

16 February 2026

Review of AEMO Governance

Submitted online



## Review of AEMO Governance – Discussion Paper

The Australian Financial Markets Association (AFMA) is responding to the Review of AEMO Governance established by the Energy and Climate Change Ministerial Council (ECCMC).

AFMA is the leading industry association representing Australia's financial markets - including the capital, credit, derivatives, foreign exchange, and other specialist markets such as gas, carbon, electricity and environmental products. Our membership is comprised of over 140 of Australia's leading financial market participants, including key participants in the Australian Energy Market.

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### Key Points

- **AEMO's market operations functions should remain independent of government**
  - **ASL should be separated from AEMO**
  - **There should be greater oversight of AEMO's budget**
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### 1. Market operations functions

Well run spot markets, operated independently from government, are essential for the functioning of the energy financial market. The Energy Reform Implementation Group's (ERIG) report, which led to the creation of AEMO, recommended reforming the NEMMCO board "to provide investor confidence and give [AEMO] stronger incentives to provide an impartial and efficient service delivery."<sup>1</sup>

They recommended that the "board appointment process should seek to ensure that the board is independent of individual jurisdictional or sectional interests and contains the appropriate range of skills."<sup>2</sup> Additionally they considered that "more industry representation on [AEMO's] board [would] further improve its service culture."<sup>3</sup>

While we acknowledge that there could be an argument for moving some of the AEMO's functions to a body more directly accountable to government, we consider that ERIG's recommendations remain relevant for AEMO's core market operations functions. AFMA continues to support the independence of the market operator in its core market operations functions and we consider that

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<sup>1</sup> [https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007\\_0.pdf](https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007_0.pdf) p115

<sup>2</sup> [https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007\\_0.pdf](https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007_0.pdf) see recommendation 2.5

<sup>3</sup> [https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007\\_0.pdf](https://www.energy.gov.au/sites/default/files/energy-reform-way-forward-aust-final-report-exec-summary-2007_0.pdf) see p10

these functions should be overseen by an appropriately skilled board with relevant industry experience. We agree with ERIG's recommendation that this structure remains critical to provide confidence to investors and the market.

**AFMA Recommendations**

- i. AEMO's core market operation functions should remain independent from government
- ii. The market operation functions should be overseen by an appropriately skilled and experienced board.

**2. ASL**

The regulatory and governance arrangements for ASL were developed in an ad-hoc fashion that has led to a muddled structure that we consider is unfit for the expanded role that ASL is anticipated to perform as the Energy Services Entry Mechanism (ESEM) Administrator. AFMA therefore welcomes reform to set up ASL to function effectively over the long-term and offers the following observations on how its current arrangements could be enhanced.

ASL was originally created to administer the NSW Electricity Infrastructure Roadmap. AFMA's understanding is that originally these functions were expected to be performed by AEMO but that it was decided that it was inappropriate for these functions to sit within AEMO's legal entity. As a result, ASL was established as a subsidiary with its own board. For reasons that are not entirely clear to AFMA, but which we understand relate to AEMO's reluctance to have the risk on its balance sheet, the contracts that ASL enters into, and their resulting risk positions, are not held in ASL but in separate vehicles.

The key function of ASL under both the NSW roadmap and the Commonwealth's Capacity Investment Scheme (CIS) is to run tenders for new energy assets. The ESEM will expand ASL's existing tendering function and give them a new market function of re-selling some of the contracts. As a result, ASL has recruited staff with markets and commercial backgrounds, rather than the engineering and operational experience that is typical within AEMO, resulting in separate and distinct workforces. The NSW Scheme Financial Vehicle has also recruited staff with similar commercial and risk management skills. The Commonwealth relies on staff at the Department of Climate Change, Energy, the Environment and Water (DCCEEW) to administer CIS contracts, which our members consider DCCEEW struggles to do without staff with appropriate commercial skills.

AFMA's view is that ASL's current corporate structure is not fit for its current role or its expanded role as ESEM Administrator. We think there should be a single body responsible for administering all market facing government schemes, managing the financial risks resulting from these schemes and re-selling the contracts to the market. We consider this body's functions will be distinct from AEMO and require staff with different, more commercially focussed, skills. We also think that combining all of these commercial functions into a single body will be the most efficient approach as it will give the body sufficient scale to sustain the required capabilities to perform these functions. We also think consideration should be given to if any AEMO's current or proposed gas procurement functions might sit better in ASL.

Given the lack of overlap between staff skill sets and AEMO's apparent reluctance to have financial risk on its balance sheet we do not think that there is any obvious reason for this body to be part of AEMO and recommend separating ASL from AEMO. We think ASL should have an appropriately skilled and commercial board and make commercial decisions independently from government, but

given that its key role will be to administer government schemes we do not think that there is a need for the same level of industry involvement as for AEMO's market operation functions.

**AFMA Recommendations**

- iii. ASL should be separated from AEMO and should be responsible for all risk management for its functions.
- iv. ASL should have an appropriately skilled and commercial board and make commercial decisions independently from government.

**3. Budget**

Oversight of AEMO's budget has been a perennial issue for market participants with many of our members expressing frustration about the lack of oversight or meaningful market participant involvement in AEMO decisions to perform additional functions that are not required by legislation but result in costs on participants, while they are concerned about under-investment in core AEMO functions. This issue has become more pressing given the recent massive growth of AEMO's budget and the impact this has on end user bills. We think there is a good case for greater scrutiny of the costs AEMO is passing through to market participants. As the discussion paper notes the growth in AEMO's costs has been driven by government policy rather than decisions by the AEMO board so while we think there should be more oversight of AEMO's budget it is unclear to us that a different AEMO governance framework would have substantially reduced the recent increases in costs.

AFMA considers that AEMO's fee for service cost recovery model is appropriate for the recovery of costs that are reasonably related to the provision of services to market participants which could be enhanced by improved oversight. But we consider the more significant issue is that governments have increasingly taken advantage of AEMO's ability to charge costs to market participants to circumvent their own budget processes, and the scrutiny associated with them, to fund AEMO activities that have little to do with the provision of services to market participants and which should more properly be directly funded by governments. We note that the paper specifically calls out AEMO requests for government to fund work outside of AEMO's statutory mandates as a reason why a different governance structure might be appropriate. Our view is that when AEMO is undertaking work at the requests of energy ministers it is essentially performing policy work, that would otherwise be done by government departments, and this spending should be funded by government and subject to the same parliamentary scrutiny as other government spending.

**AFMA Recommendations**

- v. AEMO participant fees should only be used to fund services to market participants.
- vi. The review should consider options for greater oversight of AEMO's budget.
- vii. Governments should directly fund AEMO activities that do not relate to the provision of services to market participants, bringing this spending within the scrutiny of parliament.

**4. Information sharing**

The discussion paper indicates that the review wants to examine AEMO's ability to protect and share information. AFMA supports effective information sharing between market bodies but thinks

appropriate controls need to be in place to prevent firm specific commercial in confidence information being disclosed to ministers and government departments.

AFMA has engaged extensively with policy makers about information collection and disclosure in the energy market and is keen for a consistent, efficient approach to information collection, handling and disclosure across the energy market.<sup>4</sup> We support effective sharing of information between market bodies, particularly between AEMO and the AER, to avoid duplicative data requests to market participants and think there is scope for these provisions to be improved.

While we appreciate the value of well-informed policy making, we do not think firm specific commercial in confidence information should be shared with ministers and their departments. We consider that AEMO's current general powers to disclose information are adequate for general policy work and that any information disclosure required under jurisdictional emergency powers is best dealt with in the emergency legislation rather than as a general ability to disclose commercial in confidence information.

#### **AFMA Recommendations**

- viii. There should be effective arrangements to allow the sharing of information between market bodies.
- ix. No changes are required to AEMO's framework for disclosing information to ministers and their departments.

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at [lgamble@afma.com.au](mailto:lgamble@afma.com.au) or 02 9776 7994.

Yours sincerely,



Lindsay Gamble

**Head of Energy and Carbon**

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<sup>4</sup> See for instance sections 2 and 3 of our response to the AER's Guidelines Consultation - [https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-\(25\)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf](https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-(25)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf)