



The Hon. Minister Frydenberg
Chair, COAG Energy Council
Minister for Resources, Energy and Northern Australia
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

30 November 2015

Dear Minister,

Ensuring the Governance Review delivers good consumer outcomes

We write to highlight our concerns with recommendations from the recent National Energy Market (NEM) Governance Review and to propose alternative positions for your consideration. The undersigned represent a diverse range of organisations engaged in consumer advocacy towards more effective energy markets and more effective energy policy on behalf of residential consumers, especially low-income and vulnerable consumers. We present our views as experts in our field, with the recommendations below stemming from shared consumer perspectives based on the lived consumer experience.

Policy leadership in the NEM and strategic advice

We agree with the central finding of the Governance Review report that outcomes for consumers—and the NEM as a whole—have suffered from a lack of strategic policy leadership in recent times. We support Energy Council efforts to address this, and accordingly, we welcome the proposal for the Standing Committee of Officials (SCO) to take greater leadership in strategic policy development.

However, the Governance Review panel has further recommended that SCO be assisted in this work by the Australian Energy Market Commission (AEMC). While we agree that SCO should be assisted in such work, consumer groups have serious concerns about the AEMC's ability to integrate consumer perspectives into its work. This requires a detailed understanding of differences in consumer markets based upon jurisdictional circumstances (ie where markets are more complex and evolved versus those markets with minimal competition and no technological diversity). Given the AEMC's separation from such market information, this must be re-considered.

We submit that if the AEMC is to be tasked with assisting SCO in developing strategic priorities, it should also be required to strengthen its processes for gathering consumer views, and be given the necessary information gathering powers to do this. The experience of consumer groups that have initiated AEMC rule changes is that there can be a lack of clarity about the level of evidence required to substantiate a rule change. Our experience is that the AEMC can take the view that participants must “prove” their case, rather than it taking an investigatory process to determine whether the proposal can improve the long-term interests of consumers.¹ If the AEMC is tasked with this new role, there must be a clear obligation to incorporate consumer views into AEMC decision making processes, having addressed the existing information/evidence bias that exists within the organisation.

Appointment of consumer commissioners

We believe that the most effective way to better integrate consumer perspectives into the work of regulators is through the appointment of a consumer commissioner.

The appointment of a consumer commissioner is essential to:

- promote the diversity of the markets they regulate (including, consumers); and
- ensure appropriate accountability mechanisms, in particular to the objective of 'long term interests of consumers'.

Such a position would mirror that of the Australian Competition and Consumer Commission (ACCC); section 7(4) of the *Competition and Consumer Act 2010* (Cth) provides that at least one member of the Commission must be a person who has knowledge in or experience with consumer protection. By convention, this role has been held by the Deputy Chair. Our experience of working with the current Deputy Chair and her predecessors is that the ACCC has a deeper understanding of the consumer experience and works effectively to address aspects of regulations and business practice that may lead to consumer detriment.

The Governance Review panel has recommended that the AER and the AEMC be expanded from three to five commissioners, with skills that fit an agreed matrix (including experience in consumer issues). We are concerned that under such an arrangement, consumer experience will continue to be sidelined in favour of more technical expertise. Indeed, we fear it is virtually certain this will occur on the more technical issues. However, the AEMC is bound by law to make all decisions in the long-term interests of consumers. Given the pace of change and innovation in the energy market—and the challenges this inevitably poses for the rule maker— it is essential that the AEMC be equipped to give effect to that legal obligation. Accordingly, we submit that it is essential for a consumer commissioner to be appointed to both the AER and the AEMC, whether or not the commission is expanded.

Expedited rule change process

We support an expedited rule change process. This could include increased resources for the AEMC, greater consultation in prioritising of issues or amendments to the statutory rule change process. Any process change, however, must be mindful that it enhances consumer participation, and does not create barriers to it.

¹ Alvis Consulting, Fix It, An analysis of the first retail rule change in Australia's energy markets, February 2015,

It has been our experience that important rule changes, which seek to ensure regulation keeps up with rapid developments in the energy market, have not commenced for up to a year following the submission of a proposal. We believe that this has left all market participants, including consumers, at a disadvantage. It has also meant that by the time of a final decision, other market failures are presenting themselves, holding back important innovation and productivity improvements in the NEM. For example, the issue of fixed term prices being addressed, despite the outcome of the rule change.²

Retaining the Australian Energy Regulator (AER) within the ACCC

Finally, we do not support the recommendation made by the Governance Review Panel that the AER be separated from the ACCC. In our view, the Governance Review Panel has failed to outline a compelling case for the separation of the two bodies. There are clear synergies and shared expertise between the organisations that can lead to better outcomes for consumers. For example, competition policy and economic regulation share important objectives around the long-term interests of consumers. Staff across the various areas of responsibilities can share experience leading to a stronger outcome.

We also believe that consumer benefits arise from regulators focusing broadly beyond one industry. A broader view across different industries is likely to keep the regulator independent and focused on the interests it exists to serve—that of consumers.

It is essential in the context of emerging markets that consumers are afforded protections that are fair and consistent across industry segments, to ensure consumers receive the same outcomes regardless of product or service; the separation of the AER from the ACCC may result in the opposite. Consumers must be prioritised in these increasingly complex markets, and the AER must be afforded access to the resources and expertise within the ACCC to effectively deliver this.

If you require any further information, please do not hesitate to contact Janine Rayner, Senior Energy Policy Officer, Consumer Action Law Centre, on 03 8554 6943 or janine@consumeraction.org.au, or Oliver Derum, Policy Team Leader in the Energy and Water Consumers' Advocacy Program at the Public Interest Advocacy Centre on 02 8898 6518 or oderum@piac.asn.au.

Yours sincerely,



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² Section 10, Energy Legislation Amendment (Consumer Protection) Bill 2015, Victoria



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cc: The Hon Minister Liliانا D'Ambrosio, Minister for Natural Resources and Mines, Victoria
The Hon Anthony Roberts MP, Minister for Industry, Resources and Energy, NSW
The Hon Mark Bailey MP, Minister for Energy and Water Supply, Queensland
The Hon Tom Koutsantonis, Minister for Mineral Resources and Energy, Sth Australia
The Hon Matthew Groom, Minister for Energy, Tasmania
Mr Simon Corbell MLA, Minister for Environment, Australian Capital Territory