

## LEGISLATIVE FRAMEWORK: STATEMENT OF PROPOSED APPROACH FOR THE AUSTRALIAN ENERGY MARKET OPERATOR ESTABLISHMENT – IMPLEMENTATION STEERING COMMITTEE RESPONSE TO STAKEHOLDER SUBMISSIONS

The table below sets out the response of the Ministerial Council on Energy AEMO Implementation Steering Committee (ISC) on submissions to the 'Legislative Framework: Statement of Proposed Approach' (SOPA) for the establishment of the Australian Energy Market Operator (AEMO), released in August 2008. Consistent with the approach taken in the SOPA, the table does not deal with issues associated with the establishment, constitution or proposed corporate governance framework for AEMO, which are proposed to be subject to separate consultation. The process is yet to be determined.

It is to be noted that the responses specifically relating to the gas regulatory framework may be subject to change. It is anticipated the draft National Gas Law (NGL) and National Gas Rules (NGR) will be released for public consultation in early January 2009. Any material changes will be identified at this time.

No.	Ch.	Stakeholder group	Issue	ISC response
<b>Issues relevant to AEMO generally</b>				
1.	Intro	User representative organisation	'Minimal changes' approach to be adopted in amending the national framework and relevant state-based legislation for AEMO to function as the national market operator should be balanced with achieving 'national consistency'.	<b>Agreed.</b> The ISC notes that the 'minimum changes' approach is to be understood in the context of the overarching objective of strengthening the national character of energy market governance. As outlined at paragraph 13 of the SOPA it is also envisaged that consideration will be given, over the longer term, to achieving greater national consistency where feasible and reducing the regulatory burden on businesses.
2.	Intro	Industry representative organisation	The AEMO Board should be provided with tools to meet member objectives, but where feasible not locked into specific requirements.	<b>Noted.</b> The ISC is confident the corporate governance arrangements for AEMO will deliver high quality outcomes for the energy market, while ensuring sufficient flexibility for the AEMO Board to enable it to operate efficiently and effectively.
<b>Accountability framework</b>				
3.	1	User representative	The Australian Energy Regulator (AER) should be subject to timelines when investigating possible	<b>Not accepted.</b> The ISC considers that it is not appropriate to unnecessarily

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		organisation	breaches of the National Electricity Law (NEL) and the NGL (collectively, the Law) and the National Electricity Rules (NER) and NGR (collectively, the Rules).	<p>constrain the AER's enforcement processes by holding it to specified timeframes.</p> <p>The ISC notes that there is statutory provision for the AER to develop enforcement guidelines, in consultation with the public, (see for example s 68 of the NGL) and to allow transparency around enforcement processes, such as requiring the AER to inform persons of decisions not to investigate breaches, institute proceedings or serve infringement notices. The AER is limited by the 6 year limitation period (s 230 of the NGL).</p>
4.	1	Retailer/ Operator	AEMO in addition to the AER should have an enforcement role. It should undertake investigations and report apparent material breaches of the Law and Rules to the AER, and publish reasons if no referral to the AER is made.	<p><b>Partially accepted.</b></p> <p>The basic institutional framework for energy sector regulation generally has the AER as the responsible body for enforcement. The AER has a range of enforcement tools available to it that may be appropriately adapted in the context of the transfer of functions to AEMO. It is not consistent with this framework for AEMO to assume a substantial compliance role. The ISC notes, however, that there is a memorandum of understanding between the AER and the National Electricity Market Management Company (NEMMCO) and this would be expected to continue.</p> <p>In addition, several market operators currently have some involvement in reporting of minor breaches. It is proposed that for those jurisdictions where this is the case the procedures continue the current practice of self reporting of breaches by participants to AEMO who may then report these to the AER.</p>
5.	1	Networks	It is inappropriate to create a civil penalty or conduct provision by regulation as proposed by	<p><b>Noted.</b></p> <p>The creation of civil penalties or conduct provisions by</p>

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			Recommendation 2 of Chapter 1, as this bypasses safeguards built into the rule development processes for other types of rule changes.	regulation is an existing part of the national framework. See, for example, ss 3 and 4 of the NGL.
6.	1	Networks	The need for enforcement powers as proposed in the draft National Energy Customer Framework (NECF) and reflected in paragraph 35 of the SOPA to the extent they are intended to apply to AEMO, cannot be assessed until the NECF is released.	<b>Agreed.</b> The ISC notes that the NECF is the appropriate framework within which SCO's proposed enhancements to enforcement are to be considered.
7.		Regulator	The gas dispute resolution procedure should be modelled on Chapter 7 of the Market System and Operations Rules (MSOR). This is preferable to current dispute resolution process arrangements in the electricity framework. A comprehensive review of the dispute resolution procedure should be undertaken at a later time.	<b>Agreed.</b> It is noted that Chapter 7 (as amended) of the MSOR is modelled on Chapter 8 of the NER with appropriate gas specific modifications.
8.	1	Networks/ Regulator	The current Victorian arrangements allow for technical and transactional disputes to be settled outside a dispute resolution panel process. These and similarly flexible arrangements should be maintained to ensure efficiency and to minimise cost to parties.  More broadly, existing gas jurisdictional dispute mechanisms should also be continued.	<b>Noted.</b> It is proposed that Chapter 7 (as amended) of the MSOR be 'transferred' to the national framework so that disputes in the Victorian wholesale market will be dealt with within that framework.  In addition, the ISC has decided the Chapter 7 MSOR process (with minor amendments) should be applied to disputes concerning the application and interpretation of other jurisdictions retail market rules and procedures.
9.	1	Regulator	It would be preferable for there to be flexibility to impose reporting obligations on participants rather than imposing them outright. If the ISC is minded to require reporting of non-compliance, reporting should be made to the AER and not to AEMO.	<b>Noted.</b> See also the response at 4.

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10.	1	Networks	It is preferable for gas market participants to be required to resolve disputes bilaterally rather than invoking a more formal costly dispute resolution process.	<b>Noted.</b> The dispute resolution process is intended to be cost effective and timely and builds on the experience of the current MSOR dispute resolution process. The process facilitates bilateral resolution prior to formal arbitration by the Panel.
<b>Cost recovery</b>				
11.	2	Multiple stakeholder groups	<p>AEMO should be held to an explicit efficiency discipline or disciplines as part of the cost recovery arrangements to apply to the entity. The cost recovery framework for AEMO should, for example:</p> <ul style="list-style-type: none"> <li>• require AEMO's costs to be benchmarked to best practice at specified, regular intervals;</li> <li>• hold AEMO to a 'CPI-X' commitment in order to drive cost savings, with AER oversight of any proposed expenditure in excess of the commitment;</li> <li>• include an explicit 'objective clause' or requirement that AEMO operate efficiently, referencing the rationale for AEMO establishment.</li> </ul> <p>In addition, the AEMO budget setting process should be subject to:</p> <ul style="list-style-type: none"> <li>• independent review and oversight by, for example, the AER, having regard to a 'minimal impact' on the various markets requirement;</li> <li>• the dispute resolution processes provided</li> </ul>	<p><b>Partially accepted.</b> The ISC notes stakeholder concern to impose an efficiency discipline on AEMO.</p> <p>The ISC considers that the strong corporate governance framework within which AEMO will operate, including the composition of the Board and the proposed membership composition of both industry and government, should act to impose an efficiency discipline on AEMO. The Members' Agreement for AEMO is likely to include a requirement that in preparing the Statement of Corporate Intent AEMO (like NEMMCO) should report (among other things) on performance measures to its members. The Members' Agreement is also likely to provide that one of the primary objectives of each budget should be cost efficiency. AEMO will also be required to perform its functions having regard (relevantly) to the national electricity objective and the national gas objective.</p> <p>The ISC has proposed modelling the setting of the budget and fee structure on existing arrangements for NEMMCO. AEMO's setting of the fee structure, but not the budget, will be subject to the Rules consultation procedures and to the dispute resolution processes provided for in the Rules.</p>

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			<p>for in the Rules (with costs to be in the cause); and</p> <ul style="list-style-type: none"> <li>• open and transparent industry consultation.</li> </ul> <p>The Statement of Corporate Intent should also include an explicit cost efficiency objective and be subject to consultation, with a view to driving down AEMO costs.</p> <p>Proposed AEMO 'market development' costs should also be subject to independent review and approval, industry consultation and dispute resolution processes.</p>	<p>Consistent with existing NER provisions, fee payers in the NEM (Registered Participants) and gas wholesale and retail services provided by AEMO will therefore have an opportunity to dispute the fee structure.</p> <p>In addition, the ISC notes that r 2.11.1(d) of the NER currently requires NEMMCO, in undertaking the process by which it sets the fee structure, to consider other fee structures in existence which it thinks appropriate, for comparison purposes. AEMO will be subject to the same requirement in both the NER and the NGR.</p> <p>With respect to the proposal that the AER have oversight of the AEMO budget setting process, the ISC considers that it is not appropriate for one institution in the national framework, to have regulatory oversight of the budget of another institution in the national framework.</p> <p>With respect to AEMO's anticipated 'market development' costs, the NER and NGR will provide that AEMO may budget to recover and actually recover anticipated costs associated with market development projects. Consistent with existing r 2.11.1(bc) of the NER, for both the electricity and gas fee structure determinations, AEMO will be required to carry out consultation in accordance with the Rules consultation procedures. As noted above, AEMO is to be subject to dispute resolution procedures in respect of the determination of the fee structure.</p> <p>The proposed NER and NGR provide for AEMO to manage the setting of fees to smooth the impact of actual or anticipated cost variations on the users of a service provided by AEMO.</p>

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12.	2	Retailer	The AEMO cost recovery framework should require AEMO to develop fee structures that can be incorporated readily into end-use retailer contracts and that are in a form that is manageable for affected parties outside the retail sector (for example, power generators).	<b>Noted.</b> The ISC is not proposing to depart from the NEMMCO processes for setting the budget and the fee structure. The ISC is also proposing to continue the current jurisdictional and NEMMCO fee arrangements for up to three years from the commencement of AEMO before requiring AEMO to determine new fees and charges.
13.	2	Retailer	There should be a 3 rather than 5 year fee setting process, to afford AEMO flexibility in meeting Carbon Pollution Reduction Scheme demands.  The AEMO Board should be empowered, but not required, to make multi year participant fee determinations.	<b>Noted.</b> The proposed NER and NGR provide for AEMO to manage the setting of fees to smooth the impact of actual or anticipated cost variations on the users of a service provided by AEMO. As such, it leaves AEMO to determine the most appropriate timeframe within which the fee setting process should operate.
14.	2	Multiple stakeholder groups	The costs of meeting material requests on AEMO made by MCE or Ministers should be met governments.	<b>Noted.</b> Proposed new s 52 of the NEL, for example, provides that AEMO may charge a fee (to be calculated on a cost recovery basis) for its services.
15.	2	Networks	Confirmation sought that AEMO cost recovery mechanism will not lead to upheaval vis. current arrangements.	<b>Confirmed.</b> The ISC proposes that existing market operator revenue and fee arrangements should be the reference point for future AEMO revenue and fees. The ISC also proposes that as a transitional measure AEMO will use the existing fee structures for the current market operators for the first two years of operation. AEMO will be required to carry out a review of its fees and charges within three years to conform with the proposed requirements by which AEMO will operate.

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				Also see response number 11.
16.	2	Networks	Fees should be reflective of service provided to participants.	<b>Agreed.</b> This is reflected in existing r 2.11.1(b)(3) of the NER (and will be applied to the NGR).
17.	2	Networks	Budget to include forward projection of costs (which is below sum of existing market operators).	<b>Agreed</b> This is provided for in r 2.11.3 of the NER and will be replicated in the NGR. Additionally, it is likely to be included in the AEMO Members' Agreement (like the NEMMCO Members' Agreement) as a requirement in setting the annual budget.  With regard to the quantum, it is anticipated AEMO will realise cost recovery over time.
18.	2	Networks	Confirmation that retail functions in South Gippsland will be delivered by Multinet/Utd on the same or equivalent terms under AEMO.	<b>Not accepted.</b> The South Gippsland retail rules will be transferred to the national framework as Rules or Procedures. The mechanism by which this will be implemented is under consideration.
19.	2	Networks	Expand arrangements under the Bulletin Board (BB) for gas companies to be recompensed for provision of information to STTM and the Gas Statement of Opportunities (GSOO).	<b>Not accepted.</b> The ISC notes that the Gas Market Leaders' Group has released a response to the submissions on the GSOO consultation paper. The ISC does not intend compensating providers of information for the BB, GSOO and the STTM.  Additionally, the existing NGR already provides for the BB operator to pay pipeline operators for provision of aggregation and information services (refer Rule 198).
20.	2	Multiple	Existing NEMMCO capacity to pass through costs	<b>Not accepted.</b>

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		stakeholder groups	associated with major development to the market are sufficient -- i.e. power to anticipate budget for declared EMR projects unnecessary.	<p>The exposure drafts of the NER and NGR will clarify the operation of r 2.11.1(ba) of the NER so that AEMO may anticipate budget requirements in relation to energy market reform projects and to recover the associated costs. AEMO's determinations are subject to the Rules consultation procedures (r 2.11.1(bc) of the NER) and to the dispute resolution process (r 8.2 of the NER).</p> <p>Importantly, the arrangements will allow impacts of reforms introduced to be appropriately smoothed.</p>
21.	2	Networks	The costs for particular services must be apportioned to prime beneficiaries in accordance with meaningful criteria e.g. retail market share or number of market services requested.	<p><b>Noted.</b> Consistent with Rule 2.11.3 of the NER, AEMO will be required (by both the NER and the NGR) to set the fee structure so as to fund relevant 'business lines' in accordance with key general principles. The NER and NGR will also require, consistent with existing r 2.11.1(b)(4) of the NER, AEMO to not unreasonably discriminate across participants. The fee structure will be for the AEMO Board to determine within this framework.</p> <p>In addition, it is proposed AEMO must allocate expenditures that cannot be specifically related to electricity activities, taking into account criteria along the following lines:</p> <ul style="list-style-type: none"> <li>• ensures that the total amount of the residual expenditures is allocated appropriately between the electricity and the gas industries; and</li> <li>• ensures that each industry bears an allocation at least equal to the amount by which residual expenditures would be reduced if services were no longer provided to that industry; and</li> <li>• promotes the efficient use of electricity and gas</li> </ul>

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				services.
22.	2	Networks	There should be a legislative obligation for AEMO to competitively tender for projects over \$5-10 million.	<p><b>Noted.</b> The ISC notes that the NER already includes requirements for provision of particular services to be subject to a tender process for example, the provision of non-market ancillary services (r 3.11.5) and the provision of reserves (r 3.20). Additionally, AEMO will be required to tender in relation to procurements of over \$10m for the Victorian electricity transmission system. The ISC notes that NEMMCO currently publishes its procurement guidelines and it anticipates AEMO will do the same.</p>
<b>Information gathering</b>				
23.	3	Networks, retailers and generators	The proposal to use MIOs and MINs has not been sufficiently justified. Their use does not seem to be necessary given the effectiveness of existing arrangements in relation to information gathering, for example in relation to the SOO, ANTS and Bulletin Board. They are a major deviation from the current architecture.	<p><b>Not accepted.</b> The information gathering powers detailed in the SOPA are based on those developed by the AEMC as part of the development of the National Transmission Network Development Plan (NTNDP). The ISC considers that they are appropriate and necessary to ensure that AEMO will be able to produce a quality NTNDP. They are also necessary and appropriate for AEMO's planning functions generally. In carrying out those functions AEMO needs to be as fully informed as possible. Successful implementation of these planning functions should be supported by accurate and complete information that may not be otherwise available to AEMO.</p> <p>Nevertheless, the ISC, taking into account the nature of submissions, has revised its original suggestion that the Rules might include capacity to use them. There will be no such capacity. Only the Law will provide for AEMO to make market information instruments.</p>

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				<p>The NTNDP in particular will be a more comprehensive and sophisticated document than the ANTS that will provide a broad and deep analysis of different future supply demand scenarios. It will therefore require more extensive and detailed information than is currently collected for the SOO/ANTS. It is recognised data collected under the existing arrangements will form an important input into the NTNDP and that there are significant efficiency as well as transparency benefits in consolidating information gathering processes to minimise market participants' compliance burden.</p> <p>Additionally the instruments will provide a robust and transparent framework to allow AEMO to gather information for the Victorian Electricity Transmission Planning Function, the GSOO and the SA planning functions.</p>
24.	3	Generators	The scope of the information necessary for the NTNDP is limited to transmission and not to generation. If there is a requirement for information from generators, that should only be as a last resort.	<p><b>Not accepted.</b></p> <p>The NTNDP will seek to anticipate the future development of the industry as a whole. An essential element of this document will be future generation scenarios.</p> <p>In preparing the NTNDP that is to be published, AEMO must consider a range of matters, including:</p> <ul style="list-style-type: none"> <li>• the quantity of electricity that flowed, the periods of flow and constraints;</li> <li>• the forecast quantity of electricity that is expected to flow;</li> <li>• the projected capabilities of the national transmission grid;</li> </ul>

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				<ul style="list-style-type: none"> <li>• relevant intra-jurisdictional developments; and</li> <li>• such other matters as AEMO considers appropriate.</li> </ul>
25.	3	Networks	The NTP will need information from generators for the purposes of the NTNDP. The NTNDP should be based on soundly based information on generator forced outage rates, and capital and operating costs and other matters that vary across generation technologies.	<b>Agreed.</b>
26.	3	Retailers and networks	<p>The application of the MIOs and MINs is likely to create uncertainty and weaken informal working relationships between participants and AEMO. There is a risk that the instruments will be speculative, inconsistent with other obligations and reveal strategically sensitive information.</p> <p>AEMO should engage in a dialogue with industry with respect to the use of information and the reason for any request.</p>	<p><b>Noted.</b> It is recognised that informal working relationships will be important to the successful exercise of AEMO's planning functions including the success of the NTNDP. The information gathering phase should be a vehicle not just for the collation of data, but for the exchange of ideas. This collaborative, consultative approach to information gathering is important to producing a quality NTNDP.</p> <p>Such an approach will be reinforced by the requirement for AEMO to consult with proposed recipients of the instruments and to take their views into account. Prior to serving a MIO or MIN, AEMO will be required to:</p> <ol style="list-style-type: none"> <li>give the person on whom AEMO intends to serve the MIO/MIN written notice of its intention to do so; and</li> <li>give the respondent, in the case of a MIO, an opportunity to make representations, and in the case of a MIN, a draft for comment .</li> </ol> <p>AEMO will be required to consider representations before finalising the market information instrument.</p>

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27.	3	Networks	The introduction of the MIOs and MINs creates a poor precedent, blurring the roles between market operator and regulator. AEMO's powers should not be as wide ranging as those of the AER. They are different bodies and perform different functions and therefore have different requirements.	<p><b>Not accepted.</b></p> <p>AEMO's market operator function is distinct from its planning functions as NTP and planner for the Victorian electricity transmission, the GSOO function and planner for SA. While planning is not a regulatory function, to conduct this function effectively AEMO will need to ensure it is able to obtain accurate information from relevant persons. It is therefore appropriate that the relevant framework is open and transparent and requires AEMO to take account of the reasonable costs of efficient compliance . By requiring AEMO to consult with proposed recipients, it also encourages cooperation in information gathering. The ISC considers this is a solid basis from which AEMO will manage its planning functions.</p>
28.	3		The use of MIOs and MINs should be restricted to use for the NTP function. The use of MIOs and MINs should not be extended to other functions.	<p><b>Partially accepted.</b></p> <p>The Law (and not the Rules) will provide for AEMO to have the capacity to make and issue a market information instrument if it considers it is reasonably necessary to do so for its relevant planning functions. Those functions are the NTP function, the GSOO function, the Victorian electricity transmission network function and the SA planning function.</p>
29.	3	Multiple stakeholder groups	There should be tighter controls over the type and scope of information sought by AEMO than can be attained with the use of MIOs and MINs. Because the NTNDP generally requires predictable and consistent information the requirements for that information should be set out in the Rules.	<p><b>Not accepted.</b></p> <p>The role of the NTP and the NTNDP, in particular, is anticipated to develop over time and it is therefore appropriate that the supportive information gathering instruments be capable of anticipating this development.</p>

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30.	3	Networks	<p>Businesses will experience increased compliance costs in relation to the greater need for legal scrutiny to ensure compliance with the instruments. Compliance with RIOs and RINs have proved costly.</p> <p>AEMO must have regard to the likely costs of compliance with a MIO/MIN and demonstrate the relevance of the information sought.</p>	<p><b>Not accepted.</b></p> <p>In considering the proposed use of market information instruments to support AEMO's planning functions, the ISC has been cognisant of the compliance costs for businesses in meeting information requests. This is why one of the considerations for AEMO in exercising these information gathering powers is the reasonable costs of efficient compliance. Additionally, an initial consultation process will assist AEMO to determine the availability, relevance and cost of providing information and encourage co-operation in information gathering.</p>
31.	3	Energy Australia	<p>Energy Australia (EA) should not be regarded as a network for the purpose of the NTP function.</p>	<p><b>Not accepted.</b></p> <p>As EA notes in its submission the dual function assets that it owns support the transmission network. As the assets EA owns are classified as transmission network and impact upon transmission network power flows then it would be appropriate for EA to be regarded as a TNSP for the purposes of AEMO's NTP function. It is important that the NTNDP be a comprehensive and accurate document and the nature of the electricity network means that one subsection of the network can have significant impacts on the wider grid. For this reason it is necessary for all owners of transmission network assets to provide data and information to the NTP so the NTNDP will be a robust and credible document.</p>

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32.		Multiple stakeholder groups	MIOs/MINs should be subject to the dispute resolution process in the Rules or at least be able to be appealed to the AER	<p><b>Not accepted.</b></p> <p>The ISC has, in the Law, limited AEMO in making market information instruments to circumstances where AEMO considers it reasonably necessary to do so for its planning functions. There will be no capacity for the Rules to provide for additional circumstances in which market information instruments might be used.</p> <p>The ISC has also enhanced the accountability framework for the MIOs and MINs to ensure it is appropriate and sufficient. The framework includes consultation with the proposed recipients on the proposed terms of the instruments, a requirement to take account of submissions as well as the reasonable costs of efficient compliance. Although it is not proposed there be merits review of the decision to make a market information instrument, AEMO will also be subject to judicial review.</p>
33.		Networks	Existing confidentiality arrangements are satisfactory.	<p><b>Not accepted.</b></p> <p>The framework in relation to management of confidential information, given its critical nature particularly as part of the competitive advantage of businesses, is appropriately set out in the Law. Apart from the move to regulation in the Law, the proposals for management of confidential information are consistent with existing arrangements (see, for example, existing r 8.6 of the NER and existing r 5.4 of the MSOR). Accordingly, confidential information in the hands of AEMO and Registered Participants will be protected in the same way as it is currently protected.</p>
34.	3	Networks	The free exchange of information inappropriately allows participating parties to access information beyond their individual enabling instrument.	<p><b>Noted.</b></p> <p>The proposal in relation to the exchange of 'confidential' information between relevant bodies is intended to provide for synergies and efficiencies in regulation of the energy</p>

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			<p>Where bodies, such as Electricity Supply Industry Planning Council (<b>ESIPC</b>) receive confidential information as a result of having a specific regulatory role such as managing gas system emergencies, it should be prohibited from using that information in pursuit of other roles, such as, as the Jurisdictional Planning Body.</p> <p>Stronger confidentiality procedures are required especially in the context of the extensive list of parties with whom AEMO may freely exchange information.</p> <p>Section 44AAF of the <i>Trade Practices Act 1974</i> does not provide for confidential information to be provided to industry ombudsman.</p>	<p>sector.</p> <p>AEMO will have the capacity to impose conditions to be complied with in relation to information disclosure to bodies such as the AEMC.</p> <p>The drafting of the relevant information sharing provision with industry ombudsman is intended to accurately reflect the text of s 8.6.2(d1) of the NER so that the disclosure is limited to circumstances where there is a dispute between a Registered Participant and a customer and to exclude end user information.</p> <p>The ISC notes that the <i>Trade Practices Regulations</i> provide for the AER to disclose confidential information to industry ombudsman.</p>
35.	3	Networks	AEMO's decision to pass information to a third party should be subject to review.	<p><b>Noted.</b></p> <p>AEMO's decision to pass confidential information to a third party will be subject to judicial review.</p>
36.	3	Networks	MIO/MIN gathered information should only be used for the purpose for which it was sought.	<p><b>Not accepted.</b></p> <p>One of the benefits of establishing a national energy market operator with various functions including in relation to planning is the creation of an opportunity to co-optimize the exercise of those different functions and decisions. Capitalisation on that opportunity necessarily involves providing for relatively free information flows between functions. This is subject to appropriate management within AEMO itself of any tensions between functions. The ISC considers the strong corporate governance framework to which AEMO is subject assists in it being in a position to make fully informed decisions in managing the use of information from its myriad of functions.</p>

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37.	3	Users	Information gathering arrangements are supported. And there should be specific penalties for breach of confidentiality provisions.	<b>Not accepted.</b> The general law provides for enforcement of breach of confidentiality.
38.	3	Multiple stakeholder groups	There should be a regular independent review (for example by the AER) of AEMO compliance with confidentiality provisions.	<b>Partially accepted.</b> The AER has responsibility for enforcement of the Laws and the Rules including in relation to the market operator. Additionally, consistent with the existing requirement in relation to NEMMCO, the NER will provide for AEMO to engage a market auditor to carry out a review including of AEMO's procedures and their compliance with the Rules (r 3.13.10(a)(5) of the NER).
<b>Immunity and Indemnity Provisions</b>				
39.	4	Retailer	REMCO immunity provisions for 'swing services' should exist only until STTM established.	<b>Agreed.</b>
40.	4	User representative organisation	The indemnity and immunity provisions should be comprehensively reviewed at a point in the future.	<b>Noted.</b>
41.	4	Networks	The NGL should provide for immunity for gas distributors given uncertainty about implications of NECF obligations placed on these parties.	<b>Noted.</b> This will be considered in the context of the development of the NECF.
42.	4	Multiple stakeholder groups	Section 226 of NGL providing immunity to persons giving BB information to the BB operator should be maintained.	<b>Agreed.</b>

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<b>Issues specific to the transfer of gas retail market operator function</b>				
<b>Rules and Procedures for retail gas within the national framework</b>				
43.	6	Multiple stakeholder groups	<p>Existing gas retail market rules should be grandfathered to the national framework. This will avoid inadvertent omissions, uncertainty about obligations, creating inconsistencies between Rules and Procedures.</p> <p>AEMO should manage and have administrative responsibility for the Procedures and can be tasked with achieving national consistency over time.</p>	<p><b>Noted.</b> The ISC has refined the detail associated with implementation of Option 3 set out in the SOPA..</p> <p>Existing gas retail market rules will be transferred to the national framework as one set of Procedures (with four parts applying separately in each of NSW and the ACT, Victoria, South Australia, and Queensland) effectively 'as is', subject to adoption of some common processes. The initial set of Procedures will be made by the SA Minister with effect on gazettal (to be on commencement of AEMO operations). There will be minimal changes necessary to ensure the Procedures 'fit' the national framework.</p> <p>In addition to the Rule that will provide the initial Procedures will be those made by the SA Minister and gazetted, there will be 3 other Rules to support the Procedures. Those Rules will impose:</p> <ol style="list-style-type: none"> <li>1) a requirement on AEMO to make the Procedures in relation to specific subject matters that will capture existing gas retail market rules;</li> <li>2) an obligation for AEMO and Registered Participants to comply with the Procedures; and</li> <li>3) a requirement for AEMO to amend the Procedures consistent with the Procedure change process.</li> </ol>
44.	6	Networks	If a Rule or Procedure conflicts with an AER approved access arrangement the latter must prevail.	<p><b>Noted.</b> When the AER is making an access arrangement it will be required to make it consistent with existing Rules and Procedures. When AEMO is making a Procedure it will be required to take account of existing access arrangements</p>

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				<p>but will not be constrained by their terms.</p> <p>Where as a result of the making of a new Procedure an inconsistency with an access arrangement arises, the Procedure will not take effect until the access arrangement expires.</p> <p>The ISC considers this is appropriate as the Procedures will now be part of the national framework.</p>
45.	6	Networks	If a Rule or Procedure conflicts with existing contractual rights and obligations the latter must prevail.	<p><b>Not accepted.</b></p> <p>The Rules and Procedures will have the force of law and will therefore generally prevail over provisions in contracts.</p>
<b>Gas Retail Market Procedure change process</b>				
46.	7	Multiple stakeholder groups	AEMO should develop the governance structure for collective representative committee and working group arrangements.	<p><b>Agreed.</b></p> <p>The ISC has revised its policy proposal in relation to the proposed Procedure Change Committee or Committees. The Rules will not prescribe the establishment and operation of the Committee. This is consistent with existing arrangements for the Gas Market Company. The ISC also notes that in carrying out a Procedure change AEMO will be required to undertake public consultation. It would be consistent with this requirement for AEMO to manage the Procedure change process with the assistance of a committee. However, whether AEMO establishes a particular Procedure Change Committee, and if so on what terms and with what membership, will be a matter to be determined by AEMO.</p>
47.	7	Multiple stakeholder groups	AEMO should not have the capacity to modify the Procedure Change Committee recommendations and should be required to provide reasons for the acceptance and rejection.	<p><b>Noted.</b></p> <p>AEMO will be required to consult on Procedure changes. However, to provide for flexibility, the ISC proposes that the process by which AEMO may or may not engage a</p>

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			<p>The Chair of the Procedure Change Committee should be independent.</p> <p>Separate existing gas rule change committees should be maintained to ensure ongoing expertise is maintained. Work to facilitate convergence should occur in parallel.</p> <p>The Procedure Change Committee should put both majority and minority recommendations to AEMO.</p> <p>Customer representatives on the Procedure Change Committee are unlikely to be beneficial given the technical character of changes. If they are involved they should be self-funded.</p>	<p>committee to assist it to manage the Procedure change process is a matter to be determined by AEMO. This aspect of the Procedure change process will not be prescribed in the NGR.</p>
48.	7	Networks	<p>All proposed Procedure changes should be assessed in a similar manner – that the proposal is consistent with the gas market objective, is not unreasonably costly, and is more effective than any rule it is replacing.</p>	<p><b>Partially accepted.</b></p> <p>In carrying out the Procedure change process, AEMO needs to be satisfied that the amendment is:</p> <ul style="list-style-type: none"> <li>a. consistent with the NGL and NGR; and</li> <li>b. is appropriate having regard to: <ul style="list-style-type: none"> <li>i. the national gas objective; and</li> <li>ii. any compliance costs likely to be incurred by AEMO or market participants in consequence of the amendments.</li> </ul> </li> </ul>
49.	7	Networks	<p>Existing cost recovery mechanisms for recovering network operator costs associated with changes to the existing retail market Rules should be maintained and applied in the context of the national Procedures.</p> <p>AEMO should be required to consider network operator opinion of risk that a proposed Procedure</p>	<p><b>Agree.</b></p> <p>In principle a network service provider that provides 'market operator' type services to AEMO to facilitate market operation should be entitled to recover associated costs. The mechanism by which this might occur is under consideration.</p>

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			change could bring to the safety and reliability of supply.	As discussed at recommendation 47, AEMO will be required to consult, which will include taking into account industry opinion at large.
50.	7	Multiple stakeholder groups	AEMO should have the capacity to reject 'vexatious' proposals for a Procedure change.  There should be a distinction between material and non-material changes in the process for a Procedure change. Where a material change is proposed there should be two rounds of consultation.	<b>Noted.</b> The ISC proposes to model the consultation requirements for material and non-material amendments on existing requirements relating to the development of the BB Procedures (see existing rr 161 and 162 of the NGR).
51.	7	Retailers	An alternative model for progressing a Procedure change would be to allow interested parties to develop proposals that undergo industry consultation before making a relevant recommendation to AEMO.	<b>Noted.</b> There would be nothing to prevent this proposal from operating prior to AEMO carrying out the Procedure change process.
<b>Issues specific to the transition of VENCORP's functions</b>				
<b>AEMO's Victorian electricity transmission functions</b>				
52.	8	Supply side participants	The proposal that the NEL should require AEMO to develop guidelines to manage the risk of real or perceived conflicts of interest between AEMO's Victorian electricity transmission system functions and its market operation functions is supported.	<b>Noted.</b> Further to the proposal in the SOPA that the NEL and NGL would require the AEMO Board "to prepare and consult upon guidelines to manage any potential issues of conflict in the simultaneous execution of different functions," the ISC has agreed to recommend that the AEMO Board be the sole decision maker on publishing any guidelines on the management of AEMO's statutory functions.  The recommendation is based on:  (i) further consideration of general corporate governance practice;

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				<ul style="list-style-type: none"> <li>(ii) recognition of the non-profit status of the AEMO;</li> <li>(iii) provision in the relevant draft amendments to the NEL and NGL for AEMO to perform its functions consistent with the objectives of the Laws, which provide for economic efficiency in the long term interest of consumers; and</li> <li>(iv) the role of proposed industry membership arrangements for the AEMO that will enable all relevant stakeholders to hold the Board to account for the conduct of AEMO's functions.</li> </ul>
53.	8	SP AusNet	SP AusNet noted some areas that might be addressed by the AEMO Board in the guidelines it is required to develop in relation to conflicts that might arise in the performance of its statutory functions.	<p><b>Noted.</b> These suggestions have been forwarded to the Australian Energy Market Operator (Transitional) Limited Board for its consideration.</p>
54.	8	Networks	The Victorian transmission functions should be incorporated into the NER in a way that recognises the uniqueness of these arrangements but in a way that does not naturalise this role as a constituent part of the national framework without further review. They should be drafted in the NER to provide clarity and allow an easy 'carve out' to facilitate later national convergence. At a minimum the drafting should make clear the delineation of the roles between AEMO and SPIP in the provision of network services, including network planning and augmentation processes.	<p><b>Noted.</b> The Victorian transmission functions will be included in the NEL as declared network functions available for application by jurisdictions.</p> <p>Victoria will apply the relevant declared network functions under its NEL Application Legislation.</p> <p>The obligations and functions of the AEMO and the relevant TNSPs in relation to the declared functions as applied will be specified in more detail in the NER and subject to further consultation with relevant stakeholders.</p>
55.	8	SP AusNet	Victoria should clarify the proposed transmission function oversight arrangements. Of particular relevance are the Electricity System Code, Guideline 18: Electricity Industry – Augmentation	<p><b>Noted.</b> The relevant transmission functions will be prescribed in the NEL and related Rules, and in particular:</p>

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			and Land Access, and proposals by the AEMC for a nationally consistent framework for transmission reliability standards. Potentially the ESC functions could be transferred to the AER. Alternatively for the System Code, obligations could be merged into the Rules.	<p>(i) the Victorian System Code is being reviewed to identify the extent to which there is duplication with the NER, and which obligations must be retained, either by transfer into the NER, or provided for in alternative instruments.</p> <p>(ii) obligations and arrangements under current Guideline 18 of the Essential Services Commission will transfer to the NEL and NER as appropriate, and will be the subject of further consultation with relevant parties;</p> <p>(iii) the MCE response to the AEMC Transmission Reliability Standards Review is scheduled to be released in the first quarter of 2009.</p>
56.	8	SP AusNet	The planning process in Victoria needs to be improved through greater planning coordination between distributors and AEMO and the development of a joint regulatory test or economic analysis (depending on project size). The application of the NER in relation to the Victorian specific functions needs to be clarified.	<p><b>Noted.</b></p> <p>The current derogation in the NER for the Victorian specific functions will become Rules for the declared network functions, and will be able to be amended under a prescribed Rule change process.</p>
57.	8, 9	SP AusNet	a. The ISC proposal for the application of obligations to AEMO in carrying out its Victorian electricity transmission functions will not adequately assign TNSP responsibilities to AEMO. This can only happen if AEMO is recognised as a TNSP, is accountable for TNSP obligations and is subject to the AER's compliance monitoring	<p><b>Noted.</b></p> <p>a. The draft NEL provides for AEMO's declared network functions to include provision of "shared transmission services by means of, or in connection with, the declared shared network." [s50C(1)(d)]. The Rules relevant to this function will be the subject of further consultation with relevant</p>

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			<p>regime. However, it is recognised that close cooperation between AEMO and the owner will be required for the overall TNSP role to be fulfilled.</p> <p>b. SP AusNet should be involved in the proposed novation of its network agreement with AEMO. A number of important modifications are required to the agreement to fully reflect the arrangements that exist.</p>	<p>stakeholders.</p> <p>b. Transfer arrangements for the existing network agreement between VENCORP and SP AusNet will be a matter for further consultation with SP AusNet in the context of consultation on related NER provisions.</p>
58.	10	Retailer; National Generators' Forum	AER oversight of VENCORP's transmission functions should be maintained after AEMO assumes VENCORP's role in this regard.	<p><b>Not accepted.</b></p> <p>Regulatory oversight of the setting of AEMO's revenue may be an administrative burden that fails to achieve the objective associated with such an exercise: driving an efficient outcome for a monopoly business. The processes proposed in the SOPA and provided for in Schedule 1 of the NER amendments which allow public scrutiny of key aspects of the revenue setting process will be sufficient.</p>
59.	10	Networks	There should be an independent annual budget review process to ensure the costs incurred by AEMO in relation to the Victorian electricity transmission system are efficient.	<p><b>Agreed.</b></p> <p>The ISC proposes that AEMO will report publicly on the application of the revenue methodology it is required to develop and the costs which have been actually incurred in a particular year.</p> <p>AEMO will also be required to consult when developing its revenue methodology.</p>