

Select Committee on Energy Planning and Regulation in Australia

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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1. Introduction and summary

The Justice and Equity Centre (JEC) welcomes the opportunity to make a submission to the Select Committee on Energy Planning and Regulation in Australia (the Inquiry).

Australia has a strong set of independent, expert national energy institutions. This is augmented by an array of national energy and climate policies and jurisdictional regulators and energy policy institutions. Between them they implement the transition of the energy system according to broadly consistent goals and principles and operate that system with the intent to efficiently promote the interests and meet the needs of consumers and the community.

However, much of this energy system architecture was designed decades ago to respond to the circumstances and technology of the time. In the intervening years circumstances have undergone rapid, generational change. New policy and institutions have been added at National and jurisdictional level. New technology has been rapidly introduced, and our understanding of the critical role of electricity as an essential foundation of health, wellbeing and prosperity has evolved. It is not always clear that this framework of institutions, policies and regulations operate consistently and effectively in concert, or that they consistently embody and promote the best interests of all consumers.

In this context, there is a timely opportunity to review, as a whole, this framework of policy and regulatory institutions governing the energy system and transition. Such a review should be tasked to ensure our energy institutions are appropriately tasked and empowered to promote the interests of all consumers, and identify where there are opportunities to strengthen institutions, improve consistency between them, and ensure all energy policy and regulatory institutions promote and enact principles of equity and transparent, consumer-engagement driven decision-making.

The JEC consider an appropriately scoped and structured review by the Productivity Commission (PC) would best fulfil this role and consider the Inquiry well placed to support the initiation of such a review.

In our submission we highlight specific areas where a review should recommend improvements across our framework, as well as areas where existing frameworks and institutions could be strengthened, specifically:

- There is opportunity for energy regulation, policy and planning (and its institutions) to have an explicit purpose which better reflects the essentiality of energy in supporting health, wellbeing and prosperity. Energy law and regulation has objectives, but these need review and reframing to ensure they equitably protect and promote the interests of all consumers. Other energy policy and institutions (at Commonwealth and jurisdictional level) need to be more consistently aligned with these reformed objectives. In particular, there are opportunities to more explicitly ensure energy governance (and bodies) recognise and promote equity of outcomes in their decision-making and strengthen their independent remit to do so as 'expert' bodies.

- While there are many good examples of improved consumer, community and stakeholder engagement shaping decision-making, the statutory frameworks allow for significant inconsistency. Opportunity exists to ensure that all government decision-making processes embed robust and transparent processes for consumer, community and stakeholder engagement, and that this engagement meets consistent standards of good practice in timing, structure, breadth, depth, focus, and representation.
- More support is required to ensure consumers, communities and their stakeholder representatives are able to engage meaningfully in energy decision-making processes. No matter how capable, the breadth and complexity of energy processes and decision-making requires more than a single consumer voice. Increased recognition of the importance of engagement has not come with the required support to build and fund capability for consumer and community stakeholders to have the capacity to engage meaningfully. There is an opportunity to support additional, more diverse consumer perspectives and engagement to support the work of Energy Consumers Australia (ECA).

2. A Productivity Commission Review

This select committee is well placed to voice support for an appropriately scoped review of energy policy, frameworks and intuitions by the Productivity Commission.

A well scoped PC review, undertaken systematically, encompassing wide consultation and with a timeline adequate to wholistically consider the needs of the energy system in transition, is required. This review should consider:

- The changing role (and increasing essentiality) of energy (electricity) in consumers' lives and in the economy;
- The overarching energy laws and how fit for purpose they are— and particularly whether they enable sufficient focus on the dimensions which support the essentiality of energy and the need to equitably promote good outcomes for all people in the community;
- How to update the purpose of the energy institutions and ensure they are strengthened to independently fulfill that purpose;
- How to better ensure consistency and co-ordination between energy policy and institutions at national and jurisdictional level;
- Reviewing the role of the Energy and Climate Change Ministers' Council (ECMC);
- Examining how to ensure consistent and robust approach to consumer, community and stakeholder consultation in decision-making; and
- How to improve the scope of support for diverse consumer and community engagement with decision making through improved capacity for diverse advocacy.

3. The Market Bodies

The Australian Energy Regulator (AER), Australian Energy Market Operator (AEMO) and Australian Energy Market Commission (AEMC) are robust institutions, empowered to act independently of governments to promote the interests of consumers. This structure has broadly served the community well. Strongly independent institutions are crucial to the efficient

functioning of the energy system, transparent and efficient management of the transition, and the consistent promotion of consumer interest over others.

There is scope to build on this crucial role by strengthening market bodies' remits and ensuring they are appropriately empowered to fulfil it.

This is particularly important in the context of the energy transition, where new products and dynamics are constantly emerging. The market bodies need to be empowered to act decisively and proactively to direct market evolutions which promote the consumer interest and define for themselves (as expert bodies fulfilling a purpose in the interests of consumers) new issues and areas worthy of attention and action.

Stakeholder engagement

While market bodies have each shown strong commitment to pursuing good practice in terms of stakeholder engagement, the results in this area have been inconsistent. This is in part due to the substantially increases in the workloads of these institutions.

The market bodies play a crucial and as yet underappreciated role in fostering the social license required to deliver the energy transition as a whole. There is a need for the market bodies to be consistent with their engagement practices, to promote best practice, and to be proactive in their communication with consumers and other stakeholders impacted by their decisions.

There are opportunities to ensure statutory frameworks for market bodies and other decision-making bodies embed robust requirements for transparent, good practice in consumer, community and stakeholder engagement. For instance, the AER's Better Resets Handbook could be adapted and evolved as the basis of its own approach to engagement, with other market bodies and institutions adopting a similar approach.

3.1 The Australian Energy Regulator

The AER plays a critical role in protecting and promoting the interests of consumers. Like the other market bodies, there is an opportunity to empower the AER by providing a clearer remit. This can be expected to allow the AER to operate more independently, and to more aggressively promote the interests of consumers.

The AER must be adequately resourced, both financially and in terms of the knowledge bases it has available to it, to act as an expert regulator on behalf of consumers and identify and develop guidance on new issues and areas as they emerge.

The AER's role should be delineated more clearly from the AEMC and AEMO. In particular, the role of the AER in assessing the efficiency and prudence of projects identified as needed in the Integrated System Plan (ISP) should be strengthened.

3.2 The Australian Energy Market Operator

We support the work of the ECMC to improve the effectiveness and influence of the ISP in efficiently guiding investors, governments and the public.¹ This process is a key part of promoting the interests of all consumers through the transition of the energy system. There is also scope for the structure and remit of AEMO to be considered as part of the comprehensive PC review we recommend.

The ISP is (or should be) a coordinating mechanism and a central reference to optimise the transition from a systemic perspective.

In order to remain the central, authoritative coordinating mechanism in the system, the ISP must evolve in fundamental ways. These include orchestrating investment in both the demand and supply sides of the energy market and expanding the set of outputs the ISP produces beyond the transmission optimal development path.

Outside of the ISP, AEMO requires upgraded resources to fulfil its remit as operator. This question of resourcing extends to ensuring they have the updated skills and understanding required to adapt the efficient operation of the system as it becomes more complex.

3.3 The Australian Energy Market Commission

We support the fitness for purpose of the AEMC'S remit being considered within a Productivity Commission review. However, as the body with its remit most closely aligned to the national energy objectives, there is arguably less need or scope to adjust its remit, with the focus more likely to direct and empower the Commission to fulfil in practice the purpose it has been given.

Like the other two market bodies, this will require resourcing the AEMC adequately to deal with the scope and complexity of change they are responsible for – including resources to acquire or access the range of expert technical, legal and consumer expertise necessary to undertake their work.

Practically speaking, there is a need to enable the AEMC to process rule change proposals much more quickly in order to ensure that the regulatory frameworks are appropriate for the changing energy system. An explicit aim of this reform work should be to embed a principle that rule change proposals should be treated on the basis of their merits. This is in keeping with the Commission's requirement to promote the long-term interest of consumers in all aspects of their practice.

There is also a need to ensure the AEMC is resourced to embed best practice engagement consistently through its decision making, and ensure it has scope to proactively consider new areas of relevance to the consumer interest and the ongoing reform and evolution of the energy system.

¹ Energy and climate change ministerial council, 2024, 'Response to the Review of the Integrated System Plan', ii.

4. Consumer Voice

Regardless of the capability of Energy Consumers Australia, the breadth and complexity of energy processes and decision-making requires more than a single consumer voice no matter how capable. Consumers and communities (and their interests) are diverse and good practice requires diversity in consumer and community engagement with decision making processes.

What is needed is a structure to more durably establish capacity for consumer advocacy from a broader range of organisations, across jurisdictions.

While there is recognition of the importance of engaging meaningfully with consumers and stakeholders on the part of the market bodies, as well as network and generation businesses, there has not been the support required to build and fund capability for consumer and community stakeholders. There is an opportunity to address this through support for more diverse consumer perspectives and engagement in addition to the important work of ECA.

As a starting point, we refer the select committee to the work of Uniting Communities in 2019.² This report is focussed on engagement with network decisions, but raises issues and recommendations relevant to energy processes more broadly (and issues that are more critical now than they were when it was drafted).

We also refer the select committee to our work³ describing the evolving role of consumer advocates. This work describes the dual role of consumer advocates, first facilitating the process and outcomes of consumer engagement,⁴ and second augmenting understanding and promotion of the consumer interest. It also offers clear directions on how businesses and regulators can enhance their engagement practices and improve outcomes for consumers, networks, and regulators by moving from an adversarial to a collaborative footing.

5. The three overarching laws

The JEC supports a substantive PC review which encompasses a review of the overarching framework of energy laws, to ensure they are fit for purpose and reflect our contemporary understanding of what is required to ensure decisions in energy promote the interests of all consumers and communities.

In particular, as we noted in response to recent processes introducing an emissions reduction aspect to the energy objectives, we support a wider review of the objectives which includes the

² Uniting Communities, July 2019, 'Resourcing Consumer Engagement. Available at <https://c9cdneca.azureedge.net/media/3065/ap-956-uniting-communities-resourcing-consumer-engagement-final-report.pdf?rnd=132766695810000000>

³ JEC, 19 February 2024, Draft decision 2024-29 revenue determinations: Ausgrid, Endeavour, and Essential Energy. Available at <https://jec.org.au/wp-content/uploads/2024/02/24-02-19-Sub-to-AER-Draft-decision-2024-29-revenue-determination-NSW-DNSPs.pdf>.

⁴ We use 'consumer engagement' to refer to engagement between network businesses and end-use consumers of electricity (e.g. households and businesses). In contrast, we use 'stakeholder engagement' to refer to engagement between network businesses and non-consumer stakeholders (e.g. consumer advocates, peak bodies, industry groups, and customers such as retailers, property developers, accredited service providers, aggregators, and embedded network operators).

incorporation of an explicit equity dimension to the energy objectives and the laws which enact them.

6. State coordination

Notwithstanding national coordination, the evolution of energy policy and institutions has retained significant fragmentation in the operation of frameworks across different jurisdictions. There are many instances where state policy and regulatory structures are inconsistent with national frameworks, and instances where they are ineffectively aligned with the promotion of consumer interests. While jurisdictional planning and regulation will likely remain a prominent feature of the energy system, there is significant opportunity for alignment in key principles.

In many cases State regulators have fallen short in upholding best practices in terms of transparency and stakeholder engagement. They have often failed to meet the standards now required of energy network businesses in their jurisdiction. This needs to be addressed both for its own sake and in order to mitigate the risk of social license for the energy transition being negatively impacted as a result of the perception that state planners and regulators either engage inadequately or do not show how stakeholder views shape their decisions.

In general, state regulatory bodies have proved to be effective at the specific tasks they have been designed for, but less good at evolving as the jobs required of them evolve. For example, new areas of regulation, such as the oversight of renewable energy zones (REZ) often occupy an ambiguous space between state and federal auspices.

New architecture may be required to enhance the capacity of state regulators and planners in these two specific directions: coordination and stakeholder engagement. In any case a PC review offers an opportunity to identify opportunities to better align state and national regulatory frameworks, and where consistent principles and approaches can be adopted.

Further engagement

The JEC would welcome the opportunity to discuss these matters further. If you have any queries about this submission or would like more information about our advocacy and research work, please contact Michael Lynch, Senior Policy Officer, Energy and Water at mlynch@jec.org.au.