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Ms Lucy Wicks MP
Chair, Joint Committee of Public Accounts and Audit
PO BOX 6021
Canberra ACT 2600

Sent by email to: jcpaa@aph.gov.au

Dear Ms Wicks

Regulatory Activities: Inquiry into Auditor-General's Reports 33, 47, 48 (2019-20) and 5 and 8 (2020-21)

Thank you for your letter dated 10 December 2020 inviting the Australian Energy Regulator (AER) to make a submission to the Inquiry on the Auditor-General's Report No.5 (2020-21), Regulation of the National Energy Market. This letter constitutes our submission and includes an update on actions taken in relation to the six Australian National Audit Office (ANAO) recommendations since the report was published.

The ANAO audit report covered the period from July 2015 to June 2019 and was published on 3 September 2020. We accepted all six recommendations contained in the ANAO report, with implementation of the recommendations being overseen by the new AER Board and new Chief Executive Officer (CEO) with formal reporting to the ACCC/AER Audit Committee. The ANAO report noted that in a number of areas, the AER had already started to address some issues identified by the ANAO. In making these changes, we benefited from discussions with the audit team.

The report was particularly timely for the AER. The AER has welcomed a new Chair, three new Board members, and myself as CEO following the end of the period that was reviewed by the Audit. In December 2020, we published the attached AER Strategic Plan 2020-25, which outlines the agency's purpose, vision, and objectives over the next five years. The ANAO report was helpful in the creation of the Strategic Plan, as well as to the substantially revised Corporate Plan, published in August 2020.

We set out below the key actions that we have undertaken, are currently undertaking or have planned to implement the six recommendations.

Risk management (Recommendation no. 1)

The report recommended improvements to the reporting of risk and the management of shared risks between the AER and other market bodies and government.

While the AER has an independent Board, the AER must also comply with the ACCC's risk management framework. Within this framework a number of ACCC committees also provide oversight of the AER's systems of risk and control.

Since mid-2019, the AER has made a number of improvements to risk management that strengthen the organisation's capability through training and enhanced processes and procedures. We have also worked to centralise and streamline oversight of risk management across the organisation. This has included:

- Training – all executive level staff have completed training on risk identification, management and reporting, as well as project management training. Both initiatives are designed to support the building of risk capability within the AER.
- Planning – we have revised the AER's organisational-level risk table as part of the ACCC's annual business planning process. This allows for the identification of a number of shared risks between the AER and ACCC in a consistent and systematic way, and to work with the ACCC on action plans for risks rated as 'high' or above. This initiative improves coordination and management across the agency.
- Registers – we are working on a new enhanced format for our centralised risk register. This register is designed to present AER risks clearly, to quickly identify emerging areas of risk and agree on mitigations. Dedicated responsibility for the oversight of risk management will sit within a new AER Corporate team.
- Reporting – we have implemented monthly CEO updates on strategic and operational risks, and dedicated quarterly updates on the centralised register, to the AER Board's Policy and Governance Committee. This comprises all AER Board members and is an added level of senior oversight within the AER. The AER also continues to report on risks to the ACCC Audit Committee. Further, the AER and other market bodies submit regular reports to Energy Ministers that outline our progress against strategic priorities and any key risks. This assists in identifying and managing shared risks with other market bodies. Further, the AER Board meets periodically with their counterparts in the Australian Energy Market Commission (AEMC) and Australian Energy Market Operator (AEMO).

Performance management and reporting (Recommendation no.2)

The ANAO report recommended that we develop a performance measurement and reporting framework, which includes the Corporate Plan as the primary planning document.

The AER does not publish its own separate corporate plan. But to assist us in implementing this recommendation, with the agreement of the ACCC, we produced an AER-specific plan as part of the broader agency 2020-21 Corporate Plan. This was published at the end of August and is attached.

In 2020, the AER undertook a significant strategic planning exercise, resulting in the development of our new Strategic Plan that outlines our vision, outcomes, objectives, priorities and enablers across our people, stakeholders and systems. The Plan is framed by the wider objectives of the Strategic Energy Plan, published in January 2020 by the then COAG Energy Council.

The AER Strategic Plan forms the centrepiece of the AER's new planning and reporting arrangements. It is also enabling us to consider refinements to our key performance indicators so that we move towards a clearer program logic incorporating a suite of output, outcome and impact measures, as recommended in RMG131.

We took initial steps in this year's Corporate Plan to reduce our reliance on what the ANAO has characterised as more managerial output measures, with a greater emphasis now on outcomes and impact, but this is a work in progress. We are currently working with the AER Board on developing measures that allow us to account for our impact across our diverse areas of work, with a view to putting in place substantially improved measures for 2021-22. To support this, we are enhancing the approach for our stakeholder survey, which will be conducted in March-April 2021.

We have also played an active part in the current Department of Prime Minister & Cabinet project examining the further development and future application of the principles in the Regulator Performance Framework, and how regulators can best account for impact. This is a challenging area for most regulators, including overseas, and we particularly value the opportunity to exchange experiences with, and learn lessons from, fellow regulators in other markets and jurisdictions.

Management of reviews and assessments (Recommendation No.3)

The ANAO recommended that we develop tools to promote consistent management of reviews and assessments. Three recent initiatives are assisting in addressing this recommendation:

- A new project management framework has been developed and is now in use following staff training last year. This training was attended by 95 per cent of executive level staff and included the development of a toolkit of core templates for project plans, scheduling and status reporting. This will assist in managing projects in a more consistent, structured way across the AER.
- Although we continue to draw on ACCC corporate resources, we are currently implementing an organisational redesign which includes enhancing AER-specific corporate functions. The dedicated new AER Corporate team will amongst other things lead on portfolio management reporting, as well as improvements to other processes and how we document work.
- We have already developed a number of materials and guides to promote agency wide consistency, including enhanced Board and committee paper templates. We have also developed a compliance and enforcement toolbox that includes guides and templates. These act as a useful resource for staff but also aid consistency in the management and delivery of our compliance work program.

Compliance and enforcement (Recommendations No.4, 5, 6)

Recommendations 4, 5 and 6 which related to information management, compliance intelligence, setting of compliance priorities and risk based decision making, are broadly consistent with the findings of a 2019 internal review into our compliance and enforcement work. The review made a number of recommendations to strengthen and improve our capabilities and are being implemented by our Compliance and Enforcement Branch.

As such, implementation is well advanced and in 2019 for the first time, we released Compliance and Enforcement Priorities to guide and focus our work. This together with our refreshed Compliance and Enforcement Policy, explains our approach to promoting compliance with obligations under the National Electricity Law, National Gas Law and National Energy Retail Law. It also provides guidance on how we respond to potential breaches and the factors we may have regard to when deciding whether to take enforcement action.

Our 2020/21 priorities take account of the COVID-19 situation, alongside our 'Statement of Expectations' for energy businesses. These are attached.

Our strengthened capabilities have resulted in a substantial increase in our compliance and enforcement activity. In 2020 we announced payment of 47 infringement penalties totalling

\$940,000 by seven businesses for alleged breaches of energy laws. We also accepted three enforceable undertakings from businesses to improve their systems and processes to manage their compliance obligations and currently have five cases in the Federal Court.

In 2020, after action taken by the AER, the Federal Court ordered:

- EnergyAustralia to pay \$1.5 million in penalties after it had declared the retailer breached energy laws when it wrongfully disconnected eight customers who were in financial hardship, having failed to extend legal protections to those customers.
- Four subsidiaries of AGL to pay a total of \$1.3 million in penalties for having failed to submit retail market performance data on time to the AER as required by the *AER Performance Reporting Procedures and Guidelines*, and in breach of the National Energy Retail Law.
- Snowtown 2 to pay a penalty of \$1 million after it had breached the National Electricity Rules by having failed to provide critical information to the Australian Energy Market Operator (AEMO) and network service provider ElectraNet.

The commencement of the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020* will further assist the AER in its compliance and enforcement role by significantly increasing the civil penalties the AER can seek to up to \$10 million, three times the value of the benefit attributable to the breach, or 10 per cent of the body corporate's annual turnover for breaches of provisions of the National Energy Laws. It is vitally important to have penalties that deter offending conduct and ensure compliance with energy laws is of the highest priority for businesses.

Implementation of recommendation 4 which was about information management, is expected to be completed by June 2021. A centralised repository of compliance intelligence will be developed that includes key details such as the type and location of the information stored. This will allow easier and more efficient retrieval, analysis and application in risk based decision making.

Recommendation 5 requires the AER to develop a decision making framework that demonstrates the link between regulatory obligations and non-compliance risks in the National Energy Market and the AER's annual compliance and enforcement priorities. Our new Compliance Decision Making Framework is designed to measure and assess this risk and apply it to our work including annual compliance and enforcement priority setting. This Framework will be considered by the AER Board in the first quarter of 2021 and used in the setting of our 21/22 compliance and enforcement priorities. We are also developing performance measures to evaluate the setting of these priorities.

Implementation of recommendation 6 – As discussed above, a revised risk based model to better support decision making will be considered by the AER Board in the first quarter of 2021. The Compliance Decision Making Framework incorporates a range of compliance intelligence as well as a revised risk assessment model. It now includes both static (legal obligations) and dynamic (business specific) risk assessments. We have also updated and completed over 12,000 static risk assessments in readiness for the new model.

We have also aligned our management and governance processes to the new compliance assessment process, for example through the creation of a centralised assessment team and the new Enforcement and Compliance Committee, comprised of AER Board members. These are proving valuable for triaging matters and decision-making.

I would be happy to discuss these updates with the Committee at the upcoming public hearing. In the meantime, if you require further information on this submission, please contact [REDACTED]

Yours sincerely

[REDACTED]

Liz Develin
Chief Executive Officer

Attachments

- AER Strategic Plan 2020-25
- ACCC and AER Corporate Plan
- AER 2020-21 Compliance and Enforcement Priorities
- AER Statement of Expectations for Energy Businesses (three iterations: April, August and November 2020)