

Review of Governance Arrangements for Australian Energy Markets – Table of Responses

Chapter 2 (COAG Energy Council, SCO and working groups)

Recommendations	COAG Energy Council response
2.1 That the Council, supported by SCO, change its meeting arrangements to enable a greater focus on energy matters of strategic importance.	Agree - The COAG Energy Council acknowledges the importance of providing a greater focus on energy matters and energy market reform and has already taken steps to address this.
2.2 That the focus of the work of the Council be the determination of strategic direction and the associated work programme to support this direction, with appropriate assignment of tasks to SCO and the AEMC.	Agree – The COAG Energy Council is the appropriate forum to determine the strategic direction and specification of specific priorities and work plans flowing out from these priorities. The introduction of robust new processes will ensure the Energy Council employs a greater strategic role and greater effective operational requirements.
2.3 That SCO be charged with the responsibility to present to the Council for consideration recommendations on strategic direction and a supporting work programme. The AEMC should be charged with the responsibility for aiding the development of this advice.	Agree – The COAG Energy Council recognises that the AEMC plays an important role in developing advice on strategic priority setting and associated work plans. The AEMC’s advice will be provided to SCO for consideration. SCO will make an assessment on the advice provided by the AEMC and advise the COAG Energy Council accordingly. SCO and AEMC will work collaboratively to develop the new work plan.
2.4 That the Council formally delegate the management of the work programme to SCO, including for the provision of reports on its progress.	Agree – The COAG Energy Council agrees to delegate management of the work programme to SCO. SCO will undertake more of the operational processes therefore allowing COAG Energy Council to focus on strategic direction and priorities of the market.
2.5 That SCO be supported by an expanded secretariat located within the Australian Government Department of Industry, Innovation and Science and that the secretariat includes a small number of appropriately qualified officers seconded from Australian Government and state and territory jurisdictions.	Noted – It is noted that the COAG Energy Council Secretariat may require more resources to support the expanded roles of the Energy Council and SCO. Further consideration of this matter is necessary prior to pursuing any kind of decision.
2.6 That the Council, SCO and the individual institutions each develop arrangements to ensure effective consultation with relevant stakeholders, including other institutions.	Agree – The COAG Energy Council understands the need to engage in effective consultation and will take steps to strengthen consultation where appropriate. It is appropriate for AER, AEMC, and AEMO to also respond to this recommendation. The Energy Council will continue to improve its engagement with stakeholders as a priority.
2.7 That the transparency of the activities of the Council be greatly enhanced through its website, improved communication tools and other	Agree – The COAG Energy Council’s website is currently being updated to ensure the information is better targeted and accessible.

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appropriate forums.	The COAG Energy Council is working on improving the transparency of its activities and as a priority is looking to improve the accessibility of its website.
2.8 That the working groups under SCO be given a sunset date of 31 December 2016, and that all groups which have not been formally renewed or re-established by that date through a resolution of the Council, or by delegation, be abolished.	<p>Agree – The COAG Energy Council recognises the need to urgently streamline the number, scope and duration of officials groups, and supports the mechanism of abolishing all working groups and only re-establishing those that are required to support a clear legal or technical requirement. It further considers that time limited project teams should be generally used in preference to enduring working groups.</p> <p>The Council notes SCO has already commenced this rationalisation, and considers this action should be completed well before its mid-2016 meeting, rather than waiting the 12 months recommended.</p>
2.9 That jurisdictions be permitted to implement derogations from otherwise nationally agreed agreements only if the derogation is targeted and time-limited and contains a commitment for re-evaluation against a ‘necessity principle’.	<p>Noted – The COAG Energy Council recognises the importance of consistent national arrangements in terms of reduced regulatory compliance costs.</p> <p>The COAG Energy Council is committed to a national energy framework. Harmonisation of nationally agreed arrangements should be pursued where possible.</p>

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Chapter 3 – Australian Energy Market Commission (AEMC)

Recommendations	COAG Energy Council response
<p>3.1 The AEMC’s mandate should be revised to include an obligation to prepare a major policy paper every three years containing advice on strategic direction, policy priorities and a work programme. Included in this advice would be a comprehensive review of the rules as a whole to help inform this process. This review should be directed at advising whether the rules are consistent with the strategic priorities, are fit for purpose and are not impeding beneficial and innovative developments in energy markets. In the intervening years, this document should be updated annually to address any major unanticipated changes in the market and advise on their implications for the strategic priorities and facilitate timely adjustments to the work programme. In its discharge of these tasks, the AEMC should demonstrate substantive engagement with all relevant stakeholders, including the AER, AEMO, other relevant institutions, industry participants and consumers.</p>	<p>Agree – The COAG Energy Council considers that this recommendation brings forward an intriguing concept and agrees that it is important that the rules are monitored to ensure their effectiveness.</p> <p>The COAG Energy Council tasks SCO to work with the AEMC to consider a holistic review on the rules to ensure potential benefits are realised.</p> <p>The AEMC will be tasked with providing targeted strategic advice in energy market strategy and priority setting to the COAG Energy Council through SCO.</p> <p>These new obligations will assist SCO in setting strategy and determining current priorities and looks forward to receiving the first of this advice.</p> <p>In undertaking this task, the Energy Council expects that the AEMC will engage meaningfully with all stakeholders.</p>
<p>3.2 A ‘gateway test’ process should be developed by the AEMC in conjunction with stakeholders for Council consideration.</p>	<p>Agree – The COAG Energy Council notes that the intention of a ‘gateway test’ is to give the AEMC a mechanism at the earliest opportunity to organise rule changes and reviews in order of priority against strategic priorities. This would allow the AEMC to focus their resources on the most pressing matters.</p> <p>The COAG Energy Council notes that this gateway test should not dilute the Energy Council’s commitment to the open standing rule change regime.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to the priorities of the day and improve overall timeliness.</p>
<p>3.3 A mechanism should be put in place for terminating rule change processes which are underway but no longer necessary. As with the gateway test, the AEMC should develop a proposal on a workable mechanism for the Council’s consideration.</p>	<p>Agree – The COAG Energy Council agrees to the establishment of a mechanism to terminate rule change processes if they are no longer consider relevant or fit for purpose.</p> <p>It essential that this should be on a case-by-case basis and that affected stakeholders will need to be closely consulted and that the process should be transparent and accountable.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to the priorities of the day and improve overall</p>

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	timeliness.
3.4 The AEMC should develop a staged review process proposal for broad and complex reviews, for consideration by the Council.	<p>Agree – The COAG Energy Council agrees to the AEMC developing a staged review process proposal for broad and complex reviews, for consideration and endorsement by the Council.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to the priorities of the day and improve overall timeliness.</p>
3.5 The AEMC should develop a single-step review process proposal for reviews dealing with specific or contained issues, for consideration by the Council.	<p>Agree – The COAG Energy Council agrees that the AEMC should develop a single-step review process proposal for reviews dealing with specific or contained issues, for consideration and endorsement by the Council.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to the priorities of the day and improve overall timeliness.</p>
3.6 The AEMC should implement an expedited rule change process for less complex rule changes, and changes should be made to the national energy laws to allow for an increased time-frame range of six to eight weeks for the process.	<p>Agree – The Energy Council agrees that the AEMC should implement expedited rule-change process for less complex rule changes, and changes should be made to the national energy laws to allow for an increased timeframe range of six to eight weeks for the process in consultation with SCO.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to the priorities of the day and improve overall timeliness.</p>
3.7 The AEMC should publish regularly updated timeliness performance metrics on its website, together with reasoned explanations for decisions involving significant time extensions.	<p>Agree – The COAG Energy Council recognises that this has an implication for AEMC resources. However, the Energy Council expects that timeliness information on performance metrics on the AEMC’s website and an explanation on the timelines will increase stakeholder engagement and address concerns on the timeliness of AEMC rule changes and reviews.</p> <p>The Energy Council expects that the AEMC will work with SCO to realise this recommendation.</p> <p>As part of the suite of recommended changes to the AEMC, the COAG Energy Council expects that the final result of these changes will streamline AEMC operations and better focus the AEMC’s resources to</p>

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	the priorities of the day and improve overall timeliness.
3.8 The AEMC should implement and publish best practice guidelines for its regulatory processes.	<p>Agree – The COAG Energy Council agrees that the AEMC should implement and publish best regulatory practice guidelines for its processes.</p> <p>The Energy Council expects that the AEMC will work with SCO to realise this recommendation.</p> <p>The implementation and publication of best regulatory practice guidelines for AEMC processes will enhance stakeholder confidence in the work of the AEMC.</p>
3.9 The AEMC should put in place a formal mechanism to enable stakeholders to require the AEMC to sign off on the final guidelines or procedures if they have arisen from an AEMC process, to ensure that they meet the original intent.	<p>Not supported –The COAG Energy Council recognises that it is important that there is clarity for the AER and AEMO as to the objectives and intent of the guidelines and procedures that they are required to develop under the Rules, so that stakeholders can be confident that the intent of the Rules is clear and will be applied. However, the AEMC can provide the AER and AEMO with guidance through the Rules about the objectives and factors, in addition to the NEO, NGO and NERO, to consider when developing guidelines and procedures. Given the respective roles of the AER (economic regulation and compliance) and AEMO (market operation and transmission planning) as distinct from the AEMC (rule making), it is appropriate that they are accountable for the guidelines and procedures they are required to develop under the Rules to fulfil their roles. The COAG Energy Council also notes that if a stakeholder considers that the AER or AEMO should be provided with more or different objectives for the development of guidelines or procedures they can submit a rule change proposal to the AEMC for consideration.</p>
3.10The AEMC should implement a ‘clock-start’ provision for rule change processes to improve their accountability. The AEMC would retain the ability to extend time frames for most of the steps for rule change requests by announcing an extension before the expiry of the time frame.	<p>Not Supported – The COAG Energy Council understands the principle behind recommendation 3.10, but considers that the same outcome can be achieved by the AEMC being more transparent about their timeframes as per recommendation 3.7.</p>

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Chapter 4 – Australian Energy Regulator (AER)

Recommendations	COAG Energy Council response
<p>4.1 The AER should have full management and financial autonomy, which would be most effectively achieved by re-establishing it as a stand-alone regulatory body.</p>	<p>Noted – The COAG Energy Council is committed to ensuring the AER has the right structure, management, funding and culture for the roles the AER undertakes. This is especially important in light of the roles the AER undertakes in a fast-paced and complex environment. A burgeoning workload coupled with high stake outcomes, means that it is crucial that the governance arrangements do not impede the performance of the AER.</p> <p>The COAG Energy Council is cognizant that the structure of the AER attracts more scrutiny in regards to the relationship between its structural arrangements and its performance. It notes that the Review has said that AER would, on balance, be better served by becoming an entity separate from the ACCC. The COAG Energy Council notes that this is largely based on a first principles argument, and the views and perceptions of submitters from the consultation process, and is not necessarily based on an empirical assessment of the AER’s performance.</p> <p>Overall, the COAG Energy Council agrees with the Review that a case has been made for the COAG Energy Council to consider changing the AER’s structure.</p> <p>However, the COAG Energy Council considers that major changes to the AER’s structure could be a disruption to the energy market and may detract from the ability of the AER to operate effectively during a period of significant change within the industry.</p> <p>The COAG Energy Council wants to bring his debate to the right conclusion. In order to progress, the COAG Energy Council requires more analysis on the issues to be addressed and their linkages to structural concerns, options for structural change, analysis on the costs and funding models to resource the AER, and impacts of possible implementation.</p> <p>In particular, the COAG Energy Council requires better evidence for the assertion that a differently constituted AER would be more effective in meeting the long-term National Energy objectives, and whether there are alternative models to make more immediate improvement to the AER’s performance. SCO will be tasked to undertake this analysis.</p> <p>The COAG Energy Council notes that the arrangements for the structure of the AER were part of the AEMA. Therefore, any changes may have significant impacts on the AEMA and associated</p>

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Recommendations	COAG Energy Council response
	<p>legislation and agreements.</p> <p>Overall, the COAG Energy Council agrees with the Review and that a case has been made for the COAG Energy Council to consider changing the AER's structure. More work will be required before the COAG Energy Council can make a decision on this matter.</p>
4.2 The scope of the AER's responsibilities should remain as they are; that is, those currently conferred by the relevant statutes.	Agree – The COAG Energy Council broadly agrees with Recommendation 4.2. The COAG Energy Council reserves the ability to task the AER with new functions, in consultation with stakeholders, should the need arise.
4.3 Decisions on these recommendations should be made as early as realistically feasible to allow the AER Board to plan and manage the re-configuration of the organisation over a suitable period.	Agree – The COAG Energy Council broadly agrees with Recommendation 4.3.
4.4 The AER should be reviewed every three to five years by a panel of experts appointed by the COAG Energy Council. The experts should be collectively experienced in regulation and have in-depth knowledge of all sides of the relevant markets (consumers, industry and government).	<p>Agree – The COAG Energy Council agrees with Recommendation 4.4.</p> <p>The COAG Energy Council understands that the reviews envisioned in Recommendation 4.4 are designed to assist the AER in integrating learnings and improve its performance. They will be focused on whether the AER is making the best decisions it can and that it has the right capability, is using the best methodologies and is in short is the most useful and relevant regulator possible.</p>

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Chapter 5 – Australian Energy Market Operator (AEMO)

Recommendations	COAG Energy Council response
<p>5.1 That the role of AEMO as the market and systems operator be defined as:</p> <ul style="list-style-type: none"> • facilitating the operation of markets for energy; and • promoting the reliability and efficient operation of energy systems and markets. 	<p>Agree – The COAG Energy Council broadly agrees to Recommendation 5.1. The COAG Energy Council considers that AEMO, as market operator, has a fundamental role to play regarding security of supply issues and that this role should also be acknowledged for in AEMO’s role.</p> <p>The Council agrees that there is a need for more clarity around the role of AEMO in market development. The Council considers that AEMO should continue to have a role in market development given its specific market and system operation roles in electricity and gas. AEMO’s unique role enables it to provide important and strategic insights into market development issues which cannot be provided by other market participants.</p> <p>However, the Council recognises that it is important to ensure there is clarity around how it engages and commissions AEMO to provide advice on market development matters. The Council considers that this clarity can be provided through a clear statement of AEMO’s role (see 5.2 below).</p>
<p>5.2 That the Council issue an AEMO ‘statement of role’ which clearly specifies AEMO’s core role, and includes processes for accessing AEMO’s expertise in market and systems operations and the arrangements under which it is able to undertake other activities.</p>	<p>Agree – The COAG Energy Council agrees to Recommendation 5.2 and tasks SCO to create the AEMO’s Statement of Role in consultation with AEMO.</p> <p>The COAG Energy Council welcomes the opportunity to clarify AEMO’s role through a statement of role.</p>
<p>5.3 That all activities that AEMO undertakes outside its core role should be provided on a fee-for-service or other cost recovery basis and should, where feasible, be open to competition.</p>	<p>Agree – The COAG Energy Council agrees to Recommendation 5.3 and notes that current arrangements are already aligned with this principle.</p>
<p>5.4 That AEMO remain a not-for-profit company under the <i>Corporations Act 2001</i> and that the current mixed ownership model of 60 per cent government and 40 per cent industry is retained.</p>	<p>Agree – The COAG Energy Council agrees with recommendation 5.4.</p>

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Chapter 6 – Other Governance

Recommendations	COAG Energy Council response
6.1 That the membership of the AEMC be expanded from three to up to five members, with the chair and at least two other commissioners appointed on a full-time basis.	<p>Agree – The COAG Energy Council agrees with recommendation 6.1 subject to practical arrangements.</p> <p>The COAG Energy Council understands that the energy market landscape is rapidly changing and that the governance arrangements must keep up with the pace of change.</p> <p>The COAG Energy Council agrees with the Panel that it is important the AEMC have sufficient capacity amongst their Commissioners to fulfil their roles effectively. Increasing the number of Commissioners would allow a greater diversity of skills and experience to be brought on to the Commission and expansion of the number of Commissioners is welcomed by the Council.</p> <p>The Council recognises that the AEMC, unlike the AER, has not previously had full-time Commissioners other than the Chair. The recommendation for two full-time Commissioners in addition to the Chair could have significant organisational and management implications for the AEMC. The Council will work with the AEMC to consider these implications and make a decision in the first quarter of 2016 about the appropriate mix of full-time and part-time Commissioners amongst the five Commissioners.</p>
6.2 That one of the new full-time commissioners is assigned specific responsibility for stakeholder consultation relating to the recommended strategic development and review process.	<p>Agree – The COAG Energy Council considers that stakeholder consultation is a core function of the Commissioners’ duties and considers there is merit in assigning a lead Commissioner for this task.</p>
6.3 That the agreement of at least two-thirds (rounded up) of participating jurisdictions is required in order for the COAG Energy Council to recommend a person for appointment to a position (including chair) on the AEMC; that the appointments be for five years; and that reappointments be permitted.	<p>Agree – The COAG Energy Council agrees with recommendation 6.3 and notes that under current arrangements that AEMC Commissioners can be appointed for a period of up to five years and is eligible for reappointment.</p>
6.4 That appointments of commissioners to the AEMC continue to be made on the basis of a publicly available statement of the required skills and experience (as detailed in the body of this chapter); and that the Council has regard to succession planning in making appointments	<p>Agree – The COAG Energy Council agrees with recommendation 6.4.</p>
6.5 That the membership of AER be expanded from three to up to five members, with the chair and at least two other members appointed on a full-time basis.	<p>Agree – The COAG Energy Council agrees with recommendation 6.5 subject to practical arrangements.</p> <p>The COAG Energy Council understands that the energy market landscape is rapidly changing and that the</p>

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Recommendations	COAG Energy Council response
	<p>governance arrangements must keep up with the pace of change.</p> <p>The COAG Energy Council agrees with the Panel that it is important the AER have sufficient capacity amongst their Board members to fulfil their roles effectively. Increasing the number of Board members would allow a greater diversity of skills and experience to be brought on to the Board and the COAG Energy Council supports expanding the number of Board members.</p>
<p>6.6 That all members of the AER, including the chair, be appointed (or recommended for appointment, if the AER stays in the ACCC) by the COAG Energy Council with the agreement of at least two-thirds (rounded up) of the COAG Energy Council’s participating jurisdictions, and that regardless of AER structure, appointments should be for a period of five years, and that reappointments should be permitted.</p>	<p>Agree – The COAG Energy Council agrees with recommendation 6.6 in principle.</p> <p>The Energy Council notes that making appointments for a period of up to five years is currently allowed under the <i>Competition and Consumer Act 2010</i> (Cth).</p>
<p>6.7 That appointments to the AER continue to be on the basis of a publicly available statement of the required skills and experience (as detailed in the body of this chapter) and that in making appointments, the Council should have regard to succession planning.</p>	<p>Agree – The COAG Energy Council agrees with recommendation 6.7.</p>
<p>6.8 That individual directors be appointed for a term of four years, with a maximum of two terms being the general case. Provision should be made for a director’s appointment to be extended past two terms in specific circumstances. Where a director is appointed as chair, the provision for a maximum of two four-year terms should apply from the point of appointment as chair subject to a maximum overall limit of 12 years.</p>	<p>Agree – The COAG Energy Council broadly agrees with recommendation 6.8. The COAG Energy Council considers it is appropriate for individual directors to be appointed to AEMO for a term of up to four years. The COAG Energy Council considers this will provide maximum flexibility for the operation of the Board.</p>
<p>6.9 When making assessments of independence under clause 7.2 of the AEMO constitution, the Selection Panel and the company should make greater use of the permitted discretion to permit the appointment of candidates who have past relationships with the company or a member but where those relationships should not, based on a reasonable assessment of the circumstances, give rise to lack of independence.</p>	<p>Agree – The COAG Energy Council agrees with recommendation 6.9.</p>
<p>6.10 The Selection Panel should continue to be charged with responsibility to make recommendations to the Council for all appointments to institutions and other bodies of the Australian energy market. The composition of the Panel should remain as at present, with a requirement that one member of the Panel, preferably the chair, have acknowledged expertise in governance.</p>	<p>Agree – The COAG Energy Council agrees with recommendation 6.10.</p>
<p>6.11 The membership, remit and process of the</p>	<p>Agree – The COAG Energy Council agrees with</p>

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Recommendations	COAG Energy Council response
Selection Panel should be placed on the COAG Energy Council website, along with a schedule of upcoming appointments.	recommendation 6.11.
6.12 That SCO and AEMO should develop an agreed set of operational practices for appointments to the AEMO Board which are designed to satisfy the responsibilities and accountabilities of both the Council and AEMO.	Agree – The COAG Energy Council agrees with recommendation 6.12.
6.13 Both the AEMC and AER should be funded by all jurisdictions that are members of the COAG Energy Council in a manner determined by the Council.	<p>Noted – The COAG Energy Council is committed to providing adequate funding to ensure the proper operation of the AEMC and AER and notes the Panel’s intention to create uniformity in the funding structure of the AEMC and the AER in Recommendation 6.13.</p> <p>In light of the Energy Council’s response to recommendation 4.1 regarding the AER, any decision on funding structures would be premature at this stage. The Energy Council agrees that appropriate funding structures are important to the efficient functioning of energy market institutions and considers that any decision on Recommendation 6.13 should be addressed after the response to Recommendation 4.1 is concluded.</p>
6.14 The level of stable and reliable funding for operations should be determined periodically at appropriate levels for the institutions to fulfil their responsibilities competently, professionally, efficiently and in a timely manner.	<p>Noted – The COAG Energy Council agrees stable and reliable funding for operations are important for energy market institutions to fulfil their responsibilities competently, professionally, efficiently and in a timely manner.</p> <p>Recommendation 6.14 may be addressed pending the outcomes of Recommendation 4.1 and Recommendation 6.13.</p>
6.15 Provisions for adjustment, via institutional applications to the Council, should be included to account for major changes in costs caused by identified non-controllable factors.	<p>Noted – The COAG Energy Council notes Recommendation 6.15 to create a mechanism to allow for additional funding for operations as required by the AEMC and the AER.</p> <p>Recommendation 6.15 may be addressed pending the outcomes of Recommendation 4.1 and Recommendation 6.13.</p>
6.16 When cost increases are clearly attributable, for example, to government policy decisions, the causality principle should be applied to increase the relevant jurisdictions’ contribution to funding.	<p>Noted – The COAG Energy Council notes Recommendation 6.16 on a mechanism to prevent outsourcing jurisdictional based costs.</p> <p>Recommendation 6.16 may be addressed pending the outcomes of Recommendation 4.1 and Recommendation 6.13.</p>
6.17 Funding arrangements should take into account the additional roles of the AEMC recommended by the Review.	<p>Noted – The COAG Energy Council notes Recommendation 6.17.</p> <p>Recommendation 6.17 may be addressed pending the</p>

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	outcomes of Recommendation 4.1 and Recommendation 6.13.
6.18 The Council should give careful consideration to the appropriateness and methodologies for industry contributions. Decisions on such matters should lie with the Council; the AEMC and AER should not have the ability to increase industry contributions or apply levies.	<p>Noted – The COAG Energy Council notes Recommendation 6.18.</p> <p>Recommendation 6.18 may be addressed pending the outcomes of Recommendation 4.1 and Recommendation 6.13.</p>
6.19 The application of changed funding arrangements should not result in onerous additional overhead requirements for compliance with the resource accountability requirements of multiple jurisdictions.	<p>Noted – The COAG Energy Council notes Recommendation 6.19.</p> <p>Recommendation 6.19 may be addressed pending the outcomes of Recommendation 4.1 and Recommendation 6.13.</p>
6.20 That the Energy Council assesses the requirement for another independent governance review in 2023.	<p>Agree – The COAG Energy Council agrees to Recommendation 6.20.</p> <p>The COAG Energy Council will revisit the requirement for another independent governance review in 2023 to decide if another review is required.</p>