

Senate Standing Committees on Economics  
c/o Committee Secretary  
PO Box 6100  
Parliament House  
Canberra ACT 2600

COM25/2504

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Committee,

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

We welcome the opportunity to provide a submission to the Senate Standing Committee on Economics on a Bill for an Act to separate the Australian Energy Regulator from the Australian Competition and Consumer Commission, and for related purposes (**the Bill**).

This Bill is a long time coming. We believe there is little rationale for the Australian Energy Regulator (**AER**) to remain part of the Australian Competition and Consumer Commission (**ACCC**). Since this intertwining comes from the *Competition and Consumer Act 2010* (Cth) (**the Act**), we strongly urge the Committee to make sure that the AER is separated from the ACCC as the Australian Government has proposed.

The big question of “Why?” might be coming to you right now. But before we delve into that, we believe it is convenient if we familiarise ourselves with the entities at hand.

**Australian Competition and Consumer Commission**

Section 6A of the current Act establishes the Australian Competition and Consumer Commission, a non-corporate entity that is part of the Commonwealth and *is not* a body corporate. In this respect, anything done by the ACCC is done by the Commonwealth.

The ACCC exists as a commission made up of the Chairperson and members. At the same time, there exists the ACCC as an agency: under s 27 of the Act, the Chairperson and Australian Public Service employees assisting the Chairperson together constitute a Statutory Agency for the purposes of the *Public Service Act 1999* (Cth). The ACCC (the commission) is the decision-making body for the ACCC (the agency). We will take care to distinguish if we refer to the ACCC as a commission or as an agency.

The ACCC, as an agency, promotes competition and fair trading in Australia in relation to federal laws. In this respect, the ACCC is the regulator of the worst excesses of corporations. We commend the ACCC for the work in protecting consumer rights and making sure that consumers are aware that

they—when applicable—can get the repair, replacement, or refund that they are entitled to. The ACCC means that if we buy a computer mouse and it comes faulty, we are entitled to a replacement or a refund.

The ACCC has a wide range of responsibilities. This includes taking misbehaving businesses to court, keeping a watchful eye on mergers that reduce competition, regulating Digital ID, and making sure unsafe products are recalled. In recent years, the ACCC has been taking on the scourge of scams, including through the National Anti-Scam Centre’s ScamWatch. Good on them, we say.

We present an organisation chart of the ACCC as at 30 June 2024 based on the *ACCC and AER Annual Report 2023–24* in **Appendix A**.

### **Australian Energy Regulator**

The current s 44AE of the Act establishes the Australian Energy Regulator.<sup>1</sup> Under that section, the AER is a body corporate but—for purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth) (**the PGPA Act**)—is simultaneously not a corporate Commonwealth entity.

Under current arrangements, the AER—as a board of five members—is supported by the ACCC (the agency). We will note that in the current Act, the AER does not have the ability to engage staff under the *Public Service Act 1999* (Cth).

The AER is—perhaps unsurprisingly—the regulator of wholesale and retail energy markets and energy networks.

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<sup>1</sup> For those curious, the AER was inserted into the then *Trade Practices Act 1974*—later renamed to the *Competition and Consumer Act 2010* (Cth)—by the *Trade Practices Amendment (Australian Energy Market) Act 2004* (Cth).

Based on the explanatory memorandum presented by the then Minister for Industry, Tourism and Resources, the raspy-voiced Honourable Ian Macfarlane on 17 June 2004, we take it that energy regulation has always been an intergovernmental affair that involved the ACCC and state and territory agencies. It looks to be the Australian Government’s intention for the AER to be a separate legal entity from the ACCC but supported in staffing and business support by the ACCC (the agency).

Perhaps bizarrely, the Australian Electricity Market Commission (**AEMC**)—the self-described rule maker of *Australian* electricity and gas markets—is established by the *Australian Energy Market Commission Establishment Act 2004* (SA) and not federal legislation. We are curious as to whether the Commonwealth will one day federalise AEMC legislation.

## **Other bodies established by the Act**

Please pardon us as we familiarise ourselves with other entities established by the Act. This is necessary for our other points.

The Act also establishes the National Competition Council (**the Council**), the Australian Competition Tribunal as a tribunal and a replacement to the Trade Practices Tribunal, an Accreditation Registrar (who may be distinct from the ACCC), and a Data Standards Body. However, we will only explore the Council.

The National Competition Council is a listed entity for the purposes of the PGPA Act and can engage staff under the *Public Service Act 1999* (Cth). The Council has developed annual reports in accordance with the PGPA Act. Since 2014, the Council has been in an arrangement with the ACCC to provide secretariat services meaning the Council no longer directly engages staff but still retains the legislative authority to do so.

## **De facto separate – might as well make it official**

We present several points that make the case that combining the ACCC and AER is nonsensical, and that under current operations, the ACCC and AER already operate separately.

Under current provisions of the Act, the AER is a body corporate. This means the AER has a separate legal identity but is simultaneously part of the ACCC. The AER is also only a body corporate except in relation to the PGPA Act where it is considered part of the ACCC. This means the AER is a body corporate that is not a body corporate.

We find this absurd.

In accordance with their reporting obligations, the ACCC and AER share an annual report that frequently breaks into two: for example, in the most recent annual report, the chairs of the ACCC (the commission) and the AER each have 2023–24 reviews. In addition, purpose and stakeholders are divided; strategic objectives are divided; annual performance is divided; and more! When you read the ACCC and AER annual report, you will find that the two are usually treated separately rather than as one.

This intertwining is so embedded that AER members are—under a complicated s 8AB—taken to be associate members of the ACCC (as a commission). We commend the Bill's removal of the s 8AB note.

The ACCC website notes that:

While the specific functions of the ACCC and AER vary based on their legislated responsibilities, the 2 bodies share many common objectives. Both work to protect, strengthen and supplement competitive market processes.

While we appreciate the ACCC's attempt to link the two, we do not believe that the shared goals link the two entities enough to warrant the AER being part of the ACCC.

Under this logic, government bodies that share a goal should be amalgamated. However, we would not merge the financial regulators like the Reserve Bank of Australia, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and the Treasury into one Australian Finance Regulator-General just because they work closely and seek an efficient and effective financial system that won't collapse with a housing bubble.

The AER and ACCC share objectives, yes, but their remit is simply too disparate: the ACCC regulates the worst excesses of business; the AER regulates our electricity markets. Maybe the AER can form part of the ACCC but that would imply that the Australian electricity market doesn't need a dedicated regulator.

Perhaps to no-one's surprise, the AER and the ACCC de facto function separately. You will find a reproduction of the ACCC and AER organisation chart in **Appendix A**. What we have failed to include is that the ACCC and AER each have their own members and chairs.<sup>2</sup> However, in the chart, you will find that the AER and ACCC each have their Chief Executive Officers (**CEOs**) as well as executive general managers (**EGMs**)<sup>3</sup> who report to one of the two CEOs. In the reality we live, the ACCC and AER operate separately because there is no operational reason for AER EGMs to report to the ACCC CEO. The AER has its own general counsel because energy legislation means they need a specialist rather than relying on the ACCC general counsel.

We believe that we have demonstrated that the current provisions in the Act are nonsensical, that the ACCC and AER should not remain combined, and that—in practice—the ACCC and AER operate separately.

Do the right thing and make the separation de jure with an amendment to the Act by passing the Bill.

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<sup>2</sup> Under the current Act, AER members are associate members of the ACCC. All AER members are part of the ACCC, but not all ACCC members are part of the AER.

<sup>3</sup> Please note our restraint in declining to critique the title of "executive general manager" and how this sounds more fitting for the corporate private sector rather than the Australian Government.

### **Duplication of resources?**

Before we move on to our suggestion for the Committee, we will answer the question of whether separating the ACCC and AER via legislation will lead to a duplication of resources.

We do not believe this will happen. Based on the organisation chart of the ACCC and AER in **Appendix A**, there is little duplication in responsibilities of EGMs. This is especially the case due to the different remits of the ACCC and AER.

In terms of corporate support functions—helpfully relegated to the box marked “Corporate”—we believe that the ACCC (the agency) can still support the AER if the AER believes this is more efficient than running their own corporate support.

Besides, one man’s duplication is another man’s specialisation: there should be separate general counsels and legal teams for the ACCC and AER. Maybe the two can share a Chief Finance Officer and information technology functions, but some roles make more sense if both the ACCC and AER have one.

The Bill makes amendments to the Act that will allow the AER to engage its own staff to function. These staff members already exist and are currently employed by the ACCC. They will simply move with the AER when it becomes a de jure separate entity.

We previously raised the National Competition Council, which is supported by the ACCC. Under current arrangements, the Council can engage staff to perform its functions but chooses not to. The AER needs staff but does not have the legislative authority or structural independence. Therefore, it must use ACCC staff.

This is absurd. We are glad that the Bill will rectify this travesty.

## The Australian Energy Regulator should have their own Act

We propose that the *Competition and Consumer Act 2010* (Cth), even after amendments by the Bill, will remain a large and unwieldy four-volumed piece of legislation. We believe that the matters dealt with by the AER are so distinct from the ACCC that it warrants the creation of a new Act of Parliament for the AER and Australian energy market regulation.

To assist the Committee, we propose several titles for such acts:

Long title	Short title
An Act to establish the Australian Energy Regulator, and for related purposes	<i>Australian Energy Regulator Act XXXX</i>
An Act to regulate whole and retail energy markets and energy networks, and for related purposes	<i>Energy Markets Act XXXX</i>
An Act relating to the regulation of energy markets, and for related purposes	<i>Australian Energy Market Act 2004</i>
An Act relating to energy, and for related purposes	<i>Energy Act XXXX</i>
An Act to continue the Australian Energy Regulator as a separate entity, and for related purposes.	<i>Australian Energy Regulator (Continuance) Act XXXX</i>
An Act to divorce the Australian Energy Regulator from the Australian Competition and Consumer Commission, and for related purposes.	<i>Energy (Separating the AER from the ACCC) Act XXXX</i>

We have attempted to be clever by adding the *Australian Energy Market Act 2004* (Cth) among our suggestions. This is because this Act of Parliament can be the AER's enabling legislation with just one clever amendment.

## Has an agency ever been moved from one Act to another?

If it will assist the Committee, we shall explore the statutory nature of the position of Privacy Commissioner.

The position of Privacy Commissioner was previously established under the *Privacy Act 1988* (Cth).<sup>4</sup> Following changes in 2010, the Privacy Commissioner is now established under the *Australian Information*

<sup>4</sup> If you view the "as made" version of the *Privacy Act 1988* (Cth), you will find s 19 establishing the Privacy Commissioner.

*Commissioner Act 2010* (Cth).<sup>5</sup> In other words, a statutory officeholder was moved to more relevant legislation.

Transitional provisions were made using the *Freedom of Information Amendment (Reform) Act 2010* (Cth), which allowed the then Privacy Commissioner to maintain their role even as their enabling legislation changed.

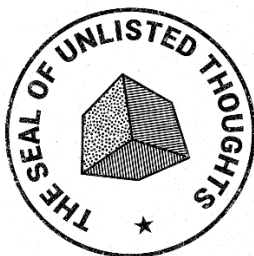
We recognise that moving the Privacy Commissioner into the *Australian Information Commissioner Act 2010* (Cth) is less of an undertaking than moving the AER and energy regulation to its own new Act. However, we have faith in the Parliamentary Counsel and their ability to make this happen.

We guarantee that future legislators will appreciate it.

We thank you for the opportunity to make a submission. If you have any questions about our submission, you can contact us at

It is with very great relief and satisfaction that we heard of the safe arrival of the Committee to Parliament House. May we soon see lasting peace for the ACCC and AER.

We are sending this submission via the internet to your trusted and excellent Committee Secretary, who will inform you of this submission as well as other matters of interest we have not mentioned in this submission.



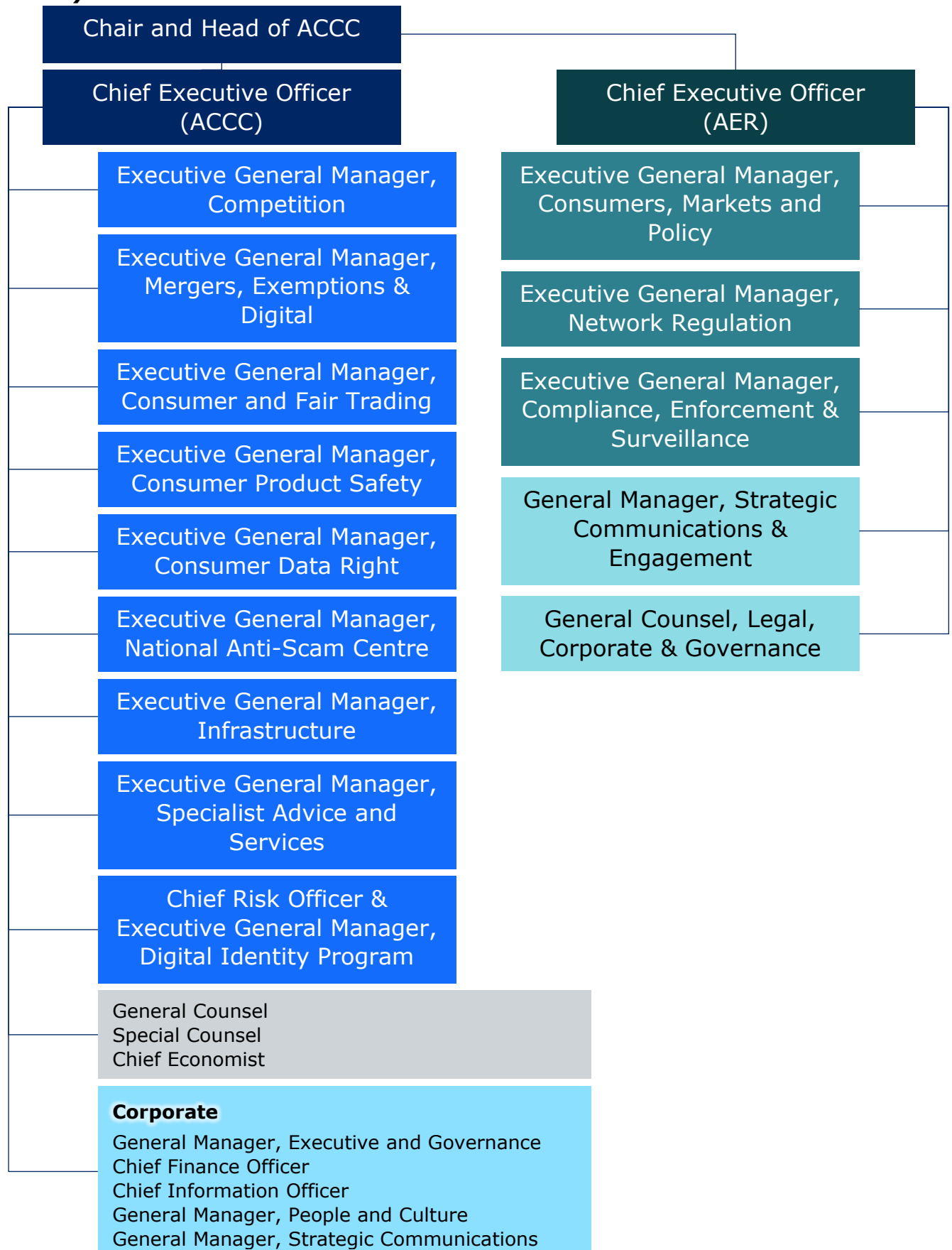
**William Luu**  
**5 August 2025**

**Warwick Senjak**

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<sup>5</sup> Currently established by s 14 of the *Australian Information Commissioner Act 2010* (Cth).

## Appendix A: Organisation chart of the ACCC and AER (as at 30 June 2024)





We base our chart on the diagram on page 24 of the *ACCC and AER Annual Report 2023–24*. We presume that their diagram is provided under a Creative Commons Attribution 4.0 Australia licence<sup>6</sup> as it is not:

- the Commonwealth Coat of Arms, or
- the ACCC or AER logos, or
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As you can see, you can cleanly split the ACCC and AER with little difficulty because the ACCC and AER are—both de facto and in some respect de jure—separate.

**Adapted from:** *ACCC and AER Annual Report 2023–24*, Australian Competition and Consumer Commission, licensed under CC BY 4.0.

**Available at:** <https://www.accc.gov.au/about-us/publications/accc-and-aer-annual-reports/accc-and-aer-annual-report-2023-24>

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