

7 August 2025

Dr Sean Turner  
Committee Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Sent by email to: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Dr Turner

**Re: Submission on the Competition and Consumer Amendment (Australian Energy Regulator Separation) Bill 2025**

Thank you for the invitation to make a submission to the Senate Economics Legislation Committee's inquiry into the Competition and Consumer Amendment (Australian Energy Regulator Separation) Bill 2025.

Enclosed is the AER's submission to the inquiry.

The AER strongly supports the passage of the Bill through Parliament. The timely passage of this Bill will facilitate the efficient and effective completion of necessary work ahead of the proposed separation date of 1 July 2026.

If you have any questions regarding the submission, please contact me or Geoff Purvis-Smith (General Counsel / Executive General Manager, Legal, Corporate and Governance Division)

Yours sincerely

Matt Garbutt  
Acting Chief Executive Officer  
Australian Energy Regulator

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# The AER's Submission to the Senate Economics Legislation Committee

## The Competition and Consumer Amendment (Australian Energy Regulator Separation) Bill 2025

The Australian Energy Regulator (the **AER**) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee (the **Committee**) on the Competition and Consumer Amendment (Australian Energy Regulator Separation) Bill 2025 (the **Bill**). This submission provides further detail to assist the Committee's consideration of the Bill and should be read alongside the Bill and its explanatory materials<sup>1</sup>.

The AER already exists as an independent decision-making body established under Part IIIAA of the *Competition and Consumer Act 2010* (the **CCA**).<sup>2</sup> It comprises five full-time members appointed under Part IIIAA of the CCA.<sup>3</sup>

However, for the purposes of the *Public Governance, Performance and Accountability Act 2013* (the **PGPA Act**), the AER and the Australian Competition and Consumer Commission (the **ACCC**) are a combined entity, with the Chair of the ACCC as the accountable authority. The Chair of the ACCC is also the head of agency for the purposes of the *Public Service Act 1999* (the **PS Act**).

In practice, this means that while the AER has its own budget program and resource allocation and undertakes the regulatory decision-making role, the ACCC Chair is ultimately responsible for the financial performance of the AER under the PGPA Act and for its staff under the PS Act.

These arrangements present unacceptable governance risks to both the ACCC and AER Chairs.

If passed, the Bill will amend the CCA to separate the AER from the ACCC for the purposes of the PGPA Act and the PS Act, establishing the AER as a non-corporate Commonwealth entity (the **NCE**) with operational control of its resources and governance arrangements.

This would give effect to the agreement reached by the Energy and Climate Change Ministerial Council in May 2023. The agreement was reached after consultation with State and Territory Energy Ministers in accordance with the Australian Energy Market Agreement.

It will also:

- ensure that the AER has governance, resourcing and staffing arrangements that reflect its mature and well-established role, and will better support its operations and the performance of its regulatory functions; and

<sup>1</sup> See the details at [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s1457](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1457).

<sup>2</sup> s44AE(2) (Establishment of the AER) of the CCA.

<sup>3</sup> s44AG (Constitution of the AER) of the CCA. As part of the appointment process, an Independent Energy Appointments Selection Panel, managed by the Commonwealth Department of Climate Change, Energy, Environment and Water, makes recommendations to the Energy Ministers (collectively). The CCA specifies that two members are to be Commonwealth members, and three members are to be State/Territory members. Appointments are made by the Governor-General in Council.

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- will bring the AER into line with the arrangements for other stand-alone, independent statutory Commonwealth entities.

The drafting of the Bill is straightforward and takes the approach of amending only those provisions that require amendment to facilitate legal separation. The Bill is not designed to alter any functions, powers or duties of the AER that are unrelated to its establishment as an NCE.

Additionally, the current Administrative Arrangements Order assigns responsibility for the AER, as set out in Part IIIAA of the CCA, to the Minister for Climate Change and Energy. However, matters relating to the PS Act and the PGPA Act (which are currently set out in Parts II and IIIAB of the CCA respectively) remain within the Treasury portfolio. If the Bill is passed in its current form (with the proposed amendments to ss 44AE(3) and 44AAC of the CCA), these matters will also fall all within Part IIIAA of the CCA. This will complete the full transfer of the AER to the Climate Change and Energy portfolio.

The AER strongly supports the passage of the Bill through Parliament. The timely passage of this Bill will facilitate the efficient and effective completion of necessary work ahead of the proposed separation date of 1 July 2026.

## Background of the Bill

The Bill addresses recommendations from several reviews. This change acknowledges the AER's significant growth in functions since its establishment in 2005 and the need for suitable resourcing and governance arrangements to undertake these functions in an increasingly complex environment.

- In 2015, the Review of Governance Arrangements for Australian Energy Markets (the **Vertigan Review**) noted that the roles of the ACCC and the AER were significantly different, and this influenced the skills and organisational culture required,<sup>4</sup> and recommended that the AER should have full management and financial autonomy as a stand-alone regulatory body to enhance its independence and effectiveness;
- In 2017, the Independent Review into the Future Security of the National Electricity Market (the **Finkel Review**) reached the same conclusion as the Vertigan Review. It also provided that “the AER’s role is highly technical and sector specific. While the ACCC also carries other sector-specific regulatory responsibilities, the AER as a separate energy agency would reflect the energy-specific responsibilities of the other energy market bodies and energy regulators in similar countries”;<sup>5</sup> and
- In 2020, the Review of the Energy Security Board (2020), conducted by Rhys Edwards, noted that many participants raised issues of wider energy market governance, which included structural separation of the AER from the ACCC.<sup>6</sup>

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<sup>4</sup> M Vertigan, G Yarrow, E Morton, [Review of governance arrangements for Australian energy markets: final report](#), COAG Energy Council, Canberra, October 2015, at 63.

<sup>5</sup> A Finkel (Chair), [Blueprint for the future: independent review into the future security of the National Electricity Market](#), DEE, Canberra, 2017, at 180.

<sup>6</sup> Mr Rhys Edwards, [Review of Energy Security Board](#), June 2020.

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## **Overview of the AER's regulatory functions**

The AER is conferred with regulatory functions pursuant to s44AH and 44AI of the CCA, the Competition & Consumer (Industry Code - Electricity Retail) Regulations 2019, the National Electricity Law, National Gas Law, National Energy Retail Law, the National Electricity Rules, National Gas Rules and the National Energy Retail Rules. The AER performs these functions in line with the National Electricity Objective, National Energy Retail Objective and National Gas Objective.<sup>7</sup>

Since its establishment in 2005, the complexity of the AER's work has grown significantly, reflecting an Australian energy market undergoing rapid and unprecedented level of change, driven by the transition to renewable energy sources, increasing consumer participation through distributed energy resources.

Throughout this work, the AER exists so that energy consumers are better off now and in the future.

The AER safeguards consumers by regulating the energy market to ensure they pay no more than necessary for safe, reliable, and affordable energy, while ensuring energy businesses adhere to the rules as Australia transitions to net zero. Its key role and functions include:

- regulating \$130 billion worth of electricity networks and covered gas pipelines, in all jurisdictions except Western Australia, by setting the revenue network businesses can recover from customers;
- enforcing the laws for the National Electricity Market and spot gas markets in southern and eastern Australia, and monitoring and reporting on the conduct of energy businesses and the effectiveness of competition;
- protecting the interests of household and small business consumers by enforcing the Retail Law in New South Wales, South Australia, Tasmania, the ACT and Queensland;
- empowering consumers to engage effectively, including through its Energy Made Easy website, and safeguarding those who are unable to protect their own interests; and
- informing debate about Australia's energy future through its expertise.

In its present form, the Bill does not alter any of the AER's regulatory functions.

## **Main objective of the Bill**

The main objective of the Bill is to amend ss 44AE(3) and 44AAC of the CCA to fully separate the AER as an organisation from the ACCC, establish the AER as a non-corporate Commonwealth entity for the purposes of PGPA Act, and ensure that the AER has its own staff for the purposes of the PS Act.<sup>8</sup>

The Bill includes additional provisions to facilitate this, including:

- facilitating the transfer of staff, including the application of the ACCC Enterprise Agreement 2024-2027 to transferred staff;

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<sup>7</sup> The AER does not have any functions in Western Australia. The AER has slightly different functions in Victoria and the Northern Territory (as these jurisdictions have not adopted all elements of the national energy legislation) and has additional state-based functions in New South Wales and Queensland.

<sup>8</sup> See also the Bill's Explanatory Memorandum:  
[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s1457](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1457).

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- permitting the ACCC to provide shared corporate services to the AER to assist in the administration of the AER; and
- ensuring an orderly transition, including the preservation of existing delegations and regulations and permitting the transfer of records.

The Bill removes the automatic associate membership of the ACCC for the AER members (while retaining their eligibility for appointment) and includes relevant consequential amendments.

### **AER's day-to-day operations remain unchanged**

There are no changes to the way the AER and the ACCC can share regulatory information. Information can still be shared using the existing legislative information sharing processes.

Similarly, there are no changes to how the AER engages with industry stakeholders. The Vertigan Review considered that Australia's energy governance framework incorporates more checks and balances than most comparable systems.<sup>9</sup> For instance, the Review noted that in the United Kingdom concerns about industry capture have rarely arisen, whether in the context of large, conglomerate regulatory bodies or smaller, more specialized agencies.

This Bill has a clear and specific purpose: to facilitate the organisational separation of the AER from the ACCC. Its impact is akin to typical machinery of government changes.

### **Government does not incur any costs**

The AER and the ACCC have proposed that the restructure be implemented at nil net cost to the government, with no change to the overall appropriation for the combined ACCC and AER. All arrangements are able to be accommodated within the existing government funding envelope and managed via the multi-year balance sheets of the combined and separated entities.

To achieve a streamlined and cost-effective separation, the Bill has also been designed to reduce the administrative burden typically associated with the creation of a new agency and machinery of government changes. This includes strategies such as sharing office space and utilising ICT shared services already provided by the ACCC, which will support the transition to full independence while ensuring efficiency and cost control.

### **Implementation of the Bill**

This Bill is set to take effect on 1 July 2026, following extensive preparation and consultation between the ACCC and the AER to ensure readiness for implementation of this organisational separation.

The AER will continue to work closely with the ACCC, the Department of Climate Change, Energy, the Environment and Water and other stakeholders to ensure the seamless implementation of this organisational separation.

The AER strongly supports the Bill and recommends its passage in its current form.

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<sup>9</sup> M Vertigan, G Yarrow, E Morton, [Review of governance arrangements for Australian energy markets: final report](#), COAG Energy Council, Canberra, October 2015, at 70.