AUSTRALIAN ENERGY
REGULATOR

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Our Ref: 14761032

Friday, 1 August 2025

The Hon Jim Chalmers MP
Treasurer

Sent by email to: [redacted]

Dear Treasurer

Thank you for your letter inviting the Australian Energy Regulator (AER) to identify regulatory reform opportunities to bolster productivity growth.

The AER is an independent decision-making body responsible for regulating energy networks and wholesale and retail energy markets under national energy legislation and rules. We work to ensure that energy consumers pay no more than necessary for access to reliable, secure energy as we transition to net zero emissions. Since its creation 20 years ago, the AER has consistently taken an adaptive and proportionate approach to regulation in the energy sector.

We are one of three market bodies that oversee and administer national electricity and gas markets in Australia. We operate within the legislative and regulatory framework for Australia's energy markets, where many rules and obligations are established in harmonised national legislation and applied across participating states and territories. The AER is responsible for economic regulation and monitoring performance and compliance with relevant legislation as well as with the rules, which are not set by the AER, but are set by the Australian Energy Market Commission (AEMC), an independent rule maker. We also carry out functions under the *Competition and Consumer Act 2010* and individual state legislation.

We are regulating a sector undergoing a once in a century transformation as we transition to net zero emissions. The energy system underpins Australia's productivity and its performance is critical to our future prosperity. It is a complex regulatory system supported by thousands of obligations on its participants. The physical evolution of the current energy system requires changes to the regulatory framework to remain fit for purpose. However, each time the framework changes, there is a need to consult and for stakeholders to respond to the changes (even changes that reduce the regulatory burden). This gives rise to a tension: industry and consumer stakeholders are simultaneously frustrated with out-of-date aspects of the framework, overwhelmed with the pace and scale of change, and are experiencing consultation/change fatigue.

Each year, we publish the results of a stakeholder survey which helps us to remain accountable for our performance, including the impact of our regulatory functions on the sector. We are committed to working constructively with our stakeholders. In that light, we have sought input from energy sector peak bodies in developing this response to your letter. We welcome their contributions and ideas.

When I launched our five-year Strategic Plan in 2020, I emphasised our intention to 'start with yes' in response to not only collaboration and good ideas but also new ways of working and opportunities to be more efficient. We take seriously our role in improving and streamlining the regulatory environment to reduce business costs, support competition and dynamism and facilitate business investment. We are constantly searching for opportunities to do so within our available resourcing and regulatory remit, for example by:

- introducing the Better Resets Handbook in 2021 to provide a guide for networks and stakeholders on what a good regulatory proposal looks like and to enable a potential pathway for a more streamlined regulatory process
- launching the Energy Innovation Toolkit in 2022 to support businesses who wish to trial innovative services to fill gaps and create competition in the market
- issuing our Network resilience guidance note in 2022 to support networks proposing expenditure and investment related to mitigating the impact of the increasing number of extreme weather events
- undertaking a review to simplify the retail market regulatory framework in 2022 and writing to Energy Ministers in 2023 with recommendations to progress an opportunity that requires legislative change
- recommending reforms in 2023 to support retail competition and customer outcomes by better balancing the cost and risk of consumer vulnerability in the energy sector
- submitting a rule change request in 2024 to remove duplicative reporting obligations by removing the requirement for transmission network businesses to provide information under the former AER Electricity Transmission Information Guidelines
- reducing the frequency of data collection for our retail market performance monitoring to better balance costs for market participants
- enabling staged contingent project approvals for large Integrated System Plan (ISP) transmission projects along with a modified Capital Expenditure Sharing Scheme to better balance risk and support network investment
- replacing bespoke Regulatory Information Notices with our Regulatory Information Orders in 2024, which streamlined, refined and standardised our reporting requirements across electricity network businesses
- deciding not to introduce scheme regulation for the South West Queensland Pipeline in 2024, on the basis that the benefits do not appear to outweigh the potential costs
- proposing new approaches to tariff design through the AEMC's 2025 pricing review to improve the productivity of capital in the energy market
- investing in Energy Made Easy, a free and independent platform that supports effective competition by empowering consumers to shop around and compare energy plans.

These examples highlight a track record that reflects our ongoing commitment to not only remain open minded to new ideas and ways of working but also to avoid or remove inappropriate regulation that stifles productivity. However, the biggest contribution we make to productivity is to minimise energy costs by ensuring electricity and gas markets are competitive and the monopoly network businesses that we regulate do not incur unnecessary expenditure, which has a ripple effect across the economy. This regulatory approach has helped drive network efficiencies between 2014 and 2023 that have reduced operating expenditure per customer by 22% while the number of outages has reduced by 25%.

Lower electricity and gas costs will impact the cost structure of every business at every scale, from the smallest micro-enterprise to the largest corporation. The benefits of reducing over-investment/economic rents, minimising flow-on costs and supporting more dynamic investment in the energy sector will be multiplied across every sector in the Australian economy.

Nonetheless, we welcome this prompt to go further and look harder to find other substantial, material and measurable actions that the AER can implement to support productivity without compromising core regulatory objectives and protections. Below is a list of immediate commitments from the AER. We will work with our stakeholders to track and measure the impact of these changes over time through our annual stakeholder survey.

We have also identified some important opportunities that would require additional resources, legislative change or the cooperation of other parties.

Streamlining the regulatory and business environment to reduce business costs

<u>A proportionate and efficient approach to data reporting and compliance monitoring</u>

We regularly review the information we request from industry to ensure our approach to data collection and reporting, along with compliance monitoring, is proportionate and efficient and we commit to continue to do this. In response to your request, we will also:

1. implement an application programming interface for Energy Made Easy to enable automated solutions for energy retailers to retrieve and upload plan information, reducing the costs of their reporting obligations
2. reduce requirements for statutory declarations and covering correspondence to accompany routine reports to the AER
3. cease the separate collection of over-the-counter electricity price hedging products for the purpose of setting the Default Market Offer (noting that the AER is consolidating the collection of contract market information under its new contract market monitoring powers to reduce the burden on industry)
4. cease reporting on the performance of distribution networks in our annual Retail Markets Report, which will reduce duplication in information collected from distribution networks
5. streamline annual compliance reviews for the Service Target Performance Incentive Scheme (STPIS) and Customer Service Incentive Scheme (CSIS), following a successful trial of a revised data capture and analysis process that reduced red tape and improved operational efficiencies for both the AER and the distribution network businesses
6. automatically exempt gas pipeline operators with Category 1 Exemptions from reporting to the AER under the National Gas Rules Part 10 Annual Compliance Order.

<u>Streamlined approval processes</u>

Under energy laws and rules, the AER is responsible for approving certain information provided by energy businesses. In response to your request, we commit to:

7. introduce a streamlined cost pass-through process for natural disasters by creating a template for top−down review and a deemed approval category
8. introduce fast-tracked sandboxing waivers for technical metering changes and explore fast-tracked authorisation applications for companies wishing to enter the electricity and gas sector

9. trial the use of artificial intelligence tools to speed up the review process for compliance and confidentiality checks of network business proposals and simple and low-risk variations to retailer customer hardship policies, while maintaining appropriate human oversight and decision-making.

Clearer and simpler obligations

Most regulatory obligations in the energy sector are in legislation or rules that are outside of our control. However, we are empowered to make a range of enforceable guidelines that have the effect of law. In response to your request, we commit to:

10. prioritise opportunities to clarify, simplify and streamline obligations in our 2025−26 review of four enforceable guidelines, which impose obligations on energy retailers in relation to how they communicate with energy customers and assist customers who are experiencing hardship
11. look to combine these guidelines to the extent possible and roll out this approach to streamlining and simplifying obligations through reviews of other guidelines over time
12. exempt electricity suppliers from the need to obtain AER approval each time they wish to convert (or 'retrofit') sites into embedded networks. Suppliers would still be required to comply with conditions requiring them to obtain customer consent but would not need to obtain prior approval from the AER.

Streamlined consultation processes and engagement with stakeholders

We highlight the importance of consultation with stakeholders to help ensure our decision-making is efficient and effective to reduce regulatory burden. However, unlike the AEMC, the AER has less ability under the energy laws and rules to fast-track decision-making in relation to low-risk or administrative matters. As a result, we are often required to go through a lengthy consultation process for even minor changes to regulatory instruments and decisions. This can create unnecessary uncertainty for energy businesses and put an unnecessary burden on both stakeholders and the AER. Legislative change could expand the AER's ability to make minor or administrative changes without the need to undertake consultation processes that are often disproportionate to the decision being made.

We are currently reviewing how we use our consultative panels to gain insights into consumer experiences and perspectives. We are also reviewing how we can be assured that network businesses are doing this well in their regulatory proposal engagement, as well as any efficiencies that can be gained in this process to ensure good outcomes for both businesses and consumers. In doing so, we are engaging with other market bodies and regulators to get insights on best practice. This work is likely to be completed in 2025.

In response to the Treasurer's request, we also commit to:

13. continually seek views on ways that we could reduce business costs and increase productivity in our consultation processes, including opportunities for stakeholders to provide input to our processes via less formal and less resource-intensive mechanisms.

Supporting competition and dynamism

Improved utilisation of network infrastructure

Network infrastructure represents enormous economic investment – better utilising that infrastructure improves the return on that investment and reduces the need for further investment that might increase energy prices. This could include greater utilisation of, and targeting of, investments at the distribution network level, where efficient, to avoid the need to build larger scale transmission and generation projects. In response to your request, we commit to:

14. review the connections framework and experience of third parties seeking to connect to distribution and transmission networks to identify opportunities to improve connection processes and minimise the barriers for third parties to connect to the network, which should facilitate faster investment and meet the growing energy needs of business
15. further develop and place greater emphasis on network utilisation performance metrics in assessing expenditure proposals
16. consult on changes to network expenditure allowances to boost the efficiency of investment, including:
    a) an annual 0.5% productivity growth adjustment to capital expenditure forecasts for network businesses, consistent with the factor currently applied to operational expenditure
    b) a standard innovation allowance (as percentage of Maximum Allowed Revenue) for all electricity network businesses with no ex-ante proposal and assessment required under a 'use it or lose it' funding arrangement.

<u>The role of networks and contestable markets in the energy transition</u>

The energy transition will require the accelerated deployment and orchestration of distributed energy resources such as rooftop solar, electric vehicles and community and household batteries. Competitive markets are generally the most effective mechanism for delivering these to consumers at an efficient price and in a way that best meets their needs. Monopoly electricity networks are prevented from taking part in these, and related, contestable markets. However, the urgency of the transition means we need to consider whether there are circumstances in which markets may be failing to deliver the required investment or where participation from networks can bring benefits such as improved productivity of the energy system which outweigh detriments. We commit to exploring this issue through:

17. a review of our Distribution Ring-fencing Guidelines commencing in 2025, to determine whether and how the requirements for distribution network participation in contestable markets could evolve
18. continue work to ensure the regulatory instruments we administer can be made ready to support the establishment of a distribution service market operator, enabling electricity networks to become platforms for new energy services.

Opportunities requiring additional resources or legislative change

The ideas listed above can all be implemented by the AER within our existing resources and remit. However, we have identified some other actions that would streamline the regulatory and business environment, reduce costs for businesses or support competition, but would require some changes to the regulatory framework and/or current resourcing arrangements.

For example, Part XICA of the Competition and Consumer Act (inserted by the *Prohibiting Energy Market Misconduct Act 2019*) prohibits specified conduct in electricity markets. This legislation, which is enforceable by the ACCC, sits alongside the provisions of the National Electricity Rules, which govern the actions of electricity market participants and are enforceable by the AER.

Divided responsibility for enforcement of the sector-specific laws governing electricity markets drives overlap and duplication in information gathering and reporting by the ACCC and AER, since both agencies are tasked with responsibility for specifically monitoring the conduct of electricity market participants.

Should Part XICA continue beyond its existing sunset date, there is an opportunity to reduce duplication and associated costs by tasking the AER with responsibility for the enforcement of laws concerned with the conduct of electricity market participants under Part XICA and the National Electricity Rules, with the ACCC continuing to be responsible for the enforcement of whole-of-economy competition and consumer protection laws in energy markets.

We recommend the government transfer the electricity price inquiry functions currently performed by the ACCC to the AER, combining them with the AER's existing responsibilities for reporting on electricity wholesale and retail markets. This would not require legislation and the combined functions could be delivered at lower cost to Government and industry. Submissions to the Government's recent consultation process support this. The need for any additional information gathering powers that may be required by the ACCC for the enforcement of Part XICA, or their whole-of-economy competition and consumer protection functions, could be addressed in the legislation that would be required to permit Part XICA to continue.

We also reiterate the need for reforms to support data sharing between energy market bodies and agencies. The Energy Security Board's data strategy identified energy access and data sharing as one of two critical workstreams to manage changing data needs in the energy transition and optimise the long-term interests of energy consumers in a digitalised economy. Updating the regulatory framework to charge agencies with the *obligation* to collect and share all necessary data (using the approach taken for *National Greenhouse and Energy Reporting Act 2007* reporting) would facilitate a 'collect once' approach to data gathering, generating efficiencies for both government and industry and enabling more informed policy and regulatory decision-making.

There are a plethora of other opportunities to reduce regulatory burden that could be achieved through changes to the energy laws or rules. For example, further thought could be given to removing the need for a Regulated Investment Test (RIT-T) for ISP projects. The Australian Energy Market Operator would need to increase its assessment and consultation process for the ISP, including consideration of non-network solutions, and transmission companies would need to include further consultation into their Contingent Project Application processes but removal of the RIT-T could alleviate a lengthy step in the approvals process. Thorough cost-benefit assessment of these projects remains critical though to ensure we don't invest in less productive assets but this could potentially be done via the ISP.

We have also identified roles we have been given under energy laws/rules that are unnecessary or duplicative. The AER's role in approving Distribution Loss Factors and/or "pre-approving" the compliance of dedicated network asset access policies are two examples.

Some other important reforms that could boost productivity in the energy sector but require legislative change are already being progressed, for example:

- the Better Energy Customer Experiences reform program is considering the case for harmonising the regulatory framework across the national energy market including the introduction of an overarching consumer duty, which would significantly simplify regulation and could reduce costs for both government and industry
- the AEMC's pricing review is considering the important role that electricity pricing, products and services will play in the energy transition
- the Commonwealth Department of Climate Change, Energy, the Environment and Water is reviewing wholesale market settings in the national energy market to ensure the market is promoting investment in firmed renewable energy generation and storage capacity into the 2030s and beyond

- the [Productivity Commission's Investing in cheaper, cleaner energy and the net zero transformation Review] is exploring reforms to speed up approvals for new energy infrastructure, reduce the cost of meeting carbon targets and encourage adaptation by addressing barriers to private investment
- the current [review of the Default Market Offer (DMO) Framework] is considering reforming the regulatory requirements for the DMO to make it an efficient price (rather than a 'reasonable' one), which may result in a lower DMO price and therefore support productivity improvements across the economy by reducing the cost of electricity for small businesses. We will be ready to implement any reforms in the DMO that apply for 2026–27, pending finalisation of the review.

We have welcomed all these efforts to improve regulation and boost productivity in the energy sector and we look forward to continuing our active engagement in these processes.

Opportunities identified by energy peak bodies

In preparing this response, we sought input from the peak bodies in the energy sector. Energy Networks Australia (ENA) put forward ideas to improve the speed of decision making; better support flexibility and innovation; implement process changes, efficiencies and technological updates; and better balance regulatory rigour with the need for accelerated capital deployment.

Many of these ideas have been picked up in this letter, with others requiring further consideration. We have identified the opportunity to reform the Regulatory Investment Test and will look at the case for increasing the current thresholds of when this test is required across both transmission and distribution networks. The ENA considers the AER should enable distribution networks to participate in contestable markets, for example in providing energy storage and electric vehicle charging services to boost productivity. The opposite position was put to us by the Australian Energy Council. As flagged above, we will be considering this as part of our upcoming review of ring-fencing guidelines and we have encouraged trial proposals to understand the benefits that could come from network-led rollout and orchestration of distributed energy resources as part of our regulatory sandbox. The ENA also urged us to consider our engagement processes and, as also noted above, we commit to do this including the use of our consumer panels. As part of our data and digital transformation new policy proposal to Government, we have previously sought funding to automate the electronic uploading of network information (also requested by the ENA) but this proposal has not yet been funded by Government.

The Australian Energy Council (AEC) acknowledged the efforts of the AER over recent years to reduce regulatory burden. The AEC would still like to see the AER improve its cost benefit analysis when reviewing or introducing new guidelines with a focus on IT change cost and customer handling time/complexity. The AER already attempts to do this but we have struggled to obtain the necessary cost information from industry participants. We will work with the AEC to see if this can be improved. The AEC also urged us to review our billing guidelines and to consider the requirements for explicit informed consent both of which we have committed to above.

The AEC also supported consideration of proposals which may be more complex, or may require changes to legislation or systems, but which could have significant productivity benefits. They made a number of suggestions which the AER would commend to government for further consideration:

- reviewing the need for existing wholesale mechanisms following the completion of the current Wholesale Market Settings Review

- automating the application of government concessions and rebates to electricity bills, as outlined in the AER's Game Changer report, to ensure all consumers receive the assistance they are eligible for while reducing administrative burdens for customers and retailers alike. This would require the involvement of Services Australia
- simplifying communication requirements relating to explicit informed consent, payment difficulty and other interactions between retailers and customers to reduce the risk of overcompliance and improve customer outcomes. Some of these changes would require law or rule changes
- harmonising consumer protections across states and territories in the National Electricity Market
- streamlining planning and approvals, including connections processes, for energy infrastructure.

As Chair of the Regulator Leadership Cohort, I have worked with my colleagues to consider the nature of regulation and the opportunities that exist to boost productivity. I have also approached my counterpart in the UK to learn from their experiences. The AER will continue to feed in other ideas as we develop them through these engagements, and through a continued focus on this task within the AER.

Thank you again for the opportunity to contribute to this important work. Please do not hesitate to contact me, or Matt Garbutt, A/CEO AER at [redacted], to discuss this further.

Yours sincerely

[redacted]

Clare Savage
Chair, Australian Energy Regulator

CC: Senator The Hon Katy Gallagher, Minister for Finance
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