



Australian Energy Market Commission

CONSULTATION PAPER

GAS COMPENSATION AND DISPUTE RESOLUTION FRAMEWORKS

PROPONENT

Energy Ministers' Sub-Group

JUNE 2023

RULE

INQUIRIES

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Reference: GRC0067

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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CITATION

To cite this document, please use the following:

AEMC, Gas compensation and dispute resolution frameworks, Consultation paper, June 2023

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SUMMARY

Over the last year, there have been a number of changes to the east coast gas system (ECGS) to address security and reliability threats and better manage volatility in the system. This includes Energy Ministers providing AEMO with obligations to monitor the market, as well as powers to intervene should this be required.

Experiences in the Declared Wholesale Gas Market (DWGM) and National Electricity Market (NEM) compensation and dispute resolution frameworks have indicated opportunities to improve the regulatory framework. This includes the need for greater clarity on who is responsible for different compensation and dispute resolution processes, as well as refinements to allow for a simplified and more efficient process, where appropriate. With the ECGS compensation framework applying to a wider range of entities and interactions, it is important the process used to determine any claim is proportionate to the size of the claim and the complexity of the issues.

The Energy Ministers' Sub-Group of the Energy and Climate Change Ministerial Council (Energy Ministers) has identified a number of issues with the existing framework for compensation following intervention by AEMO in terms of clarity, consistency, and efficiency and effectiveness. More specifically, Energy Ministers asked the AEMC to consider the following improvements:

- **Refining the compensation and dispute resolution frameworks:** to provide clear and consistent arrangements so that the gas sector operates efficiently and effectively in the long-term interest of consumers;
- **Making any necessary changes to the Part 15C dispute resolution framework** so it can be more effectively applied to any assessment of compensation claims across various parts of the NGR where compensation claims may arise;
- **Considering any bespoke amendments to the ECGS framework compensation arrangements** so it is fit for purpose; and
- **Considering whether and to what extent consequential changes to other parts of the east coast gas market** may be required.

On this basis, the Energy Ministers' rule change request proposes a number of potential solutions to improve clarity, efficiency and consistency within the compensation and dispute resolution frameworks.

Examples of potential solutions to the areas identified by Energy Ministers, and explored in this paper, could include changes to the governance and procedural arrangements, the scope of the frameworks, and the funding arrangements that underpin them.

Energy Ministers submitted a rule change request on 23 May 2023. The AEMC has commenced its consideration of the request, and this consultation paper is the first stage. The rule change request is available on the project webpage.¹

¹ <https://www.aemc.gov.au/rule-changes/compensation-and-dispute-resolution-frameworks>.

We are seeking your views on the proposed improvements to the compensation and dispute resolution frameworks

The current compensation framework for the ECGS in the NGR adopts much of the framework established for compensation for system security interventions under the DWGM rules.² However, the ECGS covers entities outside the facilitated markets so allows for a wider range of scenarios for potential claims following an intervention by AEMO using its ECGS directions power.

The objective of the Energy Ministers proposed improvements to the existing arrangements is to refine the compensation and dispute resolution frameworks to provide clear and consistent arrangements so that the gas sector operates efficiently and effectively in the long-term interest of consumers.

We would like to hear your views on the proposed improvements to the regulatory framework identified by Energy Ministers and the need for, and materiality of, any changes.

Submissions are due by 20 July 2023

There are multiple options to provide your feedback throughout the rule change process.

Written submissions responding to this consultation paper must be lodged with Commission by **20 July 2023** via the Commission's website, www.aemc.gov.au.

There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions. We will also be holding a public forum on **6 July 2023**. See the section of this paper about "How to engage with us" for further instructions and contact details for the project leader.

Consultation questions

QUESTION 1: WILL THE PROPOSED SOLUTION ADDRESS THE ISSUES RAISED BY ENERGY MINISTERS?

Do you consider that the proposed changes to the Rules will solve the issue(s) raised by Energy Ministers and improve the regulatory framework? Or are there other factors that would have a greater impact?

QUESTION 2: SHOULD SIMPLIFICATIONS TO THE PROCESS BE INTRODUCED?

a) Should a simpler, quicker process for determining claims be available in certain circumstances? If so, what are these circumstances? How could this be achieved?

² See Part 19 of the NGR. Specifically; Rule 343, Rule 350, Rule 237, Rule 238, Rule 237(10)

b) What considerations are relevant to the proposed process to allow claims to be joined into one process?

QUESTION 3: SHOULD FURTHER INCENTIVES BE CONSIDERED IN CERTAIN CIRCUMSTANCES?

Should entities receive only direct costs or should further incentives, such as compensation for other costs, such as opportunity costs, be available in certain circumstances? If so, what should these further incentives be? What circumstances should these further incentives apply?

QUESTION 4: SHOULD THE GOVERNANCE FRAMEWORK ALLOW FOR INFORMATION REQUESTS?

Should we progress Energy Ministers' proposal to allow the body determining compensation claims to request information from third parties to support this process? Should any other changes be made to allow the body determining compensation claims to obtain the information it needs from the claimant?

QUESTION 5: SHOULD COMPENSATION CLAIMS BE CAPPED?

Should there be a cap on compensation claims? If so, what form should these caps take, eg, annual aggregate, individual claims, etc?

QUESTION 6: SHOULD ANOTHER EXISTING OR NEW ENTITY OVERSEE OR DETERMINE CLAIMS?

What factors should inform the AEMC's work on the roles of the Adviser and Dispute Resolution Panel (DRP) in overseeing the compensation claims process and making determinations?

QUESTION 7: WHAT ARE YOUR VIEWS OF THE COSTS AND BENEFITS OF THE PROPOSED SOLUTION?

What do you consider will be the costs and benefits of the proposed solution? If there are costs, will these be one off or ongoing? Is there anything the Commission could do in designing the rule that would help to minimise the costs and maximise the benefits?

QUESTION 8: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS?

Do you have any suggestions regarding the target commencement timeframes? Are there additional measures that should be considered that would support the effective implementation of the desired solution?

QUESTION 9: SHOULD THE BROADER FRAMEWORKS BE ALIGNED?

- a) Should the changes to the ECGS compensation framework be applied to the DWGM compensation framework?
- b) Should any of these changes be made to the broader compensation and dispute resolution frameworks?
- c) Are there factors that may limit the application of the changes to the ECGS framework to each of these frameworks?

QUESTION 10: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

- a) Do you think there are any alternative, more preferable rule based solutions, which are more aligned with the long-term interests of consumers?
- b) Are there alternative solutions that sit outside of the energy rules such as industry or jurisdictional initiatives that would better address the identified issue?

QUESTION 11: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or principles included here that are not relevant?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included consultation questions in this paper, however, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by **20 July 2023**.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code GRC0067.³

You may, but are not required to, use the stakeholder submission form published with this consultation paper.

Tips for making submissions are available on our website.⁴

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁵

Other opportunities for engagement

There are other opportunities for you to engage with us. We will hold a public forum **6 July 2023** with registration available through the project webpage.

We can also arrange one-on-one discussions or industry briefing sessions. Please reach out to the Project Leader, Patrick Loughrey, to organise.

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

Project leader:	Patrick Loughrey
Email:	patrick.loughrey@aemc.gov.au
Telephone:	02 8296 0659

³ If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

⁴ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>.

⁵ Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>.

1 THE CONTEXT FOR THIS RULE CHANGE REQUEST

This consultation paper seeks stakeholder feedback on the rule change request submitted by the Energy Ministers' Sub-Group (Energy Ministers) about compensation for AEMO gas directions and consequential changes to the dispute resolution framework.

1.1 Energy Ministers have proposed improvements to the compensation and dispute resolution frameworks

Over the last year, there have been a number of changes to the ECGS (East Coast Gas System)⁶ to address security and reliability threats and better manage volatility in the system (see Appendix A). This includes Energy Ministers providing AEMO with obligations to monitor the market, as well as powers to intervene should this be required.

Experiences in the DWGM and National Electricity Market (NEM) compensation and dispute resolution frameworks have indicated opportunities to improve the regulatory framework. This includes the need for greater clarity on who is responsible for different compensation and dispute resolution processes, as well as refinements to allow for a simplified and more efficient process, where appropriate. With the ECGS compensation framework applying to a wider range of entities and interactions, it is important the process used to determine any claim is proportionate to the size of the claim and the complexity of the issues.

More specifically, Energy Ministers have identified issues with the existing arrangements and opportunities to improve the framework for compensation following intervention by AEMO in terms of:

- **Refining the compensation and dispute resolution frameworks:** to provide clear and consistent arrangements so that the gas sector operates efficiently and effectively in the long-term interest of consumers;
- **Making any necessary changes to the Part 15C dispute resolution framework:** so it can be more effectively applied to any assessment of compensation claims across various parts of the NGR where compensation claims may arise (e.g. Part 27 and Part 19);
- **Considering any bespoke amendments to the ECGS framework compensation arrangements** (i.e. Part 27 Division 6) so it is fit for purpose; and
- **Considering whether and to what extent consequential changes to other parts of the east coast gas market** (such as the DWGM framework) may be required (in light of any changes to the ECGS compensation framework), reflecting the differences in the operation of the different markets in the east coast gas system.

As outlined in chapter 3, Energy Ministers have proposed changes to ensure the compensation framework is clear, efficient and effective, and consistent. Energy Ministers have proposed amendments to the compensation frameworks that may affect:

- Governance and procedural arrangements,

⁶ Also referred to as the east coast gas market (ECGM).

- The scope of the framework, and
- Funding arrangements.

1.2 We have engaged with jurisdictions and market bodies on consultation processes related to this request

This rule change proposal supports a number of consultation processes for the ECGS reforms. AEMC staff have engaged with the jurisdictions and market bodies overseeing these processes, including:

- Commonwealth led consultation on extending AEMO's functions and powers in the ECGS⁷
- Commonwealth led consultation on amendments to increase transparency⁸
- AEMO consultation on *Procedures for information provision*, as well as inputs to, and allocation of costs from, the compensation process⁹
- AEMO consultation on *Guidelines for conferences, direction and trading interventions*.¹⁰

1.3 We are using the standard rule change process

We are using a standard rule change process to consider this request and this paper is the first stage of our consultation process. To make a decision on this proposal, we seek stakeholder feedback on how we propose to assess the request, the stated problem, and the proposed solutions. Information on how to provide your submission and other opportunities for engagement is set out at the front of this document, see the Summary section "How to make a submission" for more information.

Our standard process includes the following formal stages:

- a proponent submits a rule change request
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
- stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

7 The proposed regulatory amendments to extend AEMO's functions and powers to manage east coast gas supply adequacy information paper, supporting documents, and submissions are available at: <https://www.energy.gov.au/government-priorities/energy-and-climate-change-ministerial-council/priorities/gas/proposed-regulatory-amendments-extend-aemos-functions-and-powers-manage-east-coast-gas-supply-adequacy>.

8 The proposed regulatory amendments to increase transparency in the gas markets information paper, supporting documents, and submissions are available at: <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/regulatory-amendments-increase-transparency-gas-market>.

9 The *Implementation of East Coast Gas System Procedures*, supporting documents, and submissions are available at: <https://aemo.com.au/consultations/current-and-closed-consultations/implementation-of-east-coast-gas-system-procedures>.

10 The *Implementation of East Coast Gas System Guidelines*, supporting documents, and submissions are available at: <https://www.aemo.com.au/consultations/current-and-closed-consultations/implementation-of-east-coast-gas-system-guidelines>.

You can find more information on the rule change process in *The Rule change process – a guide for stakeholders*.¹¹

11 The rule change process: a guide for stakeholders, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>.

2 THE PROBLEM RAISED IN THE RULE CHANGE REQUEST

This chapter seeks stakeholder feedback on the problem identified in the rule change request – whether it is, or will soon become, a problem and if so, the scale and impact of the problem.

2.1 There are opportunities to improve the regulatory framework for compensation and dispute resolution

The rule change request identifies a number of opportunities to improve the application of the existing compensation and dispute resolution frameworks to AEMO's new directions powers.¹² Energy Ministers have requested the AEMC to make necessary rule changes to rectify any potential deficiencies and consider the need for any consequential changes to the broader compensation and dispute resolution frameworks in the NGR that may also be required to support the ECGS directions power. The suggested improvements would provide greater clarity, efficiency and effectiveness, and consistency with regard to the application of the compensation framework.

More specifically, Energy Ministers request the AEMC refine the NGR to improve the existing regulatory framework in order to achieve the following objectives:¹³

- **Ensure the procedural and governance arrangements under the ECGS compensation framework are fit for purpose** – this may entail amending the Part 15C framework or the development of a new framework separate to Part 15C;
- **Provide reasonable and proportionate access to compensation** - considering parties are detrimentally affected by AEMO's exercise of directions powers under the ECGS framework;
- **Sufficiently incentivise behaviour that supports system reliability** or adequacy through the compensation framework;
- **Ensure the compensation framework is sustainable** – that is, access to compensation and the quantum of payments is subject to appropriate limits;
- **Provide funding arrangements for compensation payments that are fair and equitable** - given the nature of claims made and the role and circumstances of the relevant market participants required to fund the compensation claims.

Below we discuss the identified opportunities for improvements. We would like to note that the improvements discussed below do not represent an exhaustive list and there is scope to consider other areas. The Commission would be interested in hearing from stakeholders if there are other parts of the frameworks that may benefit from greater clarity, efficiency and effectiveness, and consistency.

¹² The current framework is outlined in Appendix B.

¹³ See Page 7 of the Energy Ministers' rule change request.

Greater clarity

There are opportunities to provide greater clarity around responsibilities, rights, and the process for the compensation framework.¹⁴ Possible areas of the compensation framework that could be amended to provide greater clarity include the areas of *claims eligibility* and *right of appeal*.

Claims eligibility

The current ECGS framework sets out a role for an independent third party dispute resolution panel (known as the DRP),¹⁵ including provisions that the DRP should have regard to when determining the eligibility for, and amount of compensation to be claimed. These include an assessment of the DRP whether:¹⁶

- the claimant failed to take reasonable action to mitigate the loss for which compensation is being claimed
- the action of the claimant (both before and after the direction was issued) contributed or exacerbated the amount of compensation being claimed
- the claimant received funds, payments, compensation or another financial benefit for undertaking the activities required by the direction.¹⁷

These rules seek to incentivise market participants to support gas system reliability and adequacy and seek to ensure consumers do not compensate for directions that are in response to inefficient industry behaviours. However, there may be opportunities to improve these to provide greater clarity. For example, more clarity could be given to gas market participants to understand:

- in advance how rules will apply in different AEMO directions
- how much they will be paid for responding to support gas system reliability and adequacy, or what it will cost not to respond
- how AEMO determines which relevant entities will be required to fund a particular compensation claim.

Right of appeal

Energy Ministers also queried whether a right of appeal should be provided in the rules for claimants or those required to fund a claim and invited consideration of the process and considerations that may be attached to the right and consequential changes in other parts of the rules.¹⁸

14 See page 12 of the Energy Ministers' rule change request.

15 Under Part 15C dispute resolution process, there are two stages of dispute resolution. In stage 1 participants resolve issues commercially, with the wholesale energy market dispute resolution adviser (the Adviser) assisting in this process by facilitating meetings or providing non-binding expert view on the issue under dispute. If an issue cannot be resolved and is escalated to stage 2, issues are decided by an expert or panel of experts (DRP). Decisions of the DRP are binding on both parties to the dispute.

16 See page 12 of the Energy Ministers' rule change request.

17 NGR rule 707.

18 See page 11 of the Energy Ministers' rule change request.

Greater efficiency and effectiveness

There may be opportunities to improve the compensation framework while still ensuring it effectively applies to the diversity of entities in the ECGS.

Effectiveness of the compensation framework also relates to the arrangements incentivising behaviour that supports system reliability or adequacy - by creating the right incentives for relevant entities to respond to directions and to invest to help them contribute to greater security and reliability in the ECGS.¹⁹ The implication is that without any changes there is a material risk that relevant entities won't help mitigate threats, respond to directions, and invest as appropriate to support these actions.

Greater efficiency and effectiveness could, for example, be achieved through introducing the *ability to join compensation claims, ability for DRP to rely on third party information, and appropriate procedural arrangements.*

Ability to join compensation claims

For example, Energy Ministers proposed that the rules should allow for joining of compensation claims (that are individually below the \$5000 eligibility threshold) from the same applicant in relation to the same or similar event impacting on that entity given the potential significant impacts on smaller businesses. Likewise, Energy Ministers propose to consider amending the regulatory framework to allow for joining compensation claims from different entities into one process.²⁰

Ability for DRP to rely on third party information

Energy Ministers also requested the AEMC consider whether there is merit for the rules to more explicitly provide the DRP the ability to call on third parties to provide information or rely on any other source of information as the DRP thinks fit to enable a better operation of the framework that is more consistent with the NGO.²¹ The AEMC also notes provisions in the NER that allow the decision maker to request the claimant to provide information to be requested when assessing claims for compensation and power to make assumptions concerning that information where it is not provided.²²

Appropriate procedural arrangements

Under the rules (Both NER and NGR) there is a role for a Wholesale Energy Market Dispute Resolution Adviser (referred to interchangeably as either WEMDRA or the Adviser). This Adviser assists in compensation and dispute resolutions by facilitating meetings or providing nonbinding expert views on the issue under dispute. They are also responsible for appointing the DRP, in the event that one is required. The rule change request identified potential improvements to this process as outlined below.

The AER's advice on the challenges of timeframes and procedural requirements in the current framework was noted as an opportunity for improvement, e.g. the timing for the Adviser to

19 See page 16 of the Energy Ministers' rule change request.

20 See page 11-12 of the Energy Ministers' rule change request.

21 See page 10 of the Energy Ministers' rule change request.

22 NER clause 3.12.3(c)(6) and (7).

establish a DRP and the timeframe for AEMO and affected parties to discuss the nature and the scope of the claim with the Adviser.²³

Greater consistency

Consistency between the ECGS and DWGM frameworks

Energy Ministers also asked the AEMC to consider greater consistency between the ECGS and DWGM frameworks, as well as with the broader compensation and dispute resolution framework, noting that each may still require bespoke arrangements.²⁴ So while our focus will be on improvements to the compensation framework for AEMO directions, we will consider consequential changes to the DWGM and broader compensation and dispute resolution frameworks through this rule change.

Funding of compensation claims and allocation of costs of Adviser and DRP

Energy Ministers also identified an opportunity to provide greater consistency in the long-term approach to allocating compensation costs, as well as the costs of the Adviser²⁵ and the DRP.²⁶ For example, there are perceived inconsistencies between the approach taken to recover the costs of the Adviser and DRP in the NER and in the NGR. NGR subrule 237(9) generally requires these costs to be borne by AEMO for the DWGM (NGR subrule 706(5) applies in the broader ECGS), but NER clause 8.2.8 requires these costs to generally be borne equally by the parties to the dispute.²⁷

23 See page 10 of the Energy Ministers' rule change request.

24 See page 3 of the Energy Ministers' rule change request.

25 For more detail on WEMDRA please see their website <https://wemdra.resolveadvisors.com.au>. See also the AER's website covering WEMDRA www.aer.gov.au/about-us/dispute-resolution/wholesale-energy-market-disputes.

26 See page 14 of the Energy Ministers' rule change request.

27 See page 15 of the Energy Ministers' rule change request.

3 THE PROPOSED SOLUTION AND IMPLEMENTATION

This chapter seeks feedback on:

- the Energy Ministers' proposal to address the issues with the compensation framework; and
- any implementation matters the Commission may need to consider in making its determination.

3.1 Proposed solution to improve the compensation and dispute resolution frameworks

The Energy Ministers' rule change request proposed a number of potential changes to the frameworks (the rationale for these changes is outlined in more detail in section 2.1), to improve clarity, efficiency and consistency, including in the following areas:²⁸

- Governance and procedural arrangements:
 - The role of the Adviser and timeframes to establish a DRP
 - The ability for the DRP to call on, or rely on, third-party information
 - Rights to appeal
 - Ability to join compensation claims
 - The interactions between Parts 15C and other parts of the NGR that refer to part 15C
- The scope of the framework:
 - Clarifying legal rights and obligations in advance
 - Clarifying eligibility for compensation and the interaction with incentives
- Funding arrangements:
 - Funding of compensation claims, and
 - Allocation of costs.

The previous sections outlined the need to provide greater clarity, efficiency and effectiveness of, and consistency in the compensation and dispute resolution frameworks. This section summarises and outlines in more detail some proposed solutions in line with the above-identified areas to address issues with the existing frameworks.

Governance and procedural arrangements

Energy Ministers proposed a number of potential refinements to the process which would support greater efficiency. For example, the creation of a mechanism for the relevant entity(s) to agree the scope of the claim with the Adviser or DRP at the commencement of the process.²⁹ The Ministers also proposed allowing claims from multiple entities related to the same or similar events to be joined, as well as potentially allowing entities with a financial detriment of less than the threshold \$5,000 to join together.³⁰

²⁸ See pages 8-15 of the Energy Ministers' rule change request.

²⁹ See page 10 of the Energy Ministers' rule change request.

The Ministers suggested that greater efficiency in the process could also be achieved by allowing the DRP to require third parties to provide information to support its consideration of compensation claims.³¹ Additionally, Energy Ministers suggested the AEMC review AEMO's ECGS Procedures and Guidelines to consider whether they could more effectively achieve the ECGS policy objectives.³²

The scope of the framework

To ensure any changes continue to support the broader reforms to manage threats to security and reliability in the interconnected ECGS, Ministers raised the potential for further incentives beyond direct costs to be compensated in certain circumstances.³³ This could include compensation for opportunity cost when there may be additional need or urgency to encourage participants to help respond to threats to the ECGS.

Funding arrangements

Energy Ministers also identified its objective that the compensation framework should be sustainable, that is, access to compensation and the quantum of payments is subject to appropriate limits. This could be addressed by allowing compensation processes to be combined for efficiency and consistency improvements, but also through the potential introduction of caps on compensation claims.³⁴ Energy Ministers also suggested the Commission consider the allocation of costs, including whether cost allocation mechanisms might sit more appropriately in the Rules than in AEMO's Procedures.³⁵

Once the process has been refined, Energy Ministers have asked the AEMC to consider the roles of entities like the Adviser and the DRP to determine whether and to what extent the roles of these entities are appropriate to compensation frameworks.³⁶ Energy Ministers also noted that it may be appropriate to consider whether the Adviser or a different or new entity should oversee compensation claims for AEMO directions. Changes to these arrangements could help ensure the compensation process is fit for purpose.

The following questions relate to the proposal to consider changes in the areas of governance and process (Questions 1-3), scope of the framework (Question 4), and funding arrangements (Questions 5-6).

QUESTION 1: WILL THE PROPOSED SOLUTION ADDRESS THE ISSUES RAISED BY ENERGY MINISTERS?

Do you consider that the proposed changes to the Rules will solve the issue(s) raised by

30 See page 11 of the Energy Ministers' rule change request.

31 See page 11 of the Energy Ministers' rule change request.

32 See page 13 of the Energy Ministers' rule change request.

33 See page 13 of the Energy Ministers' rule change request.

34 See pages 7, 13, and 14 of the Energy Ministers' rule change request.

35 See page 14 of the Energy Ministers' rule change request.

36 See page 8 of the Energy Ministers' rule change request.

Energy Ministers and improve the regulatory framework? Or are there other factors that would have a greater impact?

QUESTION 2: SHOULD SIMPLIFICATIONS TO THE PROCESS BE INTRODUCED?

- a) Should a simpler, quicker process for determining claims be available in certain circumstances? If so, what are these circumstances? How could this be achieved?
- b) What considerations are relevant to the proposed process to allow claims to be joined into one process?

QUESTION 3: SHOULD FURTHER INCENTIVES BE CONSIDERED IN CERTAIN CIRCUMSTANCES?

Should entities receive only direct costs or should further incentives, such as compensation for other costs, such as opportunity costs, be available in certain circumstances? If so, what should these further incentives be? What circumstances should these further incentives apply?

QUESTION 4: SHOULD THE GOVERNANCE FRAMEWORK ALLOW FOR INFORMATION REQUESTS?

Should we progress Energy Ministers' proposal to allow the body determining compensation claims to request information from third parties to support this process? Should any other changes be made to allow the body determining compensation claims to obtain the information it needs from the claimant?

QUESTION 5: SHOULD COMPENSATION CLAIMS BE CAPPED?

Should there be a cap on compensation claims? If so, what form should these caps take, eg, annual aggregate, individual claims, etc?

QUESTION 6: SHOULD ANOTHER EXISTING OR NEW ENTITY OVERSEE OR DETERMINE CLAIMS?

What factors should inform the AEMC's work on the roles of the Adviser and Dispute

Resolution Panel (DRP) in overseeing the compensation claims process and making determinations?

3.2 Cost and benefits of the proposed solution

Energy Ministers considered that there are substantial additional benefits to refining the regulatory framework. For example, greater clarity on the merits of potential claims, as well as expected compensation, will promote more efficiency which is expected to reduce the cost of the process. Energy Ministers also considered that this will drive better market preparedness for potential shortfalls and greater confidence in the regulatory framework.³⁷

The expected costs are mostly restricted to the market bodies' efforts to implement and communicate the new framework. For example, AEMO will be required to update its Procedures and Guidelines and consult on these updates. There will be initial transaction costs for relevant entities as they seek to understand and engage with the amended framework.

QUESTION 7: WHAT ARE YOUR VIEWS OF THE COSTS AND BENEFITS OF THE PROPOSED SOLUTION?

What do you consider will be the costs and benefits of the proposed solution? If there are costs, will these be one off or ongoing? Is there anything the Commission could do in designing the rule that would help to minimise the costs and maximise the benefits?

3.3 Are there any implementation issues?

Energy Ministers noted an implementation concern is a desire for this framework to be completed and operationalised before winter 2024, if possible, ahead of supply shortfall risks.³⁸ This would require the rule change to be completed before the end of the year and amendments to AEMO's Procedures and Guidelines made by the end of April 2024.

Also, Energy Ministers suggested that the AEMC consider applying changes to the ECGS compensation framework to the DWGM and broader compensation and dispute resolution framework in the Rules.³⁹ This would help minimise transaction costs as entities would be able to use the same or similar processes to achieve compensation and inform operational and investment decisions.

³⁷ See page 16 of the Energy Ministers' rule change request.

³⁸ See page 7 of the Energy Ministers' rule change request.

³⁹ See page 3 of the Energy Ministers' rule change request.

This rule change is also occurring in the context of a number of other reforms (see Appendix A). Energy Ministers noted the potential for stakeholder fatigue amidst the magnitude of these reforms.⁴⁰

The intention of this rule change request is to reduce complexity and uncertainty in the regulatory framework. This should be supported by AEMO's Procedures and Guidelines and there is the potential for additional supporting documentation. The AEMC also intend to run public forums and engage with industry groups at key milestones to help stakeholders engage with this process.

QUESTION 8: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS?

Do you have any suggestions regarding the target commencement timeframes? Are there additional measures that should be considered that would support the effective implementation of the desired solution?

QUESTION 9: SHOULD THE BROADER FRAMEWORKS BE ALIGNED?

- a) Should the changes to the ECGS compensation framework be applied to the DWGM compensation framework?
- b) Should any of these changes be made to the broader compensation and dispute resolution frameworks?
- c) Are there factors that may limit the application of the changes to the ECGS framework to each of these frameworks?

3.4

Can the problem be resolved in a different or more efficient way?

As noted in section 4.4, the AEMC has the ability to make an alternative rule if it considers a more preferable rule would better meet the NGO. Energy Ministers also noted that the scope of the proposed rule change request is intentionally flexible to allow for discretion.⁴¹ This may mean that only some elements of the proposal may progress. We will consider all possible refinements to the compensation framework and consider the consequential changes to the rules that may support successful implementation.

⁴⁰ See page 17 of the Energy Ministers' rule change request.

⁴¹ See page 16 of the Energy Ministers' rule change request.

QUESTION 10: ARE THERE ALTERNATIVES SOLUTIONS THAT WOULD BE PREFERABLE?

- a) Do you think there are any alternative, more preferable rule based solutions, which are more aligned with the long-term interests of consumers?
- b) Are there alternative solutions that sit outside of the energy rules such as industry or jurisdictional initiatives that would better address the identified issue?

4 MAKING OUR DECISION

When considering a rule change proposal, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long-term interests of consumers

The Commission is bound by the National Gas Law (NGL) to only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective.

The NGO as contained in Section 23 of the NGL is:

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas.

4.2 We must also take these factors into account

The EMSG has asked us to consider changes to the Declared Wholesale Gas Market (DWGM) should be made to maintain the alignment between the DWGM and ECGS. As the DWGM is an adoptive jurisdiction, there are additional considerations we must take into account in making rules, such as whether the rule change request was submitted by AEMO or the Victorian Minister.⁴² We are satisfied that this requirement has been met as the Victorian Minister is one of the proponents through its membership and participation in the EMSG.

4.3 We propose to assess the rule change using these four assessment criteria

The Commission proposes to assess this rule change request and the issues raised in it against the set of criteria outlined below. These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request. We consider these impacts within the framework of the NGO and will assess options to further refine the regulatory framework against:

- **Safety, security and reliability:** do the proposed improvements to the compensation framework align with the broader reforms to manage threats to security and reliability?
- **Principles of market efficiency:** do the proposed improvements to the compensation framework, including the allocation of cost, provide sufficient transparency and incentives to encourage efficient and effective actions from relevant entities?

⁴² s. 295 of the NGL.

- **Implementation considerations:** do the proposed improvements to the compensation framework support market wide success by reducing complexity and uncertainty? Would consequential changes to the DWGM and broader compensation and dispute resolution framework support successful implementation?
- **Principles of good regulatory practice:** do the proposed improvements to the compensation framework promote predictability and efficiency?

QUESTION 11: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or principles included here that are not relevant?

4.4

We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the proponent⁴³
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NGO.⁴⁴

⁴³ Energy Ministers did not provide proposed rule drafting but outlined its proposed solution in its rule change request.

⁴⁴ Section 296 of the NGL.

A EAST COAST GAS SYSTEM (ECGS) REFORMS

On 12 August 2022 Energy Ministers decided on additional reforms to manage supply adequacy risks in the ECGS.⁴⁵ These reforms ranged from introducing new information obligations to improve transparency and efficiency to widening the functions and powers of AEMO to manage threats to security of gas supply. In the Communique:⁴⁶

Ministers also made it clear that these reforms are about improving efficiencies and supporting further supplies for the domestic market and are respectful of existing foundational contracts for export supply and of international partners

The reforms did not make the ECGS a single market like the national electricity market (NEM), but created an overarching framework to manage security and reliability across the facilitated markets and contract based commercial facilities.⁴⁷ The facilitated gas markets include the Short Term Trading Markets (STTM) with hubs in Adelaide, Brisbane and Sydney, the Victorian DWGM, and gas supply hub (GSH) which facilitates trades in gas and secondary transportation capacity for the Wallumbilla and Moomba trading hubs.⁴⁸

These gas market reforms have been progressed in two stages to ensure AEMO has the tools it requires in time to address potential risks to supply in winter 2023. As the EMSG rule change request notes:⁴⁹

Stage 1 focused on ensuring AEMO can monitor and communicate emerging threats to the reliability and adequacy of gas supply and to respond to any such threats, including through powers of intervention if required; and

Stage 2 focused on further measures to guide and frame how AEMO approaches its new functions and facilitate more efficient responses by market participants

This rule change request is intended to build on some of the elements of the Stage 1 reforms.

Managing threats to security and reliability

Stage 1 reforms included obligations on AEMO to assess ECGS supply and demand trends to identify risks or threats to the reliability or adequacy of supply.⁵⁰ The reforms do not establish AEMO as a system operator for the interconnected east coast market,⁵¹ but empower AEMO to monitor and mitigate threats to these interconnected systems.

45 Energy Ministers' Meeting Communique 12 August 2022, available at: <https://www.energy.gov.au/government-priorities/energy-and-climate-change-ministerial-council/meetings-and-communications>.

46 EMM communique 12 August 2022.

47 Consultation paper on the proposed regulatory amendments to extend AEMO's functions and powers to manage east coast gas supply adequacy.

48 Section 5 and Appendices A -D of the consultation paper for the AEMC's 2021 Hydrogen Review provide more information on the facilitated markets, available at: <https://www.aemc.gov.au/market-reviews-advice/review-extending-regulatory-frameworks-hydrogen-and-renewable-gases>.

49 See page 4 of the Energy Ministers' rule change request.

50 Division A1 NGL 91AD (1).

51 Consultation paper on the proposed regulatory amendments to extend AEMO's functions and powers to manage east coast gas supply adequacy.

Relevant entities, including owners, operators and controllers of facilities and LNG export projects, and retailers, are required to provide information to AEMO to help it meet its obligations.⁵² If AEMO identifies an actual or potential risk or threat, it must publish a notice in accordance with its East Coast Gas System Procedures.⁵³ AEMO may also convene a gas supply adequacy and reliability conference to discuss the threat, the likelihood of it occurring, and the need for an industry response.⁵⁴ We would generally expect that, where possible, the industry would respond to the notice of an actual or potential issue and engage with relevant conferences to mitigate threats.

AEMO may give directions or trade if it considers it necessary, for example, if the industry response is insufficient to mitigate the threat or there is insufficient time.⁵⁵ AEMO must also update the ECGS via additional notices if there is a material change in the nature or circumstances of the threat, including if the risk is unlikely to be mitigated if it doesn't exercise a direction or trading function.⁵⁶ But if there is insufficient time, AEMO is not required to publish a notice before exercising a direction or trading function.⁵⁷ After the threat has been mitigated (no longer meets the criteria in the Procedures) AEMO is required to publish a notice revoking the risk or threat notice as soon as reasonably practicable.⁵⁸

AEMO must publish a post-intervention report within four months of every exercise of a direction or trading function.⁵⁹ This reporting will include information such as the reasons for the exercise of functions, the expenditure in the exercise of the functions, and whether it mitigated the risk or threat.

AEMO directions

Section 91AF of the National Gas Law provides the framework for AEMO to issue directions to relevant entities for reliability or adequacy of supply in the ECGS. AEMO is empowered to use its discretion to direct a relevant entity if it is necessary to prevent, reduce or mitigate an actual or potential threat. A relevant entity is defined quite broadly, although it excludes small customers as defined in section 5(2) of the National Energy Retail Law.

relevant entity means the following, excluding a small customer:

- (a) a Registered participant;
- (b) an exempted participant;
- (c) a producer who injects natural gas into the east coast gas system;
- (d) a person who buys or sells natural gas in the east coast gas system;
- (e) a gas powered generator;

52 NGR Rule 684.

53 Rule 695.

54 Rule 692.

55 Division 1A NGL 91AD (e) and (f).

56 Rule 696.

57 Rule 695 (3).

58 Rule 696(1)(d).

59 Rule 698.

- (f) a storage provider whose storage facility is connected to the east coast gas system;
- (g) a person who provides pipeline, transport, compression or other related services in, into or out of the east coast gas system;
- (h) a person specified as a relevant entity by the Rules

These directions could include operating, maintaining and using equipment and controlling the flow of natural gas. But AEMO is also permitted to direct any other action to address threats to the reliability or adequacy of supply in the ECGS. Relevant entities must comply with the directions unless it is not consistent with a law of a participating jurisdiction that applies to them.

This significant discretion is balanced with requirements in the NGR which AEMO must have regard to before it can issue directions. AEMO needs to have regard to whether the industry has been given a reasonable chance to react, whether it can minimise distortions to the ECGS, industry and consumer costs (on the basis of available information), and that safety should not be compromised.⁶⁰

AEMO is also required to consult with the relevant entity, including on the proposed direction, the entity's ability to comply, and safety and technical issues.⁶¹ Through this process AEMO can also discuss alternatives to the proposed direction, for example, directing an entity buying or selling gas as an alternative to directing an entity providing transport services.

AEMO is prohibited from directing gas for LNG exports under long-term contracts.⁶²

Compensation for directions

To establish the framework for compensation following AEMO directions in the ECGS, the DWGM framework was adopted to provide one framework for the whole ECGS. But this was an interim solution to ensure a framework could be implemented before winter 2023.⁶³

Given the highly fragmented nature of the east coast gas market, and the broad potential scope of market interventions, developing appropriate compensation arrangements is a complex undertaking. On this basis, as well as the diverging views of stakeholders, an interim solution has been implemented to allow additional time to develop a long-term approach and undertake further stakeholder engagement. The AEMC will undertake a review of this process, with the approach to this review expected to be approved by Energy Ministers in early 2023.⁶⁴

60 NGR rule 699.

61 NGR subrule 700(1).

62 NGR subrule 701(2).

63 See the Information Paper for Extending AEMO's functions and powers to manage east coast gas system reliability and security.

64 Given the tight timeframes discussed earlier in this paper the AEMC, in consultation with Energy Ministers, has since opted to progress this work as a rule change.

Recovering the compensation costs

The costs of providing compensation following AEMO directions in the ECGS must be recovered somehow. In establishing the initial approach and allowing for a flexible approach to allocating these costs, Senior Officials noted:⁶⁵

the structure of the east coast gas market presents some difficulties not encountered in the electricity sector or within the DWGM, as these markets utilise the market settlement systems of AEMO itself to recover the costs of compensation arrangements. With the benefits of directions split across three STTMs, a DWGM, two GSHs and numerous regional markets not connected to an AEMO facilitated market, determining from where and whom compensation amounts will be recovered will be complex.

AEMO was required to outline how the money to fund any compensation(s) will be recovered from relevant entities in its Procedures under NGR rule 707. This includes the manner, form and methodology of payments made by these relevant entities. AEMO obtained expert advice proposing it recovers compensation payments from relevant entities according to the:⁶⁶

- **Duration of the threat or risk:** for less than a month, the costs are allocated to entities in proportion to the sum of their withdrawals in the week prior to the end of the direction. For more than a month, the sum of withdrawals for six months prior to the end of the direction will be used.
- **Location of the risk or threat:** for risks or threats limited to one state, the entity's withdrawals in that state will be used to apportion the recovery of costs. For risks or threats affecting multiple states, the sum of their withdrawals across these states will be used. For risks or threats affecting the whole ECGS, the sum of their withdrawals across the ECGS will be used.

65 See the Consultation Paper for Extending AEMO's functions and powers to manage east coast gas system reliability & supply adequacy.

66 See CEPA's 2023 Final Report on Recovering the costs of gas directions and the trading fund, available at: <https://aemo.com.au/consultations/current-and-closed-consultations/implementation-of-east-coast-gas-system-procedures>.

B CURRENT ECGS DIRECTIONS COMPENSATION FRAMEWORK

Part 27 Division 6 of the NGR outlines the current process for determining compensation claims for AEMO directions in the ECGS. Energy Ministers have also summarised the process for determining compensation claims in their rule change request.

Lodging the claim

To be eligible to make a claim, a relevant entity must have experienced direct financial detriment exceeding \$5,000.⁶⁷ But entities cannot claim for loss of profit or opportunity or indirect or consequential loss.⁶⁸

The entity has 20 business days after the financial detriment is experienced to provide AEMO with a written notice of compensation. AEMO's Procedures outline the information required to be provided in the notice.⁶⁹ This includes providing the period over which the detriment occurred, the direct costs as a result of a direction given by AEMO, and evidence supporting the claim.

NGR subrule 704(5) requires the entity claiming compensation to determine the direct costs with reference to prices in a market transaction for natural gas services it was a party to, prices in a contractual agreement for natural gas services it was a party to, or standing prices and benchmark rates set out in AEMO's Procedures.⁷⁰

Determining the compensation amount

AEMO has 10 business days after receiving the notice of compensation to request the Adviser establish a dispute resolution panel, refer the claim to the Adviser and provide details on the nature of the claim.⁷¹ Stages 1 and 2 of the dispute resolution process do not apply to compensation for AEMO directions in the ECGS.

The Adviser then has 5 business days to establish the DRP and provide details of the nature of the claim to the DRP.⁷² The DRP then has 30 business days to make a determination and notify the entity claiming compensation and AEMO of its determination.⁷³ Although if the DRP requests an extension, the Adviser can extend this period.⁷⁴ AEMO's Procedures also allow the DRP to request additional information from AEMO and note AEMO may request information from relevant entities, although it will not analyse or assess this information.⁷⁵

67 NGR subrule 704(1).

68 NGR subrule 704(4).

69 See Section 4.1 of AEMO's East Coast Gas System Procedures.

70 See Section 4.2 of AEMO's East Coast Gas System Procedures.

71 NGR subrule 706(1).

72 NGR subrule 706(2).

73 NGR subrule 706(3).

74 NGR subrule 706(4).

75 See Section 4.3 of AEMO's East Coast Gas System Procedures.

The DRP must determine whether it is appropriate for compensation to be paid to a claimant and, if so, the amount to be paid.⁷⁶ In making this determination, the DRP is required to consider whether the entity failed to take reasonable action to mitigate its direct loss, contributed to or exacerbated the amount of compensation being claimed, or received financial benefits.⁷⁷ For example, the entity may receive funds, payments, compensation or other financial benefits for undertaking the activity required by the direction. The DRP may reduce the compensation amount if it considers any of these criteria are met.

If the DRP determines compensation must be paid to a claimant, AEMO writes to them to advise the claimant of the determination and the estimated date of payment.⁷⁸ But AEMO is only required to pay the claimant after it has received payment from relevant entities.

Recovering the costs of the process

AEMO is required to determine the methodology to recover the cost of the compensation amounts from relevant entities.⁷⁹ AEMO's Procedures exempt the claimants from contributing to the cost of the compensation.⁸⁰ AEMO apportions the claim amounts across entities according to the duration (more or less than a month) and location (state, states, or ECGS) of the risk or threat. This means that an entity will be required to contribute a proportion of the compensation amount according to their total withdrawals in the relevant location across a 28 day or six month period. Whether the risk or threat lasted more than a month is determined by the publication of a risk notice and its revocation, or if no notice is published a direction and its revocation.

But AEMO is required to bear the cost of the Adviser and the Panel unless the DRP considers a party has unreasonably prolonged the proceedings.⁸¹ The DRP may also consider there is another good reason to alter the allocation of the costs.

76 NGR subrule 707(1).

77 NGR subrule 707(2).

78 NGR subrule 707(5).

79 NGR subrule 707(7).

80 See Section 4.4 of AEMO's East Coast Gas System Procedures.

81 NGR subrule 706(5).

C BROADER COMPENSATION AND DISPUTE RESOLUTION FRAMEWORKS

The broader compensation and dispute resolution frameworks under the NER and NGR may offer relevant context and insights for this rule change process. For example, a number of entities play a variety of roles in the governance of these frameworks. While not the focus of this rule change, approaches in the NER may offer insights into potential issues with compensation and dispute resolution frameworks for the ECGS. In considering the relevance of these insights, it is important to consider the key differences between the NEM and the ECGS.

Governance of the compensation and dispute resolution frameworks

Part 15C of the NGR has the rules provisions dealing with the resolution of relevant disputes – in general, disputes or other matters referred to the dispute resolution process, and disputes about the interpretation or application of the rules. NGR rule 135H requires an entity intending to use the dispute resolution process to give a notice to the party(s) to the relevant dispute and give a copy to the Adviser. If representatives of the parties cannot agree the course of the dispute resolution process, they can refer the matter to the Adviser who will refer the dispute to a DRP.⁸²

The compensation frameworks in the NGR also use the dispute resolution frameworks but with modifications. For example, the ECGS framework for compensation of direct costs arising from AEMO directions specifies which of the dispute resolution rules in Part 15C do not apply. The exclusions include the Stage 1 and Stage 2 processes, as well as the provisions allowing a direction to disclose information before the DRP is constituted and the provisions allowing referral of a dispute to mediation and settlement by agreement.

Part 19 of the NGR (the DWGM rules) refers the following compensation claims for resolution under Part 15C: claims for compensation for unintended scheduling results, claims for compensation for interventions and claims for compensation for market suspension.

Part 20 of the NGR (the rules for the short term trading markets or STTM) refers the following compensation claims for resolution under Part 15C: claims for compensation relating to scheduling errors and claims for compensation relating to administered market states.

Fast track process for scheduling errors

As noted above, the NGR refers compensation claims arising from scheduling errors (Part 20) and unintended scheduling results (Part 19) for resolution under the disputes resolution process. The NER also provides for compensation claims for scheduling errors to be referred to a DRP for determination. In these matters, the rules provide for claims to be funded from compensation funds established under the market rules and caps the amount of compensation by reference to what is available in the fund.

⁸² NGR rules 135H and 135HA.

To manage the cost and complexity of compensation processes, particularly when there are many applicants, the Adviser has created a 'fast track' process for these matters.⁸³ The fast track process is not defined in either the NER or NGR but its use is referenced in Adviser reports to the wholesale energy market. For example, the January to March 2017 report references the use of a fast track process for a gas unintended scheduling result (USR) process as "the USR and compensation is agreed".⁸⁴

The Adviser notes in the January to March 2017 report that the fast track process is a simplified compensation process for when AEMO declares a scheduling error and the compensation methodology is agreed between AEMO and any participant seeking compensation. A single DRP member is appointed and submissions are prepared for the DRP by AEMO and the claimants together. The Adviser also allows all participants with a claim for compensation to join the fast track process and requires them to agree the allocation of DRP and associated costs between them.

Other compensation claims in the electricity context

Chapters 3 and 4 of the NER provide for compensation claims in various circumstances. As outlined above, the treatment of scheduling errors is similar to the treatment of scheduling errors or unintended scheduled results under the NGR, with claims referred for determination by a DRP using the dispute resolution process.

The NER also provides for compensation where AEMO gives a direction (clauses 3.15.7 to 3.15.7B). The determination of claims for energy or ancillary services provided to the market are determined by AEMO using a formulaic approach. For other services, the claims are referred by AEMO to an expert unless the amount of the claim is below a threshold and it is not unreasonable or complex, in which case AEMO determines the compensation. The process for appointment of the expert and how the expert is provided with information, consults on its draft determination and makes its final determination is provided for in NER rule 3.12.

The expert process is also used for compensation for adjustment claims in connection with AEMO interventions (clause 3.12.1) and for market suspension pricing periods (rule 3.14.5A).

Differences between the NEM and ECGS

The compensation and dispute provisions in the NER may provide a useful reference point for the NGR where for example similar forms of compensation are available and similar principles are to be applied. Nonetheless in considering the relevance of the electricity compensation payment and cost recovery frameworks, it is important to be mindful of the major differences between the NEM and the ECGS. For example:

83 The Adviser lists determinations in both 2017 and 2021 as being fast track in its summaries of DRP determinations, available at: <https://www.aer.gov.au/about-us/dispute-resolution/wholesale-energy-market-disputes/wholesale-energy-market-dispute-resolution-electricity/dispute-resolution-panel-determinations-electricity>.

84 The Adviser reports to the wholesale energy market are available at <https://www.aer.gov.au/about-us/dispute-resolution/wholesale-energy-market-disputes/adviser-reports-to-the-wholesale-energy-market>.

- The NEM is a single interconnected market with the sale and purchase of electricity occurring through a central pool process. The ECGS is an overarching framework encompassing a number of facilitated markets and contract based arrangements.
- AEMO is the market and system operator for the NEM but does not hold this function for the ECGS.

The differences may mean for example that use of AEMO's market settlement systems to recover the cost of compensation or to provide inputs into the compensation process may be feasible in the electricity context and also in the STTM and DWGM but not for compensation under Part 27.

ABBREVIATIONS

The Adviser	Wholesale Energy Market Dispute Resolution Adviser
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
DRP	Dispute Resolution Panel
DWGM	Declared wholesale gas market
ECGM	East coast gas market
ECGS	East coast gas system
EMSG	Energy Ministers' Sub-Group
GSH	Gas supply hub
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Proponent	The proponent of the rule change request
STTM	Short term trading market
USR	Unintended scheduling result
WEMDRA	See the Adviser