

Final Rule Change Report:
AEMO Role in Market Development (RC_2017_05)
Standard Rule Change Process
20 December 2017

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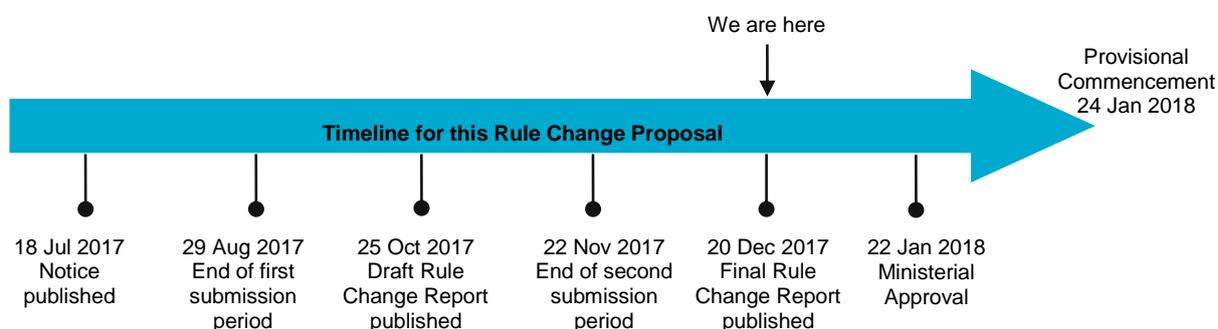
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1. Rule Change Process and Timeline

On 7 July 2017 the Australian Energy Market Operator (AEMO) submitted a Rule Change Proposal titled “AEMO Role in Market Development” (RC_2017_05).

This proposal is being processed using the Standard Rule Change Process, described in section 2.7 of the Wholesale Electricity Market (WEM) Rules (Market Rules). On 26 September 2017 the Rule Change Panel extended the timeframe for the publication of the Draft Rule Change Report in accordance with clause 2.5.10 of the Market Rules. Further details of the extension are available on the Rule Change Panel’s website.

The key dates for progressing this Rule Change Proposal, as amended in the extension notice, are:



The Rule Change Panel’s final decision is to accept the Rule Change Proposal in a modified form, as set out in section 8 of this Final Rule Change Report.

All documents related to this Rule Change Proposal can be found on the Rule Change Panel’s website at [Rule Change: RC_2017_05 - Economic Regulation Authority Western Australia](#).

2. Proposed Amendments

2.1 The Rule Change Proposal

In this Rule Change Proposal AEMO sought to clarify and extend its prescribed market development functions under the Market Rules.

AEMO considers it crucial that it should be capable of contributing to the development of the market and efficiency improvements of market processes, and that it should be able to recover costs associated with these activities. AEMO considers that the following contributions to the development of the market are not explicitly addressed in the Market Rules:

1. provision of information to the Rule Change Panel, to help the Rule Change Panel understand (and potentially quantify) the market impacts, benefits and costs of Rule Change Proposals;

2. provision of support for the periodic reviews of aspects of the WEM design that are undertaken by the Economic Regulation Authority (ERA) in accordance with the Market Rules; and
3. development of Rule Change Proposals, where it identifies opportunities for improvements in market operation and administration.

AEMO considers that this contribution to market development will improve the quality and timeliness of regulatory outcomes in the WEM and reduce the burden on Market Participants and other agencies.

While AEMO is not prohibited from performing these functions, the Market Rules do not state explicitly that these are services for which AEMO may seek cost recovery from the market. AEMO seeks to clarify AEMO's prescribed functions and budgetary approval process by explicitly including in the Market Rules a function of AEMO to "promote the development and improve the effectiveness of the operation and administration of the Wholesale Electricity Market, including providing information to the Rule Change Panel and Economic Regulation Authority to support their respective functions".

Full details relating to the Rule Change Proposal are available on the Rule Change Panel's website.

2.2 The Rule Change Panel's Initial Assessment of the Proposal

The Rule Change Panel decided to progress the Rule Change Proposal on the basis that its preliminary assessment indicated that the proposal is consistent with the Wholesale Market Objectives.

3. Consultation

3.1 The Market Advisory Committee

The proposed amendments were discussed by the Market Advisory Committee (MAC) at its 14 June 2017 meeting. A summary of the discussion is provided below; further details are available in the MAC meeting minutes available on the Rule Change Panel's website at [Market Advisory Committee Meetings - Economic Regulation Authority Western Australia](#).

14 June 2017 MAC meeting

Mr Martin Maticka gave an overview of AEMO's Pre Rule Change Proposal, which was circulated in the papers for the meeting. The following key points were discussed.

- Mrs Jacinda Papps and Mr Matthew Martin agreed that AEMO has an important role to play in the development of the market and AEMO's market development function should be funded appropriately.
- Mrs Papps noted that the recent Vertigan and Finkel Reviews both raised concerns about a lack of clarity regarding AEMO's role in the National Electricity Market (NEM). Both reviews recommended the development of a Statement of Role for AEMO, to provide greater clarity on its role than is given in the National Electricity Law (NEL). Mrs Papps noted that the proposed rule drafting was taken from the NEL and suggested AEMO should avoid introducing a similar uncertainty into the WEM.

Mr Maticka agreed that a tighter definition (e.g. to clarify what constituted the operation of the market) was needed to help distinguish between the roles of AEMO and the Public

Utilities Office (PUO). Mr Martin agreed on the need to develop greater clarity about the market development roles of each organisation.

- Ms Jenny Laidlaw noted that previously the Independent Market Operator (IMO) had an obligation under the Market Rules to develop Rule Change Proposals in some situations and that currently no party had a similar obligation. Mr Maticka advised that AEMO would continue to develop Rule Change Proposals where it became aware of material operational issues.
- There was some discussion about the challenges of predicting AEMO's resource needs for its market development functions.
- Mr Will Bargmann asked for clarification on the budget approval process for AEMO's market development function. The Chair (Mr Rajat Sarawat) replied that AEMO's Allowable Revenue, including its budget for any market development role, was assessed and approved by the ERA. The Chair noted that it was therefore critical to develop wording that clarified AEMO's market development role, as without such clarity it would be difficult for the ERA to assess AEMO's budget submissions. The Chair also suggested that giving new roles to different institutions constituted an institutional reform and so the Government would need to be comfortable with the proposed changes.
- Mr Maticka advised that AEMO would consider how to provide greater clarity in the proposal about AEMO's market development role, before submitting the proposal formally to the Rule Change Panel.

The MAC supported the progression of the Rule Change Proposal into the formal rule change process.

3.2 Submissions Received During the First Submission Period

The first submission period for this Rule Change Proposal was held between 18 July 2017 and 29 August 2017. The Rule Change Panel received submissions from Alinta Energy (Alinta)¹, Community Electricity, Perth Energy, the PUO and Synergy.

The Rule Change Panel noted in the Rule Change Notice for the proposal that:

“...the potential scope of the new function is very broad. The proposed drafting places no limits on AEMO's market development role, in particular in relation to the development of Rule Change Proposals, and provides no clarity on the boundaries between AEMO's market development role and that of other parties such as the Public Utilities Office.”

The Rule Change Panel sought stakeholder views on the role AEMO should play in the development of WEM Rule Change Proposals and whether greater clarity about the boundaries of AEMO's market development is needed. Where stakeholders considered that greater clarity of AEMO's market development role is required, the Rule Change Panel also sought views on whether this clarity should be provided in the Market Rules, which prescribe the functions for which AEMO may seek cost recovery, or in some other instrument, like the Statement of Role recommended for AEMO in the NEM by the Vertigan² and Finkel³ Reviews.

¹ Alinta Energy's submission was received after the end of the first submission period, on 1 September 2017.

² Review of Governance Arrangements for Australian Energy Markets', for which the Final Report is available at <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Review%20of%20Governance%20Arrangement%20for%20Australian%20Energy%20Markets%20-%20Final%20Report%20-%20Oct%202015.pdf>

³ 'Independent Review into the Future Security of the National Electricity Market', for which the 'Blueprint for the Future' is available at <http://www.environment.gov.au/system/files/resources/1d6b0464-6162-4223-ac08-3395a6b1c7fa/files/electricity-market-review-final-report.pdf>.

Community Electricity supported the Rule Change Proposal, considering it to be self-evident that AEMO's participation is central to a properly functioning rule change process and that participation should be properly funded. Community Electricity further suggested that the magnitude of the cost involved in the expansion of AEMO's role is relatively minor in comparison with the potential benefits of the proposal.

The remaining submissions shared the Rule Change Panel's concerns about the proposal. Synergy in particular considered that the lack of clarity about the boundaries of AEMO's proposed new functions and the potential impact of the changes on Market Fees left Synergy unable to assess the proposal against the Wholesale Market Objectives.

Synergy also questioned the need for any further expansion of AEMO's market development role. The other submitters agreed however that AEMO had an important role to play in the development of the WEM, reflecting the views expressed during the MAC discussion of the proposal.

Alinta, Community Electricity, Perth Energy and the PUO all supported formalisation of AEMO's function to provide information to the Rule Change Panel and ERA to support their respective functions. Additionally, there was cautious support for AEMO's participation in the development of Rule Change Proposals, provided that the boundaries on this activity were clearly defined.

Submitters identified the following risks with the broad scope of the proposal:

- uncertain and potentially material cost increases for Market Participants through increases to Market Fees, and Regulator Fees to the extent additional RCP Support resources would be required to handle an increased workload;
- increased costs for Market Participants and other stakeholders to respond to a greater volume of Rule Change Proposals;
- the potential for "mission creep", with AEMO assuming a role of developing structural changes to the market in parallel with, or even in competition with, the PUO or other Government agencies; and
- a more general potential for conflicts of interest and duplication of functions/costs.

In a follow up discussion with RCP Support, Synergy also raised a concern that the drafting might allow AEMO to recover costs from the market for market development activities that were not directly related to the WEM, e.g. for the development of Western Australian energy markets outside of the South West interconnected system (SWIS) or participation in national debates on energy policy.⁴

Both Alinta and Perth Energy suggested drafting changes to tighten the scope of AEMO's new functions. Perth Energy proposed changes to new clause 2.1A.2(IA) to limit AEMO's involvement to a more operational level, reflecting its mission creep concerns:

(IA) to ~~promote the development and~~ improve the effectiveness of the operation and administration of the Wholesale Electricity Market, including providing information to the Rule Change Panel and Economic regulation Authority to support their respective functions; and

In its submission, Alinta discussed the relevant findings of the Vertigan and Finkel Reviews,

⁴ Section 52 of the National Electricity Law and Section 91E of the National Gas Law allow AEMO to determine and charge fees for the services it provides under those laws, the Rules or the Procedures. These fees are to recover the costs of AEMO providing its services. AEMO's annual budget process includes a public consultation process that ensures that the fees for each of its services generate revenue to cover the cost of providing those services.

concluding that:

“...both the Vertigan and Finkel Reviews recognise AEMO’s valuable contributions into market development work. However, the reviews considered that this should be constrained to contributing to the issues identified by the AEMC as part of the process for identifying strategic priorities for energy market development.”

Alinta’s suggested drafting was consistent with its view that AEMO should play a supporting rather than leading role in market development:

(IA) to promote ~~the development~~ and improve the ~~effectiveness~~ ~~efficient of the~~ operation and administration of the Wholesale Electricity Market, including providing information to the Rule Change Panel and Economic Regulation Authority to support their respective functions; and

(IB) to provide input into market development activities identified by the Rule Change Panel and Economic Regulation Authority, including providing information and analysis to develop solutions, as required; and

Submitters offered various suggestions as to how the market development roles of the different agencies should be determined and documented.

- Alinta recommended that further work be undertaken to review the current institutional arrangements and ensure there is clear delineation between the roles of AEMO and the policy-making and regulatory bodies such as the PUO and ERA. Alinta suggested that consideration be given to developing Statements of Expectations for the ERA, PUO and Rule Change Panel; and a Statement of Role for AEMO containing a comprehensive set of outcomes-based performance indicators.
- Synergy supported AEMO’s proposal to publish memoranda of understanding (MOU) between AEMO and each of the ERA, Rule Change Panel and PUO. Synergy considered that any MOU should provide for role clarity in relation to market development matters and specifically address how regulatory and policy duplication will be avoided.
- Perth Energy suggested that a document such as a Statement of Role could potentially assist by:
 - defining the general areas of activity where AEMO can act without limit;
 - establishing a process whereby AEMO should channel any structural change ideas through to the PUO; and
 - outlining how AEMO can participate within broader market reviews.

Perth Energy suggested that the Statement of Role could also set limits on the level of staffing that AEMO can include for market development within its funding requests.

- The PUO suggested that an alternative approach could involve expansion of the ERA’s annual reports to the Minister on the effectiveness of the WEM, to explicitly define market development priorities to be undertaken by AEMO, and to potentially differentiate between market development activities to be undertaken by AEMO and policy-related responsibilities more properly undertaken by the PUO.

The assessment by submitting parties as to whether the proposal would better achieve the Wholesale Market Objectives is summarised below:

Submitter	Wholesale Market Objective Assessment
Alinta	Cannot categorically state that the proposal as drafted would promote economic efficiency or minimise the long term cost of electricity supplied. However, if greater clarity about AEMO's role in market development was included in the proposed drafting then it is likely that the proposal would better facilitate the achievement of Wholesale Market Objectives (a) and (d).
Community Electricity	Agrees with AEMO's assessment, i.e. that the changes will better achieve Wholesale Market Objectives (a) and (d); and are consistent with the other Wholesale Market Objectives.
Perth Energy	Appropriate funding would better achieve the Wholesale Market Objectives. However, if AEMO moves into review of the fundamental structure of the market, it is likely to be counter-productive and lead to lower market efficiencies.
PUO	While supporting the proposal in principle, the absence of a clearly defined role for AEMO's market development responsibilities could introduce inefficiencies and confusion amongst Market Participants and industry bodies in conflict with Wholesale Market Objectives (a) and (d).
Synergy	Unable to assess whether the proposal meets Wholesale Market Objectives (a) and (d) due to a lack of cost information.

A copy of all submissions in full received during the first submission period is available on the Rule Change Panel's website.

3.3 The Rule Change Panel's Response to Submissions Received During the First Submission Period

The Rule Change Panel's response to each of the specific issues raised in the first submission period is detailed in Appendix A of the Draft Rule Change Report for this proposal, which is available on the Rule Change Panel's website. A more general discussion of the proposal, which addresses the main issues raised in the submissions and the Rule Change Panel's response to these issues, is available in section 6.1 of this report.

3.4 Submissions Received During the Second Submission Period

The second submission period was held between 25 October 2017 and 22 November 2017. The Rule Change Panel received submissions from Alinta and AEMO.

Alinta was broadly supportive of the Rule Change Panel's amendments to the proposed Amending Rules, including the use of a light-handed, flexible approach rather than a prescriptive definition of AEMO's role in the rule change process.

Alinta questioned the use of the words "to consult with" at the start of new clause 2.3.1(c), noting that the MAC's role under existing sub-clauses 2.3.1(a), (b) and (d) is "to advise". Alinta considered that the different drafting convention in clause 2.3.1(c) suggested the new role is different from those contemplated in the rest of clause 2.3.1. However, Alinta considered that the MAC's role in each of these sub-clauses is of the same nature, and as such considered the drafting should be consistent throughout the clause.

AEMO advised that the three functions described in its Rule Change Proposal were only intended as examples of the market development activities for which AEMO sought funding from the market. AEMO noted that the three functions were related specifically to processes

within the Market Rules, but the Market Rules are only a part of the regulatory framework that applies to the SWIS, and the mechanisms under the Market Rules are only one of a number of ways that policy impacting the WEM will be determined.

AEMO considered that its market funding should cover a much broader range of market development activities, including (but not limited to):

- work for the Government and its agencies, including the PUO, to support the development of energy policy and the Government's reform agenda;
- identification and articulation of opportunities for changes to other regulatory instruments affecting the SWIS, including the Technical Rules, the *Electricity Industry (Metering) Code 2012*, and the *Electricity Industry (Customer Transfer) Code 2016*; and
- provision of information to other parties, including the PUO, to support the assessment of potential changes to other regulatory instruments.

AEMO expressed concern that the prescription of only the activities described in the Rule Change Proposal in the proposed Amending Rules could risk AEMO being left without funding to provide legitimate contributions to market and policy development activities. To address this risk, AEMO proposed either:

- removing the prescription of activities in proposed clause 2.1A.2(IA); or
- adding two activities in proposed clause 2.1A.2(IA): "providing information to other parties to support the development of any statute, ordinance, code, regulation or other instrument that may be relevant to the market or the operation of the South West interconnected system"; and "contributing to the development of policy and regulatory outcomes relating to, or impacting upon, the market or the operation of the South West interconnected system".

While generally supportive of the proposed MAC consultation process, AEMO made some suggestions regarding the drafting and interpretation of new clauses 2.5.1A and 2.5.1B, including:

- replacement of "before commencing the *development* of a Rule Change Proposal" with "before commencing the *preparation* of a Rule Change Proposal", reflecting AEMO's view of what activities should occur before the requirement to consult with the MAC is triggered;
- replacement of "before ... providing material support or assistance to another party to develop a Rule Change Proposal" with "before ... materially contributing to the development of a Rule Change Proposal to be proposed by another party" (along with other corresponding changes throughout the clause), on the basis that the former could be interpreted as requiring AEMO to vet requests for support and assistance to understand whether a Rule Change Proposal would result; and
- replacement of "must ... take into account any advice, comments or objections provided by any member or observer of the Market Advisory Committee" with "must ... take into account any advice, comments or objections provided by the Market Advisory Committee", to simplify the clause without changing its intent.

The assessment by submitting parties as to whether the proposal would better achieve the Wholesale Market Objectives is summarised below:

Submitter	Wholesale Market Objective Assessment
Alinta	Likely to better facilitate the achievement of Wholesale Market Objectives (a) and (d).
AEMO	Subject to addressing the matters raised in its submission, will better achieve Wholesale Market Objectives (a) and (d), and are consistent with the other Wholesale Market Objectives.

A copy of the submissions in full received during the second submission period is available on the Rule Change Panel’s website.

3.5 The Rule Change Panel’s Response to Submissions Received During the Second Submission Period

The Rule Change Panel’s response to each of the specific issues raised in the second submission period is detailed in Appendix A of this report. A more general discussion of the proposal, which addresses the main issues raised in submissions received in both the first and second submission periods and the Rule Change Panel’s response to these issues, is available in section 6.1.

3.6 Public Forums and Workshops

No public forums or workshops were held in regard to this Rule Change Proposal.

4. The Rule Change Panel’s Draft Assessment

The Rule Change Panel’s draft assessment against clauses 2.4.2 and 2.4.3 of the Market Rules and analysis of the Rule Change Proposal are provided in section 5 of the Draft Rule Change Report available on the Rule Change Panel’s website.

5. The Rule Change Panel’s Proposed Decision

The Rule Change Panel’s proposed decision was to accept the Rule Change Proposal as modified by the amendments outlined in section 5.2 and specified in Appendix B of the Draft Rule Change Report. The modified proposed Amending Rules were presented in section 7 of the Draft Rule Change Report.

The Rule Change Panel made its proposed decision on the basis that the Amending Rules, as amended following the first submission period:

- will allow the Market Rules to better achieve all the Wholesale Market Objectives, but in particular Wholesale Market Objectives (a) and (d);
- provide clarity on the role of AEMO, by including the provision of information to support the Rule Change Panel and the market review functions of the ERA as explicit functions of AEMO;
- adequately address the concerns raised by the MAC and in submissions about the broad scope of the proposed new functions leading to conflicts and unwarranted market costs;
- are expected to deliver benefits in terms of the Wholesale Market Objectives that outweigh any costs associated with an increase in rule change activity; and

- create no practicality issues.

Additional detail outlining the analysis behind the Rule Change Panel's proposed decision is provided in section 5 of the Draft Rule Change Report.

6. The Rule Change Panel's Final Assessment

In preparing its Final Rule Change Report, the Rule Change Panel must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3 of the Market Rules.

Clause 2.4.2 of the Market Rules states that the Rule Change Panel "*must not make Amending Rules unless it is satisfied that the Market Rules, as proposed to be amended or replaced, are consistent with the Wholesale Market Objectives*". Additionally, clause 2.4.3 of the Market Rules states that, when deciding whether to make Amending Rules, the Rule Change Panel must have regard to:

- any applicable statement of policy principles the Minister has issued to the Rule Change Panel under clause 2.5.2 of the Market Rules;
- the practicality and cost of implementing the proposal;
- the views expressed in submissions and by the MAC; and
- any technical studies that the Rule Change Panel considers necessary to assist in assessing the Rule Change Proposal.

When making its final decision, the Rule Change Panel has had regard to each of the matters identified in clauses 2.4.2 and 2.4.3 of the Market Rules as follows:

- the Rule Change Panel's assessment of the Rule Change Proposal against the Wholesale Market Objectives is available in section 6.3 of this report;
- the Rule Change Panel notes that there has not been any applicable statement of policy principles from the Minister in respect of this Rule Change Proposal;
- the Rule Change Panel's assessment of the practicality and cost of implementing the Rule Change Proposal is available in section 6.4 of this report;
- a summary of the views expressed in submissions and by the MAC is available in section 3 of this report. The Rule Change Panel's response to these views is available in Appendix A of the Draft Rule Change Report, and section 6.1 and Appendix A of this report; and
- the Rule Change Panel does not believe a technical study in respect of this Rule Change Proposal is required and therefore has not commissioned one.

The Rule Change Panel's assessment is presented in the following sections.

6.1 AEMO's Market Development Role

6.1.1 Essential components of AEMO's market development role

In its Rule Change Proposal, AEMO sought confirmation of its ability to recover costs for three functions⁵:

1. the provision of information to the Rule Change Panel to support its functions;
2. the provision of support for the reviews undertaken by the ERA under the Market Rules; and
3. the development of Rule Change Proposals, where it identifies opportunities for improvements in market operation and administration.

The Rule Change Panel agrees with the majority of first period submissions that functions 1 and 2 should be included explicitly in the list of functions for which AEMO can recover its costs. The Rule Change Panel considers that these functions are clearly necessary for the Rule Change Panel and ERA to carry out their respective functions under the Market Rules.

The Rule Change Panel also considers that AEMO has an important role to play in the development of Rule Change Proposals. AEMO's technical expertise and familiarity with market operations will often make it the most efficient option (and in some cases the only practical option) for the development of proposals addressing complex market issues. A recent example of a proposal of this type is the Rule Change Proposal "Reduction of the prudential exposure in the Reserve Capacity Mechanism" (RC_2017_06).

Providing AEMO with certainty that it can recover the costs of developing Rule Change Proposals like RC_2017_06 will encourage AEMO to take on responsibility for these tasks. This should, as suggested by AEMO, promote earlier and more efficient rectification of emergent issues in the market that may be affecting market efficiency, security or reliability.

6.1.2 Limits of AEMO's market development role

Despite these conclusions, the Rule Change Panel nevertheless agrees with the views expressed at the MAC and in first period submissions that the scope of AEMO's new function, as drafted in the Rule Change Proposal, is too broad and could be construed as extending beyond the ability to develop Rule Change Proposals to a strategic/policy making role that in the last few years has been filled by the PUO.

The Rule Change Panel has accordingly made some changes to the proposed new clause 2.1A.2(IA) to clarify the nature and extent of AEMO's new functions. The changes, which are described in further detail in section 6.2.1 of this report, are designed to indicate the contributory, as opposed to leading, role played by AEMO in market development and to list explicitly the three functions about which AEMO requested clarity in the Rule Change Proposal. The revised definition excludes other, larger-scale or strategic market development activities such as the progression of major market reviews.⁶

⁵ While AEMO has since indicated that its intention was broader, this was not apparent in the text of the Rule Change Proposal, as discussed in section 6.1.4 of this report.

⁶ In addition to its rule-making role, the Australian Energy Market Commission (AEMC) may conduct a review of any aspect of the NEM, either at the request of the COAG Energy Council or by self-initiation, in line with its own strategic priorities for market development. The previous Minister's reforms to the WEM institutional arrangements did not assign a similar role to any agency, and there is nothing to suggest that the current Government will not continue to initiate, manage and fund such reviews directly through the PUO (as has been the practice in recent years). Accordingly, the Rule Change Panel considers that major market reviews should not be undertaken by any agency at the market's expense unless the requirement for that review is prescribed explicitly in the Market Rules.

6.1.3 Limiting the scope of AEMO's Rule Change Proposals

The Rule Change Panel also agrees it is important to avoid duplication and conflicts between the market development activities of the different WEM agencies. Despite this, the Rule Change Panel has concerns about any approach that specifies AEMO's role in terms of prescriptive definitions of what Rule Change Proposals it can and cannot develop.

For example, a common view expressed in submissions is that AEMO should restrict its focus to operational matters and avoid (except as a provider of support to another agency) market development, structural or policy matters. However, the submissions received do not provide workable definitions of what, for example, constitutes an operational versus a policy issue. As an extreme example, it could be argued that the core reforms proposed by the Government's Energy Market Operations and Processes project⁷ are simply measures to improve the operational efficiency of the WEM real-time dispatch processes.

The term *policy* is often used in discussions about the WEM to describe matters that are to be progressed and decided by the Minister (assisted by the PUO) rather than other stakeholders. In this context it is clear that policy is whatever the Government of the day decides it needs to be, and importantly, its scope is therefore something that is likely to vary from time to time.

Defining the agencies' roles using terms like *policy* is unlikely to be effective if there is no clear and lasting agreement about what these terms encompass. The Rule Change Panel considers that attempting to use these terms in a prescriptive manner is impractical, could lead to unnecessary confusion and conflict about what matters meet the prescribed criteria and may inhibit the efficient development of WEM Rule Change Proposals.

Most first period submissions also suggested that AEMO should avoid market development activities that conflict with the activities of other agencies, and in particular the PUO. The Rule Change Panel believes it is extremely unlikely that AEMO would knowingly develop Rule Change Proposals in direct conflict with the Government's work program for energy market reform, or that the ERA would approve funding⁸ for AEMO to develop significant Rule Change Proposals that replicate or conflict with work being undertaken by the PUO. Nevertheless, the Rule Change Panel agrees that inadvertent overlaps and conflicts are possible, so the implementation of a mechanism to prevent their occurrence is needed.

The Rule Change Panel does not agree that imposing more prescriptive role definitions will provide the solution to this problem. The market development role of the PUO reflecting Government policy is not prescribed under the Market Rules or Regulations; and as noted above, the extent to which the PUO actively participates in market development, and in particular which Rule Change Proposals it develops, is at the discretion of the Government of the day. Further, the Rule Change Panel does not consider it practical or appropriate to make assumptions about the intentions of the current or any future Government on policy development.

Of the other agencies involved in the WEM, the ERA has no specific obligations regarding the development of Rule Change Proposals, while the Rule Change Panel itself may only develop Rule Change Proposals that address manifest errors and matters of a minor or procedural nature.

These realities make the definition of specific, permanent boundaries between AEMO's market development activities and those of other agencies impractical and risky. Specifically, the placement of any strict boundaries on the Rule Change Proposals that AEMO may

⁷ Namely the implementation of new real-time energy and ancillary services markets featuring security-constrained dispatch, facility bidding and co-optimisation of energy and ancillary services, as described in https://www.treasury.wa.gov.au/uploadedFiles/Site-content/Public_Utility_Office/Industry_reform/Final-Report-Design-Recommendations-for-Wholesale-Energy-and-Ancillary-Market-Reforms.pdf.

⁸ Through the Allowable Revenue process.

develop could lead to situations where a problem is identified in the market, AEMO is not permitted to develop a Rule Change Proposal to address that problem, and no other party is willing or able to do so.

Given the rate at which the electricity industry is changing, the Rule Change Panel considers that the risk to the Wholesale Market Objectives of AEMO not being able to develop Rule Change Proposals to address emerging issues is far greater than the risks of AEMO occasionally recovering development costs from the market for a Rule Change Proposal that is subsequently determined to be unnecessary.

The Rule Change Panel considered options to require AEMO to obtain some form of formal approval from another agency (e.g. the ERA, PUO or the Rule Change Panel itself) before commencing the development of a Rule Change Proposal that met certain pre-defined size or subject matter criteria. These options were discounted on the basis that they would effectively pre-empt and therefore compromise the integrity of the rule change process.

Based on these considerations, instead of seeking to define AEMO's role in prescriptive terms (either in the Market Rules or a separate document like a Statement of Role) the Rule Change Panel has proposed a more light-handed, flexible approach that reflects the dynamic nature of the market and the discretionary and variable nature of the other agencies' participation in market development. This approach is described in more detail in section 6.2.1, and involves the use of a mandatory MAC consultation process to ensure that the development of Rule Change Proposals funded by the market is conducted in a transparent and consultative manner.

6.1.4 AEMO's submission – inclusion of additional market development functions

As discussed in section 3.4, AEMO's submission on the Draft Rule Change Report raised concerns about the Rule Change Panel's proposed amendments to new clause 2.1A.2(IA). AEMO recommended that the clause be further amended to increase the scope of the market development activities for which AEMO can recover its costs from the market.

The Rule Change Panel agrees that AEMO is likely to be able to make legitimate and material contributions to market and policy development activities that are not covered by the Amending Rules. However, the Rule Change Panel has decided for the following reasons to make no further changes to clause 2.1A.2(IA) as presented in the Draft Rule Change Report.

- The text of the Rule Change Proposal did not indicate that the three functions now included in clause 2.1A.2(IA) were only intended as examples. As a result, the Draft Rule Change Report addressed only those functions explicitly requested in the proposal, and not the broader range of market development activities described in AEMO's subsequent submission.

Regardless of any potential benefits, inclusion of the additional functions proposed by AEMO would constitute a significant change to the Amending Rules from those presented in the Draft Rule Change Report. The Rule Change Panel does not consider that a change of this magnitude is appropriate after the end of the last public consultation period for the proposal, in particular given the concerns raised previously by stakeholders about the broad scope of the original drafting.

- The Rule Change Panel does not consider it certain that all the costs of the additional market development functions described in AEMO's submission should be funded by the market. For example, it is unclear to what extent AEMO's work on the Minister's current electricity reform program (and any future reform programs) will or should be funded by the market rather than directly by Government.

The Rule Change Panel considers the questions of what role AEMO should play in these broader market development activities and how its work on different activities should be funded are Government policy decisions. The Rule Change Panel would therefore need clear direction from Government before it further extended AEMO's market development functions under the Market Rules.

- During the consultation process for this Rule Change Proposal, stakeholders expressed strong concerns about a lack of oversight of AEMO's market development activities. While the proposed MAC consultation process will give stakeholders early visibility of AEMO's rule change development activities and the opportunity to provide timely feedback, this process does not extend to activities unrelated to the rule change process.

Given the concerns raised by stakeholders, the Rule Change Panel considers that while there may be benefits in assigning further market development functions to AEMO in the Market Rules:

- the scope of these additional functions should be clearly defined; and
- corresponding mechanisms should be developed to ensure appropriate oversight of any market development activities that will be funded by Market Participants.

The Rule Change Panel considers that the amendments to clause 2.1A.2(IA) suggested by AEMO in its submission would require further refinement to meet these criteria.

The Rule Change Panel encourages AEMO to liaise with the PUO to clarify the Government's policy position on AEMO's market development role (beyond the functions specified in clause 2.1A.2(IA)) and the cost recovery mechanism(s) for any additional functions identified. The Rule Change Panel suggests that a new Rule Change Proposal could be submitted once the policy position is clear to define any additional market development functions and associated governance mechanisms required under the Market Rules.

6.1.5 Costs and net benefits of extending AEMO's market development role

Both Perth Energy and Synergy raised concerns about the cost implications of the proposed amendments. Both parties suggested the lack of specific cost information in the proposal prevents assessment of the proposal against the Wholesale Market Objectives. Additionally, Perth Energy suggested that AEMO had failed to provide a defined value proposition and that this, combined with the lack of cost information, made the proposal incomplete.

The Rule Change Panel considers that the benefit to the market of AEMO's proposal is clear. The information provided by AEMO to the Rule Change Panel and ERA to support their respective functions is in many cases unavailable from any other source. Further, as noted previously, AEMO's expertise as the market and system operator makes it an obvious candidate to develop Rule Change Proposals that are needed to address market problems but do not fall within the scope of the Government's work program.

The Rule Change Panel agrees that AEMO's market development budget requirements are likely to fluctuate from time to time, depending on the pace of regulatory change and the extent to which material Rule Change Proposals are developed by other agencies. Additionally, it is impossible to identify in advance what Rule Change Proposals AEMO might develop and what the net benefits of those proposals might be. Together, these factors make the presentation of a standard cost/benefit analysis for this Rule Change Proposal unrealistic.

An increase in the level of rule change activity may lead to some increase in Market Fees and Regulator Fees, and as noted by Perth Energy, may also increase Market Participants' internal costs associated with assessing and responding to proposals. However, the costs of this additional rule change activity needs to be weighed against the benefits delivered by the activity in terms of the Wholesale Market Objectives.

Previous WEM Rule Change Proposals have frequently delivered benefits that far outweigh their development costs. For example, the recently commenced Rule Change Proposal "Limit to Early Entry Capacity Payments" (RC_2013_21) ended the payment of early entry capacity payments for new Facilities in periods of excess capacity. The total cost to the market of these unnecessary payments over the period up to the submission of the proposal was \$12.4 million, an amount vastly greater than the development cost of the proposal.

The Rule Change Panel also considers that the additional changes it has made to the proposed Amending Rules:

- clarify the nature of AEMO's market development function, excluding some of the potentially high cost market development activities contemplated by Perth Energy and Synergy in their submissions (and by Synergy in later clarifying discussions); and
- provide, through the mandatory MAC consultation process, a mechanism to prevent inadvertent conflicts and overlaps in the development of Rule Change Proposals and deter the development of self-serving or low value Rule Change Proposals.

It is impossible to ensure in advance that all Rule Change Proposals developed by AEMO will deliver net benefits against the Wholesale Market Objectives. However, the proposed MAC consultation mechanism, combined with the public scrutiny provided by the existing Allowable Revenue process and the independent assessment of Rule Change Proposals by the Rule Change Panel, make it extremely unlikely that the costs of extending AEMO's market development functions would outweigh the associated benefits.

For these reasons the Rule Change Panel does not agree that a lack of detailed cost information or uncertainty about the future market development activities of other agencies prevents the assessment of this Rule Change Proposal.

6.2 Additional Amendments to the Proposed Amending Rules

6.2.1 Additional Amendments following the First Submission Period

Following the first submission period, the Rule Change Panel made some additional changes to the proposed Amending Rules. A summary of these changes is provided below. The additional amendments are shown in detail in Appendix B of the Draft Rule Change Report.

Requirement to consult with the MAC

The Rule Change Panel added two new clauses to place a requirement on AEMO (clause 2.5.1A) and the ERA (clause 2.5.1B) to consult with the MAC before starting the development of a Rule Change Proposal, and where appropriate, during the development of a Rule Change Proposal. The requirement has been placed on the ERA as well as AEMO because the development costs of any Rule Change Proposal by the ERA will also be recovered from Market Participants.

The new clauses also require AEMO and the ERA to consult with the MAC before providing material support or assistance to another party to develop a Rule Change Proposal.

The agencies will be required to consult with the MAC on the following:

- the matters to be addressed by the Rule Change Proposal, and if applicable, the nature and scope of the support or assistance requested by the other party;
- what options exist to resolve the matters to be addressed by the Rule Change Proposal (i.e. are there other ways in which the problem could be resolved);
- the agency's estimated costs of developing the Rule Change Proposal or providing the support or assistance requested by the other party;
- whether and when the agency should develop the Rule Change Proposal (e.g. developing the proposal might be inappropriate, or more appropriately progressed by another agency, or insufficiently urgent to progress in the short term) or if the agency should provide the support or assistance requested by the other party; and
- whether and how the MAC will be consulted during the development of the Rule Change Proposal (e.g. for many proposals the MAC may only want to be consulted at the Pre Rule Change Proposal stage, but for more complex proposals some intermediate consultation steps may be warranted, potentially involving the use of concept papers, workshops or even, for very large proposals, the establishment of MAC Working Groups).

The agencies will be required to take into account any advice, comments or objections provided by any member or observer of the MAC in deciding whether, when and how to develop a Rule Change Proposal⁹. Note that this does not mean that the agency must always follow the advice provided, as in some cases a Rule Change Proposal may be opposed by several MAC members but still provide a material benefit in terms of the Wholesale Market Objectives.

The MAC's primary function is to provide advice regarding Rule Change Proposals, so it is well placed to provide advice to agencies considering the development of a Rule Change Proposal. The requirement to consult before commencing any substantive work on a Rule Change Proposal will help ensure that neither AEMO nor the ERA wastes Market Participant fees developing proposals that are, for example:

- contrary to Government energy policy,
- overlapping or conflicting with work being undertaken by the PUO or other stakeholders;
- fundamentally flawed in concept (e.g. addressing a problem that is not actually a problem); or
- of low value in terms of better achieving the Wholesale Market Objectives.

The MAC will also provide a forum for parties to identify opportunities to collaborate on the development of some Rule Change Proposals and to coordinate the timing of any consultation processes to ensure that stakeholders have sufficient opportunity to participate.

Most importantly, the proposed MAC consultation process will give all the relevant stakeholders, including the ERA and the PUO and the Minister, visibility of AEMO's (and the ERA's) market development intentions and the opportunity to provide feedback or clarify responsibilities at an early stage.

The Rule Change Panel does not consider that the consultation requirement will place an undue burden on agencies or result in any problematic delays in the development and progression of Rule Change Proposals. In particular, the consultation requirement is flexible

⁹ Or provide material support or assistance to another party to develop a Rule Change Proposal.

enough to accommodate the development of urgent Rule Change Proposals, e.g. in an extreme situation AEMO could circulate an email to MAC members explaining the situation and providing a suitably short window for members to raise any concerns.

The Rule Change Panel has also amended existing clause 2.3.1, to include the provision of advice to AEMO and the ERA on the development of Rule Change Proposals as a formal function of the MAC.

Clarification of AEMO's new functions

The Rule Change Panel also amended new clause 2.1A.2(IA) to:

- replace the words “promote the development” with “contribute to the development”, to emphasise the contributory, as opposed to leading, role of AEMO in WEM market development; and
- list explicitly the functions about which AEMO requested clarity in its Rule Change Proposal, to address the concerns raised at the MAC and in submissions about the broad scope of the new function as originally drafted.

Other changes

The Rule Change Panel further amended clause 2.22A.1(c) to remove the word “market” from the phrase “market reviews by the Economic Regulation Authority” to avoid any doubt that the support provided by AEMO extends to all reviews conducted by the ERA under the Market Rules.

6.2.2 Additional Amendments following the Second Submission Period

Following the second submission period, the Rule Change Panel has made an additional amendment to clause 2.3.1(c) in the proposed Amending Rules to reflect the suggestion made by Alinta in its submission. The amendment replaces the words “to consult with” at the start of the sub-clause with “to advise”, to clarify that the MAC’s role under this new sub-clause is consistent in nature with its role under the other sub-clauses of clause 2.3.1, namely to provide advice.

The additional amendment is shown in detail in Appendix B of this report.

6.3 Assessment against the Wholesale Market Objectives

The Rule Change Panel considers that the Market Rules as a whole, if amended as presented in section 8, will better achieve all the Wholesale Market Objectives, and Wholesale Market Objectives (a) and (d) in particular.

The effectiveness of the rule change process and the WEM reviews conducted by the ERA depend on access to timely and accurate market information. The information provided by AEMO to the Rule Change Panel allows the Rule Change Panel to make more informed decisions on Rule Change Proposals. The ERA uses the information provided by AEMO in its various WEM reviews to identify deficiencies and opportunities for enhancements in the operation of the WEM. Both activities work directly to better achieve all the Wholesale Market Objectives, and so confirmation of AEMO’s role in supporting these activities is also expected to contribute to this outcome.

Further, as noted above AEMO’s technical expertise and familiarity with market operations will often make it the most efficient option for the development of Rule Change Proposals addressing complex issues. Allowing AEMO to recover its costs will encourage it to take on the development of Rule Change Proposals that other parties might be less willing or able to

tackle. This is expected to promote the earlier and more efficient rectification of emergent issues in the market that may be affecting market efficiency, security and reliability, thus better achieving Wholesale Market Objectives (a) and (d):

- (a) *to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system*
- (d) *to minimise the long-term cost of electricity supplied to customers from the South West interconnected system*

The Rule Change Panel considers that the additional changes it has made to the proposed Amending Rules should help to ensure that the Rule Change Proposals developed by AEMO provide value to the market and do not conflict with the market development activities of other agencies.

6.4 Practicality and Cost of Implementation

6.4.1 Cost

The expansion of AEMO's market development functions under the Market Rules could result in some increase in AEMO's costs, which are recovered from Market Participants via Market Fees. The extent of the increase is difficult to quantify as AEMO's market development costs are likely to vary over time, depending on the number and complexity of the Rule Change Proposals in AEMO's forward work program. It should however be noted that the extent of any increase in Market Fees is subject to approval by the ERA through the Allowable Revenue process. Additionally, under the proposed Amending Rules AEMO will be required to consult with the MAC regarding the Rule Change Proposals to be included in its work program.

As a guide, AEMO has advised the Rule Change Panel that its current market development budget is approximately \$800,000 per year. AEMO considers that this represents an appropriate resource level for the current level of rule change activity. The figure excludes costs associated with the Government's market reform program, which were separately approved by the ERA in May 2017.

For the 2017/18 financial year, an annual cost of \$800,000 equates to a Market Fee charge of about \$0.021/MWh. By comparison, the total WEM Fee rate for 2017/18 has been set at \$0.918/MWh, comprising a Market Fee rate of \$0.357/MWh, a System Management Fee rate of \$0.434/MWh, and a Regulator Fee rate of \$0.127/MWh. The Rule Change Panel notes that AEMO's market development costs represent only a small proportion of overall WEM Fees and an even smaller proportion of total wholesale electricity costs.

A material increase in the volume of Rule Change Proposals may also lead to an increase in RCP Support costs, which are recovered from Market Participants through Regulator Fees. The size of any increase in RCP Support resourcing will depend on the extent to which the volume and complexity of Rule Change Proposals increase, the quality of the Rule Change Proposals submitted, and expectations about the speed at which Rule Change Proposals should be progressed. As a guide, the current annual RCP Support budget excluding the costs of the Rule Change Panel members and the executive officer (which would not be expected to change materially with an increase in activity) is also approximately \$800,000 per year.

As noted by Perth Energy, an increase in the level of rule change activity is also likely to increase the costs incurred by Market Participants to assess and respond to Rule Change Proposals. Obviously each Market Participant can and will make their own commercial

decision about the extent to which they actively contribute to rule change process. However, the Rule Change Panel considers it will be important to ensure that the pace of market development is not so great as to prevent Market Participants from being able to contribute to the rule change process in a meaningful way, and that proper consideration of this factor places a natural upper limit on the acceptable level of market development activity at any time.

6.4.2 Practicality

The Rule Change Panel does not consider that there are any issues with the practicality of implementing the proposed changes.

6.4.3 Amendments to Associated Market Procedures

The Rule Change Panel has not identified any Market Procedures that require updating as a result of this Rule Change Proposal. The Rule Change Panel expects that some consequential changes to the MAC Constitution will be required.

6.5 Protected Provisions, Reviewable Decisions and Civil Penalties

Clauses 2.1A.2, 2.3.1 and 2.22A.1 of the Market Rules are Protected Provisions. Under clause 2.8.3 of the Market Rules, amendments to a Protected Provision require the Amending Rules in the Rule Change Proposal to be approved by the Minister.

In addition, the Rule Change Panel proposes to add two new clauses, 2.5.1A and 2.5.1B, and considers that these new clauses should also be made Protected Provisions as they will form part of the governance framework for the WEM. As clauses 2.5.1A and 2.5.1B are included in an existing range of Protected Provisions in clause 2.8.13(b) of the Market Rules (i.e. "2.1 to 2.25"), no specific amendments are required to give effect to this.

This Rule Change Proposal does not amend any civil penalty provisions or Reviewable Decisions, nor does the Rule Change Panel consider that the new clauses 2.5.1A and 2.5.1B should be civil penalty provisions or Reviewable Decisions.

7. The Rule Change Panel's Decision

Based on the considerations set out in this report, the Rule Change Panel's final decision is to accept the Rule Change Proposal in a modified form as set out in section 8 of this Final Rule Change Report.

7.1 Reasons for the Decision

The Rule Change Panel has made its decision on the basis that the Amending Rules:

- will allow the Market Rules to better achieve all the Wholesale Market Objectives, and Wholesale Market Objectives (a) and (d) in particular;
- provide clarity on the role of AEMO, by including the provision of information to support the Rule Change Panel and the market review functions of the ERA as explicit functions of AEMO;
- adequately address the concerns raised by the MAC and in submissions about the broad scope of the proposed new functions leading to conflicts and unwarranted market costs;

- are expected to deliver benefits in terms of the Wholesale Market Objectives that outweigh any costs associated with an increase in rule change activity; and
- create no practicality issues.

Additional detail outlining the analysis behind the Rule Change Panel's decision is provided in section 6 of this report.

8. Amending Rules

8.1 Commencement

Subject to Ministerial approval the amendments to the Market Rules resulting from this Rule Change Proposal will commence at **8:00 AM on 24 January 2018**.

8.2 Amending Rules

The Rule Change Panel has decided to implement the following Amending Rules (~~deleted text~~, added text):

2.1A.2. The WEM Regulations also provide for the Market Rules to confer additional functions on AEMO. The functions conferred on AEMO are:

...

- (j) to support:
 - i. the Economic Regulation Authority's monitoring of other Rule Participants' compliance with the Market Rules;
 - ii. the Economic Regulation Authority's investigation of potential breaches of the Market Rules (including by reporting potential breaches to the Economic Regulation Authority); and
 - iii. any enforcement action taken by the Economic Regulation Authority under the Regulations and these Market Rules;
- (k) to support the Economic Regulation Authority in its market surveillance role, including providing any market related information required by the Economic Regulation Authority;
- (l) to support the Economic Regulation Authority in its role of monitoring market effectiveness, including providing any market related information required by the Economic Regulation Authority; ~~and~~
- (IA) to contribute to the development and improve the effectiveness of the operation and administration of the Wholesale Electricity Market, by:
 - i. developing Rule Change Proposals;
 - ii. providing support and assistance to other parties to develop Rule Change Proposals;

- iii. providing information to the Rule Change Panel as required to support the Rule Change Panel's functions under the Market Rules; and
- iv. providing information to the Economic Regulation Authority as required to support the reviews carried out by the Economic Regulation Authority under the Market Rules; and
- (m) to carry out any other functions conferred, and perform any obligations imposed, on it under these Market Rules.

...

2.3.1. The Market Advisory Committee is a committee of industry representatives convened by the Rule Change Panel:

- (a) to advise the Rule Change Panel regarding Rule Change Proposals;
- (b) to advise the IMO, Rule Change Panel, AEMO (including in its capacity as System Management) and the Economic Regulation Authority regarding Procedure Change Proposals;
- (c) ~~blank~~ to advise AEMO and the Economic Regulation Authority on the development of Rule Change Proposals where requested by AEMO or the Economic Regulation Authority in accordance with clause 2.5.1A or 2.5.1B; and
- (d) to advise the Rule Change Panel regarding matters concerning the evolution of these Market Rules.

...

2.5.1A. AEMO must, before commencing the development of a Rule Change Proposal or providing material support or assistance to another party to develop a Rule Change Proposal, consult with the Market Advisory Committee on:

- (a) the matters to be addressed by the Rule Change Proposal and if applicable the nature and scope of the support or assistance requested by the other party;
- (b) what options exist to resolve the matters to be addressed by the Rule Change Proposal;
- (c) AEMO's estimated costs of developing the Rule Change Proposal or providing the support or assistance requested by the other party;
- (d) whether and when AEMO should develop the Rule Change Proposal or if AEMO should provide the support or assistance requested by the other party; and
- (e) whether and how the Market Advisory Committee will be consulted during the development of the Rule Change Proposal,

and take into account any advice, comments or objections provided by any member or observer of the Market Advisory Committee in deciding whether, when

and how to develop the Rule Change Proposal or provide material support or assistance to another party to develop the Rule Change Proposal.

2.5.1B. The Economic Regulation Authority must, before commencing the development of a Rule Change Proposal or providing material support or assistance to another party to develop a Rule Change Proposal, consult with the Market Advisory Committee on:

- (a) the matters to be addressed by the Rule Change Proposal and if applicable the nature and scope of the support or assistance requested by the other party;
- (b) what options exist to resolve the matters to be addressed by the Rule Change Proposal;
- (c) the Economic Regulation Authority's estimated costs of developing the Rule Change Proposal or providing the support or assistance requested by the other party;
- (d) whether and when the Economic Regulation Authority should develop the Rule Change Proposal or if the Economic Regulation Authority should provide the support or assistance requested by the other party; and
- (e) whether and how the Market Advisory Committee will be consulted during the development of the Rule Change Proposal,

and take into account any advice, comments or objections provided by any member or observer of the Market Advisory Committee in deciding whether, when and how to develop the Rule Change Proposal or provide material support or assistance to another party to develop the Rule Change Proposal.

...

2.22A.1. For the purposes of this clause 2.22A, the services provided by AEMO are:

...

- (c) market administration services, including AEMO's performance of the Procedure Change Process, support for the Rule Change Panel in carrying out its functions under these Market Rules, participation in the Market Advisory Committee and other consultation, ~~to~~ support for monitoring and reviews by the Economic Regulation Authority, audit, registration related functions and other functions under these Market Rules; and

...

Appendix A Responses to Submissions Received in the Second Submission Period

Issue	Submitter	Comment/ Issue Raised	Rule Change Panel's Response
1	Alinta	Alinta considers that it is important that the requirements under new clauses 2.5.1A and 2.5.1B do not delay the progression of the manifest error type Rule Change Proposals, which may require timely resolution. To that end, Alinta notes that AEMO or the ERA could “consult” with the MAC via email, as opposed to during a scheduled meeting – which might happen quite some time after the issue was identified.	The Rule Change Panel agrees it can be critical not to delay the progression of an urgent Rule Change Proposal. As noted in section 5.2 of the Draft Rule Change Report, the Rule Change Panel considers the proposed consultation requirement is flexible enough to accommodate (most likely though the use of email) the development of urgent Rule Change Proposals, and is confident that AEMO and the ERA will be able to identify when the use of email to consult with the MAC is warranted.
2	Alinta	Alinta does not understand why the MAC's role under sub-clauses 2.3.1(a), 2.3.1(b) and 2.3.1(d) is “to advise” whereas the role in new sub-clause 2.3.1(c) is for the MAC to “consult with”. The different drafting convention indicates that this is a different role to that contemplated in the rest of clause 2.3.1. Alinta considers that the MAC's role in each of these sub-clauses is of the same nature, and as such, considers the drafting should be consistent throughout the clause.	The Rule Change Panel agrees with Alinta's suggestion and has updated the proposed Amending Rules accordingly.
3	Alinta	AEMO notes that new clauses 2.5.1A and 2.5.1B fall into an existing range of Protected Provisions in clause 2.8.13(b) of the Market Rules. While outside the scope of this Rule Change Proposal, Alinta considers there is scope for a future review of the “Protected Provision” regime. Given the significant changes to the institutional arrangements implemented by the former Government under the Electricity Market Review, including the implementation of the independent Rule Change Panel, Alinta considers that the conflicts of interest the Protected Provision regime was designed to address have largely dissipated.	The Rule Change Panel agrees that the changes made by the previous Minister to the WEM institutional arrangements may have removed the original rationale for some Protected Provisions in the Market Rules. The Rule Change Panel also notes that the PUO advised at the MAC meeting held on 8 November 2017 that it will review the current list of Protected Provisions in the Market Rules to determine if any of the Protected Provisions no longer need to be classified as such.
4	AEMO	The activities described in the original Rule Change Proposal relate specifically to processes within the Market Rules, and were put	Please refer to section 6.1.4 of this report.

Issue	Submitter	Comment/ Issue Raised	Rule Change Panel's Response
		<p>forward as examples rather than as a comprehensive scope of proposed involvement. However, AEMO notes that the Market Rules are only a part of the regulatory framework that applies to the SWIS and the mechanisms under the Market Rules are only one of a number of ways that policy impacting on the WEM will be determined.</p> <p>As noted in the Draft Rule Change Report, in its role as market and system operator, AEMO is required to work with Government and its agencies, including the PUO, to support the development of energy policy and the Government's reform agenda. As a matter of principle, AEMO considers that it should contribute to market development activities and provide input to policy development where these relate to its functions and obligations, irrespective of the regulatory instrument in which the functions and obligations are described. Consequently it should be empowered and funded for this contribution.</p> <p>Having considered the additional amendments, AEMO is concerned that the prescription of only the activities described in the Rule Change Proposal could be taken to imply that other legitimate contributions to market and policy development in the WEM are outside of AEMO's functions. As AEMO's WEM activities are funded through the Allowable Revenue process in the Market Rules, there is a risk that AEMO would not receive necessary funding to support the full range of market and policy development processes that affect the WEM.</p>	
5	AEMO	<p>AEMO has functions and obligations under other regulatory instruments including the Technical Rules, the <i>Electricity Industry (Metering) Code 2012</i> and the <i>Electricity Industry (Customer Transfer) Code 2016</i>.</p> <p>The Rule Change Proposal explained the benefits of AEMO being able to identify and propose changes to the Market Rules. AEMO considers that these benefits apply equally to all of the instruments that impose functions and obligations on AEMO. Even though AEMO is unable to initiate the formal change process to those instruments, it should still be empowered to identify and articulate</p>	Please refer to section 6.1.4 of this report.

Issue	Submitter	Comment/ Issue Raised	Rule Change Panel's Response
		opportunities for changes that will serve the long-term interests of consumers through improvements to market efficiency or the management of power system security and reliability. If AEMO was precluded from identifying and articulating such opportunities there is an increased risk they will not be pursued.	
6	AEMO	Similarly, the Rule Change Proposal explained that the Rule Change Panel would require information from AEMO to assess impacts on market and power system operation, benefits and costs for the majority of Rule Change Proposals. AEMO considers that this principle applies equally to other regulatory instruments, as well as to broader policy development by the PUO.	Please refer to section 6.1.4 of this report.
7	AEMO	<p>To address the risk of AEMO being left without funding to provide legitimate contributions to market and policy development activities, AEMO suggests either:</p> <ul style="list-style-type: none"> • removing the prescription of activities proposed in clause 2.1A.2(IA); or • adding two activities in proposed clause 2.1A.2(IA): “providing information to other parties to support the development of any statute, ordinance, code, regulation or other instrument that may be relevant to the market or the operation of the South West interconnected system”; and “contributing to the development of policy and regulatory outcomes relating to, or impacting upon, the market or the operation of the South West interconnected system”. 	Please refer to section 6.1.4 of this report.
8	AEMO	AEMO is comfortable with the Rule Change Panel's replacement of “promote the development” with “contribute to the development” in proposed clause 2.1A.2(IA).	Noted.
9	AEMO	AEMO welcomes the Rule Change Panel's consideration of the use of email contact with the MAC to satisfy the requirements of new clause 2.5.1A in the event of more urgent changes to the Market Rules that would be progressed through the Fast Track Rule Change Process.	The Rule Change Panel notes that while it supports the use of email for urgent proposals to meet the consultation requirements of clause 2.5.1A, many proposals progressed using the Fast Track Rule Change Process would not be sufficiently urgent to justify this approach.

Issue	Submitter	Comment/ Issue Raised	Rule Change Panel's Response
10	AEMO	<p><i>Regarding the words “before commencing the development of a Rule Change Proposal” in proposed new clauses 2.5.1A and 2.5.1B:</i></p> <p>The point at which the development of the Rule Change Proposal commences is difficult to specify. AEMO observes that some prior analysis will need to be performed in order to inform the consultation with the MAC described in the proposed new clauses 2.5.1A and 2.5.1B.</p> <p>For clarity, AEMO considers the following activities to occur before the development of a Rule Change Proposal commences: issue identification and investigation; identification of options to address and, in some cases, selecting the preferred solution; preliminary discussions with stakeholders; and preparation of consultation materials for the MAC, which may include concept papers. AEMO suggests that the phrase may be clarified by replacing “development” with “preparation”.</p>	<p>The Rule Change Panel disagrees with AEMO’s interpretation of clauses 2.5.1A and 2.5.1B, and therefore its proposed change to the drafting of these clauses. As explained in section 6.2.1 of this report (and in section 5.2 of the Draft Rule Change Report), the intended requirement is to consult with the MAC before commencing <i>any</i> substantive work on a Rule Change Proposal.</p> <p>Some issue identification and investigation work will clearly be needed to confirm the existence of the issue and to conduct a preliminary assessment of its impacts before any meaningful consultation with the MAC can occur.</p> <p>However, the Rule Change Panel considers that the remaining activities listed by AEMO form part of the development of a Rule Change Proposal and should not be commenced before consulting with the MAC about how and whether they should be undertaken (although for some issues the preferred solution may be inherently obvious without additional investigation). This is because these activities can, depending on the issue, involve material expenditure and so are subject to the same cost concerns as subsequent steps in the development of a Rule Change Proposal.</p> <p>Further, early consultation will allow the MAC to provide useful input on potential solutions to the issue and how it wishes to be consulted during the development process.</p> <p>The Rule Change Panel considers that “development of a Rule Change Proposal” reflects these activities better than the more restrictive “preparation of a Rule Change Proposal”, and so has not made the suggested change to the drafting of these clauses.</p>
11	AEMO	<p><i>Regarding the words “before ... providing material support or assistance to another party to develop a Rule Change Proposal”</i></p>	<p>The Rule Change Panel acknowledges that AEMO and the ERA will need to exercise some judgement in</p>

Issue	Submitter	Comment/ Issue Raised	Rule Change Panel's Response
		<p><i>and related expressions in proposed new clauses 2.5.1A and 2.5.1B:</i></p> <p>Through its roles as market and system operator, AEMO provides material support and assistance to Market Participants and stakeholders on a regular basis. Such support includes provision of market data, and education on the design and operation of the WEM. AEMO is concerned that the proposed drafting could be interpreted as requiring it to vet requests for support and assistance to understand whether a Rule Change Proposal may result. AEMO considers that this would be counter-productive, hampering services that it already provides to stakeholders, and contrary to the intent of the proposed drafting.</p> <p>To clarify this, AEMO suggests replacing this phrase in the proposed new clauses 2.5.1A and 2.5.1B with “before ... materially contributing to the development of a Rule Change Proposal to be proposed by another party”. This new drafting would then need to be reflected elsewhere by replacing “support or assistance” with “contribution” throughout clauses 2.5.1A and 2.5.1B, and by changing the end of the two clauses to “<u>or contribute to the development of a Rule Change Proposal to be proposed by another party</u> provide material support or assistance to another party to develop the Rule Change Proposal.”</p>	<p>determining whether requests of this type constitute “material support and assistance to another party”; and if so, whether this support or assistance specifically relates to the development of a Rule Change Proposal rather than the general education and operational activities of the recipient.</p> <p>However, the Rule Change Panel does not consider that the changes proposed by AEMO would simplify the decisions to be made by AEMO or the ERA in these situations. For example, AEMO could both “provide material support or assistance to another party to develop a Rule Change Proposal” and “materially contribute to the development of a Rule Change Proposal to be proposed by another party” by undertaking extensive data analyses and providing the results to that party. The key decisions required of the agency (i.e. is the assistance material and if so does it specifically relate to the development of a Rule Change Proposal) are not affected by use of the alternative wording.</p> <p>For these reasons the Rule Change Panel has not made the suggested drafting changes.</p>
12	AEMO	<p><i>Regarding the words “must ... take into account any advice, comments or objections provided by any member or observer of the Market Advisory Committee” in proposed new clauses 2.5.1A and 2.5.1B:</i></p> <p>AEMO observes that this is more prescriptive than similar clauses that describe consideration of the views of the MAC (clauses 2.4.3(d), 2.7.7(d), 2.10.13) and suggests that the drafting could be simplified to “provided by the Market Advisory Committee” without changing the intent.</p>	<p>The Rule Change Panel notes that the list of parties comprising the MAC under clause 2.3.5 of the Market Rules does not include the observers appointed by the Minister and the ERA, nor any other observers that may attend MAC meetings at the discretion of the MAC chairperson. The current drafting is designed to ensure that any input provided by these additional parties is taken into account by the relevant agency when making decisions in accordance with clauses 2.5.1A or 2.5.1B.</p>

Appendix B Further Amendments to the Proposed Amending Rules

The Rule Change Panel made some amendments to the proposed Amending Rules following the second submission period. These changes are as follows (~~deleted text~~, added text):

- 2.3.1. The Market Advisory Committee is a committee of industry representatives convened by the Rule Change Panel:
- (a) to advise the Rule Change Panel regarding Rule Change Proposals;
 - (b) to advise the IMO, Rule Change Panel, AEMO (including in its capacity as System Management) and the Economic Regulation Authority regarding Procedure Change Proposals;
 - (c) ~~to consult with~~ advise AEMO and the Economic Regulation Authority on the development of Rule Change Proposals where requested by AEMO or the Economic Regulation Authority in accordance with clause 2.5.1A or 2.5.1B; and
 - (d) to advise the Rule Change Panel regarding matters concerning the evolution of these Market Rules.