Department of Transport and Main Roads' Response to the Review of Queensland Energy Legislation – Parts 1 and 2: Options papers

The Department of Transport and Main Roads (TMR) specifically supports Queensland’s energy legislation to be updated to emphasise:

1. public safety and works safety; and
2. a future focus that ensures that the energy sector is able to adapt as well as interact with a changing transport sector.

It is important to stress that TMR's objectives and the objectives of energy entities are linked and complementary. An emphasis on road safety supports safe and reliable energy supply. For example, an incident on 18 September 2018, where a car hit a power box, causing an outage to more than 2,000 homes around Sunnybank Hills, Calamvale and Stretton, highlights the linked nature of road safety and electricity reliability.¹ A focus on safety by design contributes to the successful delivery of mobility and energy to Queensland residents and businesses, thereby improving the quality of life and economic outcomes.

Internal consultation highlighted related and associated matters, such as development processes whereby developers are conditioned to construct works, missed approvals, and contestable works. For matters such as these that are beyond the scope of the current review, TMR would like to keep discussing the issues. It is noted that the Department of Natural Resources, Mines and Energy (DNRME) received similar concerns in response to the issues paper from AusNet Services.²

Some of these topics in the options papers are being covered in detail by a Memorandum of Understanding (MOU) and Access to TMR Road Protocol being developed between TMR and Energy Queensland Limited (Energy Queensland) (parent company for Energex and Ergon). Specific MOUs and agreements assist with solidifying specific operational arrangements, and are beneficial insofar as they are relevant. They are limited, however, in that they do not capture all relevant entities. For example, TMR's MOU with Energy Queensland does not apply to new participants, nor does it cover off on local government-controlled roads. TMR requests DNRME consider whether MOUs between electricity entities and road authorities provide an approach that should be encouraged, or possibly even required.

Just as the last 20 years has been a time of substantial change in the energy industry, the next 20 years will likely see even more rapid changes, with many newer less experienced market entrants. It is therefore critical that Queensland’s energy legislation takes this into account, inserting high-level principles to ensure that the legislation is able to adapt, while retaining safeguards.

In terms of Electric Vehicles (EVs), TMR is supportive of the commencement of consultation and is pleased to see that future consultation will occur on this topic. Likewise, the consideration of the growth of hydrogen is appreciated.³

¹ This was reported in the Courier Mail, highlighting the public nature of such failures.
³ Page 12.
TMR has provided commentary regarding topics 1, 2, 4, 5, 6, 8.3, 11.1 and 11.2 from the options papers in detail below.

1 Topic 1. Purpose of state energy laws (i.e. the objectives of the Acts)

1.1 TMR Response

TMR generally agrees with the recommended Option 3, with an emphasis to be made in all energy legislation on public safety (including road safety). This supports the public interest and will ensure energy infrastructure operating throughout road corridors comply to this interest. A recurring theme is reliability and public safety are supported by TMR’s focus on road safety, and the growing use of EVs means that Queensland’s energy laws need to be updated to account for new technologies.

2 Topic 2. Energy efficiency and demand management

2.1 TMR Response

TMR has no comment regarding Topic 2.

3 Topic 3. Interactions with other laws

3.1 TMR Response

TMR agrees and supports the recommended Option 3 for definitions and information gathering powers that consistent technical terminology is essential to ensuring a safe, accessible, and efficient energy network, when interacting with road corridors. As will be highlighted in relation to topic 4, TMR supports clearer definitions, particularly in relation to new participants, as currently TMR has to deal with new energy entities through alternative mechanisms rather than through the established mechanisms. TMR has no comment on the Distributed Energy Resource Register other than to support improved transparency for consultation purposes.

4 Topic 4. Licensing

4.1 TMR Response

TMR supports the recommended Option 2 for national alignment of continued licensing. This will ensure appropriate oversight of a diversifying range of energy entities, both public and private, using significant overriding legislative powers. Given the risk to public safety when energy installations are interfered with by road users (accidental or otherwise), TMR supports a robust licensing regime. The treatment of new technologies is currently problematic from a road manager’s perspective with entities, such as wind farms or solar farms, having infrastructure that crosses roads. Operational level feedback indicates that they are not energy providers (yet) where a public utility permit application can

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4 Part 2, pages 40, 53, 55.
be lodged; rather they must have infrastructure agreements, which can be lengthy and costly to prepare.

Treating them as a Public Utility Plant (PUP) under the Transport Infrastructure Act 1994 (TIA) is required, especially as they are often long-term installations. A more streamlined approach is desired as it means that new participants are dealt with by the same rules, as under TIA there are certain provisions for PUPs, with electricity installations under the Electricity Act 1994 (Electricity Act) included in the definition of a ‘plant’.\(^5\) Due to the sheer scale of the number of proposed and under construction generators,\(^6\) having these treated as such is necessary to keeping the legislation current and fit-for-purpose. Increased transparency is also desired as it increases awareness of who is able to undertake works.\(^7\)

While out of scope, the interactions with developers and their contractors can sometimes be problematic due to works being progressed under the Planning Act 2016 (Planning Act) but developers (or their contractors) being unaware of the need for approvals for installation and construction on state-controlled roads under TIA.

The options papers reference how certain activities trigger the development approvals process under the Planning Act.\(^8\) A key issue with the way that energy entities interact with state-controlled road corridors is due to the fact that there is no similar trigger in TIA.

In relation to EVs, TMR welcomes the commencement of consultation and notes that, in consideration of the impacts of Option 2, clarity will be provided to EV charging stations.\(^9\) With the announcement of a future EV strategy being developed at the federal level and with Queensland’s The Future is Electric: Queensland’s Electric Vehicle Strategy, it is timely to see that a future focus to the proposed amendments is included.

5 Topic 5. Powers of entry and resumption

5.1 TMR Response

TMR understands the rationale behind the powers provided to energy entities\(^10\) and is supportive of the recommended Option 2; however, TMR has a more in-depth focus on:

- public safety;
- compensation; and
- consultation.

5.1.1 Public safety

As the current MOU process is not sufficient/succinct to always be relied on and legislatively there is a clear absence of road safety provisions, this poses a gap in the duty of care to the public for the design, commissioning/installation, operation, maintenance and decommissioning of energy-related infrastructure being installed within road corridors. Clear legislative practice will rectify this. It is pleasing to see that DNRME is actively considering road safety as part of a proposed amendment to section 103 of the Electricity Act and

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\(^5\) TIA, Schedule 6.
\(^7\) Part 2, pages 58, 71, 73, 78.
\(^8\) Page 60.
\(^9\) Pages 77–78.
\(^10\) Page 86.
section 81 of the *Gas Supply Act 2003* (Gas Supply Act) to highlight that consultation is to ensure road safety.\(^{11}\)

In addition to this, TMR recommends a further inclusion to section 102 of the Electricity Act after section 102(1) as section 102(1A): ‘When doing any of the things mentioned in subsection (1), an electricity entity must consider road safety’. As referenced in the Part 2: options paper, ‘expressly requiring consideration of road safety would clarify [the community’s] expectation’.\(^{12}\)

It is also proposed that, for consistency, an inclusion to section 81 of the Gas Supply Act be inserted as section 81(2)(b): ‘has regard for road safety’.

Safety must account for more than just the safety of the energy infrastructure, but the safety of road users (motorists (professional or otherwise), pedestrians and cyclists). As outlined in the introduction, TMR’s objectives and the objectives of energy entities are complementary. An emphasis on road safety supports safe and reliable energy supply.

**5.1.2 Compensation**

It is reasonable to believe that risks should be managed by the party who controls the activity. As electricity and gas works in road corridors are undertaken by the asset owner, not the road authority, the risks regarding delays to road works, and compensation for damage, should rest with the electricity entity and gas asset owner, and by extension third parties who undertake works for them. This provides an incentive for all entities to undertake good processes and reduce costs to taxpayers by taking responsibility for damage and for the cost of delaying road projects.

TMR also identifies an absence of provisions in relation to compensation in the event energy entities, or their contractors, damage road corridors during construction/installation, operation, maintenance and decommissioning of energy-related works.

Although previously suggested legislative amendments were referred to, TMR has made progress with Energy Queensland in negotiating compensation provisions via an MOU. TMR believes that MOUs could be an efficient way of dealing with compensation issues between energy entities and TMR allowing for claims for compensation of damage to road corridors by either an energy provider and or their contractors including for operational downtime.

TMR is supportive of the inclusion in Option 2 to remediate land as internal consultation has raised that decommissioning and demolition can result in a significant requirement on the road network.\(^{13}\)

**5.1.3 Consultation**

Currently, an electricity entity must give advance notice of proposed works in a publicly controlled place (Electricity Regulation 2006, section 18). However, a timeframe is important to ensure all entities are aware of their obligation to notify road authorities of emergency works.

TMR is supportive of the suggested twenty (20) day deadline to notify road managers of emergency works that have been undertaken. However, any proposed legislative

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\(^{11}\) Pages 98–99.

\(^{12}\) Page 99.

\(^{13}\) Page 97.
amendment should enable the electricity entity to meet its notification requirements by entering into an arrangement with the other party.\textsuperscript{14}

By including a timeframe, it reflects the importance for road authorities to manage third party asset impacts on the road corridor. The retention of the rights of energy entities to conduct emergency works without prior notification is supported due to the safety and urgency of electricity asset emergencies.

TMR believes that consultation provisions are another area that can be dealt with via an MOU between energy entities and TMR, allowing for greater clarity regarding electricity entities' obligations to road authorities with further refined process around notice arrangements.

6 Topic 6. Technical requirements

6.1 TMR Response

TMR generally agrees with the recommended \textbf{Options 2 and 3}, appreciating that technical requirements can be dealt with via individual amendments and inclusion of standards and codes.

That is, there is merit for further technical data being referred to in legislation to ensure best practice and compliance with all relevant Australian Standards, or landholder authority standards, that apply to the activity and location.

However, currently TMR sees this as another issue which can be initially dealt with via an agreed MOU between TMR and energy entities to further detail process and technical requirements which can encompass reference to best practice engineering standards and codes and compliance of those that work on behalf of the energy entities.

7 Topic 7. Price control

7.1 TMR Response

TMR has \textbf{no comment} regarding Topic 7.

8 Topic 8. Dispute resolution

8.1 Topic 8.1 – Energy and Water Ombudsman fee options for complaints by embedded network customers

8.1.1 TMR Response

TMR has \textbf{no comment} regarding Topic 8.1 due to not being a 'small customer'.

8.2 Topic 8.2 – Energy and Water Ombudsman Queensland

8.2.1 TMR Response

TMR has \textbf{no comment} regarding Topic 8.2 due to not being a 'small customer'.

\textsuperscript{14} Page 90.
8.3  Topic 8.3 – the Regulator

8.3.1  TMR Response

TMR is supportive of the continuation of dispute mechanism changes and the transfer of the regulator’s role to the Queensland Competition Authority. While TMR can negotiate agreements with electricity entities, it is important that a final arbiter exists. Noting that it is obviously in all parties’ best interests to negotiate an outcome before escalating the matter, TMR would prefer that legislation specify the regulator’s decision-making power, specifically if it is binding. Therefore, TMR opposes the repeal of dispute resolution arrangements.

TMR contends that having a legislative requirement to consider road safety will reduce the likelihood of disputes.

9  Topic 9. Customer protections

9.1  TMR Response

TMR has no comment regarding Topic 9.

10  Topic 10. Emergency powers

10.1  TMR Response

TMR has no comment regarding Topic 10.

11  Topic 11. Offences and enforcement

11.1  Topic 11.1 – Offences and enforcement – structural arrangements

11.1.1  TMR Response

TMR has no comment as to who is the responsible body for compliance.

11.2  Topic 11.2 – Offences and enforcement – penalties

11.2.1  TMR Response

TMR appreciates and supports that compliance and enforcement provisions are useful. This issue is due to the seriousness of public safety and a reflection on the expectation that public and private entities providing key public services act in compliance with the law. Additionally, TMR also sees that initially MOU’s may provide a good source of direction between TMR and energy entities as a precursor to any legislative offences, enforcement or penalties being applied. TMR supports that that there should be efforts to resolve matters before going to the regulator, which an MOU could assist with.