

Anne Kallies

*Centre for Resources, Energy and Environmental Law*

Melbourne Law School  
The University of Melbourne,  
Victoria 3010 Australia

September 2012

## **Submission to the Select Committee on Electricity Pricing**

Thank you for the opportunity to comment on the enquiry into Electricity Pricing.

I would like to comment on the legal and regulatory framework of the Australian National Electricity Market (NEM) and its ability to meet the contemporary challenges of climate change adaptation and mitigation as well as energy security.

I am happy to elaborate on any of the points made, if necessary.

The role of law in the electricity market is often seen as confined to addressing market failure, however legislative frameworks and other legal rules provide the vital framework for defining responsibilities, and coordinating the use of different tools. The legal framework for the NEM enshrines the institutional framework for the market by defining the roles and responsibilities of market participants and market institutions, prescribing market objectives and rules for access to the market.

The National Electricity Rules (NER) govern the operation of the NEM. They are enabled by the National Electricity Law, established through the National Electricity (South Australia) Act 1996, which is valid in all jurisdictions covered by the NEM through enabling legislation. The National Electricity Law in s 7 contains the current National Electricity Objective:

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 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.

The objective with its emphasis on economic efficiency reflects the regulatory environment of the electricity market reform in the 1990s, when the current electricity market was created. The market was created to provide the essential service of electricity supply cheaper and more efficiently than the former model of vertically integrated state based electricity commissions; a move that followed a worldwide paradigm change in the nature of electricity provision. It is important to understand that this objective and indeed the whole of the electricity market framework reflects a very specific generation profile; namely that of the time of its creation. It has created a persistent techno-institutional complex, favouring incumbent centralized fossil fuel generators, and is not sufficiently responsive to demand side solutions and the needs of renewable energy.

Since the time of the creation of the current frameworks, environmental concerns have become an important driver of transformation in the electricity sector. Australia now has committed to reduce greenhouse gas emissions by at least 5 per cent on 2000 levels by 2020 and to a long term target of 80 per cent reduction by 2050. Given that stationary energy generation amounts to some 50 per cent of Australia's emissions, reform in the electricity sector is of paramount importance. While price risk for renewable generation has to a degree been addressed through the Renewable Energy Target legislation, significant regulatory risk, especially in regard to network access and investment, remains.<sup>1</sup>

A lack of integration of objectives across the different legal and regulatory frameworks pertinent to the electricity industry, however, has the potential to significantly slow and even derail Australia's commitment to a low carbon energy future. State planning frameworks for example, such as the current reforms of the Victorian planning framework to limit investment in wind energy, can provide significant barriers for federal policy.<sup>2</sup>

Similarly, the regulatory framework of the NEM needs to reflect the public interest in climate change mitigation if real change to the current unsustainable electricity generation in Australia is to be achieved.

Elsewhere new objectives have been added for regulators to reflect the changing paradigms for electricity provision.

---

<sup>1</sup> See in more detail Kallies, A. & Godden, L., 'Electricity Network Development: New Challenges for Australia' in Marta Roggenkamp et al, *Energy Networks and the Law* (OUP, 2012) 292-31

<sup>2</sup> See in more detail Caripis, L. & Kallies, A., 'Planning Away Victoria's Renewable Energy Future?' (2012) 29 *Environmental and Planning Law Journal* 415

Thus the UK regulator, Ofgem, according to s 3A of the Electricity Act 1989, now needs to have regard to the:

... interests of existing and future consumers..., including—

(a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases;

In summary, if Australia is to achieve a transformation to a low carbon energy future it will need to rethink its current electricity market framework. Liberalized electricity markets can include 'green' objectives, as the UK example shows. A reform of the National Electricity Objective, to reflect the changed policy environment, would provide an important start.

### **Expertise:**

I am a PhD researcher at the Centre for Resources, Energy and Environmental Law at Melbourne Law School investigating how legal and regulatory frameworks in liberalized electricity markets influence the promotion of renewable energy. I hold a German law degree as well as a LLM from the University of Melbourne. My relevant publications include

Kallies, A. & Godden, L., 'Electricity Network Development: New Challenges for Australia' in Marta Roggenkamp et al, *Energy Networks and the Law* (OUP, 2012) 292-312

Kallies, A., 'The impact of electricity market design on access to the grid and transmission planning for renewable energy: Can overseas examples provide guidance' (2011) 2 *Renewable Energy Law and Policy Review* 147

Caripis, L. & Kallies, A., 'Planning Away Victoria's Renewable Energy Future?' (2012) 29 *Environmental and Planning Law Journal* 415