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Mr. Rory Campbell and Mark Tutaan
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by email: submissions@aemc.gov.au

Dear Mr. Campbell and Mr. Tutaan

**Further Comment to Draft Determination ERC0092 Metering Data Service Provision and Clarification of Metrology Procedures**[1]

I refer to my formal submission sent by email dated 1 July now acknowledged to the AEMC ERC0092 Draft Determination, and submissions to the AER – which appeared to have no impact on their determination in the Jemena Gas Network (NSW) Gas Determination, which is almost bound to be appealed before the Australian Competition Tribunal – in yet another turnaround of decisions impacting on the taxpayers' pockets.

Similar concerns relate to the ACT matter brought to the ACT in Merits Review to be determined on 26 July. I attended the Directions Hearing last week. The perception by Jemena Ltd its servants contractors and/or subsidiary companies, including JGN and ActewAGL Distribution, either directly expressed or through its asset management company Jemena Asset Management (JAM), and by the AER that the matters do not impact on NSW and the ACT is misguided. Similar concerns apply to other states and other duistributors.

The Decision by the AER of 11 and 28 June respectively is misguided in the sanctioning of unnecessary CAPX and OPEX costs associated with water meter upgrades as alleged legitimate *"additional services"* under energy laws, to be incurred by one of two major distributors with all the power – including over policy-makers, rule makers, and politicians, in a monopoly-like market will ultimately be regretted and criticized as much as the ill-fated and ill-considered Victorian smart meter roll out. The MCE is completely dominated by Victorian influences and ill-considered decisions.

I have referred to the Victorian Auditor-General's scathing comments about complete lack of governance leadership and demonstrable economic and technical case. The same issues stand to impact on ill-considered proposals, sanctioned by the AER for the unnecessary upgrade of water meters, conveniently listed as *"additional services"* or *"ancillary services"* in attempts to squeeze non-system, non-distribution excluded services into energy laws.

This I believe is beyond the jurisdiction of energy policy makers, rule makers and regulators under energy laws.

I have sighted what Kevin McMahon has sent to the AEMC. I could not agree more.

Though living in different States, our experiences of the exploitive market are very similar. Many stakeholders from Queensland and other States have contacted me regarding the public concerns that I have expressed. I have reflected back those concerns, with little real expectation of being heeded. When has the consumer voice ever been regarded with anything but disdain. It is not wonder that every one is so very disillusioned.

Nonetheless I urge the AEMC to carefully consider and discuss the consumer submissions received in the ERC0092 Matter and to submissions by consumers to other related arenas.

It is my view that the AMEC, MCE, AER and others "pandering" to those who undoubtedly dominate the market, as Mr. McMahon puts it, may well be laying itself open to legal action eventually, even if statutory provisions don't support this.

The potential also exists, despite all attempts to preclude parties from taking matters before the open courts for market participants to expose themselves to class action litigation - this is bound to happen eventually. The failure of all policy-makers and regulators to consider comparative law is not merely regrettable, but, forgive me for saying, possibly grossly misguided and bordering on risk-taking.

Perhaps the AEMC, who gets to appoint the Chairperson of the AER is not quite aware of what is happening at the level of regulatory determinations under constant challenge by those with market power.

I am aware of more than one legal matter on foot in the open courts challenging the precepts that have been adopted in the lucrative serviced hot water data metering provider monopoly and exploitive market. The enshrined rights of those covered under contract and the common law cannot be stripped from them by mere statutory provisions. The worm will turn ultimately and will bring in its wake expensive and unnecessary litigation.

Though my formal submissions deals with many of these issues, I cannot resist reinforcement at this stage before the AEMC publishes is Final Determination.

Consumers won't forever tolerate abuse of market power and misguided policies.

I can only begin to suggest that a Pandora’s box of issues that appear to have been so incompletely considered in the formulation of state and national laws, with such minimal consideration of the impact of comparative law.

For example, no single State or Commonwealth statutory provision will affect other rights or remedies.

Specifically, for example such a provision **WILL NOT** at the end of the day, even in the name of *"competition policy;"* or the alleged *"the best long term interests of consumers"* or any other such guise, under any circumstances; howsoever engrossed, structured, intimated or otherwise conveyed within such provisions, or for that matter terms of commercial agreement between one party or another, including between government authorities and other entities:[1]

a) **affect or limit a civil right or remedy** apart from such an Act, whether at common law or otherwise

b) **exonerate from liability including under the common law** such recourses, including through, compliance with any given legislative Act or ancillary provision including, Code or Guideline or reference thereto within statutory provisions; generic, state or territory; industry-specific or otherwise; and irrespective of discrepancies; misinterpretations (for example deemed sale and supply of gas or electricity as commodities attractive the full suite of protections under multiple provisions) or any other energy form; or any other commodity or service to a customer (incorporated or otherwise)

c) **hamper, restrict or remove civil or other rights or obligations under other statutory other provisions**, notwithstanding any misguided transparent or hidden warranties or guarantees (for example any warranties or guarantees entered into during the disaggregation of infrastructure or other assets)

d) **over-ride recourse to seeking justice under enshrined rights** within the written or unwritten laws, including under the common law

e) imply or create **limitations as to culpability and/or liability** by the mere existence of perceived exoneration under one enactment or ancillary provision (or for that matter terms of any commercial agreement, whether or hot between government authorities); including but not limited to for example; commercial agreements formed between government organizations during the disaggregation and sale of infrastructure assets;[2] specific legal provisions under state, local government or federal laws; or generic laws; will in any way limit a court's powers under the *Penalties and Sentences Act (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.*

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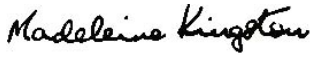
1 One example is the Energy Assets (Restructuring and Disposal) Act 2006 (Qld)
See Queensland Legislative Assembly, Hansard pp 53; 61, 62, 64 (resumed); 164, 167-178 (First and second readings reintroduction, (then) Qld Treasure and Minister for Infrastructure) pp231, 559. 11, 12, 31 October 2006
*http://www.parliament.qld.gov.au/view/legislativeAssembly/hansard/documents/2006.pdf/2006_10_11_WEEKLY.pdf*
*http://www.parliament.qld.gov.au/view/legislativeAssembly/hansard/documents/2006.pdf/2006_10_12_WEEKLY.pdf*
*http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2006/06AC042.pdf*

2 See for example the extraordinary and perhaps misguided arrangements, guarantees, warranties and assurances provided to purchases within the energy industry of energy (and impliedly other assets and/or client bases

I now refer to provisions currently operational in State jurisdictions. These issues are further discussed and analyzed in the appendices already submitted with my main submission of 1 July and under various headings including Contractual arrangements, and tenancy provisions

If not too late I have no objection to the publication of this brief comment as an additional submission, but at any rate I hope the AEMC and others will take into account in any decision making current and future



Regards

Madeleine Kingston

Private Stakeholder