 per cent of residential gas customers receive the gas rebate.<sup>315</sup>

#### Additional measures

QCOSS' submission recommended all energy businesses operating in Queensland should be required to have a Reconciliation Action Plan (RAP) in place and approved by Reconciliation Australia.<sup>316</sup> A RAP is a powerful tool for advancing reconciliation.

*A RAP is a strategic document that supports an organisation's business plan. It includes practical actions that will drive an organisation's contribution to reconciliation both internally and in the communities in which it operates.*<sup>317</sup>

Within Australia, a number of energy entities have adopted RAPs, including the Northern Territory's Power and Water Corporation, and New South Wales' transmission entity, Ausgrid. The Queensland Government also has a RAP and encourages all businesses in Queensland to consider similar action.

However QCOSS' recommendation to mandate development of a RAP by energy entities does not appear appropriate.<sup>318</sup> As noted by Reconciliation Australia:

---

<sup>313</sup> Shopping Centre Council of Australia submission, p. 2.

<sup>314</sup> Queensland Competition Authority, March 2019, *Final decision: Review of Guaranteed Service Levels to apply to Energex and Ergon Energy from July 2020*, p. 18, viewed on 17 July 2019, <http://www.qca.org.au/getattachment/2ed59a91-c030-43ee-8f63-0645cedb8c14/QCA-GSL-Review-final-decision.aspx>

<sup>315</sup> DNRME Advice, 16 April 2019.

<sup>316</sup> Queensland Council of Social Service submission, p. 5.

<sup>317</sup> Reconciliation Australia, 2019, *What is a RAP?*, viewed on 17 July 2019, <https://www.reconciliation.org.au/reconciliation-action-plans/>

<sup>318</sup> Queensland Council of Social Service submission, p. 5

*At its heart, reconciliation is about strengthening relationships between Aboriginal and Torres Strait Islander peoples and non-Indigenous peoples, for the benefit of all Australians.*<sup>319</sup>

Imposing a mandated requirement on energy businesses would appear incongruent with these aims and may undermine the integrity of these documents. Further, if mandating action is supported, it is more appropriate this come from a broader perspective than just energy.

Effective: the legislation achieves the desired outcome

Guaranteed service levels

The Queensland Competition Authority recently completed a review of the particular GSLs that apply under the Electricity Distribution Network Code and has made a number of minor revisions in line with stakeholder feedback. There is limited value in duplicating that work. However, it is noted as part of the review, the Queensland Competition Authority identified two matters in relation to scope of the GSLs which would appear to require legislative change if accepted. These were:

- the application of GSLs to retailers, and
- the application of GSLs to embedded networks, including on-supply networks.

The AEMC has further examined the application of GSLs to embedded networks, as well as stand-alone power systems.

*Application of GSLs to retailers*

The head of power for the Electricity Distribution Network Code does currently allow for the behaviour of retailers to be regulated. However, the explanatory notes tabled when Code arrangements were established make the expectation very clear the regulation of retail activities would generally be a matter for the NERL(Q), rather than the Code. Any Code provision relating to service standards would be more of an incidental nature, for example to support distribution entities to meet service standards.

The issue raised in the Queensland Competition Authority review concerned the new role of retailers under Power of Choice reforms which commenced on 1 December 2017. Under the reforms, metering related roles and responsibilities were transferred from distributors to retailers. As such, there is now a potential that retailers may be responsible for issues currently dealt with in the Code such as wrongful and/or delayed disconnections and failure to comply with notice requirements. As GSLs apply to distribution entities for these matters, the Queensland Competition Authority examined whether rules should also apply to retail entities for equivalent matters.

The Queensland Competition Authority noted several problems with metering have arisen since the Power of Choice reforms were introduced which have led to a spike in complaints to both the Energy and Water Ombudsman and the Department of Natural Resources, Mines and Energy (DNRME). However, it considered the introduction of GSLs for retailers to address these issues was unnecessary. Its decision was influenced by three factors.

- *Competition as an incentive to acknowledge inconvenience* – the Queensland Competition Authority noted, unlike distribution, competition exists in the retail sector. A customer dissatisfied with the performance of a distribution entity has no choice but to continue their service relationship with it (unless the customer decides to go ‘off-grid’ entirely). These customers should continue to receive financial recognition of poor performance. However, a

---

<sup>319</sup> Reconciliation Australia, 2019, *What is reconciliation?*, viewed on 17 July 2019, <https://www.reconciliation.org.au/what-is-reconciliation/>

customer dissatisfied with the performance of a retailer—at least in south-east Queensland—is able to move to a different retailer. The Queensland Competition Authority noted retailers could and often do provide voluntary payments—either as recognition or compensation—to customers who have experienced poor service, and considered this the least interventionist approach. It is unclear however whether this option would be available to Energy Queensland, which is subject to strict restrictions in relation to its billing / credit arrangements.

- *National, principles-based retail regulation* – the Queensland Competition Authority agreed with advocacy of the ACCC for principles based, nationally aligned regulation of retailers as opposed to state retailer GSLs. It noted new national rules were made under the NERL(Q) setting out retailer timeframes for metering installations in December 2018. These new rules took effect on 1 February 2019 and are expected to reduce the amount of delayed connections due to retailer error/inaction.
- *Separate processes* - the Queensland Competition Authority noted legislative change may be needed to facilitate retailer GSLs, which it is unable to progress.

In its final decision of March 2019, the Queensland Competition Authority decided the GSL scheme ‘should not be extended to retailers’. While it noted this would be a policy decision for the Government and may be appropriate for consideration in the legislation review, its review nevertheless assessed the issue on its substantive policy merits. Given the relatively recent completion of the Queensland Competition Authority’s review, it would be inappropriate for the matter to be re-prosecuted in this document.

#### *Application of GSLs to embedded networks (including on-supply networks) and stand-alone power systems*

At present, the legislation enables GSLs to be made to apply to ‘special approval’ holders. These are generally stand-alone networks operated by private parties. However, GSLs cannot be made for ‘on-supply’ networks, which are exempt from licensing requirements.

The AEMC has recently undertaken a comprehensive public review of arrangements in ‘on-supply’ networks and recommended customers within those networks be able to access similar protections to customers who have a direct relationship with a distributor or retailer. The Queensland Competition Authority review further investigated this issue as part of its review and agreed with:

*the principle articulated by the Australian Energy Market Commission that [on-supply] network customers should be able to expect similar access to customer protections as a standard supply customer.<sup>320</sup>*

However, the Queensland Competition Authority declined to specifically recommend any changes to GSLs on the basis it did not have sufficient time to determine a number of matters, including the value of GSL payments, the funding of GSL payments and compliance and enforcement responsibilities. Compliance and enforcement of state arrangements, including those in existing Distribution Network codes, is addressed under Section 2.11: Offences and Enforcement. Other matters would be more appropriately addressed by the code administrator.

<sup>320</sup> Queensland Competition Authority, March 2019, *Final Decision: Review of Guaranteed Service Levels to apply to Energex and Ergon Energy from July 2020*, p. 63, viewed 17 July 2019, <http://www.qca.org.au/getattachment/2ed59a91-c030-43ee-8f63-0645cedb8c14/QCA-GSL-Review-final-decision.aspx>

The Queensland Competition Authority also noted in the absence of reliability standards on these networks, it would be difficult to set a threshold. This is addressed under Section 2.6: Technical Requirements in this paper. Section 2.6 recommends a new standards and codes framework be established, which is able to deal with technical matters including reliability. The framework would apply to particular participants in the energy sector, including generators, transmission and distribution entities, and exempt networks which, under changes proposed to the licensing framework (Section 2.4: Licensing), would include on-supply networks. While the framework would enable industry to develop and register codes on a voluntary basis, in the absence of a code and where a clear net benefit has been established, the Queensland Competition Authority would be able to make a standard.

However, to enable the Queensland Competition Authority to undertake this detailed work, an amendment would need to be made to the framework settings for Electricity Distribution Network Codes, to provide that service standards may be made to apply to any exempt network, including on-supply networks, where a clear net benefit is established.

#### Concessions

At present, concessions arrangements in state legislation apply directly to retailers who administer arrangements on behalf of their own customers, as well as the customers of ‘on-suppliers’. However, there is no mechanism to support administration of concessions to customers who purchase energy from non-traditional suppliers on off-grid private networks (i.e. where there is no ‘head’ retailer responsible for sales).

While few customers are currently affected by this constraint, as the number of stand-alone power systems increases, there is the potential for more customers to be affected. It is clearly a matter of Government concessions policy as to whether these customers should be eligible for concessions payments. That would be affected by matters falling outside the scope of this review, including whether energy costs are commensurate with or significantly lower than more traditional supply arrangements, and the anticipated impact on the budget. The AEMC is separately undertaking a review of stand-alone power systems, which includes consideration of access to concessions. The outcomes of that review will be available in late 2019 and will be taken into account in the decision RIS for this project.

However, there appears no strong reason why limitations in the legislation which place obligations on retailers alone should be retained. This would not require a change in the Government’s concessions policy and would not immediately force exempt sellers to administer concessions for customers in private off-grid networks, but would remove a legislative barrier in the event Government decided to extend concessions to off-grid private networks.

#### Customer definition

Energy Queensland’s submission noted as a result of changes to the definition of ‘customer’ in the Electricity Act resulting from implementation of the NERL(Q) in 2015, there is a need to reconsider the customer-network relationship. This concern relates to the definition of ‘customer’. Under s. 23 of the Electricity Act, a customer is a person who is a customer under the NERL(Q), s. 5(1). This in turn defines a customer *as a person to whom energy is sold for premises by a retailer, or who proposes to purchase energy for premises from a retailer.*

While the approach aligns state definitions with national arrangements, it is problematic in a number of ways. In particular, there are issues with application of the law to customers who receive supply from distribution businesses, but do not otherwise purchase electricity from a retailer (either

directly, or via an exempt seller). Examples include supply to parties where costs are met by a related third party. Prior to introduction of the NERL(Q) in mid-2015, a customer was defined in terms of supply, rather than sale, of electricity, i.e. a customer is a person...who receives, or wants to receive, a supply of electricity for premises from an electricity entity or special approval holder.

The concept of a customer underpins the regulatory framework in state energy law, which deals with matters beyond the traditional retailer-customer regulated under NERL(Q). Retention of the existing NERL(Q) linked definition may inadvertently restrict application of the law.

**Feedback wanted: electric vehicles**

The definition of customer, particularly the link to premises, could exclude the regulation of supply to vehicles from the state energy laws. This could exclude the development of rules relating to technical standards of supply, emergency powers, price control and powers of entry to make equipment safe.

*Stakeholder feedback is sought on the advantages, disadvantages and risks of including electric vehicle customers within the definition of 'customer'.*

**Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost**

No concerns were raised by stakeholders in relation to the efficiency of the GSLs or concession framework. However, it is noted there are potential efficiency improvements for each.

**Guaranteed service levels**

The scope of GSLs could be adjusted to specifically exclude energy entities which do not have a customer relationship. For example, while GSLs could theoretically be made to apply to generators, in practice this is nonsensical as those entities do not have a direct customer relationship, or at least not a direct customer relationship in their role as a generator. To the extent some generators also supply energy directly to customers, this activity would be captured under network supply and any exemptions for that, rather than generation.

**Concessions**

As previously noted, retailers are required to administer concessions on behalf of customers of entities who on-sell their services. In practice, this requires customers to lodge an application with their on-seller, who then lodges the application with the retailer, who then assesses the application and pays concessions on behalf of the State Government. The retailer receives an administrative fee for doing this, but the on-seller does not. For larger on-sellers, some of whom have a customer base reportedly larger than second tier retailers, it appears efficiency gains in terms of time and cost could be achieved through agreement with the State Government to administer concessions directly. This would also limit the amount of personal information about individual customers (e.g. whether they are the holder of a Health Care Card) from being shared.

**Objectives**

The primary objectives of GSLs and concession arrangements in state law is to, for:

- GSLs – provide financial recognition of poor reliability and customer service to small customers.
- Concessions – support the administration of government concessions policy.

**Options**

Option	Description
--------	-------------

<b>Status quo (option 1)</b>	Existing arrangements continue Some consequential amendments required
<b>Partial adjustment (option 2)</b>	Minister may require exempt sellers in stand-alone power systems to enter into concessions agreement  GSLs may deal with service levels in large (100+ customers) exempt networks, subject to open process including cost assessment  Definition of 'customer' adjusted to focus on supply
<b>Full adjustment (option 3)</b>	Minister may require any exempt seller to enter into concessions agreement  GSLs may deal with service levels on any exempt network, subject to open process including cost assessment  Definition of 'customer' adjusted to focus on supply as per option 2

#### Option 1 – Status quo

Under option 1, existing arrangements would effectively continue. While some consequential amendments may be required as a result of proposal amendments to the licensing amendments at T4: Licensing, the law would otherwise be unchanged. Consequential amendments relate to the proposal to replace existing special approvals and on-supply exemptions with an exemptions framework based on AER Network Exemption classifications.

Under existing arrangements, service providers are not prevented from entering into concessions agreements with the Government, it is just that they are not compelled to do so.

Option 1 minimises uncertainty and potential costs on new service providers (exempt sellers, exempt networks). However it does not address risks that a growing number of customers with newer service models do not receive equivalent protections and support.

Impact group	Estimated impact
Energy industry participants	Minimal impact – status quo
Regulator	Minimal impact – status quo
Queensland Competition Authority	Minimal impact – status quo
Users and other public	Minimal impact – status quo

#### Option 2 – Partial adjustment

Under option 2, changes would be made to the GSL and concessions framework, and the definition of customer would be adjusted.

### Guaranteed service levels

The GSL framework would be expanded under the option to enable the Queensland Competition Authority to make GSLs for large exempt networks, for example on-suppliers with more than 100 customers. The Queensland Competition Authority would not be able to make a GSL unless it received and assessed a proposal to do so in line with existing processes for code amendment and a clear net benefit was established.

Public reviews undertaken by both the Queensland Competition Authority and the AEMC have found, at least in principle, GSLs should be able to be applied to exempt networks, though considerable work would be needed on the form and application of arrangements. To limit the potential cost impost on smaller networks, the proposed expansion under this option would only apply to larger on-supply networks with over 100 customers (net, rather than in a location). The advantage of the arrangements is it would enable protections to be extended when needed, and recognises the changing service models under which customers receive supply. The disadvantage of the arrangements is it may provide uncertainty to large exempt networks, though the process to make any potential GSLs would need to carefully consider cost.

### Concessions

Under the option, the Minister may require exempt sellers in stand-alone power systems to enter into concessions agreement. The option would not require either the Minister or the exempt seller to enter into agreement, but rather provide that the Minister may require an exempt seller to enter into an agreement. This would only occur if necessitated as a result of any changes to Government concession policy. The AEMC is currently considering proposed concessions arrangements as part of its stand-alone power systems review. The outcomes of the AEMC's work, including any assessment of costs and benefits will be considered as part of the Decision RIS stage of this review.

The key benefit is to address a gap in existing regulation to provide for new service models, so that if concessions policy changes, regulatory support exists. The key disadvantage is if the power were exercised, costs may be incurred by an exempt seller. However, it is noted the legislation provides that any concessions agreement must provide for the payment of administrative costs, making arrangements effectively cost-neutral for administering parties.

### Customer definition

The option would amend the definition of 'customer' in the Electricity Act to focus on the supply of electricity by a third party, rather than the retail sales relationship which is more limiting.

This would ensure customer protections, and obligations placed on network entities in relation to end users applies as intended.

Overall, option 2 is likely to improve accessibility to concessions and service standards where cost effective. However, it creates uncertainty for large new service providers who would potentially be subject to new requirements, though the impact on these entities would need to be thoroughly assessed prior to any agreement being entered into, or standard made.

Impact group	Estimated impact
Energy industry participants	<p>For GSLs:</p> <ul style="list-style-type: none"> <li>• Uncertainty for large exempt networks, though service levels could not be made unless clear net benefit</li> <li>• Any cost impacts on exempt networks (and pass throughs to customers) would need to be carefully considered</li> </ul> <p>For concessions:</p> <ul style="list-style-type: none"> <li>• Exempt sellers responsible for stand-alone power systems may need to enter agreements to administer concessions.</li> <li>• While this may create administrative costs, there would be provision to recover these under the concessions agreement.</li> </ul> <p>For customer definition, greater certainty around distributor-customer relationship</p>
Regulator	May incur expenses from enforcing network code obligations if responsibility conferred on regulator, under option 3 a) in T11: Offences and enforcement
Queensland Competition Authority	May incur expenses from development and enforcement of service levels if responsibility for code enforcement remains with Queensland Competition Authority under recommendations contained under option 1, 2 or 3 b) in T11: Offences and enforcement
Users and other public	<p>Potentially greater protection for customers in large exempt networks, though it is likely the costs of any service levels made would be passed on to customers</p> <p>For customer definition, greater protection for users not in direct / indirect retail relationship</p>

### Option 3 – Full adjustment

Under option 3, changes would be made to GSL and concessions framework, and the definition of customer would be adjusted to focus on supply, and extended to apply to electric vehicles.

#### Guaranteed service levels

The GSL framework would be expanded to enable the Queensland Competition Authority to make GSLs for any sized exempt networks. Unlike option 2, there would be no restriction on the number of customers supplied by the network operator. However as with option 2, the Queensland Competition Authority would not be able to make a GSL unless it received and assessed a proposal to do so in line with existing processes for code amendment and a clear net benefit was established.

The advantage of the arrangements is it allows maximum flexibility to deal with issues arising under different service models going forward, including stand-alone power systems where only one or two customers may be supplied by a network, and aligns with stakeholder feedback to the AEMC's stand-

alone power systems work which has indicated customers on these systems should receive equivalent levels of service to customers on grid connected systems.

The disadvantage of the arrangements is it may provide uncertainty to a broad range of exempt networks, though the process to make any potential GSLs would need to carefully consider cost.

#### Concessions

Under the option, the Minister may require any exempt seller to enter into a concessions agreement. The option would not require either the Minister or the exempt seller to enter into agreement, but rather provide that the Minister may require an exempt seller to enter into an agreement. As exempt sellers with customers entitled to receive rebates and concessions are already obliged to help to process applications, the obligation is not expected to create any additional burden. The key difference is it would provide an avenue for exempt sellers to recover administrative costs, and provide more enforcement options in the event an exempt seller failed to administer rebates and concessions. It is understood a number of exempt sellers have already voluntarily entered into agreements with the government to administer concessions.

#### Customer definition

As per option 2, option 3 would amend the definition of ‘customer’ in the Electricity Act to focus on the supply of electricity by a third party, rather than the retail sales relationship which is more limiting and less reflective of the role of state energy legislation.

Overall, option 3 is likely to improve accessibility to concessions and service standards where cost effective. However, it creates uncertainty for new service providers who would potentially be subject to new requirements, though the impact on these entities would need to be thoroughly assessed prior to any agreement being entered into, or standard made.

Impact group	Estimated impact
<p><b>Energy industry participants</b></p>	<p>For GSLs, the option itself may not have impacts on exempt sellers but rather allows for an assessment to be made which may have flow on impacts (i.e. the proposal will allow the Queensland Competition Authority in the future to take into account costs to exempt sellers and benefits to the community in the future. Noting:</p> <ul style="list-style-type: none"> <li>• This may create uncertainty for exempt networks, though service levels could not be made unless clear net benefit and transparent, public process undertaken</li> <li>• Any cost impacts on exempt networks (and pass through to customers) would be a critical consideration in this assessment</li> </ul> <p>Concessions:</p> <ul style="list-style-type: none"> <li>• Exempt sellers responsible may need to enter agreements to administer concessions</li> <li>• This is not expected to increase administrative costs to any particular extent (as the majority of sellers are already required to act as an intermediary), but does provide an avenue for these sellers to recover their costs associated with administration</li> <li>• Similar impact to option 2 for off-grid exempt sellers</li> </ul>

	For customer definition, greater certainty around distributor-customer relationship, and treatment of electric vehicles
<b>Regulator</b>	May incur expenses from enforcing network code obligations if responsibility conferred on regulator, under option 3 a) in T11: Offences and enforcement
<b>Queensland Competition Authority</b>	May incur expenses from development and enforcement of service levels if responsibility for code enforcement remains with Queensland Competition Authority under recommendations contained under option 1, 2 or 3 b) in T11: Offences and enforcement
<b>Users and other public</b>	Potentially greater protection for customers in large networks, though it is likely the costs of any service levels made would be passed on to customers  For customer definition, greater protection for users not in direct / indirect retail relationship

### Comparative assessment

	<b>Key advantages</b>	<b>Key disadvantages</b>	<b>Assessment</b>
<b>Status quo (option 1)</b>	Minimises uncertainty and potential costs on new service providers (exempt sellers, exempt networks) Low cost to industry	Risk that growing number of customers with newer service models do not receive equivalent protections and support	<b>Not preferred</b> option 1 is not sufficiently flexible to provide for different service models, and risks disadvantaging a large number of customers on non-traditional supply
<b>Partial adjustment (option 2)</b>	Improves concessions accessibility for all eligible customers Improves accessibility to service standards where cost effective	Uncertainty for large new service providers, though the impacts of any new obligations would need to be thoroughly assessed prior to any agreement being entered into, or standard made	<b>Not preferred</b> Not preferred on similar grounds to option 1 While it builds proportionality into the framework, this is unnecessary as proportionality and cost would be a key factor in determining any expansion of arrangements under option 3
<b>Full adjustment (option 3)</b>	Improves concessions accessibility for all eligible customers Provides more efficient option to administer concessions for exempt sellers with	Uncertainty for new service providers (large and small), though the impact of any new obligations would need to be thoroughly assessed prior to any	<b>Preferred</b> It provides sufficient flexibility to deal with different service models, and presents a more simple approach than option

	large numbers of customers Improves accessibility to service standards where cost effective	agreement being entered into, or standard made	2 to manage issues of proportionality
--	--	--	---------------------------------------

### Recommendation

Option 3: Full adjustment is preferred. This provides maximum flexibility to manage changes in service delivery models into the future, with built in safeguards to ensure no agreement is entered into, or code made without an assessment of benefits and cost. The amendment itself does not impact on exempt sellers but rather allows for an assessment to be made which may have flow on impacts (i.e. the proposal will allow the Queensland Competition Authority in the future to take into account costs to exempt sellers and benefits to the community in the future).

### Consistency with other policies and legislation

#### Section 5 of the Competition Principles Agreement

The preferred option is not expected to impact on competitiveness in the energy sector. For example, while a head of power is proposed for standards to be made in relation to exempt networks, the Queensland Competition Authority would be prevented from making a standard unless a clear net benefit was established, considering the long term interests of customers and balancing social, economic and environmental outcomes. The impact on competition would be a necessary consideration before any standard could be made.

#### Fundamental legislative principles

The explanatory notes to the Electricity Competition and Protection Legislation Amendment Bill 2014 noted concerns about potential inconsistency between requirements on retailers to enter into community services agreements and fundamental legislative principles, in particular:

- 1) That legislation have sufficient regard to the rights and liberties of individuals. This concerned the requirement to enter into an agreement. Requiring exempt sellers to enter into agreement may be seen to affect their rights and liberties. However, as noted in the assessment above, exempt sellers with residential customers are already subject to requirements under the NERL(Q) to support their customers to access concessions (i.e. via third party liaison with the principal retailer). Moving to a direct agreement with relevant sellers does not alter that obligation. The only instance where this would be a new obligation would be for exempt sellers operating in stand-alone power systems where there is no principal retailer for the site. At present, it is understood there is only one party who could potentially be affected by this.

For every other exempt seller, the only substantive change is they would be eligible to receive an administrative fee from the Government for administering the concessions. At present, this is paid to the principal retailer.

- 2) The legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons. This concerned the broad discretion afforded to the Minister to decide the terms of a community services agreement. To limit the impact of the preferred option on exempt sellers, the terms of a community service agreement would be limited in the legislation to administration of Queensland Government energy concessions and rebates.

## Implementation

The recommended option proposes a head of power that would enable the revised standards and codes framework to allow stakeholders to request the making of a standard or a code. An AEMC embedded networks review may recommend considerations that could be included, however, it is intended that state provisions do not duplicate changes made at the national level. Any additional state regulation made under the proposed standards and codes framework would be preceded by consultation and published clear net benefits by the Queensland Competition Authority.

### Stakeholder questions

#### Topic 9 Customer protections

Q9.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3
- I do not like any of the options
- Blank (I have no interest in this topic)

Q9.2 Why?

Q9.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.10 Emergency powers

### Context

Ensuring reliable and secure energy supply is crucial to minimising disruption to essential services in 21<sup>st</sup> century communities. The Electricity Act, Gas Supply Act and Liquid Fuel Supply Act include emergency powers for the supply of electricity, natural gas and liquid fuels in Queensland.

Legislated emergency powers provide certainty for taking extraordinary action to resolve an emergency.

These powers sit alongside applied national laws, protocols and processes for energy supply emergencies. National approaches to supply emergencies have reduced the likelihood of Queensland's powers being activated. However these national developments have not removed the need for state supply emergency provisions for electricity, gas and liquid fuels. State emergency powers can be activated by local emergencies not covered by national arrangements or to support national processes. For example, some national approaches to supply emergencies do not apply to Queensland's 33 isolated networks (which not connected to the national energy grid).

Likewise, state energy emergency provisions can also be used for local emergencies not covered by other state emergency laws or to support state emergency processes. For example, in the case of a disaster.

A contemporary risk management approach to emergency management includes the following categories:

- Prevention/mitigation
- Preparedness
- Response
- Recovery.

This approach recognises that preventing an emergency event is as important as responding to an emergency once it happens.

Queensland's current state energy emergency laws, some of which were written over 25 years ago, provide for some of the categories listed above, but not all:

- In relation to the 'prevention/mitigation' and 'preparedness' categories, such activities depend on information about industry operations at a strategic level, and therefore must be underpinned by a reliable and supportive process to obtain and collate information from industry participants and large customers. Some of Queensland's state energy emergency laws rely on industry participants providing information on a voluntary basis. As the sector evolves, these types of informal gathering powers may not be supported by all participants, resulting in ineffective information being used for making planning and emergency decisions. In addition to providing a safety net formal information requests may provide some protection for the entities providing information that might otherwise be considered collusive under corporation law.
- In relation to the response category, the state energy emergency laws provide a mix of declaration and directive powers. These are 'last resort' responses to an emergency that can be used when there are imminent and significant supply impacts to customers (i.e. when an emergency is happening). Last resort powers provide certainty for all stakeholders where

the market requires assistance to maintain system security and/or supply certainty. Such powers can instil confidence in the decision making process and protect the actions of market participants. For example, there may be instances where industry participants may rely on emergency powers being activated to override contractual obligations that would otherwise result in them incurring financial penalties.

[How the state energy emergency laws interact with other emergency laws](#)

### Electricity

The Queensland Government is a signatory to the NEM Emergency Protocol. The protocol sets out that national procedures to manage major electricity shortages are to operate as far as practicable before consideration is given to exercising jurisdictional emergency powers.

AEMO operates the NEM in the event of an electricity supply emergency. AEMO's electricity emergency arrangements provide a framework to coordinate electricity emergencies in participating jurisdictions, including Queensland.

AEMO's Power System Emergency Management Plan sets out how AEMO, jurisdictions and energy industry participants monitor, inform and coordinate a response to a perceived or actual threat to the NEM power system. The emergency arrangements outlined in the plan complement each NEM jurisdiction's own power system emergency response arrangements and communications plans. The plan is supported by the Memorandum of Understanding and the Protocol developed to coordinate actions to be taken under individual state legislation to manage power system security emergencies.

The Electricity Act provisions are measures of last resort and enable the Minister to ration the use and supply of electricity and to restrict use of electricity by some customers. The Governor in Council can authorise the Regulator to take over the operations of an electricity entity in limited circumstances. These powers have not been used since the commencement of the Act and the NEM. The state government also has a key role in providing assurance to its communities affected by an electricity supply emergency. In practice, effort centres on information management—providing key personnel with situational awareness.

### Gas

Natural gas supply emergency functions in Queensland are also primarily led by national entities and processes in close collaboration with market participants. There is no national emergency legislation. In Queensland, AEMO's gas emergency functions are limited to the short term trading market (Wallumbilla gas hub). The approach used is an all-hazards approach to preventing, responding to and recovery from gas emergencies and its contingency arrangements seek to balance physical supply and demand should normal market mechanisms be unlikely to achieve this balance.

Queensland also participates in the National Gas Emergency Response Advisory Committee (NGERAC). NGERAC is a working group of the COAG Energy Council which advises governments on responses to, and management of major gas supply interruptions affecting two or more jurisdictions. It comprises representatives of Commonwealth, state and territory governments, AEMO, industry and users. Response measures to supply emergencies can include using jurisdictional emergency powers.

Safety net provisions in Queensland's Gas Supply Act include powers for the Minister to declare an *insufficiency of supply emergency* and to direct industry participants to do or not to do things in order to ensure safe supply. A declaration requires a reasonable belief supply is or is likely to be disrupted or insufficient for the reasonable requirements of the community. The Act also enables the state Regulator to require gas suppliers to make and comply with a contingency supply plan and

provide notice of any known or likely supply interruptions including any intention to stop supply to customers. These powers have not been activated since the commencement of the Act.

#### Liquid fuel

The liquid fuel market is wholly privately owned and operated and the use of emergency intervention powers is far less likely than in electricity and gas supply shortfall events.

The Commonwealth's Liquid Fuels Emergency Act establishes a national approach for liquid fuel supply emergencies. It includes provision for declaring a national liquid fuel emergency where fuel shortages have national implications. The Act also gives powers to the relevant Commonwealth Minister to control industry-held stocks of crude oil and liquid fuels, production by Australian refineries, and fuel sales across Australia.

States and territories must be consulted prior to the declaration of a national emergency. An Intergovernmental Agreement sets out parameters and the National Oil Supplies Emergency Committee (NOSEC) assists with managing the emergency. NOSEC is a working group of the COAG Energy Council and also advises governments on managing national liquid fuels emergencies. The National Liquid Fuel Emergency Response Plan reinforces industry and market strategies for returning Australia to operational fuel supply levels and can be used to trigger retail rationing if a national supply disruption is severe or may last for a long time.

The Commonwealth Department of the Environment and Energy has released an Interim Report on the Liquid Fuel Security Review. The report notes NOSEC only becomes involved in significant disruptions with smaller disruptions generally being managed within companies.<sup>321</sup> Further, jurisdictional governments managing disruptions where the effects are limited to their jurisdiction. The interim report questions whether there may be value in looking at regulatory mechanisms that formalise informal communications to allow earlier coordination and information sharing before disruptions escalate and to prevent the spread and reduce the impact of shortages.

Queensland's Liquid Fuel Supply Act empowers the state to prepare for and manage extraction, production, supply, distribution, sale, purchase, use, consumption and storage of liquid fuel in the event of a shortage or anticipated shortage. Provisions supporting contingency planning include broad information gathering powers, requirements to prepare guidelines to assist in the event of a shortage including allocations to essential or high priority users and powers to direct bulk suppliers to submit information about procedures to be used in the event of a shortage.

#### State disaster

Energy emergency powers are subject to Queensland's general disaster management laws. The *Disaster Management Act 2003* is intended to help communities mitigate, prepare and effectively respond to a disaster or an emergency situation and to provide for effective disaster management for the state. This Act provides for the overall coordination of state disasters and emergency events but does not prevent emergencies being declared under other legislation.<sup>322</sup>

A disaster is a serious disruption (in terms of loss of life, illness or injury in a community, caused by an event (including disruption to an essential service or infrastructure) that requires substantial coordination by the state and others to help the community recover from the disruption. Such

---

<sup>321</sup> Australian Government Department of the Environment and Energy, 2019, *Liquid Fuel Security Report – interim report*, p. 54, viewed 17 July 2019, <http://www.environment.gov.au/system/files/consultations/7cf6f8e2-fef0-479e-b2dd-3c1d87efb637/files/liquid-fuel-security-review-interim-report.pdf>

<sup>322</sup> Section 6 of the *Disaster Management Act 2003*, s. 6

disasters or events may impact energy supply for affected communities. Depending on the circumstances, an energy supply emergency or supply interruptions are managed within state disaster coordination mechanisms or by a national process working alongside the coordinated state response.

### Assessment

Most stakeholders confirmed the need to maintain state emergency powers for the supply of electricity and gas. Some electricity stakeholders identified opportunities to streamline and update powers. No issues were raised about supply emergency operations. However, analysis and comparison of emergency provisions in other NEM jurisdictions and State legislation have identified opportunities to modernise the current state energy emergency provisions for electricity and liquid fuel supply.

#### Appropriate: the legislation addresses a social, economic or environmental need or risk

Stakeholder feedback confirmed the need for state energy emergency powers.<sup>323</sup> For electricity, Powerlink considered emergency powers essential to delivering safe and reliable electricity and that state enable management of NEM and local emergencies.<sup>324</sup> Origin stated it is imperative for emergency powers to ensure confidence is maintained in the reliability and security of the market.<sup>325</sup>

#### Information to support emergency management planning

State laws establish a formal basis for industry participants to provide information to help determine emergency response actions and to support effective emergency management planning, including to help assess whether a supply emergency is occurring or is likely to occur. If relevant and timely information affecting load and supply is not available, effective decision-making can be compromised producing sub-optimal resolution of the emergency and exposing the community to political, financial and economic risks. More importantly, timely and relevant information can be used in the planning process to prevent supply emergencies.

Current arrangements for electricity rely on voluntary provision of information. While this approach operates effectively at the moment, it may not always do so in the future. Particularly in light of emerging industry changes such as increased private sector ownership and growth of small scale and behind the meter models. Emergency powers should be broad enough to enable contributions from all industry participants to emergency management planning, in a reliable way.

State emergency powers for electricity supply are also needed to enable emergency management responses and planning for the 33 isolated networks not covered by national processes. State provisions also provide a safety net response for emerging technologies and business models that may not connect to the national grid or be covered by existing applied national laws. They further provide a framework to support informed state input into national emergency processes.

The approach to information requirements varies across the Acts with no information powers in the Electricity Act to support emergency management planning. The Electricity Act has a broad information request powers for an electricity entity or retailer to provide information reasonably required by the Regulator to perform their functions. However, emergency provisions for restriction

<sup>323</sup> The *Liquid Fuel Supply Act 1984* was not referenced in the Issues paper.

<sup>324</sup> Powerlink Queensland submission, p. 3.

<sup>325</sup> Origin Energy Limited submission, p. 5.

regulation and rationing orders are not included in the Regulator's functions. The Electricity Act is deficient in providing a contemporary legislative basis to support a state role in electricity supply emergency management planning and for being informed ahead of taking emergency response actions. This deficiency has potential to expose the community and state to unnecessary risk in the event of a supply emergency.

New South Wales, Victoria, and South Australia all maintain emergency powers for electricity, gas and liquid fuel supply shortages.

In New South Wales, section 94D of the *Electricity Supply Act 1995* (NSW) empowers the Minister to require a person to provide information as required to determine whether supply has been significantly disrupted and to plan and prepare for an electricity supply emergency in the event supply is disrupted. Maximum penalties are set at 2000 penalty units for a corporation and 100 for an individual. Likewise, section 27D of the *Emergency Management Act 2004* (SA) provides the Minister may require a person to give information or provide documents reasonably required to determine whether there is an emergency and to plan for the future exercise of electricity supply emergencies. A maximum penalty of \$100 000 is set in section 28A. Both South Australian and New South Wales legislation include provisions that seek to limit disclosure of confidential information given under to the Minister under these provisions.<sup>326</sup>

Queensland's Gas Supply Act also provides an equivalent power to request information to support supply emergency management planning. Section 245 provides the Regulator with a clear power to require information from industry participants that the Regulator reasonably believes will help in the assessment of current or probable future sufficiency of supply of processed natural gas. The direction to provide information must be by notice and be accompanied by an *information notice* to convey that the request decision by the Regulator is subject to formal review under the Act. The offence provision in s.246 sets a maximum penalty of 500 penalty units.

The Liquid Fuel Supply Act has strong information request powers limited to the administering of government action related to liquid fuel shortage.<sup>327</sup> The powers apply to any person who is, in the Minister's opinion, in a position to provide information relating to the extraction, production, storage, supply, distribution, sale, purchase, use or consumption of liquid fuel. Penalty provisions include \$1000 for an individual and \$10 000 for a corporation. This Act also protects the confidentiality of information.

It is not clear that these powers support emergency management planning (i.e. activities to help prevent/mitigate/prepare for an emergency as opposed to activities that occur during an emergency).

In summary, for information request powers:

- The gap in the Electricity Act could be resolved by introducing a request power for electricity supply emergencies, including provisions to protect full disclosure and for non-compliance. This approach would formalise current arrangements with industry and provide a comprehensive basis to allow the engagement of all participants to inform emergency response actions and emergency management planning.
- The Liquid Fuel Supply Act could be improved by ensuring information request powers support emergency management planning.

<sup>326</sup> *Electricity Supply Act 1995* (NSW) s.94E; *Emergency Management Act 2004* (SA) s.27E

<sup>327</sup> Liquid Fuel Supply Act, Part 3 Contingency planning

- Emergency power provisions in the Gas Supply Act are appropriate and stakeholders raised no issues with them.

Effective: the legislation achieves the desired outcome

Stakeholder feedback, current operations and comparisons with provisions in other jurisdictions have identified opportunities to improve the effectiveness of provisions in the Electricity and the Liquid Fuel Supply Acts.

Emergency responses in the Electricity Act

The effectiveness of the emergency response provisions in the Electricity Act are constrained by their limited scope and the time taken to initiate available response actions. A restriction regulation and rationing orders are the only actions provided for in the Electricity Act and rely on either an emergency event happening or the need to ensure continued supply. There is no provision for lower order responses that may avert a supply emergency or a specific action to target a local supply issue. In addition, government approval processes required for the Governor in Council to make restriction regulations and for gazettal of rationing orders, were identified as having potential to delay action in the event of an emergency. Origin noted the gazettal of an emergency rationing order may not be practical when rationing events happen rapidly and suggested notices to impacted parties appear to be more appropriate.<sup>328</sup>

Recent amendments to emergency provisions for electricity supply in New South Wales and South Australia allow the Premier and Minister to declare a supply emergency that in turn activates a broad directions power for the Minister. In introducing the amendments, it was noted that the changes ensure the Minister is able to act with speed and efficiency should AEMO require assistance or is not able to do what is needed because of limited powers.

Supply emergency declarations under New South Wales and South Australian legislation can be made by the Premier (New South Wales) or Minister (South Australia) if they are satisfied supply to all or any part of the state is significantly disrupted or is at risk of a significant disruption.<sup>329</sup> Victorian legislation provides for the Governor in Council to proclaim application of emergency provisions if satisfied an event will materially affect the safe, economical or effective supply of electricity or available supply is or is likely to become less than sufficient for reasonable community requirements.<sup>330</sup> Ministerial directions power may be exercised to operate following the declaration.<sup>331</sup>

Increasing the effectiveness of the Electricity Act emergency powers could be achieved by introducing provisions for a supply emergency declaration and a Ministerial directions power. Declaration of a supply emergency provides a clear signal to all parties there is a supply shortage and together with Ministerial directive powers allows a wider scope of responses and more timely action. The types of response could include a rationing notification, a direction to stop/start generation or directing a large customer to load shed in a couple of hours. Ministerial direction decisions would be informed by the emergency management plans and protocols, including relevant national emergency management instruments and any information requests.

---

<sup>328</sup> Origin Energy Limited submission, p. 5.

<sup>329</sup> *Electricity Supply Act 1995* (NSW) s.94A; *Emergency Management Act 2004* (SA) s.27B

<sup>330</sup> *Electricity Industry Act 2000* (Vic) s.95

<sup>331</sup> *Electricity Industry Act 2000* (Vic) s.96

This approach is consistent with emergency powers for NEM jurisdictions and under the Gas Supply Act and the Liquid Fuel Supply Act. It is also workable with overarching emergency provisions of Queensland’s Disaster Management Act.

**Feedback wanted: Operator of last resort (OoLR) and stand-alone power systems**

The AEMC’s *Draft Report: Review of stand-alone power systems – priority 2* considers the appropriate regulatory framework for third party stand-alone power systems, including for emergency events. The Commission’s draft position is that states may need to develop jurisdiction ‘Operator of Last Resort’ schemes for stand-alone power systems, to cover the failure of generation, network operations and potentially retail activities in stand-alone power systems.

The Commission intends to undertake further consideration of the design of an OoLR scheme and will include a position on this in its final report (due October 2019). This is expected to include recommended processes for appointing an OoLR and ensuring appropriate risk allocation, though it does not intend to set out prescriptive final recommendations.

Section 130 of the Electricity Act provides that the Governor in Council may authorise the Regulator to take over the operation of a licensed entity’s works and business in particular circumstances to ensure customers continue to receive an adequate, reliable and secure supply of electricity. The Regulator is able to appoint an operator to do all things necessary or convenient to ensure the relevant operations continue to operate as required: s. 131.

*Stakeholder feedback is sought on the adequacy of ss. 130 and 131 to manage potential issues relating to third party stand-alone power systems, in light of AEMC stand-alone power systems work.*

[Emergency responses in the Liquid Fuel Act](#)

There are some provisions in this Act that are unworkable and are not effective or efficient in supporting state emergency management, for example:

- Provisions relating to a ‘prescribed business’ (no definition or list of prescribed business is provided)
- use of paper petrol permits to achieve rationing (such paper permits no longer exist and in an emergency could not be relied on).

There are other provisions that may have a revised application in an updated Liquid Fuel Supply Act, for example, provisions in s. 11 to nominate essential or high priority users. These provisions are not operational with the state relying on a *Determination of essential users* instruments under section 11 of the Commonwealth Liquid Fuel Supply Act. While the provisions for making guidelines are unlikely to be used, there may be value in referencing the national determination to support emergency responses in the event of a local emergency.

Full assessment of these provisions will be undertaken to take into consideration the final report of the Commonwealth Government’s review of liquid fuel security.

[Emergency terminology in the Electricity Act](#)

Emergency powers included in state energy legislation typically deal with supply emergencies. This is expressed clearly in the Gas Supply Act and the Liquid Fuel Supply Act, but less so in the Electricity Act.

The Gas Supply Act uses the term ‘insufficiency of supply’. The Liquid Fuel Supply Act references a ‘liquid fuel supply emergency’ and defines this as what the Minister declares with the declaration provision pointing to circumstances that cause a supply shortage.

The Electricity Act references rationing orders as ‘emergency rationing orders’. There is no definition of ‘emergency’ and there are other Act provisions that reference ‘emergency’ that are not connected to shortage of supply.

Equivalent legislation in New South Wales, South Australia and Victoria all specify ‘electricity supply’ in emergency provisions. Energy Queensland has suggested greater clarity of the interrelationship and overlap in roles and responsibilities in different types of emergencies. The national electricity market emergency protocol uses the term ‘electricity supply shortage’.

Referencing ‘electricity supply’ in the emergency power provisions will make clearer that these powers relate to supply shortages. Specifying an electricity supply emergency will also distinguish them from other emergencies that may affect supply, for example, an emergency event under the *Disaster Management Act*.

### Objectives

Emergency powers that support national and state emergency management frameworks to prevent, mitigate, prepare, respond and recover from supply shortages that affect Queensland communities.

### Options

Option	Description
Status quo (option 1)	Under this option, existing emergency power provisions would remain unchanged in the Electricity Act, Gas Supply Act and Liquid Fuel Supply Act.
Modernise emergency powers (option 2)	Under this option, emergency power provisions in the Electricity Act would change to modernise supply emergency powers, including provision for a supply emergency declaration, Ministerial direction and information request powers to support emergency management planning. The Liquid Fuel Supply Act would be amended to revise outdated provisions.

#### Option 1 – Status quo

Option 1 would not make any regulatory adjustments to existing arrangements for supply emergencies in the Electricity Act, Gas Supply Act and Liquid Fuel Supply Act.

Option 1 has no immediate costs but there are potential future costs of ineffective emergency management planning and emergency response actions. Participation in emergency preparedness may be compromised if voluntary processes for information coordination are no longer effective, particularly for small and new entrants. Delayed responses in the event of a supply emergency is also anticipated because of government processes needed to establish a rationing order or restriction regulation before an emergency response action can be taken.

Impact group	Estimated impact
Energy industry participants	No change
Regulator	Limited flexibility for Minister in the event of an electricity supply emergency Electricity and liquid fuel emergency management planning could be compromised without a safety net requirement to support information requests for informing emergency supply decisions
Users and other public	Impact limited until there is an supply emergency event which may result in compromised and delayed responses because of outdated government processes

#### Option 2 – Modernise emergency powers

Under this option, emergency power provisions would be modernised in the Electricity Act and the Liquid Fuel Supply Act.

##### *Electricity Act*

Changes under option 2 would:

- confirm emergency powers relate to electricity supply emergencies
- introduce a power for an emergency supply declaration which would trigger Ministerial directions powers
- introduce information request powers with provisions for non-compliance and non-disclosure.

An emergency supply declaration is consistent with other states' electricity emergency powers, the Gas Supply Act and the Liquid Fuel Supply Act. Advantages of this approach are timeliness and increased responsiveness to the specific circumstances of the supply emergency.

#### Feedback wanted: Emergency powers

This option proposes a new framework for electricity supply emergencies incorporating a declaration, broad Ministerial direction powers and information request powers to support decisions and emergency management planning.

*Stakeholder views are sought on the following considerations related to option 2:*

- *What should be the threshold for an emergency supply declaration? New South Wales and South Australia rely on the Premier/Minister being satisfied that supply to all or any part of the state is significantly disrupted or is likely to be significantly disrupted.*
- *What should be the scope of Ministerial direction powers taking account of Ministerial direction powers in other NEM jurisdictions?*
- *Would there be an ongoing need for a restriction regulation?*

##### *Liquid Fuel Supply Act*

Changes under option 2 would include:

- revision of information request powers
- removal and revision of outdated provisions following consideration of recommendations in the Commonwealth Government's final report of the Liquid Fuel Security review.

Impact group	Estimated impact
Energy industry participants	No immediate change as information requests for contingency planning would continue on a voluntary basis with formal powers being activated as a compliance measure
Regulator	Ministerial declaration and directive powers increases flexibility for emergency response actions considered in emergency management planning and better align with contemporary supply emergency management
Users and other public	Minimal impact unless emergency powers are invoked and there would be increased flexibility and agility for emergency response options

### Comparative assessment

	Key advantages	Key disadvantages	Assessment
Status quo (option 1)	No immediate cost	Potential future cost of ineffective responses in an emergency event	<b>Preferred for gas</b> Option 1 does not resolve out-of-date energy supply emergency provisions compromise the state's ability to manage emergencies through informing the community and last resort interventions using modern communication methods.
Modernise emergency powers (option 2)	No immediate cost  Stronger and more flexible safety net powers  Formalises existing voluntary arrangements for information provision	Confusion about impact of the changes to emergency processes e.g. <i>if there current planning is working why is change needed?</i>	<b>Not preferred for liquid fuels and electricity</b> Option 2 will ensure the energy supply emergency frameworks will generate community confidence in the ability of the state to inform communities and use last resort interventions in the event of a supply emergency.

### Recommendation

The review is recommending option 1 for gas and option 2 for liquid fuels and electricity.

- The provisions in the Gas Supply Act already reflect contemporary emergency management (including planning) provisions and were not subject to stakeholder feedback.
- Option 2 would modernise supply emergency provisions in the Electricity Act and Liquid Fuel Supply Act.

Option 2 does not involve significant costs with proposed changes to safety net responses expected to reduce government costs. If an electricity emergency supply is declared, the range of response options, using notifications instead of meeting government procedural requirements for making a restriction regulation or gazetting a rationing order would use less government sector resources and provide a timelier means of initiating emergency response actions. The proposal for requiring electricity industry participants to provide information to assist with emergency management formalises existing voluntary practices in place and provides regulatory certainty for new and emerging industry entrants.

The key benefit of option 2 when compared to option 1 is it delivers a better safety net for non-grid connected customers that responds to expected growth in off-grid arrangements using new technology and emerging business models. For grid-connected supply emergencies, option 2 provides greater consistency with other NEM jurisdictions, and in the event of a supply emergency requiring a state government response, response options have significantly more scope and can be actioned more quickly.

### Consistency with other policies and legislation

#### Competition Principles Agreement

##### Section 5 of the Competition Principles Agreement

The proposed options are not expected to impact on competition. While the proposed electricity supply emergency provisions allow for actions that could impact on competition, they can only be activated in the event there is a supply emergency and competitive market conditions have been unable to resolve the supply emergency.

#### Fundamental legislative principles

A statutory obligation on industry operators to provide supply information to support electricity emergency management processes is dependent upon administration power. To meet Queensland's fundamental legislative principles, this obligation would need to sufficiently define the obligation and subject it to appropriate review. It is proposed that if this proposed change is progressed, legislative amendments would include provisions to define the obligation to give information as being information to help the regulator assess current or probable future sufficiency of electricity supply in relation to potential supply emergency events. The direction to give information would also be subject to the review process already established under the Electricity Act.

#### Implementation

Implementation of the recommended option would be achieved through legislative amendment. Departmental guidance material would provide supporting information about information requests would be activated, how this information would be used and kept confidential, and how industry participants would be notified of an electricity supply emergency declaration.

Stakeholder questions

**Topic 10 Emergency provisions**

Q10.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- The recommended hybrid option
- I do not like any of the options
- Blank (I have no interest in this topic)

Q10.2 Why?

Q10.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 2.11 Offences and enforcement

### Context

The primary role of the offences and enforcement arrangements is to promote compliance with the legislation. The arrangements prohibit or compel particular conduct, and set out consequences for non-compliance. These are complemented by mechanisms that enable instances of non-compliance to be detected and responded to. Different approaches apply to energy entities and individuals.

### Prohibition against particular conduct, and consequences

Broadly, the legislation provides for conduct to be regulated in three ways: via *offence* provisions, which apply to participants in the industry, customers and other individuals; via *distribution network codes*, which apply to distribution authority holders and electricity retailers; and via *specific industry obligations*, set as conditions of an authority or in the case of retailers directly imposed. Refer to

Figure 34.

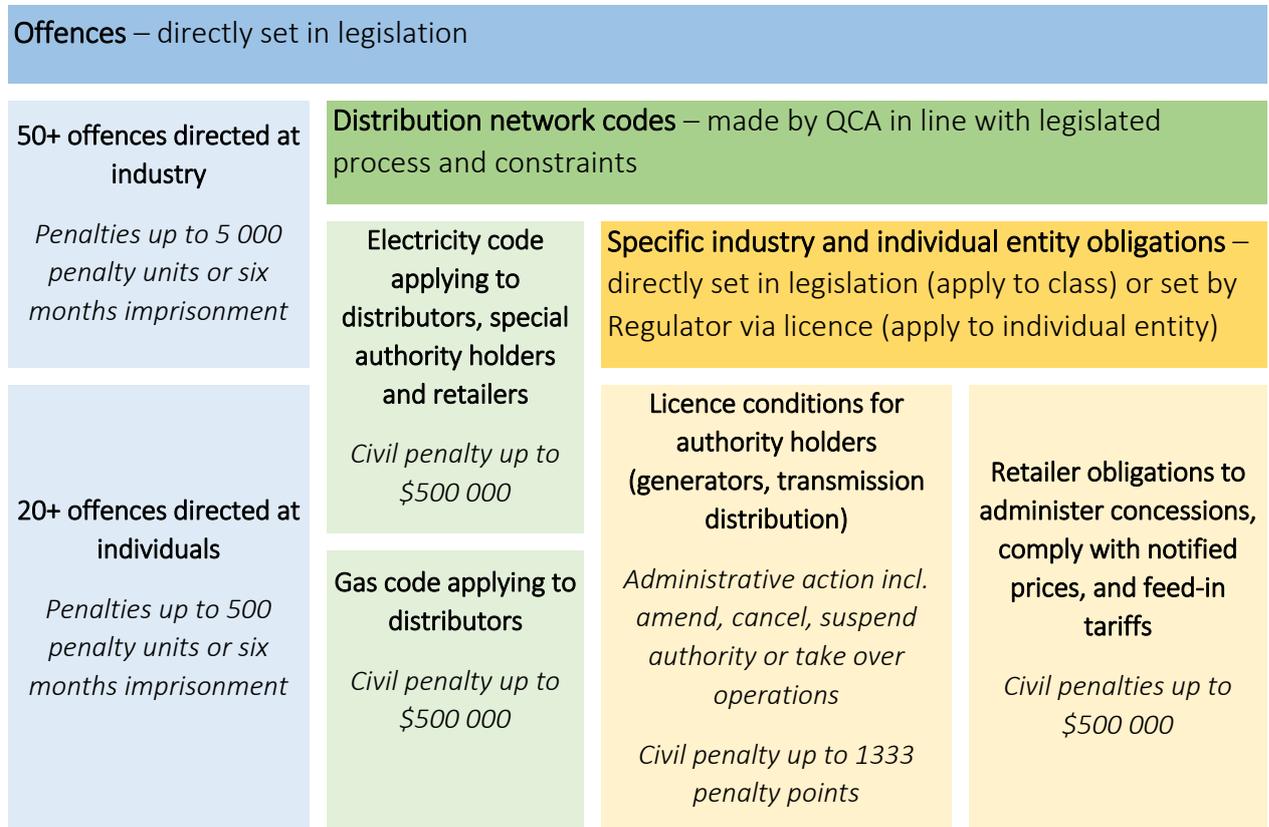


Figure 34: Framework of prohibitions in state energy legislation

The value of a penalty unit is currently \$133.45.

### Offences and penalties

The legislation contains over 50 criminal (summary) offences which apply to energy market participants—generators, transmission entities, electricity and gas distributors, and retailers. The most serious are prohibitions against:

- For electricity, connecting generating plant to a network, operating a transmission grid or supply network. This may attract a maximum penalty of 5000 penalty units.<sup>332</sup>
- For gas, operating a pipeline without authorisation. This may attract a maximum penalty of 500 penalty units.<sup>333</sup>

Sitting below these is a range of offences relating to matters including providing false and misleading information, failing to give notice of a significant disruption, failing to apply notified prices and failing to comply with a direction. Offences attracting the smallest penalties include failure to return an identification card, and building works in a protected area without written agreement of the Minister administering the *Nature Conservation Act 1992*. Each of these may attract a penalty of up to 8 penalty units.<sup>334</sup>

Around 20 summary offence provisions are directed at customers and other individuals. These largely aim to protect safety, prevent theft, and support industry participants to meet their obligations. The consequences of non-compliance range from maximum penalties of 8 penalty units for contravening an emergency rationing order to a maximum 1000 penalty units or six months in prison for the unlawful taking of electricity.<sup>335</sup> Imprisonment is also a potential consequence of projecting objects at electricity lines, wilfully and unlawfully interfering with an electricity entity's works, unlawfully connecting anything to a transmission grid or electricity supply network, and unlawfully disconnecting supply to a user or interfering with supply of electricity to a user.<sup>336</sup> For gas the maximum penalty is 500 penalty units. This applies to unlawfully taking processed natural gas or LPG, and unlawfully tampering with gas infrastructure.<sup>337</sup> Other remedies include orders to remove unauthorised works and disconnection of supply or equipment.

#### Distribution network codes

The legislation enables the QCA to make distribution network codes:

- for electricity – dealing with service levels to be provided to customers including payment to affected customers for failure to meet service levels, and rules around metering and public lighting
- for gas – dealing with the rights and obligations of distributors and customers about customer connection services.

Customer aspects of these codes are discussed in Section 2.9: Customer Protections.

Failure to comply with a distribution network code may attract a maximum civil penalty of \$500 000 for an industry participant, or if referred to the Regulator, lead to the amendment, cancellation or suspension of an authority or imposition of a civil penalty on an industry participant of a maximum 1333 penalty units.<sup>338</sup>

#### Specific industry and individual entity obligations

Industry is also subject to numerous other requirements in the legislation, as either:

---

<sup>332</sup> Electricity Act ss. 87 - 88A

<sup>333</sup> Gas Supply Act s. 286

<sup>334</sup> Electricity Act ss. 69 and 111

<sup>335</sup> Electricity Act ss. 233 and 235

<sup>336</sup> Electricity Act ss. 229-232

<sup>337</sup> Gas Supply Act ss. 287 and 289

<sup>338</sup> Electricity Act ss. 120X and 133; Gas Supply Act ss. 270W, 270ZD, 270ZL

- conditions of authorisations – these are set either on a class basis within the legislation (i.e. conditions which apply to all generators, all transmission entities and all distribution entities or special approval holders), or on an individual entity basis at the discretion of the Regulator<sup>339</sup>
- express legislated obligations for retailers – these include obligations to enter into and comply with concessions agreements, price determinations and, for electricity retailers, feed-in tariffs.

Non-compliance with the condition of an authority can lead to civil penalties up to 1333 penalty units or administrative action. Administrative actions include orders to dispose of prohibited interests, the amendment, suspension or cancellation of the authority. In extreme cases, the Governor in Council may order the take-over of operations. Non-compliance with retailer obligations can attract civil penalties of up to 1333 penalty units or up to \$500 000.

#### Mechanisms to support detection of and responses to non-compliance

To support monitoring and enforcement, a regulator is established under the Electricity Act and Gas Supply Act. This position is held by the Chief Executive of DNRME. The Regulator has a range of powers to promote compliance with the legislation, including:

- Information gathering – the Regulator may request electricity authority holders and retailers to provide information reasonably needed to monitor or investigate compliance. Authority holders must also submit an annual report to the Regulator on their operations.<sup>340</sup>
- Audit powers – the Regulator may appoint an independent auditor, or compel an entity or retailer to carry out an internal audit to assess and report on whether the entity or retailer is complying with the Electricity Act, electricity distribution network codes, and authorities, and to verify the reliability and quality of information given by the entity.<sup>341</sup>
- Powers of disciplinary action – the Regulator is able to cancel, suspend or amend an authority or make an order that a prohibited interest must be disposed of in the event of non-compliance with the legislation, the Energy and Water Ombudsman Act, a distribution network code or Electrical Safety legislation.<sup>342</sup> The Regulator may also apply to the Supreme Court for a civil penalty or for the issue of an injunction against a retailer.
- Powers of disconnection or removal – including disconnecting supply to works or an installation, or order to remove works.<sup>343</sup>

In monitoring the sector, the Regulator is assisted by various entities, including the Electricity and Water Ombudsman (which can refer systemic issues to the Regulator for action) and the QCA (which can refer material breaches of a code to the Regulator for action). Other entities which support the Regulator are inspection officers, authorised persons and distribution officers. The roles of each are explained in *Figure 35*.

---

<sup>339</sup> Subject to agreement or consultation.

<sup>340</sup> Electricity Act ss. 120 and 135AL, Gas Supply Act ss. 270ZE, 271AL. The power to request information from an authority holder is contained within the standard terms of authorities issued under the legislation.

<sup>341</sup> Electricity Act s. 120AA

<sup>342</sup> Electricity Act s. 133 and 134

<sup>343</sup> Electricity Act ss. 138, 141, 154 and 176

Electricity Act	Gas Supply Act
<p><u>Inspection officers</u></p> <p>Inspection officers are appointed by the Regulator. They are afforded extensive powers for the purposes of monitoring and compliance, including entering a place with consent, or under the authority of a warrant where an offence against the Act is reasonably suspected. After entry, inspection officers may search, inspect, photograph or film, take a thing or copy a document for the purposes of monitoring and enforcing compliance, or seize evidence if the officer reasonably believes the thing to be evidence of an offence.</p>	<p><u>Distribution officers</u></p> <p>Distribution officers are appointed by gas distributors. For the purposes of ensuring safety of gas infrastructure, or preventing or dealing with an emergency, distribution officers are taken to be public officials for the <i>Police Powers and Responsibilities Act 2000</i>.</p>
<p><u>Authorised persons</u></p> <p>Authorised persons are inspection officers (refer above) and electricity officers which have been appointed by electricity entities and retailers. The role of authorised persons is to assist with the enforcement of emergency rationing orders. For this purpose, authorised persons may enter a place to investigate compliance with an emergency rationing order and disconnect supply to an electrical installation or premises in the event of a breach.</p>	

Figure 35: Role of inspection officers, authorised persons and distribution officers in state energy legislation

In addition to the Regulator, the Electricity Act and Gas Supply Act give the QCA a direct monitoring and enforcement role in relation to compliance with distribution network codes. For this purpose, the QCA may order the production of documents or information, and require audits to be undertaken. The QCA may apply to the Supreme Court for a civil penalty, or refer a breach to the Regulator.

#### Assessment of current issues

*Appropriate: the legislation addresses a social, economic or environmental need or risk*

The offences and enforcement framework is a necessary part of the overall functioning of the legislation. In relation to appropriateness, submissions to the review did not focus on the need for offences and enforcement, but rather the range of offence provisions, and in particular the need for new offences. The review has also identified overlap between proposed offences and existing offence provisions in the Criminal Code. Consequential amendments from other reform proposals in this Options Paper have also been considered.

#### Range of offence provisions

A number of stakeholders proposed that consideration be given to additional offences.<sup>344</sup> These are outlined below.

#### *Material (physical and cyber) interference with electricity infrastructure*

The legislation currently provides it is an offence to wilfully and unlawfully interfere with an electricity entity's works. Powerlink suggested an additional offence dealing with more serious,

<sup>344</sup> Energy Queensland submission, p. 26; Powerlink Queensland submission, p. 5; Department of Main Roads and Transport.

material interferences is warranted given the potential impact of interference on individuals and on a system wide basis.<sup>345</sup> However, this would overlap with existing provisions in the Criminal Code (see *Figure 36*) and there does not appear to be a need for an energy-specific offence.

Proposed new offence	Equivalent offences in the criminal code	Maximum penalty	Comment
Material (physical and cyber) interference with electricity infrastructure	Section 408E – computer hacking and misuse  (1) A person who uses a restricted computer without consent commits an offence  (2) If the person intends to cause detriment or damage, or intends to gain a benefit, the person commits a crime  (3) If the person causes detriment or damage or obtains a benefit over \$5000, the person commits a crime	Two years imprisonment  Five years imprisonment  10 years imprisonment	Would cover incidences of cyber interference only
	Section 469 – wilful damage  A person who wilfully and unlawfully destroys or damages any property commits an offence	Five years imprisonment	Would cover incidences of physical interference only  Increased penalties for particular types of property (e.g. educational institution)
	Section 469A – sabotage and threatening sabotage  (1) A person who wilfully and unlawfully destroys or damages any public facility with intent to cause major disruption or major economic loss is guilty of a crime  (2) A person who threatens to commit sabotage is guilty of a crime	25 years imprisonment  14 years imprisonment	A public facility includes a facility for supplying energy or fuel, whether it is publicly or privately-owned  Would cover newer industry participants, which was flagged as in issue

Figure 36: Comparison of possible new offences, and existing offences in criminal code

#### *Inhibiting access to works*

It is an offence to *obstruct* an electricity officer or inspection officer in the exercise of a power, without reasonable excuse. This would extend to obstructing an officer from accessing meters and works. Energy Queensland suggested consideration be given to expanding the general offence

<sup>345</sup> Powerlink Queensland submission, p. 5.

provision to include *inhibit*, or creating a separate offence of ‘inhibiting access to works (including substations contained within basements of buildings)’.<sup>346</sup> Inhibit is a more passive form of conduct than obstruct and would potentially bring into the offence provisions a much broader range of conduct, including conduct without positive intent. The benefit of this change is unclear, though it is noted South Australia includes an offence of ‘hindering or obstructing’ a person, which may be suitable for the Queensland context.

#### *Failure to provide space for small electricity infrastructure to be built, like a substation*

The Electricity Regulations currently require certain customers to provide space for infrastructure to be built, including substations. There is no express remedy for non-compliance. Energy Queensland suggested this is an appropriate matter for an offence.<sup>347</sup> However, creating an offence provision does not appear suitable to this kind of conduct, which may be better addressed via a remedy such as removing the obligation to connect or supply.

#### *Causing damage to property*

Energy Queensland suggested a new offence be introduced for unlawfully interfering with electricity infrastructure.<sup>348</sup> This would be in addition to current offences under:

- the Gas Supply Act which provides it is an offence to wilfully tamper with infrastructure without lawful excuse
- the Electricity Act which provides it is an offence to unlawfully interfere with electricity infrastructure.

It would also be additional to more general provisions within the Criminal Code. For example, s. 469 of the Criminal Code provides a person who wilfully and unlawfully destroys any property commits an offence, with a maximum penalty of five years imprisonment. In light of these existing offences, it is unclear why an additional offence provision is needed.

#### *Failure by an entity to comply with conditions and standards of the road authority, particularly for safety*

At present, enforcement of the legislated obligations of authority holders in relation to works and access powers is achieved through the disciplinary powers of the Regulator. TMR suggested the creation of an offence would also be suitable to provide deterrence. However, this appears unwarranted given the breach of disciplinary action available.

#### *New industry participants*

The review has also considered whether there is a need to extend existing offence provisions relating to infrastructure to non-licensed parties, e.g. to protect the infrastructure of on-suppliers or meters which are owned or controlled by retailers or metering providers. At present, the offences under the Electricity Act generally extend to interference with infrastructure of an electricity authority holder, which would exclude the infrastructure of newer participants and retailers or metering providers. However, given general protections contained in the Criminal Code – particularly the offences of wilful damage (s. 469 of the Criminal Code) and sabotage and threatening sabotage (s. 469A of the Criminal Code) – additional energy-specific regulation in this area may not be needed.

---

<sup>346</sup> Energy Queensland submission, p. 26.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

### Consequential provisions

A number of options examined in this Options Paper would affect the offence and enforcement arrangements. These may require consequential amendments.

- One of the options examined in Section 2.4: Licensing is to removing electricity generation authorities. If this became a preferred option following consultation, it would affect the administrative tools available for enforcement. This is because the existing conditions of licences would no longer apply and disciplinary action such as amendment, suspension or cancellation of a licence would no longer be available. If the option became a preferred option following consultation, the current approach to specifying and enforcing obligations on retailers may be a helpful model to overcome this. For example, by turning existing class based licence conditions into direct obligations, with civil penalties attached for non-compliance.

For retailers, remedies include civil penalties of up to \$500 000 and/or injunctions issued by the court. In the event of repeated or very serious non-compliance by a generator with their legislative obligations, similar remedies could be available for generation entities. An additional potential remedy of being able to order a generator to take specific action, or to suspend or cease operations could also be adopted. Though a significant remedy, it would merely preserve existing powers of the Regulator to amend, suspend or cancel a licence for contravention of the legislation, albeit in a more structured way.

- Replacing existing ‘special approvals’ and exemptions with a three tiered exemption regime network (Section 2.4: Licensing). For special approval holders, the impact would be the same as for generation authorities.
- Replacing existing ‘distribution network codes’ and technical conditions with a ‘standards and codes’ framework (Section 2.6: Technical requirements). This would require existing powers in relation to distribution network codes (i.e. setting, monitoring, compliance) to be replaced with similar powers to apply to industry standards.

### Effective: the legislation achieves the desired outcome

The majority of issues raised by stakeholders in relation to the offences and enforcement framework related to their effectiveness in guarding against harm, particularly in relation to offences and mechanisms to support detection and enforcement.

### Offences

A number of difficulties exist which may impair the effectiveness of offence provisions.

#### *Duplicative or out-of-date provisions*

##### Unauthorised works on a protected area

Section 111 of the Electricity Act includes a penalty for electricity entities carrying out unauthorised works on a protected area, without the approval of the Minister administering the Nature Conservation Act. This section was included in the Electricity Act prior to amendments to the Nature Conservation Act which allow the Chief Executive administering the Nature Conservation Act to also grant authorities for works on state-owned protected areas. To better align s. 111 with the current approval practices for works on protected areas, it would be appropriate to update s. 111 to reflect that either the Minister or the Chief Executive for the Nature Conservation Act may give agreement.

In addition, the maximum penalty value – currently 8 penalty units – is relatively small considering the damage that may be caused by carrying out unauthorised works on a protected area. Corresponding penalties appearing in the Nature Conservation Act provide maximum penalties of:

- 3000 penalty units or 2 years imprisonment for activities including interfering with a cultural or natural resource of a protected area without agreement or authority,<sup>349</sup> and
- 165 penalty units for erecting or keeping a structure (other than a camping structure being used under a camping permit), or carry out works in a protected area without the written approval of the chief executive; or in contravention of the approval.<sup>350</sup>

While aligning the value of the maximum penalty to 3000 penalty units would be very significant, adjustment of the offence towards 165 penalty unit is more proportionate to the potential damage, and would promote greater alignment between the Electricity Act and Nature Conservation Act.

**Unlawfully taking electricity or gas**

This again is a significant offence. However it is duplicative of fraud provisions in the Criminal Code. Under s. 408C of the Criminal Code, a person who dishonestly applies to his or her own use property belonging to another commits the crime of fraud. This may attract a penalty of five years imprisonment, or 14 years if the property is of a value of between \$30 000 up to \$100 000, or 20 years if the value is at least \$100 000. Given this duplication, continuation of this as an offence under the Electricity Act and Gas Supply Act may not be appropriate.

*The interaction and consistency of offences and civil penalty provisions*

For industry participants, contraventions of the legislation can attract civil penalties and/or administrative responses. Participants are also subject to offence provisions. This presents potentially three cascading ways in which certain conduct could be captured. See example *Figure 37*.

Conduct by an <i>electricity entity</i> that contravenes an offence provision and the Distribution Code			
Applicable provision	Entity responsible for enforcement	Applicable penalty	Priority
Unlawful connection or disconnection (s. 232)	Not specified	Offence 40 penalty units or six months imprisonment	1.
Contravention of the Distribution Code (s. 120X)	QCA (unless/until the Regulator) <sup>351</sup>	Civil penalty \$500 000 per contravention	2. Civil penalty action under s. 120X to be suspended, pending outcome of criminal action
Contravention of the Distribution Code/ authority/ Act (s. 133)	The Regulator	Civil penalty \$174 023.15 per contravention Plus other alternative administrative enforcement action, including cancellation, suspension or amendment of authority	3. Action under s. 133 cannot be taken where a s. 120X action is on foot

<sup>349</sup> Nature Conservation Act s. 62

<sup>350</sup> Nature Conservation (Protected Areas Management) Regulation 2017 r. 114

<sup>351</sup> Electricity Act ss. 120ZB and 120ZC

Figure 37: Cascading ways of dealing with contraventions under the Electricity Act

Although the Electricity Act provides for which contravention takes precedence over the other, there are some questions over the duplicative jurisdiction and staging of these, noting the penalty discrepancy is material. Given these inconsistencies, it appears there is a need to:

- simplify and clarify the current provisions to ensure offence provisions have a matching pecuniary penalty provision, where appropriate
- remove or clarify duplicative provisions.

A further potential difficulty exists with available remedies where an industry participant has breached a requirement of the Electricity Distribution Network Code. The Code is able to apply to any authorised electricity entity, including a special approval holder, and retailers. The QCA is responsible for enforcement of the Code, and may generally choose to directly apply to the Supreme Court for a civil penalty order, or to refer material contraventions to the Regulator for civil or administrative action. However, the option of referring a material breach to the Regulator is only available for generation, transmission and distribution authority holders, and for retailers. It does not apply to special approval holders. While this is not currently a problem as the Code does not currently place any requirements on special approval holders, this appears to be an unintended drafting error.

#### *The size and structure of some penalties*

The current structure and level of penalty rates (whether an offence or pecuniary penalty) is largely commensurate with other jurisdictions. However, there are some anomalies. For a number of offences, Queensland maximum penalties are comparatively low, as highlighted in *Figure 38*.

Offence	Value of maximum penalty in Queensland	Maximum penalty for similar offence in corresponding jurisdiction
Contravention of licence	\$175 000 per contravention	New South Wales \$250 000 (corporation)  ACT \$450 000  Tasmania \$815 000  South Australia \$1M
Action of defaulting entities which prevent or hinder the operation of relevant operations	\$625 750 (corporation)	New South Wales \$1.1 million (corporation)
Unlawfully conveying electricity beyond own property	Just over \$5000	Tasmania \$8000 (individual) \$16 300 (corporation)  South Australia \$10 000
Unlawfully connecting to a transmission grid or supply network	Just over \$5000 or six months imprisonment (individual) Just over \$25 000 (corporation)	New South Wales \$11 000 or two years imprisonment (individual) \$220 000 (corporation)
Contravening emergency rationing order	\$1044 (individual) \$5222 (corporation)	New South Wales \$11 000 (individual) \$220 000 (corporation)

		Victoria \$16 119 (individual) \$1.6M (corporation)
--	--	---

Figure 38: Comparison of penalties, Queensland and other NEM jurisdictions

A number of industry stakeholders also indicated remedies attached to offences may be inadequate. For example, Energy Queensland noted the maximum penalty unit for discharging a weapon near an electric line, or throwing or otherwise projecting an object towards an electric line so that the line is likely to be damaged or supply of electricity interrupted is 40 penalty units (just over \$5000) or six months imprisonment.<sup>352</sup> Energy Queensland advised this is well below the cost of responding to an outage and its broader economic impact.<sup>353</sup> The same remedy (40 penalty units or six months imprisonment) is available to interference with an electricity entity's works, though as outlined above, more material interference could attract maximum penalties under s. 469A of the Criminal Code (sabotage and threatening sabotage) of up to 25 years imprisonment. Depending on the facts and circumstances, other Criminal Code provisions may also apply. For gas supply, deliberately tampering with infrastructure can attract penalties of up to 500 penalty units, which is significant and serious under Queensland law. By contrast, an offence with an equivalent penalty in the Criminal Code is recruiting a person to become a participant in a criminal organisation (s. 76 of the Criminal Code).

#### *Continuing offences*

The state legislation operates alongside applied national laws and rules. The NEL, NGL and NERL have an overarching civil penalty value that applies to breaches of civil penalty provisions and specific penalties for breaches of certain provisions. For a natural person, the civil penalty value may be up to \$20 000 and up to \$2000 for every day the breach continues. For a body corporate, the civil penalty value is up to \$100 000 and up to \$10 000 for every day the breach continues.

State laws in other comparable jurisdictions also contain provisions which creates a separate contravention for each day that a contravention continues. In the Australian Capital Territory, Tasmania and Victoria, this is in relation to particular provisions, while, in South Australia this is more generalised. While the review has considered adopting similar provisions to provide for continuing offences, continuing offences are generally considered to be unfair by the Queensland Parliament and rarely adopted. Sentencing guidelines under s. 9 of the *Penalties and Sentences Act 1992* provide for the court to have regard to damage, injury or loss, and the presence of any aggravating factors. Given this, coupled with the lack of stakeholder comment on this issue, no further consideration has been given to this as an option.

#### *Effectiveness of mechanisms to support detection of and responses to non-compliance*

Concerns in relation to the effectiveness of mechanisms to support detection of and responses to non-compliance centred on tools available to the Regulator, and overlap between administrative and enforcement roles.

#### *Tools available to the regulator*

The Queensland Government is committed to risk based, responsive regulation. A key requirement underpinning this is making a variety of tools available to the Regulator to enable proportionate responses to particular conduct. While the Regulator already has a variety of tools available for monitoring (information gathering, audit requirements) and responding to suspected contraventions (warning notices, contravention notices, amendment, cancellation or suspension of an authority,

<sup>352</sup> Energy Queensland submission, pp. 25-26.

<sup>353</sup> Energy Queensland submission, p. 26.

injunctions and penalty proceedings in court), they are not uniformly available, particularly for lower level responses such as audits, and warning and contravention notices. For example, powers of the Regulator to conduct or trigger an audit are inconsistent between the Electricity and Gas Supply Acts and are insufficiently strong to follow up compliance.<sup>354</sup> Further, there are minimal provisions to support compliance under the Gas Supply Act. For example, there is no equivalent to an inspection officer under the Electricity Act.

#### *Overlap between administration and enforcement*

Under the legislation, the Regulator and the QCA are each given administrative and enforcement roles. Broadly, the QCA administers and enforces the Distribution Network Code, though may refer material contraventions to the Regulator. The QCA also administers price determinations, feed-in tariffs, can undertake reviews at the request of the Minister and has a role in dispute resolution in relation to what is ‘fair and reasonable’ under the legislation. The Regulator administers and enforces licences and emergency provisions, as well as enforcing offences and direct obligations on retailers. The Regulator also undertakes some dispute resolution functions. This split between administrative and enforcement functions has the potential to create confusion of responsibility, especially where conduct may contravene a code as well as offence provisions and licence conditions as highlighted in *Figure 39*. This can lead to gaps or duplication in information collection, understanding of industry activities, and can disrupt focus on effective enforcement. *Figure 39* demonstrates the overlap.

Entity	Function
Regulator	Monitoring and collection of data, encouragement of compliance and enforcement of offences, licences, code contraventions, direct obligations on retailers, administrative decisions and review
QCA	Monitoring and collection of data, encouragement of compliance and enforcement of code, administrative decisions and review

*Figure 39: Regulator and QCA functions comparison*

Recent inquiries into regulatory failure in other industries suggest the need to separate administrative roles from enforcement roles to avoid issues like regulatory capture. For example the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommended an approach that separates, as much as possible, enforcement staff from non-enforcement related contact with regulated entities.

*In short, enforcement is radically different from most other functions of a regulator and, to the maximum extent practicable, should be divorced from those other functions.*<sup>355</sup>

This also aligns with the Organisation for Economic Co-operation and Development’s (OECD) international best practice principles for improving regulatory enforcement and inspections.<sup>356</sup>

There appears scope to clarify and streamline arrangements to give market participants and entities a better understanding of their reporting responsibilities, and to enable legislative and statutory bodies to operate efficiently and effectively. Options to help achieve this include:

<sup>354</sup> Electricity Act s. 120(3)

<sup>355</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2019, p. 444, viewed 17 July 2019, <https://financialservices.royalcommission.gov.au/Pages/reports.aspx#final>

<sup>356</sup> OECD, 2018, *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264303959-en>

- Consolidating administrative and enforcement functions in one agency, such as the QCA. This option would simplify arrangements, but would be a significant change and does not address risks of regulatory capture.
- Consolidating administrative functions in one agency, such as the QCA, and consolidating all enforcement functions within the responsibility of the Regulator. This option would simplify arrangements, is a relatively modest change and addresses risks of regulatory capture.

Efficient: the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost

Efficiency concerns identified in the review centred on the availability of provisional improvement notices, remediation notices and other legislative remedies, opportunities to merge inspection and electricity officer roles, remedies for non-compliance with the legislation, and opportunities to exercise enforcement powers more broadly and visibly.

Availability of Provisional Improvement Notice, remediation notices and other remedies

*Provisional improvement notices and remediation notices*

Energy Queensland proposed enforcement of the regulation could be improved through the addition of Provisional Improvement Notices. Provisional Improvement Notices are a means of directing compliance with legislative requirement. They are often used in work health and safety legislation, including electrical safety. They are most useful to direct conduct:

*Similar to enforcement powers provided to inspection officers under other Queensland legislation (for example, Worksafe Inspectors) electricity officers of a distribution business should be provided with the power to issue a Provisional Improvement Notice (PIN). A PIN would allow for a more immediate response to legislative breaches, reduce the costs of the network business in progressing action via the courts, and provide for a more appropriate response to a breach than seeking redress via the courts.<sup>357</sup>*

Energy Queensland did not specify in its submission the types of legislative breaches it envisaged provisional improvement notices would be used in conjunction with. However, it is understood these powers are most likely to be useful for rectifying instances of ongoing failure to comply with a request. The most relevant provisions of this sort appear to relate to:

- Powers of entry (discussed in Section 2.5: Powers of entry and resumption).
- Technical requirements (discussed in Section 2.6: Technical requirements). These include powers for electricity entities to specify various requirements, for example, relating to circuit breakers, power factor of electrical installations, characteristics of a protection device, use of an electrical article, the provision of links for connecting meters or space for a substation, and guidelines specifying electric motor installation and operational requirements. Other relevant technical rules include restrictions on using electricity or an electrical article in a way that unreasonably interferes with the supply of electricity to other customers.

In a similar vein, the TMR requested powers to issue remedial notices where an electricity entity or gas distributor has failed to comply with a work direction of the Department. Similar provisions appear in ss. 53BQ, 53BR and 53BS of the *SEQ Water (Distribution and Retail Restructuring) Act 2009*.

---

<sup>357</sup> Energy Queensland submission, p. 23.

Provisional improvement and remediation notes appear to be useful tools to facilitate compliance with legislation. Energy Queensland and the TMR each provide important support to promote compliance with the legislation.<sup>358</sup> However, it is not clear whether a legislative power to issue notices of improvement or remediation would necessarily improve compliance. That is, each of the entities is able to advise customers (in the case of Energy Queensland) and energy entities (in the case of the TMR) of suspected non-compliance with the legislation and request improvement or remediation. The entities are also able to raise concerns with the Regulator.

#### *Other remedies*

Energy Queensland submitted where a customer does not have a connection agreement, it should have the ability to disconnect an energy storage unit or micro-embedded generator, rather than supply:

*Where an energy storage unit or micro-embedded generator, not the subject of a connection agreement, is identified by Ergon Energy or Energex, the business works with the customer to progress a connection agreement. However, the potential exists for the network business to reach a view that the use or intended use of the storage device or embedded generating unit may reasonably interfere with the entity's supply of electricity to other customers, attracting a risk of disconnection.*

*However, this approach disconnects the customer from an electricity supply. Instead Energy Queensland's preference is to disconnect supply to the embedded generator or storage system. Such an approach would allow the customer to continue to access an electricity supply until a connection agreement is executed.<sup>359</sup>*

At present, the Electricity Act enables an electricity entity to disconnect anything connected to a transmission grid or supply network in contravention of technical conditions for the connection (s. 166 of the Electricity Act). 'Technical conditions' is not defined, but other powers under the legislation enable entities to set certain technical conditions. However, as most technical conditions are contained in the connection agreement, the section may not operate effectively where there is no connection agreement in place.

The majority of powers in relation to disconnection appear in the NERR. Under s. 119 of the NERR, it is grounds for de-energisation of premises if a customer:

- uses or allows the use of any energy equipment at the premises in a matter that unreasonably interferes with the connection or supply of energy to another customer
- uses or allows the use of customer connection services provided by the distributor at the premises other than as permitted by law or the customer connection contract.

The NERR do not appear to contemplate disconnection of equipment, which is likely to be less of an impost on customers than disconnection of premises. This is understandable however, given the applied national retail law's focus on the sale of electricity to customer premises rather than equipment for the export of energy by customers, or the technical regulation of that equipment. Amending the scope of s. 166 of the Electricity Act to enable disconnection of devices in the event a customer has not completed a connection agreement appears to be a less intrusive alternative to powers under the NERR, provided similar notice protections to those provided under the NERR are provided.

---

<sup>358</sup> Energy Queensland submission, p. 26.

<sup>359</sup> Energy Queensland submission, p. 8.

### Distinguish between the role of inspection officers and electricity officers

Energy Queensland submitted there is a need to clarify the roles and responsibilities of electricity officers, authorised persons and inspection officers under the Electricity Act.

*Energy Queensland feels there is significant confusion within the industry regarding the roles and responsibilities of 'electricity officers', 'authorised persons' and 'inspection officers'. This has become even more complicated with ring-fencing provisions. Energy Queensland recommends that the Government review the roles of each position, including their respective appointment processes, to identify opportunities to merge roles and functions.<sup>360</sup>*

Merging the roles of electricity officers, inspection officers and authorised persons may create efficiencies. However, the roles of each officer and powers conferred on them are quite distinct. While electricity officers play an operational role (reading meters, safety), the role of inspection officers is to assist the Regulator to enforce the legislation, for example, by applying for warrants of entry and seizing of evidence.

While each officer is subject to training to be approved by the Regulator before appointment, the content of that training necessarily differs given the different powers and objectives of the positions. Further as inspection officers act on behalf of the Regulator, it is appropriate they are directly appointed by the Regulator. As electricity officers act on behalf of an electricity entity, it is appropriate they are directly appointed by that entity.

The only circumstance in which electricity officers may play an enforcement role is in the event an emergency where restriction and rationing orders are in place. In this event, given the urgency of the situation, electricity officers may enter a place to investigate compliance with an emergency rationing order and disconnect supply in the event of a breach.

In non-emergency situations, it is important the Regulator retain its power as it stands to appoint an inspection officer under the Act.<sup>361</sup> The powers of inspection officers are broad, and include entering a place, with consent or a warrant, and once entering under those conditions, search a place, inspect, measure, test, photograph or film any part of the place or anything at the place, and seize evidence. Inspectoral powers are a key way in which fundamental legislative principles are negotiated in practice. These powers have the potential to encroach on the rights of individuals and invade their liberties<sup>362</sup> therefore due to the nature of these activities, particularly forcibly entering property and seizing evidence, it is appropriate such provisions are given a head of power in the primary legislation which sets up the electricity and gas supply industry, and that checks and balances are adequate, and routinely reviewed. The Regulator ought to be satisfied only suitable persons are empowered with those rights and abilities and they can be removed under appropriate circumstances.

### Opportunities to exercise enforcement powers more broadly and visibly

Consideration needs to be given to whether people are aware of the offences or contravention provisions, and associated penalties. If individuals and corporations lack awareness, this will have a significant impact on the deterrent effect of the regime.

---

<sup>360</sup> Energy Queensland submission, p. 27.

<sup>361</sup> Electricity Act, Chapter 7, Part 2, s. 146

<sup>362</sup> The State of Queensland, Department of the Premier and Cabinet 2014, Queensland Legislation Handbook, viewed 17 July 2019, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/assets/legislation-handbook.pdf>

As outlined in the former Department of Energy and Water Supply's 2016-2017 Annual Compliance Plan:

*[c]ompliance monitoring takes a light-handed approach and is largely achieved through annual reports to the Regulator on the authority holder's operations for the preceding financial year.*<sup>363</sup>

As compliance monitoring takes considerable resources, the most effective methodologies should be employed.

There appear to be opportunities for the Regulator to exercise its powers more broadly and visibly through activities such as publishing enforcement priorities, for example, publishing annual enforcement or compliance bulletins which outline the regulator's response to contraventions of the legislation, or publishing comprehensive guidance material, forms and information sheets in relation to its enforcement powers and responses.

In terms of guidance, recommendation 6-3 of the Australian Law Reform Commission report on 'Principled Regulation: Federal Civil and Administrative Penalties in Australia' (ALRC Report 95) suggested when regulators provide publically available guidelines absent of any legislative requirement, the guideline should:

- be drafted in plain English
- include a statement they are not legally binding and are non-justiciable
- be published in electronic format on the regulator's website and in hard copy
- clearly indicate they are current and operative guidelines
- to the extent practicable, be developed in consultation with the regulated community.<sup>364</sup>

ALRC Report 95 further recommends:

*Regulators who administer legislation under which criminal, civil or administrative penalties may be imposed or arise should develop and publish enforcement guidelines setting out their enforcement approach.*

In alignment with these recommendations, the Regulator may consider publishing guidelines which focus on the types of action available, the principles that support these actions, what criteria governs the choice of action to pursue and how the Regulator relates to other enforcement agencies and regulators.<sup>365</sup>

## Objectives

The objective of offences and enforcement arrangements is to promote compliance with the legislation so the legislation is able to achieve its desired regulatory outcomes.

---

<sup>363</sup> Department of Energy and Water Supply, 2016-2017, *Annual Compliance Plan*, p. 4, viewed 17 July 2019, [https://www.dnrme.qld.gov.au/\\_data/assets/pdf\\_file/0011/541478/DEWS-Annual-Compliance-Plan-2016-2017.pdf](https://www.dnrme.qld.gov.au/_data/assets/pdf_file/0011/541478/DEWS-Annual-Compliance-Plan-2016-2017.pdf)

<sup>364</sup> Australian Law Reform Commission, 2003, *Principled Regulation: Federal Civil and Administrative Penalties in Australia*, Report No 95 p. 26, viewed 17 July 2019, <https://www.alrc.gov.au/report-95>

<sup>365</sup> Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Australia*, Report No 95 (2003) p. 31, viewed 17 July 2019, <https://www.alrc.gov.au/report-95>

## Options

Option	Description
<b>Status quo (option 1)</b>	<ul style="list-style-type: none"> <li>Regulation remains unchanged, subject to any consequential amendments arising from other options in this Stage 2: Options Paper, e.g. introduction of a standards and codes framework.</li> <li>Option 1 complemented by education material prepared by the Regulator to advise of its enforcement strategy and priorities</li> </ul>
<b>Modernise offences and enforcement tools (option 2)</b>	<ul style="list-style-type: none"> <li>Expand the regulatory tools available to the Regulator to promote compliance</li> <li>Section 166 of the Electricity Act would be clarified to enable disconnection of devices without a connection agreement</li> <li>Consequential amendments and duplicative offences removed</li> </ul>
<b>Modernise plus structural adjustment (option 3)</b>	<ul style="list-style-type: none"> <li>The regulatory enhancements in option 2 would be introduced</li> <li>Supplemented by a structural adjustment between the roles of enforcement and administration (enforcement and administration roles would be either separated or consolidated).</li> </ul>

## Option 1 – Status quo

Option 1 would not make any substantive regulatory adjustments to existing arrangements. This could be achieved by:

- a) making no changes to arrangements; or
- b) making no changes to arrangements aside from any necessary consequential amendments flowing from proposals in other sections of this Options Paper.

The difficulty with option 1a) is that if other proposals set out in this Options Paper are accepted (e.g. the introduction of a new standards framework as proposed in Section 2.6: Technical requirements) the offences and enforcement framework would no longer provide an avenue to enforce technical obligations placed on energy entities. Without effective enforcement options, there would be considerable (and unnecessary) risk in advancing those proposals. For this reason, the option is not feasible if the proposed changes to technical requirements are made. If those changes are not accepted, the option is feasible.

Under option 1b), consequential amendments would be made to maintain the substantive effect of existing enforcement approaches if changes are made to technical regulation. Consequential changes would involve providing the QCA with powers to monitor and enforce electricity standards, in the same way it currently monitors and enforces the Distribution Network Code (the electricity Distribution Network Code would become a standard).

Under option 1, the Regulator would also publish information about its enforcement approach and priorities to help promote industry compliance.

The current offences and enforcement regime has not to date created any known regulatory failures. Industry has been largely compliant with arrangements and where difficulties are identified, they are worked through with the relevant participants. In total, there have only been 17 actions taken for offence provisions in the Electricity Act (eight through the Courts), two actions taken for offence provisions under the Energy and Water Ombudsman Act, and four actions taken for offence provisions under the Gas Supply Act.

Option 1 therefore appears proportionate and a relatively low cost option. However, it does not address impediments to efficient enforcement of offences, including the range of tools available to the Regulator.

Impact group	Estimated impact
Energy industry participants	Minimal impact – status quo
Regulator	Minimal impact – status quo
QCA	Minimal impact – status quo
Users and other public	Minimal impact – status quo

#### Option 2 – Modernise offences and enforcement tools

Under this option, a number of adjustments would be made to modernise arrangements. These include:

- Expanding the regulatory toolkit by establishing a single framework of regulatory enforcement powers (information notices, audits, warning notices, contravention notices, directions, enforceable undertakings, court action including injunctions and penalties, and where appropriate amendment, cancellation or suspension of a licence). These powers would be applied by the Regulator on a risk basis as set in regulatory guidance material to provide transparency to industry and ensure proportionate responses are consistently applied.
- Removal of duplicative or ineffectual offences. The offence of unlawfully taking electricity or gas would be removed. This appears adequately dealt with under s. 408C of the Criminal Code.
- Expanding the application of s. 166 of the Electricity Act to enable disconnection of a device where no connection agreement has been entered into. Similar safeguards to the national energy retail rules would apply, including the requirement for disconnection warning notices. This is a less intrusive remedy than disconnection of supply to a premises.

Similar consequential amendments as outlined in option 1 would also be made.

The key advantage of option 2 is it would support a more efficient, targeted approach to ensure enforcement is commensurate with risk. However, as a broader range of potential enforcement responses would have the potential to create uncertainty in industry, it would be important for the Regulator to publish enforcement guidelines.

The key drawback of option 2 is that it largely responds to risk, rather than an existing problem. As noted in option 1, there have been no known regulatory failures identified to date. As such, amendment may be considered premature.

Impact group	Estimated impact
Energy industry participants	<p>More responsive, proportionate response options for regulator and distribution entities could lead to greater regulatory oversight (e.g. of systems, which may create costs for affected industry participants)</p> <p>Overall cost reduction of compliance action for some participants who have low level risk of contravention</p>
Regulator	<p>Clearer role</p> <p>Strong toolkit and administrative process</p> <p>Clearer offences and penalties schedule</p> <p>May increase costs of enforcement as greater number of actions likely to be taken (e.g. due to greater number of mechanisms to respond to contraventions)</p>
QCA	Minimal impact
Users and other public	<p>Overall benefit from more safe, secure and reliable framework where offence regime provides greater deterrence against harm to system and disconnection or interferences with individual supply</p> <p>Customers who fail to complete connection agreement for storage or embedded generation may face disconnection of equipment (this is a less intrusive remedy than otherwise available)</p>

### Option 3 – Modernise plus structural adjustment

Option 3 involves modernising the offences and enforcement arrangements in line with option 2, but with the addition of structurally adjusting the roles and responsibilities of the QCA and the Regulator. There are two options for structural adjustment:

3(a) **Consolidating administrative and enforcement functions in one agency, such as the QCA**  
 New South Wales has successfully operated this model for well over 25 years. This would be a relatively simple adjustment, with the potential to provide more comprehensive insight into regulatory issues, more consistent engagement with industry, consumers, governments and other regulators and more informed consideration of regulatory risks.

However, there are disadvantages including reducing overarching policy insight within DNRME which is currently responsible for advising government on changes to the law, and exacerbating the risk of regulatory capture as a result of greater day-to-day interactions between the enforcement entity and industry on non-enforcement issues. Additional resourcing for the QCA would be required, estimated at around five staff resources plus consultancy funding, based on existing arrangements within DNRME.

3(b) **Consolidating administrative functions in one agency, such as the QCA, and consolidating all enforcement functions within the responsibility of the Regulator**

This would also simplify arrangements and be a less significant restructure of responsibilities than consolidation within one agency. The only change would be moving distribution and transmission licensing to the QCA and removing the QCA's powers to respond to code contraventions via court action or referral to the Regulator. It also manages risks associated with regulatory capture, as day-to-day administration of the act is looked after by a separate entity to the entity responsible for enforcement. This would also increase focus of each agency on their role, which may enhance administration and enforcement overall.

The key advantage of the structural adjustment option is it reduces the potential for duplication and for gaps in relation to the regulation of existing codes, and proposed future standards. Standards under the proposed arrangements will replace the existing Distribution Network Code, and have a much broader potential reach: applying to a broader range of industry participants and dealing with a greater range of subject matter, including technical requirements. Clear responsibility for administration and enforcement to avoid duplication and gaps becomes more pressing as a result.

The key disadvantage of option 3 is cost. While overall administration and enforcement costs should decrease with additional economies of scale, option 3 does present some implementation costs associated with structural change. The structural change costs of option 3(a) (consolidate administration and enforcement within QCA) are more significant than those of option 3(b) (separate administration and enforcement) due to the scale of change. Implementation costs include training, development of record keeping requirements, adjustments of memorandum of understanding and awareness raising activities. If roles are separated, adjustment to annual licence fees and reporting may need to be made to ensure annual fees continue to fund enforcement activities, and the Regulator is able to access the information it needs to effectively enforce arrangements.

Impact group	Estimated impact
Energy industry participants	Similar impacts to option 2, plus: <ul style="list-style-type: none"> <li>• Clearer compliance and reporting frameworks</li> <li>• Transparent administrative processes</li> </ul>
Regulator	Functions repealed under option 3(a) would reduce resourcing requirements Option 3(b) would have similar impacts to option 2, plus: <ul style="list-style-type: none"> <li>• Reduced cost as a result of licence administration moving to QCA</li> <li>• Greater reliance on enforcement role in relation to distribution network code subject matter may incur some costs (as monitoring and potential civil action is no longer handled by QCA)</li> <li>• Simpler information sharing arrangements with QCA and clarity of role should reduce potential for duplication</li> </ul>
QCA	Expanded functions under option 3(a) would require additional resourcing (approximately five staff resources) Expanded functions under option 3(b): <ul style="list-style-type: none"> <li>• Increased cost associated with licence administration (note however this would be unlikely to be significant given few distribution licence applications and potential reduction in generation licensing obligations under options 2 or 3 in Section 2.4: Licensing)</li> <li>• Cost savings from QCA taking on monitoring role for current subject matter of distribution network code</li> <li>• Simpler information sharing arrangements with QCA and clarity of role should reduce potential for duplication</li> </ul>
Users and other public	Similar impacts to option 2, plus stronger administration and enforcement outcomes

## Comparative assessment

	Key advantages	Key disadvantages	Assessment
<b>Status quo (option 1)</b>	<p>Low cost option to implement</p> <p>Proportionate response (no known regulatory failures)</p>	<p>Does not provide for newer risks facing energy networks, including cybersecurity risks, or for offences to capture the works of newer industry participants or meters owned by retailers</p> <p>Does not address impediments to efficient enforcement of offences, including the availability of improvement and infringement notices</p>	<b>Not preferred</b> as unlikely to effectively manage future risks
<b>Modernise offences and enforcement tools (option 2)</b>	<p>Broader regulatory responses present efficient, targeted approach</p>	<p>Largely responds to risk, rather than an existing problem</p> <p>May be considered premature as no known regulatory failures identified to date</p>	<p><b>Preferred for gas</b> as scope of standards and codes unlikely to be expansive</p> <p>Not preferred for electricity as does not address potential duplication and gaps between QCA and regulator, which may increase as remit of standards and codes expand</p>
<b>Modernise plus structural adjustment (option 3)</b>	<p>As per option 2</p> <p>Simpler, more focused enforcement minimises potential for duplication and gaps</p>	<p>As per option 2</p> <p>Higher implementation costs than options 1 or 2</p>	<b>Preferred for electricity</b> modern framework and reduces potential for overlap and gaps in administration and enforcement

## Recommendations

The review is recommending option 3 (a) or (b) to modernise both the tools and framework that support offences and enforcement.

This option is likely to deliver more benefits than option 1 or option 2 in terms of addressing current inefficiencies and gaps in offences and enforcement tools, and a regulatory structure capable of responding in a proportionate and timely way to future risks.

Option 3 is more expensive to implement and potentially leads to higher costs for industry. On balance these costs are justified by the expected improvements in administration and enforcement (as compared with option 1), the benefits of minimising potential duplication, and the benefits of addressing the potentially serious risk posed to public and essential services from gaps in administration and enforcement. More gaps are likely to happen as the energy sector continues to change.

#### Consistency with other policies and legislation

##### Section 5 of the Competition Principles Agreement

The proposed options are not expected to impact competition.

#### Fundamental legislative principles

The proposed options are not expected to infringe fundamental legislative principles. The proposed wider enforcement tools largely enable more proportionate responses by the Regulator, for example, warning and contravention notices, as opposed to stronger or more intrusive responses. Similarly powers to disconnect devices without a connection agreement are less intrusive than powers to disconnect supply to a customer.

Consequential amendments are aimed at retaining existing powers, in the absence of licensing. The proposed remedies would improve oversight of regulatory action, as they would be overseen by a Court, rather than made as administrative decisions of the Regulator. This is a stronger protection for industry, particularly in relation to remedies such as orders to suspend or cease activities.

#### Implementation

Implementation of the preferred options would be achieved through legislative amendment. This would be supported by guidance material to be published by the Regulator in relation to its enforcement strategy.

Implementation would differ, depending on whether option 3(a) or option 3(b) is preferred. Option 3(a) involves significant structural change, with all responsibilities—administration and enforcement—given to the QCA. Option 3(b) is more modest, with assessment of licences transferred to the QCA, and enforcement of distribution network codes transferred solely to the Regulator. Transitional arrangements would be needed for each option, for example, for applications or enforcement action on foot at the time of transfer. Amendments would also need to be made to the enabling legislation for the QCA to support the change in responsibility under option 3(a) and an approach to funding determined.

Stakeholder questions

**Topic 11 Offences and penalties**

Q11.1 Of the options considered for this Topic, which one do you prefer?

- Option 1
- Option 2
- Option 3a
- Option 3b
- I do not like any of the options
- Blank (I have no interest in this topic)

Q11.2 Why?

Q11.3 Thinking of your preferred option, would you like to suggest any improvements?

## Section 3: Navigation tools

### Section 3.1 Summary of stakeholder consultation responses to Stage 1 Issues Paper

#### Who made a submission?

A wide range of stakeholders and interested parties were identified and consulted during the Stage 1 Issues Paper process, including representatives from the gas and electricity industry, consumer groups, environmental organisations, and government and the public sector. A total of 42 submissions to the Issues Paper were received, 60 entities were represented during five stakeholder-group workshops, and a number of follow up individual stakeholder meetings were conducted to further investigate specific issues.

<a href="#">Advisory Council to the Energy and Water Ombudsman Queensland</a>	<a href="#">Master Builders Queensland</a>
<a href="#">Australian Conservation Foundation</a>	<a href="#">Master Electricians Australia</a>
<a href="#">Australian Energy Council</a>	<a href="#">Meridian Energy</a>
<a href="#">Australian Gas Infrastructure Group</a>	<a href="#">Origin Energy</a>
<a href="#">Australian Sugar Milling Council</a>	<a href="#">Pacific Hydro</a>
<a href="#">AusNet Services</a>	<a href="#">Property Council of Australia</a>
<a href="#">Ms Lorna Barton</a>	<a href="#">Powerlink</a>
<a href="#">Mr Trevor Berrill</a>	<a href="#">Queensland Consumers Association</a>
<a href="#">Ms Carole Cawsey</a>	<a href="#">Queensland Conservation Council</a>
<a href="#">Chamber of Commerce and Industry Queensland</a>	<a href="#">Queensland Council of Social Service</a>
<a href="#">Cotton Australia</a>	<a href="#">Queensland Farmers' Federation</a>
<a href="#">Mr Cameron Cudahy</a>	<a href="#">Red Energy and Lumo Energy</a>
<a href="#">Environmental Defenders Office</a>	<a href="#">Redback Technologies</a>
<a href="#">Energy Australia</a>	<a href="#">Rheem</a>
<a href="#">Energy Queensland</a>	<a href="#">Rio Tinto</a>
<a href="#">Energy and Water Ombudsman Queensland</a>	<a href="#">Shopping Centre Council of Australia</a>
<a href="#">Financial Counsellors' Association of Queensland</a>	<a href="#">Smart Energy Council</a>
<a href="#">Mr Adam Gowlett</a>	<a href="#">Simply Energy</a>
<a href="#">Housing Industry Association</a>	<a href="#">Vector</a>
<a href="#">Julie</a>	<a href="#">Ms Hannelie Whitehead</a>
<a href="#">Local Government Association of Queensland</a>	<a href="#">Windlab</a>

## Issues raised

Stakeholders submitted feedback on a variety of topics.

<p><b>Licensing</b></p> <p>Greater clarity for licensing requirements (who and what activities, consider new technologies)</p> <p>Greater exemptions / exemptions flexibility for new technology, community energy and where activity is separately licensed under applied national laws</p> <p>Process issues to reduce duplication and opportunities to improve transparency</p>	<p><b>Price control</b></p> <p>Support for price controls</p> <p>Request for relaxation of price controls</p> <p>Support for stronger data collection and powers</p> <p>Support for changes to Solar Bonus Scheme restrictions (e.g. to permit batteries)</p>
<p><b>Powers of entry and resumption</b></p> <p>Some stakeholders sought expanded rights of access:</p> <ul style="list-style-type: none"> <li>To customers (e.g. neighbouring property)</li> <li>Who can access property</li> </ul> <p>Some stakeholders argued to relax permission / notification obligations</p>	<p><b>Emergency powers</b></p> <p>Some stakeholders argued powers should not change</p> <p>Support for expansion to incorporate micro-grids (e.g. as backup) or otherwise enhanced (e.g. to expand the powers of network operators in emergency situations)</p> <p>Some stakeholders focused on opportunities to streamline processes</p>
<p><b>Technical requirements</b></p> <p>Request for definitions to be updated, particularly for generation, grid utility support systems, stand-alone power systems, virtual networks and network storage</p> <p>Support for technical obligations to be moved to subordinate legislation to facilitate the legislation keeping up with technological change</p> <p>Others argued all technical provisions be eliminated</p>	<p><b>Offences and enforcement</b></p> <p>Some stakeholders requested industry be given wider powers of enforcement</p> <p>Some called for the creation of new offences</p>
<p><b>Consumer protections</b></p> <p>Stakeholders were mixed on whether consumer protections should be:</p> <ul style="list-style-type: none"> <li>retained</li> <li>expanded (e.g. financial hardship and reconciliation action plans)</li> <li>removed in deference to applied national laws</li> </ul>	<p><b>Dispute resolution (including Energy and Water Ombudsman)</b></p> <p>Focused on the Ombudsman and the need to provide greater flexibility in relation to Ombudsman powers and to reduce cost</p>
<p><b>Co-generation</b></p> <p>Stakeholders supported increased legislative recognition and support for co-generation</p>	<p><b>Connections</b></p> <p>Submissions called for networks to fulfil obligation to offer supply via non-grid mechanisms (i.e. stand-alone power systems)</p> <p>There was also support for legislating maximum timeframes for approval and contestability of connection services</p>
<p><b>Data</b></p> <p>Support for improved data collection powers (e.g. to ensure data about micro-generation and batteries to inform network planning assessments)</p> <p>Others argued no changes needed</p>	<p><b>Environment / energy efficiency / demand management</b></p> <p>Some stakeholders argued no change needed, others called for increasing or strengthening environmental obligations (e.g. legislating state emissions reduction and renewable generation targets)</p>

Figure 40: Summary of feedback received from stakeholders

### Submission trends

All submissions in response to the Stage 1 Issues Paper have been reviewed with feedback incorporated into this Stage 2 Options Paper as appropriate. A variety of feedback was submitted (see Figure 40 and Figure 41).

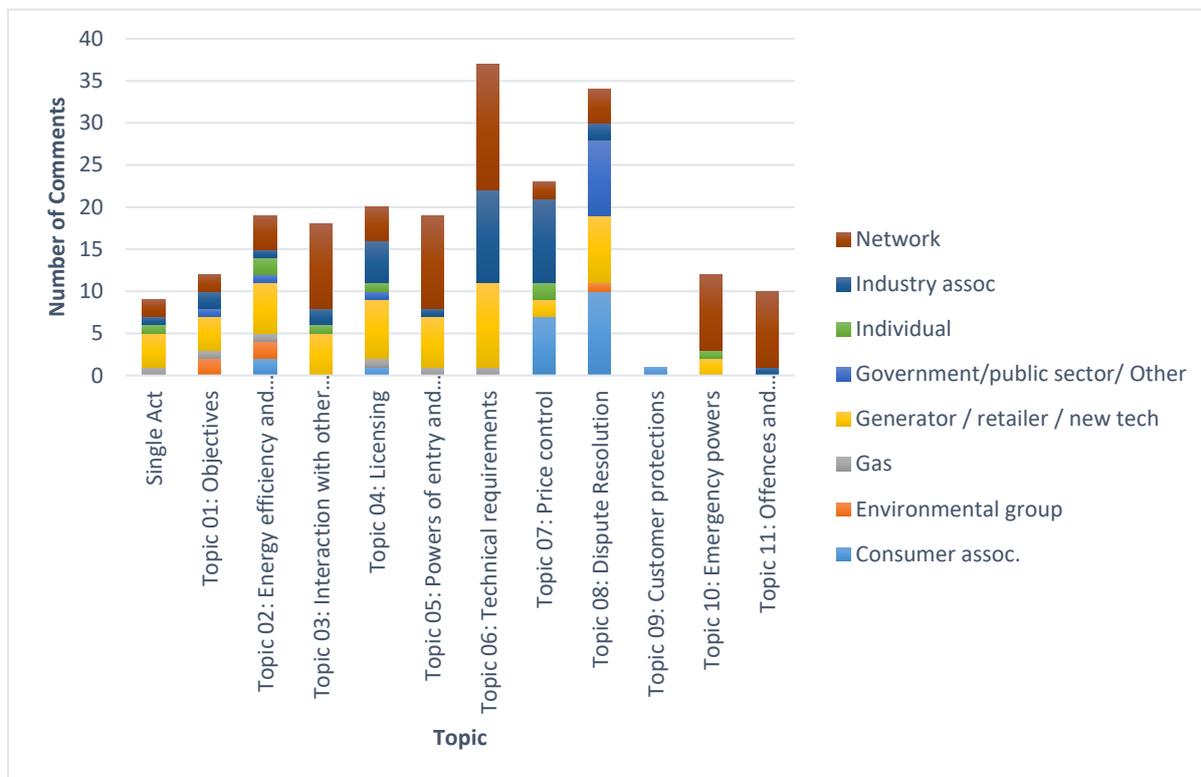


Figure 41: Responses to Issues Paper by topic

### Out of scope

Table 22 (below) outlines our responses to stakeholders’ feedback which has not been otherwise addressed in this Stage 2 Options Paper.

Table 22: Out of scope stakeholder feedback

Stakeholder comment	Response
AusNet Services	
Define licence holders as ‘public utilities’ for the purposes of Land Act easements. <sup>366</sup>	Amendments to the Land Act 1994 fall outside the scope of this review.
Australian Conservation Foundation	
Legislate emissions reduction and renewable generation targets by	Specific actions to support emissions reduction and renewable generation targets are being developed as part of Target detailed policy development project, and work the Department

<sup>366</sup> AusNet Transmission Group Pty Ltd submission, p. 3.

Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper

Stakeholder comment	Response
mandating technologies that provide a clear pathway to targets. <sup>367</sup>	<i>of Environment and Science is leading into the Queensland Climate Transition Strategy and post-2020 climate transition policy. The outcomes of that work that is relevant to state energy legislation may be included in Stage 3 Decision Paper.</i>
Need to reimage entire energy system – refer to Repower Australia Plan and CSIRO/ENA Roadmap. <sup>368</sup>	<i>The review of Queensland’s energy laws has investigated ways of changing from the traditional linear structure, and support an evolving energy sector. Work being progressed primarily under other processes, e.g. Queensland Climate Transition Strategy and the Open Energy Networks Project, has not been duplicated in Stage 2 Options Paper. However, outcomes of that work may be included in Stage 3 Decision Paper.</i>
Chamber of Commerce and Industry Queensland	
Adopt network Community Service Obligation (CSO). <sup>369</sup>	<i>CSO policy falls outside the scope of this review.</i>
Standardise offers made by retailers. <sup>370</sup>	<i>The format of retail offers is primary regulated under the NERL. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
Cotton Australia	
Attach distribution network tariff comparisons to bills. <sup>371</sup>	<i>Rules around the content of bills are set under the NERL. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper</i>
EnergyAustralia	
Apply distributor exemptions re waiving interruption notices to retailers where appropriate. <sup>372</sup>	<i>This has been addressed under the National Energy Retail Amendment (Metering Installation Timeframes) Rule 2018. No action under state legislation is required.</i>
Adopt network CSO. <sup>373</sup>	<i>CSO policy falls outside the scope of this review.</i>
Energy Queensland	
Centralise ss. 98, 136-143. <sup>374</sup>	<i>Drafting suggestion to be noted at later stage in project.</i>
Consider extending licensing to distribution system operator and give networks a coordination role, e.g. for DER. <sup>375</sup>	<i>These matters are being considered as part of the Open Energy Networks Project. Any legislative work arising from that project which is relevant to state legislation may be included in Stage 3 Decision Paper.</i>
Emergency powers should refer to AS/NZ4755 to support rationing. <sup>376</sup>	<i>The proposed reforms under Section 2.10: Emergency Powers would be broad enough to enable this to occur without a specific reference.</i>
Under the <i>Planning Act 2016</i> , networks should be able to comment on a broader	<i>This is principally a matter for planning legislation. Amendments to the <i>Planning Act</i> fall outside the scope of this Review.</i>

<sup>367</sup> Australian Conservation Foundation submission, p. 2.

<sup>368</sup> Australian Conservation Foundation submission, p. 1.

<sup>369</sup> Chamber of Commerce and Industry Queensland submission, p. 2.

<sup>370</sup> Chamber of Commerce and Industry Queensland submission, p. 3.

<sup>371</sup> Cotton Australia Limited submission, p. 2.

<sup>372</sup> EnergyAustralia Pty Ltd submission, p. 4.

<sup>373</sup> EnergyAustralia Pty Ltd submission, p. 3.

<sup>374</sup> Energy Queensland submission, pp. 19-20.

<sup>375</sup> Energy Queensland submission, p. 14.

<sup>376</sup> Energy Queensland submission, p. 21.

Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper

Stakeholder comment	Response
range of matters, including matters falling outside the Electricity Act. <sup>377</sup>	
Provide access for networks to electric vehicle registration to enhance the granularity of long-term planning. <sup>378</sup>	<i>This is principally a matter for transport legislation, though may be supported by the DER Register. Electric vehicle registration information is regulated by TMR.</i>
Require all generators to: <ul style="list-style-type: none"> <li>o provide closure date notification (including non-scheduled),</li> <li>o remediate site and</li> <li>o remove connection assets.<sup>379</sup></li> </ul>	<i>The Department of Environment and Science is leading work on the state's Climate Transition Strategy and post-2020 climate transition policy. The outcomes of that work that is relevant to state energy legislation may be included in Stage 3 Decision Paper, if timing permits.</i>
<b>Environmental Defenders Office</b>	
Include emissions reduction target. <sup>380</sup>	<i>The Department of Environment and Science is leading work through the state's Climate Transition Strategy and post-2020 climate transition policy. The outcomes of that work that are relevant to state energy legislation may be included in Stage 3 Decision Paper.</i>
Legislate emissions reduction and renewable generation targets by mandating technologies that provide a clear pathway to targets. <sup>381</sup>	
<b>Financial Counsellors' Association of Queensland</b>	
Community education important for vulnerable customers. <sup>382</sup>	<i>The Queensland government provides programs like Energy Savvy Families, which helps low-income families learn about their energy usage and to manage their bills. The Queensland Government is separately reviewing the application of the NERL in Queensland, which addresses support for customers experiencing hardship. Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
<b>Housing Industry Association</b>	
Support introduction of connections contestability to reduce timeframes and cost. <sup>383</sup>	<i>Connections policy is principally a matter for applied national laws (chapter 5A of the National Electricity Rules). Amendments to connections policy fall outside the scope of this review.</i>
<b>Individual</b>	
Access to concessions for embedded network customers.	<i>Embedded network customers may access concessions, unless there is no primary retailer. Legislation to address this specific situation is addressed in <u>Section 2.9: Customer Protections</u>. Concessions policy more generally falls outside the scope of this review.</i>
Eliminate exemptions for large polluters (e.g. Gladstone Power Station)	<i>Environmental restrictions are primarily contained in the Environmental Protection Act 1994. Specific measures for Gladstone Power Station are also contained within the Gladstone Power Station Agreement Act 1993. These pieces of legislation fall outside the scope of this review.</i>
Keep what exists and strengthen targets.	<i>The Queensland Climate Transition Strategy establishes the transition pathway to a clean growth economy and sets a</i>

<sup>377</sup> Energy Queensland submission, p. 11.

<sup>378</sup> Energy Queensland submission, p. 12.

<sup>379</sup> Energy Queensland submission, p. 6.

<sup>380</sup> Environmental Defenders Office submission, p. 2.

<sup>381</sup> Environmental Defenders Office submission, p. 2.

<sup>382</sup> Financial Counsellors' Association of Queensland submission, p. 2.

<sup>383</sup> Housing Industry Association Limited submission, p. 1.

Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper

Stakeholder comment	Response
	<i>target to reduce greenhouse gas emissions by 30 per cent by 2030.</i>
Legislate emissions reduction and renewable generation targets by mandating technologies that provide a clear pathway to targets.	
Mandate renewable energy for large energy users.	
The Queensland Government should adopt a more active role in the COAG Energy Council.	<i>Queensland is an active participant in the COAG Energy Ministers meetings and working groups.</i>
Tariffs - residential tariff should apply to apartment blocks.	<i>The NERL Exempt Seller Guidelines include price restrictions for customers on embedded networks. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
<b>Local Government Association of Queensland</b>	
Provide equitable cost sharing for plant relocation e.g. remaining useful life of asset. <sup>384</sup>	<i>Cost issues in relation to plant relocation is principally a matter for applied national laws (Chapter 6: economic regulation). The AER Framework and Approach is the first step in a two-year process by the AER to determine efficient prices for electricity distribution services. The Framework and Approach determines, among other things, which distribution services they will regulate and the broad nature of the regulatory arrangements. This includes an assessment of services (service classification) and whether the AER needs to directly control the prices and/or revenues set for those services.</i>  <i>As per Appendix C of the AER's Framework and Approach for Ergon Energy and Energex, a request to undertake relocation of network assets is an Alternative Control Service (for the current determination period 2015-20 and for the proposed 2020-25 period) and as such, the requesting party is responsible for meeting the distributors efficient costs.</i>
Remove non-reversion policy for large customers. <sup>385</sup>	<i>The non-reversion policy is set out in the NERL(Q). The Queensland Government is separately reviewing the NERL(Q). Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
Amend definition of small customers to include customers with annual load up to 160 MW. <sup>386</sup>	<i>The definition of small customers is included in the NERL. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
<b>Master Builders</b>	
Support introduction of connections contestability to reduce timeframes and cost. <sup>387</sup>	<i>Connections policy is principally a matter for applied national laws (chapter 5A of the National Electricity Rules). Amendments to connections policy fall outside the scope of this review</i>
<b>Master Electricians Australia</b>	

<sup>384</sup> Local Government Association of Queensland Ltd submission, p. 2.

<sup>385</sup> Local Government Association of Queensland Ltd submission, p. 1.

<sup>386</sup> Local Government Association of Queensland Ltd submission, p. 1.

<sup>387</sup> Master Builders Queensland submission, p. 1.

Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper

Stakeholder comment	Response
Allow citizens to sell to neighbours. <sup>388</sup>	<i>Rules around the sale of electricity to customers is set out in the NERL. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper.</i>
Adopt network Community Service Obligation. <sup>389</sup>	<i>CSO policy falls outside the scope of this review.</i>
Support introduction of connections contestability to reduce timeframes and cost. <sup>390</sup>	<i>Connections policy is principally a matter for applied national laws (chapter 5A of the National Electricity Rules). Amendments to connections policy fall outside the scope of this review.</i>
Meridian Energy	
Consideration should be given to allowing customers to agree to a negotiated price with their retailer for services which are not mentioned in Schedule 8 to enable the provision of such services. <sup>391</sup>	<i>Rules around the sale of electricity to customers is set out in the NERL. The Queensland Government is separately reviewing the application of the NERL in Queensland. Any legislative work arising from that review may be included in Stage 3 Decision Paper</i>
Origin Energy	
Apply national metering arrangements to remove duplication. <sup>392</sup>	<i>Chapter 7 (Metering) of the NER applies to grid connected areas in Queensland. Off-grid metering arrangements are set out in distribution network code but reference national rules.</i>
Powerlink	
Network requires more detailed data on generators embedded in network to inform planning. <sup>393</sup>	<i>Under national rules, information placed on the DER Register will be made available to affected networks. Any adjustment to these rules should be progressed under the applied national laws.</i>
Property Council of Australia	
Amend the <i>Local Government Act 2009 (Qld)</i> and the <i>City of Brisbane Act 2010 (Qld)</i> to provide for Environmental Upgrade Agreements. <sup>394</sup>	<i>Amendments to the Local Government Act and the City of Brisbane Act fall outside the scope of the review.</i>
Queensland Conservation Council	
Establish advisory committee on environmental impacts of energy sources and delivery of targets. <sup>395</sup>	<i>The Queensland Government is undertaking comprehensive work through the Renewable Energy Target detailed policy development project, and the state's Climate Transition Strategy and post 2020-climate transition policy. The outcomes of that work that is relevant to state energy legislation may be included in Stage 3 Decision Paper.</i>
Legislate emissions reduction and renewable generation targets by mandating technologies that provide a clear pathway to targets. <sup>396</sup>	
Queensland Council of Social Services	

<sup>388</sup> Master Electricians Australia submission, pp. 8-9.

<sup>389</sup> Master Electricians Australia submission, p. 10.

<sup>390</sup> Master Electricians Australia submission, p. 7.

<sup>391</sup> Meridian Energy Australia Pty Ltd submission, p. 2.

<sup>392</sup> Origin Energy Limited submission to the issue paper, p. 6.

<sup>393</sup> Powerlink Queensland submission, p. 4.

<sup>394</sup> Property Council of Australia submission, p. 7.

<sup>395</sup> Queensland Conservation Council submission, p. 1.

<sup>396</sup> Queensland Conservation Council submission, p. 2.

Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper

Stakeholder comment	Response
DNRME should monitor and report on sector's progress against climate change commitments. <sup>397</sup>	<i>The Queensland Government is undertaking comprehensive work through the Renewable Energy Target detailed policy development project, and the state's Climate Transition Strategy and post-2020 climate transition policy. The outcomes of that work that is relevant to state energy legislation may be included in Stage 3 Decision Paper.</i>
Legislate emissions reduction and renewable generation targets by mandating technologies that provide a clear pathway to targets. <sup>398</sup>	
Review issues around data sharing with community workers / not for profit sector (e.g. retailers and QCA sharing information about vulnerable customers in Queensland for early intervention or energy audit programs). <sup>399</sup>	<i>The regulation of retailers, and protection of privacy is primarily a matter for applied national laws and federal privacy legislation.</i>
<b>Queensland Farmers' Federation</b>	
Electricity bills – no GST. <sup>400</sup>	<i>The application of the Goods and Services Tax is a matter for the Commonwealth Government.</i>
The Queensland Government role in COAG - lead national rule change to encourage virtual net metering. <sup>401</sup>	<i>Queensland is an active participant in the COAG Energy Ministers meetings and working groups.</i>
<b>Australia Sugar Milling Council</b>	
Support introduction of connections contestability to avoid controls and stipulations of monopoly providers. <sup>402</sup>	<i>Connections policy is principally a matter for applied national laws (chapter 5A of the National Electricity Rules). Amendments to connections policy fall outside the scope of this review.</i>
Tariffs - no transitional / obsolete tariffs. <sup>403</sup>	<i>The QCA is responsible for reviewing tariffs annually. This review does not duplicate this work</i>
<b>Vector</b>	
Align Electrical Safety Act and the Work Health and Safety Act 2011 with metering laws. <sup>404</sup>	<i>The Electrical Safety Act and the Work Health and Safety Act fall outside the scope of this review.</i>
Customer ability to waive interruption notice. <sup>405</sup>	<i>This has been addressed under the National Energy Retail Amendment (Metering Installation Timeframes) Rule 2018. No action under state legislation is required.</i>
Ensure networks treat all metering providers equally. <sup>406</sup>	<i>Metering and connections policy are principally matter for applied national laws (e.g. chapters 5A and 7 of the National Electricity Rules). Amendments to metering and connections policy fall outside the scope of this review.</i>
Consider metering contestability for gas. <sup>407</sup>	
Support introduction of connections contestability to reduce timeframes and cost. <sup>408</sup>	

<sup>397</sup> Queensland Council of Social Service submission, p. 4.

<sup>398</sup> Queensland Council of Social Service submission, p. 4.

<sup>399</sup> Queensland Council of Social Service submission, p. 5.

<sup>400</sup> Queensland Farmers' Federation submission, p. 5.

<sup>401</sup> Queensland Farmers' Federation submission, p. 4.

<sup>402</sup> Australian Sugar Milling Council submission, p. 2.

<sup>403</sup> Australian Sugar Milling Council submission, p. 2.

<sup>404</sup> Vector Limited submission, p. 2.

<sup>405</sup> Vector Limited submission, pp. 3-4.

<sup>406</sup> Vector Limited submission, p. 3.

<sup>407</sup> Vector Limited submission, p. 2.

<sup>408</sup> Vector Limited submission, p. 2.

*Section 3.1: Summary of stakeholder consultation responses to the Stage 1 Issues Paper*

Stakeholder comment	Response
Licence electrical contractors to support connections contestability. <sup>409</sup>	

---

<sup>409</sup> Vector Limited submission, p. 3.

## Section 3.2 Acronyms and glossary

Acronym	Term	Description
	Applied national law	National energy laws are 'applied' in legislation in the Queensland Parliament and the other State and Territory legislatures. The applied national energy laws are the <ul style="list-style-type: none"> <li>• National Electricity Law and National Electricity Rules</li> <li>• National Gas Law and National Gas Rules</li> <li>• National Energy Retail Law and National Energy Retail Rules.</li> </ul>
AEMC	Australian Energy Market Commission	Rule maker for the applied national laws. Also provides market development advice to governments.
Australian Energy Market Operator	Australian Energy Market Operator	Responsible for day-to-day oversight of the National Electricity Market (NEM) and national gas trading platforms.
AER	Australian Energy Regulator	Regulator for applied national laws.
CSO	Community Service Obligation	Payment made by the Queensland Government subsidise cost of electricity in regional Queensland. For 2019-20, the CSO is budgeted at around \$500 million. See also Uniform Tariff Policy.
CSA	Community Services Agreement	Agreement between energy retailers and the Queensland Government to provide community services, typically the administration of Government funded rebates and concession payments. See also concession.
	Concession	Payment by Queensland Government to support pensioners and seniors meet their energy costs. Key concessions are the Electricity Rebate and the Reticulated Natural Gas Rebate. See also Community Services Agreement.
COAG Energy Council	Council of Australian Governments	The COAG Energy Council is a Ministerial forum for the Commonwealth, states and territories and New Zealand, to work together in the pursuit of national energy reform
	Demand management	Demand management is the practice of reducing electricity usage during periods of high demand to save money on energy bills, reduce or delay the need for network infrastructure, and/or reduce emissions.
DNRME	Department of Natural Resources, Mines and Energy	The Department of Natural Resources, Mines and Energy (DNRME) is the Queensland Government agency responsible for energy policy and some energy regulatory functions. The Director-General of DNRME serves as the Regulator for certain functions under the Queensland Electricity Act and Gas Supply Act.

	Digital meter	A digital meter measures the electricity used by a consumer at specified times and sends this information to the electricity retailer remotely via telecommunications networks. This removes the need for physical meter reading and also allows customers and suppliers to take advantage of demand-based electricity billing. Sometimes referred to as 'smart meter' or 'interval meter'.
DER	Distributed energy resource	DER is a term used to describe a number of different kinds of resource that produce electricity or manage demand. Examples of DERs include solar PV systems and batteries.
	Distribution network	A network used to supply energy to customers. In the electricity sector, 'distribution' refers to the 'poles and wires' infrastructure that supplies electricity to households and businesses (as opposed to the high voltage transmission towers and powerlines that connect distribution networks). In the gas sector, distribution networks are the low pressure pipelines or 'mains' that supply gas along suburban streets to households and businesses (as opposed to the high pressure transmission pipelines connecting gas refineries to large customers and gas distribution grids).
	Embedded network	A network that exists within a distribution network. It is typically connected to the distribution network via a single connection point. They are common in caravan parks, shopping centres, retirement villages and apartment buildings.
	Energy efficiency	Energy efficiency is a method to reduce the amount of electricity required to perform a unit of work. For example, an energy efficient hot water heater may reduce the amount of energy required to produce hot water.
	Exempt generator	The NEL requires any person engaging in the activity of owning, controlling or operating a generating system in the NEM to register as a Generator.
	Exempt network	Any person engaging in the activity of owning, controlling or operating a network within the NEM must register as a network service provider under the applied national laws. An exempt network is a network which, due to its size or other characteristics is exempt from these requirements. Examples include on-supply and embedded networks.
	Exempt seller	The NERL requires any person engaging in the activity of selling energy to a customer at premises to register as a retailer. An exempt seller is an entity which, due to its size or other characteristics is exempt from these requirements. Examples include on-sellers.
FIT	Feed-in tariff	A feed-in tariff is a rate of reimbursement paid by electricity retailers to their customers with solar PV installations that supply electricity back into the distribution grid.

	Governor in Council	Means the Governor of Queensland acting with the advice of the Executive Council.
GSL	Guaranteed service levels	The Queensland Electricity Distribution Network Code sets GSLs that distributors must meet regarding the quality and reliability of electricity services received by small customers. Failure to meet the requirements of the GSLs results in payments to affected customers.
	Inverter	An inverter is a device that converts direct current (DC) electricity to alternating current (AC) electricity. An inverter is required to use the DC power generated by solar panels in household wall sockets.
	Isolated network	An isolated network is a network which is not connected to the national electricity grid. Ergon Energy Queensland owns and operates 33 isolated power stations providing electricity to 34 isolated communities which are too remote to connect to the national grid. These power stations are located in western Queensland, the Gulf of Carpentaria, Cape York, some Torres Strait Islands, and on Palm and Mornington Islands.
kW	Kilowatt	A kW is a unit of electrical power equal to one thousand watts. A common maximum output for a solar system is 10 kW.
	Large scale storage	Large scale storage is sometimes referred to as grid scale storage. It is energy storage of a sufficient size to dispatch into the NEM. It can include <ul style="list-style-type: none"> <li>• a single storage system e.g. a large single battery or large hydro scheme</li> <li>• an aggregate of smaller storage systems e.g. many household size batteries joined together.</li> </ul>
LPG	Liquefied petroleum gas	A flammable mixture of hydrocarbon gases used as fuel for cooking, heating and for driving road vehicles.
	Microgrid	A small electricity network that supplies multiple customers. May be connected to a larger network (see embedded network) or operate as a stand-alone system (see isolated network).
NEL	National Electricity Law	Establishes the governance and enforcement framework for the NEM and the regulation of access to electricity networks. The NEL is supported by the NER. The NEL is applied in Queensland under the National Electricity (Queensland) Law.
NEM	National Electricity Market	The NEM consists of five connected electricity markets starting in Cairns and running through to South Australia and Tasmania. The NEM is the conventional or standard supply model where electricity is supplied through the 'national grid'.
NER	National Electricity Rules	These are the detailed rules for the operation of the NEM. Rules are made by the AEMC.

NERL	National Energy Retail Law	The NERL regulates the connection, supply, and sale of energy (electricity and gas) to residential and small business customers. The NERL is supported by the National Energy Retail Rules. When referred to as a law of Queensland, it is known as the NERL(Q).
NERL(Q)	National Energy Retail Law (Queensland)	The NERL as applied as a law of Queensland.
	Solar Bonus Scheme	The Queensland Solar Bonus Scheme was introduced in 2008. Under the scheme, eligible small electricity customers receive a premium feed-in tariff of 44 cents per kilowatt-hour (c/kWh) for surplus electricity generated by eligible solar PV systems and exported into the electricity grid. It is closed to new participants and is scheduled to end in 2028.
Solar PV	Solar photovoltaic	A technology used to generate electric power from the sun. A solar PV system uses solar panels to generate electrical power.
SAPS	Stand-alone power system	An electricity supply arrangement that is not physically connected to the national grid. The term encompasses <ul style="list-style-type: none"> <li>• microgrids and isolated networks servicing multiple customers, and</li> <li>• individual power systems, which supply electricity to a single customer.</li> </ul>