Solar 2015 Conference Speech
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# Reforming the energy market

The title of this talk is 'reforming the energy market'. But when I say 'reform' I really mean completely overhaul. And when I say 'energy market' I really mean the entire system that provides us with modern energy services – that is, the things we really want, like heating and cooling, mobility and lighting, hot food and icecreams.

My main focus is on tackling climate change. We know that Australia's electricity supply is the biggest single source of pollution in the country because of its coal-dependence but its institutions have no legal obligation to do anything about it and in many ways are actively working against the transition to clean energy.

Also, as we all know, we are in the midst of an energy revolution. It's fast moving. It's unpredictable. It's exciting.

But our energy governance systems are stranded in the world of 20 years ago and failing to keep up with the demand for change, let alone get ahead of it.

I argue that as a society we need to step back and look at our entire energy services system afresh. Mostly I'll be talking about electricity and in particular the National Electricity Market (NEM) but the over-arching message applies more generally.

**How did we get here**

The NEM was designed as part of the 1990s wave of micro-economic reform.

The plan was to create national, privatised, 'economically efficient' markets for electricity and gas designed to attract private investors. The then predominantly state-owned electricity utilities would be broken up into generation, distribution and retail arms and sold off. And that's largely what has happened.

But this plan was never debated in a parliament with the power to amend the legislation and the rules that put it into effect.

Instead it was executed through an intergovernmental agreement – the Australian Energy Market Agreement (AEMA).

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COAG, the Council of Australian governments, signed AEMA in 2004 and the COAG Energy Council - that is the energy ministers of states, territories and the commonwealth -- is responsible for implementing it. AEMA is not legally binding but parties have to give 12 months notice if they want to withdraw.

(All the states and territories signed up -- if you're interested in how the states were coerced and cajoled into doing so, there's a 2013 KPMG report commissioned to "celebrate" 15 years since the launch of the NEM. It's titled, somewhat tendentiously, 'a case study in successful microeconomic reform'.)

Under AEMA, the energy ministers are responsible for

- *the national energy policy framework;*
- *policy oversight of, and future strategic directions for the Australian energy market;*
- *governance and institutional arrangements for the Australian energy market;*
- *the legislative and regulatory framework within which the market operates and natural monopolies are regulated;*
- *longer-term, systemic and structural energy issues that affect the public interest; and*
- *such other energy related responsibilities as are conferred by Commonwealth, State or Territory legislation and unanimously agreed by the MCE consistent with this agreement.*

AEMA also sets out objectives that are mainly to do with providing an attractive environment for investors and promoting competition.

(Demand side options and greenhouse gas pollution, although mentioned in the Agreement, have been consistently ignored.)

So, essentially what AEMA does is make the COAG Energy Council responsible for the governance of Australia's energy and gas markets.

Decisions that should be exposed for debate and parliamentary scrutiny are made by energy ministers behind closed doors.

The community has no effective voice in the process either directly or through ministers from other affected portfolios.

The ministerial council itself has no accountability other than to COAG.

Clearly AEMA is compromised by the conflicting interests of the states, most of whom are owners of energy assets as well as rule-makers in the sector.

Even in its own terms it is failing look after the interests of consumers. The recent Senate inquiry into networks pointed to the 'inexcusable price-gouging of consumers'. The Productivity Commission before that said it was producing outcomes 'inimical' to consumers' interests.

In my view, AEMA is well past its use-by date. It is not serving the interests even of consumers narrowly defined let alone the community more broadly. And it is profoundly anti-democratic.

It should be abolished -- that would free up the system and enable us to start the transition to something better suited to today's realities.

In that transition there are four key changes I propose -

- national legislation
- a new objective
- action on climate change
- a fair go for local power

## 1. National legislation

The COAG Energy Council not only sets overall policy directions, it has an active role in the NEM and its institutions.

Amongst other things, it can direct the Australian Energy Market Commission - which makes the rules under which the NEM operates – to conduct reviews and provide information.

It also appoints the directors of all the key NEM institutions – The Energy Market Commission, the Energy Market Regulator, the Australian Energy Market Operator and the recently established Energy Consumers Australia. Not surprisingly these people are drawn from a fairly narrow range of backgrounds in energy market regulation, big four accounting firms and big energy companies.

We need two changes to move to a more democratically accountable arrangement --

- first, the National Electricity Law should become an act of the federal parliament that can be debated and amended like any other

At the moment we have a system of quasi-national laws created by legislating in a lead jurisdiction - South Australia - and then the other states passing mirror legislation.

- secondly, the legislative and other provisions embedding the Energy Council in the operation and management of the NEM should be unwound.

In particular the Energy Market Commission - the rule-maker - should be freed from its dual role as adviser to the Ministerial Council. There's also a case for combining the AEMC and AER to create a single properly independent regulator.

## 2. A new objective

We need a new objective for the national electricity system. This is important because it guides all the NEM institutions in their decision-making. Currently the objective is:

> to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to
>
> (a) price, quality, safety, reliability and security of supply of electricity; and
>
> (b) the reliability, safety and security of the national electricity system.

As KPMG explains (in the publication I referred to earlier) -

> [this] objective is an economic concept and is intended to be interpreted as "acting in the long term interests of consumers". If the National Electricity Market is efficient in an economic sense the long term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised.

In other words it is not that consumer interests are to have primacy. Instead it is an article of faith that economic efficiency equates to maximising consumer interests.

A new objective cannot assume that consumer interests, let alone community interests, are satisfied solely through economic efficiency.

It needs to make social and environmental objectives explicit and give communities a genuine role in deciding their energy futures.

### 3. Action on climate change

The present federal government notwithstanding, action will be taken to tackle climate change -- whether by state or local governments individually, by communities, or by a future federal government.

Electricity emissions are 35% of Australia's total, so they must and will be key in our emission reduction task.

Tackling greenhouse gas emissions is actually an objective of the Energy Market Agreement. The problem is it has never been acted upon.

New national legislation should include a target date for eliminating fossil fuel emissions from the NEM.

### 4. Enabling local power

By local power I mean the opposite of the current centralised system.

The NEM and the energy market institutions were designed to regulate a small number of 'registered participants', they being big companies that have the resources to participate in its complex processes. Consumers were the passive recipients of electricity whose participation was limited to choosing a retailer.

In line with the original design, there are currently around 200 unique registered participants in the NEM, primarily large generators, networks and retailers.

From about 2008 the picture changed dramatically for four main reasons –

- the price of solar power plummeted,
- opportunities to improve energy efficiency expanded,
- electricity prices sky-rocketed, and
- interest in community climate action escalated.

As a result non-registered but ‘active’ NEM participants now number in the millions – these include exempt generators, networks and retailers;  demand side activity; households and commercial premises generating their own power or investing in storage and negawatts; community energy projects; and various projects to decarbonise neighbourhoods and towns.

Collectively this group of ‘local power’ producers and managers is highly disruptive to the centralised NEM and its registered participants, both through the energy services they choose and through active political engagement.

In the face of the rapidly moving but highly unpredictable energy revolution, the NEM needs diversity to test new solutions and the flexibility to adapt quickly.

It should be restructured to remove the privileged position of existing large-scale participants in the centralised system.

It should allow for and encourage diversity at multiple scales while protecting the right of communities to have clean, safe and affordable energy services.

Above all, it should give communities a central role in deciding their own energy futures.

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Thankyou