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Dr Kerry Schott AO  
Independent Chair  
Energy Security Board

Submitted via email: [info@esb.org.au](mailto:info@esb.org.au)

Dear Dr Schott

## **Re: Consultation on post-2025 market design options**

Thank you for the opportunity to comment on the Energy Security Board's (ESB) consultation paper on the post-2025 market design options (the consultation paper).

The Australian Competition and Consumer Commission (ACCC) is Australia's competition and consumer regulator with the purpose of making markets work for consumers, now and in the future. The ACCC plays an active role in the Australian energy sector, where we are undertaking a long-running inquiry into the National Electricity Market and are enforcing the Electricity Retail Code and electricity-specific provisions of the *Competition and Consumer Act 2010*.

The ACCC supports the ESB's examination of whether the National Electricity Market (NEM) continues to promote efficient investment and operation in the long-term interests of consumers during this time of significant transformation. In redesigning the market to address reliability, the ACCC is primarily concerned that reforms strike an appropriate balance with consumer affordability. Consumers should not again bear the risks and costs associated with interventions in the market which are weighted too heavily towards reliability, greater than their willingness to pay, as they have in the past.

We encourage the ESB to ensure its recommended market design options preserve market efficiencies to the greatest extent possible, while limiting future government interventions by increasing confidence that energy supply is reliable and affordable throughout the energy transition.

### **Resource adequacy mechanisms**

Competitive and well-functioning markets generally provide value for money and efficient outcomes for consumers. However, the NEM's ability to function efficiently appears to have been hindered for a variety of reasons. If there is a need to revise the current market design to better align market outcomes to consumer needs, enhancements to strengthen incentives for necessary private investment may be appropriate. This would be preferable to continued government intervention or a centralised capacity market.

The ACCC considers that the design of additional or modified resource adequacy mechanisms should consider the allocation of risk, with the risks appropriately borne by parties best placed to manage those risks. Greater government involvement in securing generation capacity in the market through increased centralised planning or direct investment can lead to an over-build of capacity paid for by consumers through higher energy bills or taxation. This burdens consumers with the risk of investment.

Design options should also consider the inherent trade-off between reliability and affordability. As previously submitted to the ESB, we consider that marginal increases in reliability should not be pursued at the expense of consumer affordability.<sup>1</sup> The ACCC considers that, while consumers value reliability, it can come at too high a cost. For example, consumers continue to pay for over-investment by state-owned networks across New South Wales and Queensland due to the increase in network reliability standards following blackouts in 2004. Billions of dollars in network investment were subsequently considered excessive and the reliability standards were lowered.<sup>2</sup> Consumers continue to pay for this temporary focus on enhanced reliability standards through higher electricity charges, while not necessarily valuing the increased reliability.

### ***Modifications to the retailer reliability obligation (RRO)***

We understand that some form of the options put forward in the consultation paper will be put to policymakers. While we do not have specific views on each option, we encourage the ESB to pursue design choices that retain as much reliance as possible on market forces to determine the need for investment, and minimise the role of centralised forecasting and planning to determine supply. The 'enhanced RRO' options place more responsibility on retailers to support new generation investment. This has the potential to better align incentives and more efficiently promote investment in new generation than alternative options.

However, if poorly designed, an enhanced RRO could negatively impact retailers and retail competition. Therefore, any modifications to the RRO should seek to avoid over-procurement of generation capacity. The design of the RRO should also be indifferent to a wide range of business practices that balance supply and demand, including demand response. It should not codify standard business practices to the detriment of retailers that use innovative practices while still safeguarding reliable supply. Rather, the regulation will need to be flexible in valuing such contributions.

A physical RRO based on the trade of physical certificates has the potential to increase the value of dispatchable generation through a market mechanism, ensuring retailers bear the risk for wholesale reliability gaps. This seems preferable to establishing a centralised capacity market, an option already rejected by the ESB, which would place the risks of over or under investment on consumers or governments on their behalf.

However, the introduction of new capacity obligations in the NEM would raise a number of difficult enforcement and compliance issues. For example, there would be important questions about how to handle innovative new services such as demand response and/or small-scale battery storage, including determining in advance the volume of capacity such assets could provide and how to ensure that the promised capacity is actually provided to the market when required. In addition, the design of the physical RRO should ensure that the market for certificates is competitive and does not raise barriers to small retailers and new market entrants. The ACCC considers that the ESB should consider options to mitigate

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<sup>1</sup> ACCC, [Response to Consultation on Draft Interim Reliability Reserve Rules](#), 12 June 2020.

<sup>2</sup> ACCC, [Retail Electricity Pricing Inquiry – Final Report](#), July 2018, pp. 163-166.

market power issues and the advantages of gentailers in a redesigned Market Liquidity Obligation or similar mechanism.

### ***Exit of aging thermal generators***

The ACCC considers it important that there is transparency around the exit of aging thermal generation. We consider it appropriate to increase information and lengthen the notice period for closure to reduce the likelihood of sudden exits that significantly affect the ability of the market to meet demand. The ESB's proposals around information and notice periods appear to be low cost with minimal intervention.

### ***Market-wide consistency for jurisdictional investment schemes***

The NEM is one of the largest interconnected systems in the world. Investment decisions in some jurisdictions can affect consumers in others, while consumers could miss out on cost savings in jurisdictions that 'go it alone'. For example, significant wholesale cost savings are currently available across the NEM, but these savings will not flow through to consumers in the Australian Capital Territory. This is due to the fixed price contracts struck years ago by the territory's government.

If jurisdictional governments do not have faith in the market to deliver the necessary resources, underwriting of new investment must at a minimum follow consistent, NEM-aligned principles that minimise the risk borne by customers. We encourage governments to work closely with the ESB to incorporate consistent principles to the benefit of consumers across all NEM jurisdictions.

### **Consumer protections for new energy products and services**

The ACCC endorses a risk-based approach to assess whether the consumer protection framework remains fit for purpose as new products and services emerge. As emerging technology presents consumers with new products and services, there may be value in updating the National Energy Retail Law and Rules. Although the Australian Consumer Law provides a universal basic level of protection, the complexity of new energy technologies and the nature of electricity as an essential service may warrant targeted consumer protections.

If you have any questions in relation to this submission, please contact Lyn Camilleri, General Manager, Electricity Markets Branch, on (03) 9290 1973.

Yours sincerely



Rod Sims  
Chair