



7 October 2022

Extension of AEMO functions and powers to manage supply adequacy in the East Coast gas market.

The Australian Pipelines and Gas Association (APGA) represents the owners, operators, designers, constructors and service providers of Australia's pipeline infrastructure with a focus on high-pressure gas transmission. APGA's members build, own and operate the gas transmission and processing infrastructure connecting natural and renewable gas production around the country to demand centres in cities and elsewhere. Offering a wide range of services to gas users, retailers and producers, APGA members ensure the safe and reliable delivery of 28 per cent of the end-use energy consumed in Australia and are at the forefront of Australia's renewable gas industry, helping achieve net-zero as quickly and affordably as possible.

APGA welcomes the opportunity to contribute to the Department of Climate Change, Energy, Environment and Water's consultation process on the extension of AEMO functions and powers to manage supply adequacy in the East Coast gas market.

As this consultation is rapid and multi-staged, APGA has attempted to confine comments in the submission to the National Gas Law amendments. There are several areas where key issues are likely to be addressed in the National Gas Rules but there are important principles to highlight as early as possible and comments are provided on these also. Importantly, there are some issues that the consultation paper flags will be addressed in the rules that APGA considers appropriate to be signalled in the head instrument, such as the need to compensate market participants affected by a direction.

Importance of addressing stakeholder concerns

APGA recognises a significant amount of work has gone into developing the draft legislation in under two months since the Energy Ministers Meeting in August and that the timelines for finalisation remain extremely tight. As a small measure, APGA recommends that any future processes following a similar timeframe provide an earlier signal to stakeholders of intent to consult. A general message to stakeholders at the start or middle of September that a key, rapid consultation will occur in early October would have provided some opportunity to prepare that may have allowed stakeholders to provide higher quality feedback. As it is, even with some days advance notice of the consultation, APGA finds itself able to raise concerns but not offer useful solutions to all concerns.

In such a rapid process, it is critical that the key issues raised by stakeholders are adequately considered and addressed rather than dismissed due to limited time. There is an

increased likelihood of unintended consequences, the costs of which will ultimately be borne by gas consumers, when extensive new powers are introduced rapidly.

At this point in the energy transition, it is vital to maintain and improve market confidence as it remains clear major investment is required to address the fundamental issue. That investment will be delivered in large part through bi-lateral contractual agreements and this reform delivers AEMO the ability to override contracts.

This reform does not deliver increased supply

The consultation paper and draft legislative package set out market transparency measures and extended powers to a market body, continuing the trend of gas market reform delivering market transparency and increased powers to market bodies in an attempt to address gas supply issues over the last decade.

Despite extensive and continuous reform commencing prior to the ACCC's East Coast Gas Inquiry in 2015/16, 2022 has seen the highest gas prices and greatest challenges in the East Coast gas market. APGA understands the need to extend powers to AEMO to act at times of crisis. Unfortunately, times of crisis are more likely due to ineffectiveness of previous reforms.

Great care needs to be taken in extended such powers that it does not further damage the investment environment. More investment, in natural gas and increasingly in renewable gas, is critical to addressing the fundamental issues in the East Coast gas market, high prices and a challenging market for supply of gas. This reform, while important, must be progressed in the manner that preserves the greatest confidence in the investment environment.

Key issues

The framework for AEMO exercising its new powers of direction will be developed over time and will provide much of this confidence. APGA flags two issues that need to be considered at this first stage of the policy process:

1. The power to direct is too broad

No requirement for presence of actual or potential threat

The broad power to direct granted to AEMO by 91AF(1) is too broad. It provides no restraint on AEMO's power of direction, allowing AEMO to issue a direction to improve reliability or adequacy of supply without an actual or potential threat being present. Such a broad power introduces a new, albeit small, risk that future Governments have the option of unprecedented levels of intervention in the gas market. This damages the investment environment.

Further, there is potential for AEMO to use the power to direct to support its other functions. APGA is particularly interested in understanding further the interaction that may be allowable or envisaged between the function set out at 91AD(e), the function to direct, and 91AD(f) the function to trade or purchase services. While it is assumed AEMO is act as a normal market participant in engaging in the acquisition of market services, it is apparent that the broad drafting of 91AF(1) would enable it to direct relevant parties while exercising its trading and purchasing function.

APGA believes this issue could be addressed by modifying 91AF so that the requirement at 91AF(2)(b) that a direction MAY:

Be given to prevent, reduce or mitigate an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system

currently specifically included as not limiting 91AF(1), be redrafted to be a relatively minor limit on 91AF(1) by requiring that a direction MUST ONLY

Be given to prevent, reduce or mitigate an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system

APGA appreciates the intent of the current drafting is to avoid a threshold for intervention by AEMO that might slow its response in an emergency. It is our understanding that a 'potential threat' is a very low threshold that at least provides some limitation on a currently unlimited power for AEMO to direct market participants.

AEMO has the power to direct capital expenditure

As currently drafted, it appears AEMO will have the power to direct capital expenditure by relevant entities if it serves the purpose of maintain or improving reliability or adequacy of supply of natural gas.

This is highly concerning and does not appear in line with any other powers AEMO has in any market. APGA considers it is unlikely to be the intent of the draft legislation that AEMO could direct a natural gas industry facility to undertake capital expenditure. If this is correct, it is appropriate to make this explicit in the NGL.

Interaction between power to direct and trading function

There is potential for AEMO to use the power to direct to support its other functions. APGA is particularly interested in understanding further the interaction that may be allowable or envisaged between the function set out at 91AD(e), the function to direct, and 91AD(f), the function to trade or purchase services. While it is assumed AEMO is act as a normal market participant in engaging in the acquisition of market services, it is apparent that the broad drafting of 91AF(1) would enable it to direct relevant parties while exercising its trading and purchasing function. This is unlikely to contribute to effective or efficient market outcomes.

2. Care must be taken to ensure the extended powers do not undermine the reliability and quality of contract services

The gas market is based on bilateral contracts between producers, retailers, infrastructure service providers and large users. Bilateral contracts have proven to be extremely reliable in ensuring contracted positions are met. Many, if not all, market participants mitigate major supply risks through contracts.

The ability for AEMO to issue directions that override these contracts and direct gas to parties without contracted positions has implications for the reliability of contracts in extreme circumstances:

- Some market participants may understand they are to be prioritised in an emergency and will not contract to cover their requirements in all circumstances.
- Some market participants may understand they are to be de-prioritised in an emergency and will be unwilling to contract to cover their requirements in all circumstances.

The risk that behaviour changes is real and material. Some remedies include:

- Requiring AEMO to only issue directions in extreme circumstances.
- Requiring AEMO to consider the contracted and uncontracted positions of market participants when issuing directions.
- Ensuring the opportunity costs of market participants with contracted positions are eligible for compensation. If they are not, AEMO's power of direction significantly devalues having contracted positions to manages supply adequacy issues, which is highly counterproductive.
- Having obligations on market participants to ensure contracts are in place to cover extreme circumstances.

3. The importance of transparency and engagement should be recognised in the National Gas Law

It is vital to the effective market function that participants:

- Are aware when directions are being issued; and
- Are engaged to the greatest extent possible as directions are being contemplated or issued.

For the first, APGA considers it necessary that the National Gas Law does far more than require AEMO to provide Ministers an annual report on the use of its extended functions. AEMO directions may cause contracts to be breached, may lead to some market participants having more information than others and may have indirect effects on many market participants. Market participants should be given as much information as possible, as close to real time as possible, on what interventions are occurring in the market. Placing such a requirement on AEMO in the NGL demonstrates recognition of the importance of this issue and the potential for intervention through direction to disrupt markets.

For the second, the consultation paper sets out the intention and expectation that AEMO will consult when and where possible. This would be adequately recognised in the NGL through a 'best endeavours' requirement as part of AEMO's power of direction. Given it is the intention and expectation, it is appropriate to recognise this in the head instrument. This is consistent with the experience of AEMO and market participants in managing gas market issues is that engagement leads to effective solutions.

This would be adequately recognised in the NGL through a 'best endeavours' requirement as part of AEMO's power of direction. Given it is the intention and expectation, it is appropriate to recognise this in the head instrument.

4. Directions to infrastructure service providers must consider title to natural gas

In relation to directions, APGA would like to raise an issue specific to infrastructure service providers. An Infrastructure service provider does not typically own the gas transported or stored in its assets.

A direction to an infrastructure service provider to deliver gas or make its facilities available without an equivalent order to owners of the natural gas raises some issues:

- The infrastructure service provider may be placed in the untenable position of deciding which contract/s to break.
- Customers of infrastructure service providers may not understand or follow directions.
- If following a direction requires curtailing some customers, an infrastructure service provider may inadvertently exacerbate the market issue leading to the direction.

It is possible to envisage a multitude of different scenarios in which directions will be made to the market. It is highly likely in most scenarios that directions to infrastructure service providers should be considered secondary to directions to parties that have title to the natural gas in an infrastructure asset.

APGA covers these and other issues in more detail in the submission template attached and is available to discuss them in more detail in the time available.

Yours sincerely



STEVE DAVIES
Chief Executive Officer

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

Submission from the Australian Pipelines and Gas Association

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?	91AF	<p>AEMO's powers are understandably broad. Although we understand It appears the intent is for AEMO to be able to direct market participants as required in times of crisis, yet there are no thresholds as to when the powers can be used. There are a number of issues with drafting that may make the power to direct broader than in needs to be, including:</p> <ul style="list-style-type: none"> 91AF(1) has no requirement for there to be a connection between an actual or potential threat and AEMO giving written directions. 91AF(1) provides AEMO the power to act to 'maintain OR improve' reliability and adequacy of supply. The equivalent power for the DWGM in 91BC provides the power to act to 'maintain AND improve'. It is not clear why the 'and' requirement has become an 'or'. In changing, AEMO will have the power to issue written directions to improve reliability and adequacy in the absence of an issue or threat which appears beyond the intent of the powers. APGA would like to understand if the change is deliberate and what the drafters consider the difference between the two phrasings to be.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
			<p>Both of these issues could potentially be addressed by requiring AEMO to only issue directions when it considers there is an actual or potential threat to reliability and adequacy of supply, which appears to be in line with the intent of the legislation.</p> <p>Section 91AF(2)b states that directions MAY 'be given to prevent, reduce or mitigate an actual or potential threat to reliability.....'</p> <p>If this phrase is redrafted to be a limit of 91AF(1), a low but material threshold for use of the power to direct would be introduced.</p> <p>While APGA appreciates the need for broad powers, it is inappropriate to fail to constrain AEMO's behaviour in any way in the interest of flexibility and speed. As the legislation provides AEMO flexibility, it should equally protect market participants from worst case outcomes, which could involve major financial damage, failure to meet contractual obligations or suffering consequences in other markets. All of this will have consequences for consumers of natural gas whom will ultimately bear the cost of these impacts. A minimum threshold for direction is appropriate.</p> <p>A further requirement to engage on a 'best endeavours' basis prior to issuing a direction would provide greater confidence to market participants and enhance the likely effectiveness of any AEMO directions, and is covered at the answer to Q3 and 11.</p> <p>APGA would like to understand better the potential for AEMO's new functions to interact with each other. For example, 91AD(e) sets out the function of AEMO to direct relevant entities to maintain or improve reliability or adequacy of gas supply. 91AD(f) sets out the function of AEMO to trade in natural gas or pipeline and storage services for the same purpose. Can AEMO direct a relevant entity to provide it with gas or commodity at specific price or at the expense of an existing customer? This is particularly relevant as the current drafting of 91AF(1) allows AEMO to direct relevant parties in the absence of an actual or potential threat.</p>
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		Yes and it is preferable some of the requirements are prescribed in law rather than rules. In particular:

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	manner in which AEMO exercises its functions?		<ul style="list-style-type: none"> • The NGL should include a requirement that AEMO publish a notice that it considers directions are or will be necessary to manage reliability and supply adequacy. The details of what is to be included in the notice can be covered by rules, but the requirement should be in the NGL. • AEMO should have to publish some information about all directions it gives in close to real time. As directions are to be provided in writing, it should be relatively straight forward to publish directly. Some directions will cause market participants to be in breach of contracts and some market participants may not understand why they are being impacted by directions on other market participants. Having directions on the public record very quickly will help resolve legal issues and confusion amongst market participants. • The NGL should include a requirement to conduct a post-incident review and publish a report (subject to participant confidentiality considerations) whenever powers to direct or contract are used. A requirement to conduct the review will ensure continuous improvement in market outcomes over time. • AEMO should have to undertake 'best endeavours' to engage with market participants before issuing directions. It is clear the intent and expectation is that AEMO will engage where possible. It is understandable AEMO cannot engage in every circumstance. That inability to engage in all circumstances should not limit a requirement to engage where possible being enshrined in the NGL to emphasise its importance and provide confidence to market participants. <p>Embedding these requirements in the law demonstrates the seriousness of directions and recognition of the importance of using them as a last resort. Placing them in the rules is a clear lowering of their priority and importance which does not deliver the best outcomes for market confidence and certainty over the long-term.</p>
4	Do stakeholders consider that AEMO should develop any specific procedures or guidelines for its new functions?		Procedures and guidelines will be required for many aspects of the new powers.
5	Do you think a review of this regulatory package after three years is appropriate?		Reviews are always appropriate over time.
Transparency – Regarding the proposed additional information requirements set out in Table 1 of the consultation paper:			

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
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?		Reported data rarely tells the full story, its value in monitoring for potential threats is largely in its interpretation. AEMO should regularly engage with data providers to ensure it has the best possible understanding of the data and what it means. This is especially relevant if it is contemplating issuing directions. It is very likely market participants and infrastructure operators will be able to identify solutions that are not apparent from the data. This is particularly true for pipeline linepack data and will be covered in detail during the NGR phase of the consultation process.
7	Do stakeholders have any comments about the proposed additional information reporting and disclosure arrangements, and related transitional timeframes?		APGA will explore this during the NGR phase of the consultation process.
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?		APGA will explore this during the NGR phase of the consultation process.
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 		Noting that the gas market moves a different pace to the electricity market, it is important to consider the reduced value of real-time or hourly data for gas markets and the significant costs which would be incurred by market participants (and ultimately, consumers) in providing such data. APGA will explore this during the NGR phase of the consultation process and in 2023.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	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?		Given the broad powers to be granted to AEMO, APGA supports a formalised and extended ability to hold Gas Supply Adequacy and Reliability Conferences. Engagement and discussion with market participants is far more preferable to direction and the conferences provide increased likelihood that direction will not be used.
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?		<p>There are a number of principles that should guide AEMO’s expanded powers of direction:</p> <ul style="list-style-type: none"> • The importance of engagement should be enshrined in the NGL. From an asset operator perspective, asset operators will understand the capability of an asset, contractual positions and medium to long-term implications of a direction far better than AEMO. Direction without consultation and engagement should be an absolute last resort and a ‘best endeavours’ requirement to engage should be included in the NGL. This is entirely consistent with the intent of the legislation and expectation of AEMO’s actual processes as described in the consultation paper and in discussions with officials. • Powers of direction should recognise that some market participants have contracts to cover positions and some do not. Powers of direction should recognise the preeminence of contracted positions where possible. Failure to do so may encourage some market participants to not contract for extreme circumstances if they are confident AEMO will preference their gas supply needs over others.
12	Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?		Engagement with market participants will identify specific solutions in each circumstance.
13	How should AEMO work with stakeholders in giving directions?		AEMO should work as closely as possible with stakeholders and should engage as early and as much as possible. Asset operators have the deepest level of understanding of their assets and capability and will be able to advise AEMO on the best way to achieve desired outcomes.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
			Importantly, it is unlikely AEMO will have the time to engage with all stakeholders on all occasions, emphasising the importance of real-time public notifications of directions to give all market participants the same level of information in what are likely to be challenging market circumstances.
14	Are there technical matters that should be considered in the issuing of directions powers?		Yes. For pipelines, a particular technical matter of major significance is the medium-term implications of using gas stored in linepack to solve short-term issues. If linepack is depleted too far, a pipeline's capacity to deliver gas will be reduced or removed for days. Engagement will address this issue and allow AEMO to gather specific information in the context of a proposed direction, to better inform AEMO's decision making. APGA will explore this during the NGR phase of the consultation process.
15	Are there any entities that should not be subject to directions or certain types of directions?		There is value in considering the nascent renewable gas industry when developing the framework for directions. APGA considers that there could be many flow-on safety and technical impacts if renewable gas is redirected away from the infrastructure and users it is contracted to, as not all infrastructure, plant and equipment in the East Coast Gas System will tolerate some types of renewable gas. If facilities using renewable gas blends were excluded from certain types of direction, any risks arising from their unplanned introduction to facilities would be mitigated. This issue could also be addressed through engagement prior to direction.
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?		<p>It is important that the NGL not only to consider the recovery of costs by AEMO. There are many market participants that will incur costs due to AEMO's exercising its extended powers and functions. Pipeline service providers have long-term contracts that can make cost recovery of some additional costs incurred, including regulatory costs over which it has no control, difficult. Consistent with the intent of the Revenue and Pricing Principles set out at NGL s 24(2)b that:</p> <p><i>A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—</i></p> <p><i>(a) providing reference services; and</i></p> <p><i>(b) complying with a regulatory obligation or requirement or making a regulatory payment.</i></p> <p>It is critical that cost recovery for service providers, and perhaps other market participants, is considered in the proposed amendments to the NGL and/or NGR.</p>

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
17	What costs should parties who must comply with directions be able to seek compensation for? (e.g. direct costs, opportunity costs)		<p>As a first point, APGA considers it appropriate for market confidence that the requirement to compensate parties affected by a direction be enshrined in the NGL. This would better embody the principle of compensation in the head instrument and leave the details to the NGR.</p> <p>While APGA will explore this during the NGR phase of the consultation process, it is important to flag as early as possible that there are very likely to be unintended consequences and market distortions if opportunity costs are not compensated. Some market participants dedicate significant resources to having gas supply in challenging market environments (for example, the operator of a gas powered generator which expects a period of heightened electricity demand in the coming days) and the opportunity cost of not having this supply available due to a direction should be considered to avoid undermining incentives and signals for market participants to efficiently manage risk.</p>
18	How should the costs of compensation be apportioned and recovered from the market?		<p>As a general principle, attributing cost to cause where possible is desirable. If market participants do not have contracted positions to cover a requirement, this should be relevant to cost recovery.</p> <p>APGA considers it appropriate that an additional head of power be drafted into schedule 1 to provide the ability to make rules that ensure the efficient and equitable allocation of costs to market participants and cost recovery for market participants. There are some market participants that are best placed to recover costs from consumers and double handing of costs during cost recovery should be avoided where possible.</p> <p>It is also foreseeable that a cost hierarchy will need to be established to minimise the number of parties seeking compensation due to direction. It will be more efficient for a single party to seek compensation where possible. With regard to infrastructure services, there is potential for a direction to require a gas shipper to use multiple assets to comply with the direction. It is more efficient to require that shipper to pay the normal fees to service providers and then seek compensation rather than have each service provider and the shipper individually seek compensation.</p>
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?		APGA consider a trading fund has little value to infrastructure service providers and should not be part funded by these market participants.

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?		