

## **Responses to questions on notice from the hearing on 26 October 2017 for the Inquiry in to the modernisation of the electricity grid**

### **Question 1**

*Regarding the abolition of limited merits review, can AER outline how the benefits are likely flow to consumers and over what time period?*

We welcome the removal of the limited merits review (LMR) regime from AER decisions.

The COAG Energy Council agreed that the LMR regime was failing to meet its policy intent and was leading to higher prices for consumers. It had been deliberating on a range of reforms to the regime. After previous reforms in 2013, the Council found that the additional changes still did not address the concerns raised.

Removing LMR will help make the process for setting the revenues that electricity and gas networks recover from their customers work more in the long-term interests of consumers.

In our view, the NSW/ACT Federal Court decision affirmed the Tribunal as essentially a second regulator with broad scope to intervene in our decision making process. This highlighted some of the real failings in the LMR regime. The LMR regime compromised the AER's primary regulatory decision making process, and created strong incentives for networks to appeal for more revenue. Ultimately, at a substantial cost to consumers.

With the removal of LMR, the AER will be able to devote greater resources to supporting consumer engagement in the regulatory processes. Increased consumer participation in AER network determinations will ensure the AER has a better understanding of consumer perspectives and will help make better decisions that are in the long term interest of consumers.

The COAG Energy Council has indicated their strong support and confidence in the AER's performance and ability to make regulatory decisions in the long-term interests of consumers.

The Commonwealth Government's decision to abolish the LMR process became law in October 2017 but takes effect from June 2017. This means that network businesses will no longer be able to bring such actions to the Tribunal and as such consumers are already benefitting from this decision.

The AER has, and will continue to, work more closely with network businesses, consumer groups and other stakeholders to deliver the best possible results for consumers. We have already seen an improvement in some networks' engagement since the abolition of LMR.

## Question 2

*Regarding enforcement and compliance activities, can AER please outline the details of any investigations currently being undertaken into generation companies?*

The AER is responsible for monitoring, investigating and enforcing generation, network and retail energy businesses' compliance with obligations under the National Electricity Law, National Gas Law, National Energy Retail Law and the respective Rules and Regulations ('national energy laws').

At any given time, the AER will typically have any number of matters under investigation. Given that an investigation may lead to legal action, we do not comment publicly on the specifics of ongoing investigations. This is for a range of reasons:

- fairness to individuals, companies and businesses being investigated
- in the case of proceedings, respecting the court or tribunal's processes to ensure a fair hearing of the issues in contention
- legislative restrictions (certain material cannot be disclosed)
- the need to safeguard confidential or sensitive information (such as commercial-in-confidence price or market sensitive information or the existence or details of whistle-blowers and witnesses)
- the potential to jeopardise investigations through the untimely release of information
- privacy legislation and guidelines.

The AER is currently investigating the compliance of market participants (which can include generation companies, network businesses, energy retailers and the market operator) in relation to three significant events that occurred in the wholesale energy market:

1. Black System Event on 28 September 2016 in South Australia
2. South Australian electrical isolation on 1 December 2016
3. Excess load shedding that occurred on 8 February 2017 in South Australia.

When a matter is resolved, we typically make the outcome public (in accordance with our [Compliance and enforcement – Statement of approach](#)),<sup>1</sup> but this can depend on the outcome, the means by which the matter was finalised and whether the matter was already in the public domain. We expect to be able to publicly report on our investigations into these events in early-2018.

## Question 3

*Which part of the documents creating and enabling the ESB permits the ESB to prepare advice for one member of COAG without other members being informed or involved?*

The COAG Energy Council agreed to establish the ESB in August 2017,<sup>2</sup> as part of its response to the Finkel review's recommendations.<sup>3</sup> The terms of reference outlining the functions and responsibilities of the ESB will be published once agreed by the COAG Energy Council.

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<sup>1</sup>Link: <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-and-enforcement-statement-of-approach>

<sup>2</sup><http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Item%205%20-%20Media%20Release.pdf>

<sup>3</sup><https://www.energy.gov.au/government-priorities/energy-markets/independent-review-future-security-national-electricity-market>

#### **Question 4**

*Who prepared the first draft of the ESB 8 page NEG letter dated 13 October 2017?*

The letter from the ESB dated 13 October 2017 was advice developed by the ESB which includes its Independent Chair, Independent Deputy Chair, AEMO's CEO, and the Chairs of the AEMC and AER. The newly established ESB is supported in its activities with staff and resources from the three market bodies as required.

#### **Question 5**

*How much time did AER officers or staff spend preparing the advice?*

The ESB is supported in its activities with staff and resources from the three market bodies as required. AER staff provides advice to the AER Chair.

#### **Question 6**

*When were ESB members first provided with the draft advice?*

The ESB first met in August 2017. The ESB developed the advice for the Commonwealth government and provided this advice on 13 October 2017. This advice built on previous work done by the market bodies, including on the integration of energy and emissions reduction policy, also identified as required through the Finkel Review.

#### **Question 7**

*How was the decision arrived at in the ESB advice to assign the electricity sector obligations in national emissions reduction proportionate to the sector's emissions, as opposed to for example the sector's capacity to reduce emissions?*

The advice provided by the ESB is initial advice. The ESB is now developing further advice including modelling, requested by the Commonwealth, to help the COAG Energy Council in its decision whether to proceed with detailed design of the NEG. The ESB has been asked to model the impacts of the guarantee consistent with the Paris commitment: emissions reduction of 26-28% below 2005 levels by 2030.

The Guarantee is designed so that it can be set by government to meet any level of emissions reduction.

#### **Question 8**

*As a matter of course, does the AER make any assumptions in its modelling about the proportion of national emissions reductions to be attributed to the electricity sector?*

The AER has not conducted modelling on national emissions reductions.

## Question 9

*When having regards to the '2 degrees' target in the Paris agreement, what does the AER consider the emissions reductions targets for the electricity sector should be, in 2030 and beyond?*

Determining the emissions reductions targets for the electricity sector in 2030 or beyond is a policy decision for government.

The role of the AER is to regulate the amount of revenue that energy networks can recover from their customers and to monitor and enforce energy businesses' compliance with obligations under national energy laws, and to report on these matters.

## Question 10

*Does the AER agree with the Climate Change Authority that Australia has a 'carbon budget'? If so, how much is it?*

The AER has not considered the Climate Change Authority's work on a 'carbon budget'.

## Question 11

*Does the AER agree with the CCA that the electricity sector will need to reduce emissions between 45 and 65 percent by 2030 with a 2 degree target? If not, why not?*

Determining the level of emissions reductions required by the electricity sector is a policy decision for government.

## Question 12

*In what year does the AER consider Australia needs to reach zero net emissions?*

Determining the timeframe for Australia to reach zero net emissions is a policy decision for government.

## Question 13

*How was the figure of 28-36% renewables by 2030 on page 8 of the letter arrived at? What analysis or modelling was relied upon? If any of that analysis or modelling is not publicly available, would you please provide it to the Committee?*

The figure is initial advice. The renewables estimates are based on work done over the last two years of various different scenarios, including:

- AEMC's advice on the Integration of energy and emissions reduction policy<sup>4</sup> (December 2016), and
- AEMC/Climate Change Authority joint advice (June 2017)<sup>5</sup>

The ESB has been asked to provide modelling results, including the likely generation mix, to the COAG Energy Council in time for its November meeting. It will be a matter for COAG Energy Council as to whether it makes this additional modelling publicly available.

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<sup>4</sup> <http://aemc.gov.au/Markets-Reviews-Advice/Integration-of-energy-and-emissions-reduction-poli#>

<sup>5</sup> <http://www.aemc.gov.au/getattachment/e75f27f9-cabc-48dc-9cb3-40706260dd64/AEMC-and-CCA-joint-report-Towards-the-next-generat.aspx>

## Question 14

*Given that the 28-36% renewables may result in less renewable energy than the 35% forecast under the 'Business as usual' scenario at page 93 of the final Finkel report, can the AER explain how it considers having less renewable energy in the system than under current policies as appropriate?*

The initial advice of the ESB is that the Guarantee can be set by the government to meet any level of emissions reduction deemed appropriate.

The ESB is now developing further advice including modelling, requested by the Commonwealth, to help the COAG Energy Council in its decision whether to proceed with detailed design of the NEG. The ESB has been asked to model the impacts of the guarantee consistent with the Paris commitment: emissions reduction of 26-28% below 2005 levels by 2030. Under the NEG, the mix of variable and dispatchable generation will be determined by the market, which will be incentivised to find the lowest cost way of meeting the Guarantee.

## Question 15

*Does the emissions reduction target for the NEG to need to be set by the Federal government? Is this a legal requirement or a policy decision? Does it need to be in legislation?*

Determining the emissions reductions target for the NEG is a policy decision for government. COAG Energy Council will decide whether to proceed to the detailed design stage of the mechanism where these matters will be determined. The ESB's advice includes a proposal for how the NEG can be implemented as well as a compliance framework.

## Question 16

*Has the AER previously modelled changes in the electricity market using an assumption of no emission reduction after 2030?*

The AER has not conducted modelling on emissions reduction.