

Compensation and dispute resolution frameworks


Virtual Public Forum

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11 December 2023

AEMC

ACKNOWLEDGEMENT OF COUNTRY

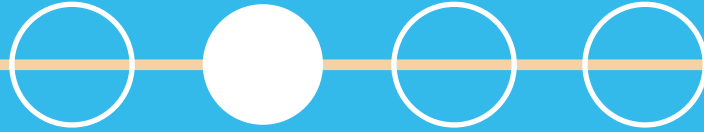


The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

Introductory remarks

AEMC

Tim Jordan – Commissioner



Agenda and Housekeeping

Martina McCowan – Director

1 Introductory comments

2 Purpose of forum and housekeeping

3 Overview of the draft determination and timelines

4 Q&A

5 Closing remarks

Purpose of today's presentation



- AEMC staff will provide an overview of the draft determination on compensation and dispute resolution frameworks



- AEMC staff will provide an overview of the next steps to progress the rule change process



- Forum participants will be invited to ask questions in a dedicated Q& A session



- While we are happy to provide answers to questions, if you have a detailed or complex issue to discuss please reach out to set up a bilateral meeting with the team

Housekeeping

- All participants are currently in 'listen-only' mode
- Moderators can switch your mic on if you are invited to speak.
- Asking questions
 - Use the Q&A button on the bottom of your screen
 - Questions will be answered at a dedicated Q&A session
 - We will try to answer all questions, but will prioritise questions with most 'upvotes' first
- Presentations from today will be posted on our website after the webinar

COMPETITION PROTOCOL

KEY PRINCIPLES

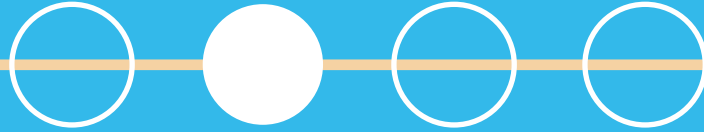


The AEMC is committed to complying with all applicable laws, including the ***Competition and Consumer Act 2010*** (CCA), during this forum. Breaching the CCA can lead to serious penalties for individuals involved in any breach (including large financial penalties and imprisonment for key individuals involved). This protocol governs the way in which discussions will proceed at this forum, and each attendee agrees to adhere to this protocol in order to comply with the CCA.

Each attendee must make an independent and unilateral decision about their commercial positions and approach in relation to the matters under discussion in this forum.

Attendees must not discuss, or reach or give effect to any agreement or understanding which relates to:

- **pricing** for the products and/or services that any attendee supplies or will supply, or the terms on which those products and/or services will be supplied (including discounts, rebates, price methodologies etc)
- **targeting (or not targeting) customers** of a particular kind, or in particular areas
- **tender processes** and whether (or how) they will participate
- any decision by attendees:
 - about the purchase or supply of any products or services that other attendees also buy or sell
 - to not engage with persons or the terms upon which they will engage with such persons (i.e. boycotting); or
 - to deny any person's access to any products, services or inputs they require
- **sharing competitively sensitive information** such as non-publicly available pricing or strategic information including details of customers, suppliers (or the terms on which they do business), volumes, future capacity etc
- **breaching confidentiality obligations** that each attendee owes to third parties.



Overview of the draft determination

Patrick Loughrey – Adviser

The draft rule would establish a compensation framework under the NGR

The rule change request asked the Commission to ensure the procedural and governance arrangements under the ECGS compensation framework are fit for purpose.

What have we done?

- The draft rule would establish a new framework-for the assessment of compensation claims
 - The proposed framework is largely based on the NER Chapter 3 expert determination process, with some modifications
 - The proposed framework would apply to compensation claims but not unintended scheduling results or scheduling errors
 - We do not consider there would be any benefit in designing a fast-tracked compensation claims assessment process for claims under Parts 19 or 27
- We propose a streamlined compensation framework that clarifies the roles and responsibilities of AEMO, the independent expert and claimants
 - AEMO would fulfill a coordinating and guiding function (but have no role in assessing claims)
 - The independent expert would be responsible for the assessment of compensation claims
 - Claimants would have appropriate rights and responsibilities as part of the process

The draft rule would refine the framework for AEMO directions in the ECGS

The rule change request sought to improve the regulatory framework to achieve the following objectives:

- sufficiently incentivise behaviour that supports system reliability and supply adequacy
- ensure the compensation framework is sustainable, i.e. access to compensation and the quantum of payments is subject to appropriate limits
- provide funding arrangements for compensation payments that are fair and equitable
- provide reasonable and proportionate access to compensation.

What have we done?

- The draft rule would limit the costs that are eligible for compensation to direct costs only to incentivise market supporting behaviour
- We further recommend introducing a new civil penalty provision to support appropriate behaviour in response to an AEMO direction
- The draft rule elevates principles into the NGR to govern the cost recovery methodology used to fund compensation claims
- The draft rule would increase the minimum threshold for a compensation claim to \$50,000 (and allow for indexation) and no joining of claims to meet the minimum threshold

Only direct costs are eligible for compensation to incentivise market supporting behaviour

- Under the current arrangements, compensation for AEMO gas directions is narrowly defined as covering:
 - direct costs of supplying a natural gas service as directed (e.g. replacing and shipping gas)
 - direct cost for a party deprived of a natural gas service (that it has paid for under contract), even if the party is not the subject of the direction.
- Stakeholders broadly supported clarifying the types of costs that are eligible for compensation. Stakeholders submitted a range of costs that the framework should contemplate: direct, opportunity, consequential and indirect costs.
- The Commission's draft determination is to leave the categories of costs that are eligible for compensation unchanged, that is, to maintain the current definition of costs that are eligible for compensation as direct costs only
 - The Commission considers that directions should be used as a last resort – therefore incentives should maintain the incentives for normal, and not directed, market operation and efficient risk allocation ensuring they are only used in exceptional circumstances
 - Good regulatory practice and implementation considerations that allow for the complexity of assessing a wider set of compensation claims

We recommend introducing a new civil penalty provision to support appropriate behaviour in response to an AEMO direction

- The Commission has considered whether a behavioural standard is needed to deter unwanted behaviour or whether it is sufficient to rely on the economic incentives offered through the types of costs that are eligible for compensation. However, the Commission is of the view that relying on the economic incentives is insufficient since they do not extend to the behaviour of those supplying the natural gas services that relevant entities may require to comply with a direction.
- Therefore, the Commission's draft determination is to recommend a new rule that prohibits certain behaviour by an entity in response to a direction or where the market anticipates a direction may be given.
- This provision intends to deter opportunistic behaviour that exacerbates the direct costs arising from an AEMO direction.
- Subject to consultation with the AER, the Commission intends to recommend to Energy Ministers that this rule be classified as a tier one civil penalty provision. We are keen to have views on whether the wording of the draft rule reflects the intention.

The draft rule would make consequential changes to the DWGM and STTM

Energy Ministers requested that the Commission consider the alignment between the existing compensation regimes in Parts 19, 20 and 27 of the NGR. Submissions to the consultation paper were mixed on this issue.

What have we done?

The Commission's draft determination is that the proposed compensation framework in Part 15C would govern the process for assessing a compensation claim, whereas the existing rules in Parts 19, 20 and 27 (as applicable to the claim) would continue to govern the following aspects:

1. eligibility to make a claim
2. how a claim is initiated and the requirement to refer claims for determination by an independent expert under the new provisions
3. what must be determined and the principles to be applied in determining compensation
4. AEMO's obligation to pay the compensation awarded and the compensation funding arrangements.

As a result, the Commission's draft determination is to make consequential changes to Parts 19 and 20 to ensure the application of the proposed compensation framework under Part 15C to relevant compensation claims in relation to AEMO directions and intervention, market suspension and administered pricing

We do not propose any changes to the existing dispute resolution provisions

- Based on the Commission's draft determination to separate compensation claims out from the existing dispute resolution provisions (with some exceptions for scheduling errors and unintended scheduling results) the Commission has considered whether any changes to the existing dispute resolution provisions would be required.
- The Commission is of the view that the NGR and NER frameworks for rule disputes have not kept up with changes to other legislation, such as the Commercial Arbitration Acts. However, these issues are not exclusive to the NGR which is the focus of this rule change. In any event, this rule cannot address the issues raised that are specific to the NER.

Under the draft determination implementation would occur on 27 June 2024

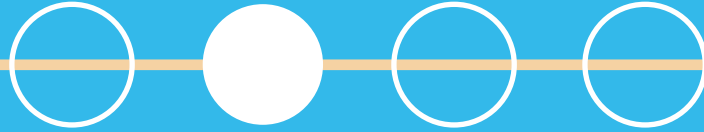
What have we done?

- The Commission's draft determination is that the proposed compensation framework and consequential changes would come into effect on 27 June 2024.
- This would provide AEMO with sufficient time to update and consult on aligned Procedures, as well as allow AEMO to publish guidance and a confidentiality deed by the proposed rule commencement date.
- Any existing claims would be dealt with under the existing arrangements.

Rule change timelines

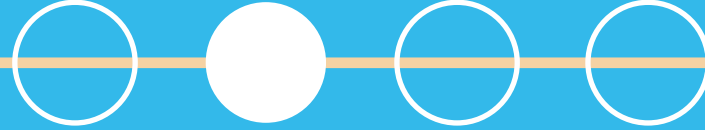
The rule change is proceeding on our standard timeline:





Q&A - and comments

Martina McCowan and Patrick Loughrey



Closing remarks

Tim Jordan - Commissioner

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