



COAG Energy Council

# COAG Energy Council

Senior Committee of Officials

## AEMC Governance legislative amendments

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Explanatory note for stakeholder consultation

2017

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## 1. Introduction

The COAG Energy Council's Senior Committee of Officials (SCO) has released for consultation a draft Bill - the *Australian Energy Market Commission Establishment (Governance) Amendment Bill 2017*. This Bill relates to Australian Energy Market Commission (AEMC) governance changes and makes amendments to the *Australian Energy Market Establishment Act 2004* of South Australia (the AEMC Establishment Act).

In December 2014, the Energy Council initiated a Review of Governance Arrangements for the Australian Energy Markets (the Review) to consider the structure, scope and mandate of the three energy market bodies and the role, operation and responsibilities of the Energy Council.

The Review recommended a number of improvements that could be made, most of which the Energy Council accepted in its published response of December 2015. Included in those recommendations were a number of reforms relating to the AEMC.

The following provides some background on each of the proposed amendments for the purpose of consultation.

### 1.1. Consultation

SCO encourages stakeholders to provide feedback, preferably through a written submission, on the draft Bill. Where possible, SCO will publish submissions on the COAG Energy Council's website. If the submission contains confidential information (or a confidential attachment) please make this clear in writing what should or should not be published.

Submissions are requested to be provided by **Monday 19 June 2017**.

For more information, please contact the COAG Energy Council Secretariat by:

- e-mail: [energycouncil@environment.gov.au](mailto:energycouncil@environment.gov.au)
- phone: (02) 6274 1668
- web: <http://www.coagenergycouncil.gov.au/contact-us/contact-us>

## 2. Proposed amendments - background

The amendments contained in this Bill operate to alter the existing governance structure of the AEMC. The AEMC is the rule maker for Australian energy markets – it makes and amends the detailed rules for the National Electricity Market (NEM) and elements of natural gas markets. The AEMC also provides support strategic and operational advice to the Energy Council.

The AEMC is established as an independent organisation under the AEMC Establishment Act. Amongst other things, the AEMC Establishment Act sets out:

- the required composition of the AEMC;
- the manner in which appointments to the Commission are made; and
- the way formal decisions of the Commission are executed.

## 2.1. The number of Commissioners

The AEMC Establishment Act currently provides that the AEMC is to consist of three Commissioners, inclusive of the Chairperson. The Review recommended that the total be increased from the existing three to five. In making that recommendation, the Review reflected on the possible increase in workload which the AEMC could be expected to undertake into the future.<sup>1</sup> The Council agreed to this recommendation.

The Review also noted stakeholder concerns about the diversity of the background and experience of the existing AEMC governance structure and potential issues with respect to adequate succession planning. The ability to appoint up to five Commissioners to the AEMC will allow more effective succession planning, in addition to addressing concerns related to diversity and increased workload.

Clauses 5 and 6 of the Bill (amending sections 12 and 13 of the AEMC Establishment Act) will allow a change to the composition of the AEMC by increasing the *possible* membership from three to up to five members. Consistent with the existing structure, the amendments will also ensure the AEMC will comprise no less than three AEMC Commissioners at all times. That is, the AEMC should always have three appointed Commissioners, but the Council may also choose whether or not to appoint up to five Commissioners.

The amendments ensure appointment of a Commissioner will be required if the office of an existing Commissioner becomes vacant, but only if the composition of the Commission falls below three. If, for example, a fourth or fifth appointed Commissioner completes a term of office, the amendments will not require those positions to be filled. The Council may, of course, elect to make further appointments if it wishes the composition of the AEMC to remain at four or five Commissioners.

## 2.2. The appointments process

The Act currently requires each of the three Commissioners to be appointed under different protocols, as follows:

- One Commissioner is appointed on the basis of the nomination of the Commonwealth Minister who is a member of the Energy Council;
- The Chair and one Commissioner is appointed based on the nomination of Ministers of the States and Territories who are members of the Energy Council.

Clause 5 of the Bill alters these arrangements to ensure that for any prospective appointment (of the up to five Commissioners) agreement of at least two-thirds (rounded up) of participating jurisdictions of the Council would be required.<sup>2</sup>

This change is being made on the recommendation of the Review, which noted that the split in responsibility for appointment of Commissioners between State and Federal governments reflected

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<sup>1</sup> See p92 of the Review of Governance Arrangements for Australian Energy Markets Final Report dated October 2015, and Chapter 6 generally.

<sup>2</sup> Similar changes are reflected in clause 7 of the Bill, for the purposes of appointing an *acting* Chairperson or Commissioner – i.e. in such case that an existing appointee is unable to perform their official functions.

the history of the development of the market institutions. The Review considered that it was appropriate to dispense with this historical artefact given the AEMC and the energy market had matured since that the initial establishment of the AEMC. The Council agreed to this recommendation.

### **2.3. Meetings of the AEMC**

Under the existing structure of the AEMC Establishment Act, formal decisions of the Commission are made in meetings which are convened by the Chairperson.

Given the existing three Commissioner structure of the AEMC, a meeting quorum consists of the Chairperson and one other Commissioner. A formal decision made during a meeting is one in which at least two Commissioners concur.

In making changes to the number of Commissioners, it is considered appropriate to ensure the meeting quorum and decision making balance remains the same no matter whether three, four or five Commissioners are appointed. Clause 8 of the Bill therefore operates to change the quorum and decision requirements of the AEMC depending on the number of appointed Commissioners at any given time.

In the case of a three Commissioner structure, the quorum requirements will remain unchanged at two Commissioners (inclusive of the Chairperson). If four or five Commissioners are appointed, the meeting quorum requirements increase to three Commissioners (inclusive of the Chairperson). No matter the number of appointed Commissioners, the amendments will ensure that a decision is carried by a simple majority of votes, except in the case of a split of two versus two, in which case the vote of the Chairperson will carry a motion.

## **3. Issues for consultation**

In providing the draft Bill for comment, SCO is seeking feedback on the provisions as they are drafted. Specifically, SCO is seeking comments from stakeholders on whether the amendments will raise any practical implementation concerns with respect to the effective governance of the AEMC.