31 January 2020

Ms Colleen McIntyre
Manager, Energy Legislation Review
Department of Natural Resources, Mines and Energy
PO Box 15456
City East Qld 4002

By email: collen.mcintyre@dnrme.qld.gov.au

Dear Ms McIntyre


The Australian Energy Regulator (AER) welcomes the opportunity to make a submission in response to the Review of Queensland Energy Legislation, Options paper (options paper) published by the Department of Natural Resources, Mines and Energy (the Department).

About the AER

The AER is the national energy regulator and operates in jurisdictions that have adopted the National Electricity Law, National Gas Law and National Energy Retail Law (Retail Law). We monitor wholesale markets, determine the amount network businesses can recoup from their customers and safeguard consumer protections by enforcing compliance with the Retail Law. In Queensland, we also regulate off-grid energy sales, which includes remote communities.

Overview

We welcome opportunities to work collaboratively with jurisdictional energy departments and regulators for the benefit of energy consumers, and support the Queensland Government’s efforts to create a future-focused regulatory framework for its energy sector. Detailed reviews such as the Department’s current review are vital to ensure regulation remains relevant and effective, and promotes efficient investment in, and operation and use of,

energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy.

We generally support the Department’s preferred options for each of the 11 topics detailed in the options paper. Our submission focuses on a few specific areas:

- Access to the Energy & Water Ombudsman Queensland
- Availability of concessions
- Powers of entry for non-traditional network operators
- Penalties
- Information gathering

We also agree with the AEMC that the current regulatory framework for embedded networks is no longer fit for purpose and that many issues adversely affecting embedded network customers will persist until the framework is reformed. That said, we consider the Department’s proposals will go some way to relieving some of those issues in the shorter term.

**The AER’s role in the regulation of non-traditional energy providers**

Our comments are largely informed by our experience with on-sellers and off-grid energy sales in Queensland through the administration of the retail and network exemption frameworks. All embedded networks in Queensland must be operated under a valid network exemption and must comply with the conditions detailed in the AER’s Network Exemption Guideline. Similarly, any person in Queensland who is not an authorised retailer and sells energy for use at premises (including off-grid) must do so under a valid retail exemption and comply with the relevant exemption conditions.

Although the AER is not a dispute resolution body, we receive many complaints and enquiries from customers in embedded networks. We also receive submissions from consumer groups, peak bodies and businesses identifying a range of consumer protection and competition issues. We have sought to respond to these issues through our network and retail exemption frameworks, including amending our Retail Exempt Selling Guideline and Network Exemption Guideline, where necessary. For example, in March 2016, we amended the Retail Exempt Selling Guideline to require exempt sellers to apply for concessions on behalf of their customers where required. In March 2018, we amended both the Retail Exempt Selling Guideline and Network Exemption Guideline to require exempt sellers and network operators with residential customers to become members of energy ombudsman schemes in any jurisdiction where the scheme allowed them to join.

The following sections provide comment on specific topics detailed in the options paper.

**Dispute resolution - Energy and Water Ombudsman Queensland (key issue 8)**

The availability of a free and independent complaints handling and dispute resolution service with authority and expertise in energy matters is a fundamental consumer protection. All small energy customers should have recourse to effective complaints handling and dispute resolution processes. Many energy ombudsmen also provide an important role coaching energy businesses in their internal dispute resolution practices. Currently, these benefits are unavailable to customers in embedded networks in Queensland.

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The AER receives many enquiries from embedded network customers in Queensland (both customers of exempt sellers and on-selling authorised retailers) about complaints handling and dispute resolution assistance. In 2019, approximately 21.5% of all enquiries received related to embedded networks and the exemptions framework. 35% of embedded network and exemptions enquiries were Queensland specific. Complaints relate mainly to pricing/overcharging and access to competition.

While there are several different independent dispute resolution bodies in Queensland that can help embedded network customers, we understand that these bodies can only assist in certain circumstances and that at times, none are able to assist with specific matters.

The Retail Law requires authorised retailers and registered distribution businesses to become a member of an ombudsmen scheme for each jurisdiction where they sell energy, or market, to small customers. The AER strongly supports the expansion of ombudsman dispute resolution services to customers of embedded networks, collaborating with the national energy and water ombudsman association, ANZEWON, to work towards this objective. As noted above, in March 2018 we revised our Retail Exempt Selling Guideline and Network Exemption Guideline to require exempt sellers and exempt network operators to be members of, or subject to, energy ombudsmen schemes in each jurisdiction where they sell or supply energy, if permitted by the jurisdictional ombudsman.

The New South Wales and South Australian energy ombudsmen now provide complaints handling and dispute resolution services to residential embedded network customers, having expanded their respective memberships to exempt sellers and network providers. The Victorian energy ombudsman, operating under different energy consumer legislation, also provides complaints handling and dispute resolution services to embedded network customers.

We welcome proposals to increase embedded network customers’ access to the Energy and Water Ombudsman Queensland (EWOQ) in accordance with the options paper’s preferred option. We note that under this option exempt sellers with residential customers would be automatically deemed to be scheme participants and subject to a maximum price per complaint based on a sliding scale based on the exempt seller’s customers.

We note, however, the Department’s estimate of embedded network customer numbers is based only on exempt retail customers. The potential customer base is likely to be significantly greater if one takes into account customers of on-selling retailers and embedded network operators. To illustrate, the AER has authorised 17 on-seller retailers to date, some of whom operate in Queensland. One of these, Metered Energy Holdings, alone has 13,000 customers. On that basis, we suggest consideration should be given to extending EWOQ membership to exempt network operators and to ensuring customers of authorised retailers who are on-selling can access EWOQ’s services.

**Customer protections - Access to concessions (key issue 9)**

Embedded networks contain many low income and older energy customers who are eligible for concessions (renters, retirement village occupants and caravan park residents). However, embedded network customers can experience difficulty accessing concessions, which are designed to be administered or applied for by authorised retailers.

The AER’s commitment to ensuring customers in financial difficulty receive the required assistance is reflected in our compliance and enforcement priorities for 2019-2020, for

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example, compliance with our new Customer Hardship Policy Guideline,⁴ and our work on Sustainable Payments Plans.⁵

As noted previously, in 2016 we amended our Retail Exempt Selling Guideline to require exempt sellers to claim concessions from authorised retailers on behalf of their customers. This amendment established a clear chain of responsibility in applying concessions. This was largely in response to the problems that embedded network customers were having in Queensland to access energy concessions.

The options paper’s recommendation will help remove one level of administration by requiring some exempt sellers to enter into a concessions agreement directly with the Minister. We are encouraged by the options paper’s statement that ‘a number of exempt sellers have already voluntarily entered into agreements with the government to administer concessions’⁶ and strongly support any measures to remove barriers to customers accessing energy concessions.

**Powers of entry (key issue 5)**

The options paper’s preferred option is to confer rights ‘to non-traditional suppliers (exempt networks) who supply work that is in the public interest to enter a place to:

- inspect, operate, change, maintain, repair or replace works
- access operating works
- read meters and protect works
- carry out urgent remedial works and to make works safe.’⁷

This option would provide consistent powers of entry for all types of network operator, with the exception of work on public roads.

We support this proposal. Although many exempt network operators own or act on behalf of the owners of the premises upon which the electricity infrastructure is located, it is reasonable that all parties that operate a distribution service have the appropriate powers to undertake their role effectively and efficiently. In particular, the operators of large networks such as Stand Alone Power Systems are most likely to benefit from powers of entry given the scale of the infrastructure and the fact that the operator is unlikely to own the land.

Although the AER does not regulate the operation of off-grid networks, we do regulate off-grid energy sales in Queensland. Our experience in regulating off-grid sales within such networks has highlighted the difficulties that exempt sellers have accessing customers’ properties to perform basic operations such as meter reading. A lack of access to infrastructure prevents customers from receiving bills based on actual consumption and may impact the safety and reliability of their supply.

We believe providing network operators with appropriate entry powers is within the interests of consumers especially given such access would be subject to notification requirements and compensation provisions.

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Offences and penalties (key issue 11)

The options paper discusses various penalty provisions in Queensland energy legislation for gas and electricity.

As the national energy regulator, the AER is the body responsible for enforcing national energy legislation. Where the AER alleges that a person has breached a civil penalty provision of the National Energy Laws, available enforcement mechanisms include bringing court proceedings to seek penalties, and issuing infringement notices (which do not involve a finding of liability). The maximum civil penalty available in proceedings, and the penalty imposed on a business in receipt of an infringement notice, are set by legislation.

Currently, a draft Statutes Amendment (National Energy Laws) (Enforcement and Penalties) Bill is out for consultation and would provide for different tiers of penalty with different maximum penalty amounts. We suggest that the Department may wish to consider the increase in civil penalty amounts that may be applied to the National Energy Laws and consider whether the alignment of state and national energy regulation in Queensland should extend to consistency of penalties where the severity of conduct is comparable.

Information gathering (key issue 3)

The options paper discusses the sufficiency of current information gathering powers and sources available to Queensland regulators.

The AER is open to utilising section 44AAF(2) and (3) of the Competition and Consumer Act 2010 (CCA), in conjunction with a provision in Queensland legislation that would permit the Queensland Competition Authority (QCA) to request information from regulators including the AER.

The AER is of the view that it is unnecessary to attach liability in relation to compliance with any request made of it by the QCA, given the existing mechanisms for information sharing under the CCA and restrictions on the provision of information given in confidence or received pursuant to a compulsory notice.

The QCA is named in Regulation 7 of the Competition and Consumer Regulations 2010 as a prescribed body to whom the AER may disclose information for the purposes of section 44AAF(3), and it is the AER’s strong preference to make any disclosure through this mechanism. The AER may impose conditions to be complied with in relation to information disclosed under that section.

Please contact Susan Faulbaum on (08) 8213 3463 or [redacted] if you would like to discuss our submission in more detail.

Yours sincerely

[redacted]

General Manager
Consumers & Markets

Sent by email on: 31.01.2020