

# **Review of Governance Arrangements for Australian Energy Markets**

*Issues Paper*

April 2015

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The views contained in this document should not be considered as representing the Energy Council or its jurisdictions.

## Acronyms

ACCC	Australian Competition and Consumer Commission
AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ASIC	Australian Securities and Investment Commission
CAP	Consumer Advocacy Panel
CEO	Chief Executive Officer
COAG	Council of Australian Governments
Cth	Commonwealth
ECA	Energy Consumers Australia
EMRWG	Energy Market Reform Working Group
ERIG	Energy Reform Implementation Group
MCE	Ministerial Council on Energy
MoU	Memorandum of Understanding
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
SCER	Standing Council on Energy and Resources
SCO	Senior Committee of Officials

## Background

On 11 December 2014, the Council of Australian Governments (COAG) Energy Council agreed to the Terms of Reference for a Review of Governance Arrangements for Australian Energy Markets (the Review). The Review was initiated in response to a COAG commitment to review the governance arrangements in the Australian energy market five years after the establishment of the Australian Energy Market Operator in 2009. The Panel comprises Dr Michael Vertigan as Chair, Professor George Yarrow and Mr Euan Morton.

The Energy Market Reform Working Group (EMRWG) is the advisory committee for this Review. The Panel will consult with the committee from time to time to provide notice of its advice and to seek feedback.

In keeping with the Review's terms of reference, the Panel notes the Review is intended to be highly consultative and will examine the broad energy market institutional structure created by COAG as well as the legislative framework that establishes and assigns functions to institutions.

This Issues Paper has been prepared to assist individuals and organisations to prepare submissions to the Issues phase of the Review. It outlines:

- the scope of the Review;
- background and context on the Australian energy markets, its institutions and reform processes;
- questions on which the Panel is seeking comment and information; and
- the consultation and submission process.

## Scope of the Review

In short, the Review will consider whether:

- the institutional structures, scope and mandates of the three market bodies, the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC), and their roles (including division of mandates) as broadly defined, remain appropriate;
- the role, operation and responsibilities of the Energy Council, its Senior Officials, and the three market bodies are clear and providing the best outcomes;

- there are opportunities to enhance the way these institutions interact with each other, the Energy Council, Senior Officials, and stakeholders, and if so, how these opportunities could be best pursued;
- the extent of conferral of responsibilities and roles by the Energy Council or individual jurisdictions under these energy market governance arrangements is appropriate; and
- there are opportunities to expedite the Energy Council and AEMC's energy market reform processes and if so how this should be done.

In essence, the Panel's task is to assess whether there are ways to change the governance arrangements of Australian energy markets so as to improve the outcomes from these arrangements in terms of quality, timeliness and cost.

This paper provides some specific questions to assist in the development of stakeholder submissions. The questions and the issues to which they relate are not intended to be exhaustive: they are simply a compilation of questions that the Panel has started to explore. Stakeholders should feel free to raise any other issues that are within the Review's Terms of Reference or to suggest other questions that might merit attention. The questions are highlighted in the relevant sections of the Paper where background or descriptive information is provided, but a complete list is at **Appendix A**. Given the scope of the review, the Panel is conscious of the risks of the exercise becoming unduly focused on overly abstract discussion of organisational structures. As the Panel sees it, the aim is to investigate whether there are features of the current arrangements that are either giving rise to systemic weaknesses in regulatory and market outcomes or that could be altered so as to lead toward systemically better outcomes. This requires that attention be paid not only to general features of the arrangements, but also to the specifics of particular outcomes or sets of outcomes and, crucially, to the causal linkages between the two.

To assist in the assessment process, therefore, submitters are encouraged:

- (a) when identifying general features of arrangements that might be held to be defective or capable of improvement, to indicate precisely how and why these features have given rise to specific outcomes that are considered problematic, and
- (b) when identifying specific decisions and outcomes for criticism, to provide some assessment of the root causes of those decisions or outcomes (i.e. give an account of how or why features of the current arrangements might have facilitated or caused the outcomes).

Similarly, where existing arrangements are considered to be working well, the Panel is keen to receive views on why that is the case, in order to develop a better understanding of the factors that contribute to successful outcomes.

In relation to each of the governance institutions, the Panel is interested in stakeholders' views on whether that institution's role remains appropriate in today's context, taking account of prospects for (necessarily uncertain) changes in this context in the future. Where adjustments or alternative arrangements are suggested by stakeholders, it would greatly assist the Panel if these are accompanied by supporting evidence, including in relation to costs and practical implementation issues.

The full terms of reference are at **Appendix B**.

## Governance Review Process



The Panel encourages submissions from individuals and organisations in response to this Issues Paper, due by **Thursday 30 April 2015**.

Submissions can be made:

### By Email

[energygovrev@industry.gov.au](mailto:energygovrev@industry.gov.au)

### By mail

Secretariat  
Review of Governance Arrangements for Australian Energy Markets  
Energy Division  
Department of Industry and Science  
GPO Box 9839  
Canberra ACT 2601

## **Publication of Submissions:**

The Panel has a strong preference for public submissions, to generate full and frank debate. It also considers it difficult to prosecute issues raised confidentially. On that basis, submissions will be published on the COAG Energy Council website at [www.scer.gov.au](http://www.scer.gov.au) unless specifically requested otherwise. Please indicate clearly in your submission if you do not wish it to be published, either in part or in full. Contact information, other than your name and organisation (if applicable) will not be published. Your name and organisation (if applicable) or state will be included on the COAG Energy Council website to identify your submission.

The Australian Government reserves the right to refuse to publish submissions, or parts of submissions, which contain offensive language, potentially defamatory material or copyright infringing material. A request may be made under the *Freedom of Information Act 1982* (Cth) for a submission marked confidential to be made available. Such requests will be determined in accordance with provisions under that Act.

## **Contacts**

For further information about the Review, the Panel or making a submission, please contact the Secretariat via email at [energygovrev@industry.gov.au](mailto:energygovrev@industry.gov.au).



# The Review Context

## History of Energy Market Reforms

The current governance structure of the Australian energy market has resulted from numerous reforms arising from the 1993 Hilmer *National Competition Policy Review*, the 2002 Parer Review '*Towards a truly national and efficient Energy Market*' and the 2007 Scales Review, conducted by the Energy Reform Implementation Group (ERIG)<sup>1</sup> '*Energy Reform – the Way Forward for Australia*'. Central to progressing these reforms was the decision by COAG in 2001 to establish a ministerial council (now the COAG Energy Council) to drive energy reform including through greater harmonisation of regulatory arrangements.

Following a review of energy market directions, COAG entered into the Australian Energy Market Agreement (AEMA)<sup>2</sup> on 30 June 2004, which reflected the formal commitment to establish two new institutions to oversee Australia's energy market<sup>3</sup> and outlined what should be considered in national frameworks. Consistent with the AEMA, the AER was established in Commonwealth law<sup>4</sup> as the national energy regulator and the body responsible for monitoring and enforcing national energy legislation. The AEMC was established in State law<sup>5</sup> to undertake rule making and energy market development.

The AEMA also agreed to further develop and implement a national legislative framework for electricity and gas: the National Electricity Law<sup>6</sup> and National Electricity Rules<sup>7</sup> commenced in 2005. The National Gas Law<sup>8</sup> and National

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<sup>1</sup> ERIG was a group established by the Council of Australian Governments (COAG) to review certain elements of the operation of Australia's energy sector and to suggest further reforms, where there is a case for them, supporting more efficient energy markets.

<sup>2</sup> The latest version of the AEMA can be accessed at <http://scer.govspace.gov.au/files/2014/01/Final-Amended-AEMA-Dec-2013-signed.pdf>. Last accessed 13 March 2015.

<sup>3</sup> Clause 5.2 of the Australian Energy Market Agreement.

<sup>4</sup> *Trade Practices Amendment (Australian Energy Market) Act 2004* (The *Trade Practices Act 1974* (Cth) has been replaced by the *Competition and Consumer Act 2010* (Cth)).

<sup>5</sup> *Australian Energy Market Commission Establishment Act 2004* (SA).

<sup>6</sup> *National Electricity Act 1996* (SA).

<sup>7</sup> The current version of the National Electricity Rules can be found at <http://www.aemc.gov.au/energy-rules/national-electricity-rules/current-rules> accessed 13 March 2015.

<sup>8</sup> *National Gas Act 2008* (SA).

Gas Rules<sup>9</sup> commenced in 2008. Further reforms in 2009 established AEMO to operate gas and electricity markets in southern and eastern Australia.

In 2012 the National Energy Customer Framework came into existence. The Framework governs the sale and supply of electricity and natural gas to retail customers and applies to both the National Electricity Market and to natural gas markets. The framework includes the National Energy Retail Law<sup>10</sup> and the National Energy Retail Rules<sup>11</sup>.

The legislative framework is based on the purpose enshrined in the National Electricity Objective<sup>12</sup> and its later counterparts, the National Gas Objective<sup>13</sup>, and the National Energy Retail Objective<sup>14</sup>.

Each national law is set out as a schedule to a South Australian Act, supported by corresponding rules, and applied by legislation in force in those States and Territories that participate in each scheme, and by the Commonwealth as provided for in the *Australian Energy Market Act 2004*.

Collectively, the national laws determine wholesale market arrangements, provide for the economic regulation of electricity and gas transmission and distribution service providers, third party access to their infrastructure, and the regulation of the retail sale and supply of energy to small customers, including a range of energy specific consumer protections separate to the universal

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<sup>9</sup> The current version of the National Gas Rules can be found <http://www.aemc.gov.au/Energy-Rules/National-gas-rules/Current-rules> accessed 13 March 2015.

<sup>10</sup> National Energy Retail Law (South Australia) Act 2011.

<sup>11</sup> The current version of the National Energy Retail Rules can be found at <http://aemc.gov.au/Energy-Rules/Retail-energy-rules/Current-rules> last accessed 2 April 2015.

<sup>12</sup> Section 7 of the Schedule – National Electricity Law in the *National Electricity Act 1996* (SA). The National Electricity 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 price, quality, safety, reliability, and security of supply of electricity; and the reliability, safety and security of the national electricity system.

<sup>13</sup> Section 23 of the Schedule – National Gas Law in the *National Gas Act 2008* (SA). The National Gas Objective is to promote efficient investment in, and efficient operation and use of, natural gas services for the long-term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

<sup>14</sup> Section 13 of the Schedule – National Energy Retail Law of the *National Energy Retail Law Act 2011* (SA). The National Energy Retail Objective is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

protections provided by the Australian Consumer Law<sup>15</sup> and State and Territory based fair trading regulation.

In 2007 ERIG noted the benefits of previous energy policy reform and recommended further reform to increase market contestability, improve transmission planning and regulation, and increase the efficiency of financial markets. ERIG also made recommendations to improve governance within the Australian energy market, including:

- privatising all energy supply assets, disaggregating large energy companies and ending all retail price regulation;
- reforming the AEMC's structure and governance arrangements, including improving the AEMC's funding, autonomy and board structure, and
- reforming the then NEMMCO's structure and governance arrangements along with the recommendation that industry be represented in the appointments of NEMMCO's Board. It sought to ensure that the NEMMCO's Board was independent of individual jurisdictional or sectoral interests and contained the appropriate range of skills.

Most jurisdictions have privatised energy generation assets, but transmission and distribution assets remain publicly owned in most jurisdictions (except South Australia, Victoria and partially in the Australian Capital Territory). The Panel notes that the NSW Government has made a commitment to proceed with the long-term lease of 49 per cent of the NSW electricity network.

Disaggregation of companies has occurred, but this has not always been the case, for example Queensland is now considering whether to merge its publicly owned electricity network service providers Ergon, Energex and Powerlink and to also merge its publicly owned generators CS Energy and Stanwell. Gas market reforms in the 1990s led to structural reforms of the vertically integrated gas utilities and the privatisation of most government-owned gas transmission pipelines. The majority of gas distribution networks are also privately owned.

State and Territory Governments remain responsible for retail pricing policy, and all National Energy Market jurisdictions have introduced full retail

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<sup>15</sup> Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

contestability in electricity and gas, which allows consumers to choose their own retailer. Victoria, South Australia and New South Wales deregulated retail electricity prices in 2009, 2013 and 2014 respectively. The former Queensland Government also passed legislation to introduce a market monitoring and reporting function for south east Queensland retail electricity market from 1 July 2015, but pricing in regional Queensland (i.e. Ergon Energy's distribution area) will remain regulated. Whilst consumers may choose their own retailer, in the ACT, Tasmania (with only one provider) and regional Queensland independent regulators continue to regulate retail electricity prices for small customers on standing offer contracts. Retail gas prices have been deregulated in all states except New South Wales and Western Australia.

COAG endorsed a number of ERIG's recommendations to improve energy market governance through the following commitments:

- establishing a National Energy Market Operator (which later became known as AEMO) ;
- ensuring the governance arrangements for the market operator involve market participants in board appointment processes, in a manner that preserves the board's independence from any particular market participant;
- introducing a national transmission planning function; and
- requiring the Ministerial Council on Energy (now the COAG Energy Council) to report annually to the COAG Reform Council on progress in implementing energy reforms to ensure agreed timelines are met.

Following ERIG's recommendations, 2009 saw the establishment of AEMO to operate gas and electricity markets in southern and eastern Australia.

Since the ERIG review in 2007, it is important to note that there have been a range of changes within the market, some anticipated but some less so. In particular new technologies and competition are playing a more dominant role in the market, increasing the role of consumer choice. Similarly changes have occurred in the wider economy, shifting demand trends and competitive forces. These effects have created new challenges for existing business models, structures and policy, such as the new paradigms of rising prices and falling demand. Arguably the rate of market change may be increasing and market reforms have pre-empted and responded effectively to these changes to a varying degree. It is important that consideration of governance effectiveness be undertaken in the context of modern market conditions and expected future challenges.

## Other Relevant Reviews

The Panel is aware there are several reviews and reports completed or underway such as the Australian Governments' Energy White Paper, the Western Australian Government Electricity Market Review and the Final Report of the Competition Policy Review (the Harper Review) that may have an impact on this Review.

The Issues Paper does not deal with these Reviews directly but any issues coming out of those reviews or reports that are of relevance may be considered as part of this Review.

## Current Governance Arrangements

In broad terms, the intent of the COAG reforms was to establish institutions that were subject to collective oversight by all participating jurisdictions. This requires a high level of clarity and predictability of roles, robust institutional characteristics, appropriate and proportional powers and mandates, appropriate delegation of technical and regulatory change processes, appropriate staffing and resourcing, with clear and agreed levels of accountability. While each institution was created through different legislative models, governments retained policy oversight (including the legal frameworks) and play a key role in market institution appointments through the COAG Energy Council.

### The Ministerial Council

When first established by COAG, the Ministerial Council on Energy (MCE) had a sole focus on energy market reform and the national energy market. The MCE is referenced in the national energy legislation (including the National Electricity Law, the National Gas Law and the National Energy Retail Law).

The remit and name of this ministerial council has changed over time. The original MCE's terms initially included consideration of energy market reform and energy efficiency. In 2011, the MCE was replaced by the Standing Council on Energy and Resources (SCER) and coverage broadened to include resources and many energy efficiency measures moved to the Select Council on Climate Change. The Select Council on Climate Change was subsequently abolished and the COAG Energy Council (the Energy Council)

replaced SCER in December 2013, returning oversight of energy efficiency with energy and resources.

The Energy Council is accountable to COAG in line with its terms of reference, which focus on the development of the nation's energy resources to optimise benefits to the community through:

- co-ordinating governance, policy development and program management to address the future challenges facing Australia's energy sources;
- providing national leadership in key strategic issues, and integrating these priorities into government decision-making; and
- increasing the consistency between regulatory frameworks to reduce costs and improve the operation of the energy sector.

While the title and scope of the Energy Council has altered over time, it retains the original energy market policy role envisaged in the AEMA and referenced in legislation. This includes policy and energy legislation oversight, including the energy laws and regulations, as well as the legislation establishing the market institutions. It is also responsible for key energy market appointments including appointments to the AER, AEMC, AEMO and Energy Consumers Australia (ECA). The AEMA also clearly identifies some issues, such as technical regulation and retail price regulation, as outside of this national oversight role. The AEMA also deals with the application of the national laws by all jurisdictions including the non-interconnected jurisdictions of the Northern Territory and Western Australia.

The Panel considers that the non-energy functions of the Energy Council, such as resources, are outside the scope of the Review, but notes that some elements of resources and energy policies, such as security of supply and fuel sources, are interdependent.

## **Market Institutions**

The three market institutions are the main vehicles by which the Energy Council governs the Australian energy markets.

The AEMC is responsible for rule making and market development in respect of electricity and natural gas transmission and distribution networks<sup>16</sup> and

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<sup>16</sup> From 1 July 2008.

retail markets<sup>17</sup> other than retail pricing. It is established under the *Australian Energy Market Commission Establishment Act 2004* (SA). While this is enacted in South Australia, it requires the unanimous agreement of the Energy Council to amend.

The AER is the principal regulator of energy in Australia. It enforces the electricity and gas rules and is responsible for the economic regulation of electricity and gas transmission and distribution networks and retail markets (other than retail pricing). The AER is established under the *Competition and Consumer Act 2010* (Cth), which is enacted by the Australian Government. The responsibility for the AER rests with the Commonwealth, however the AER's governance, functions, powers and duties are established under agreement of the Energy Council.

AEMO is the system market operator of the NEM and the Victorian wholesale gas market, the operator of various gas markets and the national transmission planner. AEMO is a company limited by guarantee. It has two types of members: government (60 per cent) and industry (40 per cent). Its corporate activities are governed by its Constitution and any obligations required by the *Corporations Act 2001* (Cth).

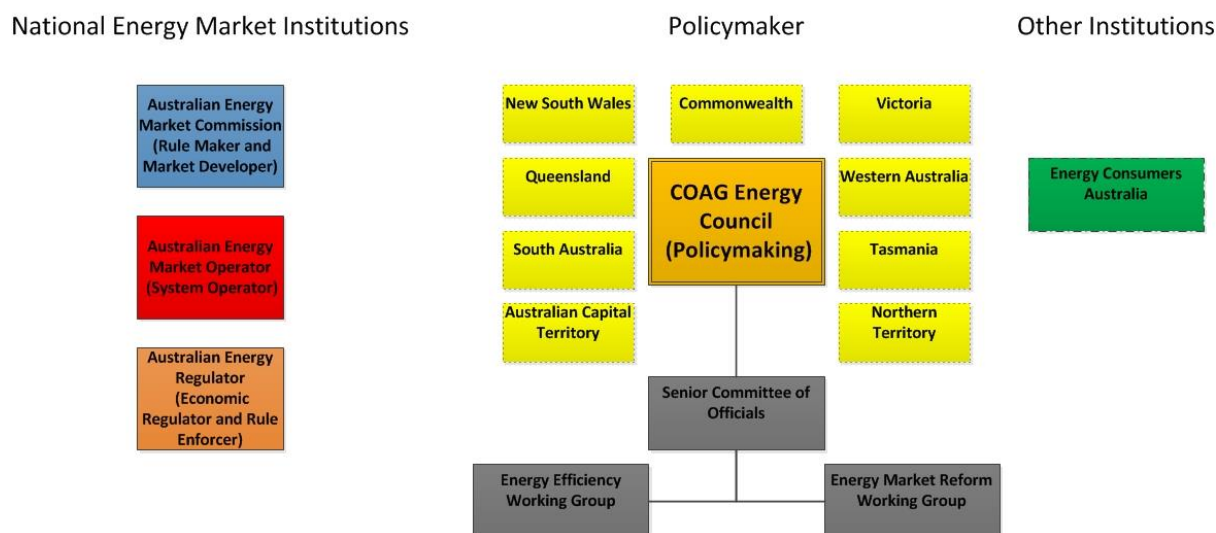
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<sup>17</sup> From September 2009.

# National Energy Governance Structure

The interaction between the three energy market institutions and Governments is provided in the diagram below.

## National Energy Market Governance Bodies



## Issues for Comment

This paper provides some specific questions to guide stakeholder submissions. These questions are not exhaustive and stakeholders should feel free to raise any other issues that are within the Review's Terms of Reference. These questions are highlighted in the relevant sections of the Paper where background or descriptive information is provided, but a complete list is at **Appendix A**.

## COAG Energy Council

### Ministerial Council

The Energy Council's work program includes existing responsibilities under Commonwealth and State legislation, National Agreements, National Partnerships and any other governance arrangements.

Its mandate in energy markets is limited to matters defined by the AEMA, which is its key foundation document for energy market matters. It is also subject to its Terms of Reference which are updated and approved by COAG from time to time. In keeping with the AEMA, it has formal procedures and



voting rules to underpin its decision making, which are broadly based on consensus of affected jurisdictions.

The Commonwealth serves as the permanent Chair of the Energy Council, with an administrative secretariat housed in the Commonwealth Department of Industry and Science. Its national energy policy work is supported by two funding mechanisms, the Energy Special Account and the Climate Change Special Account, both contributed to by all jurisdictions. The Energy Council primarily communicates with stakeholders through its website, bulletins and communiques and specific consultation fora.

The energy market functions of the Energy Council are specifically referenced in clause 4 of the AEMA<sup>18</sup>. It also is responsible for key energy market appointments including appointments to the AER, AEMC, AEMO and ECA and has established protocols and an Independent Energy Council Appointments Selection Panel for this purpose.

The Energy Council makes decisions on the basis of consensus wherever possible. In cases where general agreement cannot be reached, voting rules are applied; one vote is recorded per jurisdiction. Some work streams require specific voting rules, particularly for legislation, statutory functions, appointments and Council protocols. All other decisions are by substantial majority; requiring all but two of the votes to be in agreement.

By convention, the Energy Council meets face to face twice a year, although at times it has held extraordinary meetings in person, or by video or teleconference. It regularly conducts voting and procedural decision making by correspondence out-of-session.

There have been a number of calls to improve the pace of Energy Council processes, a notable case being the recommendations by the Productivity Commission when it delivered its *Inquiry Report into Electricity Network Regulatory Frameworks* (April 2013). Arising from this work and recommendations the then SCER agreed to task officials with examining whether existing Energy Council processes were efficient and whether there were any options which would improve the timeliness of Energy Council processes.

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<sup>18</sup> The Australian Energy Market Agreement is available at <http://scer.govspace.gov.au/files/2014/01/Final-Amended-AEMA-Dec-2013-signed.pdf>. Last accessed 13 March 2015.

## **Senior Committee of Officials (SCO)**

There is no formal or ongoing delegation of decision making by the Energy Council, but by convention it is supported by a network of Officials' groups. The lead group is the Senior Committee of Officials (SCO) which is composed of Senior Officials at Head of Department/Agency level from each of the participating jurisdictions, unless alternative representation for a jurisdiction is determined otherwise by the relevant Head of Department/Agency within that jurisdiction. SCO advises the Energy Council and develops and progresses issues to ensure Energy Council priorities are achieved. The Commonwealth serves as the permanent Chair of SCO, and by convention its decision-making processes and protocols mirror those of the Energy Council<sup>19</sup>. SCO convenes a minimum of four times a year, including prior to Energy Council meetings to consider the agenda and papers for Ministers, and in preparation for each new financial year to consider and approve the forward Energy Council work program and corresponding budget.<sup>20</sup>

Under SCO, there are two energy working groups: the Energy Market Reform Working Group (EMRWG) and the Energy Efficiency Working Group (E2WG).

## **Energy Market Reform Working Group (EMRWG)**

The primary source of technical and policy advice on energy market issues for SCO is the Energy Market Reform Working Group (EMRWG). The role of EMRWG is to identify, consider and respond to the Energy Council, through SCO, priorities for energy market development as determined by SCO, implement energy market reform work programs and associated timetables and budgets, advise on obligations under the AEMA and consult with all key stakeholders on related policy matters.

EMRWG identifies priorities for consideration by SCO and the Energy Council, including reviews and analysis by the three market institutions. It also develops policy proposals for the Energy Council's consideration that:

- promote competition in retail and wholesale markets in gas and electricity;

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<sup>19</sup> The SCO has a Terms of Reference that encapsulates these decision-making processes and protocols. It is currently being updated.

<sup>20</sup> Except for budgets under the Greenhouse and Energy Minimum Standards (GEMS) Intergovernmental Agreement (IGA), the annual work program and budget for the Equipment Energy Efficiency Working Group. These budgets are approved by the Energy Council.

- promote efficient delivery of network services, including efficient investment and operation of gas and electricity network infrastructure; and
- address impediments to, and promote the commercial adoption of, demand-side responses in Australian markets.<sup>21</sup>

EMRWG meets 15 to 20 times a year and has a Terms of Reference that mirrors the decision making process of the Council, including formal out-of-session processes. Jurisdictions cover the costs of their participation.

There are a number of technical working sub-groups established by EMRWG. These sub-groups are created when a work stream requires detailed policy, legal or technical work to be carried out to help EMRWG's work. The sub-working groups of EMRWG can be both standing, as is the case with network policy, retail policy and demand side participation working groups (allowing for detailed discussion around specific Laws and Rules for instance), as well as some time limited ones which operate on an 'as needed' basis. The more active of these sub-groups also have their own external engagement processes, and can have an extensive work program, many of which meet weekly or fortnightly.

## **Energy Efficiency Working Group (E2WG)**

The E2WG implements the energy productivity component of the COAG Energy Council reform tasks. It is responsible for implementation of the Energy Council's National Partnership Agreement on Energy Efficiency, and the National Strategy on Energy Efficiency.

The E2WG's Terms of Reference include delivering energy efficiency initiatives that lower the cost of meeting greenhouse gas reduction policies and reducing energy costs. Meetings are held as needed via teleconference, including to approve work plans and budgets, with eight meetings taking place over the past year. The Secretariat is provided through the Department of Industry and Science. Jurisdictions cover the costs of their participation in meetings.

There are also three working sub-groups under the E2WG - Equipment Energy Efficiency (E3) Committee, the Buildings Committee, and the Data and Industrial Products Committee.

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<sup>21</sup> Energy Market Reform Working Group Terms of Reference and Work Plan

**Appendix C** has further details on the roles and responsibilities of SCO, EMRWG and E2WG and a diagram of other Energy Council working groups.

### **Issues for Comment: the COAG Energy Council (policy maker)**

Overall, the Panel is interested in stakeholders' views on whether the Energy Council's role in energy market governance is still appropriate. In putting forward alternatives, stakeholders should have regard to the evidence for change, and the cost and practical implementation issues of alternatives. Stakeholders may raise issues as they consider relevant, but the Panel has identified the following areas of interest:

1. How has (or how do you consider) the Energy Council's performance tracked over time? What factors do you think are contributing to this?
2. Should the Panel be contemplating alternatives to the COAG council process for the tasks of leading energy market policy developments? Does the AEMA remain fit for purpose?
3. What are the strengths and weaknesses of the Energy Council's decision making arrangements? Are there examples of specific situations where lack of timeliness, or the need to achieve consensus, has adversely affected market outcomes?
4. How relevant is the Energy Council's agenda to contemporary market challenges? How accessible, flexible and transparent is this work program? In what ways might the agenda be improved?
5. Should the Energy Council meet more regularly or delegate more roles to officials? What suggestions can stakeholders offer to improve efficiency, timeliness and accountability of Energy Council processes, including those of SCO and its key working groups?
6. Does the Energy Council provide adequate policy oversight of its three market institutions? Can this be improved?
7. What should be the Energy Council's role in areas outside its direct policy remit, including financial markets, sustainability and climate change issues and social policy? What role should it take in engaging with non-interconnected states like the Northern Territory and Western Australia? What role should it take in areas beyond its AEMA coverage, such as retail price regulation and technical and safety matters? What practical barriers might need to be addressed in it taking on such roles?

## Australian Energy Regulator (AER)

The AER is the national energy regulator and regulates the Australian energy market, overseeing energy market functions which originate in state and territory laws. These are primarily national functions, although the AER has taken on further state-specific roles with the application of the National Energy Retail Law.

The AER consists of three full-time members; two of whom are recommended for appointment by agreement of the Energy Council Ministers representing each of the States and Territories under the AER's jurisdiction, and the third recommended for appointment by the Commonwealth. The Commonwealth member is also a full time Commissioner of the Australian Competition and Consumer Commission (ACCC).

The AER is established under the *Competition and Consumer Act 2010* (Cth) (CCA) but its functions are described in the national energy laws. It is funded<sup>22</sup> and staffed by the Commonwealth through the ACCC (also an entity of the CCA), and therefore has administrative accountabilities to ACCC corporate governance structures under the *Public Governance and Accountability Act 2013* (Cth) and *the Public Service Act 1999* (Cth).

The Chairs of the AER and ACCC operate with separate accountabilities, as stipulated under the CCA, with the AER CEO responsible to the AER Board for staffing and operational matters. The AER and ACCC share common services and facilities, and undertake a range of external facing activities together, such as the utility regulators forum and AER and ACCC regulatory conference.

In 2014, the Energy Council outlined its expectations of the AER under new accountability and performance frameworks.<sup>23</sup> The AER's statement of intent sets out how the AER will meet the Energy Councils expectations through its strategic priorities and work program. It also sets out the AER's deliverables and performance indicators to measure its progress in meeting those expectations. The Commonwealth has also outlined its expectations of the AER's role and responsibilities, relationship with the Australian Government, issues of transparency and accountability, and operational matters.

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<sup>22</sup> Clause 10.1 of the AEMA.

<sup>23</sup> <https://scer.govspace.gov.au/workstreams/energy-market-reform/aer-and-aemc-enhanced-budget-and-performance-reporting/> last accessed 2 April 2015.

The AER is funded by the Australian Government through the Commonwealth Budget, with funding of approximately \$35 million per annum.

Its regulatory functions under national energy market legislation include:

- setting the prices charged for using energy networks (electricity poles and wires and gas pipelines) to transport energy to customers;
- monitoring wholesale electricity and gas markets to ensure suppliers comply with the legislation and rules (and taking enforcement action where necessary);
- regulating retail energy markets in the Australian Capital Territory, South Australia, Tasmania (electricity only) and New South Wales, with much of this work having a consumer-oriented focus, including education for consumers and enforcing compliance by companies;
- publishing information on energy markets, including the annual State of the Energy Market report; and
- assisting the ACCC with energy-related issues arising under the CCA, including enforcement, mergers and authorisations.

While the AER does not currently have functions in Western Australia, on 24 March 2015, the Western Australian Minister for Energy announced that government's intention to transfer regulation of Western Power's networks to the AER under the National Electricity Law and National Electricity Rules. These arrangements are to be progressed as part of Phase Two of the Electricity Market Review process.

### **Issues for Comment: the Australian Energy Regulator (national regulator)**

Overall, the Panel is interested in stakeholders' views on whether the AER's role in energy market governance is still appropriate. In putting forward alternatives, stakeholders should have regard to the evidence for change, and the cost and practical implementation issues of alternatives. Stakeholders may raise issues as they consider relevant, but the Panel has identified the following areas of interest:

8. How has (or how do you consider) the AER's performance tracked over time? What factors do you think are contributing to this?
9. Does the concept of a national energy regulator, separate from the rule maker and jurisdictional governments, remain relevant in today's market? Should the Panel be considering alternative models?
10. Do you consider there are any issues in relation to the performance of the AER's functions? To what extent are your views on the

- performance of the AER due to its institutional arrangements, resourcing, the prescriptive rules environment, or other factors? To what extent does the AER's governance contribute to how it exercises its regulatory tasks, including its approach to enforcement?
11. To what extent does the AER's current three member structure, and the split between Commonwealth and state membership, affect its capabilities? Are there alternative oversight models the Panel should consider, for example a board structure or additional members?
  12. The Panel notes a number of stakeholders have expressed a view that the AER should be separate from the ACCC. Is this a sovereignty issue or is there a systemic problem in performance of the AER? If the latter, what evidence is there of a problem that such changes would address, or alternatively what are the pros and cons to be weighed up in considering the merits of such a change? Do these assessments change with different models for a separate regulator, for example a standalone but otherwise unchanged AER, or combined with other monopoly network regulators as proposed in the Harper Review<sup>24</sup>?
  13. Noting the importance of maintaining independence, what are the opportunities to improve the oversight of the AER by the Energy Council, or individual jurisdictions? How should the Panel consider the potential conflicts which arise from individual jurisdictions (and thereby an element of the Energy Council) holding assets regulated by the AER?
  14. Do you consider the AER adequately resourced? Should the AER be funded by market participants or cost recovery, rather than being funded through the Commonwealth budget?
  15. Should the AER's role be expanded or reduced in any areas, particularly in relation to its market monitoring functions?
  16. How could the relationship between the AER and the other two market institutions (AEMC and AEMO) be improved? Should the AER be given increased capacity to help develop expedited rule changes, or an increased role in reviews or policy advice?
  17. Should the AER have an expanded role in regulating state specific functions outside national frameworks? What are the opportunities to improve interaction with state technical, safety or economic regulators within the national market, and with Northern Territory and Western Australian counterparts?

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<sup>24</sup> Competition Policy Draft Report  
<http://competitionpolicyreview.gov.au/files/2014/09/Competition-policy-review-draft-report.pdf>  
last accessed 19 March 2013.

18. Are there opportunities to improve confidence in regulatory outcomes, for example through improved communication or performance and accountability measures?

## **Australian Energy Market Commission (AEMC)**

The AEMC was established in 2005 by legislation which requires the unanimous agreement of the Energy Council to amend. The AEMC has two functions: it makes and amends the national electricity, gas and energy retail rules, and conducts independent reviews for the COAG Energy Council.

The AEMC makes rules under the National Electricity Law, the National Gas Law and the National Energy Retail Law. These rules impact on how companies can operate and participate in the competitive generation and retail sectors. They also govern the economic regulation of electricity transmission and distribution network services and gas pipelines.

Importantly, any person or body (except for the AEMC)<sup>25</sup> can submit a rule change request to the AEMC. Its role is to manage the rule change process and to consult and decide on rule change requests, by following a procedure that requires public consultation and document publication.

This process takes the form of initial consideration of a rule change proposal by the AEMC and then wider public consultation, incorporating a two-stage consultation process. The AEMC publishes a draft rule determination and draft rule (for public consultation) before publishing the final rule determination and final rule. Under this process, the AEMC allows for public consultation and submissions on all rule proposals and all related AEMC papers before making its final determination. The standard timeframe under law for a rule change is approximately 6 months.

The AEMC provides the Energy Council with advice on improvements to regulatory and energy market arrangements. The AEMC also carries out reviews in accordance with terms of reference developed by the Energy Council and can also initiate its own reviews in relation to operation and effectiveness of the rules.

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<sup>25</sup> The AEMC can only initiate rule changes where the changes are of a non-material or technical nature.



The AEMC consists of three Commissioners; two State and Territory Commissioners (one of whom is Chair) and one Commonwealth Commissioner. The processes for appointing Commissioners to the AEMC are set out in the AEMA and the *Australian Energy Market Commission Establishment Act 2004* (SA). For the appointment of a State and Territory Commissioner at least six State and Territory Ministers must approve to make a recommendation to the South Australian Minister to appoint. One of the State and Territories Commissioners is appointed the Chair. For the appointment of the Commonwealth Commissioner, the Commonwealth Minister must approve the recommendation to the South Australian Minister to appoint.

The AEMC is funded by the States and Territories, pro-rata by a fixed population share as outlined in the funding agreement. The AEMC's budget for 2014-15 is \$20.6 million. Funding mechanisms vary by jurisdiction.

Similar to the AER, in 2014, the Energy Council outlined its expectations of the AEMC under new accountability and performance frameworks.<sup>26</sup>

The AEMC's statement of intent sets out how the AEMC will meet the Energy Council's expectations through its strategic priorities and work program. It also sets out the AEMC's deliverables and performance indicators to measure its progress in meeting those expectations.

The *Inquiry Report into Electricity Network Regulatory Frameworks* by the Productivity Commission recommended that the timeliness of Energy Council and AEMC processes and decision-making could be improved. It recommended that *'the National Electricity Law should be amended to require the AEMC to accelerate the process for making Rule changes within six months where they are requested by the SCER (now Energy Council) and arise from the recommendations of an appropriately conducted independent review, including previous AEMC reviews, relevant to the National Electricity Market'*. (Recommendation 21.6)

The Energy Council's predecessor, SCER, agreed in 2013 that officials prepare amendments to the National Electricity Law (NEL), National Gas Law (NGL) and National Energy Retail Law (NERL) to require the AEMC to accelerate the process for making Rule changes within six months, in the circumstances recommended by the Productivity Commission.

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<sup>26</sup> <https://scer.govspace.gov.au/workstreams/energy-market-reform/aer-and-aemc-enhanced-budget-and-performance-reporting/> last accessed 2 April 2015.

## Issues for Comment: AEMC

Overall, the Panel is interested in stakeholders' views on whether the AEMC's role in energy market governance is still appropriate. In putting forward alternatives, stakeholders should have regard to the evidence for change, and the cost and practical implementation issues of alternatives.

Stakeholders may raise issues as they consider relevant, but the Panel has identified the following areas of interest:

19. How has (or how do you consider) the AEMC's performance tracked over time? What factors do you think are contributing to this?
20. To what extent does the AEMC's statutory rule making process remain appropriate in today's market? Should the Panel be considering, for example, returning this role to jurisdictions or to the Energy Council?
21. Do you consider there are any issues in relation to the performance of the AEMC's functions? To what extent are your views on the performance of the AEMC due to its institutional arrangements, resourcing, the process requirements for rule making, or other factors? To what extent does the AEMC's governance contribute to how it exercises its statutory rule making and market development function? To what extent do you consider the AEMC's rule making processes are achieving the national energy objectives of serving the long term interest of consumers? To what extent are your views a function of its institutional arrangements, the legislative framework it operates in, resourcing, or other factors?
22. To what extent do you consider it is important to have an independent market development role within the AEMC? To what extent do you consider the AEMC's market development role 'outsources or augments' the policy responsibilities of the Energy Council? Does the market development role of the AEMC 'outsource or augment' the technical input to policy provided by the AEMO and AER? Are there alternative recommendations the Panel could pursue to improve collaboration in market development, and/or policy oversight by the Energy Council? To what extent is it important to clearly define the scope of the AEMC's 'market development' role, and the demarcation between the Energy Council and other institutions?
23. To what extent of does the AEMC's commissioner structure, and the split between Commonwealth and State and Territories membership, affect its capabilities and approach to its rule making and market development tasks? Are there alternative oversight models the Panel should consider, for example a board structure or additional commissioners?

24. Do you consider the AEMC is adequately resourced to undertake its roles? Should the AEMC be funded by market participants or cost recovery, rather than being reliant on budget from the States and Territories? Does it have the right skills base to undertake its functions, particularly across the spectrum of electricity, gas and retail sectors?
25. What are the opportunities to improve the timeliness of rule change assessments? For example, should there be a faster track for rules which arise out of reviews by the AEMC or other reputable bodies, or should the AEMC be able to progress less well refined rule proposals from the Energy Council or market participants or have some flexibility to initiate its own rule change proposals? What other opportunities are there to improve the accessibility, transparency, and rigour of the AEMC's processes?
26. Should the AEMC be given an increased gas market reporting role, in a similar manner to its electricity price reporting?

## **Australian Energy Market Operator (AEMO)**

AEMO was established to manage the NEM and gas markets from 1 July 2009. Its core functions include being the system and market operator for the NEM and the Victorian wholesale gas market, the operator of gas markets, national transmission planner and energy market development. Its membership is 60 per cent government (NEM jurisdictions plus the Commonwealth) and 40 per cent industry, and it derives its funding by recovering its costs from market participants. Industry members are derived from registered participants in the gas and electricity markets and the Gas Bulletin Board, and include generators, transmission companies, distribution businesses, retailers and resource companies.

It is a not-for-profit public company limited by guarantee under the *Corporations Act 2001* (Cth) (the Corporations Act). As such, its internal management is governed by its Constitution and the Corporations Act, and it is the former which ties it to undertaking specific functions as specified under the national energy laws. AEMO is able to set its own fees to meet its commitments, and has a 2014-15 final budget of \$141 million.

AEMO may be tasked by the Energy Council and individual jurisdictions to undertake particular functions and because of this has been involved in a range of market development tasks. It is able to follow a statutory process to establish and modify procedures, a form of subordinate regulation, based on a relevant head of power (depending on the market sector in which it is

working). It has some jurisdictional variation in its activities, the most significant being as transmission planner and procurer in Victoria.

While AEMO is an independent institution, AEMO members do not have the power to appoint Board directors. Instead they have the ability to endorse Board candidates but the power to appoint is through the Energy Council. The Energy Council Appointments Panel<sup>27</sup> undertakes an executive search and recommends a short list of candidates against a required skill set. The Panel then produces a report recommending proposed candidates for consideration by members (both government and industry) at a general meeting of the company. If approved by members, the report is submitted to the Energy Council where AEMO Member jurisdictions<sup>28</sup> of the Energy Council make the final decision to approve the appointment (or return for further consideration). If the appointments are approved, the instruments of appointments are executed by AEMO.

AEMO has recently carried out an internal review<sup>29</sup> (foreshadowed in its implementation plan) of its corporate governance arrangements. This made a number of recommendations aimed at improving the independence and capability of its Board which will be considered in this Review.

## **Issues for Comment: the AEMO**

Overall, the Panel is interested in stakeholders' views on whether the AEMO's role in energy market governance is still appropriate. In putting forward alternatives, stakeholders should have regard to the evidence for change, and the cost and practical implementation issues of alternatives. Stakeholders may raise issues as they consider relevant, but the Panel has identified the following areas of interest:

27. How has (or how do you consider) the AEMO's performance tracked over time? What factors do you think are contributing to this?
28. To what extent does AEMO's role as an independent national energy market operator and planner continue to remain relevant to delivering a more integrated, secure and cost effective national energy supply in

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<sup>27</sup> This Panel is appointed by the Energy Council but operates independently of the Energy Council.

<sup>28</sup> Western Australia and Northern Territory are not currently AEMO jurisdictions.

<sup>29</sup> <http://www.aemo.com.au/Consultations/Network-Service-Provider/AEMO/AEMO-Governance-Review> Last accessed on 13 March 2015.

- today's market? What is your assessment of AEMO's leading strengths and shortcomings on delivering on those outcomes?
29. Do you consider there are any issues in relation to the performance of the AEMO's functions? To what extent are your views on the performance of the AEMO due to its institutional arrangements, resourcing, the requirements in the rules, or other factors? To what extent does the AEMO's governance contribute to how it operates as the market operator?
  30. To what extent does AEMO's ownership and governance structure affect the quality of its outcomes? What are the implications for AEMO of having a 60 per cent government shareholding? What are the implications of 40 per cent ownership by industry? Should this be changed – what is the right level and mechanism for encouraging accountability to the Energy Council?
  31. Are there other matters to consider in terms of the influence of governments on AEMO, including the ability to task AEMO with projects, and the ability to influence board appointments? To what extent should the Panel be considering alternatives to the current AEMO structure, that is, a Corporations Act company with a Board to oversee activities?
  32. To what extent do AEMO's different roles in the national market, including its responsibility for different gas trading hub designs but not the wider gas market, and having a combination transmission planner/procurer role only in Victoria, affect its ability to deliver better national market outcomes? Is there a case for expanding or reducing AEMO's role in any areas?
  33. Does AEMO have sufficient financial, human and technical resources to undertake its roles? If not, what are the key areas for improvement in the way it sets fees and manages its resources?
  34. What opportunities are there for AEMO to improve market operation data, confidence in market outcomes, and its stakeholder engagement processes?
  35. What should AEMO's role be in market development? How might its current contribution be improved? Are there ways to improve its procedure development processes? Should it be given more specific roles in supporting regulatory processes?
  36. What are the opportunities to improve the way AEMO engages with the Energy Council and the other two institutions? Is there a role that AEMO should play in non-NEM jurisdictions, or in markets outside its direct remit such as financial markets?
  37. What are the opportunities to improve the quality and relevance of AEMO's planning and forecasting roles, including mechanisms to

improve the value adding AEMO can deliver on its existing market information sets?

## **Energy Consumers Australia (ECA)**

On 30 January 2015 Energy Consumers Australia (ECA) was established. The establishment of ECA realised the decision of the Energy Council to establish a national energy consumer advocacy body that promotes the long term interests of consumers, particularly small business and residential customers. ECA was established as a company limited by guarantee, with the principal source of funding coming from market participant fees (collected by AEMO). ECA, among other activities, will undertake research and advocacy on behalf of consumers, as well as supporting energy consumer advocacy projects and capacity building by existing advocacy organisations. ECA replaces and builds on the activities formally undertaken by the Consumer Advocacy Panel, which operated under the AEMC Establishment Act, until its repeal and closure in January 2015. The Panel notes that in establishing ECA the Energy Council agreed that the body will be subject to a review in 2018-19.

The Panel notes there are no specific reference to ECA in the Review's Terms of Reference and considers it would be premature to be making recommendations on ECA in what are still its very early days of establishment. However, the arrival of ECA has signalled a change in the national energy institutional landscape and creates new opportunities for the greater consumer engagement with both the three institutions and the Council.

## **Energy Market – Relationships and Related issues**

In addition to their specific relationships with the Energy Council and national frameworks, the institutions have a range of formal (for example specific task requirements) and memoranda of understanding (MoUs) and informal interactions on market policy. This includes engagements with counterparts in the Northern Territory and Western Australia, with state agencies in those jurisdictions which have not fully applied national frameworks, with international networks of like institutions, and other stakeholders such as consumer groups and the broader community.

The Panel also notes there are a range of energy market issues which link closely to areas outside the remit of energy ministers, including in the areas of sustainability and climate change, financial markets, and some aspects of consumer policy, which may have direct relevance to energy market outcomes.

As a notable recent example, the AEMC has released a report which outlines measures to improve the financial resilience of the NEM, including elevating decision making to respond to a large market participant failure to a single decision making point and supporting decision making through advice from a 'NEM Resilience Council' comprising the AEMC, AER, AEMO, and the Australian Securities and Investment Commission (ASIC).

With many common work areas the Panel notes the health of these linkages, and clarity of roles and responsibilities are important to meeting statutory outcomes.

### **Issues for comment: energy market relationships and related issues**

Whilst the Review will examine in detail each institution as described above, the Panel is also interested in the overarching structures and frameworks across the whole energy market. To that end, the Panel would appreciate stakeholders' views on the following strategic questions when formulating overall positions within the Review.

38. How positive or negative do you perceive the communication channels between the Energy Council, AEMO, the AEMC, and AER to be? What are the opportunities to enhance the way these institutions interact with each other?
39. To what extent do the roles and responsibilities of the different institutions as laid out in the AEMA consistent with the establishing legislation?
40. Does the broad division of mandates between these institutions remain appropriate? Are there relevant international models of alternatives the Panel should be considering?
41. What are the opportunities to enhance the way these institutions interact with stakeholders and the broader community?
42. What are the opportunities to improve the extent and consistency of responsibilities and roles by individual jurisdictions under these energy market governance arrangements?

43. What are the opportunities to improve integration between energy market, efficiency and sustainability agendas?
44. What are the opportunities to improve the governance of energy financial markets? Would a NEM Resilience Council be useful in any future governance arrangements in the NEM? What role, if any, should ASIC play in regulating electricity companies who hold financial services licenses to allow them to trade in electricity derivatives?
45. What are the opportunities to improve consumer engagement in energy market governance, particularly given the recent creation of ECA by the Energy Council?
46. There exists a range of energy market issues outside of the remit of energy ministers. Are there any issues in how this impacts the governance of the Australian Energy Market?



## Appendix A: Consolidated List of Questions

1. How has (or how do you consider) the Energy Council's performance tracked over time? What factors do you think are contributing to this?
2. Should the Panel be contemplating alternatives to the COAG council process for the tasks of leading energy market policy developments? Does the AEMA remain fit for purpose?
3. What are the strengths and weaknesses of the Energy Council's decision making arrangements? Are there examples of specific situations where lack of timeliness, or the need to achieve consensus, has adversely affected market outcomes?
4. How relevant is the Energy Council's agenda to contemporary market challenges? How accessible, flexible and transparent is this work program? In what ways might the agenda be improved?
5. Should the Energy Council meet more regularly or delegate more roles to officials? What suggestions can stakeholders offer to improve efficiency, timeliness and accountability of Energy Council processes, including those of SCO and its key working groups?
6. Does the Energy Council provide adequate policy oversight of its three market institutions? Can this be improved?
7. What should be the Energy Council's role in areas outside its direct policy remit, including financial markets, sustainability and climate change issues and social policy? What role should it take in engaging with non-interconnected states like the Northern Territory and Western Australia? What role should it take in areas beyond its AEMA coverage, such as retail price regulation and technical and safety matters? What practical barriers might need to be addressed in it taking on such roles?
8. How has (or how do you consider) the AER's performance tracked over time? What factors do you think are contributing to this?
9. Does the concept of a national energy regulator, separate from the rule maker and jurisdictional governments, remain relevant in today's market? Should the Panel be considering alternative models?
10. Do you consider there are any issues in relation to the performance of the AER's functions? To what extent are your views on the performance of the AER due to its institutional arrangements, resourcing, the prescriptive rules environment, or other factors? To what extent does the AER's governance contribute to how it exercises its regulatory tasks, including its approach to enforcement?
11. To what extent does the AER's current three member structure, and the split between Commonwealth and state membership, affect its capabilities? Are there alternative oversight models the Panel should consider, for example a board structure or additional members?

12. The Panel notes a number of stakeholders have expressed a view that the AER should be separate from the ACCC. Is this a sovereignty issue or is there a systemic problem in performance of the AER? If the latter, what evidence is there of a problem that such changes would address, or alternatively what are the pros and cons to be weighed up in considering the merits of such a change? Do these assessments change with different models for a separate regulator, for example a standalone but otherwise unchanged AER, or combined with other monopoly network regulators as proposed in the Harper Review<sup>1</sup>?
13. Noting the importance of maintaining independence, what are the opportunities to improve the oversight of the AER by the Energy Council, or individual jurisdictions? How should the Panel consider the potential conflicts which arise from individual jurisdictions (and thereby an element of the Energy Council) holding assets regulated by the AER?
14. Do you consider the AER is adequately resourced? Should the AER be funded by market participants or cost recovery, rather than being funded through the Commonwealth budget?
15. Should the AER's role be expanded or reduced in any areas, particularly in relation to its market monitoring functions?
16. How could the relationship between the AER and the other two market institutions (AEMC and AEMO) be improved? Should the AER be given increased capacity to help develop expedited rule changes, or an increased role in reviews or policy advice?
17. Should the AER have an expanded role in regulating state specific functions outside national frameworks? What are the opportunities to improve interaction with state technical, safety or economic regulators within the national market, and with Northern Territory and Western Australian counterparts?
18. Are there opportunities to improve confidence in regulatory outcomes, for example through improved communication or performance and accountability measures?
19. How has (or how do you consider) the AEMC's performance tracked over time? What factors do you think are contributing to this?
20. To what extent does the AEMC's statutory rule making process remain appropriate in today's market? Should the Panel be considering, for example, returning this role to jurisdictions or to the Energy Council?
21. Do you consider there are any issues in relation to the performance of the AEMC's functions? To what extent are your views on the

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<sup>1</sup> Competition Policy Draft Report  
<http://competitionpolicyreview.gov.au/files/2014/09/Competition-policy-review-draft-report.pdf>  
last accessed 19 March 2013.

- performance of the AEMC due to its institutional arrangements, resourcing, the process requirements for rule making, or other factors? To what extent does the AEMC's governance contribute to how it exercises its statutory rule making and market development function? To what extent do you consider the AEMC's rule making processes are achieving the national energy objectives of serving the long term interest of consumers? To what extent are your views a function of its institutional arrangements, the legislative framework it operates in, resourcing, or other factors?
22. To what extent do you consider it is important to have an independent market development role within the AEMC? To what extent do you consider the AEMC's market development role 'outsources or augments' the policy responsibilities of the Energy Council? Does the market development role of the AEMC 'outsource or augment' the technical input to policy provided by the AEMO and AER? Are there alternative recommendations the Panel could pursue to improve collaboration in market development, and/or policy oversight by the Energy Council? To what extent is it important to clearly define the scope of the AEMC's 'market development' role, and the demarcation between the Energy Council and other institutions?
  23. To what extent of does the AEMC's commissioner structure, and the split between Commonwealth and State and Territories membership, affect its capabilities and approach to its rule making and market development tasks? Are there alternative oversight models the Panel should consider, for example a board structure or additional commissioners?
  24. Do you consider the AEMC is adequately resourced to undertake its roles? Should the AEMC be funded by market participants or cost recovery, rather than being reliant on budget from the States and Territories? Does it have the right skills base to undertake its functions, particularly across the spectrum of electricity, gas and retail sectors?
  25. What are the opportunities to improve the timeliness of rule change assessments? For example, should there be a faster track for rules which arise out of reviews by the AEMC or other reputable bodies, or should the AEMC be able to progress less well refined rule proposals from the Energy Council or market participants or have some flexibility to initiate its own rule change proposals? What other opportunities are there to improve the accessibility, transparency, and rigour of the AEMC's processes?
  26. Should the AEMC be given an increased gas market reporting role, in a similar manner to its electricity price reporting?
  27. How has (or how do you consider) the AEMO's performance tracked over time? What factors do you think are contributing to this?

28. To what extent does AEMO's role as an independent national energy market operator and planner continue to remain relevant to delivering a more integrated, secure and cost effective national energy supply in today's market? What is your assessment of AEMO's leading strengths and shortcomings on delivering on those outcomes?
29. Do you consider there are any issues in relation to the performance of the AEMO's functions? To what extent are your views on the performance of the AEMO due to its institutional arrangements, resourcing, the requirements in the rules, or other factors? To what extent does the AEMO's governance contribute to how it operates as the market operator?
30. To what extent does AEMO's ownership and governance structure affect the quality of its outcomes? What are the implications for AEMO of having a 60 per cent government shareholding? What are the implications of 40 per cent ownership by industry? Should this be changed – what is the right level and mechanism for encouraging accountability to the Energy Council?
31. Are there other matters to consider in terms of the influence of governments on AEMO, including the ability to task AEMO with projects, and the ability to influence board appointments? To what extent should the Panel be considering alternatives to the current AEMO structure, that is, a Corporations Act company with a Board to oversee activities?
32. To what extent do AEMO's different roles in the national market, including its responsibility for different gas trading hub designs but not the wider gas market, and having a combination transmission planner/procurer role only in Victoria, affect its ability to deliver better national market outcomes? Is there a case for expanding or reducing AEMO's role in any areas?
33. Does AEMO have sufficient financial, human and technical resources to undertake its roles? If not, what are the key areas for improvement in the way it sets fees and manages its resources?
34. What opportunities are there for AEMO to improve market operation data, confidence in market outcomes, and its stakeholder engagement processes?
35. What should AEMO's role be in market development? How might its current contribution be improved? Are there ways to improve its procedure development processes? Should it be given more specific roles in supporting regulatory processes?
36. What are the opportunities to improve the way AEMO engages with the Energy Council and the other two institutions? Is there a role that AEMO should play in non-NEM jurisdictions, or in markets outside its direct remit such as financial markets?

37. What are the opportunities to improve the quality and relevance of AEMO's planning and forecasting roles, including mechanisms to improve the value adding AEMO can deliver on its existing market information sets?
38. How positive or negative do you perceive the communication channels between the Energy Council, AEMO, the AEMC, and AER to be? What are the opportunities to enhance the way these institutions interact with each other?
39. To what extent do the roles and responsibilities of the different institutions as laid out in the AEMA consistent with the establishing legislation?
40. Does the broad division of mandates between these institutions remain appropriate? Are there relevant international models of alternatives the Panel should be considering?
41. What are the opportunities to enhance the way these institutions interact with stakeholders and the broader community?
42. What are the opportunities to improve the extent and consistency of responsibilities and roles by individual jurisdictions under these energy market governance arrangements?
43. What are the opportunities to improve integration between energy market, efficiency and sustainability agendas?
44. What are the opportunities to improve the governance of energy financial markets? Would a NEM Resilience Council be useful in any future governance arrangements in the NEM? What role, if any, should ASIC play in regulating electricity companies who hold financial services licenses to allow them to trade in electricity derivatives?
45. What are the opportunities to improve consumer engagement in energy market governance, particularly given the recent creation of ECA by the Energy Council?
46. There exists a range of energy market issues outside of the remit of energy ministers. Are there any issues in how this impacts the governance of the Australian Energy Market?

# Appendix B: Terms of Reference

## Review of Governance Arrangements for Australian Energy Markets

### Terms of Reference

#### Context

In its April 2007 response to the report of the Energy Reform Implementation Group, the Council of Australian Governments (COAG) committed to a review of energy market governance arrangements five years after their commencement. These arrangements include the national regulator (AER<sup>1</sup>), rule maker and market development body (AEMC<sup>2</sup>) and market and system operator (AEMO<sup>3</sup>) overseen by a ministerial council now known as the COAG Energy Council (the Energy Council). With the creation of the final of these institutions - AEMO - in 2009, this review is now due.

The review is intended to examine the broad energy market institutional structure created by COAG as well as the legislative framework that establishes and assigns functions to institutions.

In broad terms, the Energy Council considers the intent of the COAG reforms was to improve the performance of national energy markets by establishing institutions that were subject to collective oversight by all participating jurisdictions. This would require a high level of clarity and predictability of roles, robust institutional characteristics, appropriate and proportional powers and mandates, appropriate delegation of technical and regulatory change processes, appropriate staffing and resourcing, with clear and agreed levels of accountability. While each institution was created in a different model, the Energy Council retained policy oversight including for the legal frameworks and plays a key role in appointment arrangements.

While the Energy Council considers that the energy market governance framework has performed well, there has been significant evolution in the national energy laws, including the creation of gas and retail laws, changes in gas and financial markets, and changes in the way electricity is generated, transmitted and used. These have created challenges for each institution not anticipated at the time of establishment and so a review of the governance regimes is timely.

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<sup>1</sup> Australian Energy Regulator

<sup>2</sup> Australian Energy Market Commission

<sup>3</sup> Australian Energy Market Operator

## **The Review**

The review is to consider the performance of current governance arrangements for energy markets and provide advice to the Energy Council on potential areas of improvement to the institutions and their oversight by the Energy Council.

The review should seek to identify governance arrangements that support market outcomes that are in the long term interests of consumers, as stated in the National Electricity Objective (NEO), the National Gas Objective (NGO) and the National Energy Retail Objective.

It should consider, in the light of experience and expected changes in the policy, regulatory and operational environment for the national energy market, whether:

- the institutional structures of the three market bodies (AEMO, AER and AEMC) , and their roles as broadly defined remain appropriate
- the broad scope and division of mandates of each institution remains appropriate
- the role, operation and responsibilities of the Energy Council, its Senior Officials, and the three market bodies including the current roles and responsibilities of these parties are clear and providing the best outcomes
- there are opportunities to enhance the way these institutions interact with each other, the Energy Council, Senior Officials, and stakeholders and if so how these opportunities could be best pursued
- the extent of conferral of responsibilities and roles by individual jurisdictions under these energy market governance arrangements is appropriate
- there are opportunities to expedite the Energy Council and AEMC's energy market reform processes (see below), and if so how this should be done.

The review should consider the issues raised in the review undertaken by AEMO of its governance in 2013 and the findings of the Productivity Commission's 2013 Electricity Network Regulatory Frameworks Report. In light of that report's findings on AEMC processes and energy market governance the review should explore actions to expedite energy market reform processes and whether it is possible to incorporate less formal processes to achieve policy objectives.

The review should be informed by extensive consultation. While it is not the intention to extensively research or replicate international models, these could be drawn on where appropriate.

This work should also be informed by, but not duplicate, any reviews of individual agency resourcing and capacity. An examination of the AER's resources, independence and operational arrangements was foreshadowed by COAG in 2012, and views relevant to this question may be canvassed as part of the present review. However, structural separation of the AER from the Australian Competition and Consumer Commission is not current Commonwealth policy, and a revision to the Commonwealth's position would require compelling new evidence in the context of the evolving energy market.

The review will not consider energy market institutions in Western Australia, except to the extent to which the Western Australian energy market might reasonably affect the outlook for the existing national institutions.

### **Outcomes**

The review will produce a draft report and a final report to Energy Council by September 2015. Unless specifically excluded, the draft and final reports will be published.

### **Process**

The review will be conducted by a panel comprising persons with appropriate expertise in Australian energy markets and governance issues, supported by a Secretariat coordinated by the Commonwealth Department of Industry.

The review will be funded from the Energy Special Account.

An advisory committee will be established comprised of members nominated by participating jurisdictions. The reviewers will consult with the committee from time to time to provide notice of its advice and to seek feedback. A draft work plan and timeline is set out below.

Activity	Due by
Terms of Reference approved by the COAG Energy Council	December 2014
Expert review panel identified and services procured	January 2015
Review commences	February 2015
Issues paper	March – April 2015
Public consultation on Issues Paper	April – May 2015
Progress report to the COAG Energy Council	May – June 2015
Draft report to the advisory committee	July 2015

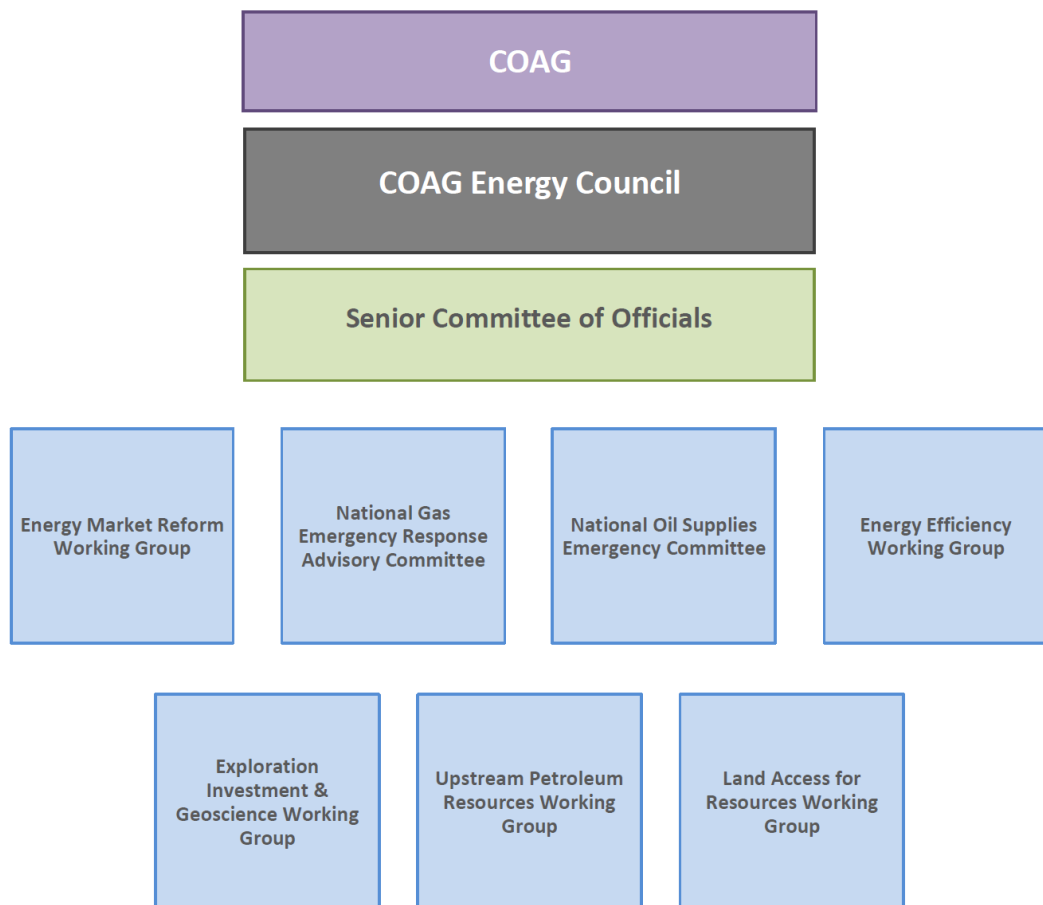


Public consultation on Draft Report	August 2015
Final report to the COAG Energy Council	September 2015
The COAG Energy Council's response	December 2015

# Appendix C: COAG Energy Council – SCO and Energy-Related Working Groups



March 2015



## Senior Committee of Officials - Functions

SCO's functions include:

- the development and progress of issues and make recommendations to Ministers relevant to the further development of high-level energy and resources policy and reform;
- prioritising issues that require Ministerial attention and decision making;

- making decisions on behalf of the Energy Council for issues not requiring Ministerial attention including those of a heavy procedural or administrative nature;
- developing a strategic work program for the Energy Council in-line with its Terms of Reference and other issues of national significance as agreed by Ministers;
- defining and managing appropriate operational arrangements, including working group structure and financial management;
- overseeing working groups to ensure COAG and Energy Council objectives are met in a coordinated and timely fashion;
- developing reform focused and strategic agendas for Ministers that provide a framework for discussion of the Energy Council's priorities of national significance and limit items of a procedural and technical nature;
- managing required reporting to COAG and other key stakeholders; and
- prosecuting other duties as directed by Ministers.

The SCO can establish working groups to implement the Energy Council work program.

## **Energy Market Reform Working Group - Functions**

The Energy Market Reform Working Group (EMRWG) is the main instrument looking at these energy market reform processes to support investment and market outcomes in the long term interests of consumers. EMRWG was established by the Ministerial Council on Energy, now the COAG Energy Council to identify, consider and respond to priorities for energy market reform by:

- implementing national energy market reform work programs;
- providing advice on obligations under the Australian Energy Market Agreement and related legislation;
- consulting with key stakeholders on related policy matters; and
- identifying strategic priorities for review in the energy sector.

EMRWG's work plan focuses on delivering several of the Energy Council's priority issues, including:

- promoting efficiency through the development of consistent national frameworks;
- promoting competition in retail and wholesale markets in gas and electricity;

- promoting efficient delivery of network services, including efficient investment and operation of gas and electricity network infrastructure;
- identifying changes to ensure market resilience and energy security; and
- addressing impediments to, and promoting the commercial adoption of, demand-side response in Australian markets.

EMRWG is one of the working groups that sit beneath SCO.

## **Energy Efficiency Working Group (E2WG) - Functions**

The Energy Efficiency Working Group (E2WG) implements the energy productivity component of the Energy Council reform tasks. The E2WG Terms of Reference outlines its functions as:

- providing strategic advice on energy efficiency policy;
- developing papers, proposals, work plans and budgets for submission to the SCO and, where appropriate, the Energy Council;
- implementation of energy efficiency aspects of the Energy Council work plan;
- reporting to SCO on implementation of energy efficiency measures (including budget reporting); and
- consulting with stakeholders as required.

There are three working committees under the E2WG; the Buildings Committee, Equipment Energy Efficiency Committee and the Industrial Information and Data Coordination Committee.

### **Buildings Committee**

The Buildings Committee is an implementation committee of the E2WG. The Buildings committee work program has been designed to deliver on Section 3 of COAG's National Strategy on Energy Efficiency (NSEE).

The role of the Buildings Committee is to monitor the ongoing building energy efficiency matters and implementation of E2WG funded building projects. It provides high-level guidance on the E2WG buildings work program and also explores opportunities for improved national consistency and collaboration across jurisdictions in optimising building energy efficiency, including regulatory frameworks. It identifies matters that need a coordinated approach.

The Buildings Committee has responsibility for:

- Providing leadership and management of the E2WG's Buildings work program—priorities and delivery of project outcomes.
- Providing assurance to E2WG that the buildings work program is delivering agreed outcomes for COAG.
- Ensuring the program intent is met by maintaining the currency of the program and its alignment with the NSEE Section 3 – Making buildings more efficient.
- Reallocating funds within the program as authorised by E2WG.
- Improving national consistency and collaboration across jurisdictions in optimising energy efficiency in the built environment including regulatory frameworks.

The Buildings Committee meetings are held quarterly.

## **Equipment Energy Efficiency (E3) Committee**

The Equipment Energy Efficiency (E3) Committee is responsible for the implementation of the E3 Program; a joint initiative of the Australian, Commonwealth, State and Territory governments and the New Zealand Government.

The E3 Program operates under national legislation, the *Greenhouse and Energy Minimum Standards Act 2012 (Cth)* (GEMS), which is underpinned by the GEMS Intergovernmental Agreement (IGA). New Zealand participates in the Program under the Australia-New Zealand Policy Framework and Funding Arrangement for the Equipment Energy Efficiency Program.

The E3 Committee reports to the E2WG, SCO and the COAG Energy Council. The IGA requires the establishment of the E3 Committee and its functions, specified in the IGA, include:

- Providing advice and technical input to the Energy Council on policy, planning and implementation of the E3 Program, including budget matters
- Advising and assisting the GEMS Regulator in the development and regulatory implementation of technical, legal and administrative aspects of the program
- Leading the development and implementation of new or revised GEMS requirements and development and international harmonisation of test procedures and standards
- Considering products for possible regulation under GEMS

- Monitoring the effectiveness of the Program
- Consulting with industry and consumer stakeholders in implementing the Program
- Advising the Regulator on targeting compliance and enforcement activities.

The Committee meets twice a year, is chaired by the Commonwealth, and includes officials from state and territory government agencies as well as representatives of the New Zealand Government. Ad-hoc teleconferences are held as required.

## **Industrial Information and Data Coordination (IIDC) committee**

The focus of the Industrial Information and Data Coordination (IIDC) committee is on sharing and collaborating on industrial energy efficiency information resources and data, including:

- facilitating communication on industrial information and data
- providing a forum for government officials involved in related activities to share experiences with their peers.
- The committee was formed in early 2014 by merging two well established E2WG committees – the Energy Efficiency Data Working Group and the Commercial and Industrial Implementation Group. These two groups had a range of achievements, including:
  - revision of the Energy Audit Standard (AS/NZS 3598)
  - development of the Industrial Energy Efficiency Data Analysis dataset
  - update of the Energy Efficiency Exchange website (eex.gov.au).

The committees merged to reflect that while there were no new joint projects across jurisdictions, there is still a need to ensure outputs of the predecessor committees are used and share knowledge on energy efficiency data and outreach activities. Since its merger, the committee has not met regularly though committee members have been contacted individually on occasion. Budgets for predecessor committees were approved by E2WG and SCO. No new budget was allocated to this committee. It is expected to have no budget remaining by the end of 2014–15.