

Energy Consumers Australia

Review of Governance Arrangements for Australian Energy Markets

Submission in response to draft report

August 2015

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Energy Consumers Australia (ECA) was established in January 2015 with the objective:

To promote the long term interests of consumers of energy with respect to the price, quality, safety, reliability and security of supply of energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on national energy market matters of strategic importance or material consequence for energy consumers, in particular for residential and small business customers.

The first two guiding principles for ECA are:

Represent a strong, balanced, and proactive voice for Australian energy consumers, including vulnerable consumers.

Improve the effectiveness of consumer advocacy in Australian energy markets by adopting a strategic evidence based approach to advocacy, advocacy capacity building, research and assessment of state issues for national impacts.

ECA regards the *Review of Governance Arrangements for Australian Energy Markets* (the **Review**) as fundamental to this objective but was not in a position to provide a submission in response to the initial discussion paper.

The release of the Draft Report (the **Report**) provides ECA with the opportunity to provide input to the Review.

ECA notes the Panel's identification of two key themes – the pace of change and a strategic policy deficit, and the Panel's comment in regard to the first, "that governance arrangements can affect sectoral activities and adaptation" and in regard to the second, that this "raises specific matters of immediate concern."

ECA also notes that since the Review began, the COAG Energy Council issued a Meeting Communique from its July 2015 meeting going to the issue of innovation in the market:

Energy and Carbon Policy Interaction in the National Electricity Market.

The Council discussed the interaction of climate change and energy policies and agreed that the energy sector would need to play a major role in Australia's effort to reduce greenhouse gas emissions because most of Australia's emissions come from the production and use of energy. The Council as the peak forum for the development of national energy policy, noted it would have a central role in ensuring that policies to reduce emissions in the energy and resources sectors are efficient and effective. The council's work plan includes initiative to ensure that Australia's regulatory frameworks are robust and able to adapt to the emergence of new technologies and energy supply models.

...New technologies such as solar and battery storage offer the opportunity to reduce emissions while supporting efficient network and wholesale market development. The Council acknowledged the importance of developing clear and consistent frameworks for the deployment of innovative technologies and addressing inefficient barriers to their deployment.

ECA supports the Panel's position on the contribution of a governance framework in achieving the overall objective "that the long-term interests of consumers are efficiently served."

"A governance framework is required to support these arrangements. Just as in more conventional markets, a key aspect of the governance framework is that functions and decision-making responsibilities and accountabilities are structured and assigned so as to promote a specified objective.

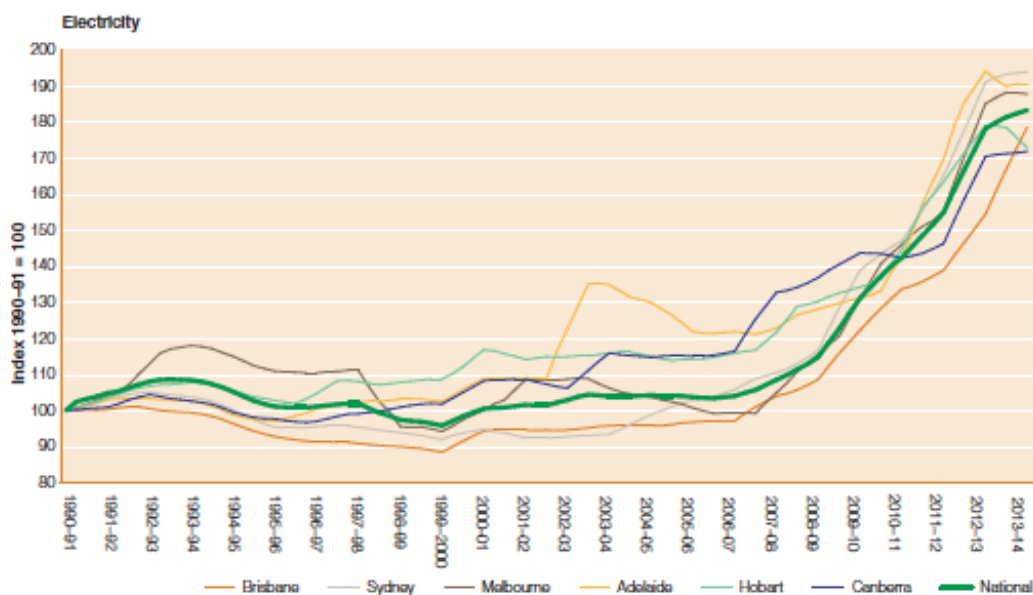
The overall objective is that the long-term interests of consumers are efficiently served. In a dynamic and changing economic environment this requires, among other things, that the constant search of market participants and potential participants to discover new and better ways of doing things is not materially impeded. It also calls for a degree of adaptability in the market rules as contexts change, although balance is required here insofar as rules also need to be reasonably stable and predictable over time if they are to serve their purposes—unpredictability in rules, sometimes called 'regulatory uncertainty', tends to degrade effectiveness."

ECA believes that while the current statement of the national energy objectives remains appropriate, the Panel is right that "the perceived potential for performance gains has fallen and strategic policy focus has been lost."

In regard to the national energy objective, ECA believes that more could be done to ensure that there is shared understanding across the elements of the governance framework, particularly in the environment COAG describes where innovation can begin to play a role in delivering outcomes that up to now could only be achieved through regulation. ECA strongly supports further work in expanding the explanation of the objective to address misunderstanding and to provide the clear and consistent framework needed to support innovation.

ECA notes a shared consumer perspective that the current energy market arrangements have not delivered beneficial outcomes for consumers. While the generation cost of electricity has been falling, Australian consumers' energy costs have been rising – the figure below shows the real increase in electricity prices as reported in the ACCC's *State of the Market 2014*. These price rises are the start point for review by consumers of the effectiveness of the Governance Framework in this sector.

Figure 5.4
Retail price index (inflation adjusted)—Australian capital cities



It is also worth noting that these concerns were shared by Ministers in changes to energy market arrangements:

“In light of significant energy price rises and concerns that inappropriate use or operation of the review process may have contributed to such rises, Energy Ministers agreed to a review of the limited merits review regime and established an independent expert panel to undertake this review.” (Hansard 26 September 2013 p7172 SA House of Assembly)

The changes made in late 2013 included the establishment of ECA and revisions to the Limited Merits Review (to focus more clearly in the long-term interests of consumers and to enable direct consumer participation in review processes). These are two important initiatives whose impact is still working through the arrangements.

Among consumer advocates, ECA is aware that some who have been working within the current system over many years are seeking more wholesale reform based on their experience and the poor outcomes achieved for consumers.

ECA is also very aware of its own role to ensure that all institutions are more effectively engaging with consumers and that the policy and regulatory focus remains on the long-term interests of consumers.

Structure of ECA submission

There are five areas in which ECA would like to express explicit support. These (and the associated recommendations) are:

- The proposals for AEMC’s market development role to be clearer and more reliably used, and to more clearly focus AEMO on its market operation role while ensuring that AEMO’s

expertise in market and system operation is available to and accessed by the AEMC (2.3, 3.1, 3.5, 5.2 and 5.3)

- Ensuring effective consultation (2.6, 3.2,)
- The importance of national outcomes (2.8)
- Aligned and improved governance for AER and AEMC (4.1, 6A, 6B, 6D, 6E)
- Timing of future review (6F)

(ECA is numbering recommendations in the format X.Y where X is the Chapter number and Y the number in the chapter. For Chapter 6 the format XZ.Y is used where Z is an alpha character to represent the separate blocks of recommendations in that Chapter).

The recommendations relating to the AEMC's market development role and the aligned and improved governance regime for AER and AEMC are both of their nature structural. ECA is also supportive of the recommendations relating to the operation of the Energy Council; however, we do want to add some additional thoughts. These structural recommendations will comprise the first section of the submission.

ECA also agrees with the observation that the focus of the regime is the long term interests of consumers and that "no one disputes that." However, the fact that the issue was raised frequently in submissions suggests there are still multiple interpretations. ECA supports the recommendation that the objective not be changed, but does have some thoughts on processes by which these interpretations can be reconciled. This, together with the discussion of effective consultation and the importance of national outcomes, will comprise the following section.

The submission will conclude with further summary comments on the future participation of Energy Consumers Australia and the timing of future reviews.

The structure of the submission is therefore:

- Structural elements (AEMC's market development role; Governance for AER and AEMC, Operation of the Energy Council)
- Process elements (Effective consultation; National outcomes; and The objective of energy market regulation)
- Concluding comments on future role of ECA and future reviews

Structural elements

The Panel reports that the specific separate roles of the Energy Council, the AEMC and the AER continue to be appropriate. The delineation of those roles through the chapter headings of "Setting strategy and determining priorities", "Rules and rule-making" and "Regulatory decision-making" respectively is a useful addition to the language of describing the separate roles.

Indeed the ordering of the organisations in this sequence is equally important, placing the AEMC before the AER. This is the order in which they occur in the Australian Energy Markets Agreement, but unfortunately not in the legislation or other discourse.

This clarity is enhanced by the Report's further descriptions, notably:

On the Energy Council

The Panel is of the view that the Council is the premier and appropriate body to have overarching responsibility and policy leadership for the Australian energy market, including for enabling cooperation between the Australian Government and state and territory governments.

On AEMC

These roles are sometimes referred to as the AEMC's 'market development' and 'rule-maker' functions...The Panel is of the view that the separation of the rule-making and rule enforcement functions, the independent regulatory authorities and the availability of a merits review appeals regime are key structural attributes of the governance of the energy market which help establish credibility with investors and provide them with the confidence to invest in the sector.

On AER

In its deliberations, the Panel has been mindful of the central role that a regulator such as the AER plays in the effectiveness of energy market governance arrangements...The AER's primary task can be summarised as regulating network access (prices and standards) to promote efficiencies that serve the long-term interests of consumers.

On AEMO

That the role of AEMO as the market and system operator be defined as:

- facilitating the operation of markets for energy; and*
- promoting the reliability and efficient operation of energy systems and markets.*

The Report has observed the variety of views on the respective roles of the Energy Council and the AEMC and has, ECA believes correctly, identified that some of this emerges because the Energy Council's role in policy is particularly difficult in a federated structure. The recommendations to more clearly delineate the AEMC role as a market developer and to establish better support for the Council's policy leadership role will significantly improve this operation.

The proposed definition of the role of AEMO is welcomed; however, as discussed below ECA would not like to see AEMO's expertise divorced from the operation of the AEMC and Energy Council.

The Report has also observed that some concerns about the operation of the AEMC and AER are based on conclusions extrapolated from the differences between the governance arrangements of the two bodies. The recommendations that are aimed at eliminating the perception that the AEMC in particular is more readily influenced by jurisdictions, and at increasing the AER's financial independence should address the source of these concerns.

AEMC's market development role

In considering the important role of market development it is important to note that the energy market contains a number of geographic network monopolies and that effective regulation (as a proxy for competition) is required to secure the long term interests of consumers. In addition, the

market overall is seeing the emergence of technologies and services which, over time and with good market development support, could see innovation and new entrants deliver significantly better outcomes for consumers.

Any discussion about responsibility for market development must be premised on an understanding that supply side investment efficiency is only one factor for consideration in achieving national energy objectives. As indicated earlier, steep price rises in the sector provide the start point for consumers in assessing the effectiveness of the governance framework, as they did for Ministers in reviewing the Limited Merits Review Framework.

Effective stakeholder engagement in market development processes is essential as consumers are not able to express their preferences directly through market decisions in regard to network services.

The Report contained five recommendations on providing greater clarity of the AEMCs market development role within the context of the Energy Council's policy leadership role:

2.3. That SCO be charged with the responsibility to present to the Council for consideration recommendations on strategic direction and the specific priorities and work plan which should be adopted. The AEMC should be charged with the responsibility for initiating the development of this advice in consultation with SCO.

3.1. The AEMC's mandate should be revised to include an obligation to advise the Council through SCO every three years on strategic direction, and propose the priorities for the Council work programme. Included in this advice would be a comprehensive review of the rules as a whole to help inform this process. This review should be directed at advising whether the rules are consistent with the strategic priorities, are fit for purpose and are not impeding beneficial and innovative developments in energy markets. In the intervening years, this document should be updated annually to address any major unanticipated changes in the market and advise on their implications for the strategic priorities and facilitate timely adjustments to the work plan.

3.5. The AEMC should develop a staged review process proposal for broad and complex reviews, for consideration by the Council.

5.2. That 'promoting the development' of the wholesale exchange and markets be removed from AEMO's statutory functions.

5.3. That the COAG Energy Council not assign policy-related tasks to AEMO, but that the expertise of AEMO be accessed through consultation by the AEMC.

Recommendations 2.3 and 3.1 together frame a process whereby the Energy Council is responsible for developing strategic direction and priorities and is supported in this task by the body charged with market development responsibilities.

Recommendations 5.2 and 5.3 make it clear that AEMO's role should focus on working with the AEMC in establishing this direction. To ensure the knowledge and expertise of AEMO is well utilised ECA recommends adding a third element to the definition of the AEMO role:

- advising AEMC and Ministers on market and system operation, outcomes and issues

This AEMO role would reflect its experience in both electricity and gas markets.

In regard to Recommendation 3.1 ECA makes the additional suggestion that AEMC advice to Council should include both annual updates and a three-year stocktake report on progress with the development of national market reform and achievements in the long-term interests of consumers.

The discussion of consumer consultation will be covered further later in this submission. ECA however particularly notes that recommendation 3.2 proposes that the AEMC should demonstrate "substantive engagement with the AER, AEMO and other relevant institutions and include an 'open door' process for stakeholders to get innovative thinking onto the agenda."

ECA intends to be particularly active in pursuing opportunities for engagement including issues of strategic direction. While ECA can be expected to pursue this engagement on its own volition, it would be beneficial for ECA to be specifically referred to in recommendation 3.2.

Governance for AEMC and AER

The Report has made a number of recommendations that will help clarify the separate roles of the AEMC and the AER. The most significant of these is the full separation of the AER from the ACCC in recommendation 4.1. ECA supports this recommendation.

4.1. The AER should have full management and financial autonomy, and that this would be most effectively achieved by re-establishing it as a stand-alone regulatory body.

The recommendations included in Chapter 6 on the governance of the AEMC and AER (6A.1-3 and 6B.1-4 respectively) and on the appointments and funding processes (6D.1-2 and 6E.1-6 respectively) will significantly resolve the issues related to misperceptions created by the different governance arrangements. They cannot be achieved without the separation recommended in 4.1.

More significantly though, ECA finds the adoption of the language to describe the two entities as a "market-development and rule-maker" (AEMC) and "regulatory-decider and rule-enforcer" (AER) more productive than the delineation of "rule maker" and "regulator" more commonly employed. ECA would encourage these more accurate terms to be used in wider discussions and will attempt to adopt them itself.

Recommendation 4.2 calls for regular reviews of the AER, while recommendation 6F.1 suggests timing for the Energy Council to consider another governance review.

4.2. The AER should be reviewed every three to five years by a panel of experts appointed by the COAG Energy Council. The experts should be collectively experienced in regulation and have in-depth knowledge of all sides of the relevant markets (consumers, industry and government).

6F.1. The Energy Council assess the requirement for another independent governance review in 2021.

ECA supports both recommendations, but suggests that the first review should be the trigger for the second. The review of the AER should certainly precede any independent governance review, and it would seem that in considering any reviews of the AER one of the issues that the Energy Council should be mindful of is the option of a wider review of governance. Recommendation 4.2 should have the words, “with the first review to be concluded no later than 2020” added. 6F.1 should be amended to delete “in 2021” and add instead “at the conclusion of the first independent review of the AER.”

The Report noted concerns with the performance of both the AER and AEMC. In relation to the AER the Report observed that some of the AER’s functions are subject to review by the Australian Competition Tribunal, but that such reviews “are not a useful vehicle for performance assessment, as they are not able to address systemic cultural or organisational issues.” The Report also notes that AER members are integral to the decision making process and as a result “are not in a position to undertake an independent review as might occur in a corporate environment.” Arising from these observations the Report recommends the process of regular reviews in 4.2.

ECA notes that similar observations could be made of the AEMC. Recommendations 3.8 and 3.9 require the AEMC to publish timeliness performance metrics, and to publish and implement “best practice guidelines”. These of themselves do not provide for future reviews of performance.

ECA accordingly suggests a regular review of the contribution the AEMC is making in strategic market development in the long-term interests of consumers:

3.11. The AEMC should be reviewed every three to five years by a panel of experts appointed by the COAG Energy Council. The experts should be collectively experienced in regulation and have in-depth knowledge of all sides of the relevant markets (consumers, industry and government).

If this suggestion is accepted by the Review, then both recommendations on review processes should state that they are to be conducted as separate independent reviews.

In addition, if the suggested amendment to recommendation 6F.1 on the time a full governance review at the conclusion of the first AER review is also accepted, that amendment should refer to the completion of both reviews.

Operation of the Energy Council

The Report has observed that developing a national energy market in our federal system is a task that is inherently complicated. As the principal policy body the Energy Council is fundamentally constrained by the extent to which individual jurisdictional executives will support recommendations, and the degree to which parliaments will enact them.

However, this complication should not deflect the Energy Council from the focus on developing a national system. There is a possibility that items do not get placed on the agenda because of a

process of self-censorship. That is, debate may as a consequence avoid contentious issues and focus only on areas where agreement already exists.

The recommendation above to ensure the AEMC stays focussed on market development and provides strategic advice to the Energy Council will assist in keeping the Council's focus on the continued development of national market arrangements, including the potential for innovation to secure outcomes for consumers.

Recommendations 2.4 and 2.5 make direct proposals for further focussing the Energy Council.

2.4. That the Council formally delegate the management of the work programme to SCO, including for the provision of reports on its work progress.

2.5. That SCO be supported by an expanded secretariat located within the Australian Government Department of Industry and Science and that the secretariat includes a small number of appropriately qualified officers seconded from Australian Government and state and territory jurisdictions.

These recommendations ensure that there is an appropriately resourced but effectively multi-jurisdictional secretariat for the Energy Council. The formal delegation of the agenda away from the Council itself should also result in greater facility for bringing items to the agenda.

ECA supports the recommendations but requests the Panel to consider whether the Secretariat should be formally assigned the task of management of the work program, and that the SCO be tasked with working as an "executive committee" to the Energy Council. As an executive committee it would recommend to the Council responses to the agenda as prepared by the Secretariat, but that the Secretariat itself has the unimpeded ability to place items on the agenda.

Process elements

As well as the structural elements, the Report makes recommendations on three areas that we are describing as process elements on which ECA wishes to comment.

As a still young organisation ECA is keen to support the Review in its recommendations on effective consultation. As the extracts from the ECA constitution make clear, ECA's objective is "*To promote the long term interests of consumers of energy... by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy.*"

In achieving this objective ECA's activities are to "*represent a strong, balanced, and proactive voice for Australian energy consumers*" and "*improve the effectiveness of consumer advocacy in Australian energy markets by adopting a strategic evidence based approach*".

As a consequence it is perhaps unsurprising that ECA is particularly supportive of the Report recommendations on effective consultation and a focus on national outcomes. In this context ECA would also like to make some comments about the Report's observations on the objective of energy market regulation and provides this in the section below Objective of Energy Market Regulation.

Effective consultation

The Report makes two recommendations on consultation.

2.6. That the Council, SCO and the individual institutions each develop arrangements to ensure effective consultation with relevant stakeholders, including other institutions.

3.2. In its discharge of the above tasks, the AEMC should demonstrate substantive engagement with the AER, AEMO and other relevant institutions and include an 'open door' process for stakeholders to get innovative thinking onto the agenda.

Appropriately, both of these recommendations refer to stakeholders in general rather than just consumers; however, consumers are a large and diverse group spread across the country requiring effort and resource for effective consultation and engagement.

ECA in particular notes the Panel's observation of "a perception that the AEMC had a tendency to see consultation exercises as an opportunity to convince rather than to learn".

A consistent theme in consultations is that the energy market arrangements appear to be operating as a barrier to innovation rather than a facilitator of it. Accordingly, ECA proposes a change in the wording of recommendation 3.2 to include the words "innovation and" before the words "innovative thinking." The revised recommendation would then read:

3.2. In its discharge of the above tasks, the AEMC should demonstrate substantive engagement with the AER, AEMO and other relevant institutions and include an 'open door' process for stakeholders to get innovation and innovative thinking onto the agenda.

A number of consumer advocates have been active in energy market regulation and many of them have been financed through the (ECA predecessor) Consumer Advocacy Panel. As many of them are jurisdictionally based there has been a focus on jurisdictionally specific issues. ECA has a role in ensuring national issues and perspectives are included in consultation processes.

In relation to recommendation 2.6 ECA anticipates that its primary role will be to provide advice on consumer consultation processes, to enhance and enable consumer advocates to participate effectively in consultation processes, and to work with institutions to further develop these processes to achieve outcomes that meet policy and regulatory objectives. It is appropriate that institutions engage with consumers broadly and ECA will not become a single point of focus for consumer engagement.

In relation to recommendation 2.2, ECA supports the Report's recommendation that the Energy Council focus on the determination of strategic direction and priorities, and in 2.3 that SCO support the Council in this work in consultation with the AEMC. In 3.2 the AEMC is encouraged to include an open-door process for stakeholders. Taken together, these recommendations would support active engagement across the policy and regulatory framework on innovation in the market.

ECA is very keen to participate with the AEMC and other stakeholders to ensure that innovation that promotes the long-term interests of consumers, remains at the forefront. Just as the economic standard for efficiency is defined as the point at which no one can be made better off without

making someone worse off, so with innovation - change should be embraced that benefits consumers without disadvantaging any.

National outcomes

The Report makes a number of references to the importance of achieving national outcomes in energy markets. This is a position that ECA supports because of the benefits to consumers and industry – competition, choice and reduced cost of regulation.

We want to particularly support the recommendation relating to jurisdictional exemptions.

2.8. That a ‘necessity criterion’ be established to apply to proposals by individual jurisdictions that seek exemptions from otherwise nationally agreed arrangements.

It is understood that in some cases the jurisdictions are concerned that adopting national arrangements will be a step backward, but that is an issue that is best resolved in reaching the national arrangements.

The Energy Council is limited in the extent to which it can enforce the recommended proposal, but as a process issue to be maintained by the new Secretariat the “necessity criterion approach” should provide the kind of scrutiny that Regulatory Impact Statements achieve, as with the Limited Merits Review process.

ECA would support recommendations that seek to further the focus on national outcomes, and expect that this will be an inevitable part of the periodic AEMC advice on strategic direction.

Objective of energy market regulation

ECA supports the Report’s observation that the focus of the regime is the ‘Long Term Interest of Consumers’ and that no one disputes this. However, while it is not disputed there exist multiple interpretations and insufficient focus at present on innovation.

In particular there is a tendency to perceive the elements of the ‘Long Term Interest of Consumers’ and ‘economic efficiency’ as having different meanings and hence an emphasis on one or the other as having significance. In one sense this is surprising, given that the interests of consumers are best met when no one could be made better off without making someone worse off. This is the condition of Pareto optimality from which the definition of economic efficiency is derived.

The reference to “long term” ensures the objective includes the consideration of investment decisions, and hence efficiency is understood to include the dynamic efficiency that comes from innovation as well as static productive and allocative efficiency.

The objective as stated in the Australian Energy Market Agreement is very clear both about the objective being the promotion of the long term interests of consumers, and that the agreement includes support for innovation (in particular distributed generation) and carbon emissions reduction.

The full objective in the AEMA states:

The objectives of this agreement are:

- (a) *the promotion of the long term interests of consumers with regard to the price, quality and reliability of electricity and gas services; and*
- (b) *the establishment of a framework for further reform to:*
 - (i) *strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate of investment;*
 - (ii) *streamline and improve the quality of economic regulation across energy markets to lower the cost and complexity of regulation facing investors, enhance regulatory certainty, and lower barriers to competition;*
 - (iii) *improve the planning and development of electricity transmission networks, to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity;*
 - (iv) *enhance the participation of energy users in the markets including through demand side management and the further introduction of retail competition, to increase the value of energy services to households and businesses;*
 - (v) *further increase the penetration of natural gas, to lower energy costs and improve energy services, particularly to regional Australia, and reduce greenhouse emissions; and*
 - (vi) *address greenhouse emissions from the energy sector, in light of the concerns about climate change and the need for a stable long-term framework for investment in energy supplies.*

The objective as stated in the three laws establishing the regulatory structure unfortunately places the order as being “efficiency for the LTIC” rather than “LTIC through efficiency”. It should be noted, however, that the enacted objectives very specifically refer to these as the objective of the laws rather than the market arrangements.

ECA supports the import of the Review’s observation on the objective:

Indeed, the Panel’s firm view is therefore that, if any changes in national objectives come to be contemplated, they should be confined to adjustments that simply provide better, less ambiguous expression of the current underlying intent, including by way of supplementary guidance as to meanings.

ECA agrees that the objective should not be changed, but further clarification may prove to be desirable, particularly as a response to the need for significant innovation in the market and COAG’s reference to:

The importance of measures to reduce greenhouse gas emissions being consistent with the national energy objectives to promote efficient investment, operation and use of electricity services for the long term interests of consumers.

ECA recommends that the Review’s final report recommend that the Energy Council conduct a review of the **wording** of the objective, and whether it should be supported with supplementary guidance, once the first reviews under the revisions to Limited Merits Review have been determined.

Concluding comments

While the review of market governance arrangements has identified a breadth of views about the issues under consideration, there has also been unanimity on a number of critical elements. These include the value of continuing to pursue the development of the national market, and that it is a reform motivated by the objective of promoting the long term interest of consumers.

The process of developing a national energy market in our federal structure is not easy. It is reasonable for participants to be frustrated at progress after nearly twenty-five years of activity. However this frustration should not deflect from the very significant achievements thus far.

Opinions will and do differ over the appropriate governance arrangements. The Report highlights these views and identifies a steady path to address most of those concerns.

ECA believes that these changes will be most effective to the extent that the recommendations relating to stakeholder engagement are implemented. As noted in this submission, ECA will be engaging with the regulatory institutions and other participants to ensure that engagement with consumers is effective.

ECA agrees with the Report's conclusion that the objective should not be changed, but that there could be value in considering the wording and whether any ancillary information would assist interpretation. ECA believes that the Review should recommend that the Energy Council should undertake such a review once current proceedings in the Australian Competition Tribunal are concluded.

ECA has appreciated the opportunity to participate in this governance review and to execute on our commitments to provide a "strong, balanced and proactive" voice for consumers. We look forward to the Review's final report and working with the Energy Council to give effect to its recommendations.