

ATA Submission:  
Review of Governance Arrangements for Australian Energy Markets Issues Paper

Secretariat  
Review of Governance Arrangements for Australian Energy Markets  
Energy Division  
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Dear Review Panel and Secretariat,

The Alternative Technology Association (ATA) welcomes the opportunity to provide feedback to the Panel for the Review of Governance Arrangements for Australian Energy Markets. We thank the Panel for preparing an issues paper that is comprehensive in scope.

Founded 35 years ago, the ATA is a National, not-for-profit organisation whose 5,500 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 Australia-wide. 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 highly supportive COAG Energy Council's review of energy market governance arrangements and appreciates this opportunity to contribute to the same. ATA hopes this review will lead to changes to governance arrangements that improve representation, transparency and accountability, leading to more competitive markets and efficient investments that unambiguously meet the long term interests of consumers.

The recommendations made herein are 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.

We make a number of specific recommendations intended to address matters of representation, accountability, transparency and process with respect to AEMO and the IEC. Due to time limitations we have not been able to respond to the entire issues paper, however we welcome the opportunity to discuss these matters with a panel at a later opportunity.

## ATA and AEMO

Over the past six years, as a 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.

More often than not, ATA is the sole consumer advocate, and only non-industry representative, in AEMO processes.

As such, ATA are uniquely placed to provide informed insights into the nature and impact of governance issues at AEMO.

ATA values the positive relationship we have with AEMO from a staff level up to an executive level. Noting that we are likely to find areas of marked divergence of opinion with AEMO in relation to some matters herein, ATA will to continue to discuss matters with AEMO throughout the course of this review with a view to finding common ground where possible.

## Q27. How has (or how do you consider) the AEMO's performance tracked over time?

AEMO has been under increasing pressure to adapt to changes to a rapidly evolving and unpredictable energy market, and engage with a growing number of stakeholders, including consumers and third party service providers.

To AEMO's credit, it has improved markedly in some areas. For example, AEMO's recent initiative of establishing a consumer forum, and allowing consumer participation in its market forums, is a very positive development.

However in other areas, the same evolving market has highlighted some faults with AEMO that need to be addressed the interest of achieving the NEO

In particular, some of the actions of AEMO in recent years indicate an entrenched reluctance to promote reforms that are intended to benefit consumers by improving consumer access to data and opening the market to new products and services that compete with existing energy businesses (who are for the most part AEMO's members).

The issues paper notes that

*"In particular new technologies and competition are playing a more dominant role in the market, increasing the role of consumer choice... 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"*

In ATA's view, this is an area were AEMO are failing on a few of fronts.

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### **What factors do you think are contributing to this?**

Many stakeholders describe AEMO as being ‘captured by industry’. In ATA’s experience, this manifests as a resistance to any change that is in the long term interests of consumers if that change is not supported by incumbent energy businesses.

### **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?**

AEMO’s role remains highly relevant in this context.

### **What is your assessment of AEMO’s leading strengths and shortcomings on delivering on those outcomes?**

In ATA’s experience of reforms, AEMO’s strength is that it is very effective at seeking and implementing changes that improve efficiencies where these changes do not negatively impact existing participants. AEMO’s weakness is that where changes aren’t supported by existing participants, irrespective of the consumer impacts, AEMO often does not support them.

### **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?**

These questions are answered in other responses herein

### **30. To what extent does AEMO’s ownership and governance structure affect the quality of its outcomes?**

In ATA’s view, there are clearly very unsatisfactory outcomes with respect to AEMO’s performance in relation to the Power of Choice 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

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- AEMO are bound by the National Electricity Objective (NEO) to act in the long term interest of consumers.

One specific example of this was AEMO's decision in 2013, under pressure from incumbent generation and retail businesses, to not submit the Demand Response Mechanism (DRM) Rule Change proposal to the AEMC, in spite of having been tasked with doing so by SCER.

AEMO were tasked with developing a rule change request for the design and introduction of the DRM. In the early stages they, laudably, ran an inclusive and robust process with a broad range of stakeholders to advise in detail on the development of the mechanism. This showed excellent initiative on AEMO's part and was encouraged by ourselves and other stakeholders.

ATA was appointed as the small consumer representative on the lead Working Group, and also participated in 4 of the 5 sub-groups established to inform the process. The sub-groups were initially tasked with developing papers on a variety of technical issues to inform the Rule Change design.

While ATA appreciates AEMO's willingness to openly engage with stakeholders in the early stages of the DRM design, AEMO's engagement with stakeholders other than existing market participants (who were lobbying AEMO directly) deteriorated after a time, to the extent that in the final stage of the DRM design, supporters of the DRM were excluded altogether.

Finally, in response to pressure from incumbent retailers and generators, AEMO's board chose to not submit a rule change proposal to the AEMC, instead deferring the decision to COAGEC.

This approach is neither reflective of positive stakeholder engagement nor focussed on the long term interest of consumers.

In our experience, these failings are also mirrored in AEMO's approach to other Power of Choice related processes. ATA would be happy to provide further information about these matters for the Panel as required.

As the sole small consumer advocate that continues to be most closely engaged with AEMO's activities, ATA has lost confidence that AEMO is willing to contribute independently, cooperatively and positively to the implementation reforms that improve consumer choice and competition wherever those reforms do not benefit incumbent businesses.

AEMO's apparent lack of support of perspectives that are counter to those of the incumbent businesses (that are also its members) demonstrates why many stakeholders now describe AEMO as 'captured by industry'

It is difficult to identify the extent to which these poor outcomes arise from AEMO's ownership, which are related to governance, which are cultural (closely related to ownership and governance) and which are simply the result of incumbent energy businesses being overwhelming better

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resourced to lobby AEMO than consumers (which wouldn't be an issue were AEMO to consider matters on merit alone).

In any case, all of these potential reasons point to governance issues, and none justify the poor outcomes. Accordingly, ATA recommends that the panel consider whether AEMO require changes that reduce its capacity to obstruct reforms that are NEO.

**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?**

Unlike the Independent Market Operator in WA (which performs a similar role to AEMO in some respects), AEMO's members include industry.

While the membership of AEMO has limited function in terms of decisions, it is concerning that consumer representation is limited to Market Customers (ATA is advised that there are fewer than three Market Customers at this time, and none have nominated as members of AEMO in any case.)

ATA recommends that the Panel

- should explore whether this membership arrangement blurs the independence and accountability of AEMO.
- rejects outright the current push by incumbent businesses toward increasing the Market Participant share of membership, on the basis that such a change is clearly unnecessary (it would seem ridiculous to claim that the outcomes of AEMO's membership or board decisions have been somehow deleterious to incumbent businesses under current arrangements)
- considers the potential for consumer representation (aside from Market Customers) in AEMO's membership. It may be appropriate for the ECA, along with a representative of the large energy users such as the EUAA, to be given AEMO membership and voting rights.

**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?**

The issues paper notes the ERIG recommendation to “... ensure that the NEMMCO's Board was independent of individual jurisdictional or sectoral interests and contained the appropriate range of skills.” This is clearly a worthwhile aspiration; however ATA questions whether this has been achieved effectively.

AEMO's directors are required by law to act in the best interests of the company, but by the National Electricity Objective (also Law) to make decisions that are in the long term interests of consumers. This may create an inherent conflict wherever the interests of consumers and AEMO (or its members) appear not to align.

There appear to be aspects of energy market operated by AEMO that may be better changed in the long term interest of consumers, but which would be very inconvenient for AEMO and/or its members. Aligning dispatch and settlement interval duration to minimise gaming of the spot market, planning to replace MSATS to improve the efficiency of operations, and the implementation of Power of Choice reforms, are all potential examples of this conflict.

As noted previously, it is sometimes difficult to identify which elements of poor outcomes arise from AEMO's ownership, which are related to governance, which are cultural and which are simply the result of incumbent energy businesses being overwhelming better resourced to lobby AEMO. As noted, none of these reasons justifies the outcomes of failing to promote the NEO.

ATA recommends that the Panel consider ways of addressing this conflict. ATA note's that other changes might be easier or more efficient than efficient changing AEMO's structure. Providing AEMO with more prescriptive and detailed guidance that the NEO may be an appropriate solution, and ATA recommend exploring this.

**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?**

ATA have engaged with AEMO as the consumer advocate in relation to Regulatory Investment Tests for Transmission in Victoria, and found AEMO in those cases to be responsive, transparent and appropriately impartial.

In that process, AEMO agreed to ATA's recommendations to

- more effectively assess the opportunities for non-network alternatives to defer or avoid spending on over \$100M of infrastructure
- align the RiT-T's for two separate infrastructure projects to facilitate consideration of potential non-network solutions common to both

In contrast, transmission businesses have an obvious conflict of interest in undertaking their own planning and, unsurprisingly, tend to downplay the potential for demand management and don't go to lengths to facilitate the consideration of such in these processes.

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Notwithstanding our concerns about the impacts of forecasting accuracy noted herein, ATA is of the view that AEMO should have a national transmission planning/procurement function.

### **33. Does AEMO have sufficient financial, human and technical resources to undertake its roles?**

With respect to changes and reforms, it would seem not.

In ATA's experience of energy market reforms with which AEMO have been tasked, AEMO are often unable to undertake all of the stages of a given process as initially planned. This tends to result in shorter and/or fewer options for stakeholder engagement and public consultation.

More so than the AEMC or AER, AEMO often cites resource shortages and the need to meet externally imposed deadlines as being reasons for its inability to consult stakeholders or substantially explore relevant issues in relation to reforms and other processes. ATA would be happy to provide the panel with examples on request.

When participating in reforms and changes to rules and processes, AEMO should be bringing in independent expertise and not just reflecting industry views. This needs to be resourced accordingly.

### **If not, what are the key areas for improvement in the way it sets fees and manages its resources?**

With respect to the above, ATA suggest that AEMO may need to improve how it

- Allocates sufficient human resources to reform projects
- Prioritises stakeholder engagement in relation to other activities
- Plans and budgets to avoid having to cut back activities in the first instance

ATA recommends that the review panel consider whether AEMO require more prescriptive direction with respect to process, timing and engagement in these contexts.

For example, when developing a rule change proposal, AEMO could be required to have at least one period of public consultation with a minimum of six weeks for written submissions, and demonstrate they have made reasonable attempts to engage with different stakeholders.

This certainty should assist AEMO in planning and budgeting and prevent AEMO's internal resource constraints from impacting on stakeholder engagement.

### **34. What opportunities are there for AEMO to improve market operation data, confidence in market outcomes, and its stakeholder engagement processes?**

AEMO have made good progress in relation to stakeholder engagement including the establishment of a regular consumer forum. As noted herei, AEMO still needs to improve its engagement with respect to its role in energy market reforms.

### **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?**

A related aspect of AEMO's energy market governance is the Information Exchange Committee (IEC). The IEC is the body responsible for changes to B2B processes and procedures that, in some regards, have a similar standing to Rules.

The IEC representation comprises only retail and distribution businesses and 'independent' members who are appointed by industry members. The IEC is not directly bound by the NEO (it has an efficiency objective, but this is not the same as the long term interests of consumers) and it is not directly accountable to any external institution. It has been argued that the IEC effectively has powers over AEMO's board.

The IEC's chosen approach of allowing 'observers' to meetings and discussions is commendable for the purposes of transparency. However in and of itself this does not allow for adequate representation or accountability.

In ATA's view, the problem of the IEC lacking independence will become worse with time as the energy market evolves to adopt new products, services and participants: if an 'industry' body is 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 fully represented in a voting /decision-making capacity.

On the other hand, the nature of the challenges around membership and voting for an industry led model may be such that they would be most effectively addressed simply by not using an industry led model.

ATA recommends that the constitution and/or rules relating to the IEC and related working groups are changed to make clear that the IEC must adhere to the NEO, and direct representation by consumer advocates and potentially providers of new products and services.

The AEMC is currently considering the above matters also.



### **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?**

It would be unfair to criticise AEMO for energy demand forecasting errors made last decade considering that everyone else's forecasts from the same time have proven similarly wrong. However ATA are concerned that AEMO are at risk of repeating these mistakes in spite of opportunities to avoid them.

ATA has undertaken extensive analysis of the relative economics of gas and electricity in Australian households. This analysis shows it is now uneconomic in the long term for most new homes to connect to gas (even without the anticipated future increases in gas prices). This is a recent, and most likely permanent, development. ATA has also developed sophisticated gas forecasting model that takes into account consumer preferences and the relative economics of gas and electricity for households (as distinct from the 'top-down' approach that AEMO continues to favour, in spite of this approach proving unreliable in recent years)

ATA's analysis shows that even with a minor price responsiveness, residential gas demand is likely to drop dramatically over coming years (details can be provided on request).

AEMO's current gas forecasts, however, continue to assume an increase in residential gas demand driven by the assumed continuation of historical rates of new connections (These are the same new connections which ATA's comprehensive analysis demonstrates are now uneconomical).

From discussion with AEMO's planning and forecasting team over a number of years, while they are aware of these factors AEMO's planners feel they do have the option to consider elements that lack a (narrowly defined) precedent or current trend. Clearly in the context of a fast evolving energy market this is a major limitation, that both leaves AEMO vulnerable to repeating the mistakes of the past, and consumers and industry vulnerable to paying for these mistakes.

ATA are unaware of what, if any, matters that affect AEMO's flexibility in forecasting lie within the scope of this review. However we note that forecasting error can result in massive costs to consumers and industry, therefore this situation needs to be addressed.

### **45. What are the opportunities to improve consumer engagement in energy market governance, particularly given the recent creation of ECA by the Energy Council?**

ECA has been created to meet the need for stronger, better informed and better resourced consumer advocacy. Current resource constraints leave many gaps for consumer representation in energy market reforms and other processes, and ATA expects that the ECA will fill some of these while deepening advocacy across the board.

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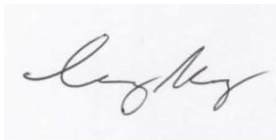
Additionally, as noted in the issues paper, ECA *“creates new opportunities for the greater consumer engagement with both the three institutions and the Council.”*

To achieve all this, ECA needs to be able to use its resources effectively and at its own discretion.

It is therefore concerning to hear a number of recent comments at energy market institutions suggesting that ECA might fund tasks which those institutions are currently (or should be) funding as a matter of course.

While these may be off-the-cuff comments and hopefully not reflective of the formal position of those respective organisations, it is concerning that energy market institutions might view ECA’s role as one that reduces their own obligations to invest resources in achieving the NEO.

Thank you again for the opportunity to provide this submission, and please feel free to contact myself ([craig@ata.org.au](mailto:craig@ata.org.au)), with any queries.

A handwritten signature in black ink, appearing to read 'Craig Memery', on a light blue background.

Craig Memery  
Energy Consumer Advocate  
ATA

