

Rule determination

National Gas Amendment (Compensation and dispute resolution frameworks) Rule

Proponent

Energy Ministers' Sub-Group

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The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

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Summary

- 1 The Commission’s final determination is to make a more preferable final rule in response to a rule change request submitted by the Energy Ministers Sub-Group (Energy Ministers).
- 2 Our final rule creates a new framework for the assessment of compensation claims by separating the current dispute resolution arrangements from the arrangements for determining compensation claims. This creates a ‘fit for purpose’ compensation framework that better supports the new East Coast Gas System (ECGS) framework under Part 27 of the National Gas Rules (NGR).
- 3 The Commission’s final determination is that the new compensation framework and consequential changes will come into effect on 31 July 2024.

Our final rule supports security, reliability and supply adequacy in the ECGS

- 4 Over the last year, there have been a number of changes to the ECGS to address security and reliability threats and better manage volatility in the system. The final rule is part of a wider body of ongoing reform work.
- 5 On 12 August 2022 Energy Ministers decided on additional reforms to manage supply adequacy risks in the ECGS. These reforms included widening the functions and powers of AEMO to manage threats to security of gas supply. A key element of the ECGS framework is the ability for AEMO to issue directions to relevant entities to the extent AEMO considers necessary to maintain and improve the reliability or adequacy of gas supply within the ECGS. The ECGS framework contains a mechanism to compensate those parties impacted by an AEMO direction.
- 6 Energy Ministers have identified a number of issues with the existing framework for compensation for AEMO directions in terms of clarity, consistency, efficiency and effectiveness. More specifically, Energy Ministers asked the AEMC to consider improvements in relation to the *governance and procedural arrangements, scope of the framework and funding arrangements*.
- 7 Our more preferable final rule provides for a well-functioning compensation framework that supports security, reliability and supply adequacy in the ECGS.
- 8 Although the rule change request did not include drafting of the proposed rule, it contained a description of the proposed rule and potential options for the AEMC to consider and explore.

Stakeholder feedback has shaped our final rule

- 9 Throughout this rule change process, stakeholders have supported improving the *governance and procedural arrangements* so that they are clear, transparent and fit-for purpose and provide directed parties with the opportunity to receive compensation. The Commission’s final rule aligns with stakeholder views by separating the compensation arrangements from the dispute resolution arrangements and streamlining the process for the assessment of compensation claims.
- 10 Stakeholders have expressed mixed views throughout this rule change process relating to the *scope of the framework and funding arrangements* that set out what costs can be claimed when a claim can be made and who funds compensation.
 - *What costs can be claimed:* Some stakeholders expressed ongoing support for broadening the categories of costs that are eligible for compensation to include opportunity costs and consequential costs. However, the Commission’s final determination is to maintain the draft (and existing) arrangements by limiting the costs that are eligible for compensation to direct

costs. One issue stakeholders identified in response to the draft determination is compensation for gas directed from storage. The Commission has considered this issue in further detail. Its final determination is that the direct cost where gas is directed from storage is the cost of replacing that gas (net of market revenues or other financial benefit received), not the cost of acquiring these stores.

- *When a claim can be made:* The Commission's final determination is to maintain its draft position in terms of increasing the minimum claim threshold to \$50,000 (and allow for indexation), balancing the minimum amount of compensation that can be claimed with the indicative costs of the expert determination process. We acknowledge varied stakeholder feedback on this issue, but note the likely significant costs of an independent expert due to the complex matters to be considered when determining claims which may include the interaction of claims with multiple gas markets and contractual arrangements. The Commission's final determination also takes into account that it is likely that directions will relate to larger volumes of gas.
- *Who funds a compensation claim:* The Commission's final rule enhances clarity through principles in the NGR to guide AEMO's cost recovery methodology for compensation claims under Part 27. The new NGR principles largely align with the current demand-driven approach adopted by AEMO, with some amendments. The final rule also provides for compensation claimants to share the burden of compensation funding in the same way as other market participants and for the costs of the independent expert to be recovered as part of the compensation funding arrangements. Stakeholders have largely expressed support for our position, with some requests for minor changes - which the Commission has listened to and reflected in its final rule.

The Commission's final rule is in the long term interest of consumers

11 The Commission considers the more preferable final rule contributes to the achievement of the national gas objective (NGO)¹ by aligning with the following assessment criteria underlying this rule change:

- **Safety, security and reliability:** The final rule refines the compensation framework for AEMO directions to better support reliability and supply adequacy compared to the existing arrangements. It retains the incentives for behaviour that supports system reliability and supply adequacy by limiting the costs that are eligible for compensation to direct costs only.
- **Principles of market efficiency:** The Commission's final determination to allow for compensation of direct costs only provides for the right balance of incentives to support the normal operation of the market, as compared to a directed market state. The Commission considers that broadening the categories of costs that are eligible for compensation would pose the risk of creating undesirable incentives in favour of a directed state. Further, the Commission's view is that participants must consider the risk of a direction alongside other risks associated with market participation. Allowing only for compensation of direct costs allocates risk to those best placed to manage the risk of a direction.
- **Implementation considerations:** The Commission's determination to increase the minimum claim threshold to \$50,000 and not to allow different entities to join claims to meet the minimum threshold to claim is shaped by implementation considerations.
- **Principles of good regulatory practice:** The Commission's final rule aligns the new NGR compensation framework with the NER expert determination process used for compensation

1 Section 23 of the NGL.

for AEMO directions, with some modifications. Alignment of the frameworks promotes consistency and simplicity through a streamlined process and transparency for stakeholders. Lastly, the Commission’s final determination to make consequential changes to the Declared Wholesale Gas Market (DWGM) and Short Term Trading Market (STTM) provisions also supports consistency through the application of the new compensation framework to relevant claims.

The final rule creates a ‘fit for purpose’ compensation framework

The final rule establishes a new compensation framework in the NGR

12 Our final determination is to establish a separate framework for the assessment of compensation claims (by establishing two new divisions in Part 15C of the NGR). This means separating the current dispute resolution arrangements from the arrangements for determining compensation claims. We have modelled the new arrangements on the expert determination framework for the assessment of electricity compensation claims under chapter 3 of the NER.

The final rule refines the framework for compensation for AEMO directions in the ECGS

13 The arrangements for AEMO directions in the ECGS in Part 27 of the NGR set out the circumstances in which a compensation claim may be made, what costs can be claimed and who funds the compensation. The Commission’s final determination:

- limits the costs that are eligible for compensation to direct costs only, to incentivise market-supporting behaviour before an AEMO direction
- inserts principles into the NGR to guide AEMO’s cost recovery methodology for compensation claims under Part 27 (these largely align with the current demand-driven approach adopted by AEMO, with some amendments)
- inserts a new rule to support appropriate behaviour in response to an AEMO direction and deter unwanted behaviour, i.e. prohibits the intentional or reckless exacerbation of costs in response to an AEMO direction without reasonable cause, but without capturing legitimate business decisions having regard to legitimate business interests.
- increases the minimum claim threshold to \$50,000 and does not allow for different entities to join claims.

The final rule includes consequential changes to the DWGM and STTM

14 The Commission’s final determination is to make consequential changes to Parts 19 and 20 of the NGR to apply the new compensation framework under Part 15C to compensation claims under those Parts arising from AEMO directions and intervention, market suspension and administered pricing. Claims relating to unintended scheduling results under Part 19 or scheduling errors under Part 20 continue to be assessed under the existing dispute resolution framework.

The final rule does not change the existing dispute resolution provisions

15 The Commission’s final determination is to not make any changes to the existing dispute resolution provisions.

Implementation of the new compensation framework in July 2024

16 The Commission’s final determination is that the new compensation framework (as well as the consequential changes to the DWGM and the STTM) will come into effect on 31 July 2024.

17 By that date, AEMO is required to review, and where necessary update, the following Procedures to ensure alignment with the final rule: the STTM Procedures; the Wholesale Market Procedures; and

the East Coast Gas System Procedures.

- 18 Further, by the commencement date, AEMO is required to make and publish guidance on the expert determination process and prepare, consult and publish a form of confidentiality deed to allow the independent expert to engage with a claimant.
- 19 Any existing claims that are not finally dealt with or decided immediately before the commencement date will be dealt with by the existing (old) rules.

Key differences between draft and final rule

- 20 We have made the following changes between the draft and final rule:
- **Changed wording of NGR rule 706:** The intent of this rule is to prohibit intentional or reckless exacerbation of costs in response to an AEMO direction without reasonable cause. The wording in the final rule clarifies what is meant by exacerbation of costs and to make it clear that this prohibition does not capture legitimate business decisions having regard to legitimate business interests.
 - **Direct costs of gas directed from storage to be calculated using the cost of replacing the gas:** Under the final rule, the direct cost of replacing stored gas is the cost of replacing that gas (net of market revenues or other financial benefit received), not the cost of acquiring these stores, to preserve the incentive to maintain physical hedges and invest in storage.
 - **Roles and responsibilities of AEMO, the independent expert and claimants:**
 - Under the final rule, AEMO can extend the time for nomination of the independent expert where the claim relates to an ECGS direction to take gas from storage. As direct costs will be based on the costs to replace the gas in storage, the time for making the claim needs to allow for this to occur. This change from the draft rule to the final rule aligns with the Commission's decision to compensate the direct costs of gas directed from storage at the replacement cost of that gas.
 - The final rule strengthens claimants' responsibility to provide information to the independent expert regarding (1) mitigation of direct costs and (2) funds, payments, compensation or another financial benefit received by the claimant for undertaking the activity required by the direction. This change from draft to final supports the intended operation of the framework in compensating for direct costs net of any financial benefit and not compensating where the claimant has failed to mitigate its direct costs.
 - **Minor changes to cost allocation principles:** In order to avoid double counting, the Commission has amended the final rule by replacing LNG 'project' with LNG 'facility'.
 - **Extended implementation period:** To avoid condensed timelines for both AEMO to develop the changes to its Procedures and for industry to respond to the changes, the Commission has changed the rule commencement date from 27 June to 31 July 2024.
 - **Other minor drafting changes:** The Commission has made minor drafting changes to provide additional clarification on some matters raised by stakeholders.

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1 The Commission has made a final determination

The Commission's final determination is to make a final rule that is a more preferable rule in response to a rule change request submitted by the Energy Ministers' Sub-Group (Energy Ministers). The rule change request seeks to address issues with the existing compensation framework following the introduction of the East Coast Gas System (ECGS) reform package under the National Gas Rules (NGR).²

Energy Ministers have identified a number of issues with the existing framework for compensation in terms of clarity, consistency, 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 interests 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 may be required.

For more detailed information on:

- why we made the final rule, refer to Chapter 2
- how the final rule will operate, refer to Chapter 3
- the final amendments to the NGR, refer to Appendix C.

1.1 Our final rule creates a new compensation framework for directions in the ECGS

Our final rule creates a new framework for the assessment of compensation claims by separating the current dispute resolution arrangements from the arrangements for determining compensation claims. This ensures a 'fit for purpose' framework that better supports the new ECGS framework under Part 27 of the NGR, i.e. a well-functioning compensation framework that supports reliability and supply adequacy. The final rule makes amendments to Parts 15C, 19, 20 and 27 of the NGR in order to:

- establish a new framework for the assessment of compensation claims
- refine the framework for compensation for AEMO directions in the ECGS to support reliability and supply adequacy
- make consequential changes to rules governing the Declared Wholesale Gas Market (DWGM) and Short-Term Trading Market (STTM) to ensure the application of the new compensation framework to relevant claims.

Our final rule does not make any substantial changes to the existing dispute resolution provisions.

² <https://www.energy.gov.au/government-priorities/energy-and-climate-change-ministerial-council/working-groups/gas-working-group/gas/proposed-regulatory-amendments-extend-aemos-functions-and-powers-manage-east-coast-gas-supply-adequacy>.

1.2 Stakeholder support for clarity, consistency and efficiency shaped our final rule

Stakeholders supported improving the *governance and procedural arrangements* so that they are clear, transparent and fit-for purpose in terms of providing directed parties with the opportunity to get compensation.³ The Commission's final rule aligns with stakeholder views by separating the compensation arrangements from the dispute resolution arrangements and streamlining the process for the assessment of compensation claims (see section 3.1 for further detail). Likewise, stakeholders supported our draft recommendations on *consequential changes to the DWGM and STTM*.⁴

With regard to the *scope of the framework and funding arrangements*, i.e. what costs can be claimed, when a claim can be made and who funds compensation, stakeholders expressed mixed views in response to our draft determination. Likewise, stakeholders provided extensive feedback on the draft decision to recommend a tier one civil penalty provision to *support appropriate behaviour in response to an AEMO direction*:

- *What costs can be claimed*: Some stakeholders continued to express support for broadening the categories of costs that are eligible for compensation to include opportunity costs⁵ and consequential costs.⁶ However, the Commission's final determination is to maintain its draft decision (which also aligns with the existing arrangements) by limiting the costs that are eligible for compensation to direct costs.⁷ The Commission's view is that:
 - Excluding *opportunity costs* from compensation provides for the right balance of incentives to support the normal operation of the market, as compared to a directed market state. Broadening the categories of costs that are eligible for compensation would pose the risk of creating undesirable incentives in favour of a directed state (see for more detail section 3.2.1).
 - Excluding *consequential costs* from compensation allocates risk to directed entities, who are best placed to manage the operational risk associated with ECGS directions. The framework has been established to enable operational risks to be assessed and managed by the directed entities, and is not intended to pass through these risks entirely to consumers (see for more detail section 3.2.2).
- *How to determine the direct costs of gas directed from storage*: Stakeholders submitted that the draft rule was unclear about how direct costs would be calculated for gas directed from storage. Stakeholders noted that if gas directed from storage was compensated at the costs they paid to acquire it (i.e. based on a contractual arrangement or market transaction), as opposed to the compensation being based on replacement cost, the draft arrangements would weaken incentives to hold physical hedges or invest in storage.⁸ The Commission acknowledges that the draft rule did not sufficiently specify what direct costs are in the case of gas directed from storage (including linepack). We have undertaken further analysis and agree with stakeholders that compensation for direct costs (at acquisition) would reduce incentives to hedge, but compensation for direct costs (at replacement) would maintain incentives to hedge. On this basis, the Commission's final determination is that the direct cost of replacing stored gas is the cost of replacing that gas (net of market revenues or other

³ Submissions to the draft determination: EUAA, p. 1; AGL, p. 1; Alinta, p. 1.

⁴ EUAA, submission to the draft determination, p. 1, no stakeholders expressed opposition.

⁵ Submissions to the draft determination: APLNG, p. 1/2; AGL, p. 1; Origin, p. 1/2; EnergyAustralia, p. 3/4.

⁶ Submissions to the draft determination: APGA, p. 1/2; Jemena, p. 1/2; APA, p. 1/2.

⁷ We note that EUAA supported this position in its submission.

⁸ Submissions to the draft determination: Origin, p. 2; Alinta, p. 2; EnergyAustralia, p. 2/3.

financial benefit received), not the cost of acquiring these stores (see for further detail section 3.2.3).

- *When a claim can be made:* Stakeholders expressed mixed views on the Commission’s draft decision to increase the minimum claim threshold from \$5,000 to \$50,000 (and allow for indexation) given the costs of the process for assessing compensation claims. Although there is consensus amongst stakeholders to set a threshold to discourage immaterial claims, stakeholders questioned whether setting the threshold at \$50,000 was too high.⁹ Having considered these comments, the Commission’s final determination maintains the minimum claim threshold at \$50,000 (and allows for indexation) based on the following considerations (see for more detail section 3.2.6):
 - The costs of an independent expert are likely to be high due to the complexity of claims, given the interaction of claims with multiple gas markets, contractual arrangements and nature of the directions (i.e., it is likely that directions will relate to larger volumes of gas).
 - Setting the threshold too low would be costly and not align with our assessment criteria of *market efficiency* and *implementation considerations*, by balancing the costs and complexity of implementation and costs to the participants required to fund the expert determination process.
- *Who funds a compensation claim:* Generally consistent with our draft determination, the Commission’s final determination is to insert principles into the NGR to guide AEMO’s cost recovery methodology for compensation claims under Part 27. APLNG raised several points in relation to the Commission’s draft determination.¹⁰ However, the Commission’s final NGR principles largely align with the current demand-driven approach adopted by AEMO, with some clarification and amendment (for more detail see section 3.2.4):
 - defining gas demand as taking gas from a pipeline for consumption purposes, an LNG export facility, or any other purposes, including for storage, where taking the gas has the potential to impact the supply demand balance in the ECGS during the period of an identified risk or threat
 - allocating costs based on time and location
 - requiring the claimant to also fund compensation
 - specifying that AEMO recovers the costs of the expert in addition to the compensation amount from the relevant entities (based on demand during the relevant period in the affected location).

The Commission’s final determination includes minor changes from the draft determination in order to avoid double counting in response to APLNG’s submission.¹¹

- *Supporting appropriate behaviour in response to an AEMO direction:* The Commission’s final determination is to make a new rule that prohibits the intentional or reckless exacerbation of costs in response to an AEMO direction without reasonable cause. The rule makes it clear that this prohibition would not capture legitimate business decisions having regard to legitimate business interests. Stakeholders had a range of views on the proposed new rule. The Commission has given further consideration to the unwanted behaviours that may emerge if a direction is given and whether there are other mechanisms within the rules or elsewhere that would deter those behaviours. However, the Commission has reached the conclusion that it is

9 Submissions to the draft determination: APLNG, Attachment A; AGL, p. 2.

10 APLNG, submission to the draft determination, p. 13.

11 APLNG, submission to the draft determination, p. 13.

necessary to recommend a tier one civil penalty provision to deter unwanted behaviour in response to an AEMO direction (see section 3.2.5 for further detail).

Appendix C outlines the amendments to the NGR made under the more preferable final rule in further detail.

1.3 Our final rule supports security, reliability and supply adequacy in the ECGS

The Commission's final rule provides for a well-functioning compensation framework that supports reliability and supply adequacy. Over the last year, there have been a number of changes to the ECGS to address security and reliability threats and better manage volatility in the system. The final rule is part of a wider body of ongoing reform work.

On 12 August 2022 Energy Ministers decided on additional reforms to manage supply adequacy risks in the ECGS. 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. 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. The facilitated gas markets include the STTM with hubs in Adelaide, Brisbane and Sydney, the Victorian DWGM, and the gas supply hub (GSH) which facilitates trades in gas and secondary transportation capacity for the Wallumbilla and Moomba trading hubs.¹²

These gas market reforms were progressed in two stages to ensure AEMO had the tools it required in time to address potential risks to supply in winter 2023. As the Energy Ministers' rule change request notes:

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 final rule builds on some of the elements of the Stage 1 reforms. Stage 2 reforms are expected to be progressed later in 2024.

The Commission notes that AEMO's direction powers are part of the broader framework established in the NGL and NGR to respond to risks or threats in the ECGS.¹³ AEMO can rely on its power to make a direction or other regulatory levers, as set out in Box 1.

Box 1: Regulatory levers available to AEMO

AEMO's ECGS directions power is one of several tools available to AEMO to respond to supply and security issues in east coast gas markets, as described below.

¹² 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-frameworkshydrogen-and-renewable-gases>.

¹³ See for further detail on this AEMO, East Coast Gas System Guidelines, June 2023. For more detail see: https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/gas_consultations/2023/implementation-of-east-coast-gas-system-procedures/east-coast-gas-system-guidelines.pdf?la=en.

- **DWGM:** The DWGM operates in Victoria. AEMO’s powers to address a threat to system security affecting the DWGM include market intervention rules that allow AEMO to take any measures AEMO believes are reasonable and necessary to overcome a system security threat.¹ The market intervention rules are supported by a power of direction for the DWGM in the NGL (section 91BC).
- **STTM:** The STTM operates at hubs in Brisbane, Sydney and Adelaide. AEMO coordinates responses to gas supply issues by convening industry conferences and, if necessary, AEMO can schedule contingency gas.
- **Industry conferences:** AEMO’s ECGS functions include calling industry conferences. AEMO uses these to consult with industry to assess potential risks or threats and options for responding. Conferences may also be called to provide information to industry about the identified risk or threat.³
- **Trading function:** AEMO’s other functions under the ECGS framework include trading in natural gas and related services to prevent, reduce or mitigate an actual or potential threat. AEMO may use its trading function where there is no industry response to an identified risk or threat, where a response is inadequate or not feasible, or where the use of a direction is not appropriate or practical.⁴

These functions are complemented by AEMO’s planning functions, by the Gas Bulletin Board arrangements and by gas emergency arrangements established by each participating jurisdiction. The consultation paper and reports published as part of the AEMC’s review of the Gas Supply Guarantee in 2021 provide more information about these and the related arrangements in the electricity market: <https://www.aemc.gov.au/market-reviews-advice/review-gas-supply-guarantee>.

Source: AEMC.

Note: ¹ AEMO lists the steps it may take to address a system security threats at paragraph 4.2 of its Wholesale Market System Security Procedures available [here](#). ² The contingency gas arrangements are described in section 9 of the STTM procedures, available [here](#). ³ AEMO explains its approach in section 3 of the [East Coast Gas System Guidelines](#). ⁴ AEMO explains its approach in section 5 of the [East Coast Gas System Guidelines](#).

2 The final rule contributes to the national gas objective

The Commission can only make a rule if it is satisfied it will or is likely to contribute to the achievement of the relevant energy objectives.¹⁴ For this rule change, the relevant energy objective is the national gas objective:¹⁵

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—

(a) price, safety, reliability and security of supply of natural gas; and

(b) the achievement of targets set by a participating jurisdiction—

(i) for reducing Australia’s greenhouse gas emissions; or

(ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NGO.¹⁶

In developing the final rule, the Commission has considered the application to Western Australia according to the following questions:

- Does the AEMC have a relevant rule-making power? The final rule does not fall within the subject matters about which the Commission may make rules under the WA Gas Act.
- Is the AEMC amending parts of the NGR that apply in Western Australia? The final rule amends Parts 15C, 19, 20 and 27 of the NGR, none of which apply in the Western Australian version of the NGR.

Accordingly, the final rule will not apply in Western Australia.

See Appendix D for more detail on the legal requirements for a determination.

2.1 How we have applied the legal framework to our decision

The Commission must consider how to address issues with the existing framework for compensation following AEMO directions against the legal framework.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NGO:

- **Safety, security and reliability:** Do the improvements to the compensation framework align with the broader reforms to manage threats to security and reliability?
- **Principles of market efficiency:** Do the improvements to the compensation framework, including the allocation of costs, provide sufficient transparency and incentives to encourage efficient and effective actions from relevant entities?
- **Implementation considerations:** Do the improvements to the compensation framework support market wide success by reducing complexity and uncertainty? Will consequential changes to the DWGM and broader compensation and dispute resolution framework support successful implementation?

14 NGL subrule 291(1).

15 The NGO was updated on 21 September 2023 with the commencement of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023 (SA)*.

16 Section 32A(5) of the NEL.

- **Principles of good regulatory practice:** Do the improvements to the compensation framework promote predictability and efficiency?

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NGO.

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this chapter explains why the final rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

2.1.1 A well-functioning compensation framework supports reliability and supply adequacy

The final rule refines the compensation framework for AEMO directions to better support reliability and supply adequacy compared to the existing arrangements. The final rule responds to the issues raised in the change request, seeking to achieve the following objectives:¹⁷

- **Sufficiently incentivise behaviour that supports system reliability and supply adequacy and ensure efficient risk allocation:** The final rule limits the costs that are eligible for compensation to direct costs only and:
 - excludes opportunity costs from compensation to incentivise market supporting behaviour (section 3.2.1)
 - excludes consequential costs from compensation to ensure efficient risk allocation (section 3.2.2)
 - compensates the direct costs of gas directed from storage at the replacement costs of that gas (less any market revenues or other financial benefits received) to preserve incentives to maintain physical hedges and invest in storage (section 3.2.3)
 - introduces a new rule that supports normal market behaviour and deters unwanted behaviour in response to an AEMO direction (section 3.2.5) - the Commission will recommend that this rule be classified as a civil penalty provision.
- **Ensure the compensation framework is sustainable, i.e. access to compensation and the quantum of payments is subject to appropriate limits, in order to support AEMO directions:** increasing the minimum threshold for a compensation claim to \$50,000 and not allowing for different entities to join claims in order to meet the minimum threshold (section 3.2.6).
- **Provide funding arrangements for compensation payments that are fair and equitable:** The final rule inserts principles into the NGR to guide AEMO's cost recovery methodology for compensation claims under Part 27 (section 3.2.4). The principles largely align with the current demand-driven approach adopted by AEMO, with some clarification in terms of AEMO allocation of costs to entities based on gas consumption at the time and in the location of the risk or threat, as well as some clarifications to avoid double counting.

2.1.2 Compensating only for direct costs incentivises market efficiency through behaviour that supports normal market operation and ensures efficient risk allocation

Consistent with the draft determination (and the existing arrangements), to incentivise market supporting behaviour and ensure efficient risk allocation, the Commission's final determination is to:

¹⁷ AEMC, consultation paper, p. 4.

- limit costs that are eligible for compensation to direct costs (no compensation for opportunity costs and consequential costs)
- introduce a rule to provide for the right balance of incentives to support the normal operation of the market in response to an AEMO direction and deter unwanted behaviour in response to a direction and recommend that the rule be classified as a tier one civil penalty provision
- compensate the direct costs of gas directed from storage at the replacement cost of that gas in order to preserve the incentive to maintain physical hedges and invest in storage.

We note that stakeholders requested the Commission to reconsider compensation for opportunity costs and consequential costs.¹⁸ The Commission's further analysis demonstrated that opportunity costs should continue to be excluded from compensation because compensation for opportunity costs may incentivise behaviours that favour a directed state. The Commission is also of the view that participants must consider the risk of a direction alongside other risks associated with market participation. In addition, the Commission is satisfied that not allowing for compensation of consequential costs preserves the current risk allocation framework which allocates the assessment of the safety risk of complying with a direction to those best placed to manage it. Given the final determination to limit costs that are eligible for compensation to direct costs in order to maintain the incentives for normal market operation and market efficiency, the Commission's final rule does not introduce a cap on compensation claims under Part 27. As claims are limited to direct costs, the Commission considers there is no basis for a further cap.

2.1.3 The final arrangements reduce costs and complexity

The new arrangements provide for a streamlined compensation framework that clarifies the roles and responsibilities of AEMO, the independent expert and claimants, thereby reducing costs and complexity.

We note ongoing stakeholder support for a fast-tracked compensation process. Alinta noted in response to the draft determination that the framework should provide for a fast-track process, suggesting that this could be a default payment for gas provided under a direction based on a benchmark price calculated by either AEMO or the AER with a claimant having the option to rely on the new expert determination process, depending on the specific circumstances. Alinta submitted that this would provide a pathway for cost recovery that does not involve burdening the market with the costs of an expert determination process, would provide for faster resolution of matters and would allow for compensation for costs falling below the proposed compensation threshold.¹⁹ However, based on implementation considerations, and the risk that such a process could undermine the incentive to not prefer a directed state, the Commission has decided to not implement this proposal (see section 3.1.1 for further detail).

In relation to ongoing stakeholder support for including opportunity costs within the compensation framework,²⁰ the Commission agrees that the complexities of calculating opportunity costs could potentially be overcome, such as through clear guidelines or prescription in the rules. However, the Commission continues to be of the view that allowing compensation for opportunity costs would lead to a marginal preference for a directed state.

The Commission also had regard to the costs and complexity of implementation and cost to participants when making its final determination on increasing the minimum claim threshold

18 Submissions to the draft determination: APLNG, p. 10-11; Origin, p. 1-2; AGL, p. 1; EnergyAustralia, p. 3; APGA, p. 1-2; Jemena, p. 1-2; APA, p. 2-3. Only EUAA did not support the broadening of cost categories eligible for compensation. EUAA, submission to the draft determination, p. 1.

19 Alinta, submission to the draft determination, p. 1.

20 Submissions to the draft determination: Origin, p. 1-2; EnergyAustralia, p. 3; APLNG, p. 10-11.

(section 3.2.6). We have noted stakeholder feedback on whether setting the threshold at \$50,000 was too high.²¹ However, setting the threshold too low will increase costs for the participants required to fund the expert determination process. Likewise, the Commission does not support allowing different entities to join claims to meet the minimum threshold to claim, noting implementation costs to all participants (section 3.2.6). The independent expert will need to assess each claim individually and allowing different entities to join smaller claims is likely to lead to the costs of the process exceeding the value of claims.

With regard to the need for consequential changes to the DWGM and STTM provisions and the dispute resolution framework to support successful implementation, the final rule:

- makes changes to the DWGM and STTM to ensure the application of the new compensation framework to relevant claims (see section 3.3),
- does not make any changes to the dispute resolution framework, other than consequential changes (see section 3.4).

2.1.4 **A streamlined compensation process ensures consistency with the NER compensation arrangements, promoting good regulatory practice**

The Commission's final rule aligns the new NGR expert determination process with the NER expert determination process used for compensation for AEMO directions, but with some modifications (see section 3.1).²² These amendments reflect the different nature of gas and electricity markets and also aim to provide greater certainty to those using the framework. Aligning the framework for determining compensation under the NGR with the comparable NER arrangements promotes consistency, simplicity and transparency for stakeholders through:

- a clear allocation of roles and responsibilities in the new framework in Part 15C and a streamlined process compared to the current arrangements (see section 3.1.2),
- requiring AEMO to provide guidance about the operation of the expert determination process for compensation claims (section 3.1.2).

Further, the Commission's final rule promotes transparency, clarity and consistency by:

- introducing NGR principles to govern the recovery of compensation costs for AEMO directions based on gas consumption, time and location – to improve clarity to participants and provide guidance to AEMO (section 3.2.4)
- allowing AEMO to recover the costs of the expert in addition to the compensation amount from funding parties – thereby providing a simple and transparent solution to the question of how to recover the costs of the expert determining a compensation claim made under Part 27 (section 3.2.4)
- providing claimants, as well as market bodies and parties required to fund a compensation claim, with a (limited) right to seek review of an expert's decision²³ – thereby aligning the right of appeal under the new compensation framework with the principles governing review of rule disputes (section 3.1.2).

21 Submissions to the draft determination: APLNG, Attachment A; AGL, p. 2.

22 Such as the arrangements for resolving conflicts of interest, the proposal for AEMO to publish guidance and the explicit right of appeal.

23 This is consistent with the NGL which allows for appeal on a question of law for rule disputes and applies the review provisions of the Commercial Arbitration Acts of each jurisdiction to the appeal. NGL section 270C.

3 How our rule will operate

3.1 The establishment of a new compensation framework in the NGR

Box 2: Final determination - Establishment of a new framework to assess compensation claims under the NGR

Consistent with our draft determination, our final determination is to establish a separate framework for the assessment of compensation claims (by establishing two new divisions in Part 15C of the NGR). This means separating the current dispute resolution arrangements from the arrangements for determining compensation claims. This will create a ‘fit for purpose’ process for the assessment of compensation claims.

We have modelled the new arrangements based on the expert determination framework for the assessment of electricity compensation claims under chapter 3 of the NER.

The Commission’s final determination is to establish a standalone compensation framework to assess compensation claims, instead of utilising the existing dispute resolution provisions for this purpose. Using the existing dispute resolution provisions is not appropriate as a compensation claim does not have the same characteristics as a rule dispute – there is no other ‘party’ to the claim.

Stakeholder feedback on this aspect of the draft determination was focused on the following matters:

- including the option for a fast-track process for ‘simple’ claims in addition to the expert determination process
- extending the limited right of appeal to a merits review
- the process for objecting to the nominated independent expert due to a perceived conflict of interest.

The Commission has had regard to this stakeholder feedback and has decided not to make any material changes in relation to these aspects. Our reasoning for our decision is set out in further detail in this chapter. We have also undertaken some further analysis in developing the final determination and have made some minor changes to the framework, where necessary and indicated throughout this chapter.

Our final determination is that the new provisions in Part 15C will cover the:

- Scope of the new framework in terms of its application to compensation claims but not unintended scheduling results or scheduling errors, including:
 - no option for a fast-track process (see section 3.1.1).
- Roles and responsibilities of AEMO, the independent expert and claimants (see section 3.1.2). This includes:
 - an explicit right of appeal, on questions of law
 - a claimant’s right to object to the appointment of an independent expert under certain circumstances.

3.1.1 Application of the new framework to compensation claims (no option to fast-track any claims)

Box 3: Final determination - The new framework applies to compensation claims (but not unintended scheduling results or scheduling errors), with no option for a fast-track process

The new compensation claims framework in Part 15C applies to compensation claims made under Part 19, 20 and 27 of the NGR in relation to AEMO directions and intervention, market suspension and administered pricing.

The compensation framework does not apply to claims arising from unintended scheduling results under Part 19 or scheduling errors under Part 20 (given these are more akin to disputes as AEMO may dispute the nature of the claim).

The Commission has also considered whether there would be any benefit in allowing for a fast-track process to apply to specific compensation claims, under which AEMO could determine 'simple' claims. Our final determination is to retain the process for AEMO in Part 20, taking into account the nature of the claims under that Part. However, our final determination is to not design such a process for compensation claims under Parts 19 and 27. This decision is based on implementation considerations and a risk of undermining the incentive for entities to prefer a normal as opposed to a directed state.

The new framework applies to compensation claims but not unintended scheduling results or scheduling errors

The Commission's final determination is consistent with our draft determination. We have considered which types of compensation claims should be assessed under the new framework and which ones would more appropriately be dealt with through the existing dispute resolution provisions. In line with our draft determination, our final determination is that unintended scheduling results under Part 19 and scheduling errors under Part 20 are different in nature to the other types of compensation claims allowed for under the NGR. This is because there may be a dispute about whether there was either an unintended scheduling result or a scheduling error – in either case AEMO may dispute the basis for the claim. Consequently, the Commission considers that the existing dispute resolution framework is more suitable in terms of treating these as a dispute. No stakeholders commented on this aspect of the draft determination.

Consequently, under the Commission's final determination, the following compensation claims will be assessed under the new compensation framework in Part 15C:²⁴

- Part 19, rules 344 and 237: a Registered Participant claims for compensation where AEMO has intervened in the market and required the Registered Participant to inject gas into the declared transmission system (DTS);
- Part 19, rules 350 and 237: a Registered Participant claims for compensation where the market has been suspended, in respect of gas injected into the DTS;
- Part 20, rules 433 and 465: a Trading Participant claims in respect of gas injected into the hub where the price is less than its offer due to rule 428 (relating to administered price cap states), rule 430 (relating to market administered scheduling states) or rule 431 (relating to market administered settlement states);
- Part 27, rules 704 -707: a relevant entity claims compensation in relation to an ECGS direction.

²⁴ See definition of compensation claim in rule 135F of the final rule.

We do not consider there is any benefit in designing a fast-tracked assessment process for compensation claims under Parts 19 or 27

The draft determination did not envisage a fast-track process within the frameworks. In developing the draft determination, the Commission had considered what a fast-track or ‘simple’ claims process might look like under the new framework for assessing compensation claims. The Commission considered whether by reference to either the dollar value of the claim, or a set of other criteria, certain claims could proceed under a fast-track process. However, ultimately the draft determination found that:

1. There is no ‘natural’ threshold or set of criteria that could be used. The Commission could not identify a class of claims suited to a streamlined process.
2. There is no meaningful way to streamline the process. Under the NER, AEMO has the responsibility to assess small claims to avoid them going to an expert for determination. However, in contrast to NER arrangements, AEMO has an information deficit within the gas context because of differences between the operation of electricity and gas markets.

Therefore, the Commission decided not to design a fast-track process. The Commission did determine to retain the ability for AEMO to reach agreement with a claimant under Part 20 where AEMO is satisfied that the claim is uncontroversial, on the basis that the calculation of the compensation amount may be relatively straightforward in many cases and appointing an independent expert to determine the claim would be an unnecessary cost.²⁵

Alinta submitted, in response to the draft determination, that the framework should provide for a fast-track process, suggesting that this could be a default payment for gas provided under a direction based on a benchmark price calculated by either AEMO or the AER with a claimant having the option to rely on the new expert determination process, depending on the specific circumstances.²⁶

Alinta submitted that this would provide a pathway for cost recovery that does not involve burdening the market with the costs of an expert determination process, would provide for faster resolution of matters and would allow for compensation for costs falling below the proposed minimum claim threshold. Alinta indicated that its proposal was modelled on the framework for directions compensation in the NER.

The Commission acknowledges that Alinta’s proposal identifies a set of claims to which the fast-track process could apply (gas supplied under direction) and a way in which the process could be streamlined (application of a benchmark).

However, ultimately the Commission has determined to not incorporate Alinta’s proposal in the framework, based on implementation considerations and the risk that such a process could undermine the incentive to not prefer a directed state:

- Any fast-track process would likely need to be administered by AEMO. AEMO has reiterated its concerns with undertaking this role, consistent with its submission to the consultation paper.²⁷
- The Commission is of the view that claims relating to gas supplied under a direction would unlikely be ‘simple’ as the compensation process also requires the assessment of funds, payments, compensation or another financial benefit received by the claimant for undertaking the activity required by the direction.

²⁵ Subrule 465(2) of the final rule.

²⁶ Alinta, submission to the draft determination, p. 1.

²⁷ AEMO, submission to the consultation paper, pp. 1-2.

- This approach would require a benchmark to be constructed and maintained, adding complexity to the rules and presenting implementation costs both initial and ongoing.
- While this approach would align more closely with the NER compensation frameworks, we consider that in this case there are fundamental differences between the gas and electricity markets (such as information asymmetries) and therefore alignment with the NER is undesirable.
- Using a benchmark to determine a compensation amount may affect incentives for entities within the ECGS. The Commission considers that there is a risk that using a benchmark to calculate compensation amounts may undermine the incentive to not prefer a directed state and that addressing this risk would increase the complexity of implementing this approach and require a more prescriptive approach in the rules.

3.1.2 The new streamlined compensation framework clarifies the roles and responsibilities of AEMO, the independent expert and claimants

Box 4: Final determination - Roles and responsibilities of AEMO, the independent expert, and claimants

The new compensation claims framework in Part 15C of the NGR clarifies the roles and responsibilities of AEMO, the independent expert, and claimants as follows:

- AEMO has no role in assessing compensation claims referred to an independent expert but rather fulfils a coordinating role by appointing the independent expert and providing guidance to claimants
 - The final rule allows AEMO to extend the time for nomination of the independent expert where the claim relates to an ECGS direction to take gas from storage, since the direct costs will be based on the costs to replace the gas in storage and the time for making the claim needs to allow for this to occur. The Commission has made this change from draft to final to align with its decision to compensate the direct costs of gas directed from storage at the replacement cost of that gas.
- The independent expert is responsible for assessing compensation claims referred to it.
- A claimant has certain rights, including a right of appeal on questions of law, but also increased responsibilities, including liability for some or all of the costs of the independent expert (for example where an applicant has unreasonably prolonged proceedings)
 - The final rule requires claimants to provide information to the independent expert regarding (1) mitigation of direct costs and (2) funds, payments, compensation or another financial benefit received by the claimant for undertaking the activity required by the direction. The Commission has made this change from draft to final rule to support the intended operation of the framework in compensating for direct costs net of any financial benefit and not compensating where the claimant has failed to mitigate its direct costs.

Consistent with the Commission’s draft determination, the final determination aligns the new NGR compensation framework with the NER expert determination process used for compensation arrangements for AEMO directions, but with some modifications (such as the arrangements for resolving potential conflicts of interest, the proposal for AEMO to publish guidance and the explicit right of appeal). These amendments reflect the different nature of gas and electricity markets and also aim to provide greater certainty to those using the framework.

The Commission considers that the expert determination process for determining compensation claims is more streamlined compared to the current arrangements. Our final rule aligns with the following assessment criteria for this rule change:

- *Principles of good regulatory practice*: By promoting simplicity through a streamlined process and transparency to stakeholders through a clear allocation of roles and responsibilities in the new framework in Part 15C and requiring AEMO to provide guidance about the operation of the expert determination process for compensation claims.
- *Implementation considerations*: Aligning the NGR with the NER compensation arrangements while also reflecting differences between the markets supports consistency across regulatory frameworks (to the extent possible) and reduces complexity.

Stakeholder submissions focused on the following particular aspects of the new framework:

- The right of appeal on questions of law²⁸
- A claimant's right to object to the appointment of an independent expert.²⁹

The Commission has considered the points made by stakeholders on these issues but concluded to not make any changes, apart from clarifying aspects of these provisions. The Commission's reasons for its decision and the specific feedback raised in submissions are discussed in the following sections.

However, based on further analysis, the Commission has made the following changes from draft to final rule:

- strengthening the obligation of claimants to provide the information the expert will need to make its determination where there is a claim for compensation under Part 27
- amending the timing for appointing an independent expert where the claim relates to gas directed from storage.

AEMO has a coordinating and guiding function (but no role in assessing compensation claims)

No stakeholders provided substantive comments on the role of AEMO in response to the draft determination.³⁰ The Commission's final determination is that under the new framework AEMO must:

- nominate and (if there is no valid objection on conflict of interest grounds) appoint the independent expert³¹
 - the final rule prescribes specific timeframes for the determination process, including the time for AEMO to nominate and then appoint the independent expert and the time for the expert to make a final determination.
 - the final rule allows the time for nomination of the independent expert to be extended by up to 6 months, where the claim relates to an ECGS direction to take gas from storage, since the direct costs will be based on the costs to replace the gas in storage and the time for making the claim needs to allow for the claimant to determine what these costs will be.³² However, this does not mean that a claimant is required to have refilled its storage after 6 months. A claimant is only required to be in a position to commence the claims process once the independent expert is appointed. Once appointed, the independent

28 APLNG submission to the consultation paper, p. 6-7.

29 Submissions to the consultation paper: APA p. 5, APLNG, p.7.

30 But the Commission notes Alinta's comments on AEMO's potential role under Alinta's proposal for a fast-track process, see section 3.1.1.

31 Rule 135JE of the final rule.

32 Rule 705(4)(a) of the final rule.

expert will issue its request for the claimant to provide information to support the claim which, if the gas directed from storage has not already been replaced, might include a claimant providing information on a forward contract to replace that gas.

- prepare, consult and publish a form of confidentiality deed to allow the independent expert to engage with a claimant³³
- publish guidance about the operation of the expert determination process for compensation claims,³⁴ which may include guidance about:³⁵
 - the selection of independent experts and if applicable, the maintenance by AEMO of a pool of potential independent experts;
 - how potential conflicts of interest will be managed; and
 - giving notice of the claim, the claims process and indicative timetables.

The independent expert is responsible for the assessment of compensation claims

No stakeholders commented on the role of the independent expert in response to the draft determination. Consequently, largely consistent with the draft determination, the Commission's final determination is that under the new framework the independent expert:

- must independently investigate, analyse and determine a compensation claim in accordance with the rules and Procedures applicable to the compensation claim³⁶
- determines the process and timetable it will adopt in performing its role, subject to the timeframes for certain steps specified in the rules, and must notify the claimant and AEMO on the process and timetable (including if the independent expert amends the process and timetable)³⁷
 - although the timetable for making determinations will be defined in the rules, the final rule gives the independent expert some discretion to extend the timeframes, for example if the expert is waiting for information from a claimant or due to the complexity of a specific claim³⁸
- may appoint a person with appropriate expertise to provide advice on a matter outside its expertise³⁹
- may request the claimant and AEMO to provide information relating to the claim or events leading to the claim:
 - the independent expert can make assumptions if the claimant does not provide the relevant information⁴⁰
 - AEMO only needs to provide the requested information to the extent it is within AEMO's possession or control (AEMO will, for example, not be required to provide an assessment of information)⁴¹
 - for compensation claims under Part 27, the rules clarify that the information to be provided by claimants includes information to enable the independent expert to assess

33 Subrule 135JD(2) of the final rule.

34 The Commission notes Alinta's drafting comment on this matter, however, we consider the arrangements as drafted are sufficient to provide guidance to entities and at the same time provide discretion to AEMO regarding what to include in its guidance.

35 Subrule 135JD(3) of the final rule.

36 Subrule 135JG(1) of the final rule.

37 Subrules 135JG(2)-(5) of the final rule.

38 Rule 135JG(5) of the final rule.

39 Subrule 135JG(8) of the final rule.

40 Subrules 135JG(6) and (7) of the final rule.

41 Rule 135JF of the final rule.

whether there was a failure to mitigate direct costs and any financial benefit received by the claimant⁴²

- must prepare:
 - a draft and final report for publication by AEMO⁴³
 - a draft and final determination for each claim referred to it and provide it to the claimant and AEMO (including details of the calculation used to determine the amount of compensation)⁴⁴
- has no power to compel third party information for its assessment of a compensation claim.

Claimants have appropriate rights and responsibilities as part of the process

The Commission's final determination is consistent with its draft determination in relation to a claimant's rights and responsibilities under the new process. We have made some minor changes to clarify the provisions around objecting to the independent expert and the limited right of appeal (see below for a more detailed discussion of stakeholder comments and the Commission's analysis).

The Commission also notes in relation to a claimant's responsibilities, that it has strengthened the claimant's responsibility to provide the independent expert with information relating to mitigation of direct costs and financial benefits received by the claimant, to ensure the independent expert has the information it needs to assess compensation under Part 27.⁴⁵

Under the new Part 15C framework a claimant:

- may notify the AER (consistent with the AER's role under the NGR dispute resolution process) that it objects to the proposed independent expert appointed by AEMO, on the ground that the independent expert has an interest that would compromise its impartiality in relation to the relevant compensation claim⁴⁶
 - the AER must give AEMO the objection and AEMO may on its own initiative nominate another person to be the independent expert⁴⁷
 - if the AER receives objections from more than 25% of the claimants in relation to the relevant compensation claim and the AER has concerns regarding the independent expert's impartiality, then AEMO must nominate another person to be the independent expert.⁴⁸
- must notify its claim within the time specified in the Part applicable to the claim, and will then have an opportunity to provide written submissions and evidentiary material once the expert is appointed⁴⁹
- must do all things reasonably necessary for the proper, expeditious and cost-effective assessment and determination of its claim⁵⁰
- may request a meeting with the independent expert to discuss matters in relation to an independent expert's draft report or draft determination applicable to the claimant⁵¹

42 Rule 707(4A) of the final rule.

43 Rules 135JH(1)(a) and (3)(a) of the final rule.

44 Rules 135JH1(b) and (3)(b) of the final rule.

45 Subrule 707(4A) of the final rule.

46 Subrule 135JE(3) of the final rule.

47 Subrules 135JE(4) and (5) of the final rule.

48 Subrule 135JE(6) of the final rule.

49 Subrule 135JG(3)(b) of the final rule.

50 Subrule 135JG(9) of the final rule.

51 Subrule 135JH(2) of the final rule.

- may seek review on questions of law as the final rule provides for claimants, as well as market bodies and parties required to fund a compensation claim, to have a (limited) right to seek review of an expert's decision.⁵²
 - the NGL allows for appeal on a question of law for rule disputes and applies the review provisions of the Commercial Arbitration Acts of each jurisdiction to the appeal.⁵³ Under existing arrangements this would apply to a compensation claim. The Commission therefore has decided to align the right of appeal under the compensation framework with the principles governing review of rule disputes. We consider this promotes good decision-making and is consistent with good regulatory practice.
- must bear its own costs of making a compensation claim⁵⁴
- may be liable for some or all of the costs of the independent expert, for example where an applicant has unreasonably prolonged proceedings.⁵⁵
- must pay to AEMO the allocated compensation process costs within 10 business days of an invoice from AEMO for the amount⁵⁶
 - the Commission recommends that subrule 135JJ(5) of the final rule be classified as a tier two civil penalty provision.

Objecting to the independent expert

Under the draft determination:

- A claimant was provided with the ability to notify the AER (consistent with the AER's role under the NGR dispute resolution process) that it objects to the proposed independent expert appointed by AEMO, on the ground that the independent expert has an interest that would compromise its impartiality in relation to the relevant compensation claim.⁵⁷
- If the AER received objections from more than 25% of the claimants in relation to the relevant compensation claim and the AER had concerns regarding the independent expert's impartiality, then AEMO was required to nominate another person to be the independent expert.⁵⁸

In response to the draft determination APA and APLNG both submitted that the 25% threshold should be removed and any number of objections should lead to review of the independent expert's impartiality by the AER.⁵⁹ APLNG further submitted that the time to make an objection should be increased from 3 to 5 business days.⁶⁰

The Commission's final determination is not to remove the 25% threshold, nor to increase the time to make an objection to 5 business days. The Commission considers that under the final rule, there are sufficient checks and balances to protect claimants taking into account that this is a compensation determination process rather than a dispute resolution process.

- Consistent with the NER, the 25% threshold determines when the AER must assess the objections and may require AEMO to appoint a different expert.

52 Subrule 135JK(1) of the final rule.

53 NGL section 270C.

54 Subrule 135JJ(1) of the final rule.

55 Subrule 135JJ(3) of the final rule.

56 Subrule 135JJ(5) of the final rule.

57 Subrule 135JE(3) of the draft rule.

58 Subrule 135JE(5) of the draft rule.

59 Submissions to the draft determination; APA, p. 5; APLNG, p.7.

60 APLNG, submission to the draft determination, p.7.

- AEMO can change the expert on its own initiative if it agrees there is a conflict, whether the threshold is met or not.⁶¹ For the final rule, this has been clarified in light of the comments on this aspect of the draft determination.
- AEMO may publish guidance about how it handles potential conflicts of interest and information about its pool of potential experts.
- If there are multiple claims AEMO can appoint one expert for all of them – the threshold relates to claims made under this process. In any circumstance a claimant has the right to object to an independent expert, it is not required to meet the threshold in order to make an objection.
- The AER has general oversight of all objections since objections are notified to the AER.

With respect to the issue raised by APLNG on the timing associated with objecting to the independent expert, these clauses are aligned with the corresponding clauses in the NER.⁶² Based on our objective to align the NGR and NER compensation frameworks (to the extent possible), the Commission’s final determination is to maintain the 3 business days to make an objection to the independent expert.

Right of appeal

The draft determination allowed claimants to seek leave to have the determination of the expert reviewed by a court on questions of law. This right was extended to market bodies and parties required to fund a compensation claim.⁶³ This aligned the draft rule with the principles governing the review of rule disputes. APLNG raised the following concerns with the Commission’s draft determination in its submission:⁶⁴

- A merits review should apply to the independent expert given the expert determines the quantum of compensation.
- Clarity should be provided on why the AER and AEMO have a right to apply to a court for a review of a determination given neither are party to the claim itself.
- There should be a provision to refund shares of compensation paid by a relevant entity where a court or expert has subsequently determined a lower amount of compensation is payable following an appeal.
- Claimants should be able to apply for a review of a determination by an expert to allocate some or all of the compensation costs to the claimant.

The Commission acknowledges APLNG’s concerns, but the Commission’s final determination is to not extend the right of appeal beyond review of the determination on questions of law. This approach is consistent with the limited right of review available for rule disputes under the NGL. The Commission considers that public policy considerations, such as the public interest in finality of arbitration decisions, lie behind the limited right of appeal that apply to arbitration decisions and by extension, decisions on rule disputes. The Commission is satisfied that similar considerations apply in relation to the expert determination process and our final rule will, as a result, align with our assessment criteria by promoting good regulatory practice.

In response to APLNG’s other concerns, the Commission has reviewed the provisions and provides the following clarifications:

61 Subrule 135JE(5) of the final rule.

62 Clause 3.12.3(a1) of the NER.

63 Subrule 135JK(1) of the draft rule.

64 APLNG, submission to the draft determination, pp. 6-7.

- Under the final rule, AEMO and the AER have a right of appeal because (in the case of the AER) any compensation awarded is ultimately funded by consumers and (in the case of AEMO) its understanding of the compensation framework is a factor in its decision-making about directions.⁶⁵
- With respect to the issue of refunds, if an award of compensation amount is subsequently reduced on appeal, the Commission considers that this will be a matter for AEMO to deal with administratively. To assist with this, the final rule allows AEMO to defer giving effect to a final determination until the time for seeking a review has expired or, if a review is on foot, until the matters is determined.⁶⁶
- The Commission is satisfied that the rule allows claimants to apply for a review of the decision to allocate some or all the compensation costs to the claimant.⁶⁷

3.2 We have refined the framework for AEMO directions in the ECGS

The following sections address issues relating to the compensation arrangements in Part 27 of the NGR. Part 27 sets out the circumstances in which a claim may be made, overlaid by a general test of whether compensation is appropriate in all the circumstances, and what costs can be claimed.

The rule change request tasked the Commission to improve the regulatory framework in order to achieve the following objectives:⁶⁸

- 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.

Against this background, the following sections provide further detail on our final determination to:

- limit the costs that are eligible for compensation to direct costs only and
 - not allow for compensation of opportunity costs (section 3.2.1)
 - not allow for compensation of consequential costs (section 3.2.2)
 - specify that for gas directed from storage the direct costs are the replacement cost (section 3.2.3)
- insert principles into the NGR to guide AEMO's cost recovery methodology for compensation claims under Part 27. The NGR principles largely align with the current demand-driven approach adopted by AEMO, with some amendments (section 3.2.4)
- introduce a new provision to support appropriate behaviour in response to an AEMO direction (section 3.2.5) which the Commission recommends be classified as a tier one civil penalty provision
- increase the minimum threshold for a compensation claim to \$50,000 and not allow different entities to join claims in order to meet the minimum threshold (section 3.2.6).

65 Subrule 135JK(1) of the final rule.

66 Subrule 135JH(4) of the final rule.

67 Subrule 135JK(2) and subrule 135JJ(3) of the final rule.

68 AEMC consultation paper, p. 4.

3.2.1 No compensation for opportunity costs

Box 5: Final determination - No compensation for opportunity costs to incentivise market supporting behaviour

Consistent with our draft determination, the Commission’s final determination is to not allow for compensation of opportunity costs. The Commission’s final determination aims to provide for the right balance of incentives to support the normal operation of the market, as compared to a directed market state. The Commission is of the view that allowing for compensation of opportunity costs would pose the risk of creating undesirable incentives in favour of a directed state.

EUAA supported our draft decision to limit the costs that are eligible for compensation to direct costs only.⁶⁹ However, other stakeholders continued to advocate for compensation of opportunity costs based on the following arguments:

- Entities in the ECGS should be provided with compensation that reflects the ‘true’ costs they incur for complying with a direction.⁷⁰
- An assessment of opportunity costs would require costly and complex counterfactual analysis, but this could be overcome with clear and transparent guidelines.⁷¹
- Compensation for opportunity costs exists under parts of the NER and in other jurisdictional compensation schemes.⁷²

Compensation for opportunity costs could incentivise a preference for a directed state

The Commission’s further analysis demonstrated that opportunity costs should continue to be excluded from compensation due to the behaviour compensation for opportunity costs may incentivise. We consider that allowing for compensation for opportunity costs could create a marginal preference for a directed state and may result in overcompensation as a result of hypothetical counterfactual analysis. This is because an entity would generally not be able to capture a price spike within a market completely and should not be driven to capture price spikes under a directed state. However, a compensation framework that allows for compensation of opportunity costs could assume that this would have been the case and compensate an entity accordingly (however, we note that opportunity costs could be determined based on different methodologies, e.g. they could be based on an alternative proxy instead of the exact value of the opportunity forgone).

Not compensating for opportunity costs thus means that when providing a natural gas service in accordance with a direction, or if deprived of a natural gas service due to a direction, an entity will not be able to recover any costs for an opportunity forgone though they may receive market revenue commensurate with higher prevailing market prices. Under the final rule, entities would be compensated their direct costs, net of market revenues received, and are therefore incentivised to respond to the emerging conditions to prevent the market from reaching a directed state.

69 EUAA, submission to the draft determination, p. 1.

70 Submissions to the draft determination: Origin, pp. 1-2; AGL, p. 1; APLNG, pp. 10-11.

71 Submissions to the draft determination: Origin, pp. 1-2; EnergyAustralia, p. 3; APLNG, pp. 10-11.

72 APLNG, submission to the draft determination, pp. 10-11.

The complexities of the analysis to calculate opportunity costs could potentially be overcome

The Commission agrees that the complexities of calculating opportunity costs could potentially be overcome, such as through clear guidelines or prescription in the rules. However, the Commission is of the view that allowing opportunity costs to be compensated for would still lead to a marginal incentive to prefer a directed state, which we consider is undesirable as it would not incentivise entities to support the normal operation of the market.

Under the NER directions regime, compensation for direction in market suspension periods excludes opportunity costs

While the Commission notes that other compensation frameworks do contemplate payment for opportunity costs, our view is that these frameworks have a rationale for doing so that does not apply to the compensation framework under Part 27 of the NGR. Under the NER administered price cap (APC) framework, the purpose of compensating for opportunity costs is to explicitly encourage participants to stay in the electricity market during times of peak stress.⁷³ The Commission notes that under the NER directions regime, compensation payments for directions in suspension periods does not extend to opportunity costs, to ensure that participants do not prefer a direction, i.e. the objective is to avoid a situation where participants would withdraw from the market and await direction by AEMO.⁷⁴ Our view is that the same logic applies to directions in the ECGS.

3.2.2 No compensation for consequential costs

Box 6: Final determination - No compensation for consequential costs to ensure efficient risk allocation

Consistent with our draft determination, the Commission's final determination is to exclude consequential costs from the compensation framework to ensure effective risk allocation.

Pipeline operators (APGA, Jemena, APA) submitted that excluding compensation for consequential costs meant that there is a risk that pipeline operators may suffer consequential costs if infrastructure is damaged in complying with a direction. They noted that one of the reasons for the Commission's draft determination to exclude consequential contract costs from compensation was the ability for a pipeline operator to be able to refuse to comply with a direction due to jurisdictional requirements, i.e. safety or quality. However, the submissions noted that:

- AEMO is not required to take into account information or communications from pipeline operators around a proposed direction,⁷⁵ including the risk that a pipeline operator may be required to accept off-specification gas as part of a direction, which could result in significant downstream consequential losses and unclear liability.⁷⁶
- a pipeline operator may only have a short period to assess whether compliance with a direction may result in safety or quality issues or non-compliance with jurisdictional law.⁷⁷

The Commission acknowledges that there is a risk of consequential costs arising from an ECGS direction. However, compensating for these would in our view, undermine the existing risk

⁷³ See for further detail clause 3.14.6 of the NER.

⁷⁴ Clause 3.15.7B of the NER.

⁷⁵ Submissions to the draft determination: APGA, pp. 1-2; Jemena, pp. 1-2.

⁷⁶ APA, submission to the draft determination, pp. 2-3.

⁷⁷ Submissions to the draft determination: Jemena, p. 1, APGA, pp. 1-2.

allocation framework in the ECGS arrangements described below. It would also undermine the incentives for an entity to give AEMO information about safety and other risks to inform AEMO's decisions about potential ECGS directions, and, where an ECGS direction is given, to assess whether compliance is consistent with the facility operator's legal obligations with respect to operation of its facility including safety and operational matters. We note that AEMO may give a direction suddenly and the rules validate a direction even if AEMO fails to consult with a directed entity.⁷⁸ We think this highlights the need for directed entities to be making the appropriate risk assessments when given directions.

Information sharing and safety frameworks associated with ECGS directions

The ECGS framework provides for AEMO to convene industry conferences (where there is time) and AEMO uses the conferences to, among things, consult with relevant entities and assess proposed directions.⁷⁹

The conferences give relevant entities an opportunity to provide information about safety or technical issues that may be relevant to a direction and that AEMO would not otherwise be aware of. This information is also incorporated into AEMO's decision-making process since, under the NGR:

- AEMO is required to have regard to the principle that safety must not be compromised in exercising a direction or trading function⁸⁰
- Before giving an ECGS direction to a relevant entity, AEMO must, to the extent AEMO considers appropriate given the nature, timing or circumstances of giving the proposed direction, consult with the relevant entity on, among other things, safety or technical issues relevant to compliance with the direction.⁸¹

As noted above, the rules validate a direction even if AEMO fails to consult with a directed entity. However, under the NGL, an entity given a direction is only required to comply to the extent compliance is consistent with the directed entity's legal obligations under the law of a participating jurisdiction.⁸² An entity can notify AEMO of its inability, or intention to not comply with a direction.⁸³

Figure 3.1 illustrates the ECGS high level process AEMO intends to follow (noting that the order of the steps may change/repeat depending on the nature of the risk or threat, or where AEMO assesses that a risk or threat no longer meets the criteria set out in the procedures).

78 Rule 700(2) of the NGR.

79 AEMO East Coast Gas System Guidelines, section 3.

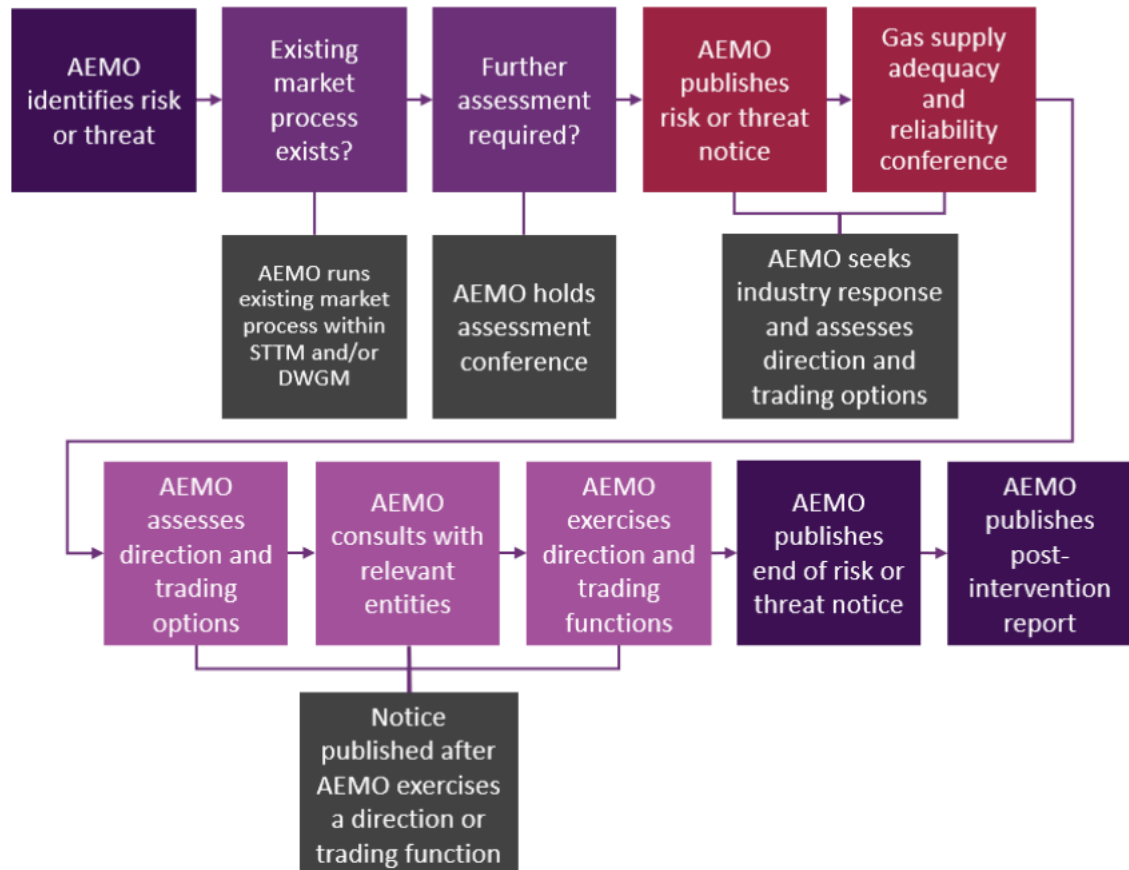
80 NGR Rule 699.

81 NGR Rule 700(2).

82 Section 91AF(6) of the NGL.

83 NGR rule 700(2).

Figure 3.1: ECGS high level information sharing process



Source: AEMO, East Coast Gas System Guidelines, p. 5. https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/gas_consultations/2023/implementation-of-east-coast-gas-system-procedures/east-coast-gas-system-guidelines.pdf?la=en.

The Commission notes that there remains a residual risk that a pipeline operator may face consequential costs as a result of complying with a direction. Pipeline operators have suggested that not compensating for consequential costs would mean that they adopt a conservative approach to complying with directions, which may undermine their effectiveness.⁸⁴ The Commission considers that it is desirable that pipeline operators adopt a prudent approach to managing these risks during a direction.

The Commission is satisfied that directed entities are best placed to manage the operational risks associated with ECGS directions. The framework has been established to enable operational risks to be assessed and managed by the directed entities, and is not intended to pass through these risks entirely to consumers. This decision aligns with the market efficiency criterion of our assessment criteria by placing risks on those best placed to manage them.

3.2.3 Direct costs for gas directed from storage to be its replacement cost

84 Submissions to the draft determination: APGA, p. 1-2.; Jemena, p. 1.

Box 7: Final determination - Direct costs of gas directed from storage to be calculated using the cost of replacing the gas

The Commission's final determination is to compensate the direct costs of gas directed from storage at the replacement cost of that gas in order to preserve the incentive to maintain physical hedges and invest in storage.

The Commission's draft determination was to maintain the current arrangements in Part 27 under which the independent expert would calculate direct costs by reference to:⁸⁵

- contractual agreement
- market transaction, or
- standing prices or a benchmark rates.

Stakeholders submitted that the draft rule was unclear about how direct costs would be calculated for gas directed from storage. Stakeholders noted that if gas directed from storage was compensated at the costs they paid to acquire it (i.e. based on a contractual arrangement or market transaction), as opposed to the compensation being based on replacement cost, the draft arrangements would weaken incentives to hold physical hedges or invest in storage.⁸⁶

The Commission has considered stakeholder feedback and acknowledges that the draft rule did not sufficiently specify what direct costs are in the case of gas that is directed from storage (including linepack). As a result, the draft framework may weaken incentives to invest in physical hedges or storage. The Commission has undertaken further analysis and we agree with stakeholder comments that compensation for direct costs (at acquisition) would reduce incentives to hedge, but compensation for direct costs (at replacement) would maintain incentives to hedge. This is because gas supplied at the time of direction is likely to be in a market that is supply constrained with higher prevailing prices. As a result, entities who are directed to supply gas in such market conditions should be adequately compensated for the cost of replacing that gas, net of market revenues or other financial benefits received, which in turn maintains their incentives to build physical hedges and responsibly store gas.

On this basis, the Commission's final determination is that the direct cost of replacing stored gas is the cost of replacing that gas (net of market revenues and other financial benefits received), not the cost of acquiring these stores.⁸⁷ Our recommendation aligns with our assessment criterion of market efficiency by supporting efficient market behaviour including prudent physical hedge decisions.

3.2.4 The final rule elevates principles into the NGR to govern the cost recovery methodology used to fund compensation claims

Box 8: Final determination - Provide clarity on the cost recovery methodology used to fund compensation claims under Part 27

Generally consistent with our draft determination, the Commission's final determination is to insert

85 Subrule 704(2) of the final rule

86 Submissions to the draft report: Origin, p. 2; Alinta, p. 2; Energy Australia, p. 2/3.

87 Subrule 704(3) of the final rule.

principles into the NGR to guide AEMO's cost recovery methodology for compensation claims under Part 27. The NGR principles largely align with the current demand-driven approach adopted by AEMO, with some clarification and amendment in terms of the final rule:

- defining gas demand as taking gas from a pipeline for consumption purposes, an LNG export facility, or any other purposes, including for storage, where taking the gas has the potential to impact the supply demand balance in the ECGS during the period of an identified risk or threat
- allocating costs based on time and location
- requiring the claimant to also fund compensation
- specifying that AEMO recovers the costs of the expert in addition to the compensation amount from the relevant entities (based on demand during the relevant period of time in the affected location).

The Commission's final determination includes minor changes from the draft determination in order to avoid double counting.

Maintaining the consumption-based approach with minor amendments

The Commission's final determination is to maintain the consumption-based approach outlined in the draft determination with some minor amendments to avoid double counting. The Commission's draft determination was that gas consumption, i.e. demand, was the preferable means of allocating costs. The Commission's draft determination provided further clarity around the definition of 'gas demand' in the NGR, which the draft rule further specified as *natural gas taken from a pipeline forming part of the ECGS for*:⁸⁸

- *consumption purposes*
- *an LNG export project, or*
- *any other purposes, including storage, specified in the Procedures, in circumstances where the withdrawal of that natural gas has the potential to impact the supply demand balance in the ECGS during an identified risk or threat.*

Alinta supported the clarifications provided by the Commission's draft.⁸⁹ APLNG raised several points:⁹⁰

- The definition of LNG export project is problematic as referencing the broader *project* rather than the export *facility* risks gas that is withdrawn from a pipeline for processing and then re-injected into another pipeline would be counted twice.
- The definition of gas demand should distinguish between gas produced for market, and gas produced for APLNG's own consumption.
- Similarly, where gas is withdrawn from a pipeline and consumed within the domestic market, it may be counted twice.
- Long term foundational contracts should be excluded from gas demand, as it is unreasonable that foundational contracts would be included in demand and attract a share of the compensation funding amounts.

88 See definition of gas demand under rule 703 of the draft rule.

89 Alinta, Submission to the draft determination, p.3.

90 APLNG, submission to the draft determination, p. 13.

- Liable relevant entities should have 10 business days to review and raise concerns or objections to the calculation and allocation approach with AEMO before invoices are issued.

With respect to the issues raised by APLNG, the Commission agrees that double counting should be avoided as it may distort outcomes. For this reason, the Commission has amended the final rule by replacing LNG 'project' with LNG 'facility'.⁹¹

The Commission has not made other changes in the final rule to address APLNG's other comments for the following reasons:

- Reducing a producer's share of demand would likely distort outcomes since it has the effect of reducing their liability when (under specific circumstances) they are best placed to respond to a tightening supply-demand gap within the ECGS.
- Regarding foundational contracts, the Commission considers the same logic applies such that they should not be excluded from the calculation of gas demand. The Commission is cognisant of the role that foundational contracts play in the viability of an LNG export project and also notes that these contracts cannot be directed under the Part 27 powers. However, foundational contracts are a significant source of demand within the ECGS and the Commission considers that they should continue to be included as demand to avoid distorting the cost allocation principles. The Commission also notes that under current arrangements these contracts do attract a share of compensation funding.
- AEMO is required to undertake consultation on its cost recovery methodology. Stakeholders can provide input into this process. However, we do not consider that providing in the NGR that liable relevant entities must have an opportunity to review and object to the calculation and allocation approach with AEMO before invoices are issued aligns with the intent to design an efficient framework. We consider it is preferable to allow AEMO to issue invoices based on the cost recovery methodology and, if a stakeholder considers there is an error in the invoice, to take that up with AEMO initially and if the matter cannot be resolved, seek resolution as a rules dispute or by other means open to the stakeholder. The NGR leave it open to AEMO to issue draft statements where AEMO considers that is appropriate.

Inclusion of principles in the NGR to improve clarity to participants and provide guidance to AEMO

Consistent with our draft determination, the Commission's final determination is to insert principles into the NGR to govern the recovery of compensation costs based on gas consumption, time and location.⁹² In line with this rule change's assessment criterion of *good regulatory practice*, the Commission's final determination provides greater clarity to stakeholders and guidance to AEMO, while allowing for some flexibility within AEMO's application of the principles-based approach.

APLNG expressed support for the insertion of principles in the NGR to guide cost recovery, noting that the current drafting balances the need for transparency against the risk of too much prescription, providing the right incentive to change behaviour in response to a potential risk or threat.⁹³

A claimant may be a relevant liable entity that is required to fund compensation

Consistent with our draft determination, the Commission's final determination is that a claimant may be a relevant liable entity that is required to fund compensation.⁹⁴ Consequently, under the

91 Rule 703 of the final rule.

92 Subclause 707(11) of the final rule.

93 APLNG, submission to the draft determination, p. 12.

94 Subclause 707(5) of the final rule.

final rule AEMO may set off against amounts payable to a claimant any amount the claimant is required to pay AEMO by way of compensation funding or as a contribution to the costs of the claims determination process.^{95 96}

EUAA supported that entities eligible to make a compensation claim will also be responsible to fund compensation.⁹⁷ APLNG did not express support, claiming it would create inequitable outcomes. The Commission considers that under a consumption-based approach to allocating costs, automatically excluding a directed entity from the class of relevant entities that are required to fund compensation will distort outcomes since a directed entity (or its customers) may also be a source of demand, and it would not be equitable to exclude them from contributing under the principles set out in the final rule.

AEMO can recover the costs of the expert in addition to the compensation amount from funding parties

Consistent with the draft determination, the Commission's final determination is that AEMO can recover the costs of the expert in addition to the compensation amount for a claim made under Part 27 from funding parties.⁹⁸ For claims made under Parts 19 or 20, the approach in Part 19 will continue to apply, and these costs will be passed through participant fees, so that costs are recovered from the market where the event leading to compensation occurs.⁹⁹ Only EUAA and APLNG commented on this issue, both expressing support.¹⁰⁰

This final determination aligns with the *good regulatory practice* assessment criterion of this rule change, as the final approach is a simple and transparent solution to the question of how to recover the costs of the expert determining compensation claims made under Part 27.

3.2.5 Our final determination introduces a new rule to support appropriate behaviour in response to an AEMO direction

Box 9: Final determination - Introducing a new provision to support appropriate behaviour in response to an AEMO direction

The Commission's final determination is to make a new rule that prohibits certain behaviour by an entity in response to a direction. The intent of this provision is to deter opportunistic behaviour that exacerbates the direct costs arising from an AEMO direction.

The Commission intends to recommend to Energy Ministers that this rule be classified as a tier one civil penalty provision.

The Commission's final determination is to make a new rule that prohibits the intentional or reckless exacerbation of costs in response to an AEMO direction without reasonable cause. The new rule 706 makes it clear that it does not prohibit making legitimate business decisions having regard to legitimate business interests.

95 Subclause 707(8) of the final rule.

96 The Commission notes Alinta's suggestion to change this provision to a 'must' provision for AEMO. However, the Commission considers that it is preferable to give AEMO discretion in relation to the settlement process for compensation claims since the appropriate approach may depend on circumstances at the time.

97 EUAA, submission to the consultation paper, p. 1.

98 Subrule 707(6) of the final rule.

99 Subrules 237(4) and 465(6) of the final rule.

100 Submissions to the draft determination: EUAA, p. 1; APLNG, p. 14.

Under current arrangements, a DRP is required to first assess whether the payment of compensation is ‘appropriate in all the circumstances’.¹⁰¹ The DRP is then required to determine the amount of compensation and may determine not to fully compensate the claimant where the claimant fails to mitigate its loss or where the actions of the claimant (both before and after the direction was issued) contributed to or exacerbated the amount of compensation being claimed.¹⁰² The current rules do not give the DRP guidance about what matters it should take into account in the first stage, when determining whether compensation is ‘appropriate in all the circumstances’. Somewhat more guidance is provided for the second stage question of whether the actions of the claimant contributed to or exacerbated the amount of compensation being claimed.

The Commission’s draft determination

The draft determination proposed to remove both the requirement for the DRP (now the independent expert) to assess whether compensation is appropriate in all the circumstances and the requirement to consider whether the actions of the claimant (both before and after the direction was issued) contributed to or exacerbated the amount of compensation being claimed. The Commission considered that, to the extent that conduct relating to a direction should be reviewed as part of the compensation framework and an assessment of that conduct made, there should be a clear prohibition on engaging in the relevant behaviour, rather than the indirect application of a behavioural standard through the compensation determination process. The Commission also considered that the AER, rather than the person determining the compensation, should assess whether the regulatory requirement has been breached.

For the draft determination the Commission also considered whether a behavioural standard is needed to deter unwanted behaviour or whether it would be sufficient to rely on the other incentives in the framework. However, the Commission was not satisfied that approach was sufficient and so proposed to include a rule to prohibit the unwanted behaviour and that would be subject to enforcement by the AER.¹⁰³

Stakeholders provided varied comments on the Commission’s draft determination

Stakeholders had a range of views on the proposed new provision. Alinta did not object to the general principle of the proposed civil penalty but considered that it required clarification.¹⁰⁴ Jemena and APGA proposed changes to clarify that behaviour must be intentional or reckless to contravene the rule.¹⁰⁵ Energy Australia proposed that reckless behaviour should be subject to a separate and lesser penalty tier on the basis that reckless behaviours are less serious than those with intent.¹⁰⁶

AGL, Origin and APLNG did not support the proposed provision. AGL considered that the provision should only be introduced if there is clear evidence that unwanted behaviour in response to AEMO directions is actually occurring.¹⁰⁷ Origin considered that the proposed rule was excessive and unwarranted, given the rule already allows the independent expert to consider whether the claimant mitigated its costs as part of determining the compensation to be paid.¹⁰⁸ APLNG noted

¹⁰¹ Subrule 707(1)(a) of the NGR.

¹⁰² Subrule 707(2) of the NGR.

¹⁰³ Rule 706 of the draft rule.

¹⁰⁴ Alinta, submission to the draft determination, p. 3.

¹⁰⁵ Submissions to the draft determination: Jemena, p. 2; APGA p. 2.

¹⁰⁶ EnergyAustralia, submission to the draft determination, p. 5.

¹⁰⁷ AGL, submission to the draft determination, p. 3.

¹⁰⁸ Origin, submission to the draft determination, p. 2.

the importance of preserving economic signals as much as possible, both to minimise market distortions and to provide incentives and market based responses for potential reliability and supply adequacy issues, and expressed concern that the provision would have distortionary effects on the market and interfere with normal commercial trading activity.¹⁰⁹ In response to the questions in the draft determination about the types of behaviour that should be prohibited, APLNG noted the civil penalty provisions related to the withdrawal of offers under the Gas Market Code.¹¹⁰ APLNG considered that if the provision is to be introduced it should be amended to exclude times when relevant entities are unaware that there is a risk or threat to reliability or supply adequacy or that the direction has been given.¹¹¹ APLNG agreed that the AER should be responsible for monitoring and enforcing breaches and proposed that the AER should establish and consult on guidelines outlining the concepts of exacerbation and reasonable cause.¹¹² It queried what information the AER would rely on to determine whether a relevant entity has breached the provision and noted that there should be no new reporting obligations associated with the provision.¹¹³

The Commission has considered stakeholder feedback and has undertaken further analysis

In light of this stakeholder feedback, the Commission has given further consideration to the unwanted behaviours that may emerge if a direction is given and whether there are other mechanisms within the rules or elsewhere that would deter those behaviours. We agree that the risk of having a compensation claim reduced has a role to play in deterring directed entities from failing to mitigate the direct costs they will incur in complying with a direction. However, this does not apply to other entities that are not directed. We have also considered the role of the Gas Market Code,¹¹⁴ the AER's proposed new market monitoring powers and general competition law but are not satisfied that these would deter opportunistic behaviour where an AEMO direction is given.

The Commission has also carefully considered the concerns about the potential for the provision to distort market signals and to deter normal business behaviour and, in that context, the interaction between the provision and the ECGS framework as a whole. The Commission agrees that it is important to preserve economic signals as much as possible to minimise market distortions and to provide incentives and market-based responses for potential reliability and supply adequacy issues. The purpose of the provision is not to suppress the prices that would otherwise emerge from the normal functioning of the market. For example, the Commission accepts that higher prevailing prices could result in a market that is supply constrained and the new provision is not intended to prevent a relevant entity offering gas to a directed entity at the prevailing market price. The concern is that an AEMO direction may be given in circumstances where usual constraints on market behaviour including market competition have broken down, at least for a time.

The Commission agrees that the provision in the draft rule needs to be clarified to provide more guidance about behaviour that will, or will not, contravene the provision. Its final determination is to include a provision that:

109 Submissions to the draft determination: APLNG p. 2 and Attachment A.

110 APLNG, submission to the draft determination, Attachment A.

111 APLNG, submission to the draft determination, Attachment A.

112 APLNG, submission to the draft determination, Attachment A.

113 APLNG, submission to the draft determination, Attachment A.

114 Competition and Consumer (Gas Market Code) Regulations 2023 (Cth).

- defines what is meant by ‘exacerbation’ of the costs of complying with a direction by reference to the range of costs that could reasonably have been expected in a workably competitive market for meeting the requirements of the east coast gas system direction.
- specifies that a relevant entity is not in breach of the provision if the entity is:
 - seeking in good faith to comply with its legal obligations, or
 - making legitimate business decisions having regard to its legitimate business interests, determined without regard to the relevant east coast gas system direction.

The Commission considers that ‘legitimate business interests’ is sufficiently broad to cover giving effect to contractual commitments, or offering gas at prices that reflect opportunity costs, if that is the prevailing market price, and so preserves economic signals, minimises market distortions and provides incentives to offer market based responses. These are examples only, and other legitimate business interests may include safety considerations and operational requirements.

In relation to the other matters raised in consultation responses, the final rule extends to intentional or reckless but applies the same civil penalty tier to both. The Commission is satisfied that tier one is the appropriate civil penalty tier for the behaviours sought to be addressed in the provisions and that even within that tier, the civil penalty framework is sufficiently flexible to respond proportionately to less serious behaviour. The Commission has also considered what information will be available to the AER and notes that determinations will be published, the overall cost of compensation will be known and the AER has information gathering powers. The final rule does not introduce new reporting obligations.

This aspect of the final determination aligns with the *market efficiency* criterion of this rule change, as the final approach preserves normal market signals while deterring behaviour that would impose inefficient costs on consumers when an AEMO direction is given.

The Commission intends to recommend to Energy Ministers that this rule be classified as a tier one civil penalty provision. The Commission has consulted with the AER which supports the recommendation.

3.2.6 The final rule increases the minimum threshold for a compensation claim to \$50,000 (and allow for indexation) and no joining of claims to meet the minimum threshold

Box 10: Final determination - Increasing the minimum claim threshold (and allowing for indexation) and no option for different entities to join claims

Consistent with the draft determination, the Commission’s final determination is to:

- increase the minimum threshold to make a claim to \$50,000. This increase is based on the indicative costs of the independent expert
- allow for indexation of the minimum claim threshold
- maintain the existing arrangements in terms of allowing for different claims from the same event to be assessed by the same independent expert, however, different entities could not join claims in order to meet the minimum threshold.

Increase of the minimum claim threshold to \$50,000 and allowing for indexation

The Commission’s final determination is to increase the minimum claim threshold from \$5,000 to \$50,000 and allow for indexation. The increase of the threshold to \$50,000 seeks to balance the

minimum amount of compensation that can be claimed with the indicative costs of the expert determination process.

EUAA, Alinta and APLNG supported the revised threshold, subject to further information provided by the AEMC, with Alinta's support subject to their suggestion around a fast-track process (see section 3.1.1).¹¹⁵ APLNG further submitted that either AEMO or the AER should be required to publish the updated indexed amount annually.¹¹⁶

AGL submitted that they consider a tenfold increase in the threshold to be too high and suggested a \$20,000 threshold or less would be more appropriate.¹¹⁷

The Commission's final determination is based on the following considerations:

- The costs of an independent expert are likely to be high due to the complexity of claims, given the interaction of claims with multiple gas markets, and contractual arrangements, and the nature of the directions (i.e., it is likely that directions will relate to larger volumes of gas).
- Setting the threshold too low would be costly and not align with our assessment criteria of *market efficiency and implementation considerations*, by balancing the costs and complexity of implementation and costs to participants (which will be required to fund the expert determination process).

We further note the existence of some other thresholds and how they have influenced our final determination:

- In the DWGM an unintended scheduling result is \$20,000 escalated by CPI with a June 2008 base (i.e. currently around \$30,000 for individual claims in the DWGM).
- In the STTM, for a scheduling error, a similar base of \$20,000 is used (June 2009 base escalated by CPI) (similarly around \$30,000 in today's dollars).

The Commission is cognisant of concerns raised by stakeholders around the increased threshold, however, we consider that it is necessary in order to balance the approximate costs of the process with any amounts being claimed. While we are aware that the process has not been tested, engagement with AEMO has indicated that assessing any claim would be a complex and timely process given the likely complexities of claims made under Part 27, therefore, on balance the Commission has retained its decision to increase the threshold.

The Commission is also of the view that we do not consider it necessary for AEMO or the AER to publish updated guidance on the indexation amount. We consider that responsibility for this calculation should rest with the claimant, given that the formula is provided in the rules.

Consistent with existing arrangements, different entities would not be able to join compensation claims to meet the minimum threshold

The Commission's final determination is unchanged from its draft determination. The Commission is of the view that allowing for the independent expert to determine multiple claims relating to the same event would be an efficient use of resources. The new Part 15C expert determination framework allows for this to occur.¹¹⁸ However, the Commission does not support allowing different entities to join claims to meet the minimum threshold to claim. This final determination aligns with the assessment criterion of *implementation considerations*. The independent expert

¹¹⁵ Submissions to the draft determination: EUAA, p. 1; Alinta, p. 1; APLNG, p. 14.

¹¹⁶ Ibid.

¹¹⁷ AGL submission to the draft determination, p. 2.

¹¹⁸ Subrule 135JE(2) of the final rule.

will need to assess each claim individually and allowing different entities to join smaller claims is likely to lead to costs of the process exceeding the value of claims.

We note that we have not received any stakeholder feedback on this issue.

3.3 The final rule makes consequential changes to the DWGM and STTM

Box 11: Final determination - The final rule makes consequential changes to the DWGM and STTM to ensure the application of the new compensation framework to relevant claims

Consistent with its draft determination, the Commission's final determination is to make consequential changes to Parts 19 and 20 to ensure the application of the new compensation framework under Part 15C to relevant compensation claims in relation to AEMO directions and intervention, market suspension and administered pricing.

Claims relating to unintended scheduling results under Part 19 or scheduling errors under Part 20 will continue to be assessed under the existing dispute resolution framework.

The Commission's final determination makes consequential changes to the rules governing the DWGM and STTM to ensure the application of the new compensation framework to relevant claims. This is unchanged from the draft decision.

EUAA supported the decision to align these frameworks, no other stakeholders commented on this aspect of the draft decision.¹¹⁹ The Commission is therefore of the view that the new expert determination framework in Part 15C should apply to Part 27 (ECGS Directions), Part 19 (DWGM) and Part 20 (STTM) of the NGR in relation to AEMO directions and intervention, market suspension and administered pricing.

The Commission's final determination is that the new Part 15C expert determination framework will not apply to claims arising from unintended scheduling results under Part 19 or scheduling errors under Part 20. These will continue to be determined using the Part 15C rule dispute process (see for more detail section 3.1.1).

The Commission's determination is that the expert determination framework in Part 15C will govern the process for assessing a compensation claim, whereas the existing rules in Parts 19, 20 and 27 (as applicable to the claim) will 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 final determination is to make consequential changes to Parts 19 and 20 to ensure that relevant compensation claim will be assessed under the new expert determination framework in Part 15C.

In addition, in relation to Part 20, the Commission's final determination is to maintain the recommended provision from the draft decision dealing with payment of the costs of the

¹¹⁹ EUAA, submission to the draft determination, p. 1.

independent expert, which will replace the arrangements that would currently apply under Part 15C.¹²⁰ Under the new provision, the costs will be borne by AEMO rather than the claimant, and passed through participant fees.¹²¹ This is consistent with the approach in Part 19.¹²²

The Commission is of the view that this aligns with *good regulatory practice*, by achieving consistency between the frameworks whilst maintaining the need for bespoke arrangements that reflect the different nature of these markets.

3.4 We do not make any changes to the existing dispute resolution provisions

Box 12: Final determination - No changes to the existing dispute resolution provisions, other than consequential drafting changes

The Commission's final determination is to not make any material changes to the existing dispute resolution provisions.

The Commission's final determination is to not make any changes to the existing dispute resolution provisions, other than consequential drafting changes. The Commission's draft determination was to separate compensation claims out from the existing dispute resolution provisions, with some exceptions for scheduling errors and unintended scheduling results, the Commission considered whether any changes to the existing dispute resolution provisions would be required and decided that none were necessary.¹²³

No stakeholders commented on this aspect of the draft determination. The Commission will therefore maintain this aspect in the final determination.

3.5 Commencement date, implementation and transitional arrangements

Box 13: Final determination - The new compensation framework (and consequential changes) will come into effect in July 2024 to allow for a sufficient implementation timeframe

The Commission's final determination is that the new compensation framework and consequential changes will come into effect on 31 July 2024. This will 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 rule commencement date.

Any existing claims will be dealt with under the existing arrangements.

Our final rule allows for expanded timeframes for both AEMO to develop the changes to its Procedures and for industry to respond to the changes. This change from the draft to final rule acknowledges the significant amount of change and consultation occurring in the sector.

¹²⁰ Under the current arrangements, rule 135JA would apply to the Part 20 compensation claims.

¹²¹ Subrule 465(6) of the final rule.

¹²² Subrule 237(4) of the final rule.

¹²³ *Compensation and dispute resolution provisions*, Draft Determination p. 26-27.

Accordingly, the Commission’s final determination specifies that the final rule (as well as the consequential changes to the DWGM and the STTM) will come into effect on 31 July 2024.¹²⁴

By that date, AEMO will be required to review, and where necessary update, the following Procedures to ensure alignment with the final rule:¹²⁵

- the STTM Procedures;
- the Wholesale Market Procedures; and
- the East Coast Gas System Procedures.

Further, by the commencement date, AEMO will be required to (see section 3.1.2 for more detail):

- make and publish guidance on the expert determination process¹²⁶
- prepare, consult and publish a form of confidentiality deed to allow the independent expert to engage with a claimant.¹²⁷

Any existing claims that are not finally dealt with or decided immediately before the commencement date will be dealt with by the existing (old) rules.¹²⁸ If an award of compensation is made with respect to an existing claim, AEMO must pay and may recover the compensation and any costs of the dispute resolution process that are required to be borne by AEMO in the manner provided for in the existing rules despite the Amending Rule.¹²⁹

124 Rule 104 of Schedule 2 of the NGR, inserted by the final rule.

125 Rule 106 of Schedule 2 of the NGR, inserted by the final rule.

126 Subclause 135JD(3) of the final rule.

127 Subclause 135JD(2) of the final rule

128 Rule 105(2) of Schedule 2 of the NGR, inserted by the final rule.

129 Rule 105(3) of Schedule 2 of the NGR, inserted by the final rule.

A Rule making process

A standard rule change process includes the following stages:

- a proponent submits a rule change request
- the Commission initiates 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).

You can find more information on the rule change process in *The Rule change process – a guide for stakeholders*.¹³⁰

A.1 Energy Ministers asked the Commission to address issues with the existing framework

The rules setting out the arrangements for determination of compensation claims under Part 27 of the NGR are drawn from Part 15C of the NGR (which is also deployed in relation to compensation claims under the DWGM and STTM rules), but with a significant number of variations. The need for variations and additional rules to disapply the provisions of Part 15C arise primarily because Part 15C is designed as a framework for the resolution of disputes. That is, while the resolution of a compensation claim benefits from the involvement of an independent third party, it does not necessarily have the tenor or characteristics of a dispute – the role and considerations of the third party in the context of a compensation claim can potentially be inconsistent with the role of a dispute resolution body.

Against this background, Energy Ministers identified a number of issues with the existing framework for compensation in terms of clarity, consistency, 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 interests 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 NGR may be required.

¹³⁰ AEMC, *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>.

A.2 The proposed rule seeks to improve clarity, consistency, efficiency and effectiveness

The Energy Ministers' rule change request proposed a number of potential changes to the framework, to improve clarity, efficiency and consistency, including in the following areas:¹³¹

Governance and procedural arrangements:

- the role of the Adviser and time frames 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 Part 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.

A.3 It proposed to focus on governance arrangements, scope of the framework and funding arrangements

This section summarises and outlines in more detail some proposed solutions in line with the above identified areas to address issues with the existing framework.¹³²

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. Energy Ministers also proposed allowing claims from multiple entities related to the same or similar events to be joined.

Energy 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. Additionally, Energy Ministers suggested the AEMC review AEMO's ECGS Procedures to consider whether they could more effectively achieve the ECGS policy objectives.

The scope of the framework

To ensure any changes continue to support the broader reforms to manage threats to security and reliability in the ECGS, Ministers raised the potential for further incentives beyond direct costs to be compensated in certain circumstances. 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

¹³¹ While the rule change request did not include drafting of the proposed rule, it contained a description of the proposed rule and potential options for the AEMC to consider and explore.

¹³² See AEMC consultation paper p. 8 and rule change request p. 7.

Energy Ministers also stated that the compensation framework should be sustainable, that is, access to compensation and the quantum of payments should be 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. 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. Energy Ministers also asked the AEMC to consider the roles of entities like the Adviser and the DRP to determine whether and to what extent their roles appropriate to compensation frameworks. 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.

A.4 The process to date

On 22 June 2023, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.¹³³ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 20 July 2023. The Commission received 11 submissions as part of the first round of consultation. The Commission further met with individual stakeholders and industry groups.

The Commission considered all issues raised by stakeholders in submissions and through discussions. Issues raised in submissions and through discussions are discussed and responded to throughout this draft rule determination. The Commission extended the time frame for making the draft rule as the rule change request raised issues of sufficient complexity.¹³⁴

On 30 November, the Commission published a draft determination and draft rule.¹³⁵ The Commission held a public forum, undertook bilateral engagement and received 9 submissions in response to its draft rule determination.

133 This notice was published under s. 303 of the NGL.

134 The notices were published under s. 317 of the NGL.

135 The notice was published under s. 308 of the NGL.

B Regulatory impact analysis

The Commission has undertaken regulatory impact analysis to make its final determination.

B.1 Our regulatory impact analysis methodology

We considered a range of policy options

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rule proposed in the rule change request, a more preferable rule and a business-as-usual scenario where we do not make a rule.

We identified who would be affected and assessed the benefits and costs of each policy option

The Commission's regulatory impact analysis for this rule change used qualitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. Where commensurate and feasible, the Commission has quantified the impacts. The Commission focused on the types of impacts within the scope of the NGO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for this rule change. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

Table B.1: Regulatory impact analysis methodology

Assessment criteria	Primary costs Low, medium or high	Primary benefits Low, medium or high	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
Principles of market efficiency	Nil No change to the cost categories eligible for compensation (direct costs only)	Low	<ul style="list-style-type: none"> AEMO Market participants Other relevant entities 	<ul style="list-style-type: none"> QL: No additional costs as there is no expansion in costs eligible for compensation. QL: Administrative simplicity is maintained. QL: Benefits are maintained as direct costs only being eligible for compensation means incentives for normal market operation are maintained.
Principles of market efficiency	Low Civil penalty provision to support appropriate behaviour in response to an AEMO direction	Medium	<ul style="list-style-type: none"> AER Market participants Other relevant entities 	<ul style="list-style-type: none"> QL: Some AER costs associated with monitoring behaviour in response to an AEMO direction. Some benefits through the incentive for appropriate behaviour in response to an AEMO direction, seeking to prevent parties from increasing the costs of compensation.
Implementation considerations	Low AEMO changes to procedures to take account of principles introduced into the rules to guide AEMO's cost recovery methodology	Low	<ul style="list-style-type: none"> AEMO Market participants Other relevant entities 	<ul style="list-style-type: none"> QL: Administrative costs of initial changes required to AEMO Procedures. Incentives for normal market operation are made clearer through AEMO update to Procedures QL: Market participants and other relevant entities will face some initial transaction costs as they seek to understand and engage with the amended framework.
Implementation considerations	Low Governance - AEMO role in appointing independent	Medium	<ul style="list-style-type: none"> AEMO AER 	<ul style="list-style-type: none"> QL: Administrative tasks required are not a substantial change on what is already required under the rules. AER role is a new role required but

Assessment criteria	Primary costs Low, medium or high	Primary benefits Low, medium or high	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
	expert and publishing guidance on operation of expert determination process and in providing information to independent expert. AER role in reviewing the appointment of the independent expert			not anticipated to be onerous.
Principles of good regulatory practice	Low AEMO can recover the costs of the expert in addition to the compensation amounts	Low	<ul style="list-style-type: none"> AEMO Market participants Other relevant entities 	<ul style="list-style-type: none"> QL: No addition in costs, allows AEMO to recover the costs of the independent expert in the same way that compensation is recovered.
Principles of good regulatory practice	Nil Change in threshold for claims from \$5000 to \$50,000	Low	<ul style="list-style-type: none"> AEMO Market participants Other relevant entities 	<ul style="list-style-type: none"> QL: No real transaction costs for relevant entities to adjust to the new framework. Benefit provided in that only claims above \$50,000 are eligible for consideration by the independent expert (of which the process costs are estimated to be approx. \$50,000). Therefore, low value claims where the costs outweigh the benefits are avoided.
Principles of good regulatory practice	Low Consequential changes to Parts 19 and 20 to link them to the new framework in Part 15C to	Low	<ul style="list-style-type: none"> AEMO Market participants 	<ul style="list-style-type: none"> QL: More consistent application of the framework across different parts of the rules. Provides consistency and predictability to market participants.

Assessment criteria	Primary costs Low, medium or high	Primary benefits Low, medium or high	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
	achieve consistency between Parts 19, 20 and 27			
Safety, security and reliability	Nil	Low	<ul style="list-style-type: none"> • AEMO • Market participants • Consumers 	<ul style="list-style-type: none"> • QL: The changes to the compensation framework align with broader reforms to manage system security and reliability given their support for incentives for normal market operation.

C Summary of amendments to the National Gas Rules

This appendix outlines the amendments to the National Gas Rules (NGR) made under the more preferable final rule.

C.1 Changes to Part 15C

C.1.1 Introduction

Under the final rule, a new framework for expert determination of compensation claims (**compensation determination process**) is inserted as Divisions 5 and 6 of Part 15C and the Part is renamed 'Dispute resolution and compensation claims'. The compensation determination process applies to the determination of these compensation claims instead of the dispute resolution process under Part 15C.

C.1.2 Claims subject to the compensation determination process

The definitions in rule 135F are amended to define which claims the compensation determination process applies to, that is, claims for compensation under:

- rule 344 (AEMO interventions) or 350 (administered price cap) of Part 19 - Declared Wholesale Gas Market
- rule 433 (administered market states) of Part 20 - Short Term Trading Market, and
- Division 6 (Claims in respect of east coast gas system directions) of Part 27 - East coast gas system reliability and supply adequacy.

Other new defined terms added for the new compensation claims process are 'claimant', 'compensation claim event' and 'independent expert'.

Consequential change are made to the term 'relevant dispute' in rule 135F, to the general principles in rules 135FA and 135FB and to the heading of Division 4 of Part 15C.

C.1.3 Administration and guidance by AEMO

Under rule 135JD, AEMO must:

- determine the terms of appointment of an independent expert (subrule (1)),
- prepare and consult on a confidentiality deed between the independent expert and a claimant (subrule (2)), and
- publish guidance about the process for determination of compensation claims (subrule (3)).

C.1.4 Nomination and appointment of independent expert

Rule 135JE deals with the nomination and appointment of the independent expert as follows:

- Where AEMO is required to appoint an independent expert to determine a compensation claim, AEMO must:
 - publish and provide to the AER and each affected claimant, notice of its proposed nominee within 15 business days of being notified of the claim or, if applicable, within the time provided in Part 27 (see appendix C.4.4) (subrule (1)(a)), and
 - take into account the principle that to the extent reasonably practicable, related claims should be determined by the same independent expert as part of the same process (subrule (2)).

- A claimant is permitted to notify the AER that it objects to a proposed nomination of an independent expert on the grounds that the independent expert has a potential conflict of interest (subrule (3)).
- If the AER receives an objection it must give AEMO a copy of the objection and any supporting information (subrule (4)).
- If AEMO is notified by the AER of an objection AEMO may nominate a different person to act as the independent expert (subrule (5)).
- If the AER receives objections from more than 25% of claimants in relation to a compensation claim and is satisfied that the nominated expert has a potential conflict of interest, the person is not eligible to act as the independent expert and AEMO and AEMO must nominate another person as the independent expert (subrule (6)) as soon as reasonably practicable (subrule (1)(b)).
- AEMO must appoint the independent expert within 5 business days if there is no objection, or once any objection has been resolved (subrule (7)).

C.1.5 Information to be provided by AEMO

Under rule 135JF, AEMO is required to:

- provide the claim to the independent expert as soon as practicable after the expert is appointed, and
- provide market data requested by the independent expert to the expert and the claimant.

C.1.6 Procedures for assessment of compensation claims

Rule 135JG deals with the procedures for assessment of compensation claims as follows:

- The independent expert is responsible for independently investigating, analysing and determining a compensation claim in accordance with the rules and Procedures including:
 - determining (and amending) the process and timetable it will adopt in processing a claim, subject to time frames specified under the rules,
 - notifying the claimant and AEMO of the process and timetable for a claim,
 - requesting written submissions and information supporting the claim from the claimant
 - requesting additional information it requires from the claimant (subrules (1) to (4) and (6)).
- The process and timetable developed by the independent expert must be consistent with time frames specified under the rules and may allow for time frames to be extended:
 - for periods in which it is waiting for the claimant to provide requested information,
 - where it reasonably considers that the issues relevant to the claim are of sufficient complexity or difficulty or there is a material change in circumstances (subrules (5)(b)).
- The independent expert is permitted to appoint persons to provide advice on matters outside the expert's expertise and provide information to that person (subrule (8)).
- A claimant must do all things reasonably necessary for the proper, expeditious and cost-effective assessment and determination of its claim (subrule (9)).

C.1.7 Draft and final report and determination

Rule 135JH sets out the following process for determinations to be made:

- The independent expert is required within 30 business days of its appointment to:

- prepare and provide to AEMO a draft report setting out the amount of compensation payable, any other matters required to be determined in accordance with the Part under which the compensation claim is made and any methodologies and assumptions used by the expert in making its determination,
- prepare and provide to each claimant and AEMO, its draft determination of the claimant's claim, and
- invite public submissions on its draft report and submissions from each claimant on the draft determination of its claim for a period of not less than 10 business days (subrule (1)).
- The independent expert must, if requested to do so by a claimant, meet with the claimant's representatives within 15 business days of the notice of the draft determination (subrule (2)).
- The independent expert is required within 20 business days after the end of the consultation period on the draft report and determinations (subrules (3) and (6)) to:
 - prepare and provide to AEMO its final report on the compensation claim (including a version from which confidential information has been omitted),
 - prepare and provide to each claimant and AEMO, its final determination of the claimant's claim, and
 - give AEMO its final tax invoice for the services rendered by the independent expert.
- AEMO must publish a final determination from which confidential information has been excluded (subrules (6) and (7)).

The final determination of an independent expert would take effect in accordance with the provisions of the Part under which the claim is made except that AEMO is not required to give effect to a final determination before the end of the period in which a person can make an application to a Court for review of the determination or, if an application for review is made or leave granted, before the matter is finally determined - see appendix C.1.8 (subrule (4)).

C.1.8 Nature of the expert process, costs of claims and review of claim determinations

New Division 6 in Part 15C deals with miscellaneous matters relating to the expert determination process.

- New rule 135JI explains the nature of the expert determination process. An independent expert appointed to determine compensation claims:
 - acts as an expert and not an arbitrator
 - is not bound by the claimant's formulation of the matters to be addressed or the rules of evidence, and
 - incurs no civil monetary liability for an act or omission in the exercise of powers or functions related to the determination of compensation claims under the rules unless the act or omission was done or made in bad faith (rule 135JI).
- New rule 135JJ deals with costs. A claimant must bear its own costs of a compensation claim (subrule (1)). The costs of the independent expert and AEMO in relation to a compensation claim (compensation process costs) are borne as provided for in the Part under which the compensation claim is made unless the independent expert allocates some or all of the compensation process costs to the claimant because the claimant unreasonably prolonged the compensation determination process or there is some other good reason to alter the allocation of compensation process costs (subrules (2) and (3)).
- If costs are allocated to a claimant, AEMO must issue a tax invoice to the claimant with a due date for payment of not less than 10 business days (subrule (4)). A claimant must pay AEMO

the compensation process costs allocated to it within 10 business days of invoice (subrule (5)). The AEMC will recommend that subrule (5) be classified as a tier two civil penalty provision under the National Gas (South Australia) Regulations.

- New rule 135K provides for a right of review. A claimant, the AER, AEMO or a person required, or who may be required, to pay money to AEMO in relation to a compensation claim is entitled to apply to a Court for review of a determination of an independent expert on a question of law if the Court grants leave (subrule (1)). A Court is empowered to grant leave in the circumstances specified in subrule (2). Subrules (5) to (9) provide for the process that will apply if an application for leave is granted and the Court reviews the determination of the independent expert.

C.2 Changes to Part 19

- A new defined term ‘compensation determination process’ is included in rule 200 to refer to the compensation determination process under new Division 5 of Part 15C.
- Rule 237 is amended to:
 - provide for claims under rule 344 (AEMO interventions) or 350 (administered price cap) to be referred for determination under the compensation determination process, rather than referring the claim for resolution as a rule dispute by a dispute resolution panel (subrule (2)),
 - allow a registered participant to withdraw a claim at any time before the date for provision of written submissions by the claimant under Part 15C (subrule (3)). Under current subrule (5), a claim may only be withdrawn before a dispute resolution panel is appointed to resolve it, and
 - replace references to the dispute resolution panel with the independent expert.
- Rule 238 is amended to reflect that an independent expert (rather than a dispute resolution panel) will be appointed to determine claims under rule 237.

C.3 Changes to Part 20

- A new defined term ‘compensation determination process’ is included in rule 364 to refer to the compensation determination process under new Division 5 of Part 15C.
- Rule 465 is amended so that claims under rule 433 (Administered market states), rather than being settled by agreement or resolved by a dispute resolution panel would be:
 - where AEMO is satisfied that the claim is not controversial and has the agreement of the claimant, determined by AEMO, or
 - otherwise, determined by an independent expert appointed by AEMO (subrule (2)).
- Rule 465 is also amended to:
 - allow a registered participant to withdraw a claim at any time before the date for provision of written submissions by the claimant under Part 15C (subrule (3)). Under the current subrule (5), a claim may only be withdrawn before a dispute resolution panel is appointed to resolve it,
 - provide that the cost of the independent expert on a compensation claim are borne by AEMO unless the independent expert re-allocates those costs, or a proportion of those costs, to the claimant on the ground that the claimant has unreasonably prolonged the proceedings or there is some other good reason to alter the allocation of those costs (subrule (6)). Under the current rules, the dispute resolution panel may allocate costs

relating to the resolution of rule 433 claims under subrule 135JA(3). The approach under subrule 465(6) mirrors the approach under subrule 237(4) in Part 19, and

- make consequential changes to the remainder of the rule to reflect the new process (subrules (4) and (5), replacing what are now subrules (6) and (7)).
- Consequential amendments are made to subrule 466 to remove references to claims under rule 433 being 'agreed' (as compensation claims under new Division 5 of Part 15C are not able to be settled by agreement) and to replace references to the dispute resolution panel with references to the independent expert.
- Subrule 466(2) is amended to make the description of losses that are not to be compensated under rule 466 consistent with losses excluded from compensation under Division 6 of Part 27 (refer to new rule 704).
- A consequential amendment is made to subrule 500(2).

C.4 Changes to Part 27

C.4.1 Introduction

- Under the final rule, Division 6 of Part 27 (Compensation claims relating to east coast gas system directions) is substantially amended by:
 - providing for compensation claims under Division 6 of Part 27 to be referred for determination under the new compensation determination process under Part 15C rather than being treated as relevant disputes under Part 15C,
 - defining terms used in amended Division 6 (rule 703),
 - clarifying the provisions relating to entitlement to compensation (rule 704),
 - specifying how notices of claim are made and withdrawn (rule 705),
 - prohibiting a relevant entity from exacerbating direct costs relating to an east coast gas system direction (rule 706),
 - providing further detail in the NGR on how compensation claims relating to east coast gas system directions are determined and paid (subrules 707(1) to (8)),
 - expanding and clarifying the principles governing the funding of compensation and the costs of determining those claims (subrules 707(9) to (11)).
- Further detail on these amendments is set out below.

C.4.2 Defined terms

- The following definitions are included in rule 703, to apply in amended Division 6:
 - claims threshold
 - compensation determination process
 - compensation funding amount
 - compensation process costs
 - gas demand
 - independent expert
 - liable relevant entities
 - LNG export facility
 - market transaction
 - notice of claim, and

- related claims.
- The defined term 'Adviser' is omitted as it is not relevant to the compensation determination process.

C.4.3 Entitlement to compensation

- Subrule 704(1) is amended to provide that a claim may be made for direct costs incurred by a claimant, in place of the current reference to financial detriment.
- The final rule specifies a claims threshold of \$50,000 for claims notified in the period ending 31 December 2024 and a claims threshold for calendar years that begin after that date equal to \$50,000 adjusted by CPI (subrules 704(5) and (6)). Under the current rules, the cost threshold for claims is \$5,000 and it is not subject to adjustment.
- The basis on which direct costs claimed by a relevant entity are to be determined is clarified in new subrules 704(2) and (3). Subrule (2) is a modified form of subrule 704(5) of the current rules. Subrule (3) provides that if the relevant east coast gas system direction required the relevant entity to provide a natural gas service using gas withdrawn from a storage facility, from storage in a pipeline or from linepack, the direct costs must be determined by reference to the cost of the replacing that gas in the relevant storage facility or pipeline and in accordance with subrule (2).
- The types of losses and costs for which a relevant entity is not entitled to compensation is amended to clearly exclude loss of profit, indirect or consequential costs or losses and opportunity costs or losses (subrule 704(4)).

C.4.4 Notice of claims and referral to an independent expert

Rule 705 is amended to provide for a claim under rule 704 to be referred for determination under the compensation determination process. Current rule 706, which deals with the appointment of the dispute resolution panel, is omitted.

A new mechanism is included to set the time by which a claim must be submitted as follows:

- AEMO must publish a notice requesting relevant entities that may be entitled to compensation to submit a notice of claim. AEMO would publish the notice as soon as practicable after the completion (as determined by AEMO, acting reasonably) of any actions required to be taken as a direct result of an east coast gas system direction (new subrule (1)).
- A claimant has 20 business days after the end of month in which the notice is issued to give AEMO its notice of claim (new subrule (2)).
- A claimant may withdraw its notice of claim at any time before the date for provision of written submissions by the claimant under Part 15C (subrule (3)). Under the current rules, a claim may be withdrawn at any time.
- Where a notice of claim relates to an east coast gas system direction under which the relevant entity was required to provide a natural gas service using gas withdrawn from a storage facility, from storage in a pipeline or from linepack, to allow the claimant time to provide details of its claim, the time for AEMO to publish notice of its proposed nominee as independent expert is extended from the 15 business day period in Part 15C to a date determined by AEMO in consultation with the claimant but not later than 6 months after the notice of claim is given (subrule (4)).

C.4.5 No exacerbation of direction costs

A new prohibition on conduct of a relevant entity that causes the relevant entity or another person to incur exacerbated direction costs as a direct result of AEMO issuing an east coast gas system direction is inserted (new rule 706). Exacerbated direction costs are defined as direction costs that exceed the upper end of the range of direction costs that could reasonably have been expected for supply of the relevant natural gas service in a workably competitive market for meeting the requirements of the east coast gas system direction (subrule 3).

A relevant entity will not be in breach of the prohibition if the relevant entity is seeking in good faith to comply with its legal obligations or making legitimate business decisions having regard to its legitimate business interests (determined without regard to the relevant east coast gas system direction) (subrule (2)).

The new rule replaces and extends the current requirement in subrule 707(1)(a) for the dispute resolution panel to consider whether it is appropriate in all the circumstances for compensation to be paid, and in subrules 707(2)(b) and (3) for any compensation to be reduced where the actions of the claimant (both before and after the direction was issued) contributed to or exacerbated the amount of compensation being claimed.

The AEMC will recommend that new rule 706 is classified as a tier one civil penalty provision.

C.4.6 Determination and payment of compensation claims

Rule 707 is amended to reflect the change from the dispute resolution panel to the independent expert. In addition, the following changes are made:

- Subrule (1) is amended to remove the requirement for the person determining the compensation to determine whether it is appropriate in all the circumstances for compensation to be paid.
- The circumstances in which the independent expert can determine not to fully compensate a claimant for its direct costs are amended by:
 - referring to the mitigation of 'costs' not ('losses') in subrule (2)(a),
 - omitting subrule (2)(b) of the current rule under which a determination can be made not to fully compensate the claimant where the actions of the claimant contributed to or exacerbated the amount of compensation being claimed, and
 - amending current subrule (2)(c) (to be renumbered as subrule (2)(b)) to allow for a determination that does not to fully compensate the claimant where the claimant received funds, payments, compensation or other financial benefit from being deprived of the relevant service. Under the current rule this applies only where the claimant receives such benefits for undertaking the activity required by the direction.
- Subrule (4A) requires a claimant to provide information to the independent expert to enable the independent expert to assess the matters above.

C.4.7 Funding the cost of compensation claims

The provisions in rule 707 that deal with the funding of compensation claims are extended to the costs of the independent expert process to make related changes as follows:

- A new concept 'compensation funding amount' is included in subrule (6) to cover both the compensation awarded to claimants and the costs of the independent expert process (unless the independent expert required the claimant to bear those costs).
- Subrule (5) is amended to:

- require AEMO to calculate the compensation funding amount,
- determine which relevant entities must fund the compensation funding amount and their respective shares, and
- require AEMO to pay the amount to the claimant in accordance with the Procedures after receiving payments from relevant entities that fund the compensation. The provision expressly enable AEMO to make Procedures that allow for part payments to claimants, ie pay claimants as amounts are received by AEMO from relevant entities.

C.4.8 Funding compensation claims and the related costs

The provisions in rule 707 that govern compensation claim funding are amended to set out the guiding principles in the rules. Compensation claimants are no longer exempt from funding compensation claims. The changes include the following:

- Subrule (7) is amended to provide that a claimant may be a relevant liable entity that is required to fund compensation. New subrule (8) allows AEMO to set off against amounts payable to a claimant any amount the claimant is required to pay AEMO by way of compensation funding or as a contribution to the costs of the claims determination process.
- Subrule (9) (currently subrule (8)) and new subrule (10) require AEMO to make Procedures:
 - about the provision of information to AEMO to enable AEMO to calculate the payment to be requested from each liable relevant entity,
 - explaining how liable relevant entities are determined,
 - explaining how AEMO will calculate aggregate gas demand in a location and a liable relevant entity's share of gas demand in that location, and
 - providing for the share of gas demand of a retailer, or other person that sells gas, to include gas consumed by the person's customers to the extent that the quantity would not otherwise be included in the calculation of gas demand.
- Subrule (11) (currently subrule (9)) requires AEMO, when making Procedures about who funds compensation and related costs, to have regard to the principle that a liable relevant entity's share of a compensation funding amount should be in proportion to its share of the aggregate gas demand of all liable relevant entities (i) in the location of the identified risk or threat and (ii) in the relevant risk or threat period, both having regard to any relevant risk or threat notice and any relevant east coast gas direction.

C.5 Transitional provisions

C.5.1 Saving of existing claims

If immediately before the commencement of the final rule a claim made under the old rules is not finally dealt with then:

- the existing claim must be dealt with and decided under the old rules as if the old rules were still in force, and
- if an award of compensation is made with respect to an existing claim, AEMO must pay and recover the compensation and any costs of the dispute resolution process that are required to be borne by AEMO as provided for in the old rules as if the old rules were still in force.

C.5.2 Instruments made by AEMO

By the commencement date, AEMO must:

- review (and update where necessary) the STTM Procedures, Wholesale Gas Market Procedures and the East Coast Gas System Procedures. Any changes to these Procedures must to take effect on the commencement date,
- prepare, consult on and publish a form of confidentiality deed to be made by an independent expert in favour of claimants, and
- make and publish guidance about the process for determining compensation claims under subrule 135JD(3).

D Legal requirements to make a rule

This appendix sets out the relevant legal requirements under the NGL for the Commission to make a final rule determination.

D.1 Final rule determination and final rule

In accordance with sections 311 and 312 of the NGL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by the Energy Ministers Sub-Group.

The Commission's reasons for making this final rule determination are set out in chapter 2.

A copy of the more preferable final rule is attached to and published with this final determination. Its key features are described in chapter 3 and appendix C.

D.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules.

The more preferable final rule falls within the matters set out in Schedule 1 to the NGL as it relates to the following clauses:

55ZF Arrangements to pay compensation to relevant entities adversely affected by AEMO's exercise or performance of its east coast gas system reliability and supply adequacy functions, and to recover the compensation paid from relevant entities.

126 Dispute resolution, including—

- (a) definition of the class of disputes subject to the dispute resolution provisions of the Rules; and
- (b) the appointment of persons to arbitrate, mediate or assist in some other way in the resolution of such disputes; and
- (c) the appointment of a person to manage and facilitate the dispute resolution process (without however derogating from that person's power to act personally as an arbitrator or mediator in a particular dispute); and
- (d) the dispute resolution process; and
- (e) rights of appeal on questions of law against decisions made in the course of the dispute resolution process.

D.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NGL to make the final rule
- the rule change request
- submissions received during first and second rounds of consultation
- the Commission's analysis as to the ways in which the final rule will or is likely to contribute to the achievement of the NGL.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹³⁶

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared system functions.¹³⁷ The Commission is satisfied that the more preferable final gas rule is compatible with AEMO's declared system functions. The final rule provides for an independent expert to determine certain compensation claims under the rules applicable to the DWGM, in place of the DRP. Under the new arrangements, AEMO ceases to be a party to the claim, but it continues to provide information in relation to those claims that is available to it as a result of performing its declared system functions and continues to give effect to the determination in its role as administrator of the DWGM.

D.4 Making gas rules in Western Australia

Under the *National Gas Access (WA) Act 2009* (WA Gas Act), a modified version of the NGL was adopted, known as the National Gas Access (Western Australia) Law (WA Gas Law). Under the WA Gas Law, the NGR applying in Western Australia is version 1 of the NGR, as amended by rules made by the South Australian Minister for Energy¹³⁸ and rules made by the AEMC in accordance with its rule making powers under section 74 and 313 of the WA Gas Law.¹³⁹

The final rule does not fall within the subject matters about which the Commission may make rules under the WA Gas Act.

The final rule amends Parts 15C, 19, 20 and 27 of the NGR that do not apply in the Western Australian version of the NGR.

Accordingly, the final rule will not apply in Western Australia.

D.5 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NGR be classified as civil penalty provisions or conduct provisions.

The NGL sets out a three-tier penalty structure for civil penalty provisions in the NGL and the NGR.¹⁴⁰ A Decision Matrix and Concepts Table,¹⁴¹ approved by Energy Ministers, provide a decision-making framework that the Commission applies, in consultation with the AER, when assessing whether to recommend that provisions of the NGR should be classified as civil penalty provisions, and if so, under which tier.

Following consultation with the AER, the Commission proposes to make the following civil penalty recommendations to the Energy Ministers in relation to the final rule.

¹³⁶ Under s. 33 of the NEL and s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

¹³⁷ Section 295(4) of the NGL.

¹³⁸ The Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018 and the National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017.

¹³⁹ See the AEMC website for further information at <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>.

¹⁴⁰ Further information is available at <https://www.aemc.gov.au/regulation/energy-rules/civil-penalty-tools>

¹⁴¹ The Decision Matrix and Concepts Table is available at: https://web.archive.org/awa/20210603104757mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf

Table D.1: Civil penalty provision recommendations

Rule	Description of rule	Proposed classification	Reason
135JJ(5)	If the independent expert determines that a claimant must bear some or all of the costs of the independent expert and AEMO, the claimant must pay that amount to AEMO within 10 business days of an invoice from AEMO for that amount.	Tier two	Tier two is proposed because failure may impact market administration.
706(1)	A relevant entity must not by any act or omission, either intentionally or recklessly, cause itself or another person to incur exacerbated direction costs, or contribute to itself or another person incurring exacerbated direction costs, in circumstances where the relevant entity is aware that the relevant east coast gas system direction has been given.	Tier one	Tier one is proposed because failure to comply risks distortion of market outcomes.

The more preferable final rule also amends subrule 707(7) which is currently classified as a tier two civil penalty provision. The subrule requires a liable relevant entity to pay AEMO in accordance with the East Coast Gas System Procedures. The Commission considers that it should continue to be classified as a tier two civil penalty provision.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER Commission	Australian Energy Regulator See AEMC
DRP	Dispute Resolution Panel
DWGM	Declared Wholesale Gas Market
ECGS	East Coast Gas System
LNG	Liquefied natural gas
NER	National Electricity Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
STTM	Short Term Trading Market
WA Gas Act	National Gas Access (WA) Act 2009
Proponent	The individual / organisation who submitted the rule change request to the Commission