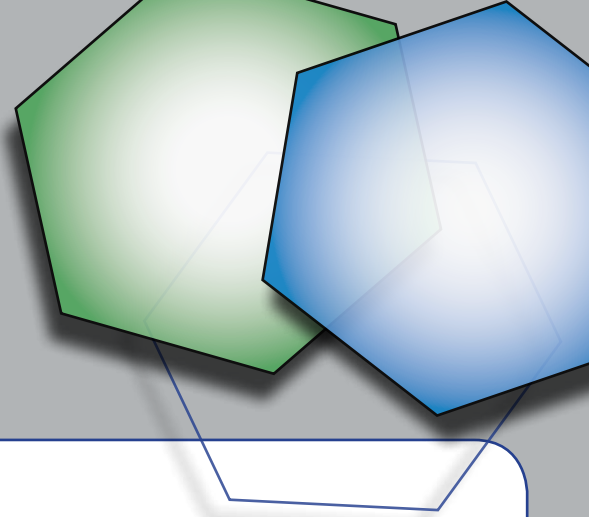


**Energy Policy Institute
of Australia**



**Public Policy Paper
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TRUST AND ENERGY GOVERNANCE IN AUSTRALIA

Robert Pritchard
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The Institute advocates that Australia must maintain a secure investment climate and be internationally competitive, whilst moving towards and contributing as much as it can to global efforts to build a low-carbon society.

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Key Points:

- Public mistrust is deeply affecting the energy industry
- Outbreaks of political activism in Australia, with inadequate responses by government, could become an insuperable obstacle to the entire process of economic development
- Consultative processes have been inadequate
- The energy industry has good cause to be alarmed
- There is a need to provide for genuine participation by stakeholders in an independent energy institution which brings sound governance and transparency to Australian energy policy

More and more frequently in modern society, one hears mention of broken trust. It is a problem that is deeply affecting the Australian energy industry.

In my opinion, there are large swathes of the public that simply don't know what to believe about the energy industry any more. They see a fragmented industry without any discernible order, without control of its own agenda, and they have grown to mistrust what they see. This regrettable situation is in my view attributable to the many partisan, wild and often irresponsible views on the energy industry, emanating from multiple sources within government, industry and society at large and egged on by social media.

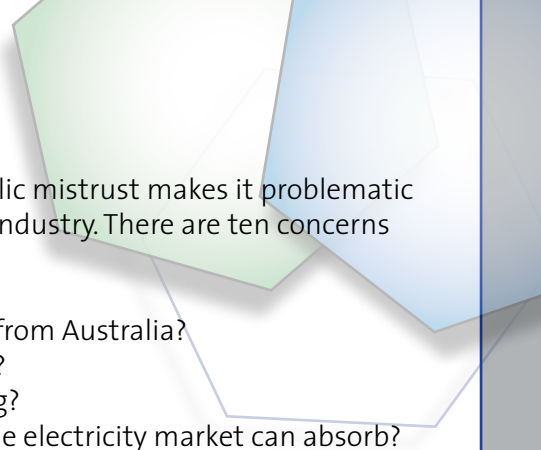
Mistrust in the energy industry cannot be dismissed as an educational and communications problem that will solve itself over time. It goes much deeper than that - it goes to the perfectly legitimate concern of the public to be involved as stakeholders in policy formulation and to the unwillingness or inability of politicians to accommodate this concern.

The problem of public mistrust is not, of course, confined to the energy industry but it affects the energy industry more than any other. It is a consequence, to begin with, of energy being so essential to the economy and to everyday life. Added to this are the complications that arise from the highly capital-intensive nature of the industry, its far-reaching social and environmental effects, and the industry's interrelations with governance systems, policymakers and politics.

The problem is exacerbated by the public's deep concern over climate change and how the transition to a low-carbon world can be achieved. This concern is extremely problematic. It is a problem which is mirrored at a global level, and its resolution depends on the taking of concerted action at both global and domestic level.

Public mistrust provides fertile ground for political activism. It is very disconcerting to investors when politicians respond to outbreaks of activism with the suggestion that the onus is on industry itself to demonstrate its 'social licence' to operate. This is a woefully inadequate and unacceptable response that has potential to be an insuperable hurdle to the entire process of economic development. The onus is squarely on governments to provide diligent environmental regulation, with appropriately high standards, demonstrating appropriate responses to public concerns. At the same time, of course, the onus is on industry to implement best practice. Otherwise, we risk reverting to the law of the jungle.

The present situation, in my view, is that both industry and the public have lost confidence in current energy governance systems. To some degree or another, this is apparent in all countries that are governed by systems of representative democracy but the shortcomings have become particularly apparent in Australia due to the complexities of its federal system of government.



The Australian energy industry has good cause to be alarmed because public mistrust makes it problematic to resolve the concerns that are of crucial importance to the future of the industry. There are ten concerns that stand out:

1. Is policy and regulatory risk scaring investors and financiers away from Australia?
2. Have Australian manufacturing industries become uncompetitive?
3. Is electricity affordable any more? Why is electricity demand falling?
4. Is there a limit to the amount of intermittent renewable energy the electricity market can absorb?
5. Should Australia switch to a carbon trading scheme, where prices find their own level?
6. What is really responsible for the gas supply crisis in Eastern Australia? Are CSG and hydraulic fracturing really safe and are Australia's environmental approval processes up to the task?
7. Will nuclear power ever become a generation option in Australia?
8. How do all policies align, especially energy and climate policies but also transport and taxation policies?
9. What are Australia's energy pathways to the future?
10. Who should Australia rely on for scientific guidance?

The breadth, depth and gravity of these concerns highlight the significant challenges that lie ahead.

The present Australian government came to power at the end of 2007 and immediately embarked on development of an Energy White Paper to provide a policy framework to guide the development of the industry. It found this no easy task, taking almost five years to complete it, because the government gave priority to formulation of its clean energy policy.

When, at 234 pages, the Energy White Paper was finally published at the end of 2012, it was long on discussion of policy principles and policy options but short on policy actions (by contrast, the equivalent White Paper on Energy Policy in China, published annually, is only 11 pages). Energy policy in Australia requires closer and more regular attention.

Unsurprisingly, the federal Opposition announced in March 2013 that, if there were to be a change of government, a new Energy White Paper would be needed within 12 months. However, most of the energy industry questions cited above are deep-rooted and will not be easily answered by a change of government, by a new Energy White Paper or by a few acts of political leadership, however astute.

The problem is that public trust in government is pretty much broken and this requires a special type of remedy.

No offence is meant to politicians. They are doing their honest best and, during Martin Ferguson's time as Australian Resources and Energy Minister, he was nothing if not a realist. My point is, however, that politicians have no special insight into long-term energy industry issues, nor do they possess special powers in problem-solving, and they won't even be in office by the time the burning energy issues are resolved.

For energy market reform at political level, Australia presently relies on irregular and protracted meetings of the Coalition of Australian Governments (COAG) and its Standing Councils, which are not really accountable to anyone. These intergovernmental meetings negotiate their way from one critical point to another under the banner of cooperative federalism. This process is however entirely political, it is as much competitive as it is cooperative, and it has a low level of transparency. COAG may have achieved a great deal as an intergovernmental circuit-breaker but there is much more that needs to be done.

Why should the public trust governments if they believe their interests have not been adequately addressed in the past? My answer is that they should not, unless there is reform of the way political decisions are made and reviewed - reform that will provide a genuine opportunity for public participation.

Genuine public participation requires a mechanism for responding to concerns; not just perfunctory consultation. In recent years, Australia has been swamped by so many public consultations and inquiries that neither industry nor the public has been able to accept them as entirely genuine. There is considerable public cynicism whether the views of those consulted were given serious consideration. In addition, inquiries at parliamentary level have often failed to achieve consensus, tending to reinforce public doubt and mistrust.

The contemporary economic and public interest demands that greater emphasis be paid to genuine public participation. This could be accommodated in the case of the Australian energy industry by a well-resourced, independent institution with a governing board on which industry and the public are represented. Its charter would be to make recommendations to governments on policies for the efficient, safe, secure, environmentally sound and competitive energy supply to the Australian economy and to the public. It would conduct independent reviews and make recommendations on appropriate policy responses to issues as they arise.

Representatives could serve for limited periods and be replaced at regular intervals. An independent institution would have long-run objectives for which its governing board would be accountable; it would be required to report annually to the Commonwealth and State governments, to industry and to the public on its deliberations and recommendations; it would need to be open and transparent in all of its deliberations; and it could conduct 'listening sessions' on issues of particular importance.

Participative processes can and must be undertaken in a trustworthy, fair, non-discriminatory and technology-neutral manner. A fit-for-purpose model could be designed for Australia's particular needs, taking a pragmatic approach and focusing on forging unity of national purpose. Other federal countries provide precedents for strong, independent energy bodies, such as the National Energy Board and Nuclear Safety Commission in Canada and the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission in the United States.

Participative processes will never make everyone happy but I believe that they would have great economic and social value in restoring and nurturing public trust in the energy industry in Australia, particularly when the public sees that participative processes make a difference to energy policy outcomes.

Robert Pritchard is Executive Director of the Energy Policy Institute of Australia and Managing Director of ResourcesLaw International in Sydney. He has over 40 years' experience as a lawyer and consultant to the energy industry, advising governments, IGOs, NGOs and major corporations. Robert was the founding Chairman of the Section on Energy and Natural Resources Law of the International Bar Association (IBA) and served for four years on the IBA Council. He edited the IBA book "Economic Development, Foreign Investment and the Law." Robert served for nine years on the Finance Committee of the World Energy Council and has been a Fellow of the Australian Institute of Energy since 1980.