



#### INTRODUCING A MINISTERIAL POWER TO MAKE RULES RECOMMENDED BY THE ENERGY SECURITY BOARD AND APPROVED BY THE COAG ENERGY COUNCIL

In delivering the Independent Review into the Future Security of the National Electricity Market-Final Report ('the Finkel Review') in June this year, Australian Chief Scientist, Dr Alan Finkel AO, emphasised the importance of good governance and ensuring there is a coordinated approach from energy market bodies to the rapidly changing National Electricity Market (NEM).

A key recommendation of the Review was the establishment of the Energy Security Board (ESB), comprised of the Australian Energy Market Commission (AEMC), Australian Energy Market Operator (AEMO), and Australian Energy Regulator (AER), with independent Chair and Deputy Chairs.

COAG Energy Ministers also agreed that there was a need to provide a mechanism to allow for the timely implementation of the Board's recommendations.

#### ***Establishment of the Energy Security Board***

The COAG Energy Council has established the ESB as a non-statutory body. This approach has been undertaken to enable it to begin performing its functions as soon as possible within the existing statutory framework. The ESB will be accountable to the COAG Energy Council, referred to as the MCE in the Energy Laws.

The ESB will be responsible for the implementation of the national reform blueprint, as articulated in the final report, as well as providing whole-of-system oversight of the security and reliability of the NEM and be integral in improving long term planning, with clear strategic direction provided by the COAG Energy Council.

Its operations will be reviewed at the end of three years.

#### ***Energy Security Board Terms of Reference***

As a non-statutory authority, the ESB will not be established in Law. The ESB will be governed by a Terms of Reference, as issued by the COAG Energy Council. These Terms of Reference are still being finalised, however a working draft has been provided as part of this consultation process to assist in stakeholder consideration of the draft legislation.

#### ***Rule Making Power***

The *Statutes Amendment (National Energy Laws) (Rules) Bill 2017 ("the Bill")* establishes a mechanism by which a proposed Rule recommended by the ESB, once it has the unanimous support of the COAG Energy Council, can be made by the South Australian Minister for Mineral Resources and Energy under the National Electricity Law (NEL), National Energy Retail Law (NERL) or National Gas Law (NGL), as appropriate.

In the case of the NERL, the Minister's Rule making power only extends to the making of Rules that are necessary or consequential to the making of Rules under the NEL or NGL, as contemplated by this Bill. This is recognition that the matters on which the ESB will deliberate will most likely fall within the ambit of the NEL or NGL.



## **Proposed Amendments**

### ***Definition of Energy Security Board***

In accordance with the recommendations of the Finkel Review, the ESB is a non-statutory authority, and is therefore not established under Law.

It is defined in the Bill as *"a Board established by the MCE on XX/YY/ZZ (a date to be confirmed) to provide the MCE with advice for the purposes of-*

*(a) whole-of-system oversight for energy security and reliability of national electricity system; and*

*(b) improving long-term planning in the national electricity market".*

As a non-statutory authority, the above definition serves to provide certainty as to the identity of the Board and its functions insofar as it relates to the Minister's ability to make Rules under the proposed head of power.

### ***South Australian Minister may make Rules on recommendation of MCE and Energy Security Board***

In order for the Minister to make a Rule, the Bill prescribes several statutory requirements which any proposed Rule must meet.

1. The proposed Rule must be in connection with energy security and reliability or long-term planning for the NEM, or in the case of Rules under the NGL, may also be in relation to investment in, and operation and use of, natural gas services.

2. The ESB is satisfied that the proposed Rule meets the relevant legislative Objective, namely, the National Electricity Objective, National Energy Retail Objective or National Gas Objective, as relevant. This ensures the ESB applies the same Rule making test as the AEMC applies in its making of Rules.

3. The Rule must have been the subject of consultation, in accordance with any MCE requirements.

Once recommended by the ESB, that Rule must receive the unanimous support of MCE Ministers. The MCE can then recommend that Rule be made by the South Australian Minister.

This Rule making power will only exist for as long as the ESB is in existence.

### ***AEMC may vary or amend Rules once made***

Once made by the Minister, a Rule made under these new provisions becomes indistinguishable from all other Rules over which the AEMC has jurisdiction. For the avoidance of doubt, this is expressly allowed for in this Bill.

### ***Special provisions for the Northern Territory as a non-interconnected jurisdiction***

Provision is made in the Bill to account for the Northern Territory's non-interconnected electricity systems by enabling the Minister to make a *"differential Rule"* which would apply to a *"local electricity system"*, both defined



terms. This is not applicable to any other NEM jurisdiction.

#### ***Other amendments to the NEL, NERL and NGL***

This Bill makes two further amendments across each of the Energy Laws, unrelated to the ESB. For reasons of timing, they have been included here:

1. *Publication of a non-controversial or urgent final Rule determination.*

The *Review of Governance Arrangements for Australian Energy Markets*, known as the Vertigan Review, recommended that where a Rule change request is considered non-controversial or urgent, the period of time within which the final Rule must be published be changed from the current six weeks to eight weeks.

Recommendation 7.8 of the Finkel Review recommended this Rule change be implemented. It is proposed this change be made across each of the NEL, NERL and NGL.

2. *Minor amendment to definition of National Gas Rules under the National Gas Law*

This corrects a minor drafting issue.

#### **Issues for stakeholder consideration**

Stakeholders are encouraged to review and comment on all aspects of this draft Bill, including any further prescription or clarity that may be required noting that the Terms of Reference for the ESB, to be issued by the COAG Energy Council, will provide greater detail with respect to process or administrative matters.

Agreement by the Senior Committee of Officials (SCO) to release the draft Bill for public consultation is not to be taken as endorsement of policy positions in the Bill by SCO.

Stakeholders are asked to consider the following questions in their feedback:

1. Does the proposed mechanism for the making of Rules by the Minister deliver the desired outcome of timely implementation of the Energy Security Board's recommendations?
2. Is the mechanism for the proposed Rule making process sufficiently robust by requiring a Rule be recommended by the ESB and MCE before it can be made by the Minister?
3. Does this Bill deliver on the intention that Rules made by the Minister utilising this power become indistinguishable from all other Rules over which the AEMC has jurisdiction?
4. Is it clear that the ESB will be required to apply the same rule making test as the AEMC in its making of Rules utilising this process?
5. Are there any changes to the draft Bill that you consider may better deliver on the desired outcome?

Stakeholders are invited to provide written submissions by close of business (AEST) on **Friday 29 September 2017**.

All stakeholder submissions will be published on the Energy Council website unless stakeholders have clearly indicated that a submission should remain confidential,



either in whole or in part.

Electronic submissions are preferred and can be sent to  
the Energy Council Secretariat at:

[energycouncil@environment.gov.au](mailto:energycouncil@environment.gov.au).

Those who wish to provide hard copies by post may do  
so by addressing their submissions to:

COAG Energy Council Secretariat  
GPO Box 787  
Canberra ACT 2601