



**EnergyAustralia**

LIGHT THE WAY

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### **Energy Ministers – Extension of AEMO Functions and Powers – September 2022**

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity.

We appreciate the opportunity to comment on the proposed set of regulatory amendments and note these are being consulted upon under significantly compressed timeframes. Our comments here are limited to the proposed NGL amendments, with responses on regulation and rule amendments to follow by 21 October.

We understand that LNG exporters would (and should) be included as a "relevant entity" and subject to AEMO's powers of direction under draft section 91AF. Further thought should be given to how this interacts with the powers of the Commonwealth Resources Minister under the Australian Domestic Gas Security Mechanism and Heads of Agreement. It may not be necessary or practical for this interaction to be prescribed in this package of amendments. However, the intention that AEMO's role complement rather than substitute ministerial actions should be contained in the bill's explanatory memorandum and other extrinsic materials, along with a description of how these roles might interact.

The proposed definition of "east coast gas system" appears to be appropriate, and further thought should be given to whether, in conjunction with relevant NEL and NER provisions, AEMO's powers allow it to appropriately deal with risks or threats that jointly affect gas and electricity markets. For example, AEMO's interventions to address a joint risk may need to be compartmentalised under either its gas or electricity functions.

The proposed amendment to clause 19 of the National Gas Regulations, to prescribe ministers and departments, gives rise to issues in the disclosure of protected information. The secretariat should consider consequential amendments (possibly to the NGL) given the list of agencies already listed in NGL section 91GC(2) have narrowly defined functions around energy and consumer protection, whereas ministers and departments have a much broader range of functions that could see protected information inappropriately used under section 91GC(3). These powers include as operators of government-owned market

participants, hence the receipt and use of protected information could be detrimental to competition and customer outcomes.

The proposal to give AEMO powers to trade in natural gas or to purchase pipeline or storage services in section 91AD(f) is significant and requires careful consideration. We appreciate the intent that AEMO would use this power sparingly, given potential conflict of interest as system operator and well as negative impacts on competition. It is critical for market participants and the effective operation of markets that this intent be reinforced in legislative provisions, including mandatory AEMO guidelines around the exercise of this power. The gravity of this does not appear to be appreciated in the draft amendments. Notably, the only related rule amendments are for the establishment of an associated trading fund. In principle we are not opposed to AEMO holding emergency procurement powers, however we recommend the power in section 91AD(f) be removed. The reasons for this recommendation are:

- subclause (g) would establish a power for AEMO to trade where the rules identify this as a function
- it seems highly unlikely that appropriate and effective law and rule provisions to frame this power could be developed on the back of a highly compressed stakeholder consultation process. As noted above, this is compounded by not having draft provisions on which to comment now
- a more fulsome consultation on associated rules can be undertaken as part of proposed 'second stage' issues in 2023
- it is not clear whether it is urgent for AEMO to be given and to exercise this power for winter 2023, noting it would still be provided powers of direction and other functions, and ministers are also progressing other reforms.

If ministers are still minded to urgently give AEMO an explicit power to trade gas and infrastructure services, this should be subject to guidance or boundaries in the same way as AEMO's power of direction in the proposed section 91AF, including subsidiary rules. Law or rule provisions could require AEMO to act in accordance with principles similar to those in NER clause 3.20.2 governing AEMO's reliability and emergency reserve trader function, namely minimising market distortions, maximising customer benefits and regard to customers' willingness to pay.

If you would like to discuss this submission, please contact me on 03 8628 1655 or [Lawrence.irlam@energyaustralia.com.au](mailto:Lawrence.irlam@energyaustralia.com.au).

Regards

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