

ATA Submission:
Review of Governance Arrangements for Australian Energy Markets Draft Report

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



Submitted by email to: energygovrev@industry.gov.au

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Dear Review Panel and Secretariat,

The Alternative Technology Association (ATA) welcomes the opportunity to provide further feedback to the Panel for the Review of Governance Arrangements for Australian Energy Markets. We thank the Panel for producing a Draft Report which clearly addresses many of the issues raised in our previous submission, and for accepting our request for an extended deadline for this submission.

Founded 35 years ago, the ATA is a National, not-for-profit organisation whose 6,000 members are residential energy consumers.

ATA presents a uniquely two-fold perspective as an energy consumer advocate. With the support of Energy Consumers Australia (and formerly Consumer Advocacy Panel), ATA brings experience in energy policy, markets and technology, to be a strong and informed voice for energy consumers across the NEM. We also speak with authority on behalf of the growing portion of the consumer base who have an active interest in demand side participation.

ATA is supportive of COAG Energy Council's review of energy market governance arrangements and appreciates this opportunity to contribute. ATA hopes this review will lead to more competitive markets and effective regulation that unambiguously meets the long term interests of consumers.

In our first submission, ATA raised matters of representation, accountability, transparency and process with respect to AEMO and the IEC, based on ATA's view that there is a need to restore the primacy of the NEO (and NGO) at all levels of decision making in the NEM while providing balance between the needs of consumers and industry stakeholders.

Over the past six years, as an advocate for small energy users in relation to energy market reforms and regulation, ATA has had strong, continuous, and - for the most part - productive engagement with AEMO across a number of different processes and working groups. ATA values the positive relationship we have with AEMO from a staff level up to an executive level.

Often, ATA is the sole consumer advocate, and only non-industry representative, in AEMO processes. As such, ATA is uniquely placed to provide informed insights into the nature and impact of governance issues at AEMO.

AEMO Recommendation 1: That the role of AEMO as the market and system operator be defined as:

- **facilitating the operation of markets for energy; and**
- **promoting the reliability and efficient operation of energy systems and markets.**

and

AEMO Recommendation 2: That ‘promoting the development’ of the wholesale exchange and markets be removed from AEMO’s statutory functions.

ATA response: Supported, with suggested modification and disambiguation.

ATA supports this definition of AEMO’s role in the terms described in Recommendation 1, along with the recommended amendment proposed by ECA in their submission to the Draft Report.

In relation to Recommendation 2, we are of the view that AEMO must retain the capacity to consider and initiate improvements to aspects of the energy market, with appropriate checks and balances, and so support Recommendation 2 if it would not compromise AEMO’s ability to do this.

ATA has noted our firm view that AEMO’s ‘industry bias’ has impacted the quality of outcomes for consumers for a number of externally initiated reforms. However, with appropriate checks and balances (for example the AEMC’s Rule Change process, which is already in place), AEMO should reserve the ability to investigate and request improvements to the energy market and system that are in the long term interest of consumers.

ATA notes AEMO’s recent Rule Change request, to improve arrangements for System Restart Ancillary Services, as one positive example of AEMO requesting an improvement to the energy market in the long term interest of consumers. Under the Rules at the time AEMO made the request, the requirement to procure SRAS services was leading to increasingly inefficient and uncompetitive outcomes, and payments for some generators that were clearly unable to provide the service. When the rule change proposed by AEMO took effect this year, the outcome was a saving of over \$30 Million per year. Most of these savings will ultimately flow through to consumers.

ATA thanks the panel for clarifying the intention of this recommendation (at the stakeholder meeting on August 25th). ATA supports the Panel’s intention, and requests that the Panel **consider whether any interpretation of Recommendation 2 may unintentionally restrict AEMO’s ability to promote improvements to the market and system where these are in the long term interest of consumers**. If needed, ATA requests that the Panel modify this recommendation in the interest of disambiguation.

AEMO Recommendation 3: That the COAG Energy Council not assign policy-related tasks to AEMO, but that the expertise of AEMO be accessed through consultation by the AEMC.

ATA response: Supported

As noted in our earlier submission, in ATA's view, there have clearly been some unsatisfactory outcomes with respect to AEMO's performance in relation to reforms that are intended to bring the benefits of improved choice for consumers. Some of the actions of AEMO in recent years indicate an entrenched reluctance to progress reforms that aim to benefit consumers by improving competition with existing energy businesses.

This reluctance is in spite of the facts that

- these reforms are part of COAG Energy Council's reform agenda;
- these reforms are widely understood to lead to better outcomes for consumers; and
- AEMO are bound by the National Electricity Objective (NEO) to act in the long term interest of consumers.

ATA's earlier submission cited examples of where AEMO's approach to these reforms is neither reflective of positive stakeholder engagement nor focussed on the long term interest of consumers. As noted therein, ATA is deeply disappointed to say it has lost confidence that AEMO will contribute independently, cooperatively and positively to the implementation of reforms that improve consumer choice and competition wherever those reforms pose risk to incumbent businesses.

Accordingly, ATA **supports the panel recommendation to limit AEMO's role in policy development and implementation.**

AEMO Recommendation 4: That the COAG Energy Council work with states such as Victoria to develop alternative arrangements for state-specific activities currently carried out by AEMO...

ATA response: Not supported

ATA is of the view that the proposal to consider changing AEMO's transition planning role is well intended but may have a very negative impact for Victorian energy consumers.

Victoria's energy users enjoy relatively low transmission costs compared to other states, along with a high level of system reliability that exceeds the reliability standards without adding undue cost. Noting these outcomes of the current arrangements, ATA is of the view that AEMO demonstrably provides better outcomes in Victoria's transmission system than would an alternative transmission planner.

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ATA understands (from discussion with the Panel members) that the Panel would prefer AEMO's Transmission planning function to be a contestable service. Since VENcorp, who was previously responsible for Victorian transmission planning, become part of AEMO, AEMO acquired and maintained extensive unique expertise in transmission planning in Victoria. ATA doubts that any other *independent* planner has the requisite skills and experience to perform this function to perform this function as efficiently as AEMO.

ATA is concerned that the assertion made by Snowy Hydro “[AEMO] it is also a not for profit organisation which appears to conflict with the incentive schemes for network businesses which use financial incentives to motivate TNSPs” has been cited in the Draft Report to support this recommendation. Given that any *independent* planner will, presumably, be in a similar situation, this could be interpreted to suggest that the Panel would accept that the planning function could be given to the TNSP as it is in other states.

TNSPs in other states have an obvious conflict of interest in undertaking their own planning, resulting in them making decisions that favour more investment and revenue, for example by exaggerating demand forecasts. This is a major reason that consumers in other states pay much more for transmission services than Victorians.

For the same reason, TNSPs that do their own planning can't be relied on to facilitate meaningful consideration of non-network alternatives to asset replacement, again at considerable cost to consumers.

On the other hand, as part of a recent Regulatory Investment Tests for Transmission in Victoria, ATA (as a consumer advocate) engaged with AEMO seeking consideration of non-network options. We found AEMO in those cases to be responsive, transparent and appropriately impartial: AEMO supported ATA's recommendations to more effectively assess opportunities for non-network alternatives (through undertaking additional detailed analysis), and align the RiT-T processes for two separate infrastructure projects to facilitate consideration of potential non-network solutions common to both.

ATA is of the view any TNSP undertaking their own RiT-T is highly unlikely to undertake such effective, productive engagement as this – indeed, they have an obvious interest in not doing so.

ATA strongly supports the Panel's related recommendation that a 'necessity criterion' should apply when jurisdictions seek exemptions from national arrangements, and is of the view that Victoria's current Transmission planning arrangements would meet such a criteria.

ATA is of the view that AEMO would, ideally, have a national role in transmission planning and procurement. However, while nationally consistent frameworks are usually preferable, 'uniformity for its own sake' can lead to unintended consequences. Hence, it may be appropriate for this role to be constrained to Victoria if it cannot be extended to other states.

Accordingly, **ATA recommends that the Panel reconsider its initial position on the matter of AEMO's Transmission planning role.**

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AEMO Recommendation 4: ... and that the Council transfer other legacy responsibilities undertaken by AEMO to the AER or other appropriate bodies.

ATA response: Supported

ATA agrees with the Panel that it is more effective and efficient for, for example, some licensing and exemption functions to be transferred to the AER. Accordingly, **ATA supports this part of recommendation 4.**

AEMO Recommendation 5: That AEMO remain a not-for-profit company under the Corporations Act 2001 and that the current mixed ownership model of 60 per cent government and 40 per cent industry be retained.

and

The panel's recommendations for AEMO governance.

ATA response: Supported, with new recommendation regarding AEMO's board

In our earlier submission, ATA recommended that the Panel

- should explore whether membership arrangement blurs the independence and accountability of AEMO
- rejects outright the push by incumbent businesses toward increasing the Market Participant share of membership
- considers the potential for consumer representation (aside from Market Customers) in AEMO's membership.

ATA thanks the Panel for supporting our first two recommendations, and agrees with the discussion on the same in the Draft Report. In particular, ATA found the Panel's discussion about the relative importance of AEMO's membership and board arrangements in the draft report very helpful in refining our own views. In light of the points made by the Panel ATA wishes to modify our third recommendation above.

AEMO's directors are required by law to act in the best interests of the company, but by the National Electricity Objective (also, effectively, law) to make decisions that are in the long term interests of consumers. This creates a conflict wherever the interests of consumers and AEMO do not align.

There appear to be aspects of energy market operated by AEMO that may, in the long term interest of consumers, be better changed, but which may be considered unpalatable for AEMO and/or its members. Real world examples of where such challenge may arise include: aligning dispatch and

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settlement intervals to minimise gaming of the spot market; planning to replace MSATS in a timely manner to improve effective competition; and the implementation of Power of Choice reforms.

ATA asserts that the ATA board has made decisions that are not in keeping with the NEO. Examples where noted in ATA's previous submission to the Panel, and ATA would be happy to discuss this issue with the Panel (and with AEMO of course). It is often difficult to identify which elements of poor outcomes are cultural, and which arise as a result of incumbent energy businesses being overwhelming well resourced to lobby AEMO: neither of these causes justifies the outcomes of failing to promote the NEO.

ATA previously recommended that the Panel should consider ways of addressing such conflict, and noted that other changes might be easier or more efficient than materially changing AEMO's structure. This continues to be ATA's view.

On reviewing the Panel's informative discussion on AEMO and other board and commission composition and processes, it seems clear that a gap exists in the knowledge and skills required for AEMO's board of directors, which is notably inconsistent with the knowledge and skills required for the Commission and those recommended, by the Panel, for the AER: there is no requirement for the AEMO board to have any knowledge of consumer issues¹.

Accordingly, as with the Panel's recommendation for the AER governance, ATA recommends that **'consumer issues, for small and large users' should be part of the knowledge and skills that AEMO's board of Directors (as a whole) are required to have.**

ATA is of the view that this minor change will go some way to improving consumer outcomes from the decisions of AEMO's board; indeed, there appears to be no compelling reason for AEMO's board *not* to have knowledge and skills of consumer issues.

AEMC Recommendation 10: The AEMC should put in place a formal mechanism for the AEMC to sign off on the final guidelines or procedures if they have arisen from an AEMC process, to ensure that they meet the original intent.

ATA response: Partly supported, with recommendation regarding Information Exchange Committee (IEC)

ATA concurs with the Panel that this recommendation will improve accountability in relation to the implementation of rule changes. However, it may leave systemic issues in relation to day-to-day procedure development unaddressed.

¹ There is reference to experience in "... the need to develop a 'customer-focussed' organisation" in the Energy Council Appointments Selection Panel's requirements for AEMO's board, however AEMO's customers are market participants, not energy users.

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The IEC is the body responsible for changes to B2B processes and procedures. In most respects, these processes and procedures have a similar standing to Rules.

The IEC comprises three retail and three distribution business representatives, along with two 'independent' members who are appointed by the other members and, as a result, tend to be consultants to the energy industry.

The IEC is not directly bound by the NEO. While it has an efficiency objective, this is not the same as the long term interests of consumers. ATA understands that legal advice sought to understand the relationship between the IEC and the NEO has confirmed that the IEC is not beholden to the NEO.

The IEC is not directly accountable to any external institution for the decisions it makes. The IEC effectively has powers over AEMO's board. AEMO are only able to challenge an IEC decision if they can demonstrate that due process has not been followed, irrespective of the outcome.

The Panel's Issues Paper posed the question (with respect to AEMO):

"Are there ways to improve its procedure development processes"?

As the IEC is responsible for governance of B2B Procedures, ATA's submission to the issues paper raised the matter of IEC in response to this question, making the above points and recommending that the constitution and/or rules relating to the IEC are changed to make clear that the IEC must adhere to the NEO, and hear direct representation by consumer advocates and potentially providers of new products and services.

The Draft Report considers issues relating to procedure development in the context of processes that specifically arise from reforms initiated externally (to the IEC), observing that:

"In considering rule-making activities, a number of submitters provided advice to the Panel on rule-like development activities which were not being undertaken by the AEMC. This included the development of significant guidelines by the AER, which may be a consequence of an AEMC rule-change outcome, and procedure development functions of AEMO.

ATA concurs with the Panel's views that:

"While recognising the pragmatism of handing technical detail to technical experts, the Panel noted that these tasks could sometimes be argued to be significant in reaching national energy market objectives, but devoid of oversight by the AEMC or the Council. Effective consultative processes may also be lacking. Indeed, in the case of procedures, it is likely that the Council is unaware of their development."

and

"...for rule changes it would be useful to require the AEMC to sign off on ... AEMO procedures where a rule change has required that these guidelines or procedures to be created or amended, to confirm that the final outcomes meet the original intent.

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Accordingly, ATA supports in part² the Panel's recommendation

"... that the AEMC put in place a formal mechanism for the AEMC to sign off on the final guidelines or procedures if they have arisen from an AEMC process to ensure they meet the original intent"

ATA agrees that this change would improve procedure development where it specifically arises from reforms initiated externally to the IEC. Alternately, allowing the AER and/or AEMC to participate in the IEC may address that need for some oversight of IEC decisions.

However, the other activities of the IEC - which may include routine changes to procedures initiated by itself or other members or AEMO, and changes proposed by businesses or other stakeholders that are not members of the IEC - are still not covered by this recommendation. For these activities then, the issues noted in ATA's previous submission (lack of representation, limited accountability, no regard for the NEO) are not addressed.

ATA agrees with the Panel's view that:

"The overall objective is that the long-term interests of consumers are efficiently served. In a dynamic and changing economic environment this requires, among other things, that the constant search of market participants and potential participants to discover new and better ways of doing things is not materially impeded"

It is in this regard that the effectiveness of the current IEC is most limited. If not addressed now, the problem of the IEC's limited representation will become worse with time as the energy market evolves to adopt new products, services and participants. If an industry body is to be tasked with governance that impacts access to innovative services and/or services provided by third parties - as the IEC would inevitably be under current arrangements - then these parties need to be represented in a decision-making capacity.

Indeed, the AEMC shares ATA's view on this matter. The AEMC recently sought stakeholder feedback to their draft advice to COAGEC on a shared market protocol³, which acknowledged that the current governance arrangements for the IEC are inappropriate for a changing energy market, recommending:

"Governance arrangements

Considering the significant benefits of industry decision making with regard to the communications sent between businesses, the AEMC is recommending that an updated

² ATA supports this recommendation with respect to procedures, and understand the intention in principle in relation to guidelines. However, guideline development by the AER does not share the same issues that procedure development does (the AER engages actively and well with stakeholders in developing guidelines) thus it would be excessive and inefficient to impose an additional formal process on the AER's guideline development.

³ <http://www.aemc.gov.au/getattachment/9fb31d02-3dca-4959-beb1-e2f50940938b/Information-sheet.aspx>

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Information Exchange Committee (IEC) would be responsible for developing and maintaining the B2B procedures. The IEC framework would need to be updated to reflect a new membership, which would comprise of:

- *two independent members, one of whom would be the chairperson;*
- *one distributor representative;*
- *one retailer representative;*
- *one representative for metering coordinators, metering providers and metering data providers;*
- *one third party B2B participant, being a B2B participant (see below) that is not a distributor, retailer, metering coordinator, metering provider or metering data provider;*
- *one consumer representative, appointed by AEMO in consultation with Energy Consumers Australia;*
- *two discretionary members, appointed by AEMO in consultation with the two independent IEC members; and*
- *one AEMO representative.”*

Further, the AEMC recommends that:

“The B2B principles would be amended to include the existing B2B principles and some new principles. When making decisions about B2B procedures, the IEC would be required to have regard to the National Electricity Objective and the B2B principles”

Clearly, the AEMC’s recommendations support those that ATA made in our previous submissions to the Governance review: that **the constitution and/or rules relating to the IEC should be changed to make clear that the IEC must adhere to the NEO, and to include direct representation by consumer advocates and providers of new products and services.**

In our brief submission responding to the AEMC on their Draft Advice, ATA observed that:

“... the revised membership arrangement proposed by the AEMC is an important step in future-proofing the energy market.

On a related matter, ATA notes that the Review Panel’s Draft Report for the Review of Governance Arrangements for the NEM does not specifically address the matter of the constitution of the IEC...”

and recommended that

“... the AEMC and/or COAG Energy Council raise the matter of the constitution of the IEC with the Review Panel, and encourage them to respond to the submissions made to that process in their final report to COAGEC”

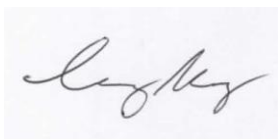
Given that COAGEC will be considering advice from the Governance Review Panel alongside the AEMC’s Advice on Shared Market Protocol, **ATA recommends that the Review Panel comments on**

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(and preferably, in ATA's view, supports) the AEMC's recommendations regarding the IEC in the Final Report.

Additionally, we ask the Panel to **consider whether expanding the membership of the IEC to include the AER and/or AEMC, in an observer or voting capacity**, would be an appropriate alternative to the proposed formal review of procedure changes.

Thank you again for the opportunity to provide this submission, and please feel free to contact me (craig@ata.org.au) or on 0412 223 203 with any queries.



Craig Memery
Energy Consumer Advocate
ATA