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Energy market legislation

There are three overarching laws relevant to the governance of energy markets, with South Australia as the lead legislator.

National Electricity Law

The National Electricity Law (NEL) is the law set out in a schedule to the *National Electricity (South Australia) Act 1996*. It establishes obligations in the National Electricity Market (NEM) and for electricity networks.

The NEL is applied as law in each participating jurisdiction of the NEM – New South Wales, Queensland, Victoria, South Australia, Tasmania and the Australian Capital Territory – by application statutes. The Northern Territory has also applied the NEL with variations that cater to local requirements.

The NEL is supported by the National Electricity Rules and National Electricity (South Australia) Regulations. The National Electricity Rules (NER) govern the day-to-day operation of the NEM and the regulation of network infrastructure. The NER are made and amended under the NEL by the Australian Energy Market Commission (AEMC) or by the South Australia Energy Minister if consistent with a head of power in the NEL.

National Gas Law

The National Gas Law (NGL), established under the *National Gas (South Australia) Act 2008*, provides the governance framework and key obligations for accessing gas pipelines as well as broader elements of the natural gas markets. The NGL is supported by the National Gas Regulations and the National Gas Rules.

The NGL is applied across all states and territories in Australia, with a modified version implemented in Western Australia (*National Gas Access (WA) Act 2009*), focusing primarily on pipeline regulation to cater for the specific market conditions in that region.

The NGL establishes several market and regulatory functions, including:

- **Economic Regulation of Gas Pipelines:** The NGL facilitates access to gas pipelines on reasonable terms across the East Coast, Northern Territory, and Western Australia.
- **Facilitated Trading Markets:** Specifically on the East Coast, the NGL establishes several trading mechanisms, including the Short-Term Trading Markets, Declared Wholesale Gas Market, Gas Supply Hub, Capacity Trading Platform, and Day Ahead Auction. These markets enhance liquidity and promote the efficient allocation of gas and pipeline services.
- **Transparency:** The NGL establishes various transparency measures, such as the Bulletin Board, Gas Statement of Opportunities (GSOO), and the Victorian Gas Planning Report, along with gas price reporting which supports informed decision-making by market participants.

National Energy Retail Law

The National Energy Retail Law (NERL) is the law set out in a schedule to the *National Energy Retail Law (South Australia) Act 2011*. It regulates the supply and sale of energy to retail customers in New South Wales, South Australia, Tasmania, Queensland and the Australian Capital Territory. The NERL is supported by the National Energy Retail Rules (NERR) and National Energy Retail Regulations.



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More detailed obligations are set out in the NERR. This includes consumer protection measures and the basic terms and conditions for standard and market retail contracts which govern the relationships between customers, retailers and distributors.

Rules under the NERR are made by the AEMC, who must make rules in line with the NERL. The AEMC must also determine whether proposed rules and amendments meet the National Energy Retail Objective and are compatible with the application and development of consumer protections for small customers.

Consumer protections provided for under the NERL include:

- Requirements that retailers must meet before disconnecting a consumer's premises.
- Requirements to provide support and assistance to customers experiencing payment difficulty and financial hardship.
- Protections for customers requiring life support equipment.

The NERL also sets out the mechanisms customers can use to resolve complaints and disputes. Under the NERL, retailers and distributors must have their own standard complaint and dispute resolution procedure and must be a member of an energy ombudsman scheme.

The NERL also makes provisions for a Retailer of Last Resort (RoLR) scheme for participating jurisdictions and seeks to ensure continuity of supply to consumers in the event of a retailer failure.

National energy objectives

The national energy objectives comprise the National Electricity Objective set out in the NEL, the National Gas Objective set out in the NGL, and the National Energy Retail Objective set out in the NERL. The national energy objectives guide energy market bodies in their decisions under energy law.

Role and function of energy market bodies

The governance framework for the Australian energy industry is captured in the Australian Energy Market Agreement (AEMA), an intergovernmental agreement between the Commonwealth, states and territories. The AEMA provides for three national energy market institutions under the overall umbrella of the Energy National Cabinet Reform Committee (ENCRC) (preceded by the Council of Australian Governments (COAG) Energy Council and since replaced by the Energy and Climate Change Ministerial Council (ECCMC)). The structure of the market bodies is designed to provide for institutional separation of powers and responsibilities.

The department supports various energy market bodies governance processes. Statements of Expectations/Role are issued every three years by energy ministers to market bodies, and market bodies respond with an annual Statement of Intent. The department facilitates nominations from energy ministers for appointments to market body boards/commissions and the Energy Consumers Australia board. Following an independent competitive recruitment process, suitable candidates are considered by energy ministers for appointment. All appointments to market body boards are agreed by energy ministers, except for Commonwealth member appointments to the Australian Energy Regulator (AER) board which requires agreement by the Commonwealth Energy Minister



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only. The Commonwealth Energy Minister is not eligible to vote on state and territory appointments to the AER board.

The role and function of the Australian Energy Regulator

The AER is established as an independent entity under the *Competition and Consumer Act 2010*. The AER regulates wholesale and retail energy markets and energy networks, mainly across southern and eastern Australia, under national energy laws and rules and ensures compliance with the rules established by the AEMC. It must perform its economic regulatory functions in a manner that will, or is likely to, contribute to the achievement of the national energy objectives.

The AER regulates electricity networks and gas pipelines in all jurisdictions except Western Australia (where the WA Economic Regulation Authority fulfills these roles) and protects consumer interests through transparent pricing and access mechanisms. The AER's functions include:

- economic regulation of monopoly electricity networks and natural gas pipelines, where fully regulated. This limits what revenue can be recovered from (or what prices can be charged to) customers, whilst ensuring regulated entities have a reasonable opportunity to recover the costs of providing prudent and efficient services.
- monitoring network, wholesale and retail markets and publishing information on energy market performance
- monitoring and enforcing compliance with national rules and legislation.
- specified functions under jurisdictional frameworks, such as the *NSW Electricity Infrastructure Investment Act 2020* and the *Queensland Energy (Renewable Transformation and Jobs) Act 2024*.

The AER protects the interests of household and small business consumers by enforcing the NERL. Its retail energy market functions cover New South Wales, South Australia, Tasmania, the ACT and Queensland, where its role includes:

- authorising retailers to sell energy
- approving retailers' policies for dealing with customers in hardship
- administering a national retailer of last resort scheme
- managing the energy price comparison website - Energy Made Easy.

The AER also has responsibility to determine the Default Market Offer (DMO), which is set out in the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*. The DMO is determined on an annual basis by the AER, and limits how much electricity retailers can charge small customers on standing offer contracts in New South Wales, South Australia, and South-East Queensland. The Australian Competition and Consumer Commission (ACCC) has responsibility to monitor and enforce compliance with the Code.

The role and function of the Australian Energy Market Operator, including its development of the Integrated System Plan in accordance with the National Electricity Objectives

The Australian Energy Market Operator (AEMO) is the independent energy markets and power systems operator for the majority of Australia's energy markets, with functions conferred by national energy laws and rules.



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As the electricity system operator in the NEM and south-west Western Australia, AEMO monitors supply and demand, voltage and frequency, and managed planned and unplanned outages, and emergencies. AEMO's work includes planning and forecasting which assist management of the power system and efficient investment.

AEMO manages the day-to-day operations of gas markets including frameworks for gas trading, ensuring system security and reliability, while conducting supply and demand forecasts to inform stakeholders about future gas availability. The department has been working with states and territories to reform AEMO's powers under the NGL and NGR to enable them to better forecast and manage east coast supply shortfall risks.

AEMO has legislated responsibilities to maintain and improve power system security. The *Security of Critical Infrastructure Act 2018* (Cth) imposes obligations on AEMO as a responsible entity for critical infrastructure assets it operates. The NER requires the power system to be operated in a secure operating state to the extent practicable and to effectively prepare for and coordinate a response to a major supply disruption – including procuring adequate system restart ancillary services, developing a system restart plan and managing and coordinating the restoration of supply following the disruption. Work is underway to further clarify AEMO's role in energy security, particularly as Australia undertakes its energy transformation. To this effect, the department submitted a NER change request seeking to confirm and clarify AEMO's cyber-security role and responsibilities.

Integrated System Plan

AEMO is required under clause 5.22 of the NER to publish an Integrated System Plan (ISP) every two years. The legislated purpose of the ISP is to establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years for the long-term interests of consumers of electricity.

The ISP is developed using a structured consultative approach that incorporates specific inputs and outputs as required by the NER. It must consider key factors such as committed Australian and state policies, demand-side forecasts, technology capabilities, transmission and generation trends, renewable energy zones, interactions with sectors like transport, gas, and hydrogen, and address reliability and security needs as new technologies are integrated into the system.

AEMO is required to use these inputs to produce an optimal development path, outlining the optimal future generation, firming, and transmission for the National Electricity Market to ensure reliable and affordable power, meet policy requirements, and manage risks during the energy transition.

The department is consulted at various times throughout the ISP development process to ensure relevant federal climate and energy policy is accurately reflected in the plan. For example, the 2024 ISP is consistent with Australia's commitments to reduce emissions by 43% on 2005 levels by 2030, and reach net zero by 2050. The department also actively uses the outputs of the ISP to further inform energy policies and programs, given its role as an independent and comprehensive assessment of the investment needs under current policy settings.

On 28 October 2022, the ECMC agreed to review AEMO's ISP framework to ensure it remains fit for purpose in delivering the energy transition. On 3 June 2024, the Minister for Climate Change and



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Energy as chair of the ECMC, initiated a series of rule changes with the Australian Energy Market Commission as the key outcomes of the review

The role and function of the Australian Energy Market Commission

The Australian Energy Market Commission (AEMC) is established as independent entity under the *Australian Energy Market Commission Establishment Act 2004 (SA)*. The AEMC is responsible for rule-making and market development for the majority of the Australian energy markets.

As a national, independent body, the AEMC makes and amends the detailed rules for the NEM, involving participating eastern states, elements of the Northern Territory Electricity Market, elements of natural gas markets including Western Australia, and the retail electricity and gas markets. The AEMC manages the rule change process but cannot initiate a rule change process itself (other than for making minor or non-material changes). The AEMC consults and decides on rule change requests made by others, in accordance with processes set out in the national energy laws, with a central focus on the long-term interests of consumers.

To further support the development of energy markets, the AEMC also provides strategic and operational advice to the Minister responsible for energy. The AEMC can formally self-initiate reviews on matters related to the rule or can undertake reviews under a terms of reference from energy ministers.

The AEMC's institutional arrangements include the Reliability Panel, which has detailed functions and powers conferred on it within the NEL. The Panel includes members who represent a range of participants in the NEM, including consumers, generators, network businesses, retailers and AEMO. The Reliability Panel monitors, reviews and report on the safety, security and reliability of the national electricity system. It determines the standards and guidelines that help maintain a secure and reliable power system for consumers.

The role and function of Energy Consumers Australia

Energy Consumers Australia (ECA) was established by the COAG in 2015 to be the independent, national voice for households and small business consumers. It is funded by NEM consumers through a small market levy collected by AEMO.

ECA's core functions include:

- Consumer research and sharing recommendations of their findings to influence energy policy development
- Engaging in energy sector processes, including meeting with industry and governments, to ensure household and small business needs are considered
- Providing grant funding for work that provides a strong evidence base for system changes that will benefit household and small businesses
- Building sectoral capacity to advocate to the energy market on behalf of diverse consumer groups.

The South Australian Energy Minister is the sole member of ECA and engages with energy ministers on governance arrangements including board appointments, the draft Business Plan and draft Annual Budget pursuant to the ECA Constitution.



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The role and function of state energy regulators

State energy regulators also play a role in the economic regulation of energy within Australia.

As the AER does not regulate energy within Western Australia, the Economic Regulation Authority regulates wholesale and retail energy markets and energy networks. In the Northern Territory and Victoria, the retail energy sector and consumer protections are regulated by each jurisdiction's respective regulator through licence schemes - in Victoria, the Essential Services Commission Victoria regulates the retail energy sector under the Victorian Energy Retail Code, while in Northern Territory, the Utilities Commission of the Northern Territory regulates the retail sector under the *Electricity Reform Act 2000*.

State planners, such as VicGrid in Victoria and EnergyCo in New South Wales, also have critical roles in each jurisdiction, including planning of renewable energy zones.

The statutory framework which supports consideration of stakeholder views and the public interest

Several features of the statutory framework have been designed to support consideration of stakeholder views. The energy market laws and rules have prescribed consultation procedures on various matters. For example, procedures that the AEMC must follow when making rules are prescribed in the respective overarching law.

The statutory framework has been designed to meet the national energy objectives. These objectives focus on the public interest as it relates to their respective energy markets and systems.