

11 March 2024

Our ref: [WD:MC]

Hydrogen and Future Fuels Division  
Department of Energy and Climate  
1 William Street  
Brisbane QLD 4000

By email: [REDACTED]

Dear Hydrogen Division

**Consultation Paper: An effective regulatory framework for Queensland's hydrogen industry**

Thank you for the opportunity to participate in the consultation on potential hydrogen industry regulatory reforms and to respond to the paper "*An effective regulatory framework for Queensland's hydrogen industry*" (**Consultation Paper**). Thank you also for the additional time to provide this correspondence.

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.

This response has been compiled by the QLS Energy and Resources Committee, whose members have substantial expertise in this area.

As an initial comment, QLS recognises that the Consultation Paper has been released at a relatively early point in the development of an extensive hydrogen industry in Queensland. This necessarily means some of the issues addressed in the paper are at a high level. QLS welcomes the early consultation as there is significant benefit in obtaining stakeholder and community input at this stage.

QLS provides preliminary comments in the following submission, but also foreshadows QLS is well-placed to contribute to discussions on specific law reform proposals once they are further developed.

QLS looks forward to continuing consultation as this process continues with a view to assessing the impact of proposed changes in practice.

### Executive summary

- If a new regulatory framework for producing hydrogen is to be introduced, it will be important to:
  - consider carefully any transitional arrangements for existing projects already underway and any retrospective application of a new framework.
  - manage any potential inconsistencies which might arise, to ensure there are no unintended consequences with respect to proponents structuring their developments to minimise and streamline regulatory scrutiny.
- QLS suggests that the likely development of naturally occurring hydrogen, and other non-renewable hydrogen, should be contemplated when considering licensing regimes for renewable energy hydrogen.
- QLS welcomes the focus in the Consultation Paper on social and community impacts and engagement with First Nations peoples. Encouraging a hydrogen industry in Queensland will ultimately generate many benefits for the State but could adversely affect the individuals and communities 'on the ground'.
- In assessing community impacts and developing consultation processes for the new industry, the following elements should be addressed:
  - Ensuring there is a recognition of the public interest and benefit in preserving Queensland's good quality agricultural land;
  - Engaging with peak agricultural bodies on the design of a social and community engagement model;
  - Measures to support landholders in their engagement with proponents, including:
    - An information program about the Queensland Renewable Energy Landholder Toolkit which has already been published;
    - A Code of Conduct to set standards for appropriate conduct of developers and operators in their negotiations with landholders and other affected community members; and
    - Consideration of who bears the cost of legal advice required for landholders and whether proponents should be required to demonstrate compliance with their obligations in relation to conduct and costs.
- QLS recommends a legislative pathway be implemented for the underground storage of hydrogen as a priority. Storage is key to ensuring a sustainable hydrogen industry.

### Regulatory framework observations

The Consultation Paper seeks comment on the potential structure of a regulatory framework for hydrogen in Queensland, taking into account existing legislation.

At this early stage, QLS does not have a position as to whether standalone hydrogen regulation is required.

However, QLS offers the following principles for consideration when assessing potential regulatory reform for hydrogen projects:

1. The production of hydrogen from renewable energy sources is possible under the current legislative framework and many projects are already proceeding in reliance on the existing framework.
2. If a new regulatory framework is to be introduced, it will be important to consider carefully any transitional arrangements for existing projects and any potential retrospective application of a new framework.
3. Care will need to be taken to manage any inconsistencies which might arise if standalone renewable energy projects are regulated in a way which is different to a renewable energy project associated with hydrogen developments. We foresee two potential unintended consequences if there are inconsistencies:
  - a. If there are inconsistencies, proponents may be incentivised to structure their developments in a way which minimises and streamlines regulatory scrutiny.
  - b. If renewable energy hydrogen projects were required to undertake a more stringent approvals process than non-hydrogen projects, it would be contrary to the objective of increasing development of renewable hydrogen.
4. Transitional arrangements and inconsistencies are particularly relevant when considering the potential for a bespoke hydrogen generation licence under the *Electricity Act 1994*. As some proponents have already progressed hydrogen generation projects, QLS queries whether those proponents will be retrospectively required to obtain a new form of licence.

### Planning Framework

In response to the issues raised in this part of the Consultation Paper, QLS acknowledges there are some advantages in providing for greater State coordination of hydrogen development assessments.

As noted in the Consultation Paper, these might include:

- “additional clarity to proponents regarding a level of consistency in assessment and a coordinated approach to assessment of the development application”;
- “ensuring projects are co-located for efficient, complementary land use and potential realisation of other benefits such as common use infrastructure”;
- relieving “the resource burden for local governments given assessments are highly technical”; and
- providing “a consistent state-wide planning and safety approach to all medium-scale and above projects.”<sup>1</sup>

---

<sup>1</sup> Consultation Paper at page 13

We have commented below in relation to the need for early and effective consultation of affected communities and landholders. It may be that greater State coordination for developments, including the connecting linear transmission line infrastructure, might improve outcomes for these stakeholders.

However, QLS highlights these potential benefits also need to be balanced against the observations above in relation to potential inconsistencies affecting proponents.

As noted earlier, projects are already proceeding under the existing legislative frameworks. Although the Consultation Paper notes the potential "resource burden" for assessing projects, local governments are also closely connected to their communities and are well-placed to assess the practical day to day impacts of proposed projects.

If there is a policy preference for greater State involvement, it is critical that local governments are involved in designing any changes to the process and in setting the threshold at which a project is assessed by the State.

### Renewable Energy

#### *Option of a hydrogen generation licence*

If the decision is made to introduce a specific hydrogen generation licence for renewable hydrogen production (either under *Electricity Act 1994* (Qld) or a new standalone hydrogen Act), any transitional arrangements or potential inconsistencies between hydrogen projects will need to be carefully considered and managed. We refer to our earlier comments on these issues.

We note the Consultation Paper also suggests that a standalone Act and/or specific hydrogen generation licence could "deal with reporting obligations, contributions to domestic decarbonisation, social impacts and mandatory incident reporting."<sup>2</sup>

We have commented on the domestic decarbonisation issue further below.

*Consultation question 6: Is an approval or licensing regime a suitable way to ensure there is enough renewable energy for the domestic market?*

QLS recommends specialist competition advice be sought in response to this question.

However, in the meantime, we raise the following issues for further consideration:

- It is to be expected that some renewable energy generation, which is planned to support hydrogen production, may not be economic if it were to be sold into the market. The proponents of such a project might intend the generation to be 'off-grid' but also determine that the project is commercially viable for the purpose of producing hydrogen.
- However, the consultation question seems to be based on the premise that renewable energy will be sold into the market.

---

<sup>2</sup> Consultation Paper at page 15.

## **An effective regulatory framework for Queensland's hydrogen industry**

- If a generation project is only to be used for hydrogen production and not sold into the market, will it be assessed under a different regime to those projects which are connected to the National Electricity Market (**NEM**)?
- If there are to be different assessment regimes for projects that are connected to the NEM, then this risks developers deliberately seeking to avoid connection of their projects to the NEM. However, this outcome would seem to be counter-productive to the policy intent of introducing more renewable energy to the network.

### *Naturally occurring hydrogen*

The Consultation Paper notes that naturally occurring hydrogen (or geogenic hydrogen) is not explicitly explored in the paper but comments and feedback on this issue are welcome to inform future work.

QLS suggests that the likely development of naturally occurring hydrogen, and other non-renewable hydrogen, should be contemplated when considering licensing regimes for renewable energy hydrogen.

Different licensing regimes may have unintended consequences associated with competitive advantages and confusing regulatory regimes.

### **Community Impacts and Benefits**

QLS welcomes the focus in the Consultation Paper on social and community impacts and engagement with First Nations peoples. The policy decisions made by the Queensland Government as part of encouraging a hydrogen industry in Queensland will ultimately generate many benefits for the State but could adversely affect the individuals and communities 'on the ground'.

As has been seen in recent years, the rolling out of new industries have wide-ranging effects not only on the landholders hosting infrastructure but also on the communities supporting the new industry.

It is important that there is a clear framework in place to support those communities. The framework also needs to identify and manage, as far as practicable, the effects of an industry which will require access to land, generate construction and increase accommodation needs for workers.

Our practitioners regularly represent landholders and community members affected by resources and energy projects.

The comments below reflect their experience and draw on a variety of legal frameworks which apply across different types of industries.

### *Preserving good quality agricultural land*

QLS emphasises that in developing a consultation and engagement framework, there must be recognition of the public interest and benefit in preserving Queensland's good quality agricultural land (**GQAL**). There are elements of the *Regional Planning Interests Act 2014* and various planning instruments which do require an assessment of the impact on GQAL.

We recommend that the consultation and planning process for any hydrogen industry in Queensland specifically deal with the preservation of GQAL, whether this is under standalone hydrogen legislation or using existing processes.

The assessment framework must identify how it is intended that the renewable energy industry and government owned entities will interact with legislation that seeks to preserve these areas and activities and/or specifically indicate how it will interact or protect land and businesses in areas identified as Prime Agricultural Areas and Strategic Cropping Land areas.

### *Engagement with peak bodies*

The renewable energy industry will need access to land, meaning landholders will need be across the proposals and the consequences for their businesses. However, at this early stage of consultation on the potential impact of a hydrogen industry, it is difficult for individual landholders to participate when the particular impact on their property is unknown.

It is therefore critical that consultation is undertaken with peak agricultural bodies on the design of a social and community engagement model at this early stage.

Ultimately, government is seeking feedback about the structure of a legislative framework. QLS raises for consideration whether government would fund peak agricultural bodies to obtain legal advice about the different options available. Peak bodies would then be in a position to participate meaningfully and provide informed feedback about the most effective and workable model for their members.

### *Landholder engagement and negotiating impacts*

In our experience, landholders are offered renewable energy leases for periods of between 35 and 70 years. These are significant long-term commercial relationships and it is critical landholders understand the consequences of entering into these arrangements.

However, farmers and graziers are time-poor and also end up bearing the financial burden of seeking advice to protect their businesses. There is also a diversity of experience in dealing with enthusiastic and outcome-driven commercial proponents and potentially a power imbalance when it comes to negotiating outcomes which are fair and reasonable. This is particularly apparent in the early days, when industry representatives are keen to progress projects but a proponent's financial backing might still be limited.

Our members are aware of landholders being pressured into rushing legal advice or even incentivising landholders not to obtain legal advice. Other concerning behaviour includes seeking to limit the extent of advice sought or using \$2 companies to limit exposure.

## An effective regulatory framework for Queensland's hydrogen industry

A range of government published materials strongly recommend that landholders obtain legal advice, but many are silent on who bears the cost of the advice.

QLS notes the Australian Energy Infrastructure Commissioner (AEIC) was established to address the poor behaviour of developers in the early days of renewable energy projects, following the concerning experiences with the early days of the gas industry.

QLS recommends consideration be given to the following measures to support this group:

- An information program, to be rolled out immediately, for farmers and graziers about the Queensland Renewable Energy Landholder Toolkit which has already been published.
- A legislated Code of Conduct to set standards for appropriate conduct of developers and operators in their negotiations with landholders and other affected community members.
- Whether proponents should be required to reimburse a landholder's fair and reasonable costs of legal advice required as a result of a hydrogen or renewable energy project. The approach in section 91 of the *Minerals and Energy (Common Provisions) Act 2014* (Qld) is now a well-understood model. In the time available, we have not formed a view as to whether such a legislative requirement should be imposed. However, we highlight that affected landholders will need legal support and the question of who bears that cost should form part of this consultation process.
- Whether proponents should be required to demonstrate compliance with their obligations in relation to conduct and the reimbursement of costs, as discussed above, before major activities commence.

### *Coordinated community benefit schemes*

The 2023 Queensland Energy Zone Roadmap sought feedback on the coordination of community investment schemes:

"Additionally, there is an opportunity to improve coordination of community investment schemes. The Queensland Government is seeking views from stakeholders on the potential establishment of a coordinated fund to which renewable energy developers could contribute. This could support investments in local priorities for REZ communities focused on creating a positive energy legacy shaped by the Regional Energy Reference Groups."<sup>3</sup>

QLS suggests a consistent approach should be taken for the impact of the hydrogen industry on affected communities. It may well be that the renewable energy projects under consideration in the Renewable Energy Zone communities may be for the purpose of producing hydrogen.

---

<sup>3</sup> Department of Energy and Public Works, Draft 2023 Queensland Renewable Energy Zone Roadmap at page 8 – available at <https://www.epw.qld.gov.au/energy/renewable-energy-zones/rez-roadmap>

## Hydrogen Storage

*Consultation questions:*

*Question 20: What matters should be considered in expanding existing regulatory requirements or designing a new framework to support hydrogen storage?*

*Question 21: Should underground storage of hydrogen be permitted in Queensland? Why or why not?*

QLS recommends a legislative pathway be implemented for the underground storage of hydrogen as a priority. Storage is key to ensuring a sustainable hydrogen industry.

We are hesitant to recommend that the regulatory framework for underground storage be accommodated in the existing petroleum legislation for a variety of reasons, including competing intentions and native title implications for existing tenure.

It may be worthwhile investigating whether the underground storage regulation is best placed under the *Greenhouse Gas Storage Act 2009* (Qld).

QLS recommends further consultation on the best available options.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on [REDACTED]

Yours faithfully



Rebecca Fogerty  
**President**