

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

Our membership covers most of the major gas users in the east coast gas market who all rely on reliable and competitively priced gas for their business sustainability. The prices being offered to our members for 2023 supply are much higher than what gas producers claim in the press they are offering. The negotiation tactics being used by producers are not consistent with their promises in their Code of Conduct. Unfortunately it will not be until next February with the next ACCC Gas Market report is published that there will be transparency on what is really happening in the market. Given 'take it or close operations' options, our members are deciding to take it on a one year contract hoping that Governments will intervene to ensure they can continue in 2024. This requires a lot more than extensive

Attached is our combined template response that also includes our 7th October submission. If we have been unsuccessful in getting our proposed changes in the legislation then we would recommend that they be incorporated in the rules. We appreciate the discussions we have had with Departmental and AEMO officials to help us prepare these comments in the short time provided. Given the importance and scope of the proposed changes it would have been better were stakeholders 'brought into the tent' earlier to raise issues that were likely to be of concerns to our membership and effectively provide more time to consult.

The powers do nothing to increase competitive supply of gas which is the fundamental underlying cause of the current problems

One of the easiest way to address the current problems in the east coast gas market is to increase supply (although this does not deal with the market power issues constantly identified by the ACCC). However, increasing supply is not possible given the approach of the NSW and Victroian Governments to ban or severely restrict new sources being developed. We do not see the recent slight easing of restrictions in Victoria having any impact on supply given the investment risks facing a gas developer. Legacy fields in Victoria are depleting fast and consumers are being forced to pay to increase pipeline and storage capacity to bring gas from Queensland. Not only are consumers paying a high price for the commodity, they are also now being forced to pay a high price for investment in 60 year transport assets that may only be required for 10 years and then are subject to accelerated depreciation further increasing transport costs.

While Ministers no doubt consider giving AEMO extraordinary powers will somehow 'fix' the gas market (depending on your definition of 'fix') in winter 2023, there is a real chance that failure to properly plan AEMO's role will only make the market worse. AEMO is being asked to try to fix a market which the ACCC says producers exercise market power, a Heads of Agreement sets the price at LNG netback and contract prices are now \$30/GJ or more and transport south is constrained. They cannot 'fix' a market that is fundamentally short competitive supply.

The risk on unintended consequences form AEMO’s actions is high

There is a real risk that a fast tracked implementation of the the proposed powers will have ‘unintended consequences’. Even if there are high level rules in place, we wonder if there will be enough time to develop the required procedures (which requires consultation) so the AEMO gas market control room operator knows what to do when confronted with a potential threat to supply adequacy or reliability at 10am on a very cold Sunday morning in early June.

Leaving aside the issue of AEMO not having the skills to be a gas market trader, there is a huge potential for ‘moral hazard’ for AEMO and all gas consumers if gas producers seek to game the market. What is the risk that an LNG producer will not sell to a C&I customer because they know AEMO will buy at a higher price than the C&I customer is willing to pay – effectively seeing AEMO as a ‘buyer of last resort’? And then those same customers expected to share the costs of the AEMO trading activities?

Why should a Japanese power station get preferential treatment over a brickworks in Sydney?

There is also the risk highlighted in our first submission that overseas customers of LNG exports will be given preferential treatment in gas supply security and reliability compared to domestic customers with firm supply contracts. The Heads of Agreement explicitly refers to the supply of uncontracted gas to the domestic market. The proposed AEMO powers allow AEMO to redirect firm gas supply to another use. It seems perverse that a Japanese power station is preferred over a domestic manufacturer in accessing domestic gas.

The market needs transparency to have confidence in the proposed powers

As we said in our first submission - we support AEMO being able to obtain more comprehensive information on the risks around gas market reliability and security and then signal that information to the market; we support the GSARC structure and purpose. Signalling to the market will be crucial to ensure the directions and trading powers are only ever used in extreme circumstances when there is an actual threat to supply adequacy or reliability. These information gathering and signalling roles will only work with AEMO providing as much transparency to the market as possible. This covers not only the GSARC discussions on AEMO’s interpretation of the data as it ‘signals’ but also comprehensive reporting to the market on the directions it issues and then reports on why it took action, the consequences and costs. There are lots of precedents in how AEMO reports on the National Electricity Market eg market notices, directions and RERT reporting.

This will provide transparency and predictability on AEMO’s actions. The market does not want to be continually surprised about the latest AEMO direction or trading activity.

How might AEMO develop procedures to apply the new powers

AEMO has a range of existing powers that they will continue to use starting with the cumulative price threshold and administered price caps. Then an order could be:

- voluntary market response following GSARC discussions, *then*
- contingency gas provisions can be called on, *then*

- directions for users to cover their positions should be a next priority i.e. exposed parties with heavy withdrawals be directed to either procure gas to cover or reduce consumption, *then*
- directions for voluntary load shedding with a RERT style incentive when developed in the next stage of reforms, *then*
- directions and ranking applicable for rationing and curtailment should follow with clear allowances for ranking different consumers above a threshold (5TJ/day) (noting this may be subject of Government legislation), *then*
- Trading should be a last line of defence once all other options have been exhausted; any trading should have the following limitations:
 - AEMO cannot procure long standing gas as it creates a conflict of interest against its role as administrator of the market
 - AEMO should be limited to using the Gas Supply Hub for gas procurement
 - AEMO can only procure interruptible (day ahead, intraday) transport services using the day ahead capacity auction – this is to limit distortions to transport pricing; AEMO should not be seen as a way for pipeliners to underwrite existing capacity
 - AEMO should not be able to access storage assets that users cannot currently (with no 3rd party access arrangement) i.e. Roma Underground storage
 - Full post trading reporting to ensure transparency

Willingness to participate in next stage of engagement

We stand ready to engage as much as required with AEMO to assist in the development of the AEMO ‘guardrails’ on how they are going to use their powers and how our members are going to meet their reporting obligations for winter 2023. In particular we need much more consultation on the proposed penalties for non-compliance. There is no guidance on how the penalties will be applied. We propose something like a ‘best endeavours’ obligation on the providers of gas consumption information.

In conclusion our members have great concerns around the high degree of uncertainty on how AEMO will operationalise these new powers. The short consultation period has raised more questions than answers. We need to have confidence that AEMO’s exercise of its extensive powers will indeed be consistent with the National Gas Objective. Consultation and transparency are needed and we are available to support AEMO in achieving these.

Once again, thank you for the opportunity to make this submission. Do not hesitate to be in contact should you have any questions.

Kind regards,



Andrew Richards
Chief Executive Officer

Attachment D – Extension of AEMO Functions and Powers - Stakeholder feedback template

Submission from Energy Users Association of Australia - Combination of 7th October and 21st October

The template below has been developed to enable stakeholders to provide feedback on proposed amendments to the national gas regulatory framework (including the National Gas Law and associated Regulations and Rules) as outlined in the consultation paper *Extension of AEMO Functions and Powers to manage supply adequacy in the east coast gas market*. ESOM strongly encourages stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue. Stakeholders should not feel obliged to answer each question, but rather address those issues of particular interest or concern. When responding to questions, stakeholders should make reference to the relevant draft Bill or Regulations or Rules if applicable.

Should stakeholders choose to provide additional feedback outside the template, they should reference the relevant question they are responding to.

A. Proposed initial reforms

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
Overarching functions			
[Insert question number]		[Insert reference where applicable]	
1	Do stakeholders have any comments on the scope of AEMO's new reliability and supply adequacy functions and the related rule-making powers as outlined in the draft Bill?	<p>91AD(e)</p> <p>91AD(f)</p> <p>91AF</p>	<ul style="list-style-type: none"> The written directions under section 91AD needs to be made public so market participants can assess what implications it might have eg what happens if a pipeline that is fully committed with firm transport contracts is directed to make capacity available? it will need to make a decision on how it allocates that reduced capacity across all its customers Delete the words 'or desirable'; there is no definition in the legislation as to what 'desirable' means so it is open to AEMO to determine; given the potential impact on the market operation and the costs that will then be recovered from market participants, AEMO's purchase of gas or pipeline services should only occur in extreme circumstances, not just when they may consider it 'desirable' We support AEMO having the ability to gather more information and keep the market informed of issues around reliability and supply adequacy We have great concerns around the ability of AEMO to trade and issue directives and this is where this submission focusses

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
		294H	<ul style="list-style-type: none"> • The response we heard in our briefing from the Department and AEMO was that AEMO will seek a market solution and intervention will only be a last resort, but: <ul style="list-style-type: none"> ○ expecting an efficient market response assumes an efficient gas supply market which is not the case as successive ACCC gas reports have highlighted, ○ given this the chances of intervention could be considered higher than if there was an efficient market operating (in which case there would probably be little need for the proposed powers), and ○ the legislation gives AEMO considerable powers to decide when and how to intervene <p>Further, while it has been suggested this power will be used as a last resort, this is not reflected in either the Bill or the NGR. We would therefore suggest that if this is the intention then it be reflected in the NGL and/or the NGR. We would also suggest that AEMO's ability to intervene only arise where there is an actual threat to supply adequacy or reliability. The draft Bill currently allows AEMO to intervene to maintain or improve reliability or supply adequacy, but in our view this sets too low a hurdle for such a significant form of intervention in the market.</p> • There are numerous places where "may" is used and some where "must" is used; we think there should be more "musts" <ul style="list-style-type: none"> ○ Section 91AF (1) "AEMO may give written directions to a relevant entity for one or more of the following purposes..." should read "AEMO must give ...". How else can directions work? ○ Section 91AF (2) – replace "may" with "must" – the list is very comprehensive; why provide a list if it is "may" because using "may" gives total discretion to AEMO irrespective of whether there is a list ○ Section 91AF(3) – replace "may" with "must" ○ Section 91F(4B) – replace "may" with "must" • Subsections (4) and (5) of refer to the making of guidelines but it is unclear whether there is any obligation on AEMO to consult the market on those guidelines – there should be • The draft bill provides for the SA Minister to make rules but it is unclear what level of market consultation will be undertaken for the development of procedures to apply in winter 2023 given r135EE and 135EF are 'switched off'; the Consultation Paper says <ul style="list-style-type: none"> ○ "This will enable AEMO to develop procedures in parallel with the development and implementation of the legislative amendments consulted in this paper. It is anticipated that AEMO would publish any necessary procedures and guidelines as soon as practicable once the legislative amendments come into effect." • We would recommend that AEMO seek to have even a fast track consultation on the winter 2023 guidelines to at least give some confidence to the market about how it will operate in winter 2023 –

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
			getting big surprises in our first GSARC meeting is not a good outcome for market confidence in what AEMO will use its powers to do
2	Does the definition of east coast gas system exclude anything that should come within scope of the new function?		
3	Do stakeholders consider any additional requirements should be specified in the rules in relation to the manner in which AEMO exercises its functions?		<ul style="list-style-type: none"> • Given the seriousness and importance of the proposed directions powers to be given to AEMO we favour more rather than less going into the legislation covering high level requirements on AEMO so there is minimal dispute about the intent of the legislation when the rules are being developed: <ul style="list-style-type: none"> ○ Insert a general 'best endeavours' obligation into the legislation; given that the intent of the legislation is that directions are really a last resort done in only exceptional circumstances, then it should be unarguable that there is a high bar to actually use the directions power; this is then transparently reported to the market and market participants will have greater confidence in AEMO's use of its powers; 'best endeavours' would also give more confidence to our members that an appropriate level of consultation is undertaken prior to a direction being issued ○ Amend the draft Bill to only allow AEMO to intervene in the market by issuing a direction where there is an actual threat to supply adequacy or reliability. ○ Insert a general requirement for AEMO to consider the costs and benefits to consumers of intervention with more detail on how this would work in practice in the rules ○ Insert some form of threshold for a directive eg a directive cannot be issued for <5TJ/d ○ Insert a requirement for details of the directive to be published at the time of issuance (to limit unintended consequences); details of what would be published to be part of the regulations ○ The proposed reporting obligations in rule 706 should be brought into the legislation and expanded; rule 706 only provides for annual reports to MCE on matters under section 91AD (e) and (f) with no mention of whether that report will be made public; the legislation should contain provisions requiring <ul style="list-style-type: none"> ▪ Reporting to MCE ▪ Reporting to the market participants on the overall implementation of section 91AD (e) and (f) eg a public version of the MCE report plus specific reporting as is the case in the DWGM on each directions event within a set period of that intervention including an analysis of the action taken and how it contributed to the NGO ▪ AEMO to publish similar intervention reports to those that it is required to publish when it uses its directions power in the DWGM.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
			<ul style="list-style-type: none"> ○ Insert a requirement for ex post review of when directions are issued to ensure continuous improvement in the way AEMO exercises its functions (see feedback on Question 5 below ○ Insert a requirement under the legislation for regular reviews on the effectiveness of AEMO in the exercise of its directions power ○ Insert a requirement to recognise the importance of existing contractual arrangements in AEMO's decision making ○ Drafting to clearly indicate how these NGL amendments will interact with the current State powers to direct gas supply to priority users in the event of a supply shortfall eg <ul style="list-style-type: none"> ▪ which has priority – this legislation or the existing State legislation? ▪ does AEMO have the ability to direct gas from a C&I buyer that has a firm contract to a gas fired generator that is not hedged to meet an LOR situation in the NEM? ○ does AEMO have the power to redirect gas from one state to another?
4	Do stakeholders consider that AEMO should develop any specific procedures or guidelines for its new functions?		<ul style="list-style-type: none"> • See our comments above on what we think should be included in the legislation that creates a head of power under which the procedures of guidelines would then be developed • Yes detailed procedures need to be developed to ensure there is clear and transparent guidance on how AEMO will exercise these powers eg how the control room is to implement directions and trading
5	Do you think a review of this regulatory package after three years is appropriate?		<ul style="list-style-type: none"> • Given the sweeping powers being given to AEMO for winter 2023 which prevents the normal consultation process on both the legislation and the rules, a review should occur at the 4th quarter of 2023 and be conducted by a party independent of AEMO; this review should go through a two stage consultation process to enable stakeholders to make submissions on a draft • That review should make a recommendation on the frequency of future reviews
Transparency – Regarding the proposed additional information requirements set out in Table 1 of the consultation paper:			
6	Do the proposed additional reporting requirements provide sufficient daily and monthly information to enable AEMO to monitor and signal potential threats to east coast gas system adequacy over a sufficient forecast period?		<ul style="list-style-type: none"> • If the very detailed proposed reporting does not then we do not know what would • The more important issue is how AEMO will interpret the data it is given – and that is why detailed procedures need to be transparently developed eg the need to work with market participants before any directions are issued or trading undertaken to ensure AEMO has correctly interpreted the data.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
7	Do stakeholders have any comments about the proposed additional information reporting and disclosure arrangements, and related transitional timeframes?		<ul style="list-style-type: none"> We wonder why the same level of detailed information is required throughout the year when the risk of a shortfall is much less outside of winter and perhaps early spring. Consideration should be given to lessening the detail and/or frequency of information reporting outside of those months that have the greatest threat to supply adequacy or reliability
8	Should there be any specific limits on who should be captured by disclosure obligations or ways to minimise compliance obligations such as thresholds, reporting party definitions, or links to other regulatory reporting requirements?		<p>Our comments relate to BB large user facilities:</p> <p>Be clear about the obligations and the operation of the large user definition eg what if a facility generally uses <10TJ/d but may for operational reasons use more than that infrequently? And what if the facility is unable to forecast that even a day ahead?</p> <p>We are concerned that a facility that temporarily goes over the 10TJ/d threshold may suffer a penalty for not reporting.</p>
Transparency – regarding the further more granular information set out in the consultation paper (subject to further consultation in 2023):			
9	<p>What are your views on:</p> <p>a) The categories of information, and are they appropriate for real-time or hourly reporting?</p> <p>b) What is the optimal approach to the collection of the categories of information listed in the interests of minimising costs and ensuring efficient data transfer?</p>		<p>The time allowed for consultation has not been sufficient to fully canvas members to express particular views. What our members have said is:</p> <ul style="list-style-type: none"> We have some members who meet the BB large user facility definition, some that buy from retailers and some that are in both categories given different sized facilities Some already report gas data to AEMO They currently do not have systems in place to enable daily reporting There can be great variability in actual gas use given changes in production targets and maintenance schedules They are concerned about the penalty provisions eg what happens if their forecasts are not accurate? The obligation to provide information should be on a 'best endeavours' basis
Signalling – regarding the signalling framework which aims to provide a practical but flexible approach to allow AEMO to notify market participants of threats to system reliability and supply adequacy:			
10	What are your views on formalising and extending AEMO's ability to hold Gas		<ul style="list-style-type: none"> The EUAA supports having formalised GSARCs which hopefully will increase the chances of a successful resolution of the issues AEMO raises without AEMO having to issue directions.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	Supply Adequacy and Reliability Conferences?		
Directions Powers – regarding the initial broad powers to be provided to AEMO to take necessary action to manage the risk of gas supply shortfalls in winter 2023:			
11	Are there particular principles which should guide AEMO's expanded powers of direction?		<ul style="list-style-type: none"> As we say above – only utilised if there is an actual threat to supply adequacy or reliability Extensive consultation through the GSARC and with the individual users likely to be impacted prior to a direction being issued; if not in the legislation then obligation should be explicit in the rules Domestic customers with firm supply contracts should not be treated any differently to overseas customers with LNG export contracts; under the HoA these overseas customers are guaranteed no interruption to their contracted supply; it would be totally unacceptable if international customers of LNG are treated more favourably than domestic customers
12	Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?		<ul style="list-style-type: none"> This situation has arisen because of Government policy allowing gas producers to exercise market power. The fact that the under the recent HoA that the LNG producers have committed to offering significantly more volume than the ACCC forecast shortfall is irrelevant if the price that gas is offered at is unaffordable for domestic customers Our members will judge these powers a success if AEMO never issues directions and never trades gas; yet the lack of a price trigger in the HoA increases the difficulty of market responses working. Looking specifically at AEMO's powers then our covering letter sets out an order of AEMO actions.
13	How should AEMO work with stakeholders in giving directions?		<ul style="list-style-type: none"> Be very transparent in the engagement leading up to the direction; any direction should not be a surprise to the party being directed
14	Are there technical matters that should be considered in the issuing of directions powers?		<ul style="list-style-type: none"> Details to be published at the time the direction is issued
15	Are there any entities that should not be subject to directions or certain types of directions?		<ul style="list-style-type: none"> Above we proposed the insertion of a some form of threshold for a directive eg a directive cannot be issued for a consumer that consumers <5TJ/d on the day(s) the direction applies
Cost recovery and compensation			

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
16	Do the proposed changes to the cost recovery framework enable AEMO to appropriately recover costs in relation to its east coast gas market reliability and supply adequacy functions?		<ul style="list-style-type: none"> We agree with proposed threshold of \$20,000 to make a claim. Only support the \$35m fund for AEMO to trade gas if it is funded by Governments. Given the reason we are in the current short supply situation is due to past Government policy of restricting gas exploration and development and not implementing a gas reservation scheme at the time of approval of the Gladstone LNG projects, Governments should pay for the fund AEMO uses to trade gas Consumers need to have confidence that the costs incurred by AEMO are 'prudent and efficient' with an assessment by the AER – no different to AEMO incurring costs that are passed on to networks for pass through to consumers – see the issues the EUAA raised in its <u>submission</u> on the ENA rule change; the AEMC's <u>final determination</u> recognises this principle subject to transitional provisions
17	What costs should parties who must comply with directions be able to seek compensation for? (e.g. direct costs, opportunity costs)		<ul style="list-style-type: none"> We do not support compensation for opportunity costs; they are difficult to measure objectively and gas suppliers should not be compensated for their ability to exercise market power in a dysfunctional gas market We look to the current experience with the AEMC consideration of generator compensation for opportunity costs <u>under the APC rules</u>; as of 20th October <u>only 1 of the 23 parties</u> claiming that compensation have provided details on their opportunity costs for events that happened in June
18	How should the costs of compensation be apportioned and recovered from the market?		<ul style="list-style-type: none"> We generally favor the causer pays approach Where costs are initially passed on to a market participant which then passes that cost onto its customers, these customers should have complete transparency around the costs AEMO passes to the market participant.
19	Should there be financial limits on individual claims, or on claims overall within a financial year?		<ul style="list-style-type: none"> Assuming our position on the non-inclusion opportunity costs, we believe it would be difficult to set the criteria for a cap on claims for costs excluding opportunity costs.
20	Is the proposed \$35m initial trading allocation appropriate?		<ul style="list-style-type: none"> That depends on how gas producers exercise their market power; the HoA only require the LNG producers to offer gas 'on competitive terms' which the producers and the Federal Resources Minister seem to interpret as LNG netback. \$35m may not go far at the current LNG netback of >\$60/GJ (will AEMO be able to utilise the current gas price cap - \$40/GJ on ang trading?)
21	How should the trading function be funded?		

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
22	What principles, if any, should guide AEMO's trading functions?		<ul style="list-style-type: none"> As proposed in our response to Question 1: <p>Directions powers should be only a last resort which should be explicitly included in the regulations; further AEMO's ability to intervene only arise where there is an actual threat to supply adequacy or reliability.</p> <p>That its trading functions will be subject to transparent market reporting to allow the market participants that bear the costs of that trading to be confident that the trading meets the NGO</p>

B. Proposed civil penalty provisions

Section 3 of the consultation paper sets out the proposed sections of the draft Bill or Rules that will be subject to civil penalty provisions and what level of penalty would apply. Please reference the specific sections of the draft Bill or Rules if you would like to provide feedback.

Section or rule	Feedback on proposed tiers
[include section or rule]	<p>General comments on penalties:</p> <ul style="list-style-type: none"> Obligation to provide information is 'best endeavours' and recognise that forecasts can be imprecise given changes in industrial processes There should be a graced period before penalties are applied
[include section or rule]	
[include section or rule]	
[include section or rule] [insert extra rows if necessary]	

C. Feedback on proposed changes to the National Gas Law, Regulations and Rules

Attachment A of the consultation paper contains the proposed regulatory amendments to give effect to the policy intent set out in the consultation paper. Comments specific to particular sections of the draft Bill, Regulations and Rules should be provided in sections C of this template.

Question /Section	Feedback
Feedback on proposed changes to the National Gas Law	
[Insert section and subsection reference]	
[Insert section and subsection reference]	
[Insert section and subsection reference] [insert extra rows if necessary]	
Feedback on proposed changes to the National Gas Regulations	
[Insert regulation reference]	
[Insert regulation reference]	
[Insert regulation reference] [insert extra rows if necessary]	
Feedback on proposed changes to the National Gas Rules	
[insert rule and sub-rule reference]	
[insert rule and sub-rule reference]	
[insert rule and sub-rule reference] [insert extra rows if necessary]	

D. Future reliability and supply adequacy reforms

Section 4 of the consultation paper outlines future additional reliability and supply adequacy reform works which will require further technical analysis, stakeholder consultation and detailed policy design. If you have comments on any of the additional future work streams, please do so in the table below.

Number	Question	Feedback
In relation to the proposed reliability and supply adequacy reforms outlined in Section 4 of the consultation paper, please provide initial feedback on the merits of these proposals, noting formal consultation will occur in 2023, when the policy design process has been further progressed.		
23	In your opinion, are any of these proposals more or less important to address reliability and supply adequacy concerns?	Reliability standard, PASA, demand response mechanism and gas RERT
24	Are there any practical issues arising from any of these proposals? <ul style="list-style-type: none"> If so, please elaborate on your concerns. 	
25	Are there any other reliability and supply adequacy proposals that should be considered as part of this work?	

E. General feedback on timing and next steps required

Please elaborate if you would like to provide general feedback on the timing and next steps required regarding this work.

Topic	Feedback