



**EnergyAustralia**

LIGHT THE WAY

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**Energy Ministers – Consultation on proposed legislative changes to incorporate an emissions reduction objective into the national energy objectives – 20 December 2022**

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity.

We strongly support the decision of energy ministers to ensure that market bodies have regard to all three limbs of the 'trilemma' in discharging their functions. This decision is also another important signalling of governments' commitment to achieve a decarbonised, modern and reliable grid. A clear and stable policy framework that gives effect to international climate change agreements is necessary if we want to make the transition at least cost. EnergyAustralia supports the emission reduction commitments in the *Climate Change Act 2022 (CCA)*<sup>1</sup> and we agree this should feature in the proposed energy law amendments.

Market bodies, state governments and market participants have already made progress towards long-term emissions reductions goals. Their various actions reflect a mixture of regulations, policy direction and moral obligations to the wider community, but this should be underpinned by nationally consistent legal obligations and ideally in the form of sector-specific emissions pathways.

This decision by ministers to amend the energy law Objectives is the first action under the recently established National Energy Transformation Partnership (NETP). The new NETP is welcome in terms of seeking alignment between jurisdictional governments. We also accept that jurisdictional governments will pursue their own priorities and policy agendas. However, the fragmentation of accountability for energy outcomes and lack of consistent energy policy across jurisdictions leads to more uncertainty and worse outcomes for consumers over the long-term. The NETP priority areas<sup>2</sup> include issues of generation and storage adequacy, energy security

<sup>1</sup> See for example our submission on the Climate Change Bill 2022 - <https://www.aph.gov.au/DocumentStore.ashx?id=14d8e4a9-44ba-4b81-94c4-7fd314b83a06&subId=721068>

<sup>2</sup> Introduce an emissions objective into the national energy objectives; co-design a First Nations Clean Energy Strategy to ensure First Nations people help drive the energy transformation; identify and declare transmission of national significance to progress the timely delivery of critical projects and ensure better community consultation; cooperate on plans for generation and storage adequacy, demand evolution, and workforce, supply chain and community needs; collaborate on energy security management, including cyber security and fuel availability. <https://www.energy.gov.au/government-priorities/energy-ministers/priorities/national-energy-transformation-partnership>

management, and fuel availability. Many of these items reflect what we might consider business as usual for energy ministers and the Energy National Cabinet Reform Committee, so further explanation of how the NETP will operate as a separate arrangement would be useful.

Our summary views on the proposed package of amendments are:

- We support the energy law Objectives containing a reference to the emission reduction targets in the Commonwealth's CCA. The CCA's coverage is broad enough and provides sufficient clarity on emissions objectives without the need to refer to other undefined legislation, international agreements or policy. That said, further thought should be given to how market bodies can and should treat emissions reductions targets in jurisdictional legislation, where they are quantified as explicitly as in the CCA.
- Further amendments to the Objectives to jointly recognise gas and electricity as "energy" do not appear to be necessary. The joint consideration of cross-sectoral impacts (including other adjacent sectors like transport) is occurring already, and is otherwise implied given the physical, commercial and other ties between the energy types. These suggested amendments may give rise to unintended consequences and without furthering the aim of achieving emissions reductions targets.
- The revised Objectives should give rise to an enhanced focus on addressing emissions reduction (including where this requires cross-sectoral considerations) in market body decisions, as well as future rule change processes via the AEMC. Accordingly, we support ministers' proposed approach of not pursuing consequential rule amendments in this consultation.

Our detailed responses to the consultation questions are attached.

If you would like to discuss this submission, please contact me on 03 9060 0612 or [Lawrence.irlam@energyaustralia.com.au](mailto:Lawrence.irlam@energyaustralia.com.au).

Regards

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## Chapter 3: Approach to incorporating an emissions reduction objective

**Question 1:** *Do you consider incorporating the emissions reduction objective into the existing 'economic-efficiency' framework is an effective way of integrating the concept into the decision making of energy market bodies?*

Yes we support this. The existing conceptual approach works towards welfare maximisation in respect of different elements of energy services. As per the proposed drafting, it should be fairly simple, in concept, to add another factor reflecting emissions reduction into this. Maintaining this efficiency framework appropriately allows decision making bodies to weigh up different factors as appropriate in the relevant circumstances.

It is not obvious to us whether there would be alternative preferable arrangements, particularly those where certain elements of the objective are given different priorities. We do not support adopting a cost-effectiveness approach as mentioned in the paper, nor foresee how this could be easily implemented within the drafting. There are instances where legislative obligations involve some 'cost effectiveness' considerations, for example where decision-makers could seek to optimise price and reliability factors subject to a 'given' emissions constraint. We note that the CCA emission reduction targets are economy-wide and do not currently specify strict compliance obligations as is the case for other types of relevant legislation. This means there will be a degree of discretion in characterising and in having regard to satisfying this element of the objectives.

**Question 2:** *Is the current level of discretion afforded through an 'economic efficiency' framework appropriate for balancing an emissions reduction component against existing components of the energy objectives?*

As above, inserting emissions reduction targets as an additional factor to consider would allow market bodies to continue to exercise their current degree of discretion, which we consider is appropriate. At present, government policies, legislation, rules etc already exist to varying degrees affecting reliability, price and other factors which market bodies must account for or otherwise form their own views on when discharging their functions in accordance with the objectives. Amendments that prescribe different priority across the factors listed in the objectives would not always promote the long-term interests of consumers in every situation and could potentially create uncertainty.

**Question 3:** *Do you consider that, for certain instances/processes, market bodies should develop/update guidance material to assist market participants in understanding how market bodies will interpret the proposed revised national energy objectives?*

- a) *What are these instances/processes and what sort of content would you want to be included in this guidance?*

Yes this will be necessary. The consultation paper notes that the AEMC has already published its own guidance on interpretation of the objectives and has also referred to decarbonisation objectives in recent determinations.<sup>3</sup>

The market bodies should issue revised and consolidate guidance in this rare instance where the objectives are amended. There will likely be a period of learning with iterations to any guidance they publish. From the outset, it may be worth exploring:

- the extent to which the electricity and gas sectors will play a reasonable role in meeting Australia's legislated targets
- how decisions can be applied in a clear and consistent manner so that business can predict over the short- and long-term how it will affect their operations and internal decision making
- the general treatment of intertemporal aspects, given this is a specific area of debate when assessing the effects of greenhouse gas emissions and the benefits of mitigation.<sup>4</sup>

### Section 3.3 Reference to Australia's greenhouse gas emissions reduction targets

**Question 4:** *Does this approach give an appropriate level of clarity as well as discretion to market bodies to consider relevant targets in their decision making? If not, detail your reasons and suggested solutions.*

By referencing the CCA, it provides certainty that the legislated targets are the benchmark for the transition (rather than voluntary targets or recommendations by the Climate Change Authority).

This approach is consistent with the *Climate Change Consequential Amendments Act (2022) Cth*, which also incorporates the obligation to facilitate achievement of Australia's greenhouse gas targets into fourteen existing Commonwealth Acts relating to climate, energy, infrastructure investment and science research. It could be seen as an anomaly for Australia's energy legislation to *not* consider Australia's emission reduction targets, given the close interconnection between the energy sector and emissions, and the approach taken towards other legislation via the consequential amendments legislation.

Specifically referring to emissions reduction targets will provide more certainty than alternative drafting, for example general references to 'emissions reduction', or achieving 'environmental' objectives. Such references could extend to issues such as land use planning, waste disposal, water or even social and community matters which are best dealt with through other explicit regulatory instruments.

Our support for explicit and legislated emissions reductions targets also extends to state and territory legislation however the current proposed drafting could be improved. The references to "other targets..." and those that are "likely to contribute..." may not reflect emissions

<sup>3</sup> [Transmission Planning and Investment Review - Stage 3 Draft report \(aemc.gov.au\)](#) – See pp iii-iv and Appendix B. The AEMC also lists 'decarbonisation' as a review assessment criterion – see section A.2. [Hydrogen and Renewable Gas Review - Final Rules Report \(aemc.gov.au\)](#)

<sup>4</sup> As encapsulated in the use of discount rates, see for example section 3.6.2 - [https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc\\_wg3\\_ar5\\_chapter3.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/ipcc_wg3_ar5_chapter3.pdf)

reduction targets nor those that have the same degree of importance as those in the CCA. Our expectation is that CCA targets should generally integrate with those legislated by states, namely those that provide for a long term and economy-wide end point (e.g. net zero by 2050). The proposed drafting of section 7(c) in the NEL (and its equivalents) could be reworded along the following lines:

...the achievement of Australia's greenhouse gas emissions reduction targets, as stated in the *Climate Change Act 2022* of the Commonwealth, and in State or Territory laws that contain the primary long term emission reduction target as relevant for that jurisdiction.

The amendment could alternatively name those jurisdictional laws, or refer to "equivalent jurisdictional legislation" as the CCA.

We do not support amendments that refer to other unspecified legislation and policy. We note that other relevant legislation and also government policies are likely to be already captured in various rule requirements, for example:

- in references to applicable "regulatory instruments"
- under the capital and operating expenditure objectives in NER chapters 6 and 6A
- in the definition of "power system needs" under NER clause 5.22.3 which underpins most of AEMO's functions in the NEM.

**Question 5:** *Does the inclusion of 'public commitments' including 'publicly as a matter of policy,' as well as legislated targets, provide sufficient certainty for effective consideration of an emissions objective by market bodies?*

As per our response to question 4 we do not support this. There is and should be a tendency to give more weight to emissions reduction targets that are legislated. Having the objectives refer to policy or public commitments in the same way as legislation could be problematic.

### **Section 3.4 Amendments to acknowledge interactions between electricity and gas markets and enable management of transition impact**

Questions on 'consumers of energy'

**Question 6:** *Do you agree that the proposed change to 'consumers of energy' is necessary and appropriate to recognise the interconnections between the two energy markets and to enable future decisions to consider the implications for the energy system as a whole?*

This proposed amendment does not seem necessary. Beyond the limited justification provided in the consultation paper, we are unaware of the current drafting being a barrier to considering joint sectoral impacts. For example, AEMO, the AEMC and the Reliability Panel have explicitly considered the relationships between gas and electricity market price caps recently. AEMO's ISP and reliability assessments are also evolving to consider more sophisticated cross sectoral linkages. In the case of the ISP this includes emissions and supply effects from adjacent sectors like transport.

Amendments to recognise “energy” gives rise to complications identified in the paper, namely whether this applies to consumption or production (or both). These amendments could give rise to unintended consequences and do not appear to further the primary aim of ensuring the appropriate treatment of emissions reduction.

**Question 7:** *What impacts (positive and/or negative) would the proposed change have on your organisation or your stakeholders/customers?*

- a) *What are these instances/processes and what sort of content would you want to be included in this guidance?*
- b) *Do you foresee any unintended adverse consequences coming from such a change, especially for market participants or consumers?*

In line with our comments above, the consultation paper highlights several examples where AEMO is already jointly considering gas and electricity impacts, illustrating that there does not appear to be a problem with the current drafting.

We question the consultation paper’s statement that “the laws do not currently acknowledge gas as a transition fuel”<sup>5</sup>. While there are ongoing discussions around the roles of gas (as well as coal) on the basis of reliability and emissions impacts, it is not clear why statements on specific technologies or fuel types should feature in the laws, nor what positive effects this would have.

EnergyAustralia has been active in all market reform consultations dealing with reliability outcomes. These discussions have appropriately enlivened considerations of the emissions impacts of different technologies, in addition to their cost and reliability contributions. Prior to ministers deciding to implement a “Capacity Investment Scheme”, the ESB was seeking explicit government guidance around emissions objectives to inform its deliberations around the need for, and potential design of, a capacity mechanism. The implementation of any federal or state-based investment targets will still need to account for the effect of different technologies will have on the operation of existing fossil fuel generators and hence electricity sector emissions. Corresponding interventions to ensure the stable, managed exit of coal generation will similarly need to be designed with emissions objectives in mind. Governments seeking to implement or influence the design of resource adequacy incentives may wish to give further explicit direction regarding emissions, beyond the targets that would be captured in the proposed objectives amendments. Otherwise, the proposed objectives should be taken as providing market bodies the ability to decide on this themselves, without the need for further government guidance.

Another area relating to emissions as well as cross-sectoral impacts is the AER’s assessments of access arrangements by regulated gas networks. The AER’s decisions on approved capital and operating expenditures and depreciation schedules for gas networks could be better framed against interim and sectoral emissions profiles, including for large industrial users where electrification may be a more expensive option. The AEMC’s administration of associated gas rules could also be affected, primarily where the rules ‘lock in’ asset values for regulated business in spite of, and potentially worsening, the negative customer outcomes associated with the inevitable stranding of fossil fuel assets. In this instance, the amendments to the

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<sup>5</sup> Page 8.

energy objectives may help the AER and the AEMC, however the management of gas network stranding and broader electrification requires comprehensive transition strategies from governments. For example, government clarity is required to manage complex issues around safety and prudent maintenance practices, the extent of any support for biogas or hydrogen as substitutes, price support for vulnerable customers and for industrial customers that cannot feasibly electrify.

Questions on 'supply of energy'

**Question 8:** *Do you consider the additional change to 'supply of energy' is necessary given the reasons above?*

As per our response to question 6, we do not support this amendment.

**Question 9:** *Do you agree that the market bodies, when making a decision under the NEL/NER should be empowered to consider the implications for price, reliability, security etc. in the gas market and vice versa? If not, what are other ways of managing the potential implications of the transition on all energy consumers?*

As per our responses to questions 6 and 7, market bodies already appear to be empowered to consider joint sectoral impacts.

**Question 10:** *Do you foresee any unintended adverse consequences coming from such a change, especially for market participants or consumers?*

We cannot identify unintended consequences at present however the proposed amendments create this risk and without delivering any benefits that we can see.

### Section 3.5 Consequential changes

**Question 11:** *Do you have views on other consequential changes that might be required for the NEL, NGL or NERL as part of implementing the emissions reduction component?*

We have not identified the need to make consequential amendments to any of the energy laws.

**Question 12:** *Are there existing rules or regulations under the national energy laws that may require consideration of consequential changes? If so, please provide details including why consequential changes are envisaged as necessary or appropriate.*

Similar to our response to question 11, we have not identified the need to make consequential amendments. To the extent any energy rules require amendment, this should be left to the

AEMC to administer under normal rule change processes which would be conducted in light of the amended law objectives.

**Question 13:** *Do you have views on any rules that would benefit from a concurrent change within the current Bill process? If so, please provide details of the changes and the reasons why they would benefit from a concurrent change.*

As above, we do not consider there is a need to make concurrent amendments.

**Question 14:** *Do you have views on/are you aware of any rules that might benefit from more explicit reference to the objectives as a whole, or specifically the emissions reduction component?*

As above, we do not consider there is a need to make concurrent amendments.

### **Section 3.6 Commencement and transitional arrangements**

**Question 15:** *Do you agree with the proposed Proclamation date being six months after passage through the South Australian Parliament?*

We do not have a preference regarding the need to accelerate or delay the timing of these changes. A period of six months seems sufficient time for market bodies and participants to prepare in relation to processes that commence after the date of amendments.

**Question 16:** *What are your views on the proposed transitional arrangements in the Draft Bill?*

- a) *Are there particular processes that should be subject to different transitional arrangements?*
- b) *How or where should arrangements for these specific processes be prescribed – in the primary legislation or through a subordinate instrument?*

We agree that AEMC reviews on foot at the time of the commencement date may benefit from having the new objectives apply, and that this should be at the discretion of the AEMC.

**Question 17:** *What already-commenced regulatory processes under the energy laws or rules might benefit from transitional arrangements that provide for the emissions reduction component to apply (i.e. automatically and not be subject to market body discretion)?*

- a) *Should business-initiated processes such as RIT-Ts and RIT-Ds be captured, rather than just market body processes?*



Generally speaking, we consider that processes which have already commenced at the time the objectives are amended should continue to be assessed under the 'old' objectives. As above, the exception to this would be where the AEMC considers it is feasible to introduce the new objectives into any broad-ranging market reviews already being completed, for example under sections 41 and 45 of the NEL. There should not be any automatic or other prescribed application under transitional arrangements.

We note that Regulatory Investment Test (RIT) assessments are specifically mentioned in the consultation paper, which seems to pre-empt the introduction of emissions reduction as a new category of market benefit. This issue was considered in the context of transmission planning assessments by the AEMC, who noted that the approach of modelling the NEM in the presence of a carbon constraint already implicitly reflects the value of carbon abatement.<sup>6</sup> Following from this, introducing carbon abatement as a new market benefit into ISP and all associated RIT-T assessments would require a material change to AEMO's existing approach and that adopted by TNSPs, which would introduce uncertainty or additional complexity in ensuring that modelled outcomes were consistent with long-term emissions reduction targets. We would not support this approach. In addition, any process involving the explicit valuation of carbon would likely be a contentious exercise in the Australian policy context, requiring comprehensive stakeholder engagement. This should be at the discretion of market bodies in providing guidance, rather than something prescribed in transitional amendments.

**Question 18:** *Should market bodies be afforded a broad discretion to decide when to apply the amended objective to a process that is 'underway'?*

As above we do not see any compelling reasons to capture processes already on foot under the amended objectives. Allowing the AEMC to consider this in the case of market reviews reflects more that individual participants or regulatory determinations (including rule changes) should be assessed from commencement of the changes, including any guidance issued by the market bodies.

**Question 19:** *Are there logical points in multi-stage and/or multi-year processes (e.g. RIT-T and RIT-D assessment processes and revenue determination processes/resets) after which the emissions reduction component should or should not be able to be applied?*

- a) *Should a RIT-T process be considered 'underway' when a project specification consultation report has been made available (clause 5.16.4(c)), or at a different stage?*
- b) *Should a RIT-D process be considered 'underway' when an options screening report or determination has been published (clause 5.17.4(b) and (c)), or at a different stage?*
- c) *Electricity – should a revenue determination/reset be considered 'underway' when the network service provider has submitted its initial revenue proposal (clause 6A.10.1 for transmission and clause 6.8.2 for distribution), or at a different stage?*
- d) *Gas – should a gas access arrangement process be considered 'underway' when an access arrangement proposal is lodged with the AER under rule 46(1A) in the NGR, or at a different stage?*

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<sup>6</sup> [Transmission Planning and Investment Review - Stage 3 Draft report \(aemc.gov.au\)](#) – See Appendix B.

As above we do not consider specific transitional provisions are necessary or will deliver any benefit, particularly in relation to RIT-T assessments that already adopt explicit carbon budgets in their cost benefit modelling constraints. In principle, any process that is initiated by a regulated entity should be assessed in light of the legal provisions that are in place at the time it is commenced.

## Chapter 4: Application by market bodies of the proposed changes

**Question 20:** *Do you agree with the characterisation of how market bodies' decision processes might be impacted or changed as a result of inclusion of an emissions reduction component in the energy objectives?*

As above, we disagree with the expectation that AEMO should or would wish to introduce a new category of market benefit in the ISP, given its existing modelling approach already explicitly constrains outcomes to the emissions reduction targets in the CCA, as well as various other targets in commonwealth and jurisdictional legislation.

It should be further noted that ISP and similar integrated modelling exercises have the benefit of being able to capture the entirety of a sector whereas other decisions, particularly those of the AER and AEMC, affect only a subset of market participants, making it difficult to reconcile to emissions reduction targets in aggregate. Hence there may be instances where a monetised value of emissions is required. Should market bodies go into this level of quantitative detail, it would need to be the subject of guidance or method papers as noted under question 3. Our expectation is that the AEMC would not necessarily seek to factor an explicit carbon value into its assessments of costs and benefits of rule changes, which tend to be more qualitative.

As per our response to question 17, further consideration should be given to the AER's assessment of expenditure proposals of gas networks. An unintended consequence of pricing carbon might be to justify continued replacement and maintenance expenditure as this lowers the rate of methane leakage, particularly when measured over the long technical lives of pipeline assets. Such continued spending in the absence of feasible alternative gas fuel sources or sizable offsets would, however, conflict with the need to cease all gas consumption by 2050 in line with emissions reduction targets.

**Question 21:** *Do you have any concerns with regards to the impact an emissions reduction component in the energy objectives may have in broadening the scope of the AEMC's rule making power or the decision-making powers of the other market bodies under the laws and rules?*

The powers and functions of the AEMC and other market bodies are already appropriately defined in the laws and rules. The addition of an emissions element in the objectives does not appear to change this.