Review of Queensland Energy Legislation

Issues paper May 2018

Electricity Act 1994
Gas Supply Act 2003
Energy and Water Ombudsman Act 2006
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Foreword

The Queensland Government is driving change in the energy sector to make living in Queensland even better. The Powering Queensland Plan sets out the government’s strategy to guide the state through the short and long-term challenges facing Australia’s energy markets. The Affordable Energy Plan is making electricity more affordable for residential and business customers.

We are investing $2 billion, including $300 million of new initiatives from 1 January 2018 to stabilise electricity prices and improve affordability, maintain energy security and reliability, transition to a low-carbon energy sector and harness North Queensland’s energy potential. While we have made significant moves towards achieving these objectives, they are just the first step with more projects underway and coming up.

Actions

| Stabilising electricity prices | • Keeping electricity prices below inflation on average for typical and small business customers over the next two years  
| | • $50 per year electricity rebate to all Queensland households over the next two years ($200 million over two years)  
| | • Energy efficient appliance rebate to help households to buy more energy efficient appliances  
| | • No interest loans and rebates for Queenslanders to purchase rooftop solar and battery systems ($21 million over three years)  
| | • EasyPay Rewards for regional households ($75) and small businesses ($120) that register for direct debit and monthly eBilling ($15 million over three years) |
| Maintaining energy security and reliability | • Established the Energy Security Taskforce to develop short and long term plans to maintain energy security  
| | • Secured gas supply for Swanbank E power station to enable it to come back online  
| | • Implement the Queensland Gas Action Plan and release over 450km² of new gas tenure for supply to the Australian market  
| | • Continue to advocate for stable, integrated national climate and energy policies |
| Transitioning to a low-carbon energy sector | • Committed to our 50 per cent renewable energy target, driving more investment in Queensland, with more committed projects than any other state  
| | • Facilitating up to 400 megawatts of diversified renewable energy, including up to 100 megawatts of energy storage through a reverse auction |
| Powering North Queensland | • Up to $50 million in capital funding towards the development of Queensland’s own baseload solar thermal plant with storage  
| | • Delivering a $386 million Powering North Queensland Plan to strengthen and diversify the north’s energy supply and create a North Queensland Clean Energy Hub |

An important part of this suite of measures is ensuring our regulatory framework for energy is fit for purpose. Having the right framework in place will contribute to and support better social,
economic and environmental outcomes and help position Queensland so that it can readily and efficiently respond to changes in the energy sector.

To do this, the Department of Natural Resources, Mines and Energy is conducting a review of Queensland’s state-based energy legislation. This Issues Paper invites feedback on our energy regulatory framework.

The support of all stakeholders–community, industry and all levels of government–is necessary to establish a credible and enduring path toward better energy regulation. We are committed to working in partnership with all stakeholders to design and deliver simple and effective regulation to continue supporting the efficient operation of the energy sector while meeting the expectations, needs and interests of all stakeholders. You are invited to participate in and contribute to this important review process, and help shape Queensland’s energy future.
Introduction

The Department of Natural Resources, Mines and Energy (DNRME) is undertaking a review of the Electricity Act 1994, Gas Supply Act 2003, and Energy and Water Ombudsman Act 2006 (as it relates to energy) and Regulations (collectively referred to as "state-based energy legislation"). The purpose of this review is to assess how well the state-based legislation serves our current and future needs, in light of changes occurring in the energy market.

Queensland’s state-based energy legislation regulates the state’s electricity and gas industries. It covers matters including:

- who can generate and import electricity into the grid
- who can supply electricity and gas
- rights to install and maintain work on private and public lands
- technical requirements and standards
- dispute resolution arrangements
- emergency powers

(refer to page 4 for more detail).

State-based energy legislation forms part of a broader energy regulatory framework, which also includes federal and applied national energy laws. Federal laws, such as the Renewable Energy (Electricity) Act 2000, apply to matters of Commonwealth responsibility.¹  

Applied national laws encompass the cooperative arrangements between state, territories and the Commonwealth where regulatory harmonisation creates a net benefit for consumers, industry and government. Applied national laws, including the National Electricity Law and Rules, National Gas Law and Rules, and the National Energy Retail Law, regulate the national electricity and gas wholesale and retail markets across various regional market jurisdictions, including Queensland.

This review will not examine federal and applied national energy laws, but will look at how well state-based energy legislation operates in conjunction with these to promote the long term interests of end users.

¹ For example, the operation of the Renewable Energy (Electricity) Act 2000 is based on the legislative power that the Commonwealth Parliament has under s 51(xx) of the Constitution, to the extent that it applies to a constitutional corporation.
Overview of state-based energy legislation

The Electricity Act 1994 and Electricity Regulation 2006 regulate the electricity industry and electricity use. In addition, the legislation establishes a framework aimed at promoting efficient, economical and environmentally sound electricity supply and use. Key features include:

- licensing: authorising who can undertake generation, transmission and distribution activities
- price control: powers to fix or monitor retail electricity prices and feed in tariffs; restrictions on pricing of certain distribution activities
- powers of entry and resumption: entry, use and resumption powers that can be exercised by electricity entities on public and private land
- emergency powers: powers to intervene in the event of an emergency and rationing powers
- technical requirements: metering requirements and restrictions on the use of certain equipment on remote networks
- energy efficiency and demand management: requirements for labelling and planning
- offences and enforcement: prohibiting unsafe practices (e.g. tampering with equipment); powers to monitor and take compliance action
- customer protections: provides the framework for a distribution code dealing with (e.g. guaranteed service levels) and places requirements on retailers to administer concessions.

The Gas Supply Act 2003 and Gas Supply Regulation 2007 regulate the supply (distribution) of reticulated natural gas and liquid petroleum gas (LPG). Key features include:

- licensing: authorising who can undertake distribution activities
- price control: powers to fix retail gas prices
- powers of entry: entry powers that can be exercised by distribution entities on public land
- emergency powers: powers to require contingency supply plans and to intervene in the event of an emergency
- technical requirements: requirements for metering
- offences and enforcement: prohibiting unsafe practices (e.g. tampering with equipment); powers to monitor and take compliance action
- customer protections: provides the framework for a distribution code, sets connection out processes in absence of applied national laws and places requirements on retailers to administer concessions.

The Energy and Water Ombudsman Act 2006 and Energy and Water Ombudsman Regulation 2006 (as they relate to energy) provide for the Ombudsman to investigate small customer disputes involving energy distributors and retailers. The Act also sets out the functions of the Ombudsman and funding arrangements for the respective services.
About this Review

The right regulatory framework can promote benefits for consumers, industry and the environment while preventing and managing undesirable outcomes. Poorly targeted or out of date regulation can lead to perverse outcomes including barriers to innovation and competition, and unnecessary cost.

This review will assess whether the state-based energy legislation continues to align with the contemporary expectations, interests and needs of, and manage risks to consumers, industry and government. In accordance with Queensland Government best practice guidelines, legislation should be reviewed within ten years of being introduced to ensure it remains relevant and effective. While the state-based energy legislation has been amended over time, reviews have tended to focus on particular issues, rather than how the legislation functions as a whole.

Since the legislation was introduced, the energy sector has also undergone—and will likely continue to undergo—rapid change. New products such as energy storage systems (e.g. home batteries), digital metering and smart appliances are becoming more prevalent with advances in technology and falling costs. This has also resulted in new energy services and innovative business models such as power purchase agreements, solar leases, off-grid arrangements, and remote control and management of home energy. These changes were not contemplated at the time the state-based energy legislation was first introduced.

A key concern is whether the state-based energy legislation has kept up with the rapid changes that have occurred in the electricity and gas industries over which it applies. Page 6 discusses some of the changes in the energy sector potentially impacting on the effectiveness of legislation.

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Changes in energy sector potentially impacting on effectiveness of legislation

National expansion

Since 1998, there has been a shift towards a single national set of market and regulatory arrangements with national regulatory bodies and rules playing an increasingly larger role in the sector.

Technology change

The uptake of new technologies in generation, demand response and metering is affecting the way in which electricity is generated, supplied and sold. For example:

- Queensland has a very high uptake of household solar photovoltaic (PV) systems with over 472,000 residential systems installed as of March 2018. We are also seeing the emergence of community renewable energy projects to promote greater self-sustainability. These developments mean generators and retailers now compete with energy-generating consumers and distributors must move electricity to and from customers.

- We expect a strong interest in complementary technologies such as energy storage and electric vehicles as they become more affordable. Storage makes it possible for market participants to lower their costs through better asset utilisation, and for consumers to have greater control over when and how they use electricity from the grid.

- Uptake of enabling technologies such as digital meters is expected to increase, creating the potential for new data-enabled services. Advancements in metering technology also has the potential to support new types of price structures.

Growth of contestability

The energy market is becoming more contestable as customers look for opportunities to have more control over their energy use. Some fringe-of-grid and off-grid customers will benefit from more reliable and cost effective alternatives compared to their current supply arrangements. This could include council-owned renewable generation supported by a customer-owned network to meet or supplement their supply needs.

Gas Supply

Gas availability has been a key concern for some large customers and is increasingly factored into considerations about energy security and reliability. At the same time, residential gas demand is forecast to increase modestly by 2019 driven by new gas connections despite residential gas penetration being low in Queensland compared to other states.

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3 Solar Tracker database, Department of Natural Resources, Mines and Energy, Energex and Ergon Energy (vendors)

4 At present, it is expensive to supply electricity to remote and regional areas with options limited to building and maintaining many kilometres of poles and wires or relying on diesel generation (an expensive fuel to use and transport). Solar PV and battery storage are expected to offer remote, some regional consumers, and the distributors who supply them, with new and cost effective alternatives that are also reliable.
**Demand profile changes**

Greater awareness and uptake of energy efficient products, combined with the impact of solar PV have considerably affected usage (volume and patterns) across the state. Initiatives to further encourage energy efficiency, support demand management and potentially improve the resilience of the grid will be driven by the Demand Management and Energy Efficiency Strategy being developed under the Powering Queensland Plan.

**Increased environmental awareness**

The past 20 years have seen awareness and concern about the environmental impacts of the energy sector increase. The Powering Queensland Plan confirms the government’s commitment to a 50% renewable energy target by 2030, and outlines actions to investigate and deliver a range of renewable energy initiatives and advocate for stable integrated national climate and energy policies.
Approach

The review will be undertaken in three stages:

- **Stage 1:** explore how changes in the energy sector may be affecting the operation of state-based energy legislation
- **Stage 2:** canvas possible options to address identified issues
- **Stage 3:** publication of the Queensland Government’s decision and rationale on the preferred option(s).

The table below summarises the stages of the review, the related objectives, and the process to be undertaken and anticipated timeframes.

**Summary of review stages**

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<th>Stage 1</th>
<th>Stage 2</th>
<th>Stage 3</th>
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<tr>
<td>Anticipated timeframe</td>
<td>Early to mid-2018</td>
<td>Late 2018</td>
<td>Mid 2019</td>
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<tr>
<td>Objective</td>
<td>Explore and validate issues</td>
<td>Develop and assess options</td>
<td>Decision</td>
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<tr>
<td>Process</td>
<td>Seek public comment on issues paper and conduct targeted stakeholder workshops</td>
<td>Develop options based on stage one outcomes for public comment via a Consultation Regulatory Impact Statement (RIS)</td>
<td>Make recommendation and publish the Queensland Government’s decision and rationale via a Decision RIS</td>
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Feedback is sought on the issues that have been identified in this paper. In addition, to help provoke discussion, you are invited to respond to the questions posed throughout this paper.

The Department will also conduct targeted workshops with key stakeholders to explore these issues in detail. A full schedule of events will be released in due course on the department’s website:


**Fast track issues**

Opportunities for reform that would create an immediate net benefit may be identified in the Stage 1 process. In this event, the Department may look to action those reforms in a shorter period than set out above. Information will be provided on the department’s website in relation to any reform work being fast tracked.
Key considerations

In assessing whether the state-based energy legislation remains fit for purpose, the following key considerations are used for the review:

- **appropriateness:** the legislation addresses a social, economic or environmental need or risk
- **effectiveness:** the legislation achieves its desired outcome
- **efficiency:** the legislation produces a net benefit, avoids unnecessary market distortion or restrictions on innovation and flexibility, and is achieved at least cost.

Issues will be assessed against the above criteria to the fullest extent possible. Questions posed in this paper aim to prompt discussion and facilitate public comment. Where appropriate, please provide examples and reasons to clarify your responses.

**Appropriateness**

This criterion considers whether the legislation is addressing an identified need. That is, whether the issues that the provisions are designed to address are still valid, and whether there are any additional matters that should be considered.

Legislation is an essential element of a functioning community as it is a powerful way to protect, create or change rights and obligations, as well as underpin the achievement of policy by providing standards, guidance and rules for organisations and individuals.

Typically, legislation is used as a mechanism to address issues of market failure (incomplete property rights, market power, incomplete information, missing and incomplete markets), to limit unacceptable hazards or risks, and/or to promote social objectives. Adherence to this framework supports policy stability and predictability.

**Effectiveness**

This criterion considers whether the legislation still achieves its objectives. As circumstances change, provisions that were once useful can become ineffective or incomplete.

New technologies affect the energy industry by changing the way an existing activity is performed and by enabling entirely new activities. Both of these can reduce the effectiveness of regulation when:

- a new technology causes the existing activity to change in a way that creates a regulatory imbalance i.e. the regulation is no longer proportionate to the activity
- existing regulation creates barriers to the new activity i.e. curbing the benefits that the new technology could potentially bring to the industry, limiting competition and protecting the incumbent
- the new activity is not captured by regulation and this may create a negative outcome for consumers directly or indirectly, either through a market failure or social harm, or by constraining incumbents.

The review proposes designing regulation to be as technology-neutral as possible. This approach recognises the pace of change occurring in the energy sector and the need to design regulation that is enduring and not easily dated by changes in technology. At the same time it acknowledges that some areas of regulation will need to be supplemented by technology-specific provisions. These are
those where the activities being regulated are intrinsically linked to certain technologies (or family of technologies). For these types of activities, the review will consider to what extent technology-specific regulation may be necessary to achieve the relevant regulatory objective.

**Efficiency**

This criterion considers whether the legislation produces a net benefit, avoids unnecessary market distortion or restricts innovation and flexibility, and is achieved at least cost.

Regulation should only be selected if it represents the best approach to achieving an objective and creates a net benefit to the community. Regulatory restrictions on competition can raise consumer prices, stifle business innovation, reduce choice and convenience and drive down productivity and need to be closely considered. To the fullest extent possible, compliance costs should be minimised for business, the community and government.

As a method of assessing competition, the Organisation for Economic Co-operation and Development (OECD) has established a set of threshold questions—a competition checklist—to help identify potential competition problems.\(^5\) This checklist is outlined on page 11.

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**Organisation for Economic Co-operation and Development (OECD) competition checklist considerations**

Impact on number or range of suppliers. Does the regulation:

- grant exclusive rights for a supplier to provide goods or services
- establish a licence, permit or authorisation process as a requirement of operation
- limit the ability of some types of suppliers to provide a good or a service
- significantly raise cost of entry or exit by a supplier
- create a geographical barrier to the ability of businesses to supply goods, services or labour, or invest capital?

Impact on ability of suppliers to compete. Does the regulation:

- limit suppliers’ ability to set the prices for goods or services
- limit the freedom of suppliers to advertise or market their goods or services
- set standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
- significantly raise costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants)?

Impact on incentives to compete. Does the regulation:

- create a self-regulatory or co-regulatory regime
- require or encourage information on supplier outputs, prices, sales or costs to be published
- exempt the activity of a particular industry or group of suppliers from the operation of general competition law?

Impact on choice and information available to consumers. Does the regulation:

- limit the ability of consumers to decide from whom they can purchase goods and services
- reduce mobility of customers to move between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
- limit information required by consumers to shop effectively?
Scope

While the review will focus on state-based energy legislation, how well the legislation interacts with other laws is a key consideration. Maintaining consistency of regulation across all levels of government can help businesses and individuals minimise compliance costs, lower administrative costs for government, and benefit the broader community through increased efficiency and effectiveness of regulation.

This review will not include an assessment of other state-based, federal or applied national laws, and price regulation (for example, the review will not consider the retail price of electricity and gas, or the deregulation of retail electricity prices). While stakeholders may have views on these matters, they are outside the scope of this review.
Assessing state-based energy legislation

Objectives of legislation

The objectives of the Electricity Act6 and Gas Supply Act7 reflect the comprehensive role state-based legislation played and the objectives of energy market reform at a point in time. The energy sector has matured and state law has moved to national arrangements resulting in disconnect between the objectives, the subject matter of the law and contemporary priorities. For example, the legislation no longer plays a substantial role in the establishment of a competitive energy market in line with national reform.8

Objectives of legislation are important to guide how provisions are interpreted and applied. There is value in recasting the objectives to recognise the complementary role state-based energy legislation now plays. For example, legislation could support or align with:

- national energy objectives: long term interests of consumers with regard to the price, quality and reliability of electricity and gas services9
- state priorities including the objectives underpinning the Queensland Government’s Affordable Energy Plan and Powering Queensland Plan10 enabling stable energy prices, ensuring long-term security of supply, supporting the transition to a low-carbon energy sector, attracting investment in Queensland’s energy sector, and improving value of the government (such as through improved administration and regulation).

Interaction with other laws

Many provisions in state-based energy law have strong crossover with subject matter in applied national laws and other state laws including the Petroleum and Gas (Production and Safety) Act 2004. Areas of potential duplication or crossover include definitions, energy efficiency laws, licence provisions, the treatment of metering, on-supply conditions, powers of access and emergency management. Some areas of crossover may be beneficial, for example, in regional and remote areas individual differences and circumstances may require additional regulatory support to achieve intended outcomes. However, others have the potential to generate confusion and unnecessary cost.

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6 To set a framework for all electricity industry participants that promotes efficient, economical and environmentally sound electricity supply and use; regulate the electricity industry and electricity use; establish a competitive electricity market in line with the national electricity industry reform process; ensure that the interests of customers are protected; and take into account national competition policy. See s3, Electricity Act.

7 To promote efficient and economical processed natural gas supply; ensure the interests of customers are protected by regulating the distribution services for reticulated processed natural gas and providing for the making of relevant distribution network codes. See s3, Gas Supply Act.

8 Though could potentially undermine the competitiveness of industry and benefits of national reform if interventions are poorly targeted.


Questions for your consideration

**Question 1.1:** What objectives should guide the design and application of state-based energy legislation?

**Question 1.2:** How well does the state-based energy legislation align with other laws?

**Question 1.3:** What areas of overlap or duplication exist between state-based energy legislation and other laws? What are the benefits and disadvantages of these?
Existing provisions in legislation

Licensing

The Electricity Act and Gas Supply Act requires a person to hold an appropriate authority to:

- connect electricity generating plant to a transmission network
- operate a transmission grid for electricity
- supply electricity or gas using a supply network within a specified area.

Applicant suitability and previous commercial dealings and competence are taken into consideration when determining whether to grant an authorisation. For electricity, the objects of the Act, quality of proposed infrastructure, likely environmental effect and alignment with environmental policy must also be considered.

These authorities reflect the traditional model of centralised generation and linear supply and aim to support the integrity of the energy supply system by ensuring operators meet minimum technical and safety standards, as well as minimum service levels.

The Acts also provide a special approvals and exemptions framework for lower risk activities and for non-traditional supply arrangements (e.g. off-grid systems that rely on their own generation and supply network). The powers given to and obligations placed on different participants vary according to the type of authority they have and whether they supply gas or electricity.

Similar requirements for licensing apply under the applied national laws for grid-connected services and gas pipelines subject to the National Gas Law. For example, generators, network operators and on-suppliers must register as market participants with the Australian Energy Market Operator or gain an exemption from the Australian Energy Regulator. While considerations that affect registration and exemption in the national energy market are similar (e.g. technical ability), they are not identical.

At the same time, new categories of participants in the industry (e.g. stand-alone providers; ancillary service providers; metering coordinators; operators of electric vehicle charging stations) have emerged which do not clearly fall within traditional licensing categories. For example, some do not operate in a specific location and/or undertake a mix of activities, meaning special approvals are relied on more regularly. It is unclear how dual function technologies (e.g. batteries) are or should be treated.

The system of authorisations in state-based energy legislation provides a mechanism for establishing, maintaining and enforcing a system of rights and obligations. While the legislation appears broadly effective in achieving this aim, there are a number of issues that may impact on effectiveness going forward:

- the transparency of rights and obligations afforded to special approval holders. Conditions of special approvals are generally determined by the Regulator and not publicly available.

11 For electricity only.

12 While the majority of energy supply is caught by applied national law registration requirements, not all are. For example, national arrangements do not capture off-grid electricity networks and some gas pipelines.
• Licences are generally for a specified activity in a specified physical area. This may impact the effectiveness of the arrangements for newer businesses operating at a small scale across a number of locations, or alternatively for businesses such as Ergon Energy Distribution, which may restrict its ability to offer alternative customer solutions, including off grid solutions within areas of its licence condition specified as network grid locations.

• the scope of exemptions, which is currently fairly limited, could be expanded to include other lower risk activities, such as operating a supply network across contiguous lots, similar to provisions in the Gas Supply Act.

Questions for your consideration

**Question 2.1:** What do you see as the key role and benefits of state-based licensing of energy businesses?

**Question 2.2:** What options exist to improve the efficiency and effectiveness of licensing arrangements?

**Question 2.3:** What entities should be licensed?

**Question 2.4:** Have risks changed in the market that warrant reconsideration of licensing and exemptions?
Price control

The Electricity Act and Gas Supply Act include Ministerial powers to fix or monitor retail prices and electricity feed-in tariffs. Price caps also apply in relation to certain activities specified in Schedule 8 of the Electricity Regulation. Price restrictions primarily act as a customer safeguard where competition either does not exist or is not effective.

The Government has only recently comprehensively examined electricity retail prices and feed-in tariff arrangements. Pricing policy decisions such as the 2016 deregulation of retail prices in South East Queensland are excluded from the scope of this review.

The need addressed by price caps in Schedule 8 of the Electricity Regulation is to be reviewed. While provisions that cap distribution costs for rural and remote customers clearly support the Government’s Uniform Tariff Policy, it is important that the rationale for application of caps to other activities be examined (i.e. why the caps only apply to some activities and businesses and not others). The Queensland Productivity Commission Electricity Pricing Inquiry noted concerns of some stakeholders in relation to the efficiency of Schedule 8 price caps on price signals, but made no recommendations in relation to these.

Table 7 – Questions for your consideration

| Question 3.1: What do you see as the key role, benefits and disadvantages of Schedule 8 price caps for electricity? |
| Question 3.2: What options exist to improve the efficiency and effectiveness of price protections? |
| Question 3.3: Should information gathering powers to inform regional price regulation be widened? |

Powers of entry and resumption

Holders of generation, transmission and distribution authorities are afforded a variety of powers over their works and the installations of customers. Powers vary between electricity and gas, and between different categories of authority holder. Some limited powers are also conferred on electricity retailers for metering. Powers include rights of entry, use and resumption powers on public and private land and access to premises to make infrastructure safe. Many overlap with those in other legislation.\textsuperscript{14}

Access to works is important to allow energy infrastructure to be properly maintained, protected or upgraded as part of normal operations and to support the development of new community infrastructure. 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 outweigh the fundamental legislative principle of preserving property rights – may not be as strong. Conversely, there appears to be overlap between the powers afforded to existing entities with those in other legislation, suggesting some may no longer be warranted.

The treatment of battery technology is also a consideration. As batteries operating below extra low voltage do not form part of an electrical installations, there are limited powers for distribution entities to enter premises to make a battery installation safe, despite potential safety issues an incorrectly installed battery may pose.

There are also opportunities to encourage energy entities to coordinate their access powers to reduce inconvenience and costs to occupiers of land.

Questions for your consideration

\textbf{Question 4.1:} In what circumstances should energy entities have a right to enter land or property to access their works/assets?

\textbf{Question 4.2:} Should rights and obligations differ between authority holders or activities?

\textbf{Question 4.3:} What safeguards should apply?

Emergency powers

Ensuring uninterrupted electricity and gas supply is crucial to minimising disruption to all aspects of society. The Electricity Act and Gas Supply Act empower the Energy Minister and Regulator to respond to and manage supply emergencies.

- The Minister may ration the use and supply of electricity during a supply emergency and restrict the use of electricity by some customers in order to maintain an acceptable and constant supply to the rest of the community. The Governor in Council can also authorise the Regulator to take over the operations of an electricity entity in limited circumstances.

- The Regulator may require gas suppliers to make and comply with a contingency supply plan and provide notice of any known or likely supply interruptions including the intention to stop supply to customers.

Queensland’s emergency powers are not as broad as those in other jurisdictions, and for electricity, do not extend to the ability to require information or take over operations of a special approval holder (e.g. on standalone systems) in emergency situations.

The laws also do not extend to battery technology and small-scale generation, despite the latter forming a major source of generation supply in Queensland.

Questions for your consideration

Question 5.1: Is there a need for state-based energy legislation to address emergency powers?

Question 5.2: What do you see as the key role and benefits of emergency powers?

Question 5.3: What opportunities exist to improve the effectiveness and efficiency of emergency powers or security of supply provisions?
Energy efficiency and demand management

State-based energy legislation has a number of provisions directly aimed at encouraging energy efficiency and demand management.

Energy efficiency arrangements aim to help households and businesses to reduce energy use and reduce costs. By encouraging a reduction in consumption, energy efficiency initiatives can help reduce emissions from the energy sector. The prevailing business model of energy industry participants is generally based on increasing rather than decreasing supply. To overcome these incentives, energy efficiency obligations are sometimes placed on energy industry participants.

In relation to energy efficiency, the Electricity Act includes requirements for labelling and performance standards for appliances. However, much of this regulation appears to no longer serve a purpose given the development of equivalent provisions under National Greenhouse and Minimum Standards (GEMS) legislation.

Other jurisdictions have taken the approach of placing express obligations on energy sector participants to work with their customers to improve efficiency. Whether or not similar measures should be pursued in Queensland will be investigated as part of the Queensland Government’s Climate Change Transition Strategy.\(^\text{15}\)

Demand management programs can help improve the overall productivity of the electricity supply chain by reducing the need to build infrastructure to meet peak demand or manage congestion. It is a condition of distribution authorities that entities consider both demand side and supply side options to provide for the efficient supply of energy. Distribution businesses must also prepare demand management plans annually for consideration by the Regulator. The obligation for annual demand management planning has now been replicated under the applied national laws and is being complemented by work by the Australian Energy Regulator to improve demand management incentives on distribution businesses.

Under the Powering Queensland Plan, the Queensland Government has established the Queensland Energy Security Taskforce. The taskforce is responsible for delivering a range of projects including the development of a demand management and energy efficiency strategy to help Queenslanders manage their power bills and to better manage peak demand, improving the resilience of the grid.\(^\text{16}\) The role of state-based energy legislation to support energy efficiency and demand management will be guided by work under that strategy.

**Questions for your consideration**

**Question 6.1:** Is there a need for state-based energy legislation to address issues of energy efficiency and demand management?

**Question 6.2:** What opportunities exist to improve the effectiveness and efficiency of existing energy efficiency and demand management provisions in the Electricity Act?

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Technical requirements

While most technical standards are now dealt with under relevant Australian Standards and the applied national laws, a number of technical provisions remain in the Electricity Act and Gas Supply Act e.g. metering placement, voltage requirements and systems of earthing are included in individual authorisations (e.g. reliability of the electricity distribution network). However, it is unclear whether the technical requirements specified in the legislation serve a particular purpose or could be replaced by general obligations to comply with relevant Australian Standards, and whether technical requirements included in authorisations, e.g. reliability standards should be made more transparent.

In general, Queensland’s approach to technical issues differs from other jurisdictions such as New South Wales, Victoria and South Australia. The legislation and licence conditions in those jurisdictions have considerable more prescription in relation to technical requirements in addition to those applying in the national laws. While these approaches could limit innovation and flexibility going forward for those jurisdictions, restrictions are considered necessary to promote security of the supply network.

The Electricity Act also restricts customers on isolated networks from using motors over a particular size (which differs across the different networks) to promote greater stability on those networks. Set over a decade ago, there is the potential that these limits no longer align with current network performance requirements.

Questions for your consideration

Question 7.1: What key technical issues and risks should state-based energy legislation address?

Question 7.2: What opportunities exist to improve the effectiveness and efficiency of technical provisions?

Questions 7.3: How should these risks and opportunities be addressed by the legislation?
Offences and enforcement

Numerous offences are included in the legislation in relation to unsafe practices. For example, offences are created for conveying electricity on another person’s property without authorisation; unlawfully being in or on premises where electricity works are situated; interrupting supply of others; unlawfully interfering with an electricity entity’s works or tampering with a gas distributor’s equipment, and wilfully and unlawfully taking supply. The offences generally do not extend to protecting the works of special approval holders and exempt sellers, though it is unclear why given the same potential degree of danger involved.

The offences are generally directed towards individual misconduct rather than the activities of energy industry participants. The activities of industry participants are instead regulated by a monitoring and compliance regime, shared between the Director-General of the Department of Natural Resources, Mines and Energy and the Queensland Competition Authority. The benefits of sharing responsibility for compliance between two agencies are unclear. Further, while a comprehensive framework exists for enforcement of some activities (e.g. compliance with a distribution network code), only limited powers exist to encourage compliance with other matters (e.g. conditions of an authority) where the only express options provided for compliance is the imposition of a civil penalty or suspension, cancellation or amendment of an authority.

Given the importance attached to authorisations, making available a broader range of enforcement tools (e.g. the ability to issue fines for less serious matters) could support earlier intervention where contravention is detected and better outcomes.

Questions for your consideration

**Question 8.1:** How well do existing offence provisions align with community expectations?

**Question 8.2:** What opportunities exist to improve the effectiveness and efficiency of enforcement provisions?
Customer protections

The Electricity Act and Gas Supply Act contain a limited number of customer protections, including providing a framework for a distribution code, which address guaranteed service levels for customers (e.g. connection timeframes), and requirements on retailers to administer concessions under community service agreements.

Customer protections related to energy are primarily provided for under applied national laws—principally the National Energy Retail Law (Queensland) (NERL (Qld))—which regulates the sale and supply of energy to premises, and federal legislation (the Australian Consumer Law and privacy legislation). While federal legislation applies throughout Queensland, there are gaps in the application of the applied national law. For example, while the NERL (Qld) applies to all sales of energy to premises in Queensland, the National Gas Law only regulates the supply of gas through certain pipelines (i.e. 'covered' pipelines subject to price regulation). Similarly, the National Electricity Law largely only regulates the supply of electricity within the national grid. This creates a risk of a gap, which was a key issue highlighted in the Finkel report.17

Access to and use of information is also an issue with the advent of data-enabled technology such as digital metering. Digital metering is the responsibility of energy retailers rather than distributors. Digital metering increases the volume and detail of energy usage and consumption data; access to this information will support innovation and improved energy management for customers. However, privacy is a concern if energy data is misused e.g. for purposes other than for which it was collected or without appropriate consent.

In this case, the National Electricity Rules govern the collection and use of metering data by registered market participants. For data collected outside the scope of the National Electricity Law (e.g. by non-traditional suppliers in alternative arrangements such as off-grid and isolated networks), the Privacy Act 1988 (Cth) provides protection for personal information held by all parties with some exceptions for small businesses with a turnover below $3 million per annum. Small businesses can however, opt-in and be bound by the Privacy Act.

Questions for your consideration

Question 9.1: What do you see as the key role and benefits of state-based energy legislation customer protection?

Question 9.2: What opportunities exist to improve the effectiveness and efficiency of customer protections?

Dispute resolution

State-based energy legislation provides a dispute resolution framework to help investigate and resolve certain disputes between:

- small–medium customers (businesses consuming up to 160 megawatts electricity or 1 terajoule of gas per annum and residential) with their energy retailers and/or distributors
- occupiers of land with electricity distributors in relation to access to land for works
- holders of various electricity authorities (generators, transmission, distribution)
- holders of energy authorities (electricity and gas) and public entities in relation to access to public land for works.

The disputes of customers and occupiers of land can be investigated and resolved by the Energy and Water Ombudsman. Disputes between holders of various electricity authorities, and between holders of energy authorities and public entities can be referred to the Regulator.

The ombudsman scheme was established to provide confidence to customers to support the introduction of full retail competition in the electricity market. Similar ombudsman schemes operate in other jurisdictions. A key issue for the Queensland Ombudsman and those of other jurisdictions going forward is whether there is a need to expand the jurisdiction of energy ombudsman schemes to capture disputes customers may have with non-traditional suppliers (e.g. those holding retail exemptions under the NERL (Qld)).

This issue of expanding ombudsman jurisdiction to the holders of retail exemptions was recently examined by the Australian Energy Regulator in collaboration with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWon). In Queensland, this would require legislative change and consideration of whether existing provisions, particularly their alignment with fundamental legislative principles, would need adjustment for smaller entities and individuals operating in the energy market (e.g. community schemes).

Other potential issues in relation to the jurisdiction of the ombudsman scheme include whether it is appropriate to:

- exclude disputes relating to capital contributions for connections, particularly as many customers seek to connect new generating equipment
- exclude land holder disputes with entities other than distribution businesses (e.g. transmission businesses, retailers, generators), given the concerns of land occupiers is unlikely to vary based on whether the conduct of concern is being exercised by company A or company B.

The arrangements supporting dispute resolution between various holders of electricity authorities and between holders of energy authorities and public entities are rarely employed. Similar dispute resolution arrangements for holders of authorisations exist under applied national laws, though subject matter of that framework differs. As with the ombudsman provisions, there is an issue whether

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the arrangements adequately support the increasing penetration of non-traditional energy participants, that is, whether there is a need for a dispute resolution framework to support the resolution of disputes between special approval holders or exempt suppliers with electricity entities.

**Questions for your consideration**

**Question 10.1:** How well do existing dispute resolution provisions align with community and industry expectations?

**Question 10.2:** What opportunities exist to improve the effectiveness and efficiency of state-based dispute resolution provisions?
**Differential treatment of electricity and gas**

Currently, there are separate regulatory instruments for the supply of electricity (the Electricity Act) and processed reticulated natural gas (the Gas Supply Act). This, to some extent, reflects the national legislative split in the form of separate applied national law arrangements for electricity and gas, and separate National Gas Rules and National Electricity Rules.

While there are notable differences between the gas and electricity industries, there are also similarities between the two. When viewed from the perspective of a customer, electricity and gas are a similar product (energy) that is used in a similar way; with an expectation of similar customer protections should their service not be delivered as desired. This perspective fits with an outcomes-based regulatory framework that focuses on consumer outcomes rather than regulating how those outcomes are achieved or delivered.

The approach of treating energy sources equally (or neutrally) has been used by Queensland in its adoption of the National Energy Retail Law (Queensland). This approach is also reflected in the Energy and Water Ombudsman Act, which provides for a consistent dispute resolution framework across gas and electricity customers. One option to achieve energy-neutral regulation is to combine the Electricity Act and the Gas Supply Act into an “Energy Act”. The approach would:

- recognise that customers have similar expectations of the electricity and gas industries
- recognise the potential for gas to supply a greater proportion of household energy needs
- reposition the legislative framework to reflect a changing energy market that includes a new mix of energy sources, energy products, and a more fluid and dynamic supply chain
- reduce regulatory burden and overlap, and address residual inconsistencies across the regulatory framework.

Current provisions in the Gas Supply Act were deliberately designed to be similar to those in the Electricity Act, and many provisions (e.g. around the making of industry codes, warning notices, the role of the Queensland Competition Authority, referrals to the Regulator) are replicated almost exactly. Combining these two instruments would reduce pages of regulation. Inconsistencies that have arisen through historical circumstance and legislative drafting (e.g. differences between inspection powers under the Gas Supply Act and the Electricity Act) could be reduced and prevented from occurring in the future. However, there are a number of potential issues with a single “Energy Act”:

- traditionally, market participants in the gas and electricity industries have seen their sectors as having unique differences that preclude their regulation under a single Act
- different market pressures may mean that the conditions for regulatory intervention (i.e. to address market failure, hazards and risk or promote social policy) may exist in one industry (electricity or gas), but not the other
- the Gas Supply Act has a much narrower base than the Electricity Act—gas production and transmission, for example, is contained in the Petroleum and Gas (Production and Safety) Act reducing the potential scope of harmonisation.
These issues will need to be carefully considered. However, retaining separate Acts—while having the advantage of minimal change—may struggle to support changes in the sector going forward. To accommodate growth in the gas sector and provide better flexibility to incorporate a more fluid and dynamic supply chain, it is proposed the review adopt a preference for greater alignment between electricity and gas law, including the creation of an “Energy Act”. This option is most likely to support transformation of the sector in the long term and provide greater fluidity in the supply chain.

**Questions for your consideration**

**Question 11.1:** What would be the benefits and risks of adopting an “Energy Act” covering both the electricity and gas industries in Queensland?

**Question 11.2:** What issues would need to be addressed?
Invitation for feedback

The Department invites written submissions from all interested parties and members of the community on the Issues Paper. Written comments should be provided 5pm, 19 June 2018. The Department will take account of all submissions received by the due date.

Responses and submissions should be sent either by email or post:

- energyreview@dnrme.qld.gov.au with the subject line: Review of Queensland Energy Legislation – Issues Paper – [your name]
- Review of the Queensland Energy Legislation – Issues Paper
  Energy Industry Policy – Strategic Futures
  Department of Natural Resources, Mines and Energy
  PO Box 15456
  City East Qld 4002

As this is a public consultation process, the Queensland Government is committed to openness in its considerations of public policy. For this reason, written comments and submissions may be published on the Department's website. Please mark clearly any comments or information you wish to be kept confidential.