

**Network of Illawarra Consumers of Energy
Emissions Reduction and Energy Laws
Objectives
February 2023**

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Contents

Contents	1
Introduction.....	2
NICE.....	2
This submission.....	2
Responses to questions in the Paper.....	5
Conclusion	10
References	12
Attachment – Australian Energy System Governance.....	13

Introduction

NICE

The Network of Illawarra Consumers of Energy (NICE) is an informal network advocating for the energy transition to a net-zero carbon future to be managed with consumers' interests at heart.¹ This necessary transition must occur at least cost to consumers while maintaining the reliability and security of energy services, appropriate consumer protections for essential services, and a just transition for affected workforces.

We believe there is a role for regionally-based advocacy within the context of nationally consistent energy policy. The choice and options for energy supply differ by geographic region regarding different climatic conditions affecting demand and supply options and different risk factors impacting resilience planning. David Havyatt is the sole author of this submission.²

We appreciate the opportunity to comment on *Incorporating an emissions reduction objective into the national energy objectives – Consultation Paper* issued by the Collective of Energy Ministers³ in December 2022 (the Paper). Slightly reminiscent of the Parliamentary procedure of moving an amendment at the second reading of legislation that starts "while not denying the second reading, the house notes that..." our objection to the legislative proposals contained in the Paper is not that if made they create problems, rather that they are insufficient to address the policy needs for the energy transition.

This submission

Attached to this submission is an extensive paper that reviews the history of the development of national energy policy which includes a history of the formulation of the objectives of policy and national energy laws.⁴

In that paper we make the case for fundamental change in the governance arrangements. These are:

1. Focus on the national energy system, not a "market".
2. A new Australian Energy System Agreement.
3. A restated national energy policy objective to be the same in both the agreement and legislation.

¹ The network does not actively recruit participants. It maintains an open website including a blog and list of publications. It also maintains a LinkedIn presence to which updates are regularly posted.

² Mr Havyatt was employed as Senior Economist at Energy Consumers Australia from October 2015 to August 2020. For the avoidance of doubt, nothing in this submission is the position of Energy Consumers Australia.

³ We use the term Collective of Energy Ministers to describe the collective of energy ministers that has previously gone by the names of the Ministerial Council on Energy, the Standing Committee on Energy and Resources, and the COAG Energy Council but as of May 2020 became both the National Cabinet Energy Committee and the Energy Ministers Meeting.

⁴ *Australian Energy System Governance: January 2023* available at https://assets.nationbuilder.com/nice/pages/21/attachments/original/1675805750/Australian_Energy_System_Governance.pdf?1675805750

4. New national energy laws are to be enacted by the Commonwealth but preserve a role for a Ministerial Council.
5. New market body arrangements with a single Australian Energy Authority with all the current functions of the AEMC and AER, the long-term planning functions transferred from AEMO and the secretariat functions to Ministerial Council moved from SCO. To avoid doubt, ESB is abolished, and the AEA is responsible for developing the strategic energy plan.
6. The new market body is to be given powers to make subordinate legislation on its own volition subject to possible disallowance by either house of the Commonwealth Parliament or a majority of the Ministerial Council.

The centrepiece of our suggested change is a statement of the objective of national energy policy that could be incorporated in both a new agreement covering the energy system and new national energy laws. This formulation, based on Energy Consumers Australia's submission to the Finkel Review reads:

The objective of energy policy is that consumers, collectively now and in the future, pay no more than necessary for the energy services they need as we transition to a net-zero emissions economy, with no one left behind while maintaining a reliable system.

Paradoxically, while we think the approach of including emissions reduction in the objectives of the national energy laws is an insufficient reform, we also note that the Australian Energy Market Commission has already expressed a view on how it can incorporate emissions reduction as an element in its decision making. The device is simply that in having regard to the adequacy of resources, these need to be resources consistent with the commitments of national emission reduction commitments.

The substance of the submission is a response to the consultation questions based on our paper *Australian Energy System Governance*. Given that we expect that our suggestion for wider reform will not be acted on in preference to changing the objective, we draw attention to our response to question four. Using the NEL as an example we propose the drafting of the replacement objective be:

7—National electricity objective

- (1) The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of ~~electricity~~ **energy** with respect to—
 - (a) price, quality, safety, reliability and security of supply of electricity; and
 - (b) the reliability, safety and security of the national electricity system, **and**
 - (c) **the achievement of targets for reducing Australia's greenhouse gas emissions to which the Commonwealth, a State or a Territory has made a public commitment.**
- (2) **In applying s7(1)(c) a public commitment to a target includes**
 - (a) **Australia's greenhouse gas emissions reduction targets provided for under the *Climate Change Act 2022* of the Commonwealth; and**

- (b) other targets for reducing, or that is likely to contribute to reducing, Australia's greenhouse gas emissions—
 - (i) stated in a law of the Commonwealth, a State or a Territory; or
 - (ii) stated in, or made under, an international agreement to which the Commonwealth, a State or a Territory is a party; or
 - (iii) stated publicly as a matter of policy by the Commonwealth, a State or a Territory.

We believe that the above drafting maintains the balance of s7 rather than the third limb of the objective being excessively long.

Responses to questions in the Paper

This section details our responses to the questions raised by officials in the Paper. Subsections are headed with the title of the subsection of the Paper in which the following questions appeared

3.2. Consideration of alternative approaches

1. Do you consider incorporating the emissions reduction objective into the existing ‘economic-efficiency’ framework is an effective way of integrating the concept into the decision making of energy market bodies?

No. There are three reasons for that view. The first is the deficiency in the existing objective introduced in its original drafting, as detailed above. The second is that the Australian Energy Market Commission (AEMC) has already demonstrated that it can incorporate emissions reduction objectives in rule-making while AEMO is required to consider them in preparing the Integrated System Plan (ISP). Finally, the focus of Australian Governments must be on remaking the Australian Energy Market Agreement and a recommitment to its national character by First Ministers. This process should provide an objective that can be included in the energy laws.

2. Is the current level of discretion afforded through an ‘economic-efficiency’ framework appropriate for balancing an emissions reduction component against existing components of the energy objectives?

Yes, though the same is true of an objective framed as the long-term interests of consumers as the goal. This is already demonstrated by how the AEMC interprets the objectives of the national energy laws. The question itself is a revelation about the naivety of the comments made by SCO in developing the current objectives and concern about the need to trade off objectives.

3. Do you consider that, for certain instances/processes, market bodies should develop/update guidance material to assist market participants in understanding how market bodies will interpret the proposed revised national energy objectives?

Yes, as the AEMC already does. The Collective of Energy Ministers could aid the market bodies in issuing a Statement of Policy Principles to require that in considering resource adequacy (security of supply), regard must be had to Australia's decarbonisation ambitions and commitments.

a) What are these instances/processes and what sort of content would you want to be included in this guidance?

Ideally, the guidance could be issued against the simplified form of the objective, as in the AEMA, of promoting the long-term interests of consumers with respect to price, quality and reliability. The guidance could catalogue all the components of quality and reliability.

3.3. Reference to Australia's greenhouse gas emissions reduction targets

4. Does this approach give an appropriate level of clarity as well as discretion to market bodies to consider relevant targets in their decision making? If not, detail your reasons and suggested solutions.

While we don't support the approach overall, if Ministers are determined to go down the path of amending the objectives of the energy laws rather than remaking the AEMA with an objective that can be shared, we do not believe the proposed approach is optimal.

We agree that the emissions reduction objective should be added as a third limb (in electricity) and a second limb (in gas and retail) if only to ensure that it doesn't prompt a soul-searching re-examination of interpretations already established. However, we believe s7 should be renumbered s7(1), and the new limb s7(1)(c) should only be (in the NEL as an example) the stem of the proposed s7(c) before the word "including". This maintains a balance in the number of words devoted to each limb.

The remainder of the proposed s7(c) should be inserted as a new s7(2) starting with the stem "in applying s7(1)(c) a public commitment to a target includes:".

5. Does the inclusion of 'public commitments' including 'publicly as a matter of policy,' as well as legislated targets, provide sufficient certainty for effective consideration of an emissions objective by market bodies?

That something is public as a matter of policy is too indistinct a test. The existing Rules (NEL 5.22.3(b)) require the ISP to consider "a current environmental or energy policy" of a participating jurisdiction requires at least one of the following to be satisfied:

- (1) a commitment has been made in an international agreement to implement that policy;
 - (2) that policy has been enacted in legislation;
 - (3) there is a regulatory obligation in relation to that policy;
 - (4) there is material funding allocated to that policy in a budget of the relevant participating jurisdiction;
- or
- (5) the MCE has advised AEMO to incorporate the policy.

The relevant equivalent would be that "the jurisdiction has advised market bodies in writing to incorporate the policy."

3.4. Amendments to acknowledge interactions between electricity and gas markets and enable management of transition impacts

'Consumers of energy'

6. Do you agree that the proposed change to 'consumers of energy' is necessary and appropriate to recognise the interconnections between the two energy markets and to enable future decisions to consider the implications for the energy system as a whole?

It is potentially desirable, but it is inappropriate to include it in the objectives of the national energy laws unless the objectives included are a complete replication of the market objective

included in the AEMA. In addition, the planning and operation of the electricity system also need to include the liquid fuels system as transport becomes electrified.

7. What impacts (positive and/or negative) would the proposed change have on your organisation or your stakeholders/customers?

Minimal.

a) Do you foresee any unintended adverse consequences coming from such a change, especially for market participants or consumers?

Changing words for only marginal benefit introduces a risk that market bodies will "over-think" the consequences of the change.

‘Supply of energy’

8. Do you consider the additional change to ‘supply of energy’ is necessary given the reasons above?

It would be totally undesirable to change to "supply of energy" in the NEL and NGL. While it is reasonable to consider the interests of consumers of energy in the Rules for electricity (as a way, for example, to consider the prospective needs of current consumers of gas or liquid fuels for electricity as we decarbonise), it would be inappropriate to consider the impact of electrification on, for example, the unit price of gas.

9. Do you agree that the market bodies, when making a decision under the NEL/NER should be empowered to consider the implications for price, reliability, security etc. in the gas market and vice versa? If not, what are other ways of managing the potential implications of the transition on all energy consumers?

No. See the answer to Q8.

10. Do you foresee any unintended adverse consequences coming from such a change, especially for market participants or consumers?

Yes. See answer to Q8.

3.5. Consequential changes

11. Do you have views on other consequential changes that might be required for the national energy laws as part of implementing the emissions reduction component?

Yes. Changing the objective as described might partially address one of the criticisms that Parer (2002) made over 20 years ago (that "Greenhouse responses so far are ad hoc and poorly targeted"), but it will not address others (e.g. that "There are many impediments to the demand side playing its true role in the market").

The question of demand side response is also a consideration in the other open consultation on the National Energy Performance Strategy. That strategy is required to address issues such as the split incentives on energy efficiency investment for rental accommodation and the general problem of households that aren't in poverty but who are capital poor.

12. Are there existing rules or regulations under the national energy laws that may require consideration of consequential changes? If so, please provide details including why consequential changes are envisaged as necessary or appropriate.

Not that we have identified.

13. Do you have views on any rules that would benefit from a concurrent change within the current Bill process? If so, please provide details of the changes and the reasons why they would benefit from a concurrent change.

No.

14. Do you have views on/are you aware of any rules that might benefit from more explicit reference to the objectives as a whole, or specifically the emissions reduction component?

No.

3.6. Commencement and transitional arrangements

15. Do you agree with the proposed commencement date being six months after passage through the South Australian Parliament?

We have no concerns with the proposed timing.

16. What are your views on the proposed transitional arrangements in the Draft Bill?

We have no views on the proposed transitional arrangements.

a) Are there particular processes that should be subject to different transitional arrangements?

b) How or where should arrangements for these specific processes be prescribed – in the primary legislation or through a subordinate instrument?

17. What already-commenced regulatory processes under the energy laws or rules might benefit from transitional arrangements that provide for the emissions reduction component to apply (i.e. automatically and not be subject to market body discretion)?

We have no views on the proposed transitional arrangements.

a) Should business-initiated processes such as RIT-Ts and RIT-Ds¹³ be captured, rather than just market body processes?

18. Should market bodies be afforded a broad discretion to decide when to apply the amended objective to a process that is ‘underway’?

No. As noted above, the AEMC has already found a way to include emissions reduction objectives, and AEMO is required to do so for the ISP.

19. Are there logical points in multi-stage and/or multi-year processes (e.g. RIT-T and RIT-D assessment processes and revenue determination processes/resets) after which the emissions reduction objective should or should not be able to be applied?

We have no views on the proposed transitional arrangements for multi-year or multi-stage processes.

- a) Should a RIT-T process be considered ‘underway’ when a project specification consultation report has been made available (clause 5.16.4(c)), or at a different stage?
- b) Should a RIT-D process be considered ‘underway’ when an options screening report or determination has been published (clause 5.17.4(b)) and (c), or at a different stage?
- c) Electricity – should a revenue determination/reset be considered ‘underway’ when the network service provider has submitted its initial revenue proposal (clause 6A.10.1 for transmission and clause 6.8.2 for distribution), or at a different stage?
- d) Gas – should a gas access arrangement process be considered ‘underway’ when an access arrangement proposal is lodged with the AER under rule 46(1A) in the NGR, or at a different stage?

4. Application by market bodies of the proposed changes

20. Do you agree with the characterisation of how it is envisaged market bodies’ decision processes might be impacted or changed as a result of inclusion of an emissions reduction component in the energy objectives?

We have no fundamental disagreement with the characterisation. However, we hope that the AEMC will execute the fourth dot point under " the AEMC will start a process of amending its processes and documents, including:" before the first dot point.

21. Do you have any concerns with regards to the impact an emissions reduction component in the energy objectives may have in broadening the scope of the AEMC’s rule making power or the decision-making powers of the other market bodies under the laws and rules?

No. The objectives of the national energy laws are not what gives the market bodies their powers; these occur under different sections (s15 of the NEL for AER, s29 for the AEMC and s49A for AEMO, none of which are limited by the NEO. Also, what the AEMC may make Rules about (s34) isn't constrained by the NEO.) If anything, the inclusion of an additional criterion reduces rather than increases the discretion of market bodies.

Conclusion

In the development of energy policy, the need for that policy to include the need to reduce greenhouse gas emissions from energy has been an element of every policy statement since 1991. In addition, the need for energy policy to address the reduction of greenhouse gas emissions was included in the objective of the AEMA in 2004.

However, despite requests from stakeholders to the contrary, the first objective inserted into the NEL in 2005 did not include emissions reduction as one of the factors to be promoted. Despite this non-inclusion, the electricity sector is (apart from LULUCF) the only one to reduce emissions faster than the national rate of decline. Furthermore, the AEMC has developed an interpretation of the energy laws' objectives that includes consideration of emissions reduction. AEMO is already explicitly required to consider established policies in developing the ISP.

Consequently, revising the objective of the national energy laws is not a priority issue. However, this does not mean that the framework of national energy policy is robust. The policy deficiencies identified by Parer (2002) still apply. (detailed above in the sub-section *The national energy objective and the objectives of the national energy laws*). The "strategic policy deficit" identified by the review of governance arrangements (Vertigan et al. 2015) still exists (as referenced in the Appendix under *Review of Governance Arrangements and Future Security*).

These policy failures are not a consequence of the relationship between policy and the market bodies as encapsulated in the objectives of the national energy laws. They are a direct consequence of the failure to continue the development of a truly national energy system. This, in part, has been facilitated by senior energy officials. The initial process of reform was frustrated by the statutory electricity authorities; as a consequence the Commonwealth's preferred approach of a single National Grid Management Corporation was not realised. That any progress at all was made required the Prime Minister to engage directly with other First Ministers (NAA 1992a, 1992b).

Apart from the need for Australian Governments to recommit to the development and operation of a truly national energy system, it needs to be recognised that the implementation of the recommendations of the Vertigan and Finkel Reviews have not been successful in creating fit for purpose governance arrangements. The experiment of the Energy Security Board has been an abject failure, with very little to show for its efforts. The most recent example is the dismissal by the Collective of the proposals for a resource adequacy mechanism by way of a dispatchable capacity market. Similarly the attempts to improve the strategic focus of Ministers by tweaking the functions of SCO have also failed (and the EC and SCO are not bound by the limitations of the objectives in the law).

The Vertigan Review's final recommendation was:

6.20 That the Energy Council assesses the requirement for another independent governance review in 2023.

The Collective of Energy Ministers should consider this recommendation, and rather than a protracted assessment of the requirement for such a review, it should recommend that First Ministers commission the review.

References

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Attachment – Australian Energy System Governance