

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.

Attached is our first response focussing on the Bill drafting as well as making some comments on the regulations which will be the focus of our second submission on 21st October.

The very short time given for this consultation means we have not been able to fully consult with our members – but we understand the timing constraints to get the measures in place by winter 2023. We have some understanding of the risks to gas supply in winter 2023, particularly in the South with the much lower availability from Longford. It is disappointing that the AEMO Gas Supply and System Adequacy report presented to Ministers on 12th August is still not publicly released to help our members fully understand the situation.

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 will make more comments in our second submission on ways to minimise the administrative burden on those providing the information. The focus of our comments in the template is on the proposed directions power. The Department and AEMO have sought to ensure our members that these directions powers will only be used as a last resort. However, given:

- we expect AEMO to apply its overall very conservative approach to managing NEM reliability and security into the gas market, and
- the lack of competition in the east coast gas supply market regularly reported on by the ACCC in the gas market reports

we consider the chances of 'last resort' directions are much higher than negligible and hence the risks to our members having a potentially large cost exposure. There needs to be much more clarity in the legislation to ensure AEMO is only going to use its directions powers in extraordinary circumstances. Our members are very concerned that AEMO will be in the gas market competing against them for supply and storage and able to pay whatever price is required knowing that EUAA members will have to make a contribution to the costs of the AEMO purchase. Our members are already seeing new contract prices that are three times the price in their old contract due to the exercise of market power by gas producers. Members do not want to have to bear significant additional costs from AEMO market intervention that is also paying prices reflective of the exercise of that same market power.

Perhaps the starkest issue for our members is that they may find themselves subject to a direction and not able to take delivery of gas under a firm gas supply contract. Yet they the Federal Government in its recent Heads of Agreement negotiation with the LNG producers assured their international customers there would be no Government direction that meant these international customers would not be able to take delivery of their

contracted LNG. Our members cannot understand why they should have a sovereign risk issue for Australian gas that is not faced by an international customer for Australian produced gas.

Our members need to have confidence that the powers will be exercised only when absolutely necessary. This requires a high level of transparency around how it will decide to exercise those directions and the detail of those directions being available to the market. Our concern is that this is not going to be the case for the limited rules that will be developed ahead of winter 2023. We recommend at least limited stakeholder engagement on these guidelines to give confidence to gas consumers that the NGO is furthered.

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

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 underwhich the procedures of guidelines would then be developed
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?		
7	Do stakeholders have any comments about the		

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	proposed additional information reporting and disclosure arrangements, and related transitional timeframes?		
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?		
Transparency – regarding the further more granular information set out in the consultation paper (subject to further consultation in 2023):			
9	What are your views on: <ol style="list-style-type: none"> a) The categories of information, and are they appropriate for real-time or hourly reporting? 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? 		
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 Supply Adequacy and Reliability Conferences?		<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.
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:			

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
11	Are there particular principles which should guide AEMO's expanded powers of direction?		
12	Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?		
13	How should AEMO work with stakeholders in giving directions?		
14	Are there technical matters that should be considered in the issuing of directions powers?		
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
Cost recovery and compensation			
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 will comment further in our second submission
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
18	How should the costs of compensation be apportioned		<ul style="list-style-type: none"> We generally favor the causer pays approach

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	and recovered from the market?		
19	Should there be financial limits on individual claims, or on claims overall within a financial year?		
20	Is the proposed \$35m initial trading allocation appropriate?		
21	How should the trading function be funded?		
22	What principles, if any, should guide AEMO's trading functions?		

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]	
[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?	
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