



ESB RULE RECOMMENDATION PROCESS GUIDE

Context

- The Energy Security Board (ESB) was established by the COAG Energy Council in August 2017 as a non-statutory body, responsible for implementation of the Finkel Review recommendations and to provide whole of system oversight for energy security and reliability.
- The *Statutes Amendment (National Energy Laws) (Rules) Act 2018* established a mechanism by which a rule recommended by the ESB to the COAG Energy Council can be made by the relevant South Australian Minister under the National Electricity Law (NEL), National Energy Retail Law (NERL) or National Gas Law (NGL).¹
- The ESB may only make a rule recommendation if:
 - the recommendation is in connection with:
 - energy security and reliability of the NEM (or local electricity system) or long-term planning for the NEM (or local electricity system); and
 - for recommendations made under the NGL, the investment in, and operation and use of, natural gas services;²
 - the ESB is satisfied that the recommended rule is consistent with the national electricity objective, national energy retail objective or national gas objective (as applicable); and³
 - the ESB has undertaken consultation on the recommended rule in accordance with any requirements determined by the COAG Energy Council.⁴
- COAG Energy Council may ask the ESB to develop rule recommendations to give effect to written advice requested from the ESB or the ESB may choose to submit rule recommendations to complement written advice requested by the COAG Energy Council.
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Purpose of this guide

- The purpose of this Guide is to set out the process the COAG Energy Council expects the ESB to follow in making rule recommendations to Ministers, including the requirements for consultation on rule recommendations made by the ESB, so that stakeholders understand how they can participate in the ESB's processes.

ESB rule change recommendation process

Set out below is the process the ESB will follow in making a rule recommendation to COAG Energy Council.

1. The process outlined below relates to rule recommendations initiated by COAG Energy Council or within the ESB. Proponents of rule change requests are asked to submit their rule change proposal to the Australian Energy Market Commission (AEMC) who is required to consider all rule changes proposed to it, subject to limited exceptions, under the national energy laws.

¹ ss. 90F of the NEL, 238B of the NERL and 294G of the NGL.

² ss. 90F(4)(a) of the NEL, 238B(3)(a) of the NERL and 294G(3)(a) of the NGL.

³ ss. 90F(4)(b) of the NEL, 238B(3)(b) of the NERL and 294G(3)(b) of the NGL.

⁴ ss. 90F(4)(c) of the NEL, 238B(3)(c) of the NERL and 294G(3)(c) of the NGL.

2. The ESB must notify the COAG Energy Council that it intends to commence public consultation on a proposal to make a rule recommendation under the NEL/NERL/NGL, which may include a forward notice of extended time for making the rule recommendation.
3. Within [10] business days following the date of the notification, the ESB must release a consultation paper that:
 - includes a draft of the proposed rule/s;
 - describes the issues that the rule is intended to address and the rationale for the proposed solution;
 - explains how the proposed rule is consistent with the NEO/NERO/NGO and with one or more of the high-level outcomes set out in the Strategic Energy plan;
 - includes information on any other options considered, but not included for consultation together with an explanation of why there were not included.
 - invites stakeholders to make written submissions on the proposal within the public consultation period.
4. The public consultation period should be for a minimum of four weeks from the date of release of the consultation paper.
5. The ESB may, but is not required to, undertake informal consultation during the consultation period, including stakeholder forums and meetings.
6. Following the close of the public consultation period the ESB must, in accordance with its terms of reference, vote on whether to make a rule recommendation to the COAG Energy Council and on the form and contents of that recommendation.
7. Within [4] weeks following the close of the public consultation period, the ESB must:
 - make a rule recommendation to the COAG Energy Council; or
 - notify the COAG Energy Council that the ESB will not be making a rule recommendation in respect of the proposal; or
 - notify the COAG Energy Council that it is extending the time for making a rule recommendation due to the complexity or extent of issues raised in submissions or a material change in circumstances. The extension of time must be no longer than [4] weeks unless the Chair of the Senior Committee of Officials otherwise agrees.
8. If the ESB makes a rule recommendation, the recommendation decision paper must include:
 - the final rule;
 - details of the consultation conducted;
 - an explanation of the issues that the rule is intended to address and the rationale for the proposed solution;
 - information on the ESB's consideration of the costs and benefits associated with the proposed rule;
 - a summary of submissions made and how those submissions have been taken into account in the final rule and supporting policy position;
 - a description of how the proposed rule is consistent with the NEO/NERO/NGO and with one or more of the high-level outcomes set out in the Strategic Energy Plan;
 - whether the ESB's decision to make the recommendation was unanimous;
 - whether any member of the ESB was unable to participate in the decision due to a conflict of duty or interest;
 - if the ESB's decision to make the recommendation was not unanimous then a brief statement of the member's reasons for not agreeing to the recommendation.
9. If the ESB decides to notify the COAG Energy Council that it is not making a rule change

recommendation in respect of a proposal that notice must include the ESB's reasons for that decision.

10. As soon as practicable after notifying the COAG Energy Council under step 7 above, and with agreement of the Chair of the Senior Committee of Officials, the ESB must publish the documents provided to the COAG Energy Council on its website.