

Attachment C - ENERGY SECURITY BOARD REVIEW

TERMS OF REFERENCE - DRAFT FOR CONSULTATION

In July 2017, the Energy Security Board (ESB) was established by the COAG Energy Council. The Council established the ESB to support the transition of Australian energy markets and advance the long-term interests of consumers in this process. The ESB's specific responsibilities were to be:

- (i) Overseeing the implementation of the recommendations of Finkel Review;
- (ii) Providing whole-of-system oversight to the Council for the operational and technical delivery of energy security, reliability and affordability in the National Electricity Market (NEM);
- (iii) Providing advice on governments' actions affecting the NEM; and
- (iv) Proposing law and rule changes to the Council.
- (v) Co-ordinating how the three energy market bodies exercise their separate roles

The ESB has also been tasked by Council to undertake specific policy advice, for example their work on the post-2025 market design.

The ESB comprises a Chair, Deputy Chair and the chairs of the Australian Energy Market Commission (AEMC), Australian Energy Regulator (AER) and the Chief Executive Officer of the Australian Energy Market Operator (AEMO). This composition reflects the intent as stated in the Finkel Report, that the ESB's role would include co-ordinating how the three energy market bodies exercise their separate accountabilities to keep pace with the rate of change.

The Board's purpose and scope of responsibility is outlined in its Terms of Reference. The TOR also lists a number of priority actions to be progressed by the ESB in its first 18 months.

When the ESB was established the Council asked that it operate for an initial three-year term and then be subject to review as to its performance and future¹. The review will be conducted by an independent reviewer, consistent with the Council's agreed position and overseen by the Council and its Senior Committee of Officials (SCO). The ESB Reviewer will be assisted by an ESB Review Team (refer below).

Review Scope

Review of performance of the ESB against the original responsibilities

The reviewer will review and report back to the Council on the performance of the ESB against the original responsibilities, and detail how the role of the ESB has evolved, if it has, and any additional functions the ESB provides.

Cessation or Continuation of the ESB

The Reviewer will consult with relevant stakeholders to examine and report on the effectiveness and performance of the ESB and provide a recommendation on cessation or continuation of the ESB. This process will include consultation with the Board members, Chair and Deputy Chair, and reference to the Terms of Reference issued by the COAG Energy Council and the COAG Energy Council decision of 14 July 2017.

¹ The Finkel Report (page 166) suggested that at the time of conducting the three year review, the Council should consider including the ESB in the AEMA and developing legislation to give the ESB statutory recognition and functions.

Future considerations for the ESB (only if continuation is recommended)

Options for the ESB continuation must include, but need not be limited to, the following:

- i. Continuing the ESB as is;
- ii. Continuing the ESB, with different ToRs and/or structure;
- iii. Replacing the ESB with another body, bodies or role in the energy market governance structure.

The reviewer will need to develop a clear framework for employing the next chair and deputy chair.

The reviewer will also be expected to consider the related documentation when conducting the review of the ESB as detailed in **Attachment A**.

Consultation

The Reviewer should consult with key stakeholders in the preparation of its draft and Final reports, including visiting each individual jurisdiction that participates on the Council. Key stakeholders include:

- COAG Energy Council Ministers
- COAG EC Senior Committee of Officials
- ESB and market bodies (AEMO, AEMC, AER)
- Industry stakeholders (Retailers, Generators, network businesses)
- Industry participants including consumer bodies (Energy Consumers Australia, Australian Energy Council, etc.)

ESB Review Team

The COAG Energy Council Secretariat will assist in managing the review's logistics and support staff will be provided by the Department of Industry, Science, Energy and Resources, and/or other jurisdictions.

Budget Implications

Allocated Budget for the review, including the ESB Review Team, will be determined by SCO following consultation with potential reviewers. Consistent with the Council funding model, the Commonwealth will be liable for meeting fifty per cent of the costs with the remaining cost to be attributed to the jurisdictions as per the agreed cost sharing calculation.

Deliverables and Timing

Item	Deliverable	Due Date
1	Approach Paper that sets out the proposed methodology to assess the effectiveness, performance and functionality of the ESB	January 2020
3	Draft Report, including draft findings and recommendations	May 2020
4	Final Report, including findings and recommendations	June 2020
5	A draft Implementation Plan for the final Report's recommendations	June 2020
6	Subject to the Council's response to the Final Report, a final Implementation Plan for the Report's recommendations	July 2020

Independence and Publication

To remove doubt, while the Council, SCO, the SCO Reference Group and individual jurisdictions will provide advice and input to the review, they have an advisory role only. The Reviewer is the decision-maker with respect to the approach to the review and the deliverables, including the final findings and recommendations. It is acknowledged that transparency is consistent with the intent for an independent review. Accordingly, the deliverables above will be published on the Council website following agreement of Council.

Related Documents

Relevant references for the Review include:

- ESB Terms of Reference
- Scope of work from the Independent Chair and Independent Deputy Chair contracts
- COAG Energy Council Terms of Reference
- Overview of Energy Market Governance Framework (link to ESB establishment web page)
- Status of Finkel Review recommendations
- Independent Review of the Future Security of the National Electricity Market – A Blue Print for the Future – June 2017
- ESB’s Health of the NEM report 2017 and 2018
- Consultation Guide on the Ministerial Rule Making process
- Sections of the national energy laws that implement the role of the ESB to consider, develop and recommend rule changes to the Council (see NEL s90F NEL; NGL s294F; NERL s238B).

Relevant background reading also includes the Final Report of the Review of Governance Arrangements for the Australian Energy Markets delivered in October 2015.