

4 July 2023

Our ref: [WD:BC:KS:MC]

Exposure Draft Consultation - Energy Bill Team
Department of Energy and Public Works

By email: [REDACTED]

Dear Department

Energy (Renewable Transformation and Jobs) Bill 2023 - Exposure Draft Consultation

Thank you for the opportunity to provide feedback on the exposure draft of the Energy (Renewable Transformation and Jobs) Bill 2023 (**Draft Bill**) and the accompanying materials. This is an important step in the policy development for Queensland's energy future.

Thank you also for the additional time to provide our response.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Executive Summary/Key Points

- QLS welcomes the consultation on the Draft Bill and accompanying materials. QLS also supports a legislative framework which sets a clear pathway for the transition to more sustainable alternatives.¹
- Early public consultation on such significant policy development is a positive step and will help to identify any issues requiring further consideration, particularly when the transition to renewable energy is of critical importance to the Queensland community.
- QLS recommends the policy response provide for meaningful engagement and consultation with Aboriginal and Torres Strait Islander People about the impacts of climate change on land that they, as original custodians, have cared for and managed for over 60,000 years. Engagement should occur at the earliest stage, including as part

¹ Queensland Law Society, *2020 Call to Parties Statement: Queensland State Election*, page 9 (<https://www.qls.com.au/Pages/Legal-Policy/Call-to-parties/State-Election-2020-Call-to-Parties-Statement>)

of identifying potential Renewable Energy Zones (**REZ**) and Priority Transmission Investments (**PTI**).

- QLS recommends reconsidering the regulation-making power in clause 34 of the Draft Bill, in the interests of transparency and clarity and to ensure the Draft Bill has sufficient regard to the institution of Parliament with respect to delegated legislation.²
- QLS considers any derogation from the National Electricity Law (Qld) should not be made by regulation but should appear in primary legislation. Ideally, derogations would be clearly identified in the *Electricity—National Scheme (Queensland) Act 1997* (Qld), which applies the National Electricity Law (**NEL**) to Queensland.
- QLS encourages the government to publish further information about the consequences of derogating from the NEL, to enable Queensland consumers to understand the analysis to be undertaken in relation to minimising costs, managing the reliability of supply and any other consequences for the community as a result of the provisions in the Draft Bill.
- QLS supports the establishment of a Job Security Guarantee Fund (**Fund**) and acknowledges the significance of the legislative commitments included in the Draft Bill in the form of the Job Security Guarantee and the Fund. However, QLS would welcome further detail in respect of the Fund's operation, including how it can be accessed and the categories of costs it will include. QLS recommends further public consultation on the draft regulations and guidelines referenced in the Draft Bill, which will prescribe categories of costs for which amounts may be paid from the Fund and the procedures for payments from the Fund.³
- In preparing for the transition to renewable energy, QLS also recommends additional funding be made available to the legal assistance sector to assist workers affected by the transition to understand their options with respect to the Jobs Security Guarantee. Legal advice may be required regarding, for example, their eligibility to access the Fund or when considering transferring between publicly owned energy corporations to new employment opportunities.

Consultation process - Aboriginal and Torres Strait Islander People

QLS recommends the policy response provide for meaningful engagement and consultation with Aboriginal and Torres Strait Islander People about the impacts of climate change on land that they, as original custodians, have cared for and managed for over 60,000 years. Engagement should occur at the earliest stage, including as part of identifying potential REZs and PTI.

² Section 4 of the *Legislative Standards Act 1992* (Qld) Department of the Premier and Cabinet, *The Queensland Legislation Handbook* (2019) Part 7.3 Institution of Parliament < <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/assets/legislation-handbook.pdf?a>

³ Clauses 72(4) and 73 of the Draft Bill

Interaction of the Draft Bill and the National Electricity Law

The Consultation Paper released with the Draft Bill clearly identifies the policy decision of the Queensland Government to derogate from the NEL in certain respects, including in relation to the PTI framework. For example, the Consultation Paper notes:

- the PTI framework does not replace the existing framework in the National Electricity Rules but provides Queensland “another avenue to deliver the transmission infrastructure we need, in an efficient way”;
- the existing regulatory framework under the current NEL and National Electricity Rules (NER) is not designed for this state-directed purpose; and
- the Draft Bill “modifies some parts of the NEL and NER, to allow the State to identify and assess PTI projects, and direct Powerlink to construct and recover its costs in respect of them.”⁴

The Draft Bill includes a number of opportunities to diverge from the NEL. For example:

- Clause 34 of the Draft Bill states that a regulation may provide for the application of a provision of the NEL in relation to a PTI. The regulation may also provide that a national provision does not apply in relation to a matter or applies with stated modifications.
- Clause 54 of the Draft Bill contemplates developing a negotiation process for a standard of performance, to be prescribed by regulation, where the process may “involve less or no consultation, advice or other involvement by AEMO”. However, the standard of performance negotiated under this clause is ‘taken to be a negotiated access standard determined in accordance with the national electricity laws.’
- Part 5 (Priority transmission investments) provides for *assessment documents* to be declared by regulation to be assessment documents. These are the documents used to assess candidate PTIs for investment. The extract of the draft *Energy (Renewable Transformation and Jobs) Regulation 2023* presently refers to a number of NEM documents, but the Draft Bill suggests there is discretion to declare any other documents as assessment documents.
- Clause 59 of the Draft Bill provides a regulation may declare that a transmission service provided by the service provider using the REZ transmission network is taken to be a non-regulated transmission service or prescribed transmission service under the national electricity laws.
- Clause 66 of the Draft Bill provides that for the purposes of Part 7, a regulation may provide for the application of a provision of the NEL in relation to a REZ transmission network or REZ controlled assets. The regulation may also provide that a national provision does not apply in relation to a matter or applies with stated modifications.

QLS recognises that stepping away from elements of the National Electricity Market (NEM) is a policy decision for the government of the day.

⁴ Consultation Paper at page 17

However, QLS also acknowledges the following context provided by Explanatory Notes to Electricity – National Scheme (Queensland) Bill 1997 (the application Act for the National Electricity (Queensland) Law):

- The National Electricity Market was initially implemented with the objective “to improve the allocation of national resources and deliver cheaper electricity to consumers in Queensland and other jurisdictions participating in the NEM.”⁵
- “The application of law regime is essential to ensuring the nationally consistent operation of the electricity supply industry which is central to the strength of the economy. Further, the establishment and maintenance of a consistent and stable legislative regime is necessary for the efficient operation of, and sound investment decisions in, the National Electricity Market.”⁶

National cooperative schemes are carefully negotiated between all participants before they are implemented. Such schemes are conceived of with the intent to benefit the participant State governments and communities. The schemes are also intended to provide efficiencies which cannot be achieved by disparate State-based regimes.

In the case of an electricity grid which traverses and is interconnected across State borders, adding or removing capacity in one State may well have an impact across the network. The cooperative framework established by the NEM was intended to coordinate investment and construction with a view to assessing and managing the impact of new or altered capacity across the grid.

The Consultation Paper also states similar steps to enable state-led transmission projects have been taken in New South Wales (*Electricity Infrastructure Investment Act 2020* (NSW)) and Victoria (*National Electricity (Victoria) Amendment Act 2020* (Vic)).

However, the frameworks recently implemented by NSW and Victoria provide for some continued engagement with the NEM entities:

- NSW has appointed AEMO Services Ltd, a subsidiary of the Australian Energy Market Operator (**AEMO**), as the NSW Consumer Trustee under the *Electricity Infrastructure Investment Act 2020* (NSW). The Consumer Trustee will be involved in planning for investment in generation, storage, firming and network infrastructure and authorising network infrastructure projects.⁷ AEMO Services Limited’s website states it will “carry out coordinated planning of long-term investment, competitive tenders to facilitate this investment, authorisation of Renewable Energy Zone transmission infrastructure, and provide financial risk management and advice.”⁸
- NSW has also appointed the Australian Energy Regulator under the *Electricity Infrastructure Investment Act 2020* (NSW) as a regulator. The AER will have functions including making revenue determinations for network infrastructure projects authorised

⁵ Explanatory Notes to Electricity – National Scheme (Queensland) Bill 1997 at page 1

⁶ Explanatory Notes to Electricity – National Scheme (Queensland) Bill 1997 at page 4.

⁷ NSW Government, *NSW Climate and Energy Action – Entities delivering the Roadmap* - <https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap/entities-delivering>

⁸ <https://aemoservices.com.au/about-us> (accessed 3 July 2023)

by the Consumer Trustee and determining the amount payable to network operators for network infrastructure projects.⁹

- In Victoria, section 16ZA of the *National Electricity (Victoria) Amendment Act 2020* (Vic) requires the Minister to consult with the Premier, the Treasurer and AEMO before making an Order (unless that Order is a minor Order).

QLS recommends that in the next stage of consultation for Queensland's renewable energy transition, further information be published clarifying:

- The extent of engagement with the Australian Energy Market Operator (**AEMO**), in relation Queensland's approval and construction of PTI infrastructure, to enable AEMO to understand the impact of new Queensland-based infrastructure on the national grid;
- The analysis process to be undertaken by the Government and Powerlink in relation to infrastructure and other works in REZs, including consideration of short and longer term Queensland consumer impacts (e.g. electricity costs and reliability of supply) as a result of PTI.

Derogation from National Electricity Law – transparency and legislative standards

It is critical for any derogations to be transparent, clear and readily accessible.

QLS recommends reconsidering the inclusion of the regulation-making power in clause 34 of the Draft Bill, which contemplates that a regulation may be made under the Draft Bill and may provide for an application of the National Electricity (Queensland) Law or NER, or may also provide that a national provision does not apply or applies with stated modifications.

This provision could be interpreted as permitting a regulation to amend an Act. This is inconsistent with the fundamental legislative principles that a bill has sufficient regard to the institution of Parliament and that an Act should only be amended by another Act.¹⁰

Under the Draft Bill, any derogation will be made in a regulation pursuant to another Act with a different name. This will make it difficult to understand and interpret which aspects of the National Electricity Law (Qld) are in effect, without cross-referencing a number of pieces of legislation, including subordinate legislation.

QLS considers any derogation from the National Electricity Law (Qld) should not be made by regulation but should appear in primary legislation. Ideally, derogations would be clearly identified in the *Electricity—National Scheme (Queensland) Act 1997* (Qld), which applies the National Electricity Law to Queensland. For example, an existing modification of the National Electricity Law (Qld) presently appears in section 6A of the *Electricity—National Scheme (Queensland) Act 1997* (Qld).

⁹ NSW Government, *NSW Climate and Energy Action – Entities delivering the Roadmap* - <https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap/entities-delivering>

¹⁰ Section 4(4) of the *Legislative Standards Act 1992* (Qld); See also Department of the Premier and Cabinet (2019) *The Queensland Legislation Handbook Governing Queensland*, Part 7.3 – Institution of Parliament – accessed at <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook.aspx>

Renewable Energy Zones

QLS raises a number of drafting queries in relation to the sequence of events for declaring a REZ:

- Clause 40(3)(d) of the Draft Bill requires the declaration to state when the declaration of the REZ ends, which must be no earlier than 15 years after the day on which the first participant is connected to the REZ transmission network. In order to identify this end date accurately, does this mean that a participant must be connected before the declaration is made? If this is not the intent, then the drafting may need to be reconsidered to require a date which is no earlier than 15 years after the day on which the first participant is expected to be connected to the REZ transmission network.
- Clause 40(3)(d) of the Draft Bill suggests a REZ should be in place for at least 15 years. We query whether the revocation power in clause 42 of the Draft Bill is permitted to be exercised before the 15 year timeframe ends? If so, what are the consequences for participants who are already connected to the REZ transmission network?
- Part 6, Division 3 of the Draft Bill deals with management plans for REZs. Clause 45(b) of the Draft Bill requires a management plan for a REZ to contain details of the process to be used by the REZ delivery body to approve entities who may 'access the REZ controlled assets'. It is clear from the definitions in clause 36 that a REZ transmission network is a different concept to a REZ controlled asset. However, we expect that some entities may require access to both. This again raises a sequencing question – is it intended that an entity 'connect' to a REZ transmission network before the REZ declaration (under clause 40(3)(d)) but could not access the REZ controlled assets until such time as the management plan is approved?

Job Security Guarantee and Job Security Guarantee Fund

The impact of the transition from coal-power to renewable energy sources on energy workers, communities and regions must be carefully managed. In this regard, we acknowledge the significance of the legislative commitments included in the Draft Bill in the form of the Job Security Guarantee and Job Security Guarantee Fund.

QLS supports the establishment of a Job Security Guarantee Fund and notes the government has indicated it will contribute \$150 million in this regard. Although this funding is very welcome and necessary, further investment must be proactive and ongoing to ensure that the purpose of the Fund is achieved in a timely and efficient manner.

Furthermore, QLS is mindful that affected workers may require legal advice to assist them in determining whether they meet eligibility requirements in order to access the Fund or when considering transferring between publicly owned energy corporations or new employment opportunities. QLS considers that funding of this kind must also be factored into the ongoing funding model.

In addition, we would also welcome further detail in respect of the Fund's operation including how it can be accessed and the categories of costs it will include.

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To this end, we note the scope of the support proposed to be captured by the Job Security Guarantee, foreshadowed in the Queensland Energy Workers' Charter, includes, but is not limited to:

- every energy industry worker is guaranteed a job within the Government owned energy sector as it transforms;
- every energy industry worker will be offered agreed financial support and options to support transition to their new career;
- workers whose existing job no longer exists, and who do not wish to accept the offer of an alternative job in accordance with that commitment, will have access to other options in accordance with the Charter.

It would be helpful to consider the comprehensive set of draft regulations and guidelines being contemplated alongside this Draft Bill.

QLS recommends there be public consultation on the regulations and guidelines referred to in clauses 72(4) and 73 of the Draft Bill before they are made.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED]

Yours faithfully

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Chloé Kopilović
President