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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Competition in Energy Markets – Note by Australia**

28 November 2022

This document reproduces a written contribution from Australia submitted for Item 3 of the 74th OECD Working Party 2 meeting on 28 November 2022.

More documents related to this discussion can be found at
www.oecd.org/competition/competition-in-energy-markets.htm

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Australia

1. Introduction

1. In 2022, the Australian energy market has come under material pressure due to a combination of international and domestic factors. Russia's invasion of Ukraine, and disruptions to supply in international markets, have heavily impacted global gas and coal supply and energy prices. In Australia, these factors have been compounded by extreme weather conditions in the Australian winter, and reliance on our fleet of ageing coal-fired power stations.

2. In addition, Australia is entering a difficult stage of the energy transition, with growth in intermittent renewable technologies accelerating ahead of complementary flexible generation sources to provide power when renewables aren't available, leaving periods where supply and demand is tight and prices are high.

3. As the competition authority, the ACCC is committed to promoting competitive markets that will support a reliable and secure energy supply both for industry and the community.

4. The ACCC's role in energy markets is defined by the *Competition and Consumer Act 2010* (Cth) (CCA). The CCA contains a range of functions which are relevant to competition in energy markets, including:

- monitoring and reporting on gas and electricity markets as part of our ongoing gas and electricity inquiries. In addition, the Australian government has tasked the ACCC with an active role in monitoring and reporting on current energy market conditions.
- enforcing and promoting compliance with Australia's economy-wide competition laws which provide protections from threats to the competitive process posed in energy markets.
- enforcing the Australian Consumer Law which provides economy-wide protections that prohibit false, misleading and unconscionable conduct. For example, the ACCC is monitoring retailer communications with consumers about energy cost and price increases to ensure these communications are accurate, do not contain misleading statements and that any price changes are transparent.
- monitoring and enforcing compliance with the rules on electricity market misconduct under Part XICA of the CCA. These rules ban certain conduct that harms competition and consumer welfare.
- ensuring compliance with [Electricity Retail Code](#), which sets out sector-specific protections such as a price cap on standing offers for retail electricity supply and clear and consistent advertising of prices to consumers.

5. We support measures to assist consumers easily compare products, which can lead to customers receiving greater choice and greater value for money. Measures that promote this include: lowering search and switching costs, improving the portability of consumer data, and ensuring energy products and services are clearly and consistently advertised. This will help to promote competitive energy markets.

6. This submission outlines the ACCC's experience and perspective in relation to the above as well as the relationship with the Australian Energy Regulator (AER) and some of its initiatives to help consumers including the protection of vulnerable consumers.

2. Regulation of electricity and gas markets

7. This section sets out the range of other relevant bodies with responsibility for energy regulation, and developing and implementing energy policy in Australia, as well as the ACCC's role and our relationship to the AER and other market bodies.

2.1. Energy institutions in Australia

8. The [Australian Energy Market Commission](#) (AEMC) undertakes rule making and advises on energy market development. Under the National Electricity, Gas and Energy Retail laws, the AEMC makes and amends the National Electricity, Gas and Retail Rules that underpin the National Electricity Market.

9. The [Australian Energy Market Operator](#) (AEMO) manages electricity and gas systems and markets across Australia.

10. The [AER](#) is the national energy regulator and the body responsible for monitoring and enforcing national energy legislation. The AER regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules. The AER's functions relate mostly to energy markets in eastern and southern Australia. The AER also has a key role in enabling consumers to make informed choices about their energy supplier and monitoring and reporting on the effectiveness of competition.

11. [Energy Consumers Australia](#) advocates on energy market matters of strategic importance and material consequence for energy consumers.

12. The [Energy Security Board](#) (ESB) provides whole of system oversight for energy security and reliability to drive better outcomes for consumers. The ESB has been revised for the delivery phase of the Post-2025 project, and comprises the heads of the AEMC, AER and AEMO, and is chaired by the head of the AEMC.

13. The [Energy Ministers Meeting](#) (EMM) is a Ministerial forum for the Commonwealth, Australian states and territories, and New Zealand to work together on priority issues of national significance and key reforms in the energy sector. Energy Ministers work closely with Energy Consumers Australia and have oversight of the energy market institutions responsible for the operation of national energy markets (ESB, AEMC, AEMO and AER).

2.2. ACCC and AER

14. The ACCC and AER are two separate bodies established under the *Competition and Consumer Act 2010* (Cth) (CCA) that exist as a single entity under the accountable authority of the ACCC Chair.

15. The ACCC is an independent Commonwealth statutory authority. Its role is to administer the CCA and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians. The ACCC makes decisions through formal meetings of its Commission.

16. The AER has its own Chair and independent board and has separate program funding. Most energy market regulation is the responsibility of the AER, which enforces

the National Energy Laws and rules. However, the ACCC has certain roles in energy as discussed below.

17. While specific functions vary according to the legislated responsibilities of the ACCC and AER, the two bodies share many common objectives. Both work to protect and promote competitive market processes and consumers. Under existing arrangements, the AER shares staff, resources, and facilities with the ACCC.

2.3. The ACCC's role in energy

18. As noted above, the ACCC's role in energy markets is in the context of the CCA which provides economy-wide protections for competition and consumer protection. In addition, the CCA contains provisions designed to prevent energy market misconduct (Part XICA), and to ensure compliance with the price cap set by the AER on standing offers and clear and consistent advertising of prices to consumers through the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 (Electricity Retail Code).

19. The ACCC also has specific monitoring and regular reporting roles in relation to the National Electricity Market and the wholesale gas market (discussed below). This work enables the ACCC to provide robust, up to date information to government, industry and the public, which informs government policy decisions and facilitates the ACCC's consideration of conduct as part of its core statutory functions.

3. Events in the electricity and gas markets in 2022 and their implications

20. Electricity and gas wholesale market prices surged to record and persistent highs this year, driven by multiple significant supply-side constraints.

21. During June 2022 gas spot prices on the east coast surged to the highest levels on record, with AEMO stepping into cap prices at \$40/GJ in several of these markets.

22. Domestic gas spot prices began increasing from the end of March 2022. Since early May 2022 domestic gas spot prices have risen to much higher levels, at least 2 to 5 times higher than in March 2022.

23. Domestic gas spot prices also rose above international prices (on an export parity basis) in mid-2022. While LNG prices are a key factor influencing domestic prices, other factors can also influence prices in domestic gas spot markets. In this instance, domestic gas spot market prices being above LNG prices reflected significant cold weather along the east coast of Australia, coal generation outages, and coal supply issues (due to flooding).

24. While some gas users were shielded from these prices, given the majority of their gas was under contracts,¹ gas-powered generators and other gas users needing to source additional gas from the gas spot market were exposed to prices well above historical levels.

25. Weston Energy, a gas retailer, ceased operating during this period and the AER transferred its customers to other retailers under the Retailer of Last Resort Arrangements.²

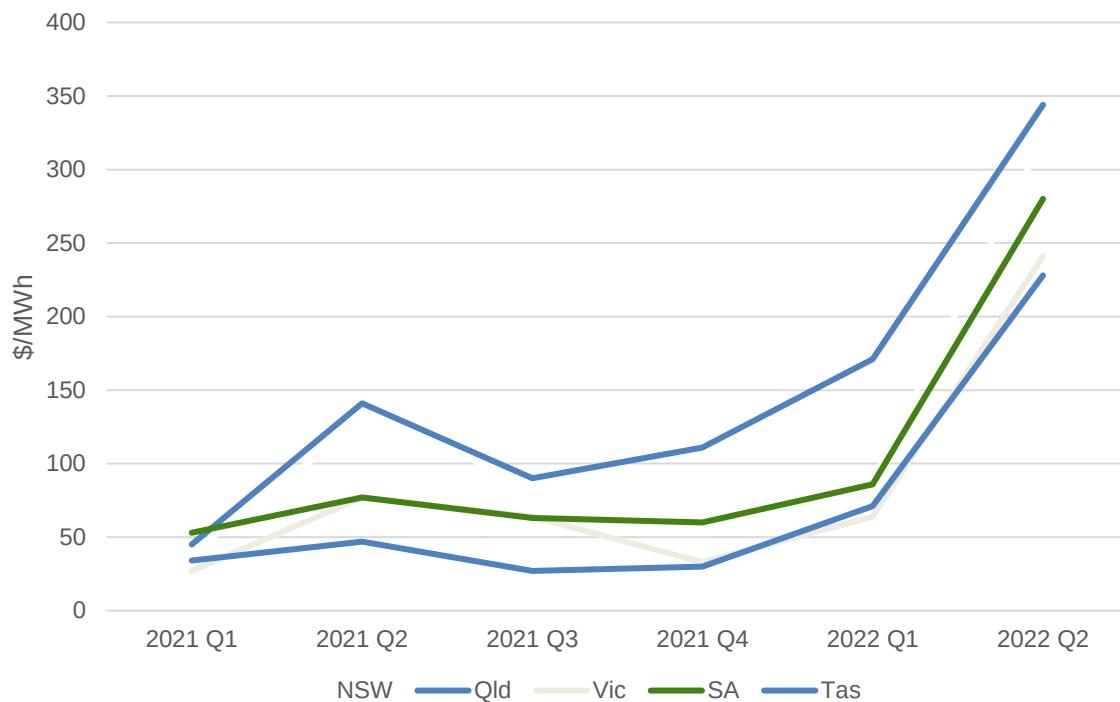
¹ Australian Energy Regulator, [State of the energy market 2021](#), Commonwealth of Australia, 2 July 2021, p 192.

² See: <https://www.aer.gov.au/communication/aer-ensures-continued-supply-for-former-pooled-energy-and-weston-energy-customers>

26. While gas is used as a fuel in its own right, the gas and electricity markets are tightly entwined. Gas is an important source of fuel for electricity generation and is needed to complement variable renewable energy generation.

27. Spiking wholesale electricity spot prices in Q2 2022, as shown in Figure 1 below, were influenced by unscheduled thermal generation outages, extreme cold weather and fuel supply issues, and, importantly, high international coal and gas prices.

Figure 1 Quarterly wholesale spot prices across National Electricity Market regions, quarter 1 2021 to quarter 2 2022



Source: AER; AEMO (data).

28. In early June, spot prices in Queensland, New South Wales, South Australia, and Victoria breached the cumulative price threshold, triggering a cap on spot prices at \$300/MWh. Following the introduction of the price cap, generation capacity was withdrawn from the market, contributing to a forecast shortfall in supply. To maintain power system security and reliability, AEMO used its powers under the National Electricity Rules to direct generators to supply electricity.

29. This became unsustainable and AEMO moved to suspend the wholesale market in all regions of the National Electricity Market for the first time on 15 June 2022.

30. AEMO indicated the market suspension was the best way to ensure a reliable supply of electricity as it would give:

- AEMO visibility of available generation capacity, allowing it to manage the balance of supply and demand in the system
- generators a clear and simple process to recover their costs
- AEMO the ability to dispatch electricity in a simple and methodical way.

31. The suspension was lifted on 24 June 2022 and the National Electricity Market returned to normal operations.

32. While spot prices have stabilised, they remain higher year-on-year and are forecast to remain elevated. This has had a flow on effect to electricity derivatives contracts which continue to increase in price. Since June, the market has seen five electricity retailers fail, as it becomes increasingly difficult to manage liquidity and price risks.

4. Australia's electricity markets

4.1. Overview

33. Australia's National Electricity Market is a wholesale electricity spot market and physical power system operated by AEMO interconnecting five jurisdictions: New South Wales, Victoria, Queensland, South Australia, Tasmania, and the Australian Capital Territory. The National Electricity Market is one of the world's longest interconnected power systems, stretching from Port Douglas in far north Queensland to Port Lincoln in South Australia and across the Bass Strait to Tasmania, supplying approximately 10.7 million customers.

34. Western Australia and the Northern Territory are not connected to the National Electricity Market but have their own markets.

35. The Northern Territory's Interim Northern Territory Electricity Market (I-NTEM) was established in 2015 and is operated by Power and Water Corporation, a Northern Territory government owned corporation. I-NTEM provides a framework to facilitate the wholesale exchange of electricity between generators and retailers by introducing an efficient economic dispatch of generation and basic market operation functions.

36. Western Australia's Wholesale Electricity Market (WEM), established in 2006 and operated by AEMO, supplies electricity to the south-west of Western Australia via the South West Interconnected System (SWIS). There are approximately 88 WEM Participants, including Market Generators, Network Operators and Market Customers. As part of the WEM, AEMO also operates the Short Term Energy Market (STEM), an energy-only forward market to support trading around bilateral contract positions – it determines the quantities that generators sell to AEMO, the quantities that retailers buy from AEMO, and a single clearing price for each trading interval.

37. The WEM also has an additional capacity market, the Reserve Capacity Mechanism (RCM), which ensures that there is sufficient generation capacity in the SWIS.

4.1.1. National Electricity Market design

38. Unlike the WEM, the National Electricity Market is an energy only market. All electricity is traded through the wholesale spot market, with market participants hedging their risk on various secondary financial markets (i.e. on the Australian Securities Exchange or bilaterally).

39. As market and system operator, AEMO manages both generation dispatch and settlement, which both occur at five-minute intervals. AEMO tracks electricity demand, generator bidding and network capability to determine which generators should be dispatched to produce electricity. Normally, the cheapest generator bids are dispatched first then progressively more expensive offers until enough electricity can be produced to meet demand. The highest priced offer needed to cover demand sets the 5-minute price in each region of the National Electricity Market.

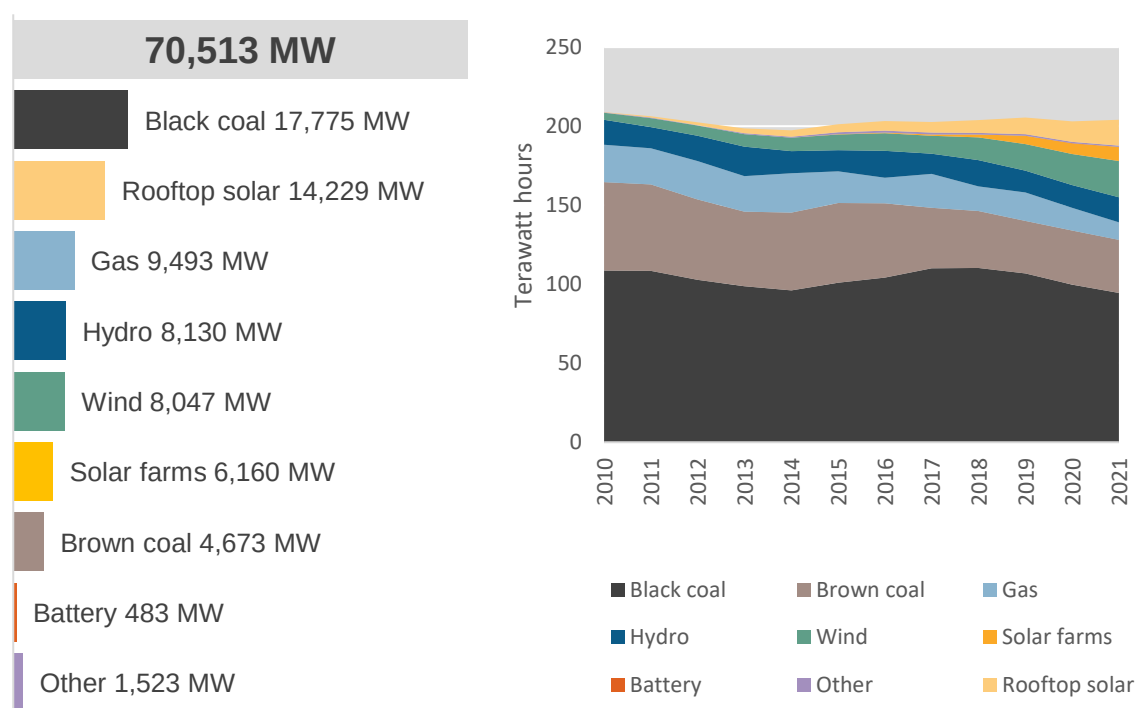
40. At present, there is no capacity mechanism or market with all capital investment costs to be recovered through trading in the energy only market. To allow capital recovery, the market price cap³ is currently \$15,500/MWh. However, if prices stay high in the market over a rolling seven-day period, and the cumulative price threshold (currently \$1,398,100) is breached, an administered price cap of \$300/MWh is applied.

4.1.2. Generation in the National Electricity Market

41. The National Electricity Market's generation fleet uses a mix of technologies to produce electricity. Figure 2 below shows the generation capacity and generation output by fuel source across the whole of the National Electricity Market.

42. As at 1 January 2022, black coal continued to provide the most generating capacity, closely followed by rooftop solar. Generation output by fossil fuel generators continues to fall, with corresponding increases in renewable generation.⁴ While Australia has significant uranium reserves, there is no nuclear generation in Australia, as it is expressly prohibited under Commonwealth legislation.

Figure 2 Generation capacity and output by fuel source in the National Electricity Market



Note. Generation capacity as at 1 January 2022. Other dispatch includes biomass, waste gas and liquid fuels.
Source: AER, AEMO (data), Clean Energy Regulator (data).

³ The market price cap is the maximum price that can be reached on the spot market during any dispatch and trading interval.

⁴ AER, State of the Energy Market 2022, p 33.

43. With the increasing uptake of rooftop solar, grid demand (meaning demand for electricity produced by generators) continues to fall. AEMO is currently forecasting that minimum operational demand, the lowest level of demand from the grid, will shift from the middle of the night to the middle of the day across the National Electricity Market in the next 5 years. This reduction in minimum operational demand will also pose system security risks. However, rooftop solar has a limited impact on maximum demand, which typically occurs in the early evening.

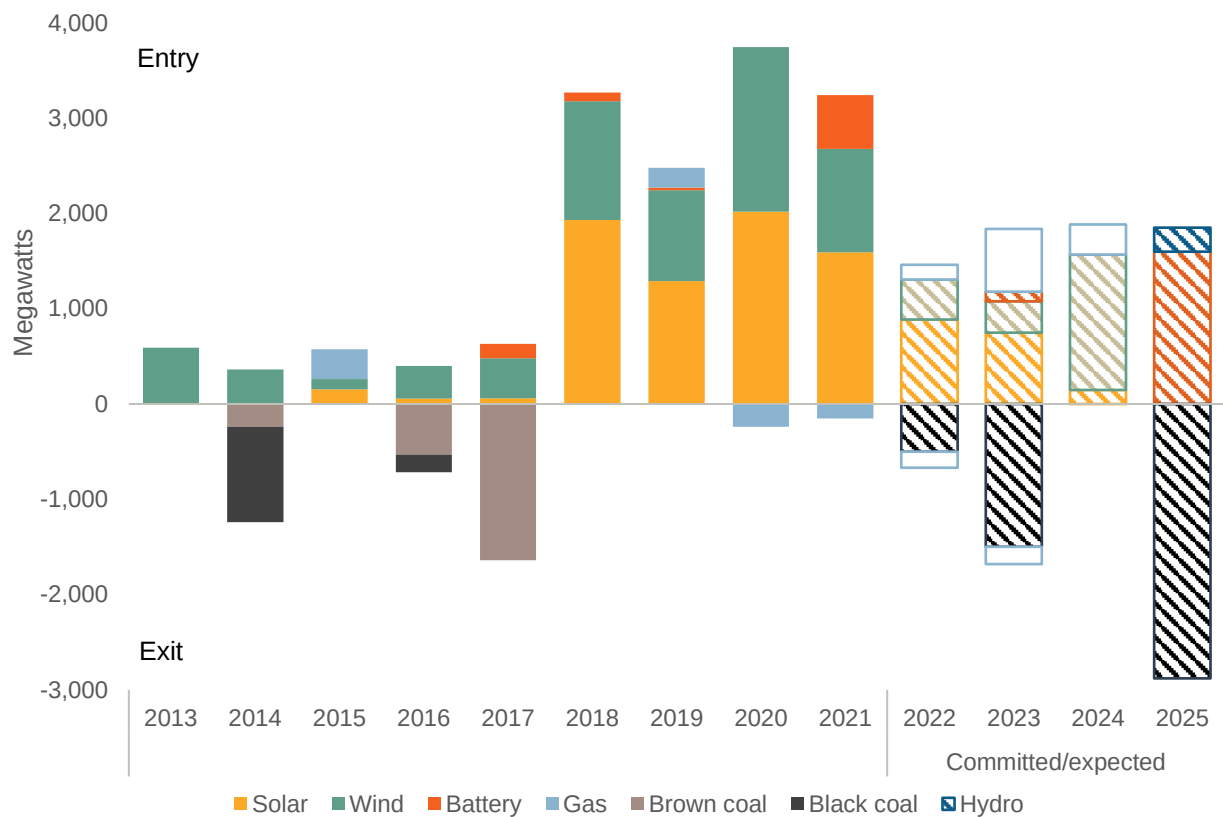
44. Traditionally, Australia's electricity market has operated to vary generation output to balance system supply and demand. Given the cost of this approach, market bodies have identified demand side flexibility as an increasingly viable alternative.

4.1.3. Post 2025 National Electricity Market Design

45. Australia's energy markets are undergoing a profound transformation. The National Electricity Market (NEM) is moving from a centralised system of large fossil fuel (coal and gas) generation towards an array of smaller scale, widely dispersed wind and solar generators, hydroelectric generation, grid-scale batteries, and demand response. Figure 3 below shows past and expected entry and exit of generation technologies.

46. AEMO's 2022 Integrated System Plan envisions that, by 2050:

- Storage capacity, provided by batteries, virtual power plants and pumped hydro, will increase by a factor of 30
- Grid-scale solar and wind will experience a 9-fold increase, while rooftop solar will increase 5-fold
- Electricity usage will nearly double
- Gas-fired peaking plants will increase, while coal generation will be completely withdrawn.

Figure 3 New generation capacity and plant withdrawal by fuel source

Note. Capacity includes scheduled and semi-schedule generation, but not non-scheduled or rooftop solar photovoltaic capacity. Actual and expected investment and closures from 1 January 2022 are shown as shaded components.

Source: AER; AEMO (data).

4.2. Electricity market monitoring inquiry 2018 – 2025

47. The Australian Government directed the ACCC to hold a public inquiry into the prices, profits and margins in the supply of electricity in the National Electricity Market. The inquiry will monitor and consider matters including, but not limited to:

- electricity prices faced by customers in the national electricity market, including both the level and the spread of price offers
- analysing how wholesale prices are influencing retail prices and whether any wholesale cost savings are being passed through to retail customers
- wholesale market prices including the contributing factors, such as input costs, bidding behaviour and any other relevant factors
- the profits being made by electricity generators and retailers and the factors that have contributed to these
- contract market liquidity, including assessing whether vertically integrated electricity suppliers are restricting competition and new entry
- the effect of policy changes resulting from recommendations made by the ACCC in its [Retail Electricity Pricing Inquiry report](#) of July 2018.

48. The inquiry will make recommendations to government(s) to take any proportional and targeted action considered necessary to remedy any failure by market participants, or the market as a whole, to deliver competitive and efficient electricity prices for customers.

49. The interim reports of the electricity market monitoring inquiry are available [here](#).

4.3. Reporting to the Australian Government

50. In addition to our general roles under the CCA, and the reporting requirements of our current Inquiry into the National Electricity Market, the government has asked us to take an active role in monitoring current energy market conditions.

51. On 6 June 2022, the Treasurer wrote to the ACCC regarding current electricity and gas prices. The letter requested that we:

1. ensure that the factors influencing prices in these markets are made fully transparent
2. bring to the government's attention any need for regulatory change to ensure electricity and gas markets function properly for the benefit of all Australians
3. investigate any concerns arising about anti-competitive or false and misleading conduct in electricity and gas markets and take appropriate action.

52. On [8 June 2022](#), the Energy Ministers released a communique which requested the ACCC, as part of its ongoing Inquiry into the National Electricity Market, report back to Energy Ministers in July 2022 on early views on the current situation. In light of the rapidly changing market conditions, and new requests from the government, the ACCC indicated it would progress this work within the existing electricity market monitoring inquiry.

53. The ACCC's latest inquiry report contains our response to the Government's request and sets out our analysis of the impacts of the crisis on the electricity sector. This report will be submitted to the Treasurer in November 2022 and is traditionally published in mid to late December.

5. Australia's gas markets

5.1. ACCC Gas Inquiry 2017 - 2030

54. The Australian Government directed the ACCC to conduct a wide-ranging inquiry into the supply of and demand for wholesale gas in Australia, as well as to publish regular information on the supply and pricing of gas. The ACCC's inquiry into the gas market has recently been extended to 2030.

55. The inquiry monitors and considers matters including:

- the pricing and availability of offers to supply gas
- the volumes of gas supplied or available to the east coast gas market
- the pricing, volume and availability of gas for domestic supply compared to the volume of gas for export
- the pricing, volume and availability of services for gas transportation services that facilitate the movement of gas in the east coast gas market.

56. The interim reports of the Gas Inquiry are available [here](#).

5.1.1. Physical markets

57. The ACCC Gas Inquiry focuses on the east coast gas market (ECGM) including flows from the Northern Territory (NT) to the east.⁵ The ECGM market was traditionally served by gas basins in the south (the Cooper basin and offshore basins in Victoria, primarily the Gippsland and Otway basins), with basins in Queensland opened up to facilitate exports from three LNG projects.

58. Within the ECGM, gas is mostly traded through confidential bilateral contracts, also known as gas supply agreements (or GSAs), which are wholesale supply contracts negotiated between sellers and buyers. Buyers enter into bilateral GSAs with sellers to satisfy their gas requirements over an agreed term. About 90% of gas traded on the east coast is through GSAs.

59. While most gas is traded under GSAs, gas can also be traded in spot markets or other facilitated markets, which allow purchasers to trade gas without entering long term contracts with a specific supplier. Spot market trading can also be a useful mechanism for participants to manage imbalances in their contract positions. AEMO operates three separate types of gas spot markets in the ECGM:

- Victoria's Declared Wholesale Gas Market (the DWGM).
- A short term trading market (STTM) for gas, with hubs in Sydney, Brisbane and Adelaide.
- Gas supply hubs in Wallumbilla, Queensland and in Moomba, South Australia.

60. The commencement of LNG exports significantly changed the ECGM.

61. In addition to significantly increasing both supply and demand for natural gas on the east coast, the LNG projects also linked domestic prices with international LNG prices (as LNG exporters have the option of supplying any uncontracted gas to either the domestic market or LNG markets). This influence has been seen in recent years, particularly given the LNG producers are at times the marginal suppliers to the domestic market.

62. The ECGM is also highly concentrated. Much of the gas produced in the east coast is produced by the LNG exporters. On an aggregate basis, the LNG exporters and their associates had influence over close to 90% of the 2P reserves⁶ in the east coast in 2021, through a combination of their direct interests in 2P reserves, joint venture and exclusivity arrangements. This may increase the risk of coordinated conduct and increase the market power of the LNG exporters.

63. International events have impacted on the current situation in the ECGM.

64. The increased demand for LNG, arising due to a rebound in post-covid industrial activity and interruptions to Russian gas supply to Europe, has led to significant and unprecedented increases in LNG prices. Contract prices in the ECGM have increased as well, albeit not as much as prices in LNG markets. By early 2022, prices offered by

⁵ Australia has three distinct gas markets, being the east coast gas market (ECGM), a Northern Territory (NT) market and a Western Australian (WA) market. Gas in the NT is mainly sourced from basins in the territory's south and offshore basins in the territory's north-west. The NT market was connected to the ECGM in 2018 via a one-directional transmission pipeline called the Northern Gas Pipeline, allowing gas to be sent from the NT to the ECGM. The WA market remains disconnected from the NT market and the ECGM.

⁶ 2P (proved and probable) reserves: Commercially recoverable reserves with at least a 50 per cent probability that the quantities recovered will equal or exceed the estimated quantity.

producers for 2023 ranged from \$7.33-\$16.33/GJ and those offered by retailers to commercial and industrial users for the same period ranged from \$8.52-\$13.46/GJ.

65. In the ACCC's [Gas Inquiry July 2022 interim report](#), we forecast a 56 PJ shortfall in gas supply for the ECGM in 2023 if LNG producers export all of their uncontracted gas as LNG spot and additional sales. Since 2018, we have observed that LNG exporters have exported at least half - and more frequently, around 70% - of their excess gas to overseas spot markets.⁷ In 2021, LNG exporters exported 99% of their excess gas that was forecast for 2021 (100 PJ) to overseas spot markets and as additional sales under long term contracts.

66. The domestic east coast gas market uses a relatively small proportion of the total east coast gas production each year. For 2023, AEMO forecasts that domestic east coast gas demand will be around 571 PJ, requiring approximately 29% of all the gas expected to be produced for the year.

67. In response to the projected shortfall in 2023, the Australian Government announced a review of the Australian Domestic Gas Security Mechanism (ADGSM), which allows for exports to be curbed in the event of a likely shortfall in gas supply.

68. The ACCC also recommended that the Heads of Agreement between the Commonwealth Government and Queensland LNG producers be strengthened and extended.

69. Recently, the Australian Government entered into a new Heads of Agreement with the 3 east coast LNG exporters, under which they have committed to offering uncontracted gas to the domestic market prior to export. The Australian Government also requested the ACCC consider and provide advice on options to improve the operation of a gas industry Code of Conduct, and on other steps to improve the functioning of the east coast gas market more broadly.

5.1.2. LNG Netback Series

70. As part of the current Gas Inquiry, the ACCC publishes the LNG netback price series to improve transparency of gas prices in the east coast gas market.⁸

71. An LNG netback price is a measure of an export parity price that a gas supplier could expect to receive for exporting its gas. It is calculated by taking the price that could be received for LNG and subtracting or 'netting back' the costs incurred by the supplier to convert the gas to LNG and ship it to the destination port.

72. LNG netback prices based on Asian LNG spot prices and oil-linked medium-term LNG contract prices currently play an important role in influencing gas prices in the east coast gas market.

73. An LNG netback price is not the sole factor that influences domestic prices in the east coast gas market. Individual prices paid by gas users can also reflect other factors that may be relevant to their circumstances, including the terms and conditions of their gas supply and any applicable transportation or retailer charges.

74. The LNG netback price series comprises:

⁷ ACCC, *Gas Inquiry 2017 – 2025 Interim report*, p.7

⁸ See: <https://www.accc.gov.au/regulated-infrastructure/energy/gas-inquiry-2017-25/lng-netback-price-series>

- historical LNG netback prices at the Wallumbilla Gas Supply Hub, dating back to January 2016, based on a measure of historical Asian LNG spot prices
- forward short-term LNG netback prices at Wallumbilla, over a 2-year period, based on market expectations of future Asian LNG spot prices
- forward medium-term LNG netback prices at Wallumbilla, over a 5-year period, based on estimates of oil-linked prices under medium-term LNG contracts for delivery to Asia.

75. Historical and forward medium-term LNG netback prices are updated on [the ACCC's website](#) once a month, and forward short-term LNG netback prices are updated twice a month.

5.1.3. Supply recommendations

76. To increase gas supply on the east coast, and to encourage producers to bring gas to market in a more timely manner, the ACCC has recommended that:

- Governments should consider the risks of individual gas developments rather than implementing blanket moratoria on gas exploration and development
- Governments should proactively encourage gas to be brought to market in a timely manner through the adoption of shorter timeframes for developments, where appropriate, and greater oversight of work programs.

77. In July 2021, Victoria removed a moratoria on exploration and development of conventional gas reserves and resources.

78. In order to facilitate the efficient development of infrastructure required to bring gas to market the ACCC has made the recommendation that governments should facilitate a more coordinated approach to the planning of pipelines required to bring new sources of supply to market, where feasible, and encourage these pipelines to be developed through a competitive process and operated on a third-party access basis.

79. Energy Ministers considered further measures to support the development of new gas infrastructure through consultation paper 'Options to advance the east coast gas market'. The Commonwealth has also provided funding for Basin development plans, which will consider infrastructure requirements. The Queensland Government is also conducting a study of the optimal pipeline to bring gas from the North Bowen Basin south.

5.1.4. Market transparency recommendations

80. The ACCC works to improve market transparency through regular reporting of key information to the market on the forecast demand and supply balance and gas wholesale, pipeline and storage prices biannually through the gas inquiry interim reports. Additionally and as referenced above, the ACCC publishes the LNG netback price series to improve transparency of gas prices in the east coast gas market.

81. To improve market transparency through changes to the transparency mechanisms in the National Gas Rules the ACCC recommended that:

- Compression and storage facility providers should be required to report Information on their standing prices and conditions of access, as well as information on the prices paid by users to access their infrastructure
- The Gas Bulletin Board should be amended to require:
 - Information on short-term off market trades to be reported.

- LNG export facilities to report information on exports and prices.
- LNG import facilities to report information on imports and other facility related information (noting that Australia does not currently have any import terminals)
- Gas producers to report reserves and resources information on a consistent basis
- Infrastructure operators should publish additional information on infrastructure availability and developments
- AEMO should publish production cost estimates in the Gas Statement of Opportunities
- Post-inquiry reporting recommendations
 - The AER should publish information on wholesale gas prices following the end of the ACCC's current inquiry
 - The AER should publish an LNG netback price series following the end of the ACCC's current inquiry

5.1.5. Pipeline access regime recommendations

82. The 2015-16 inquiry made recommendations to Energy Ministers on how the regulatory framework applying to pipelines could be improved to pose more of a constraint on the behaviour of service providers:

- The current test for regulation of gas pipelines (the coverage test) should be replaced with a new test.
- The Australian Energy Market Commission should review the rules applying to full regulation pipelines and make any amendments that may be required to address the concerns that pipelines subject to full regulation may still be able to exercise market power.

83. Recommendations to remove the coverage test were accepted by Energy Ministers in July 2021 as part of a broader package of reforms to the pipeline access regime. Legislation to enact these changes is awaiting passage through SA Parliament. The AEMC review was conducted in 2018 and resulted in a number of improvements to the full regulation regime.

84. The current 2017-25 inquiry has made recommendations to Energy Ministers on how the new lighter handed regulatory framework ('Part 23') could be improved, which focused on the:

- information disclosure requirements, with a number of recommendations made on how to improve the quality, accessibility, usability and oversight of the reported information and to provide more transparency on the prices actually paid by shippers:
- negotiation frameworks, with a number of recommendations on how to improve this framework and to prevent it being used to frustrate access to arbitration
- dispute resolution mechanism, with recommendations made on how to improve the accessibility of the mechanism to smaller shippers.

85. These recommendations were accepted by Energy Ministers in March 2022 as part of a broader package of reforms to the pipeline access regime. Legislation to enact these changes is awaiting passage through SA Parliament.

86. In terms of improving access to regional pipelines the ACCC has recommended that Energy Minister consider implementing a capacity surrender mechanism for pipelines where all the capacity has been procured by a single retailer.

87. To lower barriers to participation in the capacity trading regime the ACCC has recommended that day ahead auction access charges on particular pipelines should be amended.

5.1.6. Storage recommendations

88. In order to improve access to storage services the ACCC has recommended throughout its inquiry that Government should implement a third-party access regime for gas storage facilities through the National Gas Law and National Gas Rules.

5.1.7. Improvements to competition

89. The ACCC monitors retailer price offers to identify any competition concerns that may emerge and require further examination, particularly in supplying the C&I segment in which the ACCC has commenced its C&I monitoring project.

90. In order to improve upstream competition, the ACCC has recommended that:

- Governments should consider the diversity of suppliers and the efficiency with which gas can be brought to market when granting new tenements and should avoid granting new tenements to producers with large existing reserves.
- Governments should take steps to reduce the infrastructure, capital and regulatory barriers faced by producers by:
 - considering the implementation of a light-handed third-party access regime for upstream infrastructure through the National Gas Law and National Gas Rules
 - removing duplication in regulatory approvals processes.

91. In the July 2022 interim report the ACCC recommended that producers consider whether they are breaching restrictive trade practices provisions in Part IV of the CCA by entering into joint ventures, joint marketing and exclusivity arrangements, as these arrangements may be lessening competition in an already concentrated and tight market.

5.1.8. Advocacy

92. The ACCC makes a range of recommendations throughout its report process and other platforms. The ACCC has provided input to the voluntary code of conduct that is being developed for the negotiation of contracts between suppliers and users.

93. In regards to the Heads of Agreement, the ACCC recommended that:

- The Commonwealth Government should strengthen the commitments made by LNG producers under the Heads of Agreement signed with LNG producers.
- The Commonwealth Government should extend the Heads of Agreement signed with LNG producers before it expires in early 2023.
- A new Heads of Agreement was negotiated in good-faith between the Minister for Resources and east coast LNG exporters and is in place until 1 January 2026.

6. Competition law, fair trading law, industry codes and consumer data right

94. Australia's key competition law provisions are contained in Part IV of the CCA which covers cartels, restrictive trade practices and mergers. The CCA also contains specific electricity market misconduct regulation, which bans certain types of misconduct that harm competition in electricity markets.

6.1. Electricity market misconduct regulation

95. Part XICA of the CCA (the Prohibiting Energy Market Misconduct laws) bans generators from manipulating the spot market, for example by withholding supply to inflate prices. It also penalises generators that withhold electricity contracts for the purpose of substantially lessening market competition. The ACCC is closely watching market behaviour to ensure these rules are not being broken.

96. The regulation applies to electricity generators and retailers that generate electricity or supply electricity to small customers and it establishes three specific prohibitions:

- retail pricing provision, relating to electricity retailers passing on cost reductions to their small customers
- electricity financial contract liquidity provision, relating to the supply of electricity hedging contracts by owners of electricity generators
- electricity spot market provisions, relating to the bidding conduct of owners of electricity generators, when they are participating in electricity spot markets.

97. During our energy crisis in June 2022, the Treasurer wrote to the ACCC noting the ACCC's critical role in monitoring and reporting on developments in the electricity and gas markets to ensure that the factors influencing prices in these markets are made fully transparent.

98. The Treasurer also asked the ACCC to investigate any concerns about anti-competitive or false and misleading conduct in these markets and take appropriate action.⁹

99. The ACCC actively monitors retailer offers to supply electricity and can take energy retailers to court if they mislead consumers. Working jointly with the AER, we have written to energy retailers to remind them of their obligations under the CCA and the National Electricity Retail Code. Retailers cannot set the price of their standing offers above the 'safety net' Default Market Offer set by the AER, or (in Victoria) the Victorian Default Offer set by the Essential Services Commission.

6.2. Fair trading laws

100. The ACCC enforces the Australian Consumer Law which provides economy-wide protections that prohibit false, misleading and unconscionable conduct. The ACCC is currently monitoring retailer communications with consumers about energy cost and price increases to ensure these communications are accurate, do not contain misleading statements and that any price changes are transparent.

⁹ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/letter-acc-electricity-and-gas-price-rises>

6.3. Electricity Retail Code

101. The Electricity Retail Code was introduced to implement recommendations that the ACCC made in its 2018 REPI report to improve consumers' ability to engage with the market and choose the best offer for their circumstances.¹⁰

102. The ACCC is responsible for ensuring compliance with the Code. The Code is binding on all electricity retailers that supply electricity to small customers in the applicable distribution regions.¹¹

103. The Code imposes requirements on how prices and discounts must be advertised, published, or offered. It requires electricity retailers to present energy price information in a clear and easily understood way. This simplifies comparisons between offers and helps consumers to make better choices.

104. The Code also:

- sets a price cap for standing offers
- requires retailers to compare their offers to the price cap.

105. The limit on standing offer prices in the code is set by the Australian Energy Regulator (AER). The AER uses the average electricity use in different regions to set a maximum annual bill amount for standing offers. Retailers cannot charge standing offer prices at a rate that would mean a consumer using the average amount of electricity would be billed above this maximum annual bill amount.

106. We may take enforcement action where:

- retailers fail to follow the code
- retailers fail to respond to our concerns or choose not to take steps to fix compliance failures
- the issues go beyond a failure to follow code requirements and involve behaviour that is likely to mislead or deceive consumers.

107. One of the ACCC's [compliance and enforcement priorities](#) is the pricing and selling of essential services, with a focus on energy.

108. Through the [Electricity market monitoring inquiry 2018-25](#), the ACCC is monitoring and reporting on the broader effects of the Electricity Retail Code on standing and market offers and advertising practices.

6.4. Consumer data right

109. The Consumer Data Right in Australia is an economy-wide data portability program intended to empower consumers to benefit from their data. It is expected to increase competition and consumer choice and stimulate demand-driven innovation and markets for new data products and services.

110. The Consumer Data Right (CDR) program is predicated on a 'right' for consumers to share certain data safely and securely. This right is enacted in legislation. As a consent-

¹⁰ See: Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 at <https://www.accc.gov.au/business/industry-codes/electricity-retail-code>

¹¹ The Code currently applies to New South Wales, South East Queensland and South Australia.

driven mechanism, CDR puts consumers in control of deciding when they want their privacy protected, and when they want the convenience and benefits of sharing their data.

111. The Consumer Data Right was first introduced to the banking sector with the 4 major banks commencing consumer data sharing in July 2020; the remaining non-majors commenced a year later in July 2021. The energy sector is the next sector for the CDR, with a phased rollout of consumer data sharing commencing in November this year.

7. AER initiatives

112. The ACCC and AER are also looking at features of energy markets from a demand-side perspective. Demand-side factors, such as search and switching costs, improving the portability of consumer data and ensuring energy products and services are clearly and consistently advertised means that consumers can compare products easily and have greater choice.

113. The AER has several initiatives in place to help consumers manage the burden of high energy prices.

7.1. Default Market Offer

114. As noted above in relation to the Electricity Retail Code, the AER is responsible for determining the Default market offer (DMO). The DMO is a maximum price that retailers can charge electricity customers on default contracts known as standing offer contracts. The AER's role is to determine the DMO price each year.

115. The DMO applies to small business and residential customers in areas where there is no other retail price regulation: South Australia, New South Wales and south-east Queensland. The DMO price for each area also acts as a 'reference price' for residential and small business offers in that area. When advertising or promoting offer pricing, retailers must show the price of their offer in comparison to the DMO/reference price. This helps customers more simply compare the price of different offers.

7.2. Better Bills guideline designed

116. In March 2022, the AER published the [Better Bills Guideline](#). The guideline creates an enforceable obligation on energy retailers in respect of their preparation of customers' bills to make it easier for residential and small customers to understand billing information.

7.3. Energy made easy

117. [Energy Made Easy](#) is a free energy price comparison website, operated by the Australian Energy Regulator (AER), for residential and small business customers.

118. Wherever you live in Australia you can use the website: however, the energy price comparison feature is only available in states and territories where the National Energy Retail Law has commenced (at this stage Tasmania, the Australian Capital Territory, South Australia, New South Wales and Queensland).

119. Energy Made Easy allows users to compare all generally available gas and electricity plans, including details such as GreenPower options or solar feed-in tariffs, discounts and incentives, and key terms and conditions. The comparison website is designed to make it simpler for consumers to find a plan that suits their needs.

120. Energy Made Easy also offers a bill benchmark tool that allows users to compare how much electricity their household uses compared to other similar-sized households in their area

7.4. Towards energy equity – a strategy for an inclusive energy market

121. On 20 October 2022, the AER released its new consumer vulnerability strategy – [Towards energy equity: A strategy for an inclusive energy market](#).

122. The AER's strategy is focused on reducing barriers to participation, supporting consumers experiencing payment difficulty, ensuring the consumer voice is heard in sector reforms and improving affordability by reducing the cost to serve energy consumers.

123. The strategy identifies five core objectives and 15 actions that the AER will undertake in the next three years. They are to:

- improve identification of vulnerability
- reduce complexity and enhance accessibility for energy consumers
- strengthen protections for consumers facing payment difficulty
- use the consumer voice and lived experience to inform regulatory design and change
- balance affordability and consumer protections by minimising the overall cost to serve.

124. The AER has observed that the energy sector is experiencing rising debt levels and the number of electricity hardship consumers has been increasing. Average debt on entry to hardship programs has increased in recent years and consumers are continuing to accrue debt while on hardship programs. Consumers are experiencing poor outcomes including disconnections, underconsumption of energy, high levels of debt and failed payment plans.

125. This comes at a time when energy prices are increasing and consumers are facing significant cost of living pressures. In addition, the ways in which the market operates can also directly influence consumer outcomes and impact consumers experiencing vulnerability. The AER has conducted research and consultation with stakeholders which shows that when markets are complex, or not inclusively designed, this can cause new vulnerabilities or compound existing challenges.¹²

8. Recently announced measures by Government

126. On 25 October 2022, the Australian Government announced the following further measures to improve energy security, reliability and affordability:

- **Increased support for the ACCC Gas Inquiry** – the ACCC received further funding, dedicated to monitoring the gas market through the ACCC Gas Inquiry, increasing the frequency of domestic gas supply assessments. The ACCC's gas inquiry was extended for a further 5 years until 2030.
- **Improving Gas Security and Reliability** – The Australian Energy Market Operator (AEMO) will have extended powers to intervene and respond to gas system security concerns and manage volatility. Ahead of winter 2023, immediate

¹² AER – Towards energy equity strategy – October 2022, p. 2.

legislative reform will see AEMO's powers to ensure adequate gas reserves are available for power generation extended to include all east coast gas markets. In addition, the National Gas Rules will be strengthened so that AEMO and gas market participants will be able to identify and respond to emerging gas system security concerns and manage periods of volatility - such as what occurred in this year's winter. The Budget will allocate \$23 million over three years to deliver these reforms.

- **Protecting Consumer Interests** – The Australian Energy Regulator (AER) will take on a new compliance and monitoring role to ensure gas companies are acting in the best interests of consumers and support reforms to encourage investment in firm capacity, with \$22.8 million provided in the Budget over four years for this increased activity. The AER will actively monitor the behaviour of pipeline service providers (such as prices charged, contract terms and access negotiation outcomes) and their compliance with obligations. They will administer, monitor and enforce compliance with an expanded information disclosure framework to ensure users have access to gas on fair terms.
- **A Stronger ADGSM “Gas Trigger” to Protect Supply:** The Australian Government will reform the Australian Domestic Gas Security Mechanism (ADGSM) to give the Minister for Resources greater flexibility to protect domestic gas supplies. Under the reforms, the Minister for Resources will receive expert advice each quarter and will be able to start the process to activate the ADGSM if there is a risk of domestic gas supply shortages. More information is available on the [Securing Australian domestic gas supply web page](#).
- **Reviewing and strengthening the voluntary Code of Conduct:** The Treasurer has requested the ACCC provide observations on the existing voluntary Code of Conduct for the negotiation and development of Gas Supply Agreements between Gas Suppliers and Gas Customers in Australia. In providing this advice before the end of the year, the ACCC will consider options and recommendations to:
 - improve price transparency,
 - better define a reasonable offer, including consideration of reasonable prices,
 - improve the operation of the code, with the intention of it being made mandatory.¹³

9. Conclusion

127. The ACCC and AER are very closely aligned and, under current arrangements, share resources as well as staff. This means that while our roles and responsibilities are separately and clearly defined we collaborate closely on energy matters. This is even more important than ever in a time that is widely accepted as a period of crisis for the energy sector.

128. In addition to energy market regulation, the AER has a key role in enabling consumers to make informed choices about their energy supplier. This role includes ensuring consumers are empowered to access the best energy offer for their circumstances. More recently the AER launched its energy equity strategy which is focused on reducing

¹³ The Hon Ed Husic MP, [Improving energy security, reliability and affordability](#), media release, 25 October 2022.

barriers to participation, supporting consumers experiencing payment difficulty, ensuring the consumer voice is heard in sector reforms and improving affordability by reducing the cost to serve energy consumers.

129. As noted above, the ACCC's role in energy is informed by the broad policy framework set out in the CCA. The ACCC's main role relates to monitoring and reporting under the electricity and gas inquiries, as well as enforcing our general economy-wide and energy-specific rules contained in the CCA and the Electricity Retail Code.

130. The main benefit of the ACCC's ongoing inquiries into gas and electricity is to provide transparency for market participants and to make recommendations to government(s) to take proportional and targeted action necessary to remedy any failure by market participants, or the market as a whole, to deliver competitive and efficient energy markets for consumers.

Further resources

Previous inquiries by the ACCC: the [East Coast Gas Inquiry 2015 – 2016](#) and the [Retail Electricity Pricing Inquiry 2017 – 2018 \(REPI\)](#)

The [State of the energy market report](#) is the AER's flagship annual report covering Australia's wholesale electricity and gas markets, the transmission and distribution networks, and energy retail markets. It provides an accessible review of energy market activity in eastern and southern Australia over the 2021/22 financial year.

the AER's [Wholesale electricity market performance monitoring](#)

the AER's quarterly and annual retail [performance reporting](#). The AER is responsible for reporting on energy retailer performance under the National Energy Retail Law. It publishes data on a range of performance indicators including; customer numbers, contract types, complaints, energy debt, payment plans, hardship programs, disconnections and reconnections.

the AER's [Strategic Plan 2020-25](#)

The AER's latest [Wholesale markets quarterly report](#) analyses how and why spot prices in both gas and electricity reached record highs during the second quarter of 2022.

AEMO's [Quarterly Energy Dynamics](#) reports provide detailed market dynamics, trends and outcomes in Australia's electricity and gas markets. It is produced quarterly.

AEMO's [2022 Integrated System Plan](#) (ISP) provides a comprehensive roadmap for the National Electricity Market.

The Energy Security Board's [Health of the NEM](#) is an annual report on the health of the National Electricity Market.