

Review of AEMO Governance

10 March 2026

Justice and Equity Centre
ABN 77 002 773 524
www.jec.org.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone + 61 2 8898 6500
Email contact@jec.org.au



About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Michael Lynch, PhD
The Justice and Equity Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: +61 2 8898 6500
E: mlynch@jec.org.au

Website: www.jec.org.au

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

- Recommendations2**
- 1 Introduction.....4**
- 2 Why AEMO’s functions have grown5**
- 3 Consequences of inappropriate governance structures5**
- 4 The vision6**
- 5 Principles to guide structure and governance7**
 - Independence 7
- 6 Governance framework.....8**
 - Separating specific functions of AEMO 8
 - Corporate status of AEMO and ASL..... 8
 - Corporate status of the Australian Energy Planner 9
 - Principles to guide assessment of governance options..... 9
- 7 Membership structure and Board of Directors10**
 - Proposed membership structure and board of directors..... 10
 - Membership 10
 - Industry expertise 10
 - Expert advisory boards 11
- 8 Budgeting and responsiveness to governments11**

Recommendations

Governance framework

Recommendation 1:

That AEMO be divided into three bodies according to its three discrete functions:

- *AEMO, responsible for operation of the market,*
- *its subsidiary AEMO Services Limited, responsible for the administration of extra-market mechanisms, and*
- *the Australian Energy Planner, responsible for planning the development of the energy system.*

Recommendation 2:

That the AEP should be 100% government owned.

Recommendation 3:

That no single government be able to gain a majority share in either AEMO or the AEP.

Recommendation 4:

That AEMO be constituted as not-for-profit corporations under the Corporations Act 2001.

Recommendation 5:

That AEMO, ASL and the AEP be constituted as expert regulatory bodies, empowered to execute their functions on the basis of their own technical expertise.

Membership structure and Boards of Directors

Recommendation 6:

That AEMO and the AEP have separate and distinctly comprised Boards of Directors.

Recommendation 7:

That each respective board of directors possess a mixture of skills and expertise, with a set of pre-stated representational requirements, distinct to the purpose of that board. Membership should include at least two consumer representatives.

Recommendation 8:

That Expert Advisory Boards for both AEMO and the AEP be appropriately convened and structured in order to provide a forum for non-independent stakeholders, and other experts, to avail their expertise and viewpoints to AEMO and the AEP respectively.

Budgeting

Recommendation 9:

That AEMO and AEP Boards of Directors be required to take into consideration the preferences of consumer – either via a public consultation process or via consultation with a standing panel of consumer representatives – before assuming new functions or making recommendations with funding ramifications.

1 Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the discussion paper for the independent review of AEMO Governance (the discussion paper).

The roles and functions of Australian Energy Market Operator (AEMO) have evolved substantially since its inception, particularly in the last ten years. This has involved taking on new functions that stretch the bounds of their in-house expertise. Notwithstanding this dynamic, they have performed those roles with relative effectiveness, often with limited resources and under significant and constant time constraints.

While acknowledging this relative success, it is important to note that AEMO is broadly functioning in ways well beyond the intent which informed its existing structures. At this juncture in the transition – where the functions AEMO performs will continue in their centrality and significance – it is necessary and timely to ensure the structure and governance of AEMO best enable it to fulfill its roles efficiently and promote consumers' best interests.

This consideration of the most appropriate future structure and governance for AEMO should be shaped by a clear vision for the purposes and objectives of AEMO – in its various functions. The assessment should be transparent and based on clearly established principles – for instance, that governance be appropriate to function.

The JEC's position is that the vision of AEMO as an expert regulatory body is best effected by

- Dividing AEMO into separate entities, governed and structured appropriately according to their specific functions, specifically:
 - The Australian Energy Market Operator, continuing the 'operator' functions of the existing entity (the operator)
 - The Australian Energy Planner (AEP), a new entity assuming and evolving the planning (ISP) functions of the existing entity (the planner)
 - AEMO Services Limited, operating as an appropriately independent subsidiary of AEMO (the extra-market policy administrator).
- AEMO (and its subsidiary, AEMO Service Limited) retaining its status and corporate structure as a not-for-profit corporation regulated under the *Corporations Act 2001*;
- The Australian Energy Planner being created either as a not-for-profit corporation regulated under the *Corporations Act 2001*, or as some other entity that affords it appropriate independence from the governments to which it is accountable as well as ensuring it is appropriately transparent;
- AEMO ownership moving to 100% government with a stipulation that no single government can gain a majority ownership of shares;
- The AEP ownership moving to 100% government with a stipulation that no single government can gain a majority ownership of shares.

2 Why AEMO's functions have grown

In order to assess the adequacy of the ongoing structure and governance of AEMO, we must understand how and why the roles and functions of the organisation have accreted over time. We note three important dynamics in relation to these questions.

First, there is a disconnect between the parties that assign functions to AEMO (state and federal governments) and those which fund AEMO (consumers). This represents a misalignment of incentives. Governments may have an outsized incentive to assign functions to AEMO as they do not face the direct cost consequences of doing so. Those costs fall indirectly and opaquely on consumers.

Second, AEMO's status as an independent regulatory body has been realised inconsistently, rather than on the basis of principles of good regulatory practice. In some ways AEMO is treated as an independent expert body whose perspective is relied upon exclusively. In other areas the role of its expertise is only partially recognised, with it required to act more specifically according to government direction.

AEMO's independence is effectively partial and the resulting constraints it faces reduce the effectiveness of the body in fulfilling some of its functions for consumers.

Third, AEMO's role and expertise isn't explicitly defined, leaving it open to absorb new tasks and functions as and when they arise, out of expediency. A more precise and constrained articulation of AEMO's expertise and authority would have prevented them taking on roles beyond market operation or in planning areas far beyond its staff knowledge set, such as the development of demand side resources. At the very least, at each step, the structure of the body would have to have been assessed and adjusted to accommodate these new roles, affording an opportunity to ensure it remained appropriately structured, governed and resourced to undertake them.

These dynamics have occurred as a result of the evolution of decision making and the development of system needs over time, without any commensurate assessment of the impact of these decisions and changes. Over time this has impacted the ability of AEMO to most effectively fulfill each of its roles, making a review of this kind both necessary and timely.

3 Consequences of inappropriate governance structures

The result of this pragmatic accretion of roles over time is a mismatch between AEMOs structure and its functions. In some cases, this mismatch creates or perpetuates a range of perceived or actual biases with impacts on AEMOs effectiveness in undertaking each of those roles in promotion of the consumer interest. We see these as:

- Status quo bias:
That AEMO may tend to towards decisions which unreasonably preference existing settings, traditional technology, or historical institutional knowledge, rather than those which maximise consumer interest. For example, as AEMO's initial function as a planner was limited to transmission planning, this institutional history shapes the execution of its function as a whole of system planner today – and contributes to an exclusive focus on transmission. This is in

spite of its in-principal commitment to technology neutrality and what it is empowered to do by the National Electricity Rules (NER).

- Incumbency bias:
That AEMO's decisions may tend to broadly favour the interests of incumbent industry actors, on the basis those large, established market participants are more visible, predictable and well understood relative to new entrants. This is to some extent a natural outcome of acting as a regulatory body in a period of rapid change. Nonetheless, it must be proactively managed through governance structures more appropriate to enabling the rapid change required.
- Government bias:
That AEMO makes decisions on the basis of instruction or implied instruction from government. This applies most crucially to planning, but also operational areas, for example, where government stakeholders may place a different value on the attainment of reliability outcomes to consumers – or rather, have a much higher assessment of the value of avoiding risks to reliability than consumers. A broad government bias can be said to exist where the regulatory body preferences the perspectives of government over its official requirement to conform to the preferences of consumers.
- Overly conservative risk appetite:
As a result of being both the planner and operator – and so solely responsible for ensuring reliability outcomes - AEMO has a disproportionate incentive for conservatism in a range of important processes and decisions, including the introduction of new technologies, or the level of reliance on new actors or markets for the provision of services previously procured from single providers. This contributes to AEMO preferring more conservative options, which may not fully optimise outcomes for consumers.
- One-directional skew in forecasting errors:
AEMO does not face any material cost for any forecasting errors. This, in conjunction with the dynamics detailed above, is likely to result in AEMO being more accepting of one-directional skews in forecasting errors than a standard commercial entity. To the extent this is true, it has resulted in inefficient planning and increased costs for consumers. The risks of this dynamic, and the significance of the impact on consumers of it not being mitigated, make it a critical consideration.

It is not necessary for these biases to be intentional, or materially realised, for them to be relevant and important considerations for decisions about the appropriate governance and structure for AEMO and its various functions. Assessments of potential reform of AEMO, examined through this review, should explicitly seek to address and manage the impact of these potential biases.

4 The vision

In addressing identified issues with AEMOs structure and governance, the aims of this review should be clearly stated, framed as an explicit vision for what AEMO should be.

The JEC's vision is for AEMO as an independent expert regulatory body (or bodies) that:

- Makes decisions in the long-term interest of consumers;
- Makes decisions based on evidence and its technical expertise, which is clearly defined and limited;
- Is responsive to, but independent of both government and industry;
- Is transparent; and
- Is accountable.

The purpose of this review should be to enable AEMO to develop into this to the greatest degree possible.

5 Principles to guide structure and governance

Robust principles should shape the measures to address the identified issues and enable AEMO to function as an expert regulatory body or set of expert regulatory bodies. These principles should include:

- Expertise should be defined and appropriate to the purpose and functions – this is particularly relevant in relation to the different functions of planning and operation.
- Governance and structures should be appropriate to manage and mitigate the risks arising from functions. This includes addressing actual or perceived conflicts of interest.
- Independence and empowerment should enable optimum fulfilment of purpose unencumbered by conflicting interests.
- Responsiveness to the policy and purpose of governments and other stakeholders is appropriate but should be subject to the overarching objective to best promote the consumer interest.

Independence

In relation to resourcing, we contend this means the body undertaking AEMO's function(s) should be resourced adequately to develop and maintain the expertise needed to fulfil its remit. These resources should not be contingent on direct responsiveness to government. These resources should not be directly linked to particular processes. Rather, the body should have autonomy to direct funding according to its understanding of the needs of their remit and interpretation of what is in consumers' long-term interests.

Staff within the body should be adequately insulated from government and other stakeholders to maximise their capacity to deliver expert, evidence and merit-based advice, based on their expertise and their interpretation of what is in consumers' long-term interests. This does not mean that staff members are not accountable. They should be accountable, but to the board, not to the owners of the body, and grounds for adjustments to their terms of employment should be transparent and

The body's independence to produce regulatory decisions on the basis of its expertise should not be threatened by the degree to which it is expected to be responsive to government or other stakeholders.

Finally, real or perceived conflicts of interest arising from ownership or board membership should be removed or materially mitigated through appropriate governance structures. Actors who have interests that are materially impacted by the decisions and processes of the body should be prohibited from ownership or membership (and thus any perception of influence)

These principles are the basis of our answers to the consultation questions that appear in the discussion paper.

6 Governance framework

Separating specific functions of AEMO

AEMO should be structurally separated according to its distinct, major functions – being planning and operation.

Structural separation would better enable each body to have appropriate structure and governance, a limited and defined expertise, and enhance the capacity of each regulatory body to ensure it has the skill and expertise profiles most appropriate to fully fulfil that function.

Ideally, the JEC sees the functions currently combined within AEMO, separated into:

- Market Operator,
- Energy Planner, and
- Extra-Market Policy Administrator.

In this preferred structure, AEMO would retain its role as Market Operator. AEMO Services Limited (ASL) would remain as Extra-Market Policy Administrator – as an independent subsidiary of AEMO. The Australian Energy Planner (AEP) would be created as a new body with augmented planning responsibilities.

Both AEMO and the AEP should have separate, and appropriately structured and constituted boards. These should be populated with directors who collectively possess skills and expertise appropriate to the specific functions of the operator and planner respectively.

Corporate status of AEMO and ASL

It is appropriate that AEMO and its subsidiary ASL continue as not-for-profit corporations regulated under the *Corporations Act 2001*.

This ensures appropriate powers to fulfil the commercial functions of AEMO and ASL, as well as providing an appropriate degree of independence from the relevant Australian governments.

Optimally, to avoid any actual or perceived conflicts of interest, industry should not have any ownership or control. AEMO should be entirely government 'owned'. While conflicts of interest are more material in relation to the planning functions, AEMO is responsible for producing guidelines and procedures, which have the potential to impact – and benefit - the interests of industry members. This issue can be managed with the use of ringfences, but experience with network regulation indicates the surest elimination of the issue involves completely removing the source of potential conflict.

In recommending total ownership of AEMO by government, we appreciate that governance structures of the market bodies must manage and mitigate political risk to the transition which may arise from undue control by any single jurisdiction. In order to incentivise consensus-building and consensus-based oversight by the governments, we propose that it is stipulated that no government has a majority share in the ownership of AEMO.

Corporate status of the Australian Energy Planner

As the AEP will not have commercial functions in the same way the market operator does, it is not clear that constitution as a corporation under the *Corporations Act 2001* is most appropriate.

This distinction aside, the principles guiding its constitution and status are broadly analogous. The AEP should be transparent and accountable, with appropriate structure, governance and expertise, and must also be independent from governments.

Importantly, it should not be accountable to a single government. Rather the line of accountability should be to all the states and commonwealth together. Again, this is possible under a number of formulations.

We do not consider any incumbent industry ownership or control of the AEP to be appropriate. These actors have a clear conflict of interest in relation to planning the future of the energy system. Any increased capacity to influence or perceived capacity to influence decisions or processes within the AEP qualifies – in actuality or perception – the scope to act purely in the best interests of consumers and undermines the independence on which the body's authority is (partially) based.

Principles to guide assessment of governance options

Regardless, of the assessment of our specific proposal, the principles outlined earlier should guide the assessment of alternative governance arrangements.

Governance framework

Recommendation 1

That AEMO be divided into three bodies according to its three discrete functions:

- *AEMO, responsible for operation of the market,*
- *its subsidiary AEMO Services Limited, responsible for the administration of extra-market mechanisms, and*
- *the Australian Energy Planner, responsible for planning the development of the energy system.*

Recommendation 2

That the AEP be 100% government owned.

Recommendation 3

That no single government be able to gain a majority share in either AEMO or the AEP.

Recommendation 4

That AEMO be constituted as not-for-profit corporations under the Corporations Act 2001.

Recommendation 5

That AEMO, ASL and the AEP be constituted as expert regulatory bodies, empowered to execute their functions on the basis of their own technical expertise.

7 Membership structure and Board of Directors

Proposed membership structure and board of directors

As we have outlined in earlier sections, we propose that AEMO/ASL and the newly created AEP should have their own boards of directors.

We propose that membership and voting rights align with ownership.

Membership

All directors of the two boards should be independent, per the existing definition provided in the discussion paper: that they are not a member of management and are free of any business or other relationship that could materially interfere with their judgment or could reasonably be perceived to do so.

The directors should be equally independent of governments – that is, they should not hold positions with any government during the period of their placement on the board of directors.

Each board of directors should possess a mixture of skills and expertise, with a set of pre-stated representational requirements. These should include that at least two consumer representatives (one representing residential consumers and one representing small business) should appear on each board of directors. Other requirements could be stated in the form of expertise; for example, to have at least one director on each board that has knowledge of or expertise in consumer protection, or demand side participation.

Consideration should be given as to the constitution of these corporations and the manner in which the board members are appointed, their term, and manner of removal.

Industry expertise

We appreciate the importance of industry expertise and viewpoints to the work of both AEMO and the AEP. However, we contend that this expertise can be appropriately accessed without incorporating it at the board level.

We also do not see industry as being unique in their position as having a particular expertise and viewpoint that is necessarily engaged with by AEMO and the AEP.

Industry stakeholders should be free to insert their views and knowledge into processes conducted by the market bodies via the standard stakeholder engagement processes run by the market bodies.

Expert advisory boards

It would also be appropriate to convene specifically tasked standing Expert Advisory Boards for both AEMO and the AEP in order to allow these market bodies to access the skills and knowledge of industry and other stakeholders and experts, including consumer representatives.

The views and expertise of consumer representatives are equally important to those of industry participants.

Membership structure and Boards of Directors

Recommendation 6

That AEMO and the AEP have separate and distinctly comprised Boards of Directors.

Recommendation 7

That each respective board of directors possess a mixture of skills and expertise, with a set of pre-stated representational requirements, distinct to the purpose of that board. Membership should include at least two consumer representatives.

Recommendation 8

That Expert Advisory Boards for both AEMO and the AEP be appropriately convened and structured in order to provide a forum for non-independent stakeholders, and other experts, to avail their expertise and viewpoints to AEMO and the AEP respectively.

8 Budgeting and responsiveness to governments

While we agree AEMO should be appropriately guided and directed by government policy, such as emissions targets and commitments, we do not agree with the premise of the discussion paper that AEMO should become more responsive to governments in general.

We consider the functions of a body such as AEMO best fulfilled by structuring and empowering AEMO as an expert regulatory body, independent of both government and industry. This enables decision-making on the basis of its own expertise in optimising its overarching consumer interest purpose.

In relation to budgeting, we note the existing disconnect between the parties assigning functions to AEMO (state and federal governments) and those funding AEMO (consumers, via industry participants).

On the other hand, requiring all governments to contribute funding to AEMO directly may have the unintended effect of reducing the independence of AEMO and the AEP from governments.

This tension is not easy to resolve and we recommend measures to structurally and transparently mitigate the potential risks of either. Accordingly, we propose that each board be required to take into consideration the preferences of consumers and stakeholders, either via a public consultation or by consulting with a standing panel of consumer representatives, when considering new functions or proposing budgets related to their functions.

Budgeting

Recommendation 9

That AEMO and AEP Boards of Directors be required to take into consideration the preferences of consumer – either via a public consultation process or via consultation with a standing panel of consumer representatives – before assuming new functions or making recommendations with funding ramifications.

9 Continued engagement

We welcome the opportunity to meet with Mr Nigel Ray PSM and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@jec.org.au regarding any further follow up.