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Energy Industry Policy – Strategic Futures
Department of Natural Resources, Mines and Energy
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Dear Sir/Madam

Review of the Queensland Energy Legislation – Issues Paper

Origin Energy (Origin) welcomes this opportunity to respond to the Queensland Government’s Issues Paper on the Review of Queensland Energy Legislation. As one of Australia’s largest energy retailers, Origin has a strong interest in the review of the legislative framework to ensure that it remains efficient and effective in the current market environment.

In the review of the legislative energy framework, Origin would encourage the Government to closely review and align (where possible) the Queensland electricity and natural gas requirements with the rules and requirements that have been implemented on a national level through the National Energy Rules (NER). The NER has delivered efficiency benefits and reduced regulatory burden through the implementation of nationally consist energy laws and regulations. Many retailers operate across all jurisdictions and the single set of rules has resulted in increased competition and customers being offered additional price and service benefits.

Origin thus supports a detailed review of the relevant Acts (ie Electricity Act, Gas Supply Act and Energy and Water Ombudsman Act) to ensure that energy requirements are appropriately allocated to the most relevant regulatory instrument and only necessary requirements are included. As a general principle, Origin believes that:

- Acts should include the high level framework for the operation of the electricity and natural gas market. Provisions within Acts can only be amended by Parliament which can be a lengthy process;

- Regulations should ‘flesh out’ the basic parameters of the regulatory framework, but not include specific supply details;

- Licences should confer an authority to undertake a licence activity and should specify the basic parameters of operating in the market (ie the supply area, terms of the licence such as how the licence can be amended, surrendered and relevant fees); and

- Codes and Guidelines should contain the detailed and technical requirements with which customers are supplied and the manner in which generators, retailers and distributors operate. The detail should be included in these instruments as requirements can be amended by agreement with the Regulator and relevant parties.

Origin believes that there is merit in the Government’s proposal to develop a single Energy Act. Being able to find obligations in a single regulatory instrument and consistency in terminology will improve regulatory certainty and reduce ambiguities with the application of the requirements. However, caution needs to be taken with this approach to ensure that the combining of the various Acts does not
have flow on implications for Regulations, Codes, Contracts or other regulatory instruments and cause ambiguities with either the requirements or terminology.

By way of summary, Origin’s key recommendations in relation to any future energy regulatory regime are set out below:

- As far as possible, licensing for emerging energy technologies should be consistent across the NEM and licensing arrangements should have scope to respond to emerging technologies without creating market distortions by ‘preferring’ one class of provider or product over another;
- Price protections (and other consumer protections) are best provided for within the National Energy Consumer Framework (NECF), which is continually enhanced through AER and AEMC consultations in response to current issues;
- It is imperative that any future energy regulatory regime include entry powers for retailers to enable them to meet their responsibilities around metering;
- In relation to emergency powers, AEMO remains best placed to give directions during emergency situations and that any directions given by Ministers would be most appropriately done in consultation with the Ministers of other jurisdictions to ensure decisions that affect cross border customers are dealt with in a coordinated manner;
- Given that Queensland’s Energy Efficiency initiatives and schemes are being developed within the Queensland Government’s Climate Change Transition Strategy, any regulatory framework changes relating to this issue are more appropriately considered as part of that policy decision;
- Technical standards are not well suited for inclusion in legislation and it would be more appropriate to deal with technical standards in Codes or Guidelines (which can respond in a more timely manner to ensure that standards are kept up to date and amended as the need arises);
- Development of policy around metering data (including access by customers) should be carried out at a national level through the Consumer Data Right;
- The Queensland Energy and Water Ombudsman framework should be reviewed to capture potential cost savings and to align with the models used in other jurisdictions; and
- If embedded networks are to become subject to an Ombudsman Scheme, it is important that costs are appropriately distributed to ensure there is no cross-subsidisation of complaints or participants and that a user pay model might be the most appropriate cost-structure.

Questions Raised in the Consultation Paper

The Issues Paper raises several questions with regards to the Review of Queensland Energy Legislation. Origin provides specific comments to these questions below.

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<td>1. What do you see as the key role and benefits of state-based licensing of energy businesses?</td>
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<td>2. What options exist to improve the efficiency and effectiveness of licensing arrangements?</td>
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4. Have risks changed in the market that warrant reconsideration of licensing and exemptions?

Origin considers that an effective licensing framework:

1) ensures consumers are effectively and adequately protected;
2) stimulates competition and market entry; and
3) minimises unnecessary compliance and administrative burden.

This is best achieved when a licensing framework is structured so that only necessary conditions required to obtain an authorisation reside in applicable laws and specified regulatory instruments, while the operational conditions (financial, technical and governance requirements) are included within issued authorisations. This ensures flexibility to review conditions as the market changes.

It should be noted that the market is quickly evolving given the advances in technology. For example, construction of a gas fired power station may have taken approximately 5 years to complete, but alternative generation options such as large solar farms are now being constructed in very short periods of time. The authorisation processes need to be streamlined and efficient to ensure that administrative processes do not delay project execution.

**Generator Authority**

Origin suggests that the need for an entity to apply for a state based Generation authority should be reviewed. This is given the complex and comprehensive process that a generator needs to undertake to become registered with Australian and Energy Market Operator (AEMO). A generator cannot operate in the market without meeting performance standards and being registered with AEMO. The State based requirement to obtain an authority duplicates many of the AEMO processes and adds to the time and cost of being able to commence generating.

The review of licensing requirements for generators will also need to review how innovative generation business models are treated. This is in relation to distributed energy, aggregators, increased levels of renewables, battery storage and pumped hydro.

If the authorisation requirements for generators remain in the Act, registration requirements may need to be deemed based on the size of the generator. This is discussed further below.

**Defining “Generating Plant”**

In reviewing the need for a generation authority in Queensland, the Government should consider the emergence of small distributed generation models and how they should be governed. Section 130 of the *Electricity Regulation 2006*, states that a person who operates generating plant with a capacity of 30MW or less is deemed to have a Special Approval to connect the generating plant to a transmission grid or supply network. In such a circumstance, the person operating the generating plant does not need a Generation Authority and may rely on the ‘deemed’ Special Approval.

An issue for the industry is that ‘generating plant’ is not defined in any of the Queensland legislative instruments (Act or Regulation). This opens the framework up to interpretation as to the meaning of ‘generating plant’ (i.e. battery storage considered generation). It should be noted that the National Energy Rules defines a generating system and this definition could be used as a starting point for reviewing the generation authorisation requirements.

It should also be noted that there is a misalignment for the registration of systems in the National Energy Rules (NER) and the Queensland Energy Act. The NER requires registration for generation systems greater than 30MWh per annum or for battery systems greater than 5MWh per annum. In the
Act, authorisation is required for a generating plant greater than 30MWh per annum and for any systems less than 30MWh, these are deemed to be authorised.

Origin considers that a consistent approach across the NEM is required with respect to the treatment of emerging energy technologies and how they are authorised or operate in the market. This is in order to avoid market distortions where one class of provider or product is advantaged over another.

**Behind the Meter Generation**

If an entity is a ‘behind the meter’ generator (eg mine site), the entity does not require authorisation unless they cross a property boundary or connect to the grid. How these generators fit within the Act will need to be reviewed.

**Special Approval Holders**

Given the expansion of distributed energy and the inclusion of small generating plants being captured under the Special Approval Holders Authority, the conditions of this authority may need to be reviewed to determine their ongoing appropriateness. This is given that the Special Approval Holder Authority was historically developed to capture the retail supply of energy to customers within the Goondiwindi area. This authority has slowly been expanded to include small generating plants.

S60 of the Electricity Act sets out the conditions of a ‘Special Approval Holder’. One of the conditions is that the holders pays relevant Energy Ombudsman Scheme costs. However, the smaller generating plants that are deemed special approval holders are not members of the Ombudsman Scheme and thus would not be liable to pay the fees.

### Issue 3: Price Controls

1. What do you see as the key role, benefits and disadvantages of Schedule 8 price caps for electricity?
2. What options exist to improve the efficiency and effectiveness of price protections?
3. Should information gathering powers to inform regional price regulation be widened?

The Electricity Act provide that the Minister may set prices or the methodology for fixing prices for Standing Contract Customers. The Minister may also set prices for the provision of charges or fees relating to customer retailer services for Standing Contract Customers. The current retail price control provides that the pricing entity must have regard to the actual costs of supply and consider the effect of the price determination on competition in the Queensland retail electricity market.

Origin considers that it is essential that the process for determining price controls is clear, transparent, and agreed with all stakeholders. A fair and transparent process will give all stakeholders confidence in the outcomes of the price-setting process.

Origin believes price protections for consumers are adequately covered in the National Energy Consumer Framework (NECF) and the relevant derogations for Queensland. These protections are continually being enhanced through AER and AEMC consultations. Recent consultations include advance notice of price changes, preventing discounts off inflated rates and enhancements to the retail pricing guidelines. These consultations are subject to rigorous processes that seek input from regulators, industry and consumers.
In terms of the Schedule 8 price caps, we believe that the decision to continue to regulate these fees is a policy decision for the Queensland Government. The fees captured under this Schedule are distributor fees which are a direct pass through to customers via the retailer. An estimate of actual costs from the distributors for each of these services could assist with the decision process.

**Issue 4: Powers of Entry and Resumption**

1. In what circumstances should energy entities have a right to enter land or property to access their works/assets?
2. Should rights and obligations differ between authority holders or activities?
3. What safeguards should apply?

The Powers or Entry and Resumption clauses have more relevance to distribution and transmission businesses than retailers.

However, it will be imperative that Chapter 6 of the Electricity Act continues to include Retailers, Meter Providers, Meter Data Providers and Metering Coordinators as a defined electricity entity for the purposes of being able to enter a property to inspect, maintain, remove, repair or replace meters or related equipment. This is given the Power of Choice reforms where competition was introduced into metering service from December 2017 and distributors are now not the sole providers of meters.

**Issue 5: Emergency Powers**

1. Is there a need for state-based energy legislation to address emergency powers?
2. What do you see as the key role and benefits of emergency powers?
3. What opportunities exist to improve the effectiveness and efficiency of emergency powers or security of supply provisions?

1. Is there any other information not identified by the proponents that should be included in the notice? If so, what? What purpose should it serve?

Any direction given by the Minister should be done in consultation with Australian Energy Market Operator. As the market operator, AEMO has the best view of the complete operation of the market including the technical parameters of plant, and a forward view of their operation. Additionally, AEMO have powers of direction that is granted to them under the National Electricity Rules. It is imperative that any emergency powers ensures confidence is maintained in the reliability and security of the market.

It is noted that section 124 of the Electricity Act refers to the Minister gazetting an emergency rationing order. As was seen with the South Australian black out experience, these rationing events can happen rapidly and gazetting notices is unlikely to be practical. Notices to the impacted parties appears to be more appropriate in the circumstances.

**Issue 6: Energy Efficiency and Demand Management**

1. Is there a need for state-based energy legislation to address issues of energy efficiency and demand management?
2. What opportunities exist to improve the effectiveness and efficiency of existing energy efficiency and demand management provisions in the Electricity Act?
State policy also has an important role to play in facilitating renewable energy projects but this policy should be complementary to national policy and targeted to specific state circumstances.

At this time, Origin questions whether State based legislation is required for energy efficiency and demand management given the work that is being undertaken at both a national and state level. Many of the requirements currently included in the Act have been overridden by national legislation and requirements.

For example, the Electricity Act includes provisions in relation to the labelling of appliances and the performance standards of appliances. These standards are now out of date given the introduction of the National Greenhouse and Minimum Standards (GEMS). Further, the AER is involved in developing and consulting on energy demand side initiatives on a national basis.

The Issues Paper notes that the development of Energy Efficiency initiatives and Schemes are being considered as part of the Queensland Government’s Climate Change Transition Strategy. Origin believes this avenue is appropriate to decide whether additional changes are required to the Act to support any policy decisions in this regard.

**Issue 7: Technical Requirements**

1. What key technical issues and risks should state-based energy legislation address?
2. What opportunities exist to improve the effectiveness and efficiency of technical provisions?
3. How should these risks and opportunities be addressed by the legislation?

The Electricity Act and Gas Supply Act provide for technical standards for:
- meter replacement;
- voltage requirements; and
- systems of earthing.

Origin does not support technical standards being included within an Act. These standards need to be provided within Codes or Guidelines where the standards can be kept up to date and amended as the need arises. Including the standards within the Acts limits the ability of the Queensland market to align with any Australian standards developed.

The legislative and regulatory framework needs to encourage and provide incentives to firms to engage in product testing activity, in other words to offer new and innovative services to customers based on the most up to date standards. If standards are set within Acts that are out of date, there is a risk that innovation will not occur as the innovation may breach the technical standards in Queensland legislation.

The Electricity Act contains provisions related to on-suppliers. On-suppliers are included to state that receivers may elect to install a meter at their expense and on-suppliers that operate their own private network are exempt from being registered as a network operator under the national rules. Origin encourages Queensland to adopt the national framework which includes minimum metering standards for customers within embedded networks.
**Issue 8: Offences and Enforcement**

1. How well do existing offence provisions align with community expectations?

2. What opportunities exist to improve the effectiveness and efficiency of enforcement provisions?

The focus of offences and enforcement provisions in the Acts are largely distributor focussed given the retailer operating framework is part of the National Energy framework. Comments are best provided by those that are subject to them.

**Issue 9: Customer Protections**

1. What do you see as the key role and benefits of state-based energy legislation customer protection?

2. What opportunities exist to improve the effectiveness and efficiency of customer protections?

The National Energy Customer Framework (NECF) was adopted in Queensland following the passing, of the *Electricity Competition and Protection Legislation Amendment Act 2014* and the *National Energy Retail Law Act 2014 (Qld)*. Adoption of the NECF brought Queensland into line with all other jurisdictions with the exception of Victoria.

From a retailer perspective, there are positive ongoing benefits as a result of NECF implementation including a consistent regulatory framework. We consider that the NECF has enabled retailers to make operational efficiencies which have reduced the cost of service. Benefits would have been higher if State-based derogations did not apply and all States had adopted NECF under the Australian Energy Market Agreement (AEMA) as originally planned. Whilst derogations may be necessary for reasons unique to their state or territory, in practice they only add to administrative complexity and additional costs to retailers with little practical customer benefit. Thus, Origin does not support additional state based customer protection – rather additional protections, if required, should be developed through AER and AEMC consultations.

Origin notes the discussion in the Issues Paper with regards to customers access to meter data. Origin believes many of these issues will be resolved through the Treasurer’s announcement to adopt the Consumer Data Right (CDR) in the energy sector. The CDR will give all energy consumers (including large customers) the right to access and direct the transfer of their data to third parties. This includes meter data. The CDR framework will also address privacy concerns that are currently evident in the energy sector. Origin supports the development of this issue at a national level.

**Issue 10: Dispute Resolution**

1. How well do existing dispute resolution provisions align with community and industry expectations?

2. What opportunities exist to improve the effectiveness and efficiency of state-based dispute resolution provisions?

The Energy and Water Ombudsman Act 2006 (the Act) has evolved over the past decade as competition has been introduced into the energy industry and water has been incorporated within the realm of the Act. The energy market is ever evolving with the demand for the services of the Ombudsman fluctuating, but total number of complaints significantly falling over the past five years.

Origin supports reviewing the legislative framework that underpins the Energy Ombudsman to determine its relevance in today's energy sector and to determine whether the model continues to be the most effective and cost-efficient operating model for Queensland.

Governance Structure


The establishment framework of the Queensland Energy Ombudsman Scheme differs to each of the other Energy Ombudsman Schemes in other jurisdictions. In New South Wales, Victoria and South Australia they have been established as companies limited by guarantee governed by boards of directors. Western Australia is slightly different in the fact that it is a company limited by guarantee with a board of directors, however the Ombudsman is provided by the Western Australian Office. Tasmania's energy and water schemes are provided by the state government's Ombudsman as there is not yet competition between energy retailers in Tasmania.

The major difference between all the other jurisdictional Energy Ombudsman Schemes and the Queensland Energy Ombudsman is that they are not governed by a legislative Act and Regulation framework. Rather, they operate in accordance with and observe the roles, functions, powers and obligations as set out in Constitutions and Charters. Amendments to the Constitutions and Charters do not need to go through a legislative consultation process – rather amendments are agreed by members.

The Constitutions and Charters also set out the governance structure of the Ombudsman schemes which ensures the Ombudsman Body is independent of Industry. The Ombudsman is appointed by a Board and where the Ombudsman must have no association with any member company. Generally, Ombudsman Boards have an equal number of industry and consumer directors, as well an Independent Chair. This contrasts with EWOQ where the Ombudsman is appointed by the Queensland Government (through Governor in Council) and supported by an Advisory Body.

This highlights that EWOQ has a vastly different governance framework in comparison to all the other Energy Ombudsman. It raises the question as to whether the EWOQ legislative framework continues to be flexible enough to adapt to changes in the functions, scope and the demand for Ombudsman services or alternatively, whether a Company Structure governed by Constitutions and Charters would provide greater flexibility to adapt to the ever-changing scope of the energy world and a lower cost solution for the energy industry and their customers.

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1 EWOQ, Annual Report 2016-17, p23. The table shows that total closed complaints fell from 10,505 in 2012-13 to 6,020 in 2016-17.
Ombudsman Fees

EWOQ funding operates on a participant’s annual fee and a user pay fee complaint model under s67 and s68 of the Act. Annual budget guidelines, developed by the Advisory Council, are prepared to support the user pay allocation of costs\(^2\).

The user pay fees are significantly higher in Queensland than any other Energy Ombudsman jurisdiction. These can be seen in Attachment 1 (confidential). Origin queries whether these higher costs are a function of the governance framework and the framework not being able to respond to fluctuations in demand. Officers of the Ombudsman are appointed under the Public Services Act 2008 and this appointment process may limit the extent to which costs can be reduced when complaint levels are low or falling over time.

Origin believes the user pay fees should be based on an estimate of the average time an officer will spend on each of the types of complaints. The complaint types should not be cross subsidising each other to recover costs.

Origin supports a review of the framework to determine whether the current statutory body framework is the most cost-effective solution for delivering a dispute resolution service for energy customers in Queensland.

Scope of Ombudsman Scheme

Any extension to the scope of functions for the Ombudsman needs to be considered on a case-by-case basis given the complexities in the market, especially with the evolution of distributed energy options and behind the meter technologies.

This is particularly true for issues relating to bulk hot water, renewable power purchase agreements (for solar, wind, batteries) and embedded networks. Embedded networks are currently being reviewed by the Australian Energy Regulator. Origin supports the Ombudsman Scheme being extended to small embedded network customers where energy supply is individually metered. We believe the types of disputes should be limited to the supply of energy (ie fees and charges, disconnection, quality of supply).

The Ombudsman should not be involved in the fixing of tariffs, unmetered energy disputes nor non-energy related disputes relating to such matters as building designs. This includes capital contributions and land holder disputes with entities. These disputes are generally of a commercial contract nature and outside the realm of an Ombudsman Scheme.

The Ombudsman Scheme framework needs to be flexible to enable refinement or extension of the Ombudsman’s scope as the market evolves. Origin questions this flexibility given the paper highlights that an extension of scope would require a legislative change and consideration as to whether existing provisions, particularly their alignment with fundamental legislative principles, would need adjustment (ie for community schemes)\(^3\). The timeliness of this process needs to be considered as part of this legislative review.

Scheme Membership and Funding for new Participants

If it is determined that the scope of the Ombudsman should be expanded to include new participants (embedded networks), there will need to be amendments to the framework to ensure they become a scheme participant and thus financial members of EWOQ. S7 and s64 of the Energy and Water

\(^2\) Energy and Water Ombudsman Act 2006, s69

Ombudsman Act 2006 currently sets the parties to who the Act applies and the parties to fund the Ombudsman’s Office.

We believe entities need to become scheme participants of EWOQ in order to ensure participation, enforcement of decisions and ensure embedded network customers receive the benefits of such a scheme. Without a mandatory membership of the Scheme, response 'opt in' levels will be low (or zero). This has been the case in both New South Wales and South Australia where embedded network membership has been optional. Non-memberships has the potential to lead to cross-subsidy issues where members will need to cover the cost of investigations for issues related to non-members.

Further, for smaller scheme participants, the cost of membership should be a user pay arrangement and include a participant’s annual fee as per current arrangements. Origin suggests that the annual fee for smaller operators will need to be reviewed to ensure that the Ombudsman scheme does not become a barrier to entry for the energy sector. Origin believes a user pay fee will provide incentives for operators to manage disputes to minimise the costs incurred through the Ombudsman.

Transitional Sections of the Act

There are various transitional elements of the Act that need to be reviewed and ultimately removed if deemed appropriate. This is specifically in relation to the Community Ambulance Cover requirements and transitional provisions that were placed into the Act to maintain scope and fee liabilities when the Scheme was amended to include Water entities.

### Issue 11: Differential Treatment of Electricity and Gas

1. What would be the benefits and risks of adopting an “Energy Act” covering both the electricity and gas industries in Queensland?
2. What issues would need to be addressed?

Overall, Origin supports the consolidation of electricity and natural gas provisions to the extent feasible to remove redundant requirements, ensure consistency in terminology and thus reduce ambiguities as to the energy legislative framework in Queensland. However, in doing this, there will need to be a comprehensive review of other regulatory instruments to ensure that the consolidation of requirements do not have follow on impacts to contracts, regulations or other regulatory instruments.

Closing

Origin supports the review of the relevant Acts to ensure they remain relevant to the market in which the energy industry is operating in. This is particularly important given the advancements in national frameworks over the past decade.

Should you have any questions or wish to discuss this information further, please contact Caroline Brumby on [contact information].

Yours sincerely