

# **Explanatory Material**

## **AEMO Exposure Drafts**

December 2008

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## Introduction

### Background

1. On 13 April 2007 the Council of Australian Governments (COAG) agreed to establish a single, industry funded national energy market operator for both electricity and gas to strengthen the national character of energy market governance. This body is to be known as the Australian Energy Market Operator (AEMO).
2. COAG agreed AEMO would be empowered to carry out all current functions performed by:
  - i. the National Electricity Market Management Company (NEMMCO);
  - ii. the Victorian Energy Networks Corporation (VENCorp);
  - iii. the Gas Market Company (GMC) in New South Wales and the Australian Capital Territory;
  - iv. the Queensland Gas Retail Market Operator (GRMO), currently operated by VENCorp, and
  - v. the Retail Energy Market Company (REMCo) in South Australia.
3. In addition, it was agreed AEMO would adopt the following new functions:
  - i. the National Transmission Planner (NTP) for electricity;
  - ii. the gas market Bulletin Board (BB) operator;
  - iii. the gas Short Term Trading Market (STTM) operator, to run initially in South Australia and New South Wales;
  - iv. advisor to the National Gas Emergency Response Advisory Committee (NGERAC); and
  - v. preparation of the proposed gas market Statement of Opportunities (GSOO).
4. In December 2007 the Ministerial Council on Energy (MCE) approved an implementation plan for the establishment of AEMO by 1 July 2009 (Implementation Plan).
5. A key part of the implementation of AEMO is establishing the regulatory framework. This involves changes to the National Electricity Law (NEL) and National Gas Law (NGL), which will be effected through the South Australian Parliament as the lead legislature for the national energy legislation. Changes to the underlying National Electricity Rules (NER) and National Gas Rules (NGR) will also be required, with these to be made by the South Australian Minister.
6. While consequential changes are required to state-based legislation, this consultation package only discusses proposed changes to the national framework.

### The Exposure Drafts

7. The MCE has agreed to a two stage process for the release of the exposure drafts. The first stage involves the exposure drafts of amendments to the NEL and NER, which are included as part of this package. The second stage involves the exposure drafts of amendments to the NGL and NGR. The NGL and NGR amendments will be released no later than 19 January 2009 for a 4 week consultation.

8. The ISC considers this shortened period is necessary to ensure legislation is in place to allow AEMO to commence operating by 1 July 2009. While separate consultation on exposure drafts of the NGL and NGR is intended, the ISC notes the significant similarities between major elements of the electricity and gas packages and encourages gas stakeholders to consider the electricity amendments, together with the explanatory material which includes discussion of proposed changes to the gas framework. Further details on the gas provisions will be provided with the release of the gas exposure drafts.
9. The draft legislative framework has been guided by the Statement of Proposed Approach (SOPA) consultation paper, which was distributed for public comment on 7 August 2008, and was accompanied by an information workshop for interested parties.
10. A subsequent detailed response to stakeholder submissions, including revisions consequential to the AEMO Implementation Steering Committee's (ISC's) consideration of comments received from stakeholders, is included as part of this package.
11. Although the ISC is confident that the proposed amendments to the NEL and NER reflect ISC's policy proposals, they are subject to further refinement and clarification. Any material changes to the arrangements for gas will be communicated in supplementary materials when the gas exposure drafts are released.
12. This document and the associated attachments, including the proposed legislative amendments, are for consultation purposes only and do not represent the final views of the MCE or the governments of participating jurisdictions.

### **Structure of this note**

13. Part 1 sets out the scope of the exposure drafts and includes details of the related work beyond the scope of these documents.
14. Part 2 sets out in further detail the amendments proposed in the exposure drafts to empower AEMO to perform the functions noted above in the Introduction.
15. Part 3 addresses the institutional arrangements for AEMO generally as set out in the exposure drafts, including AEMO's proposed information gathering powers, the liability regime that is proposed to apply to AEMO and the confidentiality regime to apply under the national framework.

## **Part 1: Scope of the Exposure Drafts**

16. The amendments proposed in the exposure drafts are intended to confer the necessary powers on AEMO to enable it to undertake the functions agreed by COAG and referenced at paragraphs 2 and 3. The exception to this is the STTM function, which is under development by the Gas Market Leaders Group (GMLG) and will be legislated for separately.
17. Since the release of the SOPA, the ISC has also confirmed that AEMO should incorporate the planning functions currently performed by South Australia's Electricity Supply Industry Planning Council (ESIPC) and the NSW Gas Supply Continuity Scheme (NSW Scheme) function which is currently operated by GMC.
18. The exposure drafts also incorporate a number of further miscellaneous amendments to facilitate the establishment of AEMO.

### **Related AEMO work beyond the scope of the exposure drafts**

19. The exposure drafts deal with the empowerment of AEMO to provide for and regulate the performance of its functions under the NEL and NGL, noting that the NGL provisions will be made available in January 2009. In addition to the matters noted above, the following related AEMO work is beyond the scope of the exposure drafts, for the reasons given below.

#### *AEMO establishment, corporate governance framework and membership*

20. The exposure drafts do not deal with the establishment of AEMO, its proposed corporate governance framework or membership.
21. With respect to the establishment of AEMO, it is proposed that AEMO will be a *Corporations Act 2001 (Cth)* company limited by guarantee. It is therefore unnecessary to establish AEMO by legislation. In addition, issues about AEMO's governance and membership will be dealt with in AEMO's Constitution and accompanying Members' Agreement. The ISC is currently undertaking a separate process in conjunction with industry to develop AEMO's governance documents.
22. In June 2008, MCE agreed to membership for AEMO, which will comprise: government holding 60 per cent of the total voting entitlements; and, industry (supply-side) holding the remaining 40 per cent.

#### *New National Gas Market Rules*

23. While the exposure drafts of the NGL and the NGR will contain general provisions to support the assumption by AEMO of the functions currently performed by the jurisdictional gas market operators VENCORP, REMCO (in South Australia), GMC and GRMO, including common procedure change and dispute resolution processes, they will not include much of the detail that currently exists in the various jurisdictional gas market rules or changes to these. Existing jurisdictional retail rules will be transferred to the national framework as procedures ('Retail Procedures') made under the NGR. The Victorian wholesale gas Market System Operation Rules (MSOR) will primarily be transferred to the NGR.

24. It was proposed in the SOPA that the retail rules would be transferred to the national gas framework by implementing a split of relevant provisions across rules and procedures, with areas of technical detail to be included in procedures made by AEMO. Consistent with the desire for a minimal changes approach in the transfer to the national model and to minimise any unintended implications for participant obligations, the ISC now proposes that the existing rules be transferred as procedures, substantially 'as is', with minimal provisions to be contained in the NGR. Exposure drafts of Retail Procedures are expected to be available early in 2009. The Retail Procedures are discussed in more detail below.

#### *NSW Gas Supply Continuity Scheme*

25. As discussed earlier, AEMO will also assume GMC's current role as operator of the NSW Scheme.
26. The NSW Scheme was introduced by the NSW Government in 2008 to improve security of gas supply in the event of a shortage of gas due to reasons other than infrastructure failure. It is not proposed, however, to transfer the NSW Scheme into the national framework, on the basis that the NSW Scheme will cease when the proposed gas STTM commences (expected to be in mid-2010).
27. AEMO will administer the NSW Scheme under NSW legislation and rules (i.e. the *Gas Supply Act 1996 (NSW)* and *Market Operation Rules (Gas Supply Continuity Scheme) 2008 (NSW)*). It should be noted that AEMO will be immune from civil liability except in the case of negligence or bad faith (pursuant to the *Gas Supply Act 1996 (NSW)*). In the case of negligence, the monetary liability will be capped. This is consistent with the civil liability provisions proposed for AEMO to be set out under the NGL and NEL.

#### *Emergency Management*

28. In the SOPA, the ISC noted potential benefit in the possible development of a national approach to emergency management following the establishment of AEMO and its assumption of responsibility for gas and electricity functions nationally. It also noted significant practical difficulties and complexities with establishing such a mechanism. A working group has been created to review current arrangements and possible approaches to national scale emergency management and will work independently of the establishment process for AEMO.
29. Accordingly, the proposed amendments to the NEL and NGL do not contain any new national emergency management functions. Emergency management will continue to be primarily the responsibility of jurisdictions.
30. As part of its assumption of existing market operator functions, AEMO will take over the emergency management functions currently performed by NEMMCO under the NEL and NER and by VENCORP under the MSOR.

#### *Transitional provisions*

31. Transitional provisions are also generally not included in this package as they are currently being developed. The ISC's intention is that the transitional provisions will ensure a smooth transfer of functions from the current operators to AEMO, with particular attention being paid to the transfer of the operators' assets and

liabilities, as well as the preservation of any existing rights or obligations. It is anticipated that the provisions will be largely of a mechanical, rather than substantive nature.

32. The ISC acknowledges that stakeholders will be keenly interested in the transition to AEMO's proposed cost recovery arrangements. It is proposed that the cost recovery framework of the existing market operators be retained for a minimum of two years with a review no later than three years after AEMO establishment. For further information see below.
33. In addition, the ISC proposes, for 2009-2010, providing for particular cost recovery arrangements in relation to the GSOO, NTP, and smart metering secretariat services. Each of these functions will be declared to be (in the case of the GSOO) a major gas project and (in the case of the NTP and smart metering secretariat) a declared National Electricity Market (NEM) project. The interim participant fee structure will require retailers to pay for the major gas project and the declared NEM project.

## Part 2: AEMO Functions

### AEMO's role under the NEL and NGL

34. Part 5 of the NEL and an equivalent part of the NGL, will prescribe the functions of AEMO as described above. These Parts will also relevantly set out the new functions of AEMO including the NTP function (in the proposed s49(2) of the NEL) and the GSOO. It is anticipated that the assets and liabilities of the existing market operators will be statutorily novated to AEMO.
35. The exposure draft of the NER contains numerous minor amendments to allow AEMO to perform the functions currently performed by NEMMCO under the NER. More detail about how AEMO will perform its gas functions will be contained in the Retail Procedures, which are discussed in more detail below and which will be consulted upon separately.

### National Transmission Planner

36. A major new function of AEMO will be its role as the NTP for electricity.
37. The NTP emerged from COAG's decision of 13 April 2007, where it was agreed to establish an enhanced planning process for the national transmission network to ensure a more strategic and nationally coordinated approach to major transmission flow path development. COAG noted that this would provide guidance to private and public investors to help optimise investment between transmission and generation across the power system and inform transmission companies' investment decisions as well as the Australian Energy Regulator's (AER) regulatory reset processes associated with the economic regulation of transmission assets.
38. COAG directed the MCE to request the Australian Energy Market Commission (AEMC) to undertake a review into the proposed changes, including developing a detailed implementation plan for a NTP function.
39. The final design of the NTP, as set out in the exposure draft, is largely based on the recommendations in the AEMC's final report which was provided to the MCE for consideration on 30 June 2008 (Final Report). The report included proposed changes to the NEL and the NER<sup>1</sup>.
40. The MCE considered the AEMC Final Report and on 6 November 2008 published a response addressing the Report's recommendations<sup>2</sup>. The MCE response outlines areas of deviation from the AEMC's final recommendations and provides the reasoning for this deviation. The proposed amendments within the exposure draft NEL correspond to the policy positions stated in this response.
41. The principal task of the NTP will be to ensure the strategic, nationally focussed and efficient development of major transmission flow paths. Section 49(2) of the proposed amendments to the NEL defines the core elements of AEMO's NTP function. Further detail regarding the performance of these functions is contained in Schedule 2 of the proposed amendments to the NER.

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<sup>1</sup> Available at <http://www.aemc.gov.au/electricity.php?r=20070710.172341>.

<sup>2</sup> See EMR Bulletin No 136 at <http://www.mce.gov.au>

42. The development and publication of the National Transmission Network Development Plan (NTNDP) is the primary responsibility of AEMO in its role as the NTP. AEMO's detailed obligations with regard to the publication and development of this document are defined in proposed rule 5.6A of the NER.
43. The NTNDP must be published no later than 31 December each year (for the coming year), with the requirement for the first publication to be no later than 31 December 2010. The NTNDP will present a broad and deep analysis of different future supply and demand scenarios for National Transmission Flow Paths, taking into account various policy, technology and economic assumptions and forecasting out at least 20 years from the beginning of the year in which the NTNDP applies. Information within the NTNDP, such as current and future congestion and transmission development strategies under a range of scenarios, will enhance the ability of the market to identify and respond to investment issues in an economically efficient and timely fashion.
44. There will be strong inter-linkages between AEMO's NTP function and Transmission Network Service Providers' (TNSP) planning by virtue of a requirement that the NTNDP include a consolidated summary of each TNSP's Annual Planning Report and additionally have regard to these reports. In preparing the NTNDP that is to be published, AEMO must also have regard to:
- the most recent electricity Statement of Opportunities (SOO) that has been published;
  - the most recent GSOO that has been published;
  - the current revenue determination for each TNSP; and
  - any other documents that AEMO considers relevant.
45. To ensure that the NTNDP is a credible document that is relevant to market participants and potential investors, provisions within the exposure draft define an annual stakeholder consultation process which AEMO will be required to undertake in the production of the NTNDP. This consultation will allow market participants to make written submissions on the proposed NTNDP inputs, the content of the NTNDP as it applies for the current year and on issues raised in a statement of material issues for the NTNDP to be published by AEMO. Further, the rigour and transparency of this document will be enhanced through provisions that require AEMO to establish and maintain a publicly available database of key inputs into the NTNDP. To support these functions AEMO will be empowered to issue Market Information Orders (MIO) and Market Information Notices (MIN) to gather information from relevant participants. AEMO's proposed information gathering powers are discussed in greater detail below.
46. Included at Schedule 2 of the NER exposure draft are a number of amendments to Chapter 5 of the NER which allow for the transfer of the functions of the Inter-Regional Planning Committee (IRPC) to AEMO. The 13 April 2007 COAG decision required the role of the IRPC to be subsumed by the NTP function. The functions of the IRPC are largely technical in nature and cover a wide range of operational and planning activities. To the extent they are not made redundant by the new NTP arrangements; the functions will be retained and transferred to AEMO.

## **Gas Statement of Opportunities**

47. A major new AEMO function will be the preparation of the GSOO. The GSOO proposal is being developed by the gas industry through the GMLG<sup>3</sup>. It is intended to perform a similar role for the gas market as the electricity SOO and the NTNDP perform for the NEM.
48. The GSOO is proposed to be defined in the NGL. It is proposed that AEMO will publish this statement from January 2010. It will provide a 10 year outlook, consistent with the electricity SOO, and a more speculative view to a 20 year horizon.
49. AEMO's key functions regarding the GSOO will be set out in the NGL.
50. AEMO will be empowered to use the new MIOs and MINs, (discussed below under Part 3) to collect information for the GSOO. Further detail about the preparation and content of the GSOO will be included in the amendments to the NGR.

## **Victorian Electricity and Gas Functions**

51. A proposed new Subdivision 3 Division 2 of Part 5 of the NEL and an equivalent for the NGL provide support for AEMO to perform a range of electricity and gas functions which are currently performed by VENCORP in Victoria. The functions principally are:
  - electricity transmission service provision, electricity transmission planning and direction of augmentations for the electricity transmission system principally owned by the TNSP SP AusNet; and
  - operation of the wholesale gas market and related gas transmission system for the principal transmission system in Victoria, owned by GasNet Australia.
52. The transfer of these functions to AEMO is intended to integrate the functions into the national governance framework. The Victorian specific functions are described generically in the NEL and NGL in a manner that facilitates their application by a jurisdiction through its application legislation. They are described as part of AEMO's 'adoptive jurisdiction' functions. For example, the electricity transmission functions currently performed in Victoria will be described as 'declared network functions' that will apply only where the jurisdiction has invoked the relevant part of the NEL. Currently it is intended that only Victoria will apply these provisions in its application legislation.
53. The NEL amendments also support AEMO's assumption of the role of jurisdictional system security coordinator in Victoria.
54. AEMO will be empowered to use the new MIOs and MINs, (discussed below under Part 3) to collect information for its Victorian specific planning functions.

## **The Electricity Supply Industry Planning Council**

55. As mentioned earlier, at its 13 November 2008 meeting the ISC agreed, as foreshadowed in the Implementation Plan that AEMO will also take

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<sup>3</sup> See: [www.mce.gov.au](http://www.mce.gov.au)

responsibility for the functions currently performed by ESIPC in South Australia. Subdivision 2 of Division 2 of Part 5 of the NEL empowers AEMO to perform these functions.

56. As with the Victorian functions described above, the ESIPC functions will be described generically in the NEL and NER in a manner that allows them to be operational only when applied by the jurisdiction through application legislation. It is intended that South Australia will apply these provisions by inserting relevant provisions in its application legislation. The powers replicate those currently conferred on ESIPC under s6E of the *South Australian Electricity Act 1996 (SA)* and regulation 5E of the *Electricity (General) Regulations 1997 (SA)*.
57. AEMO will be empowered to use the new MIOs and MINs to gather information to assist it to perform ESIPC's current planning functions.

### **Treatment of Existing Gas Market Rules**

58. The jurisdictional market operators are currently responsible for operating retail gas markets in Queensland, New South Wales, the Australian Capital Territory, Victoria and South Australia. The retail markets are each supported by jurisdictional retail market rules. Additionally VENCORP operates a wholesale gas market in Victoria, supported by the MSOR.
59. As noted in its response to the SOPA, the ISC intends to transfer the existing gas market rules to the national framework essentially unchanged, except where necessary to apply the national governance framework. It is intended that the retail market rules will largely be incorporated into a new set of retail market procedures sitting under the NGR and administered by AEMO, while the Victorian MSOR will largely become part of the NGR itself.
60. Although the Retail Procedures are not included in this package the key changes to accommodate the new national governance structure will be made as amendments to the NGR, as well as broad empowering provisions for the rules and procedures to be included in both the NGL and the NGR.
61. These changes include a national process for amending the Retail Procedures, as well as a common dispute resolution mechanism for the Retail Procedures. The new process for amending the gas Retail Procedures will be included in the NGR. It is based on current processes for amending the BB Procedures in Part 18, Division 4 of the NGR. While the provisions will require AEMO to conduct appropriate consultation on proposed changes to the Retail Procedures, to provide flexibility it is not proposed to prescribe the mechanism by which this would occur. Additionally a new provision in the NGL will allow AEMO to make urgent amendments to the Retail Procedures, where failure to make the amendment in a timely manner would prejudice or threaten the operation of the gas markets, the supply of natural gas or the response to a gas emergency. The common Retail Procedure change process is designed to allow the procedures to be amended efficiently by the market operator and to retain industry engagement in the process.
62. The proposed amendments to the NGR will contain the new common dispute resolution framework to apply to disputes between gas market participants about the application and interpretation of the MSOR and the Retail Procedures and any other matters that are currently subject to dispute processes under existing

retail rules. As indicated in the ISC's response to submissions, the proposed framework is based on Chapter 7 of the MSOR, incorporating revisions to that chapter that have been proposed following consultation by VENCORP in the Victorian market. The dispute resolution framework adopts a two stage approach intended to allow parties to resolve disputes informally in the first instance, with the help of the Adviser on mutual agreement of the parties, prior to assembling an expert dispute resolution panel. It should be noted that a new provision will be inserted into the NGR which requires the AER to appoint the Adviser as is currently done under Chapter 8 of the NER.

## Part 3: Common regulatory framework

### Information Gathering

63. Division 5 of the NEL, and equivalent NGL provisions, are concerned with AEMO's information gathering powers for its planning functions.
64. Amendments will be made to allow AEMO to issue MIOs and MINs to support the following functions:
  - the NTP;
  - the GSOO;
  - the Victorian specific planning functions; and
  - functions currently performed by ESIPC in South Australia.
65. Section 53D of the NEL, which will be replicated in the NGL, allows AEMO to use all information gathered under any of its information gathering powers, including MINs and MIOs for any purpose connected with the performance of its statutory functions. The ISC considers that an important benefit of establishing AEMO is that it can improve the exercise of all of its various functions by sharing information gathered in the performance of individual functions.
66. The proposed provisions for MIOs and MINs are based upon the regulatory information order and notice provisions that are currently in both the NEL and the NGL and apply to the AER. This model was recommended by the AEMC NTP Final Report, was supported in the MCE response to the AEMC NTP Final Report and is considered by the ISC to be appropriate for all of AEMO's planning functions.
67. The ISC notes stakeholder submissions responding to the SOPA expressed concern over AEMO's proposed information regime, particularly the proposed MIOs and MINs. Issues raised included the burden and the cost of compliance, the protection of confidential information, and the potential for these powers to be extended to other AEMO functions.
68. The ISC has considered the issues raised in submissions and has altered its proposal. AEMO will now be restricted to using MIOs and MINs to support its planning functions. There will be no ability to extend the use of the framework by a Rule change.
69. The proposed NTP amendments allow for all persons including TNSPs, generators and others to be issued a MIO or MIN to support AEMO's NTP function. This is necessary in view of the type of information that will need to be gathered for the NTNDP, such as a broad and deep analysis of future supply/demand scenarios. The accuracy of these scenarios will be dependent on gathering data from existing generators and new entrant generators as well as TNSPs.
70. In response to a number of issues raised in submissions, the NEL exposure draft includes provisions that establish an accountability framework for the exercise of these information powers. AEMO will be required to have regard to the reasonable costs of efficient compliance in considering whether to issue a MIO or MIN, including considering the impacts of the proposed terms of the order or notice. Further, AEMO will be required to engage in a consultation process with

the intended recipient on the proposed terms of the instruments prior to deciding to issue the instrument.

71. The NEL exposure draft also reflects a decision (also to apply to gas) that AEMO will be able to disclose information to specified energy market institutions. This is because one of the benefits of establishing the national regime is the opportunity to maximise the efficiencies and synergies that may be achieved. It is noted that passing information to third parties will be subject to judicial review.
72. The NEL exposure drafts also contain provisions that reflect the strong public interest in compliance and accurate reporting by recipients of these information instruments. Accordingly, the recipient of a MIO or MIN must comply with it and failure to do so will be prescribed by regulation as a civil penalty. AEMO may, however, grant persons a general or specific exemption from compliance with a MIO and the issuing of MIOs and MINs will be subject to judicial review. Consistent with other like provisions, providing information that is known to be false or misleading in response to a MIO or MIN will be a criminal offence.
73. It is expected that the proposed NGL amendments will also duplicate the above arrangements.

### **Protected Information**

74. The NER currently imposes confidentiality obligations on participants and NEMMCO.
75. However, the approach in the exposure draft is for AEMO's confidentiality obligations to be elevated into the NEL. Proposed Division 6 of Part 5 of the NEL sets out obligations on AEMO in respect of protected information. Under the NEL, AEMO will have an obligation to take all reasonable measures to protect from unauthorised use or disclose information:
  - given to it in confidence; or
  - given to it in connection with the performance of its statutory functions and classified under the Rules as confidential information.
76. This is consistent with the approach adopted for similar confidentiality obligations imposed on the AER and the AEMC by s44AAF of the *Trade Practices Act 1974 (Cth)* and s24 of the *Australian Energy Market Commission Establishment Act 2004 (SA)* respectively. Division 6 of Part 5 substantially replicates rule 8.6 of the NER.
77. Consequential amendments are proposed to rule 8.6 of the NER to remove the obligations imposed by that rule on NEMMCO, while preserving the obligations set out in the rule on Registered Participants. It is proposed that the remaining provisions dealing with confidential information in the NER continue to operate essentially unamended.
78. An identical regime for the treatment of protected information is proposed for the NGL and NGR. This is intended to replace the principal substantive obligations in relation to confidential information currently operating under the jurisdictional retail market rules and the Victorian MSOR. Certain variations are proposed to the equivalent of rule 8.6 in the NGR to adapt the rule for the

purposes of the gas framework. These are based substantially on VENCORP's retail market rules.

## **Registration**

79. Currently participants in the national electricity market are required to register with NEMMCO under rule 2.1 of the NER. Classes of participants are also required to register with the various gas market operators under the current jurisdictional retail and Victorian wholesale market regimes.
80. While the NER model is to remain largely as is, the proposed NGR exposure draft will include a hybrid registration system that contains a standardised process for registration of gas market participants but retains the current jurisdictional eligibility criteria for registration. The standardised process is modelled on the regime currently in the NER.
81. Briefly, the proposed exposure draft of the NGL will require the following classes of people, if required by the rules, to register with AEMO:
  - a. Service providers;
  - b. Users;
  - c. Non-scheme pipeline users;
  - d. Producers;
  - e. Storage providers;
  - f. Traders; and
  - g. others prescribed by Regulation.
82. A key feature of the proposed registration framework is that it will accommodate different types of registration for participants depending on the extent of their participation in the different markets administered by AEMO. Initially these registration requirements will be based on the existing jurisdictional arrangements. In some cases the Rules will require relevant participants to prove compliance with prudential requirements.
83. Importantly, it is proposed that transitional provisions will provide that existing registered participants under jurisdictional gas market rules and members of GMC and SA members of REMCO will be deemed to be registered with AEMO.
84. At this stage, it is proposed that the registration process for BB participants will remain as a separate process under the NGR.

## **Fees and Cost Recovery**

85. The legislative amendments seek to establish an effective cost recovery regime allowing AEMO to fund the services it is required to provide. The key features of this regime are that the costs borne by participants should reflect the costs incurred by AEMO in providing services to the participant, and that there should be no cross subsidisation between AEMO's different functions.
86. As set out in the SOPA, the ISC will achieve this by adopting for AEMO the NEMMCO cost recovery model as set out in rule 2.11 of the NER. This will include requirements for AEMO to:
  - prepare and publish, before the beginning of each financial year, a budget of AEMO revenue requirements for that financial year. The budgeted revenue must take into account and separately identify projected revenue

requirements to support forecast expenditure for AEMO's identified lines of business; and

- develop and consult on the participant fee structure for its various functions in accordance with various cost recovery principles. There will also be an ability to dispute the participant fee structure.

87. Hence, the exposure draft of the NGL will propose introducing a similar process for determining participant fees in gas as is currently used in electricity. It is proposed that this comprise:

1. the NGL and NGR providing a power for AEMO to recover costs from participants;
2. a two-stage fee setting process, with a structure being determined at periodic intervals and charges determined annually in light of an annual budget for activities;
3. a list of AEMO gas outputs being prescribed to guide the fee structure and the corresponding activities for the annual budgeting process;
4. principles to guide the setting of the structure of participant fees; and
5. a capacity for a new fee to be determined between periodic reviews of the fee structure to permit immediate cost recovery for new functions or like matters.

88. Several consequential refinements to the cost recovery regime are also required. These include:

1. inserting a principle in the NER and NGR to clarify AEMO's capacity to recover costs that are common between its industries;
2. a simple set of 'outputs' being specified, but for the NGR with assurance that prices for services can vary between jurisdictions where the (unit) cost of performing those functions differ materially; and
3. some clarification of the principles to apply to AEMO's fee setting, with the initial change being to prescribe the national gas objective as the overall criterion for fee setting in the gas industry (rather than this being implicit as in electricity).

89. The exposure drafts also include the ability for AEMO to recover the costs associated with its new NTP and GSOO functions, as well as ESIPC's functions and the Victorian specific gas functions. The mechanism for recovery of the costs of AEMO's declared network functions (ie the existing Victorian-specific functions) will continue to be regulated through Chapter 6A of the NER, with relevant modifications to reflect the broader AEMO cost recovery model and the respective roles of AEMO and a relevant TNSP. Those modifications will apply in place of the current Victorian derogations in Chapter 9 of the NER.

90. Relevant amendments to Chapter 6A will ensure that AEMO's revenue for its Victorian TNSP function is not subject to approval by the AER. However, AEMO will be required to prepare a revenue methodology which will be subject to public consultation. The cost recovery framework of the existing market operators will be retained for a minimum of two years with a review no later than three years after AEMO establishment. The effect of this decision is that, despite proposed requirements in the NEL and NGL for AEMO to determine fees and charges for services provided under the Law or the Rules, fees and charges may be determined on the same basis as they were determined by the former market operators.

## **Immunities**

91. In the SOPA, the ISC indicated that AEMO should be protected from liability for acts or omissions that occur as a result of the performance of its statutory functions unless they occur as a result of bad faith or negligence. In the case of NEL statutory functions, this policy position has been implemented by retaining the existing indemnity provisions in Part 9 of the NEL and replacing references to NEMMCO with AEMO (see amendments to ss119 and 120 and the proposed new ss120A and 120B). In the case of the NGL the current s.221 which provides immunity to the BB operator will be moved to another part of the NGL and will be expressed to apply generally to AEMO when performing its NGL statutory functions. Additionally the current immunity for REMCo when operating the South Australian swing service shall be retained in the NGL in respect of AEMO.