

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

Submission from Jemena in relation to NGL, 7 October 2022

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?		Clause 13 of Schedule 1 provides for the making of Rules in relation to the payment of compensation to relevant entities and recovering compensation paid from relevant entities. This Rule making power does not enable Rules to be made to impose rights and obligations on relevant entities and other third parties (who are customers of the relevant entities) to allow for the recovery by relevant entities of compensation recovered through those entities. We discuss further the need for this gap to be addressed in our response to question 16.
2	Does the definition of east coast gas system exclude anything that should come within scope of the new function?		n/a
3	Do stakeholders consider any additional requirements should be specified in the		Jemena will provide feedback on the NGR amendments in its subsequent submission.

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
	rules in relation to the manner in which AEMO exercises its functions?		
4	Do stakeholders consider that AEMO should develop any specific procedures or guidelines for its new functions?		Jemena will provide feedback on the NGR amendments in its subsequent submission.
5	Do you think a review of this regulatory package after three years is appropriate?		<p>Jemena strongly supports a review of all measures contained in this package after three years, given the significant intervention in gas markets which will occur by AEMO's exercise of these broad functions and powers (and associated uncertainty this creates for market participants), the minimal time provided for consultation on this package and the work on further reforms to be undertaken next year.</p> <p>Jemena considers that the review should be a public review process involving a draft and final report which would allow for important stakeholder engagement in that review process. An open and transparent review process is conducive to ensuring regulatory certainty and allows for a proper assessment and evaluation of AEMO's exercise of its powers. Any review, should consider whether AEMO has exercised those powers consistently with the National Gas Objective.</p>
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?		Jemena will provide feedback on the NGR amendments in its subsequent submission. However, at a high level, it is important that they reporting requirements are reviewed and aligned with other gas reforms currently under consultation. These reporting requirements also need to recognise that the concept of 'relevant entities' captures a broad range of gas industry participants and general reporting requirements applying equally to all entities may provide not to be fit for purpose both initially and over time.
7	Do stakeholders have any comments about the proposed additional information reporting and disclosure arrangements, and related transitional timeframes?	NGL s 91FA & 91FB	<p>The proposed NGL amendments would remove the requirements for AEMO, when issuing an information order or notice relating to its system reliability and adequacy functions, to have regard to the reasonable costs of efficient compliance and from the consultation obligations with affected participants.</p> <p>While we understand the package's intention is to ensure that AEMO's ability to gather relevant information is not hampered in an emergency situation, we believe the NGL should continue to require AEMO to take reasonable steps to engage with participants who would be the subject of such orders. Such a requirement should ensure that AEMO still consults with impacted participants where</p>

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			<p>possible in the circumstances, while still providing some flexibility to AEMO to undertake informal (potentially including verbal) consultation—or in extreme circumstances where this is not possible, to proceed without undertaking consultation.</p> <p>Jemena will provide feedback on the NGR amendments in its subsequent submission.</p>
8	<p>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>		<p>Jemena will provide feedback on the NGR amendments in its subsequent submission.</p>
<p>Transparency – regarding the further more granular information set out in the consultation paper (subject to further consultation in 2023):</p>			
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>Jemena will provide feedback on this question in its subsequent submission.</p>
<p>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:</p>			
10	<p>What are your views on formalising and extending AEMO's ability to hold Gas Supply Adequacy and Reliability Conferences?</p>		<p>We broadly support the use of AEMO signalling and Gas Supply Adequacy and Reliability Conferences to seek to ensure that market participants are fully informed about AEMO's concerns in relation to system reliability and supply adequacy, and we note that these mechanisms should be employed by AEMO prior to it issuing directions or taking direct action. We assume AEMO will initiate, coordinate and implement an appropriate ACCC authorisation an framework to ensure that good faith</p>

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		NGL section 91AE	<p>Reporting on AEMO's exercise of functions (section 91AE of the NGL)</p> <p>We note that proposed section 91AE of the NGL and rule 706 of the NGR would require AEMO to report to Ministers about the exercise of its system reliability and supply adequacy functions, including the exercise of its directions and trading powers. However, to provide for transparency and accountability to consumers and industry given the significant scope of these powers, and consistent with the intention outlined in the consultation paper that these powers only be used in circumstances where the market does not respond, section 91AE of the NGL should also require AEMO to prepare a report in the months following each instance of it exercising its directions or contracting powers. Each report should document:</p> <ul style="list-style-type: none"> - the incident/threat/issue which AEMO identified - the actions taken by AEMO to signal this issue to the market - the market responses called for and whether any responses were proposed by participants - the directions issued and contracting actions taken by AEMO (however consideration should be given to market participant confidentiality) - why the AEMO actions were necessary to address the identified issue - the result of these AEMO actions in addressing the identified issue and the associated costs to relevant entities. <p>Consideration could also be given to a process which allows for market participants (including groups representing end customers) to make submissions which comment on the specific incident and AEMO's responses, with this feedback to be included in the report. All reports should be published on AEMO's website, allowing all market participants to better understand the nature of the issue which occurred, the way in which AEMO applies its powers (including the system reliability or supply adequacy impacts and results of AEMO applying its powers) and potentially also better equip market participants to respond to any similar issues in the future.</p>
12	Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?		n/a
13	How should AEMO work with stakeholders in giving directions?	NGL section 91AF	While AEMO's functions and powers will be extended to manage supply adequacy the reforms across the interconnected east coast market do not establish AEMO as a system operator – in contrast to its functions in the Victorian DWGM. This is a vital factor as it is the individual system operators of each natural gas industry facility who have the greatest understanding of their asset, their customers and

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			<p>their needs, the operating environment and the safety and technical systems, process and requirements in place.</p> <p>Only by engaging with any potentially affected system (or facility) operator, will AEMO be able to undertake its functions in a manner which achieves the NGL and avoid unnecessary safety risks, incurring unnecessary costs, and potentially creating future risks to supply.</p> <p>Accordingly, section 91AF of the NGL needs to require AEMO to use best endeavours to engage directly with all persons to whom a direction would apply, prior to AEMO formally issuing the direction. This engagement should inform the relevant entity about the nature of the direction and, where possible, seek feedback on:</p> <ul style="list-style-type: none"> - the reasonable ability of the entity to comply with the direction within the specified time frame - whether compliance with the direction may pose a serious risk to safety - whether compliance with the direction may cause or exacerbate a threat to system reliability or supply adequacy in a manner not previously considered or anticipated by AEMO - the entity's expected financial detriment, harm or liability associated with compliance with the direction. <p>In circumstances where there is an urgent need for a direction, AEMO could seek to engage verbally using the contact details collected for the register of participants under proposed rule 692. Such an engagement process should allow AEMO to draw on the industry expertise of market participants, and therefore to better target its directions and improve their effectiveness in addressing system reliability and supply adequacy issues. We have provided suggested NGL amendments in relation to this issue in section C.</p>
14	Are there technical matters that should be considered in the issuing of directions powers?	NGL section 91AF	<p>The ability of a person to comply with, and therefore the effectiveness of, a direction which involves a gas facility may potentially be subject to technical (including safety) limitations associated with physical infrastructure.</p> <p>We understand the intention behind the package's additional information disclosure obligations is to provide AEMO with more information about the potential technical capabilities and limitations of facilities.</p> <p>However, as we will explain in our subsequent submission on the NGL amendments, this data can be complex and in many cases will be subject to significant degrees of engineering interpretation, estimation and judgement. There are likely to be circumstances, particularly if a market is experiencing significant turbulence, where participant reporting against a pre-determined set of requirements may not result in AEMO gathering fit-for-purpose information which allows it to adequately understand and seek to rectify the issue—for example, information about stored pipeline</p>

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			<p>linepack volumes could be misinterpreted and may over-represent a facility's capability to respond to a direction. As noted above, AEMO is not the system operator for facilities across the interconnected east coast market which are outside the DWGM and accordingly, may not have the knowledge, expertise or understanding of the asset, customer, or environment which each facility operator possesses.</p> <p>In such circumstances where AEMO is considering issuing a direction involving a facility, AEMO must be required to use best endeavours to engage directly with the facility operator, as set out in response to question 13. This engagement would allow the facility operator to provide direct, targeted, timely and fit-for-purpose information which takes into account the impacts of the proposed direction, therefore allowing AEMO to leverage the technical knowledge of market participants and use this to improve the effectiveness and reduce the likelihood of negative consequences (including those relating to safety) of directions.</p>
15	Are there any entities that should not be subject to directions or certain types of directions?		n/a
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>Principle of entitlement to compensation in NGL s 91AF</p> <p>Section 91AF of the NGL should include a principle which specifies that adequate compensation should be provided to a relevant entity that suffers financial detriment as a result of an AEMO direction. Although we note that a similar statement is proposed to be included in rule 696 of the NGR, we consider it would be more appropriate to state such a principle in the NGL and then provide for the NGR to set out the mechanism to give effect to this principle. We have provided suggested NGL amendments in relation to this issue in section C.</p> <p>Ensuring relevant entities are provided with a reasonable opportunity to recover AEMO costs</p> <p>We note that the proposed framework requires the costs incurred by AEMO in exercising its functions (including the costs of compensation claims relating to AEMO directions) be recovered from relevant entities, and allows AEMO to levy fees or charges on some types of relevant entity from which AEMO is currently not able to, such as some transportation service providers. Where AEMO levies fees or charges on a relevant entity, the relevant entity should in-turn be provided with the right to recover these costs from its customers, consistent with the revenue and pricing principles set out in the NGL.</p> <p>However, these AEMO functions and potential additional costs represent a change to the regulatory framework which existed when Access Arrangements were approved or contracts executed with customers. This means that some regulatory instruments and contracts will not provide transportation</p>

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			<p>service providers with the right to recover its cost from what is effectively a change in law or regulatory change.</p> <p><i>Scheme pipelines</i></p> <p>We note that the Jemena Gas Networks' Access Arrangement is sufficiently flexible to accommodate a new AEMO fee to be reflected in reference tariffs. However, other scheme pipelines may not have sufficient flexibility to accommodate such AEMO charges. We are supportive of changes to the NGL and/or NGR to automatically determine that any AEMO fees or charges that arise as part of these reforms (and which cannot be recovered through an existing mechanism) are taken to be an approved pass through and can be varied in a pipeline's reference tariff. This approach would be consistent with the provisions in the National Energy Retail Law in respect of the Retailer of Last Resort cost recovery scheme for distributors.¹</p> <p><i>Non-scheme pipelines</i></p> <p>For non-scheme pipelines (or in circumstances where a customer has otherwise negotiated access under a non-reference service), a service provider's ability to pass through additional AEMO fees or levies will depend on provisions set out in individual Gas Transportation Agreements (GTAs), which in some cases can have terms exceeding 20 years. It is not necessarily the case that a service provider will have rights to recover costs associated with a change in law under all GTAs. For example, when NGR Parts 24 to 26 were introduced causing Jemena to incur additional costs, some of our customers refused to pay modest charges to allow us to recover those costs, despite those costs having been reviewed by the AER and considered acceptable.</p> <p>We therefore propose that the head of power set out in Schedule 1 of the NGL be amended (either by broadening clause (13) or creating a new clause (14)) that allows Rules to be made to enable transportation service providers to recover the additional costs incurred due to AEMO's exercise or performance of its east coast gas system reliability and supply adequacy functions from their customers. These Rules would need to address the right to recover the costs and the obligation to pay by customers in the form of a service charge. We have provided suggested NGL drafting on this issue in section C, and will provide feedback in relation to the NGR in our subsequent submission.</p> <p>Cost recovery and compensation provisions in the NGR</p> <p>Jemena will provide feedback on the NGR cost recovery and compensation provisions in its subsequent submission.</p>

¹ NERL Clause 167(4).

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)		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.
18	How should the costs of compensation be apportioned and recovered from the market?		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.
19	Should there be financial limits on individual claims, or on claims overall within a financial year?		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.
20	Is the proposed \$35m initial trading allocation appropriate?		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.
21	How should the trading function be funded?		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.
22	What principles, if any, should guide AEMO's trading functions?		Jemena will provide feedback on the cost recovery and compensation provisions in its subsequent submission.

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]	n/a
[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	
NGL s 91AF(1)	<p>Insert new subsections and modify subsection (1) to provide notice of actual or potential threat.</p> <p><u>(X) If AEMO reasonably believes that there is an actual or potential threat, AEMO may publish a notice providing details of the actual or potential threat.</u></p> <p>(1) <u>If AEMO publishes a notice under subsection (X), AEMO may, in relation to the actual or potential threat, give directions to a relevant entity for one or more of the following purposes:</u></p> <p>(a) [as currently drafted]</p> <p><u>(X) A direction by AEMO under subsection (1) to a relevant entity is to be given to the person verbally or by instrument in writing. If the direction is given verbally, it must be confirmed by instrument in writing given to the person as soon as it is practicable to do so.</u></p>
NGL s 91AF	<p>Insert new subclauses (1A) and (1B):</p> <p><u>(1A) Prior to issuing a direction to a person under this section, AEMO must use its best endeavours to engage with that person to inform them that AEMO intends to issue a direction and of the proposed nature of that direction and, where reasonably practicable, invite the person to provide comment on:</u></p> <p><u>(i) the person's expected reasonable ability to comply with the proposed direction within the specified time frame</u></p> <p><u>(ii) the person's expectation of whether compliance with the proposed direction would pose a serious risk to safety</u></p> <p><u>(iii) the person's expectation of whether compliance with the direction may cause or exacerbate a threat to system reliability or supply adequacy in a manner not previously considered or anticipated by AEMO</u></p> <p><u>(iv) the person's expectation of the financial detriment, harm or liability associated with compliance with the proposed direction.</u></p> <p><u>(1B) Where reasonably practicable, AEMO must consider the information provided by a person under section (1A) in determining whether to give a direction under this section.</u></p>
NGL s 91AF(3)	<p>(3) The Rules may <u>must</u> specify—</p>

Question /Section	Feedback
	<p>(a) the matters that AEMO may or must consider in determining there is or is not an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system;</p> <p>(b) the kinds of directions that AEMO may or may not give under this section;</p> <p>(c) the matters that AEMO may or must consider in determining whether to give a direction under this section.</p>
NGL s 91AF(8)	(8) A person to whom a direction under this section applies must comply with the direction. <u>The requirement to comply with a direction has effect despite any Act or law and overrides any obligation in that Act or law to the extent of any inconsistency. The person to whom a direction applies incurs no liability for non-observance of any other Act or law due to an act or omission done or made in good faith and in compliance or purported compliance with a direction under this section</u>
NGL s 91AF(9)	<p>Replace proposed subclause (9) with the following:</p> <p><u>(9) A person incurs:</u></p> <p><u>(a) no liability for damage, loss or injury; and</u></p> <p><u>(b) no liability for breach of contract, breach of confidence or any other civil wrong</u></p> <p><u>resulting from an act or omission done or made in good faith and in compliance or purported compliance with a direction under this section, including a direction to operate equipment or direct the flow of gas in a manner inconsistent with existing contractual provisions</u></p>
NGL s 91AF	<p>Insert new subclause (9A):</p> <p><u>(9A) A person which suffers financial detriment as a result of a direction under this section is entitled to adequate compensation.</u></p>
NGL Schedule 1	<p>Insert new subclause (14):</p> <p><u>(14) Arrangements, rights and obligations in relation to the recovery of costs incurred by transportation service providers from AEMO's exercise of its powers or performance of its east coast gas system reliability and supply adequacy functions.</u></p>
Feedback on proposed changes to the National Gas Regulations	
[Insert regulation reference]	Jemena will provide feedback on the Regulations in its subsequent submission.
[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]	Jemena will provide feedback on the NGR amendments in its subsequent submission.

Question /Section	Feedback
[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?	Jemena will provide feedback on the future reforms in its subsequent submission.
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. 	Jemena will provide feedback on the future reforms in its subsequent submission.
25	Are there any other reliability and supply adequacy proposals that should be considered as part of this work?	Jemena will provide feedback on the future reforms in its subsequent submission.

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