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Submission on *Review of Decision Making in the Gas and Electricity Regulatory Frameworks*

I write on behalf of the Energy Intensive Industries Alliance in response to the Consultation on the MCE Review of Decision-making in the Gas and Electricity Regulatory Frameworks.

The Alliance represents the interests of industries -- and in particular cement, paper, timber, aluminium and plastics and chemicals industries -- where energy is a substantial proportion of production costs (up to 25 per cent) and the cost and reliability of energy supply is an important contributor to the competitiveness of trade-exposed businesses.

The Alliance membership embraces large-scale companies and sites as well as a number of small and medium-sized facilities, including timber processing plants, plastics production businesses and chemicals manufacturers.

The major energy-intensive manufacturers account for about a third of Australia's annual electricity consumption. Collectively, energy-intensive manufacturing employs a million Australians, contributes more than \$200 billion to gross domestic product and more than \$60 billion in value-adding to the economy.

While the Alliance welcomes the continuing focus of the Ministerial Council on Energy on energy reform issues of concern to consumers, there are a number of aspects of the Review of Decision-making consultation paper that are a source of concern to its members.

The MCE has stated as a principle that end-users and consumers should be more effectively included in the reform process, but the Review of Decision-making paper as well as the 4 November Council meeting communique (with respect to advocacy support) underline the fact that governments have yet to come to terms with the needs of energy-intensive manufacturers in delivering on this commitment.

Neither the paper nor the communique have dealt adequately with the core fact that decisions by governments or regulators relating to the cost of energy impact on all users (large, medium and small business as well as residential customers).

Another key concern for the Alliance is the ongoing inability of governments in the energy reform process to acknowledge that customers (the demand side) and service providers (the supply side) must be treated equally and, in this case, must be given equal rights to seek reviews of regulatory determinations.

The Alliance's central goal with regard to review of determinations by energy regulators is that organisations representing its manufacturing members should be clearly given standing in any process that is introduced.

Neither Model A nor Model B, as put forward in the paper, address this issue in a manner that will ensure that representatives of energy-intensive manufacturers can be participants in reviews of regulatory determinations.

This situation can only add to the uncertainty of investors in one of the most critical sectors of the economy when considering the impact of one of their most important input factors -- energy costs -- on existing operations and future developments.

With respect to the models proposed for consideration, the Alliance's main concerns relate to the review entities' capacity for intervention, to the effectiveness of review decisions and to the costs for participants. In this latter regard, the Alliance points out that energy network service providers can recover their process costs from their customers through the regulatory system but trade-exposed manufacturers have no means of doing the same.

Both models proposed are likely to expose parties seeking regulatory determination reviews to substantial costs and this makes the governments' decision, as set out in the 4 November communique, on funding support for customer advocacy very important. The direction set out briefly in the communique does not give the Alliance confidence that governments have given adequate attention to the needs of manufacturing end-users, who consume a third of the electricity sold in Australia and contribute significantly to the standard of living of the community overall through their operations.

The grounds for the appeal entities to consider reviewing regulatory determinations, as set out in the discussion paper, appear to the Alliance to be less than clearly expressed, not least because governments seem to be struggling to balance the merits review process with the existing powers and processes of the Federal Court.

This situation, it seems to the Alliance, can best be resolved by governments opting for Model A -- recourse to the Australian Competition Tribunal -- and then amending the national electricity and gas laws to provide absolute clarity on a process that will be effective in remedying clearly inappropriate regulatory determinations with a full and fair opportunity for any parties adversely affected by a decision to seek to have it reversed.

In pursuing this path, the MCE should ensure that it embraces the important core goals of this process -- ie improvement in the accountability of regulatory decisionmaking, greater transparency of regulatory processes and decisions, certainty and consistency in outcomes over time and, for both service suppliers and industrial customers, a full appreciation of the impact of regulation on investment decisions for long-lived capital assets. An additional and important factor for governments to bear in mind is the elimination of divergences in regulatory processes across jurisdictions -- which is why the Alliance supports the continuing moves to national regulation and applauds the progress apparently made at the MCE 4 November meeting in this regard for electricity distribution and retailing.

In conclusion, the Alliance seeks to emphasize that, as governments failed to accept energy-intensive customer arguments for section 68 of the new NEL to include allowance for end-user standing in market regulatory processes, the present merits review consultation presents an important opportunity for the MCE to ensure that consumers and their representatives have as much right to participate in the review process for regulatory determinations as service providers.

The issue of the length of time that such merit reviews may take, and the costs potentially involved, is clearly weighing on the minds of ministers and their advisers. It is an issue of concern to the Alliance's members as well, but we emphasize that the over-riding concern of the MCE should be to ensure that the current reform activity delivers customers competitively-priced, reliable power of satisfactory quality where and when they need it and does not predominantly focus on promoting efficient investment in supply systems. The long-term interest of consumers is the core test for every aspect of the market, and the Alliance is concerned that governments and regulators never lose sight of this goal.

In this regard, it also needs to be remembered by governments that the delivery of reliable power and gas to energy-intensive industries at prices that enable them to remain globally competitive is in the interest of the Australian community as a whole and not just of the manufacturers' shareholders.

The Decision-making consultation paper is helpful in canvassing the issues that need to be considered in development of a merits review process for regulatory determinations, but it is still a considerable distance from providing a final proposal for the consideration of consumers before the MCE establishes the policy.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Miles Prosser', is written over a vertical line.

Miles Prosser
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(for Energy Intensive Industries Alliance)