



13 May 2020

To: Energystrategicpolicy@industry.gov.au

Dear consultant for the independent review of the Energy Security Board

Critical Strategies Group is pleased to make this submission to the independent consultant's review of the effectiveness and performance of the Energy Security Board (ESB).

Critical Strategies Group is committed to providing premium and fit-for-purpose services that promote the delivery of high-quality policy outcomes. Among other things, Critical Strategies Group's Director of Government Engagement and Strategic Policy has over thirteen years' experience in energy policy, including analysis, development and implementation, with ten years' specific focus on national energy frameworks and cooperative energy reforms and is a leading Australian policy expert on national energy frameworks and governance arrangements.

Critical Strategies Group has had the following involvement with the ESB:

- Provided the initial recommendation that led to the establishment of the ESB in our submission to the *Independent Review into the Future Security of the National Electricity Market; Blueprint for the future* (the Finkel Review) (submission available on request)
- As an independent consultant for the Australian Energy Regulator (AER), provided *ad hoc* advice on matters being progressed through ESB
- Monitored outputs from ESB, along with other market institutions, COAG Energy Council and individual governments.

Submission

In Critical Strategies Group's 2017 submission to the Finkel Review, we recommended the establishment of the ESB as the single body responsible for security. The previous governance arrangements meant no one agency had responsibility for or was accountable to governments during periods of supply disruption. In part this failure was as a result of the split in responsibilities for security between the different market institutions, which created uncertainties in who was accountable following the system black events in late 2016 and early 2017. The proposed membership of the ESB recognised those split responsibilities and brought these aspects together for coordinated action through a single agency.

There have been no substantive governance reforms that would resolve this issue if the ESB were to be wound up. As such, there remains a clear need for a single body, bringing together the market institutions with responsibility for system and supply security, to have responsibility for energy security under the national energy frameworks.

However, in practice, the scope of the ESB's role has extended to one of policy development. Specifically, in implementing the Finkel Review recommendations, the ESB is required to undertake analysis that involves trade-offs between energy security, on the one hand, and costs for consumers, on the other.

Such trade-offs are generally the responsibility of policy-makers (members of governments), as they are able to be held to account for their decisions through their governments or parliament. There is no such accountability for the ESB's decisions or its member agencies. This creates a significant disjoint between decisions made by the ESB and the lived consumer experience and is at odds with effective governance arrangements.

Further, in terms of the policy development aspect of the ESB's role, this raises questions about its constitution and the result of its membership on the effectiveness its decision-making. Relevantly, the activities performed by the ESB duplicates areas of responsibility of the market institutions, meaning there are instances where the ESB role is in conflict with the institutions' national functions. Also, the different roles and perspectives of the different market institutions mean that the ESB processes can be held hostage to intrinsic positional differences, leading to compromised outcomes.

The ESB also entrenches historical barriers to consumer perspectives being central to decision-making. Retail consumer and small business interests have historically been under-represented in policy development, regulatory reform and decision-making. This is, in part, due to the difficulties for consumers to engage with the complexities of the regulatory and market arrangements. However, with the establishment of Energy Consumers Australia, an opportunity was lost to adopt a more inclusive governance arrangement, which is particularly relevant during a period of rapid change where technologies, products and services are creating greater differentiations between consumers.

This policy development role appears to be used as a source of independent and coherent advice to the COAG Energy Council, which has been criticised for being slow to respond to policy issues. In part this inertia could be attributed to political differences, which makes consensus decision-making problematic. Nevertheless, problems within the COAG Energy Council cannot and should not be addressed through imposing that responsibility on a body that has been established for a different purpose, without an appropriate policy framework to guide its decision-making and no accountability to parliaments or COAG for its decisions.

Critical Strategies Group has reviewed energy policy and regulatory outcomes since 2008 against the policy objective of maximising consumer economic welfare (*National energy policy and regulation – Performance since 2008*, attached). This provides anecdotal evidence of a failure in the current policy and regulatory arrangements.

Critical Strategies Group has further reviewed the current governance arrangements and their contribution towards the findings on energy policy and regulatory outcomes (*National energy governance – the case for reform*, attached). We find that the current governance arrangements are not effective and require reform to deliver effective governance.

This finding is consistent with the COAG Energy Council's decision to allocate policy development to the ESB, as this is an indication that the previous governance arrangements were ineffective and needing reform. However, as noted in our document, *National energy governance – the case for reform*, the governance issues identified cannot be solved by the ESB alone nor by fine-tuning the functions and responsibilities under the current governance arrangements.

Rather, we find there is a need for substantial reform of the governance arrangements to meet the minimum requirements of good governance and to place consumer economic welfare front and centre.

In the attached document, *National energy governance – the case for reform*, Critical Strategies Group recommends the current governance arrangements be reformed by increasing accountability of the institutions and, most importantly, the COAG Energy Council (as lead policy body), separating functional responsibilities where these have inherent conflicts and streamlining agencies to remove duplication in responsibilities.

If you have any queries about any of the above matters, please do not hesitate to contact Jodi Smith on jlsmith164@gmail.com or 0439 649 810.

Kind regards

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Critical Strategies Group