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NEM Review Implementation Taskforce

Lodged via Have Your Say webpage

CEC Submission to the National Electricity Market Wholesale Market Settings Regulatory Reforms Consultation Paper

The Clean Energy Council (CEC) welcomes the opportunity to provide feedback to the NEM Review Implementation Taskforce (NEMRIT) and NEM jurisdictions on the draft regulatory package to implement the core recommendations of the NEM Wholesale Market Settings Review, comprising the draft National Electricity (South Australia) (Wholesale Market Liquidity and Investment) Amendment Bill 2026 and the draft National Electricity Amendment (Wholesale Market Liquidity and Investment) Rule 2027[1].

The CEC is the peak industry body representing around 1,000 organisations across Australia's clean energy sector. Its membership includes renewable energy, storage and firming developers and generators, network businesses, energy retailers, equipment manufacturers, investors and financiers, professional services firms, constructors and installers. In short, CEC members are responsible for developing, financing, building and operating the renewable energy, storage, network and firming projects that underpin Australia's energy transition and future electricity system. We are committed to accelerating Australia's transition to a clean energy future as rapidly as possible while maintaining secure, reliable and cost-effective electricity supply for customers.

This legislative package is important for the next stage of Australia's energy transition. It makes the Electricity Services Entry Mechanism (ESEM) a permanent part of the NEM and strengthens liquidity in the wholesale market and associated contract markets. This should give renewable energy, storage and firming projects the long-term revenue certainty they need to be bankable. Improving bankability can attract investment at a lower cost, and that lower cost of capital can flow through to lower electricity prices for households and businesses. Getting these settings right will help Australia undertake the enormous task of replacing an old and ageing coal fleet at the lowest cost, using our abundant wind and solar resources backed by storage and firmed by gas. It will also help Australia make better use of its own energy resources, reduce exposure to volatile international fuel markets, and improve national energy security and independence.

While the existing package provides a solid basis, the CEC and its members have identified a range of elements that need to be improved or further detailed, including elements linked to the proposed NEL changes prior to them being submitted to the ECMC in December.

As we outline below:

- **The CEC supports the core design and a nationally consistent framework**. The package broadly implements the Panel's recommendations and paves the way for the implementation of the ESEM, Market Making Obligation (MMO) and other key elements of the Panel's final report that will underpin the future operation of the NEM. In supporting the package, however, the CEC notes the Panel's emphasis on reinforcing rather than replacing existing physical and financial

[1] DCCEEW, National Electricity Market Wholesale Market Settings Regulatory Reforms – Consultation Paper, Section 1.2.

markets, which should be clearly articulated in the mandates of the newly created ESEM entities and in how they are described in the NEL.

- **Greater emphasis must be placed on the industry-led contract design process**. The Panel recommended an industry co-design process for development of new financial contracts and this needs to be more clearly protected in the NEL. Specifically, the ESEMA and AER must be required to have regard to the recommendation from the industry-led contract co-design working group and explain and consult on the rationale for any deviations in the contracts designated for the ESEM auctions and MMO.
- **Governance and discretion need tighter boundaries**. Important design choices are left to future guidelines or to the discretion of the ESEM Administrator (ESEMA) and Financial Management Entity (FME). We recommend clearer principles in the Law and Rules, transparent decision rules and targeted industry consultation, including on the FME's Risk Management Framework. These principles should act as guard rails for both the initial development of the guidelines and any future amendments to them. Clear guard rails give industry greater certainty that future changes to the guidelines will not unexpectedly devalue investment decisions made in good faith under the existing framework.
- **Investment certainty depends on predictable trajectories, procurement and recycling.** Departures from the tender plan should be justified against clear criteria and ideally consulted on, the forecasting period should be aligned to the maximum expected ESEM contract term plus the in-market period, and contract recycling should seek to limit basis risk and minimise market impacts. Without this predictability, developers face greater uncertainty about future procurement volumes and the risk that recycled contracts compete with or undercut their projects, raising the cost of capital and ultimately the costs passed through to consumers.
- **Transparency should be designed-in from the outset.** All winning prices and volumes, information on unsuccessful bid ranges, progress of awarded projects and jurisdictional costs. Publishing this information allows developers and investors to calibrate future bids, gives financiers visibility of the true cost of new investment, and builds confidence that the scheme is delivering against its trajectory. Similarly, detailed information should be made available on recycling activity. A transparency obligation should be defined as a core principle in the NEL, with details on specific metrics defined in the guidelines, based on co-design with industry.
- **Project delivery settings should prioritise readiness and deliverability.** ESEM procurement should place greater weight on objective project-readiness criteria and realistic delivery milestones. Bond settings and notice-to-proceed requirements should support the timely delivery of viable projects while recognising factors outside a proponent's control, helping ensure contracted capacity is built and minimising costs for consumers.
- **Long-duration needs require a clear pathway.** The eight-hour firming definition, strategic reserve and Special Purpose Procurements must together support long-duration storage, which is essential as coal exits to cover extended renewable lulls, provide firm capacity and support system strength.
- **Regulatory interventions must be proportionate and targeted.** MMO triggers should be linked to objective and observable liquidity criteria.
- **Early checkpoints are needed during establishment.** Timely reviews during the initial years of operation would help refine key elements such as the ESEM contract structures and the in-market period. These reviews should consider objective criteria such as the success of the contract structures in stimulating investment. Waiting for a four-year review cycle risks several tender rounds locking in contract structures that fail to support projects reaching financial close,

whereas an earlier review would allow such problems to be identified and corrected before they undermine investment.

- **A stable investment environment must be preserved while ESEM details are defined and implemented.** Specifically, consideration should be given to announcing additional rounds of Capacity Investment Scheme (CIS) tenders to minimise any gap between the conclusion of the CIS and the commencement of ESEM procurement.
- **Guideline-making powers and obligations should be defined in the NEL.** The NEL should enshrine guideline-making powers, subject to clear parameters including: (i) an obligation to review guidelines every two years (with a public consultation process) or if there is a significant market change; and (ii) a requirement that guidelines be consistent with the national electricity objective.

The following sections set out CEC member feedback on the key issues raised in the consultation paper. The CEC remains actively engaged in these matters and will provide further information or feedback where this would assist the Taskforce as the package is finalised.

Feedback on key topics in the consultation paper

This section provides CEC member feedback on key topics covered in the consultation paper. Three overarching themes emerged:

- **Governance and discretion need tighter boundaries.** CEC members have identified that important design choices are left to future guidelines or to the discretion of the ESEM Administrator (ESEMA) and Financial Management Entity (FME). The preferred direction is clearer statutory principles, transparent decision rules and targeted industry consultation. Wherever appropriate, these principles should be clearly articulated in the Law.
- **Investment certainty depends on predictable trajectories, procurement and recycling.** CEC members support a nationally consistent framework, but highlight that discretion to defer procurement, change contract design or manage recycling actively could weaken price discovery and investor confidence.
- **Transparency should be designed in from the outset.** CEC members seek publication of winning prices, contracted quantities, progress of prior awarded capacity, jurisdictional costs, and contract recycling activity.

1.1 Entities, functions and powers

The ESEM introduces a new set of institutions into the NEM. The ESEMA will set entry trajectories and run procurement, the FME will act as the enduring counterparty to ESEM contracts and manage contract recycling, and the Australian Energy Regulator (AER) will monitor compliance with the Risk Management Framework (RMF). Together, these entities will hold long-term contracts on behalf of consumers and make decisions that shape investment in the NEM for decades. For CEC members, who will develop, finance and operate the projects contracted under the scheme, confidence in how these entities are governed, resourced and held to account is fundamental to their willingness to invest.

The ESEM will rely on new derivative contracts that can require lengthy regulatory approvals and trading platform development. The CEC therefore recommends that NEMRIT and the ESEM entities engage early with financial regulators, including the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA), so that regulatory requirements inform contract design from the outset. Leaving this engagement until late in the process risks contract designs having to be reworked or implementation being delayed, eroding the very investment certainty the package is designed to create[2].

The proposed governance model also places significant influence in the ESEMA and the AER. This places a premium on these bodies having the capability and resources to perform their new roles, clear lines of accountability, and an effective feedback loop between the ESEMA, the FME, existing market bodies and financial regulators. Without these, decisions on procurement, recycling and risk management could be made without full visibility of their combined effect on the market and on investors.

The same principle applies to the ESEM management funds, which will hold all receipts and payments made by the FME but currently attract limited oversight. The CEC broadly supports the proposal to establish these funds as statutory trusts, subject to understanding how this would work in practice, as it would impose fiduciary duties on the FME and introduce regulatory oversight. Given the size of the FME's contract book, there is also a role for financial regulators such as ASIC or APRA in overseeing

[2] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.1.2.

the FME. The draft package also grants the ESEMA immunity from liability except for bad faith or negligence, with liability for negligence capped[3].

Further, the RMF will govern how the FME manages its exposure and undertakes contract recycling, and any basis risk it does not address will ultimately be borne by Market Customers and, through them, consumers. Yet under the current drafting, industry will have limited opportunity to shape it. Unlike other guidelines in the package, the RMF is not subject to public consultation.

The RMF will also be critical to the FME's standing as a bankable counterparty. The cost recovery framework, which gives the FME indirect access to Market Customer credit support, places it in a strong credit position overall. However, gaps remain where wholesale prices move sharply or a Market Customer default creates a shortfall, requiring the FME to carry unrecovered amounts into the following year and seek bridging finance. This would increase ESEM costs and could weaken financiers' confidence in the FME. It is also unclear which entity is paid first if the management funds are in shortfall. The CEC considers priority should be given to the FME as the enduring counterparty to ESEM contracts.

As such, the CEC recommends targeted industry consultation on the RMF, early engagement with financial regulators, and clearer requirements for independent oversight, transparency and coordination between the ESEM entities.

1.2 Contract co-design

Pro forma ESEM contracts, developed through an industry-led co-design process convened by the ESEMA, sit at the heart of the scheme. Their terms will determine whether projects can secure finance, whether the contracts are attractive to the buy-side market (to enable recycling), how risk is shared between developers and consumers, and ultimately whether the ESEM delivers the investment the NEM needs. The CEC strongly supports industry helping to design them.

However, the rules only require the ESEMA and the AER to *consider* advice from the industry working group, which does not place sufficient weight on its role in the process. The ESEMA also need only convene the co-design working group once every four years[4]. This may suit a mature scheme but is too slow for the early years. The first contracts will be designed without the benefit of market experience, and any flaws could persist through several tender rounds, locking them into projects for the life of their contracts and damaging investor confidence just as the scheme needs to build it.

The CEC therefore supports an earlier initial review (for example, two years for the first co-design process), guided by objective indicators such as the proportion of awarded projects reaching financial close and notice to proceed, and tender participation rates. A low rate of financial close, for example, would signal that the contracts are not bankable. Changes should be made only where objective evidence shows material benefits, as terms that shift without good reason undermine the predictability investors rely on.

The value of co-design also depends on who is at the table. If its composition and operation are left entirely to guidelines, they could change over time without the same scrutiny. The CEC recommends that consideration be given to placing high-level principles for representative, industry-led co-design in the Law and Rules (similar to the treatment of the Reliability Panel) rather than relying only on guidelines alone.

1.3 Victorian offshore wind transition

[3] Draft NEL Amendments, section 15 inserting new clause 122A.
[4] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.1.4.

Victoria will run its first offshore wind auction in parallel with this package and later request that those contracts be integrated into the ESEM with the FME as counterparty. We broadly support novating these contracts to the FME[5]. However, we seek greater clarity on how future offshore wind contracts will be designed and procured under the ESEM, so that the momentum created by Victoria's program carries through to an enduring national pathway. This includes how a contract-for-difference plus availability payment structure will be accommodated once the transition is complete, whether through a bespoke pro forma contract developed through co-design or a special purpose procurement.

1.4 New South Wales LTESA transition

The NSW Electricity Infrastructure Roadmap has been a key driver of long-duration storage investment, with Long-Term Energy Service Agreements (LTESAs) that explicitly define and procure storage of different durations. As LTESA tenders are expected to cease once ESEM procurement begins, the main issue for CEC members is how these long-duration storage needs will be carried into the ESEM[6].

A service-based national scheme may not reproduce the technology and duration requirements embedded in the NSW framework, and it is unclear whether the current shaping and firming products can accommodate different storage durations and pumped hydro support periods.

If this is not resolved, projects already in development could face a gap between schemes, and the NEM could under-procure the deeper storage it needs to manage extended renewable lulls as coal exits. The trajectory and contract design processes therefore need a clear feedback loop so the required mix of services can be procured.

The CEC seeks a defined transition pathway for long-duration storage, continuity between the final LTESA tenders and first ESEM tenders, and clarity on how different storage durations will be represented in trajectories and contracts. The CEC also seeks confirmation that pre-ESEM LTESAs will remain within the existing NSW Roadmap architecture, with cost recovery shifting to the FME, as these transitional arrangements are yet to be drafted.

1.5 South Australian scheme interactions

South Australia's Firm Energy Reliability Mechanism (FERM) supports investment in firm capacity in a region with one of the highest shares of variable renewable generation in the world. CEC members understand that FERM would cease when the ESEM and market-making arrangements commence, but the transitional arrangements have not yet been drafted, leaving uncertainty for signed contracts and procurements undertaken before ESEM commencement[7].

Moving from technology and jurisdiction-specific schemes to nationally standardised service contracts changes eligibility, cost recovery and commercial risk. If FERM tenders run while the ESEM is still being finalised, participants will be pricing bids without knowing how their contracts will be treated, which could raise bid prices or deter participation. The CEC seeks early publication of the FERM transitional arrangements, with enough detail for participants to prepare bids with confidence during the transition period.

1.6 Renewable Electricity Guarantee of Origin (REGO) certificates

[5] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.1.5.
[6] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.1.5.
[7] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.1.5.

The Commonwealth is still considering whether Renewable Electricity Guarantee of Origin (REGO) certificates should be incorporated within the ESEM or treated separately. REGOs are project-linked, while ESEM Bulk Energy contracts are designed to be fungible. Bundling the two would sit awkwardly with that design and could limit projects' ability to capture the value buyers place on traceable renewable electricity.

The CEC considers the simplest approach is to treat REGOs as separate and complementary to ESEM Bulk Energy products. Under this model, the energy and shape of a project are valued through the ESEM, while the 'green premium' is valued and monetised separately through REGOs. This preserves the fungibility of ESEM contracts while giving projects an independent revenue stream that supports bankability.

1.7 Anticipated entry trajectory and tender plan

The anticipated entry trajectory is the core investment signal of the ESEM. It forecasts the shortfall in each ESEM service over at least 15 years and informs the tender plan for each procurement round, guiding developers on where and when new capacity will be needed. This makes it a major area of focus for CEC members, who seek clearer treatment of generator exit risk, state targets, transmission build-out, network reliability and the status of Capacity Investment Scheme (CIS) projects when the first trajectory is prepared[8].

The signal is only as strong as procurement's commitment to it. Under the draft package, procurement is informed by, but not bound to, the trajectory and tender plan and the ESEMA has full discretion to deviate from AEMO's modelling without any requirement to justify changes or undertake additional consultation. If volumes can shift without clear justification, developers risk investing in projects for tender rounds that are deferred or reduced, adding costs that are ultimately passed on to consumers. The forecast horizon raises a similar issue: a 15-year horizon on a contract with a three-year in-market period would exclude the final three years of the support period from the forecast. Other NEM forecasts, such as the Integrated System Plan (ISP) and Electricity Statement of Opportunities, operate under more clearly defined frameworks.

The ESEMA's procurement discretion is compounded by its reserve price, which is set but not published. The ESEMA's ability to cap prices, combined with the FME's incentive to place a floor on prices, could undermine the intention for the ESEM to be market-reinforcing. While the reserve price is a potentially important safety valve against overly expensive contracts, how it is set and how it interacts with the trajectory should be clarified.

The integrity of the trajectory also depends on the accuracy of nominated coal exit assumptions. The CEC welcomes that its prior recommendations on exit assumptions have been addressed, but a clear regulatory exit signal for coal would increase certainty that those assumptions will be met. To provide this signal, the CEC has recommended that the Safeguard Mechanism's non-binding sectoral baseline for electricity be replaced with facility-level obligations for major scheduled and semi-scheduled generators. The CEC also seeks further consultation on aligning the ESEM trajectory with the ISP over time.

In addition, NSW has set a target of one million households and small businesses with access to rooftop solar and a battery by 2035[9], while Victoria counts household batteries aggregated as virtual

[8] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.1.
[9] NSW Government, *NSW Consumer Energy Strategy to save money and power across NSW*, media release, 16 September 2024, https://www.nsw.gov.au/media-releases/nsw-consumer-energy-strategy-to-save-money-and-power-across-nsw.

power plants towards its legislated energy storage targets of 2.6 GW by 2030 and 6.3 GW by 2035[10]. If the ESEM cannot recognise these resources, trajectories risk overlooking a growing source of firming and overstating the need for new utility-scale capacity. This suggests a need to ensure alignment between the ESEM Trajectory and the broader AEMC Targets Statement which captures these types of emissions and renewable energy policies influencing the NEM.

The CEC therefore prefers a mechanical and predictable approach, with transparent inputs and assumptions, defined treatment of committed and prospective projects, a forecast horizon aligned to the maximum expected ESEM contract term plus the in-market period for the relevant procurement round, and strict criteria for any departure from the published tender plan and adequate consideration of state-based DER targets in determining trajectories.

1.8 Eligibility requirements

CEC members support a pass/fail gateway based on State requirements followed by price-based assessment by the ESEMA, as it offers a simple, fast and competitive path to contract. This may help standardise the manner in which jurisdictional policies beyond emissions and reliability targets influence the ESEM, but the fact that jurisdictions can add or change their own gateway criteria could introduce the complexity and inconsistency the ESEM aims to remove[11].

Other eligibility settings also need clarity. Whether a project is 'committed' currently depends on an AEMO convention rather than a test in the NER, which is potentially challenging, and the CEC queries whether this test should be formalised. Competition thresholds set by the AER are a further gateway, yet few details are available on how they will work. Because the AER is bound by its own guidelines, a new exemption for an otherwise desirable project would require a further Rules consultation.

Additionally, CEC members are eager to ensure that across State and Commonwealth eligibility requirements, adequate weight is given to project deliverability, such that there can be a high degree of confidence that projects awarded in ESEM tenders will be able to be built at the prices bid. Specifically, pass/fail requirements linked to objective project readiness criteria should be explored.

We acknowledge the role the notice-to-proceed (NTP) Bond is intended to play as a supporting mechanism alongside the eligibility requirements. Setting it at an appropriate level should be a subject of thorough industry consultation and detailed analysis.

The CEC therefore seeks early publication and national alignment of gateway criteria where possible, a clear interface with state approvals, consideration of a formal test for when a project is deemed 'committed' and further consultation on NTP bond settings.

1.9 Core ESEM procurements

Core ESEM procurements will set the price of new investment in the NEM, and that price is the signal developers, investors and the broader market use to judge where and when to invest. Under the draft package, only a representative aggregation of prices will be published, which CEC members consider insufficient[12].

Without full visibility of outcomes, developers cannot calibrate future bids, the market cannot see the true cost of new entry, and confidence in the scheme's competitiveness is weakened. At a minimum,

[10] Victorian Government, *Victorian renewable energy and storage targets*, https://www.energy.vic.gov.au/renewable-energy/victorian-renewable-energy-and-storage-targets.
[11] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.2.

[12] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.3.

all winning prices and quantities should be published, together with useful information on unsuccessful bid ranges and progress against the trajectory.

There should be clearer principles governing contract updates and the minimum in-market period. A fixed three-year minimum may not suit assets, particularly storage, whose value emerges closer to generator exit. These projects would need to bid higher to compensate for being out of the money during the mandatory in-market period, which may not be the most efficient outcome for consumers.

There is also a need to clarify the definition of firming, given the proposed Rule would simply define this as 8 hour duration, which may not be sufficient in all cases, for instance, the 2026 ISP advised that during renewable droughts, GPG may be required to sustain supply for around 3 days at a time. This may not be the appropriate definition either, but without a more effective definition of firming it will be challenging for the ESEM to ensure it procures reliable and effective services.

In addition, the CEC seeks further detail on the principles governing contingent bids, which are left to the ESEM (General) Guidelines, including what happens if contingent capacity is withdrawn or becomes unavailable and whether this would trigger a further procurement round.

The CEC seeks full publication of cleared prices and volumes, annual reporting on projects reaching notice to proceed, and clearer statutory principles for procurement design and changes to contract parameters. The principle of transparency should be enshrined in the law and the details defined collaboratively with industry in the guidelines.

1.10 Special purpose procurements

Special purpose procurements provide a pathway for projects that standard, technology-neutral auctions may not deliver, such as offshore wind, pumped hydro and other long-duration storage, which have long lead times and distinct commercial structures. They are also the only route to an in-market period shorter than three years. The central issue is whether these procurements have enough flexibility to accommodate technology-specific commercial structures while also balancing the need for consistent governance and transparency[13].

Flexibility is valuable, but if special purpose procurements are used too readily or without visibility, they risk undermining confidence in the core ESEM and the fairness of competition between technologies. The CEC supports their use where standard auctions are demonstrably insufficient, accompanied by clear initiation criteria, consultation and disclosure of technology-specific costs and outcomes.

1.11 Strategic reserves

Strategic reserves are the system's last line of defense against rare but severe events, such as prolonged wind and solar droughts or the simultaneous loss of major generators. Because they are funded by consumers but used only occasionally, getting their design right matters for both reliability and cost. CEC members consider the design cannot be assessed confidently until the required duration and relationship with firming are clearer[14]. An eight-hour product and a multi-day reliability need imply materially different technologies and reserve design.

Keeping reserves out of market may constrain value stacking, particularly for long-duration assets. The design should be driven by system reliability needs and interaction with existing emergency reserve arrangements, not by an arbitrary product definition.

[13] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.4.
[14] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.5.

The CEC seeks clarity on how reliability needs will be assessed, particularly with regard to High Impact Low Probability events, as the duration and severity of these events should be the key determinant of the duration and capacity of the reserve service needed to address them.

The CEC supports strategic reserve costs being recovered from the jurisdiction that requests the reserve. Integration with the existing Reliability and Emergency Reserve Trader (RERT) has been deferred to further consultation. The CEC considers the RERT could sensibly be merged with the new strategic reserve process, provided AEMO, and not just the Ministers of participating jurisdictions, can recommend procurement to the ESEMA in line with the current RERT principles and guidelines. Given the likely high cost of these arrangements, strategic reserve procurement using consumer funds should also be subject to transparent reporting on when the service is used and what it costs consumers, which could be achieved by extending the existing RERT reporting requirements in rule 3.20.6 of the NER.

1.12 Essential system services (ESS)

As coal exits, the system services it once provided by default, such as system strength, inertia and voltage control, must be deliberately procured. The draft package allows the ESEMA to run a competitive ESS tender alongside core ESEM procurements, which the CEC welcomes as recognition that system security is closely linked to, not incidental to, new generation and storage. The framework remains under development, and the CEC is eager to see how it progresses[15].

Key parameters are deferred to guidelines, however, and it is not yet clear how tenders will set out the system's ESS needs, or whether ESS contract durations will align with ESEM contracts as the CEC has previously recommended.

ESS is already procured through several channels, including by transmission network service providers (TNSPs) as non-network options, an area under review by the AEMC through the Security Framework Enhancements rule change process. Adding another channel without coordination risks further fragmentation, duplicated costs and mixed signals for grid-forming batteries and other assets able to provide these services. The CEC therefore recommends that ESS procured within the ESEM be considered holistically alongside TNSP procurement, with system needs clearly set out in each tender and ESS contract durations aligned with ESEM contracts.

More broadly, the CEC continues to recommend that system security be more holistically co-optimised with the wholesale spot market to the extent practical, and that a separate ESS procurement workstream be established to fully explore this topic.

1.13 Project development phase

The CEC supports measures that ensure awarded projects are actually built. Experience with the CIS has shown that contracted projects do not always proceed, and a NTP bond is a reasonable way to discourage speculative bids that tie up procurement volumes. The CEC therefore welcomes the bond in principle, but has concerns with the proposed 12-month timeline associated with it[16]. It may be more appropriate for the tenor of the bond to be determined by the ESEMA at a later date, once the broader ESEM package has been finalised.

Planning approvals, grid connection, financing and equipment procurement routinely take longer, often for reasons outside a proponent's control. An overly tight deadline risks disqualifying otherwise viable projects, and financiers will price that risk in, raising costs for consumers. The CEC

[15] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.6.
[16] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.7.

recommends the timeframe be tested against realistic planning, connection, financing and procurement timelines, that bond settings recognise delays outside a proponent's reasonable control, for example through a one-off extension right, and that greater transparency be provided on how bonds will be sized. Relief mechanisms should include consideration of changes in jurisdictional requirements/criteria, with NTP bonds returned to bidders if such changes mean they are no longer able to proceed.

Where a project or bidder has had an NTP bond returned or forfeited, clarity should be provided on their ability to participate in future tender rounds once the project in question has achieved a greater level of maturity.

Information should be provided on awarded projects' progression to NTP and COD. Objective criteria for triggering the retendering of stalled capacity should be a topic of further consultation.

1.14 Contract recycling

Contract recycling is how the FME passes long-term ESEM contracts back into the market, for example by selling a 15-year contract as a series of shorter-tenor contracts. If designed effectively, it adds liquidity and returns risk to those best placed to manage it. If designed poorly, it can distort prices and undercut the projects the ESEM is meant to support. CEC members therefore strongly favour a mechanical, predictable recycling function[17]. This is consistent with the Panel's advice that the risks associated with the FME being a price taker are offset by the material benefits, including by enabling market participants to factor contract recycling into their forward hedging and retail pricing strategies.

The FME should sell down the same fungible contract in shorter tenors, rather than actively constructing offsetting positions that introduce basis risk, which would ultimately be borne by Market Customers and consumers. As the Draft Rules address this risk only through exposure-management obligations on the FME and the Risk Management Framework, the CEC seeks further detail on how the FME will recycle contracts to minimise basis risk, and clearer direction in the Rules on the types of contracts the framework will mandate or permit.

The CEC also highlights that active trading or price management by the FME could weaken the intended feedback loop, obscure the true cost of new investment and compete with new projects seeking buyers during their in-market period. Recycling to a predictable timeline would allow participants to plan and trade around it and reduce distortion of market prices. The CEC therefore seeks release of, and consultation on, the FME's recycling strategy before the package is implemented.

It is additionally possible that the FME's contract recycling activities could trigger the MMO if interactions are not carefully managed. The detail of the AER's liquidity threshold metrics is left to guidelines, but if these pick up signals like volume, spread, number of trades, price volatility etc., then the FME's activities in recycling a large contract book may read like the behaviour the liquidity thresholds are designed to detect. Obligated Market Makers would then be required to post minimum volumes at tighter bid-offer spreads for the same contract type, which in turn changes the market the FME is recycling into. These dynamics could distort bidding activity in the ESEM procurement process as participants adopt more cautious strategies in anticipation of future market-making obligations.

To avoid this dynamic arising, clear information is required on how contract recycling activity and MMO triggers will interact and the degree to which they will be coordinated.

1.15 Cost recovery and cost relief

[17] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.2.8.

The overarching principle of cost recovery aligned with jurisdictional trajectories is supported by CEC members as a means of ensuring state energy policies can be implemented in an efficient and nationally standardised manner, with each jurisdiction's cost under the ESEM aligned with the trajectory it has chosen to pursue. In terms of the granularity with which these costs are then reported, CEC members support visibility of administrative, core-service and state-specific costs so customers can understand the drivers of charges[18].

Most of the detail, including the cost structure and how cost allocation principles apply, is deferred to the ESEM Cost Determination Guidelines. The CEC understands the intent to avoid locking in inflexible mechanisms, but proponents need greater certainty on core design elements to form a view. The CEC acknowledges that these guidelines must be prepared and amended in accordance with the Rules consultation procedures, which allows industry to provide input, albeit at a later stage than consultation on key design elements.

The CEC also supports the principle behind cost relief: Market Customers that contract directly for services the ESEM would otherwise provide should not pay twice. This preserves incentives for private contracting alongside the scheme, consistent with the CEC's preference that developers can layer products such as bilateral PPAs and tolling arrangements without prejudicing their ESEM participation. However, the draft Rules are not yet clear on how input credits will be applied, whether they can be traded, or whether behind-the-meter and other self-investment arrangements will qualify. As these points will determine how attractive private contracting remains, the CEC seeks clarity on them in the ESEM (Cost Relief) Guidelines.

1.16 Market Making Obligation

A liquid contract market is essential for retailers and new entrants to manage risk and for investors to finance new projects. The Market Making Obligation (MMO) is designed to restore liquidity when it falls below objective triggers, by requiring large participants to post bids and offers for electricity derivatives. CEC members support detailed guidelines and objective liquidity triggers and welcome the requirement for forward bids and offers from the next full quarter, which addresses earlier concerns about free hedging for non-MMO participants. The key question is who should be captured as a large supplier[19].

A large single asset or heavily contracted project may have little trading capability or residual exposure even if its physical capacity exceeds a given threshold. While we welcome exemptions to manage operational considerations, this framework should be kept as simple as possible – e.g. if obligated parties were exempt from market making for a limited number of days per month.

Broader participation could support liquidity, but obligations should match capability and legal status.

The CEC seeks exposure and capability-sensitive thresholds, detailed guidelines before commencement, workable exemptions and nomination arrangements, and transparent review of whether voluntary or non-physical participation should expand over time.

It is also vital that any regulatory barriers limiting liquidity are addressed before an MMO is applied – e.g. liquidity barriers created by counterparty risk management and prudential arrangements (which are currently under review).

1.17 Retailer Reliability Obligation

[18] DCCEEW, Regulatory Reforms Consultation Paper, Section 2.3.
[19] DCCEEW, Regulatory Reforms Consultation Paper, Section 3.1.

Under the draft package, provisions for the Retailer Reliability Obligation (RRO) cease to apply in each participating jurisdiction on the date the MMO or ESEM applies there, with savings and transitional provisions allowing specified RRO requirements to continue for a period. The CEC supports this approach, which is consistent with its previous recommendation that the RRO be phased out as the MMO and ESEM begin to apply[20].

1.18 Transitioning from CIS to ESEM

The CEC strongly supports the extension of the CIS to ensure a stable investment environment and ongoing momentum in the energy transition while the details and implementation of the ESEM are finalized. This should take the form of additional tenders in 2027, which available data suggests may be necessary in any case to meet CIS targets regarding the NEM Generation component of the scheme.

1.19 Approach to Guidelines

In the current draft regulatory package:

- The AER's power to develop the ESEM Cost Determination Guidelines is conferred by the NEL and is subject to the customary Rules consultation procedure;
- The AER's power to develop the MMO Guidelines and Competition Threshold Guidelines is conferred by the NER and is subject to the customary Rules consultation procedure;
- The ESEMA's power to develop the ESEM (General) Guidelines, the ESEM (Cost Relief) Guidelines and the CCD Guidelines is conferred by the NER and is subject to the customary Rules consultation procedure; and
- The ESEMA's power to develop the risk management framework is conferred by the NEL and is not subject to public consultation, but is subject to oversight by the AER and MCE.

Other than the requirement to follow the Rules consultation procedure and the lists of matters that must be included in each guideline, few parameters are set as to how the AER / ESEMA develops the relevant guidelines.

Due to the structure of the regulatory package, which defers much of its detailed operation to future guidelines, there is therefore significant uncertainty around how key aspects of the ESEM design will operate.

On this basis the CEC recommends:

- All guideline-making powers are enshrined in the NEL, and subject to clear parameters including: (i) an obligation to review guidelines every two years (with a public consultation process) or if there is a significant market change; and (ii) a requirement that guidelines be consistent with the national electricity objective.
- The provisions of the Draft NER, which specify the matters to be addressed in each guideline, should be more specific as to the principles that must be applied in addressing those matters (while leaving enough flexibility to adapt to evolving market circumstances). A good example of this approach being taken is the ESEM Cost Determination Guidelines, which are required to explain the application of the "cost allocation principles" set out in detail in section 118AAT

[20] DCCEEW, Regulatory Reforms Consultation Paper, Section 3.2

of the draft NEL amendments. This approach should be extended to the other guidelines provided for in the draft regulatory package.

- For the risk management framework, in addition to the above point, public consultation should be required.

To conclude, the CEC remains supportive of the Panel's core recommendations and of a nationally consistent framework, while noting the refinements and open design questions outlined above.

The CEC welcomes further engagement on the matters raised as the regulatory package is finalised and the next iteration of consultation on the NER progresses. The CEC continues to actively work and engage on the topics raised in this submission and will endeavour to share any relevant additional information or feedback as and when it arises.

Further queries can be directed to Martin Kennedy at the following email address: mkennedy@cleanenergycouncil.org.au.

Best regards,

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