

DATED 30TH DAY OF JUNE 2004

AUSTRALIAN ENERGY MARKET AGREEMENT

BETWEEN

**THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE NORTHERN TERRITORY OF AUSTRALIA
THE AUSTRALIAN CAPITAL TERRITORY**

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THIS AGREEMENT is made the 30th day of June 2004.

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE NORTHERN TERRITORY OF AUSTRALIA

THE AUSTRALIAN CAPITAL TERRITORY

RECITALS:

- A. In June 2001, the Council of Australian Governments (COAG) recognised that effective operation of an open and competitive national energy market will contribute to improved economic and environmental performance and deliver benefits to households, small business and industry, including in regional areas, and:
- (a) established the Ministerial Council on Energy (MCE) to provide national oversight and coordination of energy policy development and to provide national leadership so that consideration of broader convergence issues and environmental impacts are effectively integrated into energy sector decision-making;
 - (b) set up an independent review of energy market directions (COAG Review) so that further energy market development could be focussed on areas likely to generate significant benefits; and
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(c) established a national energy policy framework to guide future energy policy decision-making by jurisdictions and to provide increased policy certainty for energy users and for the energy sector.

B. As a substantial response to the COAG Review and other matters, the MCE provided a report to COAG, the *Reform of Energy Markets*, on 11 December 2003 and the Parties have entered into this agreement to give effect to the recommendations in that report.

OPERATIVE PROVISIONS:

1. PRELIMINARY

1.1 This agreement may be referred to as the Australian Energy Market Agreement.

1.2 This agreement includes the attached annexures.

1.3 The Parties agree that this agreement:

(a) overrides and replaces the National Electricity Market Legislation Agreement of 9 May 1996, including in relation to Tasmania's participation in the NEM referred to in Annexure 2; and

(b) prevails to the extent of any inconsistency with the Natural Gas Pipelines Access Agreement of 7 November 1997.

1.4 The Parties have each endorsed the MCE Report on *Reform of Energy Markets* of 11 December 2003 and have agreed to the recommendations in the MCE Report to provide the basis for the development of a truly national and efficient energy market. These agreements are summarised in Annexure 1.

1.5 For the avoidance of doubt, this agreement is not intended to give rise to legal obligations among the Parties.

(a) Nothing in this Agreement affects the right of any of the Parties to develop, implement and/or maintain (whether through legislation, regulation,

administrative initiatives or otherwise) policies relating to environmental (including greenhouse) and planning issues within their own jurisdictions.

1.6 In this agreement, unless the contrary intention appears:

- (a) **“ACCC”** means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974 (C/wth)* and includes a member of the Commission and a Division of the Commission performing functions of the Commission;
 - (b) **“AEMC”** means that entity referred to in clause 5 of this agreement;
 - (c) **“AER”** means that entity referred to in clause 5 of this agreement;
 - (d) **“Australian Energy Market Legislation”** means:
 - (i) the Electricity Legislation and the Gas Legislation as amended by the Implementing Legislation; and
 - (ii) the Implementing Legislation;
 - (e) **“Code Registrar”** means a person appointed to or acting in the position of Code Registrar and appointed under the *Gas Pipelines Access (South Australia) Act 1997* of South Australia;
 - (f) **“Commencement Date”** means the date on which both the AER and the AEMC are established by the coming into operation of the Implementing Legislation of both the Commonwealth of Australia and the State of South Australia;
 - (g) **“Electricity Legislation”** means existing legislation giving effect to the National Electricity Market, including the *National Electricity (South Australia) Act 1996*, the *National Electricity (South Australia) Regulations*, the legislation of the other jurisdictions participating in the NEM that applies any part of the *National Electricity (South Australia) Act 1996* and regulations in force under that Act, the National Electricity Law (“NEL”) and the National Electricity Code;
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(h) **“Gas Legislation”** means existing legislation giving effect to the Natural Gas Pipelines Access Agreement including the *Gas Pipelines Access (South Australia) Act 1997*, the *Gas Pipelines Access (South Australia) Regulations*, the *Gas Pipelines Access (Western Australia) Act 1998*, the *Gas Pipelines Access (Western Australia) Regulations*, the legislation of any other jurisdiction that applies any part of the *Gas Pipelines Access (South Australia) Act 1997* and regulations in force under that Act, the *Gas Pipelines Access Law* and the National Gas Code;

(i) **“Implementing Legislation”** means legislation:

- (i) amending the Electricity Legislation and the Gas Legislation required to give effect to this agreement; and
- (ii) establishing the AEMC and the AER, and conferring functions and powers on those bodies in accordance with this agreement;
- (iii) subjecting each Party to the jurisdiction of the AER and the AEMC in accordance with the relevant anticipated timetables in clauses 8 and 9

and, for the avoidance of doubt, does not include any law the primary object or purpose of which is not the subject of this agreement;

(j) **“legislation”** includes regulations;

(k) **“Ministerial Council on Energy”** or **“MCE”** means the body established on 8 June 2001, being the Council of Ministers with primary carriage of energy matters at national level comprising Ministers representing the Commonwealth and each of the States and Territories;

(l) **“MCE Minister”** means the Minister of the Crown in right of a Party appointed to represent that Party for the purposes of this agreement, and includes any delegate of that Minister;

- (m) **“National Electricity Code”** means the code of conduct called the National Electricity Code approved by each of the relevant Ministers of the States of New South Wales, Victoria, Queensland and South Australia and the Australian Capital Territory as amended and in operation for the time being;
 - (n) **“National Gas Code”** means the National Third Party Access Code for Natural Gas Pipeline Systems approved by each of the relevant Ministers of the Parties as amended and in operation for the time being;
 - (o) **“NECA”** means the National Electricity Code Administrator Limited A.C.N 073 942 775;
 - (p) **“NEL”** means the National Electricity Law set out in a Schedule to the *National Electricity (South Australia) Act 1996*;
 - (q) **“NEM”** means the electricity market operating in NSW, Vic, Qld, SA and the ACT as governed by the *National Electricity (South Australia) Act 1996*;
 - (r) **“NEM jurisdiction”** means a jurisdiction that has in force legislation applying the NEL as a law of that jurisdiction;
 - (s) **“NEMMCO”** means the National Electricity Market Management Company Limited A.C.N 072 010 327, the company that operates and administers the market in accordance with the National Electricity Code;
 - (t) **“NET”** means the National Electricity Tribunal established under Part 3 of the *National Electricity (South Australia) Act 1996*;
 - (u) **“Natural Gas Pipelines Access Agreement”** means the Natural Gas Pipelines Access Agreement dated 7 November 1997 as amended being the intergovernmental agreement by which the Parties agreed to implement a uniform national legislative framework governing access to natural gas transmission pipelines between and within jurisdictions;
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- (v) **“NGPAC”** means the National Gas Pipelines Advisory Committee established under the Natural Gas Pipelines Access Agreement (which terms have the meaning given in the Gas Pipelines Access Law made under the *Gas Pipelines Access (South Australia) Act 1997* and applied as a law of South Australia); and
- (w) **“Parties”** means the parties to this agreement and **“Party”** means any one of them.

2. **OBJECTIVES**

2.1 The objectives of this agreement are:

- (a) the promotion of the long term interests of consumers with regard to the price, quality and reliability of electricity and gas services; and
 - (b) the establishment of a framework for further reform to:
 - (i) strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate of investment;
 - (ii) streamline and improve the quality of economic regulation across energy markets to lower the cost and complexity of regulation facing investors, enhance regulatory certainty, and lower barriers to competition;
 - (iii) improve the planning and development of electricity transmission networks, to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity;
 - (iv) enhance the participation of energy users in the markets including through demand side management and the further introduction of retail competition, to increase the value of energy services to households and businesses;
 - (v) further increase the penetration of natural gas, to lower energy costs and improve energy services, particularly to regional Australia, and reduce greenhouse emissions; and
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- (vi) address greenhouse emissions from the energy sector, in light of the concerns about climate change and the need for a stable long-term framework for investment in energy supplies.

3. **OPERATION OF AGREEMENT**

- 3.1 This agreement is effective when executed by all Parties.
- 3.2 The Parties will use all reasonable measures to comply with the dates in this agreement but acknowledge that any date may be altered by the unanimous agreement of the MCE Ministers.
- 3.3 This agreement may be amended upon unanimous agreement of all Parties by a notice signed by all Parties setting out the terms of the amendment and the date on which the amendment will come into force.

4. **MINISTERIAL COUNCIL ON ENERGY**

Role of the MCE

- 4.1 The Parties agree that the MCE is the national policy and governance body for the Australian energy market including for electricity and gas.
 - 4.2 The MCE will report to COAG on the operation of this agreement and any proposed amendments.
 - 4.3 The Parties agree that the MCE has responsibility for:
 - (a) the national energy policy framework;
 - (b) policy oversight of, and future strategic directions for the Australian energy market;
 - (c) governance and institutional arrangements for the Australian energy market;
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- (d) the legislative and regulatory framework within which the market operates and natural monopolies are regulated;
- (e) longer-term, systemic and structural energy issues that affect the public interest; and
- (f) such other energy related responsibilities as are conferred by Commonwealth, State or Territory legislation and unanimously agreed by the MCE consistent with this agreement.

4.4 The Parties agree that the MCE has:

- (a) power to issue policy directions to the AEMC with respect to rule-making or electricity or gas market reviews;
- (b) power to approve arrangements for the funding of the AEMC and the AER;
- (c) power to recommend appointments of commissioners to the AEMC and members to the AER in accordance with this agreement; and
- (d) any other energy related power conferred on it by agreement between the Parties or by legislation.

4.5 The Parties agree that the MCE will not be engaged directly in the day-to-day operation of the market or the conduct of regulators.

Operation and Voting

4.6 Except as provided for in this agreement, the Parties agree that the MCE may establish such rules concerning its operation as it considers appropriate, including rules concerning frequency of meetings, chairing, and making of decisions.

4.7 The Parties agree that:

- (a) decisions of the MCE concerning the NEM will be made by agreement of the MCE Ministers representing Parties that are, or are, by this agreement, deemed by 4.8 and 4.9 to be NEM jurisdictions; and
- (b) Western Australia and the Northern Territory of Australia can participate as observers in decision-making relating to the NEM.

4.8 The Parties agree that pending the coming into operation of legislation applying the NEL within its jurisdiction, the Commonwealth of Australia is deemed to be a NEM jurisdiction for the purposes of:

- (a) MCE Ministers approving or recommending changes or amendments to the *National Electricity (South Australia) Act 1996* (and regulations made thereunder) the NEL and the National Electricity Code (the “NEM scheme”); and
- (b) MCE Ministers issuing, varying or withdrawing policy directions to the AEMC.

4.9 The Parties agree that Tasmania will be deemed to be a NEM jurisdiction in accordance with Annexure 2 and that Tasmania’s entry into the NEM will be governed by the obligations referred to in Annexure 2.

4.10 For the avoidance of doubt, Western Australia can participate in decision-making relating to the operations, powers and functions of the relevant regulator under the Gas Pipeline Access Law, including National Gas Code.

4.11 For the avoidance of doubt, “decision” in this clause includes a decision, resolution, direction, recommendation, appointment or other matter to be determined by the MCE.

5. **AUSTRALIAN ENERGY MARKET INSTITUTIONS**

5.1 The Parties agree that the Australian energy market institutions will comprise:

- (a) the Australian Energy Market Commission (AEMC) to be established as the body responsible for rule making and energy market development at a national level, including in respect of the National Electricity Code and the National Gas Code;
- (b) the Australian Energy Regulator (AER) to be established as the body responsible for economic regulation and compliance with the Codes of the electricity and natural gas industries at a national level; and
- (c) NEMMCO, which will continue to be responsible for the day-to-day operation and administration of both the power system and electricity wholesale spot market in the NEM.

6. **AUSTRALIAN ENERGY MARKET LEGISLATION**

6.1 The obligations of each of the Parties under this clause 6 are to be read subject to any qualifications relevant to the participation of jurisdictions under this agreement.

6.2 Each of the Parties agrees to develop and implement a national legislative framework for the energy market, comprising the Australian Energy Market Legislation, with uniform application and effect within each Party's jurisdiction. To this end, the Parties agree to the following:

Commonwealth

- (a) The Commonwealth of Australia will submit to its Parliament legislation including consequential amendments to the *Trade Practices Act 1974*, with the effect of:
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- (i) establishing the AER (“the AER establishment legislation”) and conferring on it, and enabling the conferral of, functions and powers in respect of electricity and gas;
- (ii) applying the NEL as appropriate as a law of the Commonwealth of Australia; and
- (iii) conferring functions and powers in respect of electricity and natural gas on the AEMC and on the AER, and enabling the AEMC and the AER to exercise those functions and powers within the jurisdiction of the Commonwealth of Australia.

South Australia

- (b) The State of South Australia will submit to its Parliament Implementing Legislation with the effect of:
 - (i) establishing the AEMC (“the AEMC establishment legislation”) and conferring functions and powers on the AEMC in respect of electricity and natural gas;
 - (ii) conferring functions and powers on the AER and enabling the AER to exercise its functions and powers in South Australia; and
 - (iii) making consequential amendments to the Electricity Legislation and the Gas Legislation.

Western Australia

- (c) The State of Western Australia will submit to its Parliament Implementing Legislation with the effect of:
 - (i) conferring functions and powers on the AEMC in respect of natural gas only and enabling the AEMC to exercise its functions and powers in Western Australia’s jurisdiction;
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- (ii) making consequential amendments to the *Gas Pipelines Access (WA) Act 1998*; and
- (iii) if the State of Western Australia at its discretion and in consultation with the MCE elects to become subject to the jurisdiction of the AEMC and the AER in respect of electricity, or of the AER in respect of natural gas, conferring the relevant functions and powers on those bodies and, enacting such legislation as may be necessary for those bodies to exercise those functions and powers in Western Australia.

Northern Territory

- (d) The Northern Territory of Australia will submit to its Parliament Implementing Legislation with the effect of:
 - (i) conferring functions and powers in respect of natural gas only on the AEMC and on the AER, and enabling the AEMC and the AER to exercise those functions and powers in the jurisdiction of the Northern Territory of Australia; and
 - (ii) if the Northern Territory at its discretion and in consultation with the MCE elects to become subject to the jurisdiction of the AEMC and the AER in respect of electricity, conferring functions and powers in respect of electricity on those bodies and enacting such legislation as may be necessary to exercise those functions and powers in the Northern Territory.

New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory

- (e) Each of the States of New South Wales, Victoria, Queensland and Tasmania and the Australian Capital Territory will submit to its Parliament Implementing Legislation with the effect of:
 - (i) conferring on the AEMC and the AER functions and powers in respect of both electricity and natural gas; and
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- (ii) enabling the AEMC and the AER to exercise their respective functions and powers in its jurisdiction.

6.3 Each Party will submit its proposed Implementing Legislation for unanimous approval by MCE Ministers and take all reasonable measures to ensure its legislation is enacted and proclaimed expeditiously and in the form approved.

6.4 Each Party will take all steps reasonably necessary to:

- (a) in the case of the Commonwealth of Australia and the State of South Australia, ensure its Implementing Legislation is enacted and becomes operative as soon as practicable;
- (b) in the case of the other States and Territories, ensure their Implementing Legislation is enacted and becomes operative on a date as soon as practicable after the Commencement Date; and
- (c) in accordance with the extent of their participation under this agreement, repeal or amend (to the extent necessary to ensure consistency) any legislation which is inconsistent with, or would alter the effect, scope or operation of the Australian Energy Market Legislation or this agreement.

Amending Legislation and Regulations

6.5 Australian Energy Market Legislation may only be amended, and regulations may only be made pursuant to the Australian Energy Market Legislation as amended from time to time, with the agreement of the MCE. The Party or Parties that are required to legislate to give effect to any amending legislation or to enact regulations will take all reasonable measures to secure the relevant enactment in accordance with a time-table agreed by the MCE.

6.6 A Party will not take any action that would limit, vary or alter the effect, scope or operation of the Australian Energy Market Legislation without the agreement of the MCE.

7. **APPOINTMENTS TO THE AEMC AND THE AER**

AEMC Appointments

- 7.1 The AEMC will consist of 3 commissioners, two of whom are to be recommended for appointment by agreement of at least six (6) of the MCE Ministers representing each of the States and Territories (“State and Territory AEMC Commissioners”) and the third to be recommended for appointment by the MCE Minister representing the Commonwealth.
- 7.2 Commissioners will be appointed for a term of up to five years. Appointments to the AEMC will be made by the Governor-in-Council of South Australia on the recommendation of the relevant MCE Ministers, through the Minister responsible for the South Australian AEMC establishment legislation.
- 7.3 One of the State and Territory AEMC Commissioners is also to be recommended for appointment as Chair of the AEMC by agreement of at least six (6) of the States and Territories for an initial term of up to five years.

AER Appointments

- 7.4 The AER will consist of 3 members, two of whom are to be recommended for appointment by agreement of at least five (5) of the MCE Ministers representing each of the States and Territories that have elected to be subject to the jurisdiction of the AER (“State and Territory AER Members”) and the third to be recommended for appointment by the Chair of the ACCC (“ACCC AER Member”). Provision may be made for the appointment of acting Members on the same basis.
- 7.5 Should Western Australia elect to become subject to the jurisdiction of the AER, the two State and Territory AER Members (including acting appointments) are to be recommended for appointment by agreement of at least six (6) of the MCE Ministers representing each of the States and Territories.
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7.6 Members will be appointed for a term of up to five years. Appointments to the AER will be made by the Governor-General-in-Council on the recommendation of the relevant MCE Ministers, through the Minister responsible for the Commonwealth AER legislation.

7.7 A Member will be recommended for appointment as Chair of the AER by agreement of the Commonwealth MCE Minister and a simple majority of the MCE Ministers representing Parties that are subject to the jurisdiction of the AER. The first Chair will be appointed for a term of three years with an option for extension.

8. **FUNCTIONS OF THE AEMC**

8.1 The AEMC will have the following functions:

- (a) from the Commencement Date, all rule-making and market development functions currently performed by NECA and, to the extent applicable, NEMMCO in respect of the NEM electricity wholesale market and transmission networks, including undertaking changes to the National Electricity Code and initiating code changes of a minor administrative nature;
 - (b) by no later than 30 June 2005, all functions associated with rule-making and market development currently performed by the National Gas Pipelines Advisory Committee and, to the extent applicable, the Code Registrar in respect of natural gas transmission and distribution networks;
 - (c) by no later than 31 December 2006, rule-making and market development functions conferred by jurisdictions in respect of electricity and natural gas distribution networks and retail markets (other than retail pricing);
 - (d) from the Commencement Date, undertaking electricity and gas market reviews;
 - (e) complying with policy directions issued by the MCE (through the MCE Minister responsible for the AEMC establishment legislation) provided that these policy directions are :
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- (i) consistent with the legislative provisions establishing the AEMC;
 - (ii) given in writing;
 - (iii) made in respect of either proposed rule-making or electricity or gas market reviews;
 - (iv) where made in respect of the NEM are made by agreement of the MCE Ministers representing the Parties that are, or are deemed by this agreement to be NEM jurisdictions; and
 - (v) where made in respect of natural gas are made by agreement of MCE Ministers;
- (f) such other functions as may from time to time be agreed unanimously by the MCE Ministers and are conferred by legislation.

8.2 The Parties agree that active participation of both energy users and suppliers is important to achieve effective competition and maximise the benefits of market reform. To assist in achieving this:

- (a) the MCE will establish a more structured and transparent code change process to be followed by the AEMC;
 - (b) end-user and industry consultation in developing code changes will be strengthened; and
 - (c) the AEMC will be required to consider the long-term interests of consumers in making code change decisions.
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9. **FUNCTIONS OF THE AER**

9.1 The AER will have the following functions:

- (a) from the Commencement Date, economic regulation of the NEM electricity wholesale markets and transmission networks, and in particular:
 - (i) the ACCC's electricity transmission regulatory functions and the regulatory functions of NECA;
 - (ii) monitoring and reporting on compliance with the National Electricity Code; and
 - (iii) enforcing the National Electricity Code;
- (b) no later than 30 June 2005, economic regulation of gas transmission networks for all Parties subject to the jurisdiction of the AER, and in particular enforcing the National Gas Code;
- (c) no later than 31 December 2006, economic regulation of NEM electricity distribution networks and retail markets (other than retail pricing) for the Parties that are NEM jurisdictions;
- (d) no later than 31 December 2006, economic regulation of natural gas distribution networks and retail markets (other than retail pricing) for the Parties subject to the jurisdiction of the AER; and
- (e) such other functions as may from time to time be agreed unanimously by the MCE Ministers representing the Parties that have elected to be subject to the jurisdiction of the AER and are conferred by legislation.

9.2 The AER will be a constituent part of the ACCC but will be a separate legal entity located separately from the ACCC and:

- (a) an appointment to the position of the State and Territory AER Member will also operate as an appointment of that person as an Associate Member of the ACCC which role will be advisory only;
- (b) the appointment process identified in the Conduct Code Agreement of April 1995 will not apply to the appointment of the State and Territory AER Members as Associate Members of the ACCC;
- (c) the staff required by the AER will be engaged by the ACCC and made available to the AER under arrangements to be agreed by the AER and ACCC; and
- (d) the CEO of the AER will be chosen by the AER Members following agreement with the ACCC.

9.3 All decisions at meetings of the AER will be made as follows:

- (a) from the Commencement Date, decisions at meetings of the AER will require the unanimous agreement of the members present and voting. However, it is intended that the AER voting rule will change to a requirement for simple majority decisions when the AER assumes responsibility for national regulation of distribution and retailing (other than retail pricing) as provided in clauses 9.1(c) and (d);
- (b) a quorum for AER meetings is constituted by 2 members and must include the Chair and the ACCC AER Member; and
- (c) provision will be made for AER resolutions and decisions to be taken without a meeting if all three (3) members agree to the resolution or decision in writing and sign the document.

9.4 The Parties agree that for the purpose of the relevant provisions of the *Trade Practices Act 1974* as amended by the AER establishment legislation to be enacted by the Commonwealth of Australia:

- (a) each State and Territory may, through its Australian Energy Market Legislation (as amended from time to time), confer functions and powers, and impose duties on the AER; and
- (b) these functions, powers and duties shall be performed and exercised by the AER in accordance with the Australian Energy Market Legislation (as amended from time to time).

10. **FUNDING ARRANGEMENTS**

10.1 The Parties agree that the AER and AEMC will be funded by an industry levy. The levy will also fully recover the establishment costs and any operational costs incurred prior to commencement of the levy.

10.2 The Parties agree that, as an interim arrangement for the 2004-2005 financial year:

- (a) the AEMC will be fully funded, including its establishment costs, by New South Wales; and
- (b) the AER will be fully funded, including its establishment costs, by the Commonwealth

on the basis that Parties responsible for interim funding will be fully reimbursed via the industry levy.

10.3 The Parties agree that for the purpose of reimbursing the AEMC interim costs paid in accordance with sub-clause 10.2, NECA Members will pay any surplus funds distributed to them following the wind-up of NECA to New South Wales.

11. **DISSOLUTION OF NET, NECA, NGPAC AND THE CODE REGISTRAR**

11.1 The Implementing Legislation will effect the transfer of functions, powers and duties of the NECA, NGPAC and the Code Registrar to the AER and the AEMC on dates to be agreed between the Parties and consistent with the timetables in clauses 8 and 9 for commencement of the exercise of relevant functions by the AER and the AEMC.

- 11.2 Upon completion of the transfer of the functions powers and duties of NECA to the AER and the AEMC, the Parties will take all necessary steps to wind up NECA in accordance with the *Corporations Act 2001* (Cth).
- 11.3 Upon completion of the transfer of the functions powers and duties of NGPAC to the AEMC, the Parties will amend the Natural Gas Pipelines Access Agreement entered into on 7 November 1997 by revoking clause 9 of that agreement and will take all other steps necessary to disestablish the NGPAC and the Code Registrar in accordance with the Implementing Legislation.
- 11.4 The Implementing Legislation will have effect that, on a date or dates to be agreed between the Parties, being a date or dates after the Commencement Date:
- (a) decisions of the AEMC will be subject to judicial review by the Supreme Court of each of the States and Territories (without affecting the inherent jurisdiction of those Courts to hear judicial review proceedings); and
 - (b) decisions of the AER will be subject to judicial review by the Federal Court.
- 11.5 The Parties will take all steps necessary to disestablish the NET in accordance with the Implementing Legislation.

12. **MOU BETWEEN AER, AEMC and ACCC**

- 12.1 The Parties agree that the MCE will endorse a Memorandum of Understanding between the AER, the AEMC and the ACCC that will address consultation, co-operation, code change authorisation and staffing arrangements.

13. **WITHDRAWAL OF PARTIES**

- 13.1 If a Party does not comply with any one or more of its obligations under this agreement that Party will withdraw from this agreement if all of the other Parties give written notice requiring it to do so.
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- 13.2 A Party may withdraw from this agreement by giving 12 months notice in writing to each of the other Parties of its intention to do so, and all of the Parties will then negotiate in good faith in relation to the terms of withdrawal of the Party that has given notice, including the date on which the Party will cease to be a Party, and any legislative changes and other arrangements that may be necessary as a consequence of the withdrawal.
- 13.3 If a Party withdraws, this agreement will continue in force between all of the remaining Parties.
- 13.4 A Party may rejoin as a Party to this agreement with the unanimous agreement of the other Parties, if it has first indicated that it is prepared to adhere to the obligations in this agreement.
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EXECUTED AS AN AGREEMENT

SIGNED by

The Honourable John Winston Howard MP)
Prime Minister of Australia)

The Honourable Andrew Refshauge MP)
Acting Premier of the State of New South Wales)

The Honourable John Thwaites MP)
Acting Premier of the State of Victoria)

The Honourable Peter Beattie MP)
Premier of the State of Queensland)

The Honourable Dr Geoff Gallop MLA)
Premier of the State of Western Australia)

The Honourable Kevin Foley MP)
Acting Premier of the State of South Australia)

The Honourable Paul Lennon MHA)
Premier of the State of Tasmania)

The Honourable Claire Martin MLA)
Chief Minister of the Northern Territory of Australia)

Jonathon Donald Stanhope MLA)
Chief Minister of)
the Australian Capital Territory)

ANNEXURE 1

MCE REPORT TO COAG –SUMMARY OF RECOMMENDATIONS

The MCE recommends the following reform package to COAG:

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| Governance
of Energy
Markets | <ul style="list-style-type: none">• The Ministerial Council on Energy to subsume the NEM Ministers Forum on 1 July 2004, establishing a single energy market governance body. Transition measures to include:<ul style="list-style-type: none">- Commonwealth and Tasmania to immediately join the NEMMF as full members;- WA and NT to participate in the NEMMF as observers.• A national legislative framework to be agreed, and developed on a collaborative basis between the Commonwealth, States and Territories, under a new inter-governmental agreement. |
| Economic
Regulation
And Rule
Making | <ul style="list-style-type: none">• Two new statutory commissions to be established on 1 July 2004, funded by industry levy:<ul style="list-style-type: none">– Australian Energy Market Commission (AEMC), with responsibility for rule-making and market development;– Australian Energy Regulator (AER), with responsibility for market regulation.• The AER to be a constituent part of the ACCC but operate as a separate legal entity. State jurisdictions to appoint two AER Members, with the third drawn from the ACCC. Chair to be agreed by both the Commonwealth and majority of states/territories.• The AEMC to also be a separate legal entity, accountable to and subject to the power of policy direction from the MCE. The AEMC to comprise three Members, with two (including the Chair) appointed by the states.• The new bodies to initially be responsible for electricity wholesale and transmission in the connected (NEM) jurisdictions, extended in 2005 to include gas transmission for all other than WA (in accordance with the <i>COAG Natural Gas Pipeline Access Agreement of 1997</i>). Provision to be made for WA and NT to join for electricity, and WA for gas under the AER, by agreement. NECA to be abolished after establishment of AER and AEMC. |
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- The ACCC to retain responsibility for competition regulation under Part IV of the *Trade Practices Act*, for competition-related code-change authorisations under Part VII, and for industry access code approvals under Part IIIA.
- The new regulatory arrangements to provide for consultation and cooperation between the AEMC, AER and ACCC. The code change and authorisation process to be streamlined, to avoid duplication. The AEMC and AER to have specific consultation obligations. End-user and industry consultation in developing code changes to be strengthened.
- Agreement in-principle to development of a national approach to energy access under the *TPA*, covering electricity and gas transmission and distribution, to be considered by the MCE in 2004. Streamlined procedures for ACCC approvals and acceptance of access-related code changes under Part IIIA of the *TPA* to be developed and agreed by the MCE.
- Agreement that the AER will be responsible for the regulation of distribution and retailing (other than retail pricing), following development of an agreed national framework. Work will commence on the national framework in 2004, and the MCE will consider the outcome in 2005. Following MCE agreement on the framework, the AER will assume responsibility for national regulation of distribution and retailing (other than retail pricing) by 2006. Any jurisdiction may, at their discretion, opt to transfer responsibility for retail pricing to the AER once it has assumed distribution and retail responsibilities.

**Electricity
Transmission**

- A new NEM transmission planning function to be developed, including an Annual National Transmission Statement (commencing in 2004) and a last resort power to direct that a project be subjected to the regulatory test.
 - A new regulatory test for transmission to include the full economic benefits of increased competition, to be implemented in July 2004.
 - A new process to be developed for assessing wholesale market regional boundaries, while maintaining jurisdictional boundaries for retail customer pricing. Initial report in June 2004.
 - Improvements to inter-regional financial trading arrangements, to be evaluated in conjunction with future arrangements for regional boundaries.
 - Market-based incentives for transmission performance to be developed, by July 2004.
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- Conclude the review of transmission pricing arrangements, for implementation in 2004.
 - Removal of existing biases in favour of unregulated transmission investment, in mid 2004. The code changes to recognise and protect the rights of existing investors in market transmission services.

User**Participation**

- In all jurisdictions where full retail competition is operating, each jurisdiction to align their retail price caps with costs, and periodically review the need for price caps.
- The MCE to examine options for a demand-side response pool in the NEM, and consider the costs and benefits of introducing interval metering.

Natural Gas**Penetration**

- The MCE welcomes the Productivity Commission review of the National Gas Access Regime, and will be responding to the recommendations in 2004.
- The MCE notes the direction of the COAG review to preclude future state exemptions from joint marketing provisions. Proponents of future arrangements for the joint marketing of gas, which raise competition concerns, may seek authorisation by the ACCC on a case by case basis. The Ministerial Council on Mineral and Petroleum Resources (MCMPR) is considering this issue.
- The MCE notes that the MCMPR is also considering the appropriate treatment of unproduced areas in existing production licences that are due for renewal, and to review the gas industry's principles for third party access to upstream facilities, and to advise the MCE of its conclusions.

Greenhouse**Emissions**

- The MCE to work closely with the COAG High Level Group on Greenhouse to address greenhouse gas emissions from the energy sector on a national basis.
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ANNEXURE 2

TASMANIA'S PARTICIPATION IN THE NEM

1. The Parties that are NEM jurisdictions agree that, pending Tasmania becoming a NEM jurisdiction by the coming into operation of Tasmania's legislation applying the NEL as a law of Tasmania (the *Electricity – National Scheme (Tasmania) Act 1999*):
 - (a) Tasmania will be deemed to be a NEM jurisdiction for the purposes of:
 - (i) MCE Ministers approving or recommending changes or amendments to the *National Electricity (South Australia) Act 1996* (and regulations made thereunder) the NEL and the National Electricity Code (the "NEM scheme"); and
 - (ii) MCE Ministers issuing, varying or withdrawing policy directions to the AEMC;
 - (b) all action necessary will be taken to amend the NEM Scheme to give effect to clauses 1(a), 1(c), 1(d) and 1(e);
 - (c) a Minister of the Crown in right of Tasmania nominated by Tasmania for that purpose will be treated as being a Minister of a NEM jurisdiction for the purposes of the NEM scheme and the approval of changes or amendments to the NEM scheme;
 - (d) the Minister of the Crown in right of Tasmania referred to in (c) may require the AEMC to amend Chapter 9 of the National Electricity Code so as to incorporate jurisdictional derogations for Tasmania authorised by the ACCC on 14 November 2001; and
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- (e) the AEMC will be legislatively empowered and required to make the amendment to the Code referred to in (d) without carrying out the procedure for Code Changes under the National Electricity Law.
2. The “Deed of Assumption: National Electricity Market Legislation Agreement” between Tasmania, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory dated 7 December 2001 providing for Tasmania’s entry to the NEM will remain operative, but a reference in that Deed to the current or future operation of the National Electricity Market Legislation Agreement or a Party’s participation in that agreement will be taken to be a reference to the operation of this Australian Energy Market Agreement in respect of the NEM or to the Party’s participation in the NEM in accordance with the Australian Energy Market Agreement as the context requires.
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