

19 June 2017

COAG Energy Council Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601



Dear Secretariat

Australian Energy Market Commission (AEMC) Governance legislative amendments

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. PIAC has engaged extensively in the COAG Energy Council's Review of Governance Arrangements for the Australian Energy Market and welcomes the opportunity to respond to this draft Bill.

PIAC supports the proposal to increase the number of Commissioners in the AEMC and standardising the appointment process, as stated in our submissions to the Governance Review. However, we remain concerned that the recommendations from the Governance Review final report and this legislative amendment do not go far enough in expanding the breadth of perspective and experience of AEMC Commissioners. This may lead to maintaining the status quo where, in the view of many energy market stakeholders, consumers' perspectives continue to be underrepresented in the policy and regulatory decisions. Ensuring the breadth of the Commissioners' perspective will also be more important as the AEMC's role as policy advisor to the COAG Energy Council was confirmed in the Governance Review.

The background of Commissioners

The need for more specialised understanding of consumer protection issues, while always important, will only become more so given the industry transition underway where solutions, options and decision making is increasingly coming from individual consumer participation rather than from industry.

The Governance Review final report refers to the AEMC's internal guidance documentation for the desired objective, accountabilities and capabilities of an AEMC Commissioner. It requires the Commission "*to have a desirable mix of ... knowledge and experience of consumer protection principles, laws and practices*" amongst other qualities.¹ However this may be insufficient to fully capture the complexity and magnitude of energy policy and regulatory impacts on consumers because this one requirement can be diluted by the nine other requirements which focus more on technical, commercial, legal and managerial knowledge.

Ensuring that at least one Commissioner has specialised understanding of consumer matters will assist the AEMC to make better informed decisions with respect to consumer impacts and the experience of consumers in the energy market.

¹ Referred to in the Governance Review final report pp. 92-3

A precedent exists for a similar appointment in the Australian Competition and Consumer Commission (ACCC) where legislation requires that “*at least one of the members of the Commission must be a person who has knowledge of, or experience in, consumer protection.*”²

Recommendation 1

Amend the proposed legislation to explicitly require the AEMC to include at least one Commissioner with a background in consumer matters.

The number of Commissioners

The proposed Bill allows discretion as to the number of Commissioners at any one time to be at least 3 and up to 5. While PIAC acknowledges that this is consistent with the recommendation from the Governance Review final report, this arrangement would risk there being no change from the status quo of 3 Commissioners. Requiring there to be 5 Commissioners would streamline processes by removing uncertainty around the number of Commissioners, assist in succession planning and help to ensure a diversity of perspective in the Commission’s decision making processes. This is especially the case in conjunction with Recommendation 1, for at least one Commissioner to have a background in consumer matters.

Further, if a vacancy were to occur while there are more than 3 Commissioners under the draft Bill, that Commissioner’s office would cease to exist. At a minimum, PIAC seeks that in such a situation, any Commissioner’s office would be refilled rather than ceasing to exist.

Recommendation 2

Amend the proposed Section 12 of the legislation to explicitly require 5 Commissioners. In the case where there is discretion around the number of Commissioners, require that there be transparency and potential for stakeholder input into the decision.

Recommendation 3

Amend the proposed Section 13 (4) of the legislation such that vacant Commissioner’s offices are refilled regardless of the current number of Commissioners at the time of the vacancy.

PIAC would welcome the opportunity to meet with the Secretariat and other stakeholders to discuss these issues in more depth.

Yours sincerely

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² Competition and Consumer Act 2010, Section 7 (4)