

Department of Treasury and Finance
1 Treasury Place,
Melbourne Victoria 3002

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12 August 2026

Subject: Submission to the Review of the Essential Services Commission Act 2001 – Issues Paper

1. Introduction

The Australian Energy Council (**AEC**) welcomes the opportunity to provide this submission to the Department of Treasury and Finance in response to the Review of the Essential Services Commission Act 2001 – Issues Paper (**the Issues Paper**).

The AEC is the peak body for energy retailers and generators operating in competitive markets. Our members generate and sell energy to over 10 million homes and businesses and are committed to delivering a reliable, affordable and decarbonised energy system for consumers. The AEC supports net zero by 2050 and recognises the electricity sector's role in reducing Australia's emissions. Our members are major investors in renewables, firming and storage technologies that are critical to ensuring that customers continue to receive reliable and sustainable energy supply as we navigate the energy transition.

Key points

The AEC considers that the objectives of the Essential Services Commission Act 2001 (**the Act**) remain relevant and appropriate. Independent economic regulation continues to serve an important purpose for the energy sector and should be retained.

To the extent we have a concern with the operations of the Essential Services Commission (**ESC**), it is with how those objectives are being interpreted and applied in current regulatory practice, not the statutory framework itself. Regulatory practice has drifted toward increasingly prescriptive, legalistic rule-compliance, adding cost without commensurate consumer benefit. This has been combined with an element of scope creep as the ESC has expanded its own remit to elements of social policy over and above its initial remit of economic policy. The scope of the recent review of the Energy Retail Code of Practice is an illustration of this trend.

The review is an opportunity to re-anchor the ESC's approach in proportionate, evidence-based, principles-based regulation, focused on addressing systemic market failures where they can be robustly established. One way to assist with this would be to include an additional clause clarifying the need for the objectives to be appropriately balanced (noting that efficiency itself supports good consumer outcomes) and for due weight to be given to both short- and long-term impacts.

The cost of regulation itself – including its cumulative impact – should be an explicit factor before new obligations are imposed, supported by a clear evidentiary threshold.

Decision making should be as transparent as possible, so that all stakeholders can understand the basis for the decision. AEC and its members have observed late changes in policy, that are not foreshadowed in the consultation process. At the very least, such changes should be subject to further consultation. The ESC's rule-making and enforcement functions should be separated, consistent with the AEMC/AER model that applies nationally in energy.

Victoria should pursue closer alignment with national energy frameworks where this does not compromise established consumer protections, to reduce fragmentation and compliance costs for retailers operating across jurisdictions. We acknowledge that steps have been taken by the ESC in this direction, but there remains scope for further alignment. This would also position Victoria for an eventual shift to joining the National Energy Consumer Framework (NECF). Notwithstanding the Issues Papers' claims of leadership in energy regulation, we consider the Victorian arrangements and national arrangements to currently be broadly equivalent in terms of their level of consumer protection and the basis of price regulation. Accordingly, we do not see that Victorian energy consumers would lose protection in any meaningful way from a transfer to the national framework, which would have the advantage of reducing retailer compliance costs (which would ultimately flow through to customer bills) and would reduce the ESC's costs without imposing an equivalent cost burden on the AER.

The table in Appendix 1 includes answers to each of the specific questions raised in the Issues Paper. Please do not hesitate to contact me at jo.desilva@energycouncil.com.au or by telephone on 03 9205 3100 if you wish to discuss our submission further.

Yours sincerely,

Jo De Silva

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Appendix 1: Responses

Q#	Question (as listed in the Issues Paper)	AEC response
1	<i>Are the objectives of the Essential Services Commission Act and the ESC still relevant and appropriate?</i>	Yes. The purpose provision (s.1) and the ESC's objective (s.8) — balancing efficiency (productive, allocative and dynamic) with the long-term interests of Victorian consumers — remain sound and enduring. However, we consider that practical application of the objectives could be improved by adding a clause to ensure the objectives are appropriately balanced against each other. .
2	<i>How does the ESC take into account the objectives of the Act in performing its functions?</i>	In the AEC's experience, the objectives are referenced in ESC decision-making, but current practice tends to give greater practical weight to short-term affordability and compliance outcomes than to the dynamic efficiency and longer-term considerations the Act also requires the ESC to weigh under s.8A. This is why we consider a “balance” clause as recommended in our response to question 1 would help guide the ESC in its decision making.
3	<i>To what extent are the objectives of the Act and the ESC being achieved?</i>	Partially. There is a strong focus on consumer protection outcomes, but this comes at the expense of a lower weighting to the long-term efficiency and investment limb of the objective is being under-weighted. Achievement of the objectives would be bolstered by greater use of empirical evidence to ensure that interventions in response to shorter-term considerations are fully justified and do not unduly undermine innovation and investment— a material concern given the levels of both of these required to successfully deliver the energy transition.
4	<i>Should any changes be considered to the objectives of the Act or to any objectives of the ESC under any industry specific Acts?</i>	No change to the Act's core objectives is required. The AEC cautions against layering further sector-specific objectives onto the ESC's mandate, consistent with the OECD principle of avoiding multiple, potentially conflicting, regulatory objectives ¹ .
5	<i>Are the ESC's interfaces with other regulators and regulatory systems working well?</i>	There is room for improvement, particularly at the Victoria/national interface. The AEC supports closer alignment between Victorian energy retail regulation and the AEMC/AER/NERR framework, and clearer delineation between the ESC's economic regulation role and generalist consumer protection regulators (ACCC, Consumer Affairs Victoria). These changes would assist in arresting the increase in regulatory burden over recent years.
6	<i>Should economic regulation continue to be applied to all the sectors currently defined in the Act as essential services?</i>	For energy, yes. The AEC does not have a basis to comment on the water, ports or local government sectors. As noted above, however, we consider that much of the existing energy regulation the ESC administers could be transferred to the AER under the national framework without diluting consumer protection for Victorian energy users

¹ OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris

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7	<i>Should consideration be given to applying economic regulation to any other sectors?</i>	The AEC has no strong view on extending scope beyond the sectors currently regulated, but supports retaining the Act's existing safeguards for any expansion — demonstrated significant and non-transitory market power, benefits that clearly exceed costs, and the absence of existing sector-specific regulation. The AEC notes that the boundaries of electricity supply are expanding as consumers adopt distributed energy resources and other newer energy services, and so the ESC should periodically consider the implications of having extensive regulation of grid-supplied electricity with limited oversight of other types of energy supply.
8	<i>Do the principles outlined in this paper and the Act's objectives adequately describe all the features of best practice economic regulation? Are there any others?</i>	The principles set out (the Victorian Guide to Regulation and the OECD principles) are appropriate. The AEC would add one further discipline: regulatory intervention should be evidence-based, with a demonstrated and quantified problem established before new obligations are imposed, and decisions should account for the cumulative — not just the marginal — cost of regulation.
9	<i>Do the current functions of the ESC represent best practice economic regulation?</i>	The AEC notes that regulatory practice has drifted toward increasingly prescriptive, legalistic, rule-compliance-focused regulation — a trend the AEC also observes at the AER and IPART. This risks discouraging innovation and diverting investment into compliance rather than customer service. The Victorian Default Offer illustrates the trade-off: while it delivers price benefits to consumers who don't engage in the market, it can also dampen retailers' incentive to differentiate and innovate.
10	<i>Do the current governance arrangements for the ESC equip it to perform all its statutory functions effectively?</i>	Broadly yes. Commissioner eligibility requirements and the separation of the CEO from the Commission are appropriate and should be retained. The AEC's principal governance concern relates to the ESC's dual role in both making and enforcing Codes of Practice (see Question 11). We also consider that greater transparency is needed for decision-making. There have been several occasions where stakeholders have been surprised by a post-consultation change in policy direction and the rationale for this has not been made adequately clear.
11	<i>What are the opportunities and risks of the ESC continuing to have the power to make and enforce regulatory standards? Are these different according to the sector being regulated?</i>	The ESC's combined role as both maker and enforcer of Codes of Practice creates a perception — whether or not it reflects reality — that the regulator acts as rule-maker, judge and enforcer. The AEC recommends the review consider separating these functions, drawing on the national energy model in which the AEMC develops rules, and the AER administers and enforces them. Separation would also help address concerns around the incentives created by the combined role where penalties are both the primary enforcement tool and a substantial source of revenue.
12	<i>Does the ESC have an appropriate set of tools to be an effective regulator, given its functions?</i>	Largely yes, following the 2021 reforms. The AEC recommends two refinements: consolidating the currently

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		inconsistent information-gathering, sharing and enforcement powers that vary across the ESC's sector-specific Acts; and broadening the enforcement toolkit beyond financial penalties toward restorative approaches that aim to directly redress customers for any harm suffered. Fees should be the primary revenue source, in contrast to fines flowing to the ESC's enforcement fund and we support continued government oversight of fee levels.
13	<i>Should private and public sector businesses providing essential services be regulated alike?</i>	Yes, in principle. The AEC supports consistent regulatory treatment of public and private entities, including extending equivalent enforcement tools — such as civil penalties — to publicly owned water corporations where practicable, to maintain a level playing field and public confidence in even-handed regulation.
14	<i>Should any other changes to the ESC's functions, powers or to provisions of any legislation that applies to the ESC be considered?</i>	We have no further suggestions other than those in the previous sections.