

2006–08

AER STRATEGIC PLAN



AUSTRALIAN
ENERGY
REGULATOR



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Contents

Energy market reform	2
The AER	4
Our authorising environment	7
Our vision	9
Corporate goals	10
Key areas of focus for 2006–07	12
AER members	14
Energy market environment	16
Contacts	20

Energy market reform

Commencing in the mid-1980s Australia undertook a series of economic reforms designed to improve our productivity and our standard of living. Major reforms to policy and institutions were undertaken in areas such as capital markets, industry protection, infrastructure services (government business enterprises), labour markets, business and corporate regulation, competition policy, taxation, training and innovation.

A central feature of the reform agenda was the Hilmer inquiry (1993) which recommended extending the reach of competition law and policies to sectors of the economy not directly exposed to international competition. The Hilmer inquiry was the catalyst for major changes to the energy market such as establishing a competitive National Electricity Market (NEM) in southern and eastern states as well as establishing a national electricity transmission system, structural separation of generation, transmission and distribution activities, corporatisation of government-owned entities, allowing customers to choose their supplier, providing non-discriminatory access to the natural monopoly services, removing discriminatory regulatory barriers to entry for new participants, implementing cost reflective pricing for network services and removing all legislative and regulatory barriers to interstate trade in gas.

New institutions were introduced to oversee the energy reform agenda. On 8 June 2001, the Council of Australia Governments (COAG) agreed to establish a new Ministerial Council on Energy (MCE) to examine future energy use scenarios for Australia, the potential for harmonising regulatory arrangements, opportunities for increasing interconnection and system security in electricity and gas and ways of enhancing cooperative energy efficiency activities.

COAG also agreed to an independent review of energy market directions in Australia. The review was chaired by the Hon. Warwick Parer. The panel completed its final report on 20 December 2002. Some of the key recommendations of the report related to governance and institutions. In particular, the panel recommended the creation of a national energy regulator to encompass the energy-specific roles of the ACCC, state and territory regulatory bodies and some of the roles of the National Electricity Code Administrator (NECA). The panel observed that there was overlap between these bodies in important areas and there were too many regulators.

In December 2003 the MCE responded to the Parer review by announcing a comprehensive set of policy decisions for its major energy market reform program. These policy decisions resulted in COAG entering the Australian Energy Market Agreement (AEMA) on 30 June 2004. The AEMA provided for three institutions to oversee the operation of Australia's energy market.

The Australian Energy Market Commission (AEMC) was established as the body responsible for rule making and energy market development at a national level. The Australian Energy Regulator (AER) was established as the body responsible for economic regulation and compliance with the codes of the electricity and natural gas industries at a national level. To assist in providing an economy-wide perspective, the AER was located within the Australian Competition and Consumer Commission (ACCC), although the AER is a legal entity in its own right. The National Electricity Market Management Company (NEMMCO) continued to be responsible for the day-to-day operation and administration of both the power system and electricity wholesale spot market in the NEM.

The AEMA also provided for a new national legislative framework including establishment acts for the new institutions and consequential amendments to the electricity and the gas legislation.

The new National Electricity Law (NEL) was passed through the South Australian Parliament on 14 April 2005 and new National Electricity Rules (NER) commenced on 1 July 2005.

The MCE is currently preparing a new National Gas Law (NGL) and National Gas Rules (NGR). The new gas legislation will incorporate the MCE's response to the Productivity Commission's inquiry into the National Gas Access Regime which was completed in June 2004. Amendments will also be made to the NEL and the NER to transfer regulation of electricity distribution and non-price retail functions to the AER.

The AER

The Australian Energy Regulator (AER) is Australia's independent national energy market regulator. It commenced operation on 1 July 2005.

Our functions

Our functions include (or will include):

- > monitoring compliance and investigating and prosecuting breaches by registered participants and other persons with the NEL, NER and the regulations
- > monitoring the wholesale electricity market
- > economic regulation of electricity transmission and distribution (except in Western Australia and the Northern Territory)
- > economic regulation of gas transmission and distribution (except in Western Australia)
- > regulation of retail markets, to the extent determined by the Ministerial Council on Energy (MCE).

At present, the transfer of all of the AER's functions from the ACCC and state regulators is not complete.

On 4 November 2005 the MCE confirmed its agreement to the transfer of economic regulation of gas transmission and distribution and electricity distribution to the AER by 1 January 2007.

In the interim, the AER assists the ACCC in undertaking the gas transmission regulatory functions that will ultimately be transferred to the AER, including approval of access arrangements, applications for approval of associate contracts, approval of annual tariff changes within an access arrangement period, and gas transmission ring-fencing compliance reporting.

The AER will work closely with state regulators to ensure a smooth transfer of the economic regulation of distribution network functions to the national framework.

Energy retail regulation (to the extent determined by the MCE) is scheduled to transfer to the AER from 2008.

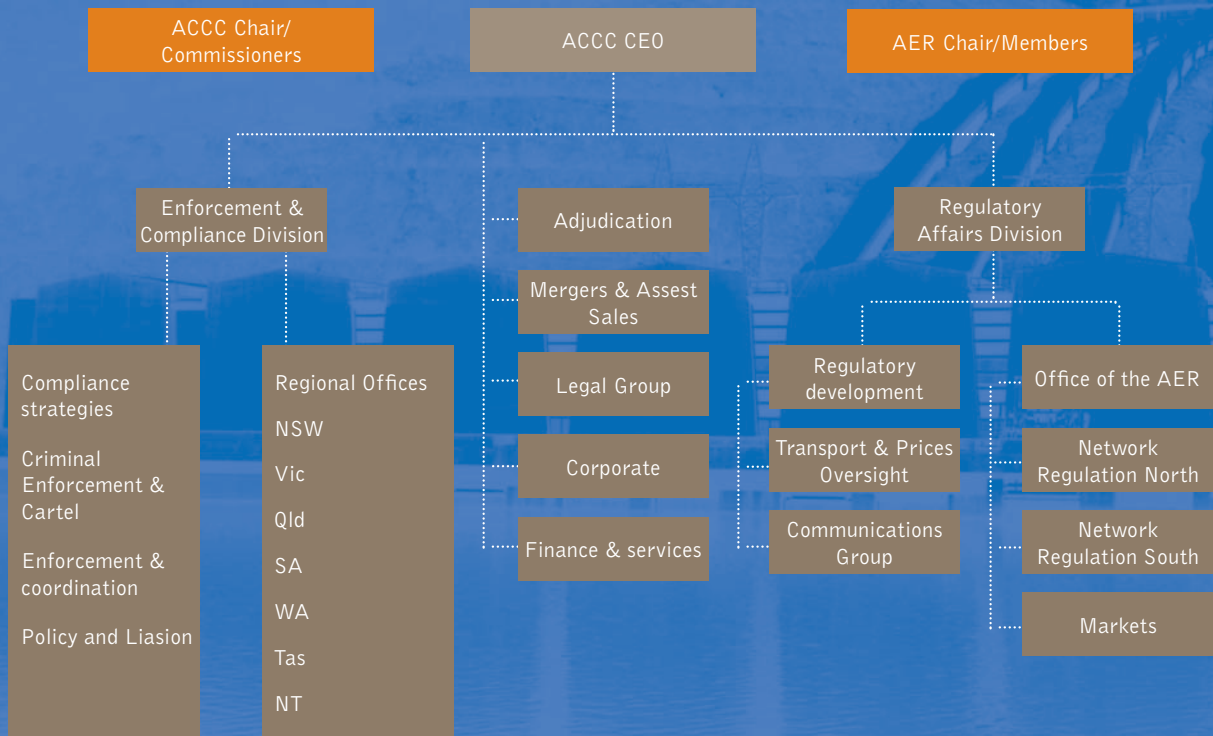
The AER assists the ACCC with energy competition matters including merger issues and energy authorisations.

Our structure

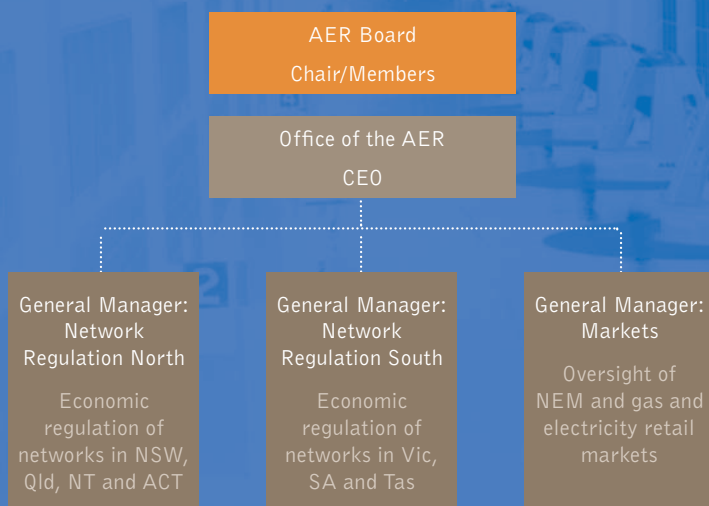
The AER was established in accordance with the Trade Practices Amendment (Australian Energy Market) Act 2004. The AER comprises three members who are statutory appointees. The members are collectively referred to as the Board.

The AER is a separate legal entity which operates as a part of the ACCC. The Australian Government is responsible for funding the AER. The ACCC is responsible for ensuring the AER has the resources (including staff) that it needs. The AER Board advises the ACCC on its requirements. The AER/ACCC relationship is illustrated in figure 1.

Relationship between ACCC and AER



AER organisational chart



On 23 May 2005 Mr Steve Edwell was appointed chairman of the AER for three years, and as a member for five years. Mr Ed Willett was appointed as a full-time member until 19 January 2008 (this appointment will be served concurrently with his ACCC appointment). Mr Geoff Swier was appointed as a part-time member until 29 June 2008 (see p. 12 for biographies and photographs of members).

The AER board members are responsible for decisions about statutory functions. Decisions made by the Board include regulatory decisions such as revenue and price caps and access arrangement approvals, approval of the AER strategic plan, annual work plan and annual report and oversight of delegations.

The office of the AER is responsible for providing timely, quality advice to the Board to support its decision-making responsibilities. The Office of the AER in consultation with the Board is responsible to the ACCC for governance and efficient management of resources.

Our authorising environment

The Australian Energy Market Agreement (AEMA) outlines the agreement of the Commonwealth, state and territory governments to a national approach to energy market regulation. On the basis of this agreement, national energy legislation is put in place. The AER is established under the *Trade Practices Act 1974* with its current functions set out in the NEL and NER. Additional gas regulation functions will be set out in the new gas law and national gas rules and electricity distribution and retail functions will be set out in further amendments to the NEL and NER.

The AER is one of several institutions with a role in the energy market. Key functions rest with other agencies including determining the law (MCE), determining the rules (AEMC), determining what is regulated (ministers, National Competition Council), operating the electricity market (NEMMCO), technical regulation such as safety regulation (state regulators) and competition regulation and enforcement (ACCC).

The AER recognises that overall outcomes for the energy markets and stakeholders, including the long-term interests of consumers, will be improved if the AER works cooperatively and maintains a close working relationship with other agencies in the energy sector. To this end a memorandum of understanding (MOU) has been established between the AER, ACCC and AEMC. The MOU is a public document and provides for consultation, information sharing, cooperation, regular meetings and staff exchange.

The AER will work closely with NEMMCO and will establish a MOU to outline the relationship and methods of cooperation.

The AER's decisions are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) and other commonwealth laws.

Regulatory environment for energy



Legislative basis

Australian Energy
Market Agreement

National
Electricity Law

National
Electricity Rules

National Gas
Law (pending)

National Gas
Rules (pending)

Regulations

Trade Practices Act

Government oversight

Council of Australian
Governments
overall coordination and
agreement

Ministerial Council
on Energy
national policy and
governance body

Standing Committee
of Officials
supports MCE

South Australian
Parliament
Lead legislator

Institutions

AEMC
rule-making and
market development

AER
NEM oversight and
economic regulation

ACCC
competition regulation
in the energy sectors

NEMMCO
operate the NEM,
register participants,
maintain system
security, coordinate
planning

Our role

To promote efficient investment and prices in the energy sector to benefit the long-term interests of energy consumers through:

- > effective economic regulation of electricity and gas network and retail businesses
- > monitoring, compliance & enforcement with NEM law and rules
- > supporting the ACCC in enforcement of competition law as it applies to the energy sector
- > improving quality, availability and accessibility of information on the operation of the energy market
- > effective consumer protection regulation.

Our vision

To be recognised as a world best practice energy regulator

Our values

Competence

We take pride in our people and the way we perform our role. We will develop expertise and continuously work to improve our performance.

Cooperation

We will work cooperatively with other authorities responsible for energy market development and operation.

Respect

We will operate with honesty and integrity and will treat people with respect.

Consultation

We will be consultative and seek to effectively engage with our stakeholders. We will ensure our processes are inclusive and transparent.

Performance

We will focus on achieving quality outcomes in a timely way.

Public service

We adhere to the Australian Public Service Values and Code of Conduct.

Corporate goals

ONE Provide clear, timely and consistent decisions

We will build capacity within the AER to make timely and consistent decisions in anticipation of assuming additional responsibility for the regulation of electricity and gas distribution and retail businesses from January 2007. We will ensure we have sound project planning and monitoring processes in place to enable us to effectively regulate 40 energy transmission and distribution businesses. We recognise that a crucial factor in being able to meet this goal is our staff, both current and future. A high priority for us is the identification, recruitment, retention and training of staff. We will draw on the expertise of jurisdictional regulators through staff transfers and other arrangements.

TWO Ensure energy businesses and users clearly understand the operation of the legal framework and how the AER will undertake its roles

We will develop guidelines that clearly set out how we will operate, perform and exercise our duties, functions and powers. These guidelines will be developed in consultation with stakeholders. We will set out the process that we will follow when undertaking regulatory tasks, including setting out the timelines and explaining how we will engage with stakeholders. Regulatory decisions will clearly set out the reasons for our decisions and identify all the material relied on in reaching those decisions. Material will be made available to all stakeholders, subject only to necessary confidentiality requirements of parties.

THREE Provide high quality, relevant information about the energy sector to all stakeholders, including policy makers to help inform good policy outcomes

We will regularly publish information on energy market operations that is clear, accessible and relevant. This information will come from our economic regulatory experiences as well as market monitoring and compliance. We will use our relationships with overseas regulators to collect information about relevant international experience and include that within our analysis.



FOUR Contribute to the reliable, safe operation of the NEM

We will actively monitor the performance of market participants regarding their obligations under the NEL and NER. We will promote a culture of corporate compliance with market participants through effective engagement, auditing processes and where appropriate rigorous investigation and enforcement of breaches of the law and rules. We will publish reports to provide information to the market on levels of compliance and to highlight potential areas of concern.

FIVE Develop effective working relationships with the AEMC and NEMMCO

We will work closely with the AEMC and NEMMCO to ensure the efficient regulation and operation of energy markets. We will develop and maintain appropriate memorandums of understanding that transparently outline the nature of the relationship between our organisations.

Key areas of focus for 2006–07

The AER has published a detailed work program for 2006 and 2007. This program sets out timeframes for the key work elements facing the AER.

There are a number of key reforms and reviews currently being undertaken in the energy market that are relevant to much of the AER's work program and will need to be taken into account as work develops. We will keep stakeholders informed about how these reforms affect our work program and the changes we may need to make.

With the introduction of new laws and rules in electricity and gas it will be necessary to provide guidance on the operation of the new regimes. Development of clear regulatory guidelines is critical to the effective undertaking of a significant program of regulatory determinations.

An extensive range of guidelines and model templates is proposed. In a number of cases these guidelines are mandated in the law or the rules. The AER intends to undertake substantial consultation with stakeholders in the preparation of these guidelines.

New laws will transfer gas transmission functions from the ACCC to the AER and electricity and gas distribution and non-price retail functions from the state regulators to the AER. The AER will work closely with the ACCC and state regulators to effect a smooth transition of these functions. We will form a working group with the state regulators to facilitate the smooth transfer of distribution functions.

The new functions will increase the workload of the AER. We will be looking to expand significantly over the next year through recruitment and the transfer of staff from the state regulators. The integration of staff from the state regulators will be a key priority as these staff can provide continuity and assist in skill development.



Regulatory determinations are scheduled for Powerlink (electricity transmission, 2006), Roma to Brisbane pipeline (gas transmission, 2006), GasNet Corio loop expansion (gas transmission, 2006), South West Queensland pipeline (gas transmission, 2006), GasNet and VENCORP (gas transmission, 2007), ElectraNet (electricity transmission, 2007), SP AusNet and VENCORP (electricity transmission, 2007) and Integral Energy, EnergyAustralia, Country Energy and ActewAGL (electricity distribution, 2008).

The AER will be focusing on electricity market monitoring, compliance and enforcement. The issuing of new electricity rules necessitates a review of rebidding guidelines and reporting requirements. We will also publish an annual report on the operation of the wholesale electricity market alongside our ongoing compliance reviews, audits and reports. We have an ongoing role in monitoring compliance with ring fencing obligations.

We are committed to providing information to inform market participants about national energy market issues. As well as continuing to publish weekly and quarterly reports on the operation of the NEM, we will publish our first state of the national energy market report. This report will draw on information available to us through our regulatory activities and other publicly available information to provide a comprehensive snapshot of energy market developments and issues.

AER members



Steve Edwell

Steve Edwell was appointed by the Ministerial Council on Energy as inaugural chair of the Australian Energy Regulator, a position he has held since 23 May 2005.

Steve has over 15 years experience in reform of utilities, in particular electricity and water, where he has driven a number of comprehensive reform projects, and has worked in both the public and private sectors.

From 1988 to 1998 Steve worked in Queensland Treasury, holding the position of Assistant Under-Treasurer Structural Reform. Subsequently Steve has taken various contracted positions in the utilities sector and has acted as a consultant on a range of electricity and water matters, specialising in large-scale reform implementation.

Immediately before this appointment, Steve worked for the Western Australian Government leading the implementation of comprehensive electricity reform in that state. Steve was also the CEO of the Queensland Electricity Reform Unit, which implemented a range of electricity reforms culminating in Queensland joining the National Electricity Market. His other assignments have included being commissioned by the Queensland Government to implement the CoAG water reforms and as head of the Queensland Office of Energy.

Steve has a commerce/economics degree from University of New South Wales and an MBA from University of Queensland.



Ed Willett

Part IIIA of the Trade Practices Act provides that one of the members of the AER must be a commissioner of the ACCC.

Ed Willett was appointed to the ACCC in January 2003 for a five-year term. Before his appointment to the ACCC, Ed was the inaugural executive director of the National Competition Council for seven years. Before that he worked as an assistant commissioner with the Industry Commission, and helped develop the Commonwealth Department of Industry, Science and Technology's role in business law and regulation, spent three years as deputy head of the Commonwealth Office of Regulation Review, and was involved in other Industry Commission inquiry work and research.



Geoff Swier

Geoff Swier holds a Masters of Commerce (Economics) from the University of Auckland and has 20 years experience in microeconomic reform in Australia and New Zealand, focusing on the establishment of competitive energy markets and privatisation.

Geoff played a leading role in the Victorian electricity industry reforms from late 1993, and led policy and planning work for the reform of the Victorian gas industry between 1996 and June 1999. Between 1999 and 2001 he was a director of VENCORP, the Victorian gas market system operator.

Ed also spent three years with the New Zealand Ministry of External Relations and Trade as an advisor on international economics and trade, and eight years as an economist with the Department of Defence. Ed has degrees in law and economics and a post-graduate diploma in international law.

He began his career in New Zealand Ministry of Energy in 1982 working in energy forecasting and energy policy. Between 1984 and 1987 he was an economic adviser to the New Zealand Minister of Finance, and in 1990 was an adviser to the NZ Minister for State Owned Enterprises. In the early 1990s he was involved in policy work that led to the development of the NZ wholesale electricity market.

Energy market environment

Australian Energy Market Agreement 30 June 2004 (AEMA)

Legislation governing the operation of the energy markets is a cooperative scheme involving Commonwealth, state and territory legislation. This scheme is established by the AEMA. The AEMA covers objectives, operation of agreement, Ministerial Council on Energy, Australian energy market institutions, Australian energy market legislation, appointments to the AEMC and the AER, functions of the AEMC, functions of the AER, funding arrangements, dissolution of NET, NECA, NGPAC and the Code Registrar, MOU between AER, AEMC and ACCC and withdrawal of parties.

Council of Australian Governments (COAG)

COAG is the peak intergovernmental forum in Australia. COAG comprises the Prime Minister, state premiers, territory chief ministers and the President of the Australian Local Government Association (ALGA). The role of COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments.

Ministerial Council on Energy (MCE)

The MCE was established by COAG in 2001 to deliver the economic and environmental benefits for Australia from implementation of the COAG national energy policy framework.

The MCE is the national policy and governance body for the Australian energy market, including for electricity and gas, as outlined in the COAG AEMA of 30 June 2004. The MCE comprises ministers with responsibility for energy from the Australian Government and all states and territories.

The MCE may provide statements of policy principle to the AEMC subject to the procedures set out in the NEL and the AEMA.

Standing Committee of Officials (SCO)

SCO is a group of senior officials from the Commonwealth and state and territory governments with responsibility for assisting the MCE.

South Australian Parliament

South Australia has the role of lead legislator. The process involves ministers of the participating jurisdictions approving the initial version of legislation and rules. The South Australian Parliament then enacts the approved legislation which is then applied in other participating jurisdictions through Application Acts passed in those jurisdictions.

National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005 (NEL)

The NEL was passed by the South Australian Parliament on 14 April 2005. The NEL contains provisions setting out the powers and functions of the AEMC and AER as well as provisions for the operation of the NEM.

Initial National Electricity Rules (NER)

The initial NER commenced on 1 July 2005. As the AEMC is charged with amending the rules from time to time, the latest version of the rules can be found on the AEMC website.

National Gas Law (NGL) and Rules (NGR)

The MCE's proposed response to the Productivity Commission's review of the gas access regime (November 2005) anticipates a new NGL and NGR along similar lines to the NEL and NER.

Regulations

Additional regulations may be put in place to govern specific aspects of the energy markets as authorised by the legislation. For example, South Australia has made the Australian Energy Market Commission Establishment Regulations 2005 under the *Australian Energy Market Commission Establishment Act 2004*.

Trade Practices Act 1974

The Trade Practices Act (as amended by the *Australian Energy Market Act 2004*) provides for the AER.

Australian Energy Market Commission (AEMC)

The AEMC is a new national body created as part of the energy market reform process currently being undertaken by the MCE. In 2003 Commonwealth, state and territory governments agreed to establish a new regulatory framework for the energy sector. As part of this the AEMC was established with responsibility for rule making and market development.

Australian Energy Regulator (AER)

The AER is a part of the ACCC. It was established under Part IIIAA of the *Trade Practices Act 1974* and operates as a separate legal entity. The AER regulates the wholesale electricity market and electricity transmission networks in the NEM. The AER will also be responsible for the economic regulation of gas transmission networks and enforcing the gas access code in all jurisdictions except Western Australia. Further, the AEMA of June 2004 establishes that future powers of the AER will include responsibility for the economic regulation of both NEM and gas distribution networks (except in Western Australia) and retail markets (other than retail pricing) following the development of an agreed national framework.

Australian Competition and Consumer Commission (ACCC)

The ACCC retains responsibility for competition regulation under the Trade Practices Act, for competition related code change authorisations under Part VII, and for access regulation under Part IIIA.

National Electricity Market Management Company Limited (NEMMCO)

NEMMCO was established in May 1996 to implement, administer and operate the wholesale NEM, manage the security of the power system and continually improve the efficiency of the NEM. NEMMCO has dual roles of Market Operator and System Operator. It is a body corporate whose members are the governments of the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria.

Reliability panel

The NEL requires the AEMC to establish the Reliability Panel in accordance with the NER. The role of the panel is to monitor, review and report on the safety, security and reliability of the national electricity system. The membership of the panel must consist of a commissioner of the AEMC appointed to act as chairperson of the panel, the CEO of NEMMCO or its delegate; and at least five but not more than eight other persons appointed by the AEMC for up to three years representing the key stakeholders in the market.

Advocacy panel

The MCE has decided that consumer advocacy arrangements for both gas and electricity users should be dealt with by an independent panel which has the capacity to allocate funding for the purpose of energy end user advocacy, with a particular focus on small to medium consumers. In addition to providing grants, the panel will be able to commission research on matters of concern to consumers. The panel will publish the results of research it commissions and funds and will report on the outcomes of funded activities.

The new panel will be accountable to the AEMC with the MCE responsible for appointment of panel members and approval of grant allocation guidelines. The MCE has decided that the most appropriate way to implement this model is by giving the body a legislative basis through the NEL and NGL.

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