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## **ENERGY SECURITY BOARD – MINISTERIAL POWER TO MAKE RULES**

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

We welcome the opportunity to comment on the draft *Statutes Amendment (National Energy Laws) (Rules) Bill 2017* (the Draft Bill).

Implementing the Finkel Blueprint is a major reform task that will take at least three years and an intense collaborative effort by market bodies and energy market stakeholders. The Energy Security Board (ESB), with its unique whole-of-system view, will play a critical role in overseeing and coordinating this task and we applaud the Energy Council for moving quickly to get it up and running.

We also support efforts to expedite the implementation process. The extensive consultation and analysis already undertaken as part of the Finkel Review, together with the need to move quickly to restore community and investor confidence in the National Electricity Market (NEM), means that alternatives to the standard rule making process must be considered. In this submission we offer our general support for the Draft Bill, which would give the South Australian Minister, where there is unanimous support within the Energy Council, the power to make rules based on a recommendation from the ESB. The Australian Energy Market Commission (AEMC) would continue to manage these rules, as well as those made through the standard rule-making process.

In doing so, we offer suggestions about how the Draft Bill and the terms of reference for the ESB can be amended to ensure that ‘affordability’ is properly embedded in its governance and the design of the new rule-making power. It is critical that the institutional arrangements for the transformation of the sector reflect the pressing national importance of affordable energy for the community and the economy.

### **Affordability and the ESB**

In the last ten years electricity prices have doubled, and Australian households and small businesses are now facing further, significant price rises.<sup>1</sup> Price rises of this magnitude will be unmanageable for many consumers: we expect the incidence of debt and disconnection to increase; many people to struggle to pay their bills, even those who have not previously experienced difficulties; and small businesses to close their doors because of power costs. Affordability must therefore be paramount in the ESB’s decision-making. Action to shore-up system security and reliability must be sensitive to consumer needs and done at least cost to avoid energy prices being higher than they need to be.

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<sup>1</sup> See for example, St Vincent de Paul Tariff Tracker report for NSW (published July 2017), p 6  
[https://www.vinnies.org.au/icms\\_docs/272193\\_NSW\\_Energy\\_Prices\\_July\\_2017.pdf](https://www.vinnies.org.au/icms_docs/272193_NSW_Energy_Prices_July_2017.pdf).



While the Finkel Review was instigated in response to a system security event, concerns about affordability were reflected in the terms of reference for the review:

*The blueprint will outline national policy, legislative and rule changes required to maintain the security, reliability and affordability of the NEM in light of the transition taking place.<sup>2</sup>*

This focus on affordability flowed through into the Finkel Panel's analysis and its recommendations – including in relation to the ESB, where it placed affordability and the pricing and availability of retail contracts for commercial and industrial consumers, at the center of the annual *Health of the NEM* report that is one of the ESB's key tasks.<sup>3</sup> We also expect the Energy Council to incorporate affordability objectives in the 'Statement of Expectations' it will develop to guide the work of the ESB, and provide a new set of 'whole-of-system' KPIs for the market, in line with Recommendation 7.6 of the Finkel Review Report.

As it stands however, there are no explicit references to affordability in the Draft Bill, and only one mention of it in the terms of reference for the ESB. We suggest the Draft Bill be amended in the following ways to embed affordability in the DNA of the ESB:

1. We note that the ESB is required only to ensure that any rule changes it recommends to the Energy Council are “*consistent with*” the National Electricity Objective (NEO) – the ‘long term interests of consumers’, and ‘price’, being at the heart of the NEO. This appears to be a lesser test than the one for standard rule changes, where the AEMC must be satisfied that the change “...*will or is likely to contribute to the achievement of the national electricity objective*”.<sup>4</sup> We suggest that this specification of the test be carried over into the new rule making power contemplated by the Draft Bill. This would not only help ensure that consumers and affordability are appropriately regarded by the ESB, but also that a common test is used for all rule changes under the National Energy Laws.

In this regard, we are pleased to that the Draft Bill proposes amendments that provide for the Australian Energy Market Commission to vary or amend rules made via this new process. This will help ensure that *all* rules made under the National Energy Laws can be managed and varied, over time, as circumstances change.

2. We suggest that the definition of the ESB proposed in the Draft Bill as the new section 2(1) of the *National Electricity Law* (and mirrored in the *National Energy Retail Law* and the *National Gas Law*) be amended to explicitly recognise, and give it equal weighting to ‘affordability’ alongside ‘energy security’ and ‘reliability’.
3. We note that the Draft Bill proposes (s 90F(4) of the *National Electricity Law* and mirrored in the companion laws) to confine the ESB's rule-making power to matters related to “*energy security and reliability of the NEM or long-term planning for the NEM*”. While it is important this new rule-making power is established in a way that reflects the specific purpose for which it is intended – that is to expedite the implementation of the Blueprint – we are concerned that this formulation may limit the ESB's ability to take steps to address affordability issues that, for example, might emerge as part of its *Health of the NEM* assessment.

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<sup>2</sup> <http://coagenergycouncil.gov.au/publications/independent-review-terms-reference>

<sup>3</sup> See recommendations 6.2 and 6.4 of the *Blueprint for the Future* <http://www.environment.gov.au/energy/publications/electricity-market-final-report>

<sup>4</sup> *National Electricity (South Australia) Act 1996*, s 88(1).



We are also conscious that Blueprint makes ten recommendations that go to the objective of *rewarding consumers* – from making it easier for consumers to access and use their data (Rec. 6.3), to reviewing the regulation of microgrids and individual power systems (Rec. 6.9). It is important that the new rule making power can be used to progress these important reforms to empower consumers.

We also suggest that the preamble to the ESB terms of reference be amended to reflect its role overseeing the implementation of the Blueprint, and monitoring the performance of the market against the affordability, system security and other parameters set out in the ESB Statement of Expectations described earlier in this submission.

We also support the proposal to extend the consultation period for the non-controversial or urgent rule making process under the National Energy Laws from six to eight weeks. This was recommended by the Governance Review in 2015 and will give the AEMC more time to consider input from stakeholders, and expand the set of matters that can be progressed through this expedited process.

Thank you for the opportunity to comment on the Draft Bill and the ESB terms of reference. If you would like to discuss this submission further please do not hesitate to contact Chris Alexander via email at [chris.alexander@energyconsumersaustralia.com.au](mailto:chris.alexander@energyconsumersaustralia.com.au) or 02 9220 5500.

Yours sincerely,

Signed for and on behalf of  
Energy Consumers Australia