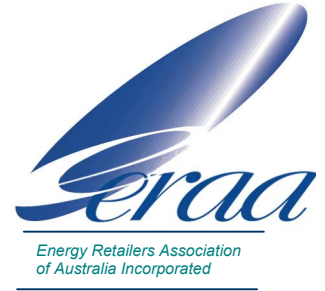


7 January 2005



Manager - Energy Market Reform Team  
National Energy Market Branch  
Department of Industry, Tourism and Resources  
GPO Box 9839  
Canberra ACT 2601

By e-mail to [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

Dear Sir or Madam

Re: Consultation – National Electricity Law – additional comments

As stated in our letter of the 24<sup>th</sup> of December, the ERAA supports the main changes to the National Electricity Law (the Law) in the Exposure Draft, subject to specific comments in this and the previous letter.

The ERAA stressed the need for full consultation on all parts of the NEM governance regime in our first letter.

The first ERAA letter also covered the major points of concern to the ERAA. This letter provides further explanation on some aspects covered by that letter, specifically:

- Changes to and application of the Market Objective.
- The investigation and information sharing provisions.
- Subtle and small changes that occur in the new governance instruments

Information on these issues is attached.

If you have any queries on the content of this submission, please contact me or Diane Campbell at the ERAA Secretariat on (02) 9369 4296.

Yours sincerely,

Deane Russell  
Executive Director

## **Comments on the Exposure Draft of the National Electricity Law**

These comments provide additional information to that provided to the SCO in December and should be read in conjunction with the ERAA letter of 24 December 2004.

### **Changes to and application of the Market Objective**

The Market Objective has been changed markedly and without meaningful consultation. While we note that a change to a single, aspirational objective is in accordance with the findings of the Productivity Commission review of the National Access Regime, we are concerned that the change may have wider impact than the MCE intends. We therefore ask that more consultation occur on the market objective. In particular, we consider that it is important that the MCE clarify that the objective be interpreted in an economic sense, as implied by the explanatory document published by the SCO after the forum on 10 December 2004.

The ERAA is also concerned that the SCO has focused on one element of the role of the Market Objective. The current objectives have been used to guide market bodies in the development of processes and procedures and not just the Code change process. We believe that this should continue and that all market bodies should be required to give due regard to the objective in developing all of their policies and procedures.

### **The investigation and information sharing provisions**

The ERAA has previously expressed concern that the new investigation regime represents a significant loss of rights to participants and that it should be changed. We note that AGL, one of our member organisations, has provided the SCO with a legal advice that shows that the information gathering and enforcement regime established by the Law is excessive and beyond that in other relevant markets.

We previously stated that, as a minimum, a process similar to clause 8.5.4 of the current Code should be included in the Regulations to define how the AER should carry out its investigative work.

The investigative powers of the AER are of particular concern since §18 of the Law<sup>1</sup> allows information gathered to be used for any purpose and to be shared with the ACCC, AEMC and NEMMCO specifically and, more generally, to others under §44AAF(7) and (8) of the TPA. This section overturns a general principle of law that information gathered in confidence should not be shared nor used for other purposes. The ERAA strongly opposes this reduction in participant rights.

The ERAA considers that the investigative and enforcement powers of the AER should be reviewed and the excessive powers in the Law removed.

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<sup>1</sup> By applying section 44AAF of the TPA.

**Other comments.**

The ERAA notes that there is an additional subtle change to that notified in our first letter. Shifting the current protected provisions of the Code into the Law means that changes to those provisions can be made without consultation. While moving these provisions to the Law makes sense, this subtle reduction in participants' rights should be considered carefully. Matters such as the scope of the rules, the Market Objective, the Rule change process and functions of the AEMC and NEMMCO would previously require consultation before changes could be made. The SCO and the MCE should consider what assurances can be provided to participants and interested parties that appropriate consultation will always occur before these matters are changed.