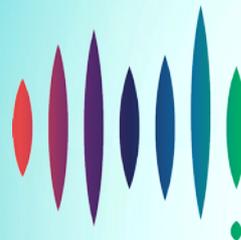




Maddocks

National Energy Regulation Handbook



**ENERGY
CONSUMERS
AUSTRALIA**

NATIONAL ENERGY REGULATION HANDBOOK

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From the Authors

We thank Energy Consumers Australia for the opportunity to prepare this National Energy Regulation Handbook, and all at ECA and Maddocks who provided feedback or made a contribution.

The national energy regime is notable for both its complexity and its broad impact on ordinary household and business consumers. The key legislation alone comprises some 2,738 pages, and is highly technical in its language and subject matter.

The purpose of this Handbook is to act as a roadmap to the national energy regime, focusing on the main governing legislation. It aims to equip the reader with a working knowledge of energy regulation as it operates in Australia, so as to provide a meaningful understanding of the regime and a starting point for any more detailed advocacy or analysis.

The Handbook is not legal advice, and does not attempt to be fully comprehensive. This inaugural version of the Handbook is current to 14 October 2016, but the legislation referred to may change from time to time, and may differ in some respects between jurisdictions. Accordingly, it is necessary to review the legislation directly, and readers should not rely on the Handbook alone.

We hope that you find the Handbook a useful resource. If you have any suggestions or feedback to be incorporated into future versions of the Handbook, please let us know by contacting Robert Gregory on 03 9258 3770 or robert.gregory@maddocks.com.au.

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CHAPTER 1: OVERVIEW OF THE NATIONAL ENERGY REGIME

A Background and Structure of the Regime

1. The National Energy Regime (**NER**) regulates the sale and supply of natural gas and electricity in Australia, with a focus primarily on competition and consumer protection.
2. The NER is composed primarily of three overlapping components:
 - the **National Gas Regime**, which comprises the National Gas Law, the National Gas Rules and accompanying regulations and Procedures;
 - the **National Electricity Regime**, which comprises National Electricity law, National Electricity Rules and accompanying regulations and Procedures; and
 - the **National Energy Customer Framework (NECF)** which comprises the National Energy Retail Law, the National Energy Retail Rules and accompanying regulations(collectively, the **NER Legislation**).

Objectives and means of regulation

3. The objectives of the NER are broadly to promote **efficiency** and the **long term interest of consumers** with respect to **price, quality, safety, reliability** and **security of supply**. These regulatory objectives are discussed in greater detail at paragraph 24 below.
4. The means which are utilised by the NER to achieve those objectives are broadly as follows:
 - 4.1 **Access Regulation** – aimed at ensuring competitive access to gas pipelines and electricity networks;
 - 4.2 **Market Regulation** – providing for the operation and regulation of wholesale markets on which gas and electricity are traded;
 - 4.3 **Retail Consumer Regulation** – with a particular focus on consumer protection at the retail and distribution level.
5. The National Electricity Regime also regulates for the security and planning of the electricity network.
6. The table on the next page summarises the means of regulation employed by each of the three core components of the NER.

Means of Regulation			
	National Gas Regime	National Electricity Regime	NECF
Access Regulation	<p>Whether a gas pipeline will be regulated under the National Gas Regime.</p> <p>The type and extent of regulation that will apply.</p> <p>Exemptions and incentives for Greenfields pipelines;</p> <p>What access arrangements will govern the use of a pipeline by third parties.</p> <p>The determination of access disputes.</p>	<p>Classification of distribution or transmission services</p> <p>The type and extent of regulation that will apply</p> <p>Determinations governing the terms of access to regulated distribution and transmission services;</p> <p>The determination of access disputes.</p>	N/A
Market Regulation	<p>The operation of the wholesale gas markets and the obligations of market participants.</p> <p>The National Gas Bulletin Board.</p>	<p>The operation of the National Electricity Market (NEM);</p> <p>Obligations on market participants to establish metering installations.</p>	N/A
Network Security and Planning		<p>Regulation of power system security;</p> <p>Connections to the electricity network and the planning and expansion of the electricity network</p>	N/A
Retail Consumer Regulation	<p>Regulating gas connection services provided by distributors to retail customers.</p> <p>Retail support obligations between distributors and retailers.</p>	<p>Regulating electricity connection services provided by distributors to retail customers;</p> <p>Retail support obligations between distributors and retailers.</p>	<p>Retail Energy Contracts:</p> <ul style="list-style-type: none"> - between retailers and small customers; and - between distributors and customers; <p>Compensation and Complaint Management:</p> <ul style="list-style-type: none"> - small customer complaints and dispute resolution; - no-fault small compensation claim regime; <p>Authorisation of Energy Retailers</p> <p>Retailer of Last Resort Scheme</p>

Interaction with the supply chain

7. The core components of the NER impact on the energy supply chain at each of the following levels:
 - **production** – the process by which electricity is generated or gas produced;
 - **transmission** – the wholesale supply of energy over a long distance from the place of production to the gateway of a more localised market;
 - **distribution** – the wholesale supply of energy within a local market;
 - **retail** – the sale of energy from a local distributor to the ultimate consumer.
8. The National Gas and Electricity Regimes are primarily concerned with regulating the transmission and distribution of energy, and wholesale energy markets more generally, whereas the NECF is primarily concerned with regulating retailers and distributors in their dealings with retail customers.
9. Although each of the identified means of regulation will have a flow-on effect throughout the entire supply chain, their direct interaction with the supply chain is summarised in the following table:

Direct Interaction with the Supply Chain					
	Production	Transmission	Distribution	Retail	Customer
Access Regulation					
Market Regulation					
Network Security and Planning					
Retail Consumer Regulation					

Structure of the legislation

10. Although broadly a national scheme (with certain exceptions and modifications), the legislation for the NER is not passed by the Commonwealth Parliament, but by the Parliaments of each participating State and Territory.
11. This process is commonly known as ‘co-operative federalism’, and in the case of the NER is coordinated by the COAG Energy Council.
12. Each of the National Gas, Electricity and Energy Retail Laws were passed into law initially as Schedules to Acts of the South Australian Parliament:
 - 12.1 the *National Electricity (South Australia) Act 1996 (SA)*
 - 12.2 the *National Gas (South Australia) Act 2008 (SA)*;
 - 12.3 the *National Energy Retail Law (South Australia) Act 2011 (SA)*.
13. The Laws passed into legislation in South Australia are then incorporated by reference into the law of the other participating jurisdictions through local legislation of their own.
14. The consequence is that each participating Parliament can theoretically modify any aspect of the NER Legislation as it applies in their jurisdiction, by modifying the local legislation accordingly.

Rules and Procedures

15. In respect of each of the National Gas and Electricity Regimes and the NECF, the primary Laws governing those regimes are supported by a set of Rules, which provide more detailed regulation in respect of the subject matter provided for by the Laws. Each of the Laws provides that the accompanying Rules have the force of law.¹
16. The initial set of Rules for each of the three regimes was made by the relevant Minister in South Australia. In each case, the Australian Energy Market Commission also has power to make further Rules, or modifications to the Rules, at the request of any person or (in respect of certain limited subject matters) of its own initiative, and the relevant Laws provide the process by which that Rule-making power is to be exercised. (The rule-making process will be considered further in **Chapter 5** of this Handbook.)
17. Each of the National Electricity Law and the National Gas Law also provides for the Australian Energy Markets Operator to publish Procedures governing particular matters, primarily in relation to the operation of the National Electricity Market and the wholesale gas markets.
18. In total, the primary Laws, Rules and accompanying regulations for the NER, as passed in South Australia without taking into account any of the modifications in other jurisdictions or any of the Procedures, comprise over 4,000 pages of legislation.
19. For that reason, in most cases this handbook will focus primarily on the Laws – those documents are the most important and provide for most of the significant rights, obligations and processes. This handbook will summarise the Rules, Regulations in more general terms only, where they are of practical significance (most notably in relation to the National Electricity Regime).
20. Where possible, this handbook will follow the structure of the legislation itself, so as to enable ease of reference between the commentary and the underlying legislation which it describes.

¹ National Electricity Law s9, National Gas Law s 26, National Energy Retail Law s 15.

The Form of Regulation Factors

25. The National Gas Law and National Electricity Law³ further specify common factors which determine the form (and extent) of regulation which will apply to regulated gas pipelines and electricity networks.

The Form of Regulation Factors

- The presence and extent of any **barriers to entry**;
- The presence and extent of any **network externalities**;
- The extent to which any **market power** by the service provider is, or is likely to be, mitigated by any countervailing market power possessed by a user or prospective user;
- The presence and extent of any **substitute** and the **elasticity of demand**;
- The extent to which there is **information available** to a prospective user, and whether that information is adequate to enable a prospective user to negotiate on an informed basis with the service provider.

The Revenue and Pricing Principles

26. The National Gas Law and National Electricity Law⁴ also specify common revenue and pricing principles, which particularly influence the determination of access arrangements in respect of regulated gas pipelines and electricity networks.

The Revenue and Pricing Principles

- **Cost recovery** - A service provider should be provided with a reasonable opportunity to recover at least their efficient costs.
- **Incentives** – A service provider should be provided with effective incentives in order to promote economic efficiency.
- **Regulatory asset base** - Regard should be had to the regulatory asset base adopted in any previous determination, or in the Rules.
- **Return commensurate with risks** – A price or charge for a service should allow for a return commensurate with the regulatory and commercial risks involved in providing the service.
- **Levels of investment** - Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider.
- **Levels of utilisation** - regard should be had to the economic costs and risks of the potential for under and over utilisation of the pipeline or network in question.

³ National Gas Law s16, National Electricity Law s2F

⁴ National Gas Law s24, National Electricity Law s7A

C The Principal Regulatory Bodies

27. The NER Legislation confers powers and functions on the following principal regulatory authorities (discussed in further detail in Chapter 5 of this Handbook):
- 27.1 the Australian Energy Regulator (**AER**);
 - 27.2 the Australian Energy Markets Commission (**AEMC**);
 - 27.3 the Australian Energy Market Operator (**AEMO**);
 - 27.4 the National Competition Council (**NCC**);
 - 27.5 the Ministerial Council on Energy (**MCE**) and the relevant Ministers of the Commonwealth and each participating jurisdiction;
 - 27.6 the Australian Competition Tribunal (**the Tribunal**);
 - 27.7 the Energy Ombudsmen in each of the participating jurisdictions.

The Australian Energy Regulator

28. The primary functions of the AER include the following:
- 28.1 **Enforcement** – the AER monitors compliance, investigates, and may conduct proceedings in respect of breaches of the NER Legislation.
 - 28.2 **Economic Regulatory Functions** – the AER approves access arrangements and makes determinations in relation to regulating access to electricity networks and natural gas pipelines.
 - 28.3 **Dispute Resolution** – the AER may hear and determine access disputes regarding access to regulated electricity networks and gas pipelines.
 - 28.4 **Retail Authorisation and Approval Functions** – the AER is responsible for:
 - 28.4.1 authorising energy retailers; and
 - 28.4.2 approving standardised offers for connection services and administering other matters relating to the relationships between distributors, retailers and retail customers for both gas and electricity.
 - 28.5 **Retailer of Last Resort Scheme** – the AER oversees the Retailer of Last Resort scheme, which provides for circumstances where an energy retailer fails or is unable to acquire or sell energy.

The Australian Energy Market Commission

29. The AEMC's primary function is to make and modify the Rules which apply under the National Electricity Law, the National Gas Law and the National Energy Retail Law.
30. With limited exceptions, the AEMC does not initiate rule changes of its own motion; rather, it manages the process by which rule changes are requested by others, including consultation with relevant stakeholders and deciding whether the rule change will be allowed.

D The National Gas Regime

39. The National Gas Regime deals broadly with the following matters:

39.1 **access regulation**, including:

39.1.1 **whether** a gas pipeline will be regulated under the National Gas Regime;

39.1.2 the **type** and **extent** of regulation that will apply;

39.1.3 **exemptions and incentives** for investment in greenfield pipelines;

39.1.4 what **access arrangements** will govern the use of a pipeline by third parties, and the amount of **annual revenue** that can be derived from the pipeline;

39.1.5 the determination of **access disputes** in relation to regulated pipelines;

39.2 **market regulation**, including:

39.2.1 the operation of the **wholesale gas markets** and the obligations of market participants;

39.2.2 to establish the **National Gas Bulletin Board**, which provides up to date and accessible gas system and market information in order to facilitate improved decision making and trade on the wholesale gas markets;

39.3 **retail consumer regulation**, including:

39.3.1 regulating **gas connection services** provided by distributors to retail customers; and

39.3.2 **retail support obligations** between distributors and retailers.

Coverage, classification and access to gas pipelines

40. Any person may apply to have a gas pipeline covered (ie regulated) under the National Gas Regime – typically, if they are seeking access on competitive terms to a pipeline that is owned by a third party.
41. An application for a pipeline to be covered will be made initially to the NCC, which will consider and make a recommendation on:
 - 41.1 whether the pipeline ought to be **covered**;
 - 41.2 whether the pipeline is a **transmission** pipeline or a **distribution** pipeline;
 - 41.3 the **jurisdictional status** of the pipeline (ie which Minister is responsible for its regulation); and
 - 41.4 whether the pipeline ought to be subject to **light regulation** or **full regulation**.
42. Upon the making of a recommendation by the NCC, the application falls to be determined by the relevant State or Commonwealth Minister.
43. The National Gas Regime also provides for greenfields incentives, which provide an opportunity for new pipelines to be exempt from regulation for a 15 year period.
44. Once covered, all pipelines will be subject to **general requirements and obligations** – for example, prohibitions in relation to ring fencing and entering into associate contracts of an anti-competitive nature.
45. Depending on the level of regulation that applies, a covered pipeline may also be covered by an **access arrangement**, which the pipeline service provider must submit to the AER for approval. Depending on the level of regulation that applies (or that is sought to be included in the access arrangement), access arrangements may specify the total revenue that may be charged annually by the pipeline service provider, queuing requirements where a pipeline is used by multiple parties, and other terms of access.
46. Once a pipeline is covered, the AER has the power to hear and determine **access disputes** between users (or prospective users) and the pipeline service provider. When determining an access dispute, the AER must give effect to any access arrangements that relate to the pipeline in question.

Regulation of wholesale gas markets

47. There is no single wholesale market for gas in Australia. Rather, Australia's domestic gas market consists of three distinct regions:
- 47.1 the **eastern gas region** – connecting Australia's eastern and southern states and territories;
 - 47.2 the **western gas region** – based in Western Australia; and
 - 47.3 the **northern gas region** – based in the Northern Territory.

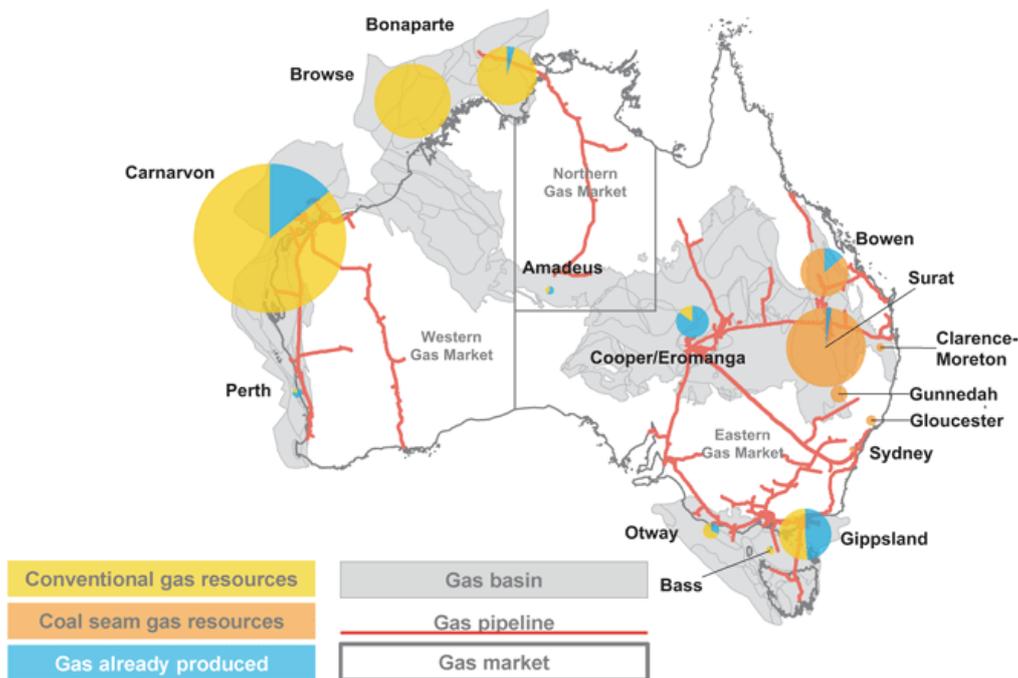


Figure 1 source: Parliamentary Library

48. Chapter 2, Part 6 of the National Gas Law provides for two types of wholesale gas exchanges on which gas may be traded – a **Declared Wholesale Gas Market (DWGM)** and a **Short Term Trading Market (STTM)**.
49. There are two such markets in Australia, each based in the eastern gas region:
- 49.1 a DWGM which operates in Victoria;
 - 49.2 a STTM with demand hubs in Adelaide, Sydney and Brisbane.
50. The wholesale gas markets are operated by AEMO. In addition, AEMO may also make statutory instruments, known as 'Procedures', to regulate the conduct of those markets.
51. Market participants on either the DWGM and STTM must be registered by AEMO, unless exempted from registration, and must comply with conditions of registration.
52. The DWGM in Victoria, was established in 1999 to enable wholesale trading based on injections of gas into the transmission system that links multiple producers, major users and retailers.

53. Part 19 of the National Gas Rules provides the rules which govern the operation and administration of the DWGM. AEMO's functions and powers as operator of the market under those rules include:
- 53.1 dealing with gas scheduling;
 - 53.2 the determination of a market price;
 - 53.3 facilitating the billing and settlement of transactions;
 - 53.4 prudential requirements;
 - 53.5 the regulation of technical matters;
 - 53.6 making information available to the market; and
 - 53.7 managing market emergencies and system security threats.
54. The SSTM is described by AEMO as:
- a market-based wholesale gas balancing mechanism established at defined gas hubs [in Adelaide, Sydney and Brisbane]. The market uses bids, offers and forecasts to determine schedules for deliveries from the pipeline transmission users and the hubs. The market sets daily market prices and settles each hub based on the schedules and deviations from schedules.⁵
55. Part 20 of the National Gas Rules provides the rules which govern the operation and administration of the STTM.
56. AEMO's functions in respect of the SSTM include:
- 56.1 providing a market operator service,
 - 56.2 scheduling and pricing;
 - 56.3 managing ownership, risk and responsibility for gas;
 - 56.4 facilitating the making of contingency offers for gas;
 - 56.5 facilitating billing and settlement; and
 - 56.6 prudential requirements.
57. In addition to the regulated wholesale gas markets themselves, AEMO:
- 57.1 may establish, operate and administer one or more **gas trading exchanges (GTEs)**; and
 - 57.2 must operate and maintain the **National Gas Services Bulletin Board** – a website containing gas market information covering all major gas production fields, major demand systems and national gas transmission pipelines in all jurisdictions save Western Australia and the Northern Territory.

⁵ <http://www.aemo.com.au/Gas/Market-Operations/Short-Term-Trading-Market>

Retail regulation – gas

58. Although the National Gas Regime primarily deals with regulation at a wholesale level, Parts 12A and 21 of the National Gas Rules deal with issues concerning the relationship between **distributors, retailers and retail customers**.
59. Part 12A of the National Gas Rules regulates the provision of gas connection services by distributors to retail customers. In particular, Part 12A provides for:
- 59.1 standardised offers (requiring approval by the AER) to provide basic and standard connection services;
 - 59.2 a regulated framework for the negotiation of non-standard connection contracts;
 - 59.3 the regulation of:
 - 59.3.1 connection charges;
 - 59.3.2 applications for connection services;
 - 59.3.3 the formation and performance of connection contracts;
 - 59.3.4 the resolution of disputes between retail customers and distributors.
60. Part 21 of the National Gas Rules provides for retail support obligations between distributors and retailers, in respect of shared retail customers. In particular, Part 21 provides for:
- 60.1 the regulation of billing and payment issues; and
 - 60.2 a credit support regime in respect of outstanding service charges.

E The National Electricity Regime

61. The National Electricity Regime is substantially larger and more complex than the National Gas Regime or the NECF. It deals broadly with the following matters:

61.1 **access regulation**, including:

- 61.1.1 the **classification** of distribution services to be regulated under the National Electricity Regime (transmission services are not classified under the National Electricity Regime);
- 61.1.2 the **type** and **extent** of regulation that will apply;
- 61.1.3 the making of **determinations** governing the terms of access to regulated distribution and transmission services;
- 61.1.4 the determination of **access disputes** in relation to regulated distribution and transmission services;

61.2 **market regulation**, including:

- 61.2.1 the operation of the **National Electricity Market (NEM)**;
- 61.2.2 obligations on market participants to establish **metering installations**;

61.3 **network security and planning**, including:

- 61.3.1 a regime for regulation of **power system safety and security**; and
- 61.3.2 a regime governing **connections** to the electricity network and the **planning** and **expansion** of the electricity network;

61.4 **electricity metering**;

61.5 **retail consumer regulation**, including:

- 61.5.1 regulating **electricity connection services** provided by distributors to retail customers;
- 61.5.2 **retail support obligations** between distributors and retailers.

Network security and planning

62. Part 8 of the National Electricity Law and Chapter 4 of the Rules deal with the safety and security of the national electricity system.
63. Part 8 of the National Electricity Law provides for AEMO to manage a variety of **power system security issues**, including **load shedding**, and provides for the appointment of **jurisdictional system security coordinators** by the relevant Minister of each jurisdiction.
64. Chapter 4 of the Rules provides a framework for achieving and maintaining a **secure power system**, and specifies conditions under which **AEMO can intervene** in the process of the spot market and issue directions to registered market participants so as to maintain or re-establish a secure and reliable power system.
65. Chapter 5 of the Rules regulates the **connection to**, and the **planning and expansion of**, the electricity network. Within Chapter 5:
 - 65.1 Part A provides a regulated framework for market participants to **connect to** a transmission network or a distribution network and to access the national grid.
 - 65.2 Part B provides a regulated framework for the future **planning and expansion of the electricity network**. Among other things, it requires transmission and distribution network service providers to analyse and publish an Annual Planning Report on the future operations of their networks and the adequacy of current infrastructure, and provides conditions which must be met for the connection of market participants to the national power system

Regulation of the National Electricity Market and metering requirements

75. The **National Electricity Market (NEM)** is a spot market operated by AEMO, and connects five regional market jurisdictions (Queensland, New South Wales, Victoria, South Australia and Tasmania). Western Australia and the Northern Territory are not connected to the NEM.
76. A map depicting the regional boundaries of the NEM is depicted on the next page.
77. Market participants in the NEM must be registered by AEMO, unless exempted from registration, and must comply with conditions of registration. The registration process is governed by Chapter 2 of the National Electricity Rules.
78. Chapter 2A of the National Electricity Rules provides a framework for the AEMC to determine or modify the NEM's regional boundaries.
79. The main body of rules which govern the operation and administration of the NEM are provided in Chapter 3 of the National Electricity Rules.
80. In addition, Chapter 7 of the National Electricity Rules deals with **metering requirements**. Broadly, market participants are obliged to establish, and register with AEMO, metering installations in respect of electricity connection points, which measure the consumption of electricity. Chapter 7 of the Rules provides a detailed regime for the administration of metering installations and the disclosure and use of metering data.

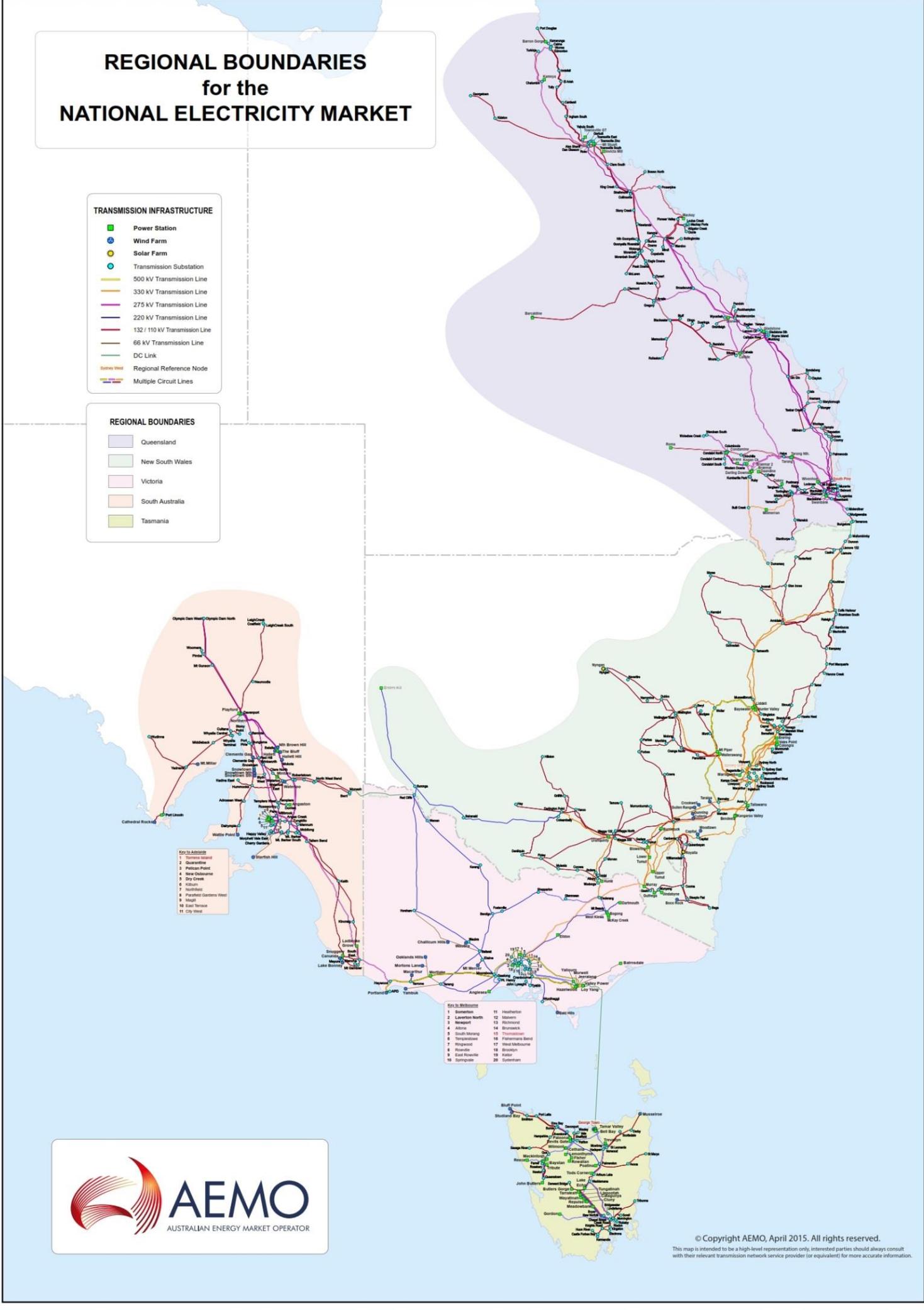
REGIONAL BOUNDARIES for the NATIONAL ELECTRICITY MARKET

TRANSMISSION INFRASTRUCTURE

- Power Station
- Wind Farm
- Solar Farm
- Transmission Substation
- 500 kV Transmission Line
- 330 kV Transmission Line
- 275 kV Transmission Line
- 220 kV Transmission Line
- 132 / 110 kV Transmission Line
- 66 kV Transmission Line
- DC Link
- Regional Reference Node
- Multiple Circuit Lines

REGIONAL BOUNDARIES

- Queensland
- New South Wales
- Victoria
- South Australia
- Tasmania



- Key to Abbreviations**
- 1 Torres Island
 - 2 Queensland
 - 3 Pelican Point
 - 4 New Chubbairne
 - 5 Dry Creek
 - 6 Yillumbury
 - 7 Northfield
 - 8 Transfield Gardens West
 - 9 Hight
 - 10 East Terrace
 - 11 City West

- Key to Melbourne**
- | | |
|------------------|-------------------|
| 1 Swanston | 11 Hawtherton |
| 2 Laverton North | 12 Mairns |
| 3 Newport | 13 Richmond |
| 4 Altona | 14 Dromana |
| 5 South Morang | 15 Thomastown |
| 6 Springvale | 16 Frankston Band |
| 7 Ringwood | 17 West Melbourne |
| 8 Rowville | 18 Breamley |
| 9 East Reservoir | 19 Kallal |
| 10 Springvale | 20 System |



Retail regulation – electricity

81. Although the National Electricity regime primarily deals with regulation at a wholesale level, Chapters 5A and 6B of the National Electricity Rules deals with issues concerning the relationship between **distributors, retailers** and **retail customers**.
82. Chapter 5A of the Rules regulates the provision of electricity connection services by distributors to retail customers. In particular, Chapter 5A provides for:
 - 82.1 standardised offers (requiring approval by the AER) to provide basic and standard connection services;
 - 82.2 a regulated framework for the negotiation of non-standard connection contracts;
 - 82.3 the regulation of:
 - 82.3.1 connection charges;
 - 82.3.2 applications for connection services;
 - 82.3.3 the formation and performance of connection contracts;
 - 82.3.4 the resolution of disputes between retail customers and distributors.
83. Chapter 6B of the National Electricity Rules provides for retail support obligations between distributors and retailers, in respect of shared retail customers. In particular, Chapter 6B provides for:
 - 83.1 the regulation of billing and payment issues; and
 - 83.2 a credit support regime in respect of outstanding service charges.

Retailer of Last Resort scheme

97. Part 6 of the National Energy Retail Law provides a regime under which gas and electricity retailers are registered and appointed as **Retailers of Last Resort (RoLRs)**, in the event that a retailer:
- 97.1 loses its right to acquire, or authorisation to sell, energy;
 - 97.2 suffers an insolvency event; or
 - 97.3 otherwise ceases to sell energy to its customers
- (RoLR Events).**
98. The AER determines applications by retailers for registration as an RoLR, and oversees the RoLR regime more generally. Among other things, Part 6 provides that the AER:
- 98.1 may take exercise various powers and appoint a RoLR where it considers that an **RoLR event has occurred**; and
 - 98.2 may also exercise certain powers in respect of **contingency events** – that is, where the continuity of the sale of energy to a retailer’s customers is at risk.

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CHAPTER 2: THE NATIONAL GAS REGIME

A Overview and Structure of the Legislation

1. This Chapter deals with the National Gas Regime, which regulates:
 - 1.1 **access** to gas pipelines;
 - 1.2 **gas wholesale markets**; and
 - 1.3 **retail gas connection services** and support obligations.
2. This Chapter will focus on the National Gas Law (**NGL**) and the National Gas Rules (**NGR**).
3. The NGL is divided into 10 Chapters:
 - 3.1 Chapters 1, 2, 8, 9 and 10 deal with **conceptual, administrative and general matters** which affect the National Gas Regime as a whole:
 - 3.1.1 **Chapter 1:** Preliminary matters, including the overall national gas objective and key concepts relevant to gas regulation;
 - 3.1.2 **Chapter 2:** Sets out the relevant regulatory bodies, and outlines their powers and functions;
 - 3.1.3 **Chapter 8:** Sets out process regarding proceedings, including judicial and merits review, dealing with decisions under the NGR;
 - 3.1.4 **Chapter 9:** Deals with the making of the National Gas Rules by the Australian Energy Market Commission, and the modification of such rules through a consultative process;
 - 3.1.5 **Chapter 10:** Deals with confidential information and miscellaneous provisions, and also sets out 3 schedules.
 - 3.2 Chapters 3 to 6 deal with issues of **access regulation**:
 - 3.2.1 **Chapter 3:** Sets out the process for when a pipeline will be subject to regulation (known as ‘coverage’), the classification of the pipeline (as transmission or distribution) and the level of regulation a pipeline will be subject to;
 - 3.2.2 **Chapter 4:** Sets out the obligations and regulatory requirements relating to covered pipelines;
 - 3.2.3 **Chapter 5:** Sets out the process and procedure relating to greenfields pipeline incentives;
 - 3.2.4 **Chapter 6:** Deals with disputes regarding access to pipeline infrastructure and the process for making an access determination (where there is a dispute in relation to access to a pipeline service);
 - 3.3 Chapters 7 (and to some extent, Chapter 2) deal with issues relevant to the **gas wholesale markets**:
 - 3.3.1 **Chapter 7:** Establishes the Natural Gas Services Bulletin Board, which provides up-to-date and readily accessible gas system and market

information in order to facilitate improved decision making and trade in gas and pipeline capacity;

3.3.2 **Chapter 2:** deals with the functions and powers of gas market regulatory bodies, including AEMO's functions and powers in respect of the gas wholesale markets.

4. This Chapter will also focus on Part 12A and Part 21 of the **NGR**, which deal with **retail consumer regulation:**

4.1 **Part 12A:** regulates the provision of gas connection services between distributors and retail customers;

4.2 **Part 21:** provides for **retail support obligations** in respect of distributors and retailers who have shared customers, including billing and payment rules and a credit support regime in respect of retailers' liability for distributors' outstanding charges.

B Conceptual, administrative and general matters

National Gas Objective and other key concepts

5. The National Gas Objective (**NGO**) (which is substantially similar to the National Electricity Objective and the National Energy Retail Objective) is set out in s 23 of the NGL:

National Gas Objective (NGL, s 23)

The objective of this Law is to promote **efficient investment in, and efficient operation and use of**, natural gas services **for the long term interests of consumers** of natural gas with respect to **price, quality, safety, reliability and security of supply** of natural gas.

6. The Form of Regulation Factors (NGL s 16) and the Revenue and Pricing Principles (**RPPs**) (NGL s24) are also critical concepts applicable to the National Gas Regime, and are discussed in Chapter 1 of this Handbook.

Principal regulatory bodies

7. There are five principal regulatory authorities that exercise powers or functions in relation to the regulation of gas pipelines and wholesale gas markets in Australia:

- 7.1 **The National Competition Council (NCC)**: makes **recommendations** to the Minister regarding:

7.1.1 when a gas pipeline will be covered (i.e. regulated);

7.1.2 whether a gas pipeline should be exempt;

and makes **determinations** regarding:

7.1.3 how a gas pipeline should be classified; and

7.1.4 the extent of regulation that will apply (i.e. subject to heavy regulation or lighter regulation);

- 7.2 **The relevant State or Commonwealth Minister**: determines whether a pipeline should become a covered (i.e. regulated) pipeline, or be exempt from coverage, after receiving a recommendation from the NCC

- 7.3 **The Australian Energy Regulator (AER)**: the AER is the key regulator in all jurisdictions other than WA¹. The AER's primary functions under the National Gas Regime are:

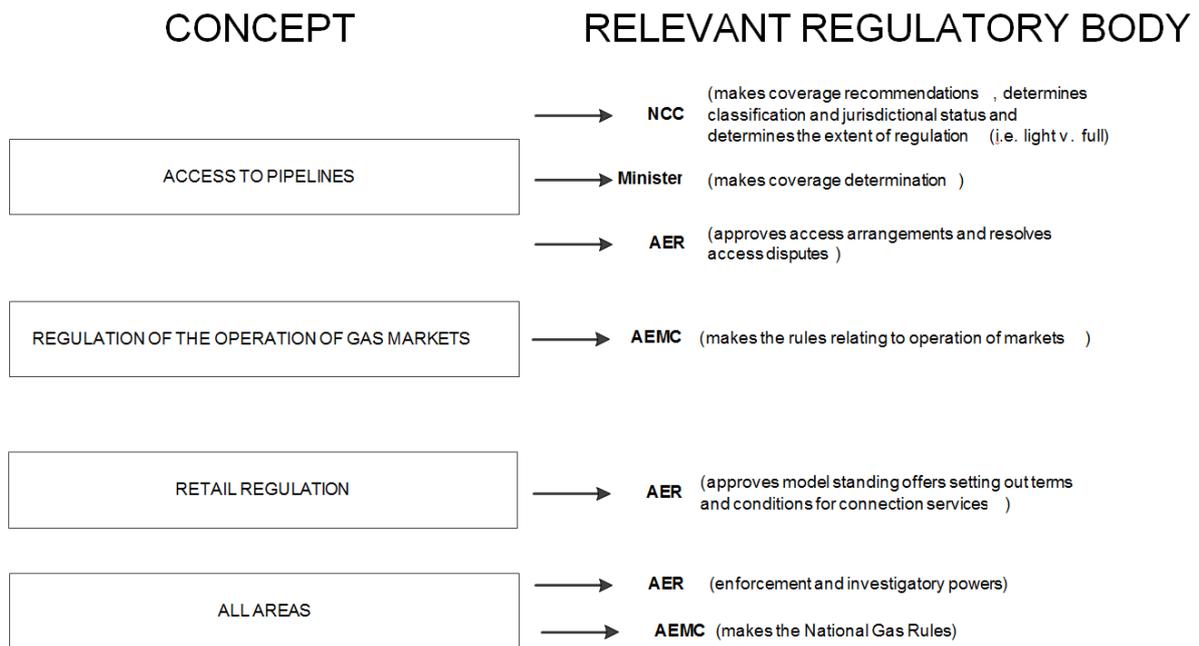
7.3.1 **Enforcement**: monitors compliance, investigates and may conduct proceedings in respect of breaches of the NGL and NGR;

7.3.2 **Economic Regulatory Functions**: the AER approves access arrangements and makes determinations concerning access to gas pipelines;

7.3.3 **Dispute Resolution**: the AER may hear and determine access disputes regarding access to regulated gas pipelines;

¹ The Economic Regulation Authority Western Australia regulates the gas market in Western Australia.

- 7.3.4 **Retail Approval Functions:** the AER is responsible for approving standardised offers for connection services and administering other matters relating to the relationships between distributors, retailers and retail customers for gas.
- 7.4 **The Australian Energy Market Commission (AEMC):** responsible for making and amending the NGR.
- 7.5 **The Australian Energy Market Operator (AEMO):** regulates the operation of wholesale gas markets by determining (amongst other things) who can participate in the market and the market price for gas each day;
8. The diagram below summarises the role played by each of the regulatory authorities.



Manner in which the AER must perform or exercise economic regulatory functions or powers

9. Section 28 of the NGL sets out the manner in which the AER must perform or exercise its economic regulatory functions or powers under the NGL and NGR.
10. Given the significance of that section, it is set out in full below, with our comments inserted in brackets to illustrate key concepts:

s.28 Manner in which AER must perform or exercise AER economic regulatory functions or powers

- (1) The AER must, in performing or exercising an AER economic regulatory function or power –
 - (National Gas Objective)**
 - (a) perform or exercise that function of power in a manner that will or is likely to contribute to the achievement of the **national gas objective**; and
 - (b) if the AER is making a designated reviewable regulatory decision –
 - (Opportunity for stakeholders to make submissions)**
 - (i) ensure that –
 - (A) the covered pipeline **service provider** that provides the pipeline services to which the applicable access arrangement decision will apply; and
 - (B) **users or prospective users** of the pipeline services that the AER considers have an interest in the matter;
 - (C) any **user or consumer associations or user or consumer interests groups** that the AER considers have an interest in the matter,

are, in accordance with the Rules –

 - (D) **informed** of the material issues under consideration by the AER; and
 - (E) given a reasonable opportunity to **make submissions** in respect of the decision before it is made; and
 - (Must specify interrelationship of constituent components)**
 - (ii) specify –
 - (A) the manner in which the constituent components of the decision relate to each other; and
 - (B) the manner in which that interrelationship has been taken into account in the making of the decision; and

(continued)

C Access Regulation - Overview

11. The provisions regarding access regulation are contained in Chapters 3, 4, 5 and 6 of the NGL, and associated Parts of the NGR:

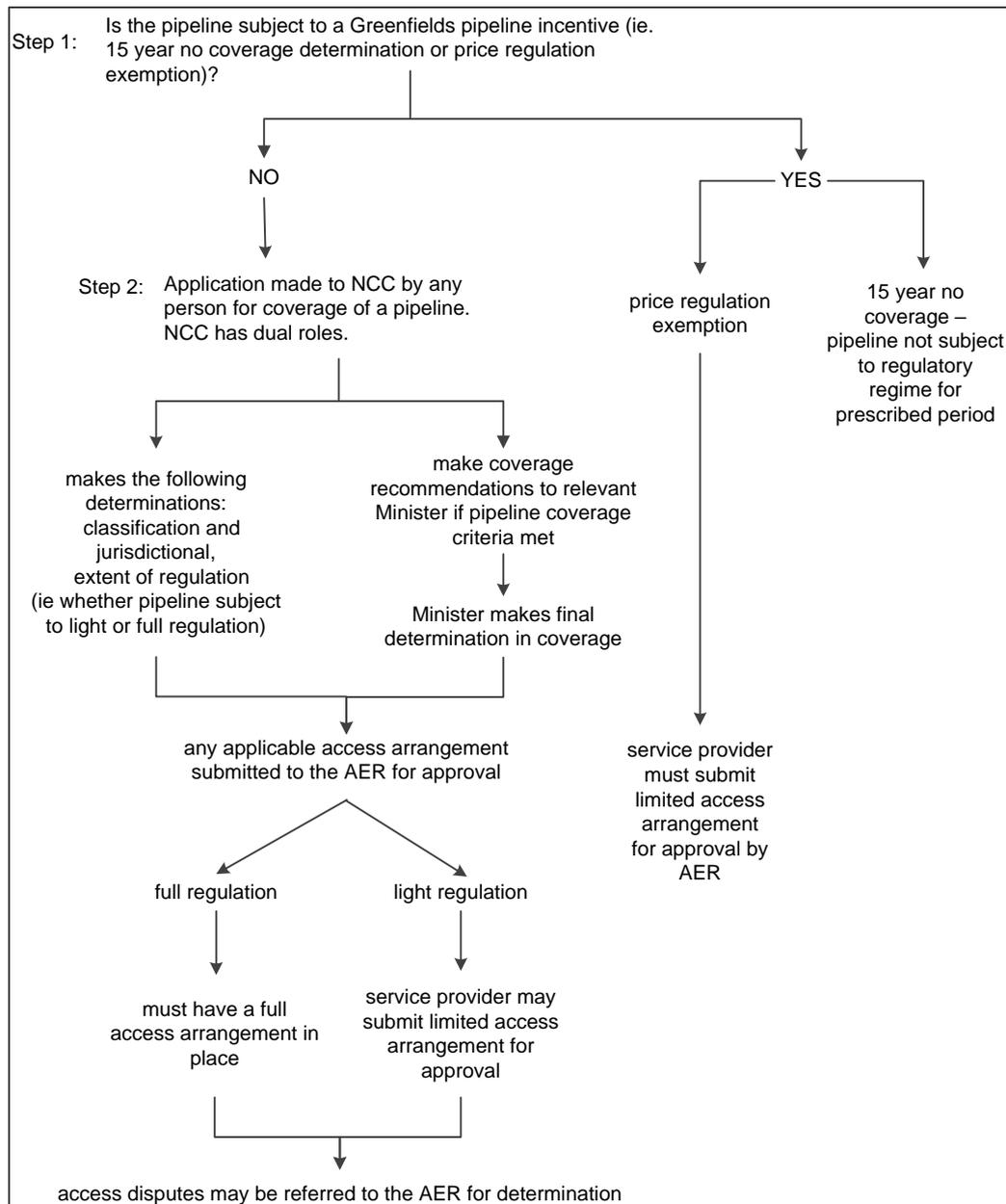
11.1 **Chapter 3:** Sets out the process for when a pipeline will be subject to regulation (known as 'coverage'), the classification of the pipeline (as transmission or distribution) and the level of regulation a pipeline will be subject to;

11.2 **Chapter 4:** Sets out the obligations and regulatory requirements relating to covered pipelines;

11.3 **Chapter 5:** Sets out the process and procedure relating to greenfields pipeline incentives;

11.4 **Chapter 6:** Deals with disputes regarding access to pipeline infrastructure and the process for making an access determination (where there is a dispute in relation to access to a pipeline service).

12. The diagram below provides an illustration of how access to natural gas is regulated at each point in the process:



D Access Regulation – Coverage and Classification of Pipelines

13. Chapter 3 of the NGL sets out four distinguishing features by which a gas pipeline is **classified** under the National Gas Regime:
- 13.1 Whether a pipeline will be **‘covered’**, that is, subject to regulation, or ‘uncovered’;
 - 13.2 The **function** of the pipeline, as either a:
 - 13.2.1 **transmission pipeline** (transports gas from the producer to distribution networks); or a
 - 13.2.2 **distribution pipeline** (delivering gas from the transmission pipeline to end-user).
 - 13.3 The **jurisdictional status** of the pipeline, which is used to establish which relevant Minister is responsible for determining the coverage of a particular pipeline.
 - 13.4 Whether a covered pipeline is subject to **full regulation** or **light (i.e. partial) regulation**. This will have an impact on the regulatory requirements that a pipeline will be subject to.
14. Each key element outlined above is considered in turn, below.

Application for pipeline coverage

15. A pipeline will only be subject to regulation if it is ‘covered’ under s 99 of the NGL.
16. **Any person** may apply for a determination that a pipeline be covered (**coverage determination**): NGL s 92.
17. The key concepts and mechanics in the process for applying for a coverage determination are set out below:



Stage 1: Application to the NCC

18. When an application is made for a coverage determination, the NCC must make a **coverage recommendation** to the relevant Minister.
19. The coverage recommendation must deal with each of the four distinguishing features referred to in paragraph 13 above.
20. The NCC must deal with the application in accordance with the NGR: NGL s 93. Among other things, NGR r 15 provides that the NCC must deal with an application for a coverage determination in accordance with the **standard consultative procedure** – set out in **Annexure 1**.

Coverage Recommendation

21. In making a coverage recommendation, NGL s 97 provides that the NCC **must**:
 - 21.1 give effect to the **pipeline coverage criteria**; and
 - 21.2 in deciding whether or not the pipeline coverage criteria are satisfied **must have regard to the NGO**.
22. The pipeline coverage criteria are set out in NGL s 15, extracted below:

s.15 Pipeline Coverage criteria

The pipeline coverage criteria are:

- (a) that access (or increase access) to pipeline services provided by means of the pipeline would promote a **material increase in competition** in at least 1 market (whether or not in Australia), other than the market for the pipeline services provided by means of the pipeline;
- (b) that it would be **uneconomic for anyone to develop another pipeline** to provide the pipeline services provided by means of the pipeline;
- (c) that access (or increased access) to the pipeline services by means of the pipeline can be provided without undue risk to **human health or safety**;
- (d) that access (or increased access) to the pipeline services provided by means of the pipeline would not be contrary to the **public interest**.

23. If the NCC is satisfied that the pipeline coverage criteria are met, it **must** recommend that the pipeline be covered; likewise, the NCC must **recommend against** coverage if it is **not** satisfied that the pipeline coverage criteria are met.

Classification of pipeline's function

24. As part of a coverage recommendation, the NCC must also make an **initial classification decision** as to whether the pipeline is a **transmission pipeline** or a **distribution pipeline**: NGL s 98(1).
25. Among other things, the classification of a pipeline will affect:
- 25.1 the obligations of the pipeline service provider in respect of access arrangements; and
- 25.2 in respect of cross-boundary pipelines, which Minister will be responsible for making a coverage determination.
26. In order to do so, the NCC must apply the **pipeline classification criterion** set out in NGL s 13 (extracted below).

s.13 Pipeline classification criterion:

(1) Pipeline classification criterion is whether the primary function of the pipeline is to –

(a) **reticulate gas within a market** (which is the primary function of a distribution pipeline); or

(b) **convey gas to a market** (which is the primary function of a transmission pipeline)

(2) Without limiting subsection (1), in determining the primary function of the pipeline regard must also be had to whether the **characteristics of the pipeline** are those of a transmission or distribution pipeline having regard to:

(a) the characteristics and classification of, as the case requires, an old scheme transmission pipeline or an old scheme distribution pipeline;

(b) the characteristics, as the case requires, of a transmission pipeline or a distribution pipeline as classified under this Law;

(c) the characteristics and classification of pipelines as specified in the Rules (if any);

(d) the **diameter** of the pipeline;

(e) the **pressure** at which the pipeline is or will be designed to operate;

(f) the **number of points** at which gas can or will be injected into the pipeline;

(g) the extent of the **area served** or to be served by the pipeline;

(h) the pipeline's **linear or dendritic configuration**.

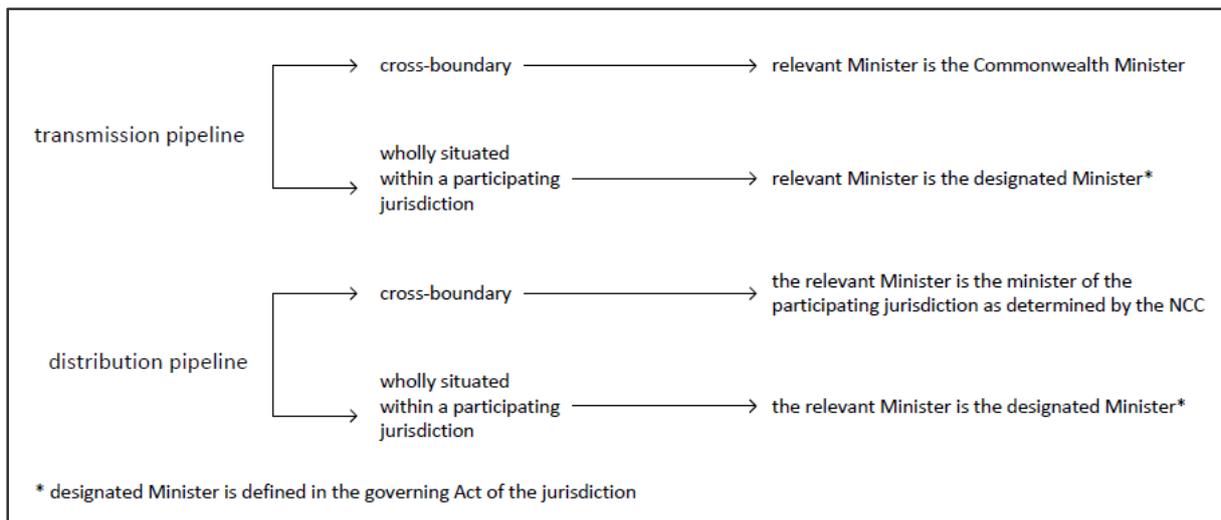
27. Key practical features of distribution and transmission pipelines are set out below:
- 27.1 Transmission pipelines:²
- 27.1.1 Main function is to convey gas to the market.

² NCC Gas Guide 'Classification and the decision maker' pp.15; AER website 'Networks & Pipelines'; AEMC 'Gas'

- 27.1.2 Transports gas from the producer/generator to the distribution networks in metropolitan and regional areas.
- 27.1.3 Usually larger in width, operating at high voltages for efficient transport over long distances.
- 27.2 Distribution pipelines:³
 - 27.2.1 Main function is to reticulate gas within a market.
 - 27.2.2 Distribution pipelines deliver gas from points along the transmission pipeline (called city gates) to end consumers (usually through retailers, although some large consumers access gas from the city gate).
 - 27.2.3 Usually consists of high, medium and low pressure pipelines.

Classification of a pipeline's jurisdictional status

- 28. The NCC's initial classification decision must also classify whether or not the pipeline is a **cross-boundary pipeline**, and (in the case of a **cross-boundary distribution pipeline**), with which jurisdiction the pipeline is most closely connected: NGL s 98.
- 29. A **cross-boundary pipeline** is one that is partly situated in the jurisdictional areas of two or more participating jurisdictions: NGL s 2.
- 30. Among other things, this will determine which Minister is responsible for making a coverage decision in respect of the pipeline – see diagram below.



- 31. In order to determine which jurisdiction a cross-boundary distribution pipeline is most closely connected to, the NCC must apply the **jurisdictional determination criteria** set out in NGL s 14 – extracted below.

³ NCC Gas Guide 'Classification and the decision maker' pp.15; AER website 'Networks & Pipelines'; AEMC 'Gas'

<p>s 122 Principles governing light regulation determinations</p> <p>(1) In deciding whether to make a light regulation determination under Division 1 or to revoke a light regulation determination under Division 2, the NCC must consider:</p> <p>(a) the likely effectiveness of the forms of regulation provided for under this Law and the Rules to regulate the provision of the pipeline services (the subject of the application) to promote access to pipeline services; and (b) the effect of the forms of regulation provided under this Law and the Rules on –</p> <p style="margin-left: 40px;">(i) the likely costs that may be incurred by an efficient services provider;</p> <p style="margin-left: 40px;">(ii) the likely costs that may be incurred by efficient users / prospective users; and</p> <p style="margin-left: 40px;">(iii) the likely costs of end users.</p> <p>(2) In doing so, the NCC –</p> <p>(a) must have regard to the national gas objective; and</p> <p>(b) must have regard to the form of regulation factors; and</p> <p>(c) may have regard to any other matters it considers relevant.</p>	<p>S 16 Form of regulation factors</p> <p>The form of regulation factors are –</p> <p>(a) the presence and extent of any barriers to entry in a market for pipeline services;</p> <p>(b) the presence and extent of any network externalities (that is, interdependencies) between a natural gas service provided by a service provider and any other natural gas service provided by the service provider;</p> <p>(c) the presence and extent of any network externalities (that is, interdependencies) between a natural gas service provided by a service provider and any other service provided by the service provider in any other market;</p> <p>(d) the extent to which any market power possessed by a service provider is, or is likely to be, mitigated by countervailing market power possessed by a user or prospective user;</p> <p>(e) the presence and extent of any substitute, and the elasticity of demand, in a market for a pipeline service in which a service provider provides that service;</p> <p>(f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);</p> <p>(g) the extent to which there is information available to a prospective user or user, and whether that information is adequate, to enable the prospective user or user to negotiate on an informed basis with a service provider for the provision of a pipeline service to them by the service provider.</p>
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Stage 2: Determination by the Minister

37. A coverage recommendation is made by the NCC to the relevant Minister.
38. On receiving a coverage recommendation, the Minister must decide whether to make a coverage determination in respect of the pipeline to which the recommendation relates: NGL s 99.
39. The principles governing the making of a coverage determination are provided by NGL s 100, as follows:
- 39.1 The relevant Minister **must** make a determination that a pipeline be covered if he/she considers the pipeline coverage criteria are satisfied in relation to the pipeline.
- 39.2 In determining whether the pipeline coverage criteria are satisfied in relation to the application the relevant Minister (in accordance with section 100 of the NGL):
- 39.2.1 **must** have regard to the NGO; and
- 39.2.2 **must** have regard to the coverage recommendation made by the NCC;
- 39.2.3 **must** have regard to any submissions which may be requested by the Minister under NGL s 99(4); and
- 39.2.4 **may** take into account any relevant submissions made to the NCC by the public.
40. Critically, while the Minister must have regard to the coverage recommendation made by the NCCC, and must apply the same **criteria** for decision-making, NGL s 100 nonetheless requires that the Minister form his or her own view. Accordingly, the Minister may make a determination that differs from the recommendation he or she receives from the NCC.

Other matters

41. Chapter 3 of the NGL also deals with the following matters which are not covered here in detail:
- 41.1 the revocation of coverage (Part 1, Division 2);
- 41.2 the revocation of light regulation determinations (Part 2, Division 2);
- 41.3 the coverage of pipelines the subject of a competitive tender process (approved by the AER for the construction and operation of a new pipeline) (Part 3);
- 41.4 the coverage of pipelines following approval of a voluntary access arrangement submitted by a service provider (as opposed to circumstances where an application for coverage is made by a third party) (Part 4);
- 41.5 the reclassification of pipelines – ie, from a transmission pipeline to a distribution pipeline or vice versa (Part 5).

E Access Regulation - Greenfields Pipeline Incentives

42. In addition to regulating covered pipelines for competition and efficiency, the National Gas Regime also encourages the efficient investment in natural gas services by providing incentives for the creation of greenfields pipelines.

43. There are two types of greenfields pipeline incentives that are established under NGL Chapter 5:

43.1 **15 year no-coverage determinations**, which are available to all new pipeline projects; and

43.2 **price regulation exemptions**, which are only available for new international pipelines that bring foreign gas into Australia.

44. Further specific provisions regarding greenfields incentives are set out in NGR Part 13.

15 year no-coverage determinations

45. If a greenfields pipeline project is proposed, or has commenced, the service provider may, before the pipeline is commissioned, **apply to the NCC for a 15-year no-coverage determination** in respect of that pipeline: NGL s 151.

46. As the name suggests, a pipeline subject to a 15-year no-coverage determination may not be 'covered' under NGL s 99 while the determination remains in place.

47. A pipeline is first commissioned when it is first used for the haulage of natural gas on a commercial basis: NGL s 12.

48. The NCC **must**:

48.1 make a recommendation to the relevant Minister that a 15 year no-coverage determination be made if it is **not** satisfied that all of the pipeline coverage criteria (discussed above) are met;

48.2 must recommend **against** a 15 year no-coverage determination if it **is** satisfied that the pipeline coverage criteria are met;

48.3 in deciding whether the pipeline coverage criteria are met must have regard to the NGO

(NGL s 154)

49. In determining what recommendation it should make on an application, the NCC must proceed in accordance with the standard consultative procedure – see **Annexure 1**.

50. On receiving an application, the relevant Minister:

50.1 **must** give effect to the pipeline coverage criteria;

50.2 in determining whether or not the pipeline criteria are satisfied in relation to the pipeline:

50.2.1 must have regard to the NGO;

50.2.2 must have regard to the no-coverage recommendation (but is not bound by it);

Early termination

57. A greenfields pipeline incentive may cease to have effect in the following circumstances:
- 57.1 It may lapse if the pipeline is not commissioned within 3 years: NGL s 173;
 - 57.2 it may be revoked by consent: NGL s 174;
 - 57.3 it may be revoked if granted on the basis of a misrepresentation: NGL s 175;
 - 57.4 a price regulation exemption may be revoked for breach of a condition on which the price regulation exemption was granted: NGL s 176.

F Access Regulation - requirements on covered pipelines

58. Chapter 4 of the NGL deals with the regulatory requirements that will be imposed on a **covered pipeline service provider (CPSP)** once a pipeline is covered. These issues are regulated in further detail by Parts 6 to 11 of the NGR.
59. We will deal with the following key topics below:
- 59.1 **general requirements** for all CPSPs;
 - 59.2 **structural and operational separation requirements**;
 - 59.3 requirements applicable to pipelines that are subject to **light regulation**;
 - 59.4 requirements applicable to pipelines that are subject to **full regulation**;
 - 59.5 the determination of **access arrangements** by the AER; and
 - 59.6 a summary of the key comparisons between CPSPs providing full v. light regulation.

General requirements for all covered pipelines

60. General duties for the provision of pipeline services by CPSPs are set out in Chapter 4, Part 1 of the NGL.
61. Among other things:
- 61.1 a CPSP must be an Australian corporation, a foreign company, or the Crown, or a joint venture between any two or more such entities: NGL s 131;
 - 61.2 a CPSP must not engage in conduct for the purpose of preventing or hindering the access of another person to a pipeline service provided by means of the covered pipeline: NGL s 133;
 - 61.3 a CPSP must comply with the queueing requirements of an applicable access arrangement: NGL s 135.
62. Part 11 of the NGR also sets out general requirements concerning the facilitation of access to all covered pipelines.
63. These include:
- 63.1 a requirement to make any access arrangement and other information available on the CPSP's website: NGR r 107;
 - 63.2 a requirement to provide information regarding tariffs on request from a prospective user: NGR r 108;
 - 63.3 a prohibition on the bundling of services unless reasonably necessary: NGR r 109;
 - 63.4 (in respect of transmission pipelines, and any distribution pipelines determined by the AER), establish and maintain a public register of spare capacity: NGR r 111;
 - 63.5 respond to a request for access to the pipeline within 20 business days and in accordance with a procedure set out in NGR r 112.

unless the associate contract has been approved by the AER under NGR r 32.

73. The competitive parity rule requires that a CPSP must ensure that any pipeline services it provides to an associate are provided as if the associate were a separate unrelated entity: NGL s 148(2).

Full regulation and full access arrangements

74. The principle distinguishing feature of a pipeline covered by **full regulation** is that the CPSP **must** submit to the AER for approval a **full access arrangement** within 3 months of the pipeline being covered: NGL s 132, NGR r 46.

75. The process for a CPSP in submitting a full access arrangement for approval by the AER is set out in NGR Part 8, Division 8, as follows:

75.1 pre-submission conference with the AER (optional);

75.2 submission of an access arrangement proposal;

75.3 public notice and submissions;

75.4 draft decision and submissions;

75.5 hearing (in some cases);

75.6 final decision

Pre-submission conference

76. A service provider may, in the course of preparing a full access arrangement proposal, request a **pre-submission conference** with representatives of the AER to discuss the proposal, and the AER must comply with such a request unless it appears to be unreasonable: NGR r 57.

Submission of an access arrangement proposal

77. Rule 48 of the NGR provides that a full access arrangement proposal must:

77.1 identify and describe the **pipeline** to which it relates;

77.2 describe the **pipeline services** proposed to be offered;

77.3 specify the **reference services**, and for each service specify the **reference tariff** (price) and the **terms and conditions** on which the service will be provided;

77.4 specify any **queueing arrangements** (if applicable – these will apply to all transmission services, and distribution services if notified by the AER) – see further NGL s 135, NGR r 103;

77.5 set out the **capacity trading requirements** – see further NGR r 105;

77.6 set out any **extension and expansion requirements** – see further NGR r 104;

77.7 state the terms and conditions for **changing receipt and delivery points**;

77.8 state the **review submission date** (if applicable) and the **expiry date** for the access arrangement.

proposed: NGR r 64. (There is a limited exception in relation to exempted international pipelines.)

92. The AER may consult in relation to its own proposal, but is not obliged to do so. It must make a decision giving effect to its own proposal within 2 months after the final decision.

Price and revenue regulation

93. The most critical component of a full access arrangement, as distinguished from a limited access arrangement, is that a full access arrangement will regulate the maximum price and revenue to be extracted from the pipeline in question.
94. When submitting an access arrangement proposal for consideration by the AER, a CPSP must provide detailed financial and operational information set out in NGR r 72.
95. As indicated above, NGL s 24 sets out the manner in which the AER must perform its economic regulatory functions, including the determination of access arrangements. Critically, the AER must take into account both the NGO and the RPPs.
96. Significantly, Part 9, Divisions 3 to 11 of the NGR set out detailed requirements for the AER to apply in determining the total revenue for a CPSP in the context of a full access arrangement.
97. Most critically, NGR r 76 sets out the **building block approach**, as follows:

Part 9, Division 3 Building Block Approach
NGR r 76 Total Revenue

Total revenue is to be determined for each regulatory year of the access arrangement period using the building block approach in which the building blocks are:

- (a) a **return on the projected capital base** for the year (See Divisions 4 and 5); and
- (b) **depreciation of the projected capital base** for the year (See Division 6); and
- (c) the **estimated cost of corporate income tax** for the year (See Division 5A); and
- (d) increments or decrements for the year resulting from the **operation of an incentive mechanism to encourage gains in efficiency** (See Division 9); and
- (e) a forecast of **operating expenditure** for the year (See Division 7)

98. As is apparent from rule 76 above, the remaining Divisions in Part 9 provide a further breakdown and explanation of how each element of the building block approach is to be applied and satisfied.

Light regulation and limited access arrangements

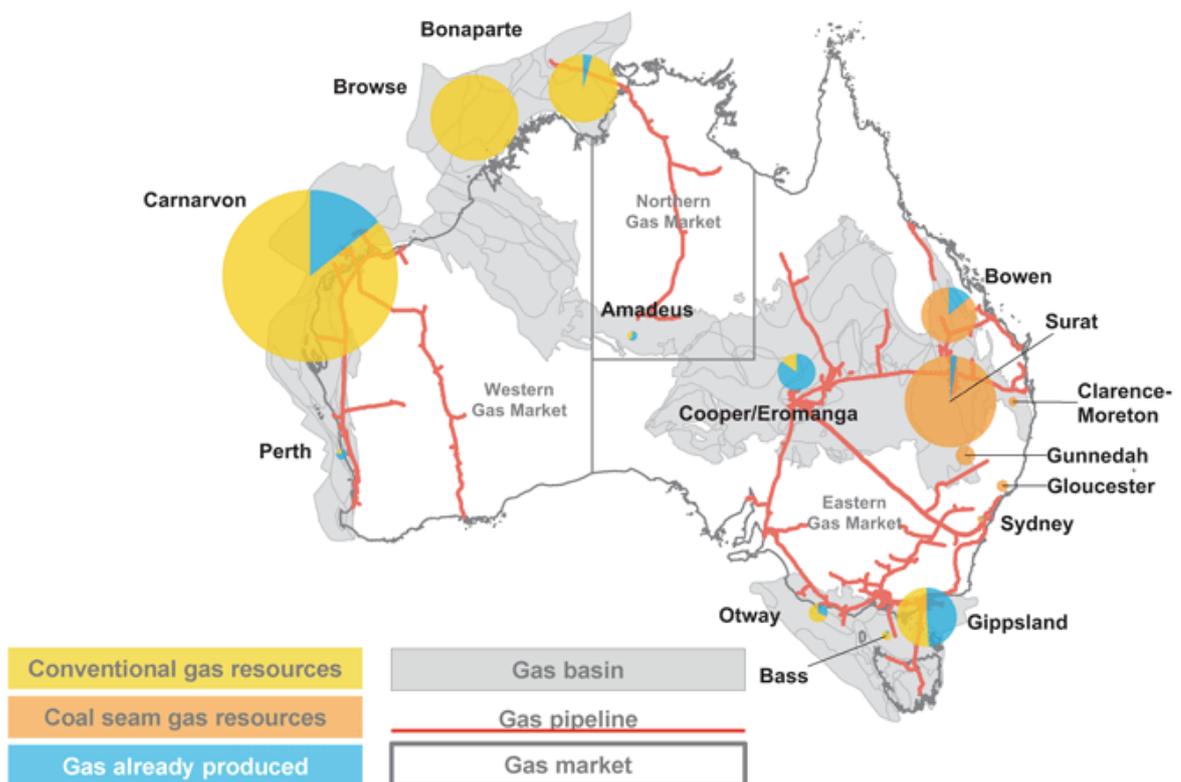
99. In contrast to full regulation, the distinguishing feature of a pipeline covered by **light regulation** is that it does not require a full access arrangement.
100. In addition, a CPSP providing light regulation has the following specific obligations:

Overview: comparison between full v light regulation – requirements and obligations

Full regulation	Light regulation
<p>General requirements for full regulation include:</p> <ul style="list-style-type: none"> • must be specified legal entity (s.131 NGL); • must not prevent or hinder access (s.133 NGL). 	<p>Same</p>
<p>Structural and separation requirements, including:</p> <ul style="list-style-type: none"> • ring fencing requirements (s.139-146 of NGL); • requirements regarding associate contracts (s. 147-148 NGL) 	<p>Same</p>
<p>Not subject to this provision</p>	<p>Specific requirement to not engage in price discrimination (s.136 NGL)</p>
<p>Subject to requirements regarding requests for access and information disclosure, including:</p> <ul style="list-style-type: none"> • provide information on tariffs (r.108 NGR); • not bundle services (r.109 NGR); • maintain public register in certain circumstances (r.111 NGR); • respond to requests for access to pipeline services (r.112 NGR) 	<p>Same, however subject to additional requirements including:</p> <ul style="list-style-type: none"> • publishing terms and conditions on access to light regulation services (including prices on offer for the services) (r.36 NGR); • provide information about access negotiations for light regulation services to the AER (r.37 NGR)
<p>Access agreement information (r.72 NGR):</p> <ul style="list-style-type: none"> • Must provide detailed access information, in particular information relating to financial and operational information <p>Note: Rule 42 to 44 NGR provide general overview of access arrangement information</p>	<p>A service provider subject to light regulation will only be required to provide access arrangement information where there is a limited access arrangement in place.</p> <p>The information that must be provided if there is a limited access arrangement in place includes (r.45(2) NGR):</p> <ul style="list-style-type: none"> • the capacity of the pipeline and the extent to which that capacity is currently utilised; • the key performance indicators for the pipeline
<p>Full access arrangement (s.132 NGL and r.48 NGR):</p> <ul style="list-style-type: none"> • A service provider subject to full regulation must submit a full access arrangement to the AER for approval within 3 months of a pipeline becoming covered. • Full access arrangement deals with: <ul style="list-style-type: none"> ○ Access; and ○ Reference tariffs; ○ sets total revenue • AER determines proposal in accordance with the procedure set out in Part, Division 8 of the NGR. 	<p>Limited access arrangement (s.116 NGL and r45(1) NGR):</p> <ul style="list-style-type: none"> • A service provider subject to light regulation may submit a limited access arrangement to the AER for approval • Limited access arrangements provide terms and conditions governing access (however without provision for price/revenue regulation) • AER determines proposal in accordance with the expedited consultative procedure

H Regulation of wholesale gas markets

112. There is no single wholesale market for gas in Australia. Rather, Australia's domestic gas market consists of three distinct regions:
- 112.1 the **eastern gas region** – connecting Australia's eastern and southern states and territories;
 - 112.2 the **western gas region** – based in Western Australia; and
 - 112.3 the **northern gas region** – based in the Northern Territory.
113. Chapter 2, Part 6 of the National Gas Law provides for two types of wholesale gas exchanges on which gas may be traded – a **Declared Wholesale Gas Market (DWGM)** and a **Short Term Trading Market (STTM)**.

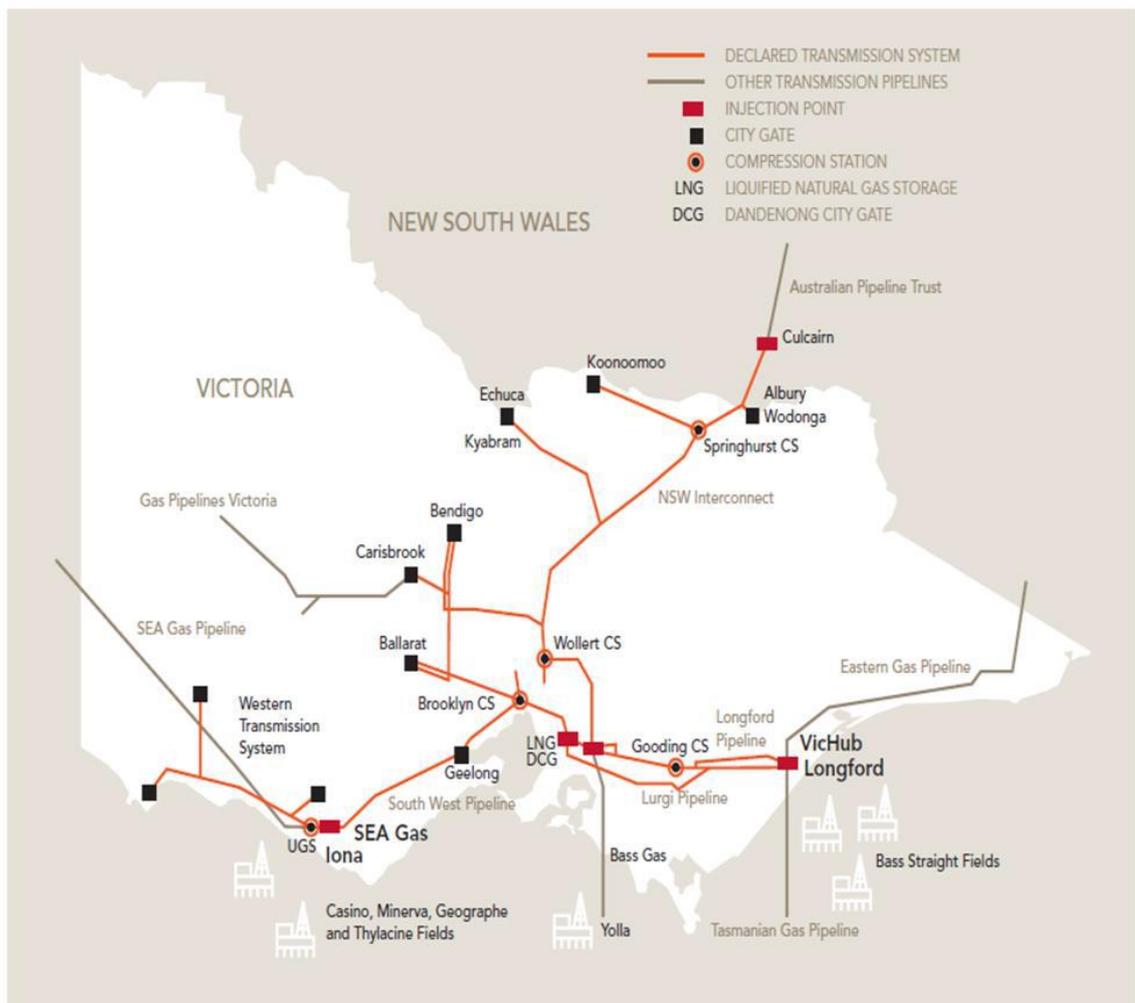


114. There are two such markets in Australia, each operated by AEMO and based in the eastern gas region:
- 114.1 a DWGM, which operates in Victoria;
 - 114.2 a STTM with demand hubs in Adelaide, Sydney and Brisbane.
115. It is important to note that while the NGL provides for the functions and powers of AEMO in respect of the DWGM and the STTM, the specific provisions in the legislation dealing with these markets will only apply to a participating jurisdiction where the application Act of that jurisdiction declares that it applies – see NGL ss 91B and 91FEA

- 116. The wholesale gas markets are operated by AEMO. In addition, AEMO may also make statutory instruments, known as 'Procedures', to regulate the conduct of those markets.
- 117. Market participants on either the DWGM and STTM must be registered by AEMO, unless exempted from registration, and must comply with conditions of registration.

The Declared Wholesale Gas Market – Victoria

- 118. The DWGM in Victoria, was established in 1999 to enable wholesale trading based on injections of gas into the transmission system that links multiple producers, major users and retailers.
- 119. Part 19 of the NGR provides the rules which govern the operation and administration of the DWGM.
- 120. Section 44 of the *National Gas (Victoria) Act 2008 (Vic)* provides that NGL s91B applies to the Victorian jurisdiction and Part 6 of that Act deals with the declared gas wholesale market in Victoria.
- 121. The declared transmission system (**DTS**), which is a complex network of high-pressure transmission pipelines primarily in Victoria (see below), also forms part of the DWGM.



- 122. Gas transported through the DTS supplies a variety of needs, including those of:

- 122.1 residential, business and industrial customers;
 - 122.2 gas-fired power generators (there are 5 connected to the DTS);
 - 122.3 exports to NSW, Tasmania and South Australia;
 - 122.4 storage.
123. Although not an exhaustive explanation of the DWGM, the following key issues are set out briefly below:
- 123.1 registration of market participants;
 - 123.2 AEMO's functions under the DWGM;
 - 123.3 AEMO Wholesale Gas Market Procedures;
 - 123.4 agreements that AEMO may enter into in respect of the DTS.

Registration of market participants

124. NGL s 91BJ prohibits a person from participating in a DWGM in a **registrable capacity** unless registered (or exempted) by AEMO in accordance with the Rules.
125. A person participates in a DWGM in a registrable capacity if they are:
- 125.1 a **service provider** for the DTS or for a declared distribution system;
 - 125.2 a **producer** that injects natural gas into the DTS;
 - 125.3 a **storage provider** whose storage facility is connected to the DTS (eg stored gas is usually owned by a retailer or trader, and is injected into the DTS during peak demand);
 - 125.4 a **person who buys or sells** natural gas in the DWGM (ie retailers, traders, large market customers who participate in the DWGM directly);
 - 125.5 a person classified by the Rules as a participant in the DWGM.

AEMO's functions under the DWGM

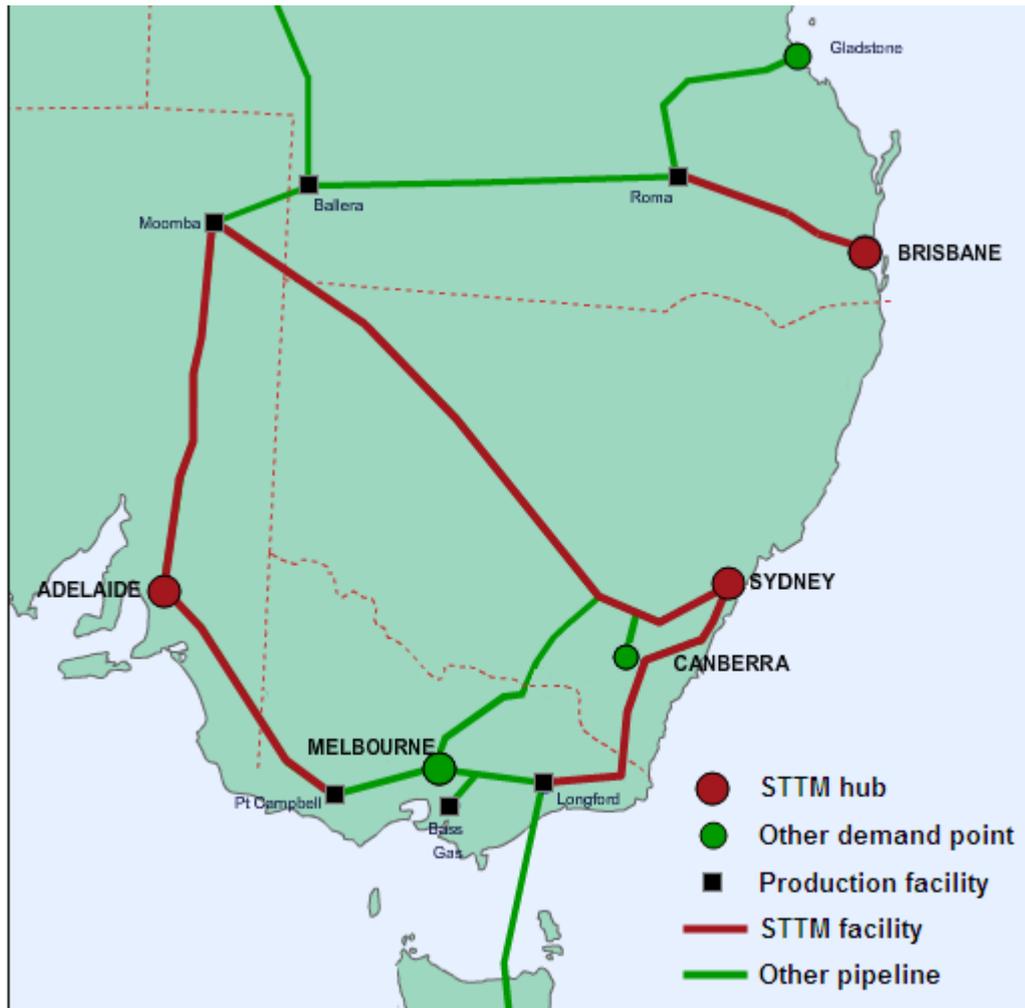
126. AEMO's functions include the operation and administration of the DWGM: NGL s 91BA(1)(b).
127. The Rules that govern the DWGM are contained in NGR Part 19, including AEMO's specific role and powers as the operator and administrator of the DWGM.
128. AEMO's powers and responsibilities concern each of the following areas, set out in NGR Part 19, Division 2 to 5:
- 128.1 **system security**;
 - 128.2 **gas scheduling**:
 - 128.2.1 AEMO must schedule injections of gas into and withdrawals of gas from the declared transmission system by market participants (and must ensure sufficient gas is available for withdrawal during each gas day)

The Short Term Trading Market - Victoria

138. The SSTM is described by AEMO as:

a market-based wholesale gas balancing mechanism established at defined gas hubs [in Adelaide, Sydney and Brisbane]. The market uses bids, offers and forecasts to determine schedules for deliveries from the pipeline transmission users and the hubs. The market sets daily market prices and settles each hub based on the schedules and deviations from schedules.⁴

139. A map depicting the STTM is included below:



140. The operation and administration of the STTM by AEMO is governed by NGL Chapter 2, Part 6, Division 2A, and by NGR Part 20.

141. Although not intended to be exhaustive, the explanation below deals with the registration of market participants, and AEMO's functions under the STTM.

⁴ <http://www.aemo.com.au/Gas/Market-Operations/Short-Term-Trading-Market>

I Retail Regulation

145. Although most aspects of the National Gas Regime deal with regulation at a wholesale level, NGR Parts 12A and 21 deal with issues concerning the relationship between **distributors, retailers** and **retail customers**.

Gas connection services for retail customers

146. Part 12A of the NGR deals with the provision of gas connections to distribution pipelines for retail customers.

Types of connection services

147. NGR rr 119A and 119I define three different types of connection services available as between distributors and retail customers, each of which are regulated under NGR Part 12A:

basic connection services

- a service involved in providing a connection between a distribution pipeline and a retail customers premises where:
 - the provision of the service involves minimal or no extension to, or augmentation of, the distribution pipeline; and
 - a model standing offer has been approved by the AER for providing that service as a basic connections service.

standard connection service

- a connection service (other than a basic connection service) for a particular class of connection applicant and for which a model standing offer has been approved by the AER

negotiated connection contract

- means a connection contract between a connection applicant and a distributor:
 - where the connection service sought by the connection applicant is neither a basic connection service nor a standard connection service; or
 - where the connection service sought by the connection applicant is a basic connection service or a standard connection service but the connection applicant elects to negotiate terms and conditions on which the connection service is to be provided.

Connection charges

148. Regardless of the type of connection service, connection charges must be consistent with the criteria in NGR r 119M (extracted below).

NGR r119M	Connection charges criteria
(1)	<p>Connection charges (or the method for calculating connection charges) for a particular connection service must be consistent with the following criteria:</p> <ul style="list-style-type: none"> (a) if the present value of the expected incremental revenue to be generated as a result of the distributor's capital expenditure for the relevant connection assets exceeds the present value of that capital expenditure, no connection charge may be imposed; and (b) if paragraph (a) does not prevent the imposition of a connection charge, the connection charge must not exceed the amount by which the present value of the capital expenditure exceeds the present value of the expected incremental revenue.
(2)	<p>For the purposes of applying the connection charges criteria:</p> <ul style="list-style-type: none"> (a) in determining the present value of expected incremental revenue, the requirements of rule 79(4) [which sets out the process for determining present value of expected incremental revenue] apply; (b) the relevant connection assets are taken to include any augmentation of the distribution pipeline required to accommodate the new connection or connection alteration (c) if the distributor's applicable access arrangement requires the use of assumptions about any of the following matters: <ul style="list-style-type: none"> (i) the connection assets required; (ii) the discount rate; (iii) the expected life of the connection; (iv) the incremental cost of purchasing and installing the connection assets; (v) the expected gas consumption and the tariffs applicable to supply services relating to the connection; (vi) the expected incremental operating and maintenance costs, then the assumptions must be consistent with the relevant provisions of the distributor's applicable access arrangement.

Applications for connection services

149. NGR r 199R provides that an application for a connection service may be made by:
- 149.1 a **retail customer** for whom the connection service is sought;
 - 149.2 a **retailer** or other person acting on behalf of a retail customer;
 - 149.3 a **real estate developer** who seeks connection services for premises comprised in a real estate development.
150. If a distributor reasonably requires additional information to assess the application, it may require the connection applicant to provide the necessary information.

151. A distributor must, within 10 days after receiving an application:
- 151.1 advise the connection applicant whether the proposed connection service is a **basic** connection service, a **standard** connection service or **neither**;
- 151.2 if the connection service is neither or the connection applicant elects for a negotiated connection contract, then the distributor must advise the connection applicant of the negotiated connection process and of the costs / expenses related to the negotiations.

Basic and standard connection services

152. The **formation of connection contracts** (i.e. offer, acceptance and contractual performance) is governed by NGR Part 12A, Division 6.
153. NGR r 119B provides that a distributor **must** have one or more **model standing offers** to provide **basic connection services**. A model standing offer must be submitted for approval by the AER: NGR r 119C.
154. If the distributor wishes to offer connection services that are not basic connection services, but are not individually negotiated, a distributor **may also** submit to the AER for approval a model standing offer in respect of **standard connection services**: NGR r 119E.
155. The differences between basic connection services and standard connection services, and the terms applicable to each, are set out in the table below:

Factor	Basic connection services	Standard connection services
Applying for a model standing offer	<p>Distributor must have a model standing offer to provide a basic connection service to a retail customer.</p> <p>A distributor must submit for the AER's approval a proposed model standing offer for the AER's approval.</p>	<p>Distributor may submit for the AER's approval a proposed model standing offer to provide standard connection services on specified terms and conditions.</p>
Terms and conditions of a model standing offer	<p>When a distributor submits a proposed model standing offer, the terms and conditions must cover:</p> <ul style="list-style-type: none"> • a description of the connection; • timeframes for commencing and completing the work; • qualifications required for carrying out the work in providing a contestable service (being a service provided by more than one supplier or on a competitive basis); • safety and technical requirements to be complied with by the provider of a contestable service or the retail customer; • details of connection charges (being the charge imposed by the distributor for the 	<p>Same</p>

Factor	Basic connection services	Standard connection services
	<p>connection service);</p> <ul style="list-style-type: none"> ○ <u>note</u>: overview of connection charges provided in the next section. • manner in which the connection charges are to be paid by the retail customer 	
Obligations on distributors	<p>The distributor must submit to the AER with its proposed model standing offer:</p> <ul style="list-style-type: none"> • a declaration that the distributor considers its proposed connection charges to be consistent with the connection charges criteria; • details of the basis on which the distributor has applied the connection charges criteria 	Same
AER's approval of a model standing offer	<p>The AER may approve a proposed model standing offer on specified terms and conditions if it is satisfied that:</p> <ul style="list-style-type: none"> • the services, or class of services, is likely to be sought by a significant number of retail customers in the area served by the distribution pipeline; • the connection charges are consistent with the connection charges criteria; • the terms and conditions are fair and reasonable; • the terms and conditions comply the energy laws. 	Same, save for the first factor which the AER is not required to be satisfied of when approving a model standing offer for a standard connection service.
	<p>In deciding whether to approve a model standing offer to provide a basic connection service the AER must have regard to:</p> <ul style="list-style-type: none"> • the national gas objective; • the basis upon which the distributor provided the service in the past; • geographical characteristics of the area served by the relevant distribution pipeline. 	In deciding whether to approve a model standing offer to provide standard connection services, the AER is only required to have regard to the national gas objective.

Negotiated connection contracts

156. The **process and framework for negotiation connections** is set out in NGR, Part 12A, Division 3, and must be read in conjunction with the relevant provisions of the National Energy Retail Law (**NERL**).
157. NGR r 119J provides that a distributor and a connection applicant for a negotiated connection contract must negotiate in accordance with a **negotiation framework** set out in NGR r 119K.
158. Among other things, the negotiation framework requires that:
- 158.1 each party must negotiate in **good faith**;
 - 158.2 the connection applicant must, if requested to do so, provide the distributor with information it reasonably requires in order to negotiate on an **informed basis**;
 - 158.3 the distributor must provide the connection applicant with information it reasonably requires in order to negotiate on an **informed basis**, including:
 - 158.3.1 an estimate of the amount to be charged by the distributor;
 - 158.3.2 an estimate of connection charges;
 - 158.3.3 a statement of the basis upon which connection charges are calculated (which must be consistent with the connection charges criteria);
 - 158.3.4 a statement of the assumptions made by the distributor in applying the connection charges criteria;
 - 158.3.5 if the connection applicant has elected to extend the negotiations to cover supply services – an estimate of any applicable charge for supply services and a statement of the basis of their calculation.
159. The distributor may consult with other users of the distribution pipeline who may be adversely affected by the proposed new connection.
160. In assessing the application for a negotiated connection contract, a distributor must determine:
- 160.1 the **technical requirements** for the proposed new connection or connection alteration;
 - 160.2 the extent and costs of any necessary **augmentation or extension**;
 - 160.3 any possible material effect of the proposed connection or connection alteration on the **capacity** of the distribution pipeline to meet existing future demand.
161. A distributor may charge a reasonable fee to cover expenses directly and reasonably incurred in assessing an application for a negotiated connection contract and making a connection offer, regardless of whether the distributor's connection offer is accepted: NGR r 119L.

Retail support obligations between distributors and retailers

162. Part 21 of the Rules provides for certain **retail support obligations** which apply to distributors and retailers who have **shared customers**: NGR r 501.
163. A **shared customer**, in relation to a distributor and retailer, means a person who is a customer of the retailer and whose premises is connected to the distributor's distribution system.
164. Among other things, Part 21 provides for:
- 164.1 billing and payment rules; and
 - 164.2 a credit support regime for distributors and retailers.

165. The provisions of Part 21 prevail over any inconsistent provisions in a distributor's access arrangement: NGR r501.

Billing and payment rules

166. NGR Rule 504 provides that, subject to the rest of Part 21, a **retailer** must pay to a **distributor** the distribution service charges payable in respect of each **shared customer**.
167. An exception to this is where a distributor and a shared customer agree that the customer will be responsible for paying distribution service charges to the distributor directly: NGR r 504. In that case, the distributor must notify the retailer of the direct billing arrangement.
168. Distribution service charges must be calculated in accordance with the applicable access arrangement or a gas service agreement: NGR r 504. (A **gas service agreement** is a contract between a distributor and a retailer for transportation of gas to the premises of shared customers, whether pursuant to an access arrangement or otherwise).
169. Further, distributors must provide a statement of distribution service charges, which must include the following information:
- 169.1 the distribution service charges separately identified;
 - 169.2 the date of issue and due date for payment;
 - 169.3 metering data (where applicable);
 - 169.4 any adjustments to distribution service charges from previous retail billing periods;
 - 169.5 where applicable, any credits for GSL payments that the distributor is required to make in respect of a shared customer's premises: NGR r 506.
170. Among other things, Division 3 of Part 21 deals with:
- 170.1 the adjustment of distribution service charges to account for differences in meter readings and errors;
 - 170.2 the reassignment of tariffs applicable to the shared customer;
 - 170.3 a procedure for retailers to dispute amounts charged by a distributor; and
 - 170.4 the notification of changes to distribution service charges.

J ACCC Inquiry into the East Coast Gas Market (April 2016)

178. In April 2016, the Australian Competition and Consumer Commission (**the ACCC**) published its report from an inquiry into the competitiveness of the wholesale gas industry.
179. The ACCC made a number of key findings and recommendations regarding:
- 179.1 gas supply;
 - 179.2 gas transportation; and
 - 179.3 the operation of the gas markets and the level of market transparency.
180. Among other things, the ACCC's key findings and recommendations concerned an apparent lack of effective competition in the market for gas transportation services, particularly concerning transmission pipelines.
181. The key findings and recommendations regarding that issue are extracted below:

Key Findings

...

Gas transportation

6. Pipeline operators have responded to the changes underway in the market. There is, however, evidence that a large number of pipeline operators have been engaging in monopoly pricing. This gives rise to higher delivered gas prices and is having an adverse effect on the economic efficiency of the east coast gas market and upstream and downstream markets, the costs of which will ultimately be borne by consumers. There is also evidence that the ability and incentive of existing pipeline operators to engage in this behaviour is not being effectively constrained by competition from other pipelines, competition from alternative energy sources, the risk of stranding, the countervailing power of shippers, regulation or the threat of regulation.
7. The current gas access regime is not imposing an effective constraint on the behaviour of a number of unregulated pipelines. The current test for regulation under the National Gas Law (NGL) (the coverage criteria) is not designed to address the market failure that has been observed in this Inquiry, that is, monopoly pricing that results in economic inefficiencies with little or no effect on the level of competition in dependent markets. Other gaps in the regulatory framework are also allowing pipelines that are subject to regulation to continue to engage in monopoly pricing. Information asymmetries are limiting the ability of shippers to identify any exercise of market power and to negotiate effectively with pipeline operators.
8. Less than 20 per cent of the transmission pipelines on the east coast are currently subject to regulation under the NGL and National Gas Rules (NGR). This is in direct contrast to other comparable jurisdictions, such as the United States, the European Union and New Zealand, where the vast majority of transmission pipelines are regulated. It is well recognised in these jurisdictions that pipelines can wield substantial market power even where producers and users have a number of transportation options.

Recommendations

...

Gas transportation

3. The COAG Energy Council should agree to replace the current test for the regulation of gas pipelines (the coverage criteria) in the NGL with a new test. This test would be triggered if the relevant Minister, having regard to the National Competition Council's recommendation, is satisfied that:
 - the pipeline in question has substantial market power
 - it is likely that the pipeline will continue to have substantial market power in the medium term, and
 - coverage will or is likely to contribute to the achievement of the National Gas Objective.The COAG Energy Council should also ask the AEMC to carry out further consultation on the specific matters that should be considered when applying this test and how it should be implemented and to advise the COAG Energy Council of the amendments that would need to be made to the NGL and the NGR to give effect to this new test.
4. The COAG Energy Council should ask the AEMC to review Parts 8–12 of the NGR and to make any amendments that may be required to address the concern that pipelines subject to full regulation may still be able to exercise market power to the detriment of consumers and economic efficiency. In carrying out this review, the AEMC should also consider whether any changes can be made to the dispute resolution mechanism in the NGL and NGR to make it more accessible to shippers, so that it provides a more effective constraint on the behaviour of pipeline operators.
5. The COAG Energy Council should ask the AEMC to explore how the scope of the information disclosure requirements in the NGL should be expanded to require all pipelines operating on an open access basis (that is, regulated and unregulated pipelines) to publish financial information that shippers can use to determine whether or not the prices they are offered by pipeline operators are cost reflective. The publication of this information would enable shippers to negotiate more effectively with pipeline operators and to identify any exercise of market power more readily.

Annexure 1 Standard Consultative Procedure

NGR r 8 Standard consultative procedure

- (1) If the Law requires a decision maker to deal with a proposal in accordance with the standard consultative procedure, the decision maker must proceed in accordance with this rule.
- (2) The decision maker must proceed as follows:
 - (a) the decision maker must publish a notice on its website and in a newspaper circulating generally throughout Australia;
 - i. describing the proposal and giving the address of a website at which the proposal can be inspected; and
 - ii. **inviting written submissions on the proposal within 15 business days of the date of the notice**; and
 - (b) the decision maker must, after considering relevant submissions made within the time allowed in the notice and other matters the decision maker considers relevant, make a draft decision; and
 - (c) if the draft decision identifies changes to the proposal that should, in the decision maker's opinion, be made, the decision maker must:
 - i. if it is the proponent – notify the proponent of the decision and the reasons for it and give the proponent a reasonable opportunity to modify its proposal in light of the decision;
 - (d) the decision maker must then publish, on its website and in any other way the decision maker considers appropriate:
 - i. the draft decision; and
 - ii. any modification of the proposal made in light of the draft decision; and
 - iii. a notice inviting written submissions and comments on the draft decisions, and (if applicable) the modified proposal, within a period (at least 15 business days) stated in the notice;
 - (e) the decision maker must, within 20 business days after the end of the period allowed for making submissions and comments on the draft decision, consider all submissions and comments made within the time allowed and make its final decision.
- (3) A draft or final decision must:
 - (a) be in writing; and
 - (b) state the terms of the decision and the reasons for it.
- (4) After making a final decision, the decision maker must, without delay;
 - (a) if the decision is in the nature of a recommendation – deliver the final decision to the authority or person to whom the recommendation is addressed; and
 - (b) give copies of the final decision to the parties to the administrative process in which the decision is made; and
 - (c) publish the final decision on the decision maker's website; and
 - (d) make the final decision available for inspection during business hours at the decision maker's public offices.
- (5) Subject to the Law, a decision made in accordance with this rule takes effect on the date provided for its commencement under the terms of the decision or, if no date is so provided, 10 business days after the date of the decision

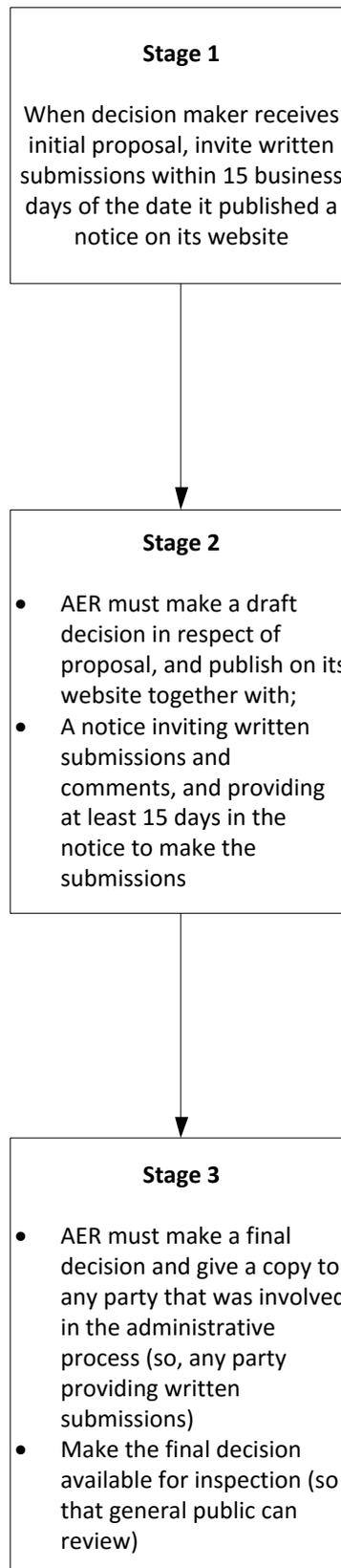
NGR r 8 Standard consultative procedure

- (6) If the Law requires a decision maker to deal with a proposal in accordance with the standard consultative procedure, the decision maker must proceed in accordance with this rule.
- (7) The decision maker must proceed as follows:
- (a) the decision maker must publish a notice on its website and in a newspaper circulating generally throughout Australia;
 - i. describing the proposal and giving the address of a website at which the proposal can be inspected; and
 - ii. **inviting written submissions on the proposal within 15 business days of the date of the notice**; and
 - (b) the decision maker must, after considering relevant submissions made within the time allowed in the notice and other matters the decision maker considers relevant, make a draft decision; and
 - (c) if the draft decision identifies changes to the proposal that should, in the decision maker's opinion, be made, the decision maker must:
 - i. if it is the proponent – notify the proponent of the decision and the reasons for it and give the proponent a reasonable opportunity to modify its proposal in light of the decision;
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- (a) be in writing; and
 - (b) state the terms of the decision and the reasons for it.
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- (a) if the decision is in the nature of a recommendation – deliver the final decision to the authority or person to whom the recommendation is addressed; and
 - (b) give copies of the final decision to the parties to the administrative process in which the decision is made; and
 - (c) publish the final decision on the decision maker's website; and
 - (d) make the final decision available for inspection during business hours at the decision

NGR r 8 Standard consultative procedure

- (11) If the Law requires a decision maker to deal with a proposal in accordance with the standard consultative procedure, the decision maker must proceed in accordance with this rule.
- (12) The decision maker must proceed as follows:
- (a) the decision maker must publish a notice on its website and in a newspaper circulating generally throughout Australia;
 - i. describing the proposal and giving the address of a website at which the proposal can be inspected; and
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- (13) A draft or final decision must:
- (a) be in writing; and
 - (b) state the terms of the decision and the reasons for it.
- (14) After making a final decision, the decision maker must, without delay;
- (a) if the decision is in the nature of a recommendation – deliver the final decision to the authority or person to whom the recommendation is addressed; and
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Diagram of the public consultation aspect of the standard consultative procedure



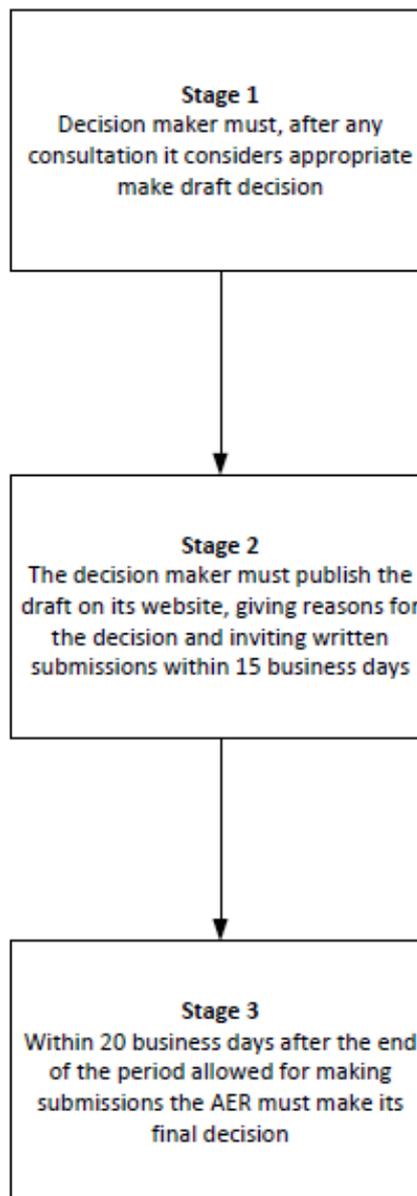
Annexure 2 Expedited Consultative Procedure**NGR r 9 Expedited consultative procedure**

- (1) If the Law requires a decision maker to deal with a proposal in accordance with the expedited consultative procedure, the decision maker must proceed in accordance with this Rule.
- (2) The decision maker must proceed as follows:
 - (a) the decision maker must, after such consultation (if any) as the decision maker considers appropriate (and any revision of the proposal that results from that consultation), make a draft decision; and
 - (b) the decision maker must give copies of the draft decision to the parties to the administrative process in which the decision is to be made;
 - (c) the decision maker must publish, on its website and in any other way the decision maker considers appropriate, the draft decision together with a notice stating:
 - (i) stating why the decision is required;
 - (ii) giving reasonable details of the context in which the draft decision has been made, the issues involved and the possible effects of the decision; and
 - (iii) inviting written submissions and comments on the draft decision within 15 days from the date of the notice;
 - (d) the decision maker must, within 20 business days after the end of the period allowed for making submissions and comments made within the time allowed and make its final decision.
- (3) A draft or final decision must:
 - (a) be in writing; and
 - (b) state the terms of the decision and the reasons for it.

(continued)

r.9 Expedited consultative procedure (cont)

- (4) After making the final decision, the decision maker must, without delay:
- (a) if the decision is in the nature of a recommendation – deliver the final decision to the authority or person to whom the recommendation is addressed; and
 - (b) give copies of the final decision to the parties to the administrative process on which the decision is made; and
 - (c) publish the final decision on the decision maker’s website; and
 - (d) make the final decision available for inspection during business hours at the decision maker’s public offices.
- (5) Subject to the Law, a decision made in accordance with this rule takes effect on the date provided for its commencement under the terms of the decision or, if no date is so provided, 10 business days after the date of the decision.



CHAPTER 3: THE NATIONAL ELECTRICITY REGIME

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CHAPTER 3: THE NATIONAL ELECTRICITY REGIME

A Overview and structure

1. This Chapter deals with the National Electricity Regime, which regulates (among other things):
 - 1.1 **access regulation** in respect of electricity transmission and distribution services;
 - 1.2 **network connection, planning and expansion;**
 - 1.3 power system **safety and metering;**
 - 1.4 the **National Electricity Market (NEM);**
 - 1.5 retail electricity connection services and support obligations.
2. This Chapter will focus on the National Electricity Law (**NEL**) and National Electricity Rules (**NER**).
3. The NEL is divided into the following Parts:
 - 3.1 **Part 1:** Preliminary matters, including outlining the overall national electricity objective and key concepts relating to electricity regulation;
 - 3.2 **Part 2:** Participation in the National Electricity Market;
 - 3.3 **Part 3:** Sets out the functions and powers of the Australian Energy Regulator;
 - 3.4 **Part 4:** Sets out the functions and powers of the Australian Energy Market Commission;
 - 3.5 **Part 5:** Sets out the functions and powers of the Australian Energy Market Operator;
 - 3.6 **Part 5A:** Sets out the functions and powers of the Minister of the participating jurisdiction;
 - 3.7 **Part 5B:** Sets out the functions and powers of the Tribunal;
 - 3.8 **Part 6:** Sets out the process for initiating merits review and judicial review proceedings under the NEL;
 - 3.9 **Part 7:** Outlines the relevant process for making of the National Electricity Rules;
 - 3.10 **Part 8:** Sets out safety and security processes of the National Electricity System;
 - 3.11 **Part 8A:** Sets out processes and procedures relating to smart metering services;
 - 3.12 **Part 9:** Immunities;
 - 3.13 **Part 10:** Sets out processes and procedures relating to access disputes;
 - 3.14 **Part 11:** General provisions.

4. The NER are an extensive set of Rules relating to the regulation of electricity in Australia. This Handbook focusses on the following Chapters of the NER:
 - 4.1 **Chapter 2**, which deals with Registered Participants and Registration;
 - 4.2 **Chapter 3**, which deals with Market Rules;
 - 4.3 **Chapter 4**, which deals with power system security;
 - 4.4 **Chapter 5**, which deals with connection, planning and expansion of the electricity network;
 - 4.5 **Chapter 5A**, which deals with electricity connection for retail customers;
 - 4.6 **Chapters 6 and 6A**, which deal with access regulation in respect of distribution and transmission services, respectively;
 - 4.7 **Chapter 6B**, which deals with Retail Markets;
 - 4.8 **Chapter 7**, which deals with Metering;
 - 4.9 **Chapter 10**, which sets out the Glossary.

5. The remaining Chapters of the NER, which will not be covered in detail, are as follows:
 - 5.1 **Chapter 1**, which is the Introductory Chapter;
 - 5.2 **Chapter 8**, which deals with Administrative Functions;
 - 5.3 **Chapter 8A**, which deals with Participant Derogations;
 - 5.4 **Chapter 9**, which deals with Jurisdictional Derogations and Transitional Arrangements;
 - 5.5 **Chapter 11**, which deals with Savings and Transitional Rules.

B Conceptual, administrative and general matters

National Electricity objective and other key concepts

6. The National Electricity Objective (**NEO**) (which is substantially similar to the National Gas Objective and National Energy Retail Objective) is set out in section 7 of the NEL:

National Electricity Objective (NEL, s 7)

The objective of this Law is to promote **efficient investment in, and efficient operation and use of**, electricity services **for the long term interests of consumers** of electricity with respect to:

- (a) **price, quality, safety, reliability and security of supply of electricity;**
- (b) **and the reliability, safety and security of the national electricity system.**

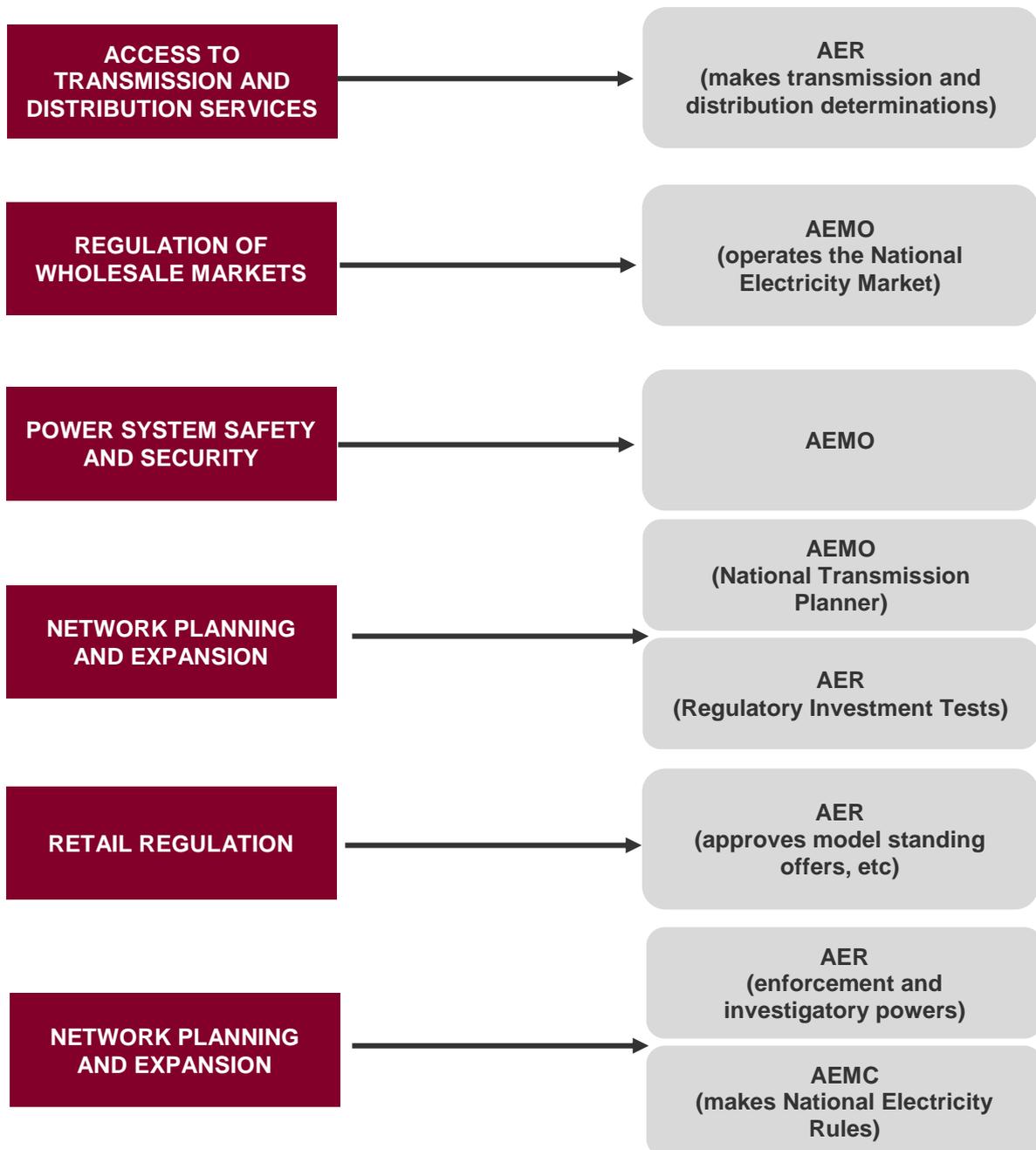
7. The Form of Regulation Factors (NEL s 2F) and the Revenue and Pricing Principles (**RPPs**) (NEL s 7A) are also critical concepts applicable to the National Electricity Regime, and are discussed in Chapter 1 of this Handbook.

Principal regulatory bodies

8. There are three main governing bodies that assist in implementing the regulation of electricity:
- 8.1 The Australian Energy Regulator (**AER**): the AER is the key regulator in all jurisdictions other than WA¹. The AER's primary functions under the National Electricity Regime are:
 - 8.1.1 **Enforcement:** monitors compliance, investigates and may conduct proceedings in respect of breaches of the NEL and NER;
 - 8.1.2 **Economic Regulatory Functions:** the AER approves distribution determinations and transmission determinations relating to the revenue and price of, and access to, distribution and transmission services, respectively;
 - 8.1.3 **Dispute Resolution:** the AER may hear and determine access disputes regarding access to electricity network provided by means of, or in connection with a distribution or transmission system;
 - 8.1.4 **Retail Approval Functions:** the AER is responsible for approving standardised offers for connection services and administering other matters relating to the relationships between distributors, retailers and retail customers for electricity.
 - 8.2 **The Australian Energy Market Operator (AEMO):** regulates the operation of national electricity market and acts as the National Transmission Planner.
 - 8.3 **Australian Energy Market Commission (AEMC):** responsible for making the NER.

¹ The Economic Regulation Authority Western Australia regulates the electricity market in Western Australia.

9. The diagram below summarises the role played by each of the regulatory authorities:



Manner in which the AER must perform or exercise economic regulatory functions or powers

10. Section 16 of the NEL sets out the manner in which the AER must perform or exercise its economic regulatory functions or powers under the NEL and NER.
11. Given the significance of that section, it is set out in full below, with our comments inserted in brackets to illustrate key concepts:

Manner in which AER must perform or exercise AER economic regulatory functions or powers (NEL s 16)

(1) The AER must, in performing or exercising an AER economic regulatory function or power –

(National Electricity Objective)

- (a) perform or exercise that function of power in a manner that will or is likely to contribute to the achievement of the **national electricity objective**; and

(Opportunity for stakeholders to make submissions)

- (b) if the function of power performed or exercised by the AER relates to the making of a distribution determination or transmission determination, ensure that –

(i) the **regulated network service provider** to whom the determination will apply; AND

(ii) any affected Registered participant; and

(iii) if **AEMO** is affected by the determination – AEMO; and

(iv) **network service users or prospective network service users** of the relevant services that the AER considers have an interest in the determination; and

(v) any **user or consumer associations or user or consumer interest groups** that the AER considers have an interest in the determination,

are, in accordance with the Rules –

(vi) **informed** of material issues under consideration by the AER; and

(vii) given a reasonable opportunity to **make submissions** in respect of the determination before it is made; and

(Must specify interrelationship of constituent components)

- (c) in relation to making a reviewable regulatory decision, specify –

(i) the manner in which the constituent components of the decision relate to each other; and

(ii) the manner in which that interrelationship has been taken into account in the making of the reviewable regulatory decision; and

(continued)

(Must make preferable designated reviewable regulatory decision, on reasoned basis)

- (d) if the AER is making a reviewable regulatory decision and there are 2 or more possible reviewable regulatory decisions that will or are likely to contribute to the national electricity objective –
- (i) make the decision that the AER is satisfied will or is likely to contribute to the achievement of the national electricity objective to the greatest degree (the **preferable designated reviewable regulatory decision**); and
 - (ii) specify reasons as to the basis on which the AER is satisfied that the decision is the preferable designated reviewable regulatory decision.

(Taking into account the RPPs)

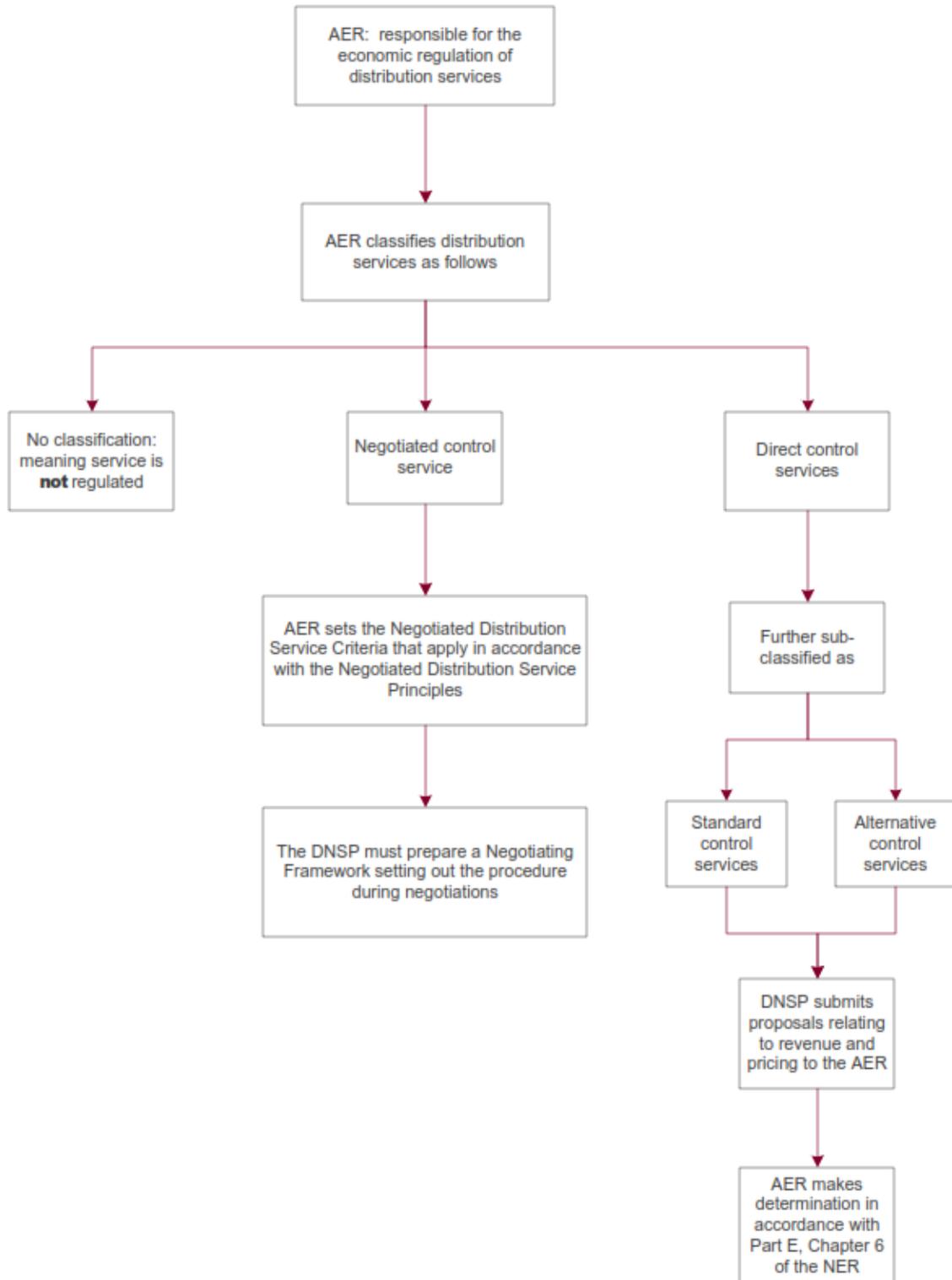
- (2) In addition, the AER –
- (a) must take into account the revenue and pricing principles –
 - (i) when exercising a discretion in making those parts of a distribution determination or transmission determination relating to direct control network services; or
 - (ii) when making an access determination relating to a rate or charge for an electricity network service; and
 - (b) **may** take into account the revenue and pricing principles when performing or exercising any other AER economic regulatory function or power, if the AER considers it appropriate to do so.
- (3) For the purposes of subsections (2)(a)(ii), a reference to a “direct control network service” in the revenue and pricing principles must be read as a reference to “electricity network service”.
- (4) In this section –

affected Registered Participant means a Registered Participant (other than a regulated network service provider to whom the distribution determination or transmission determination will apply) whose interests are affected by the distribution or transmission determination.

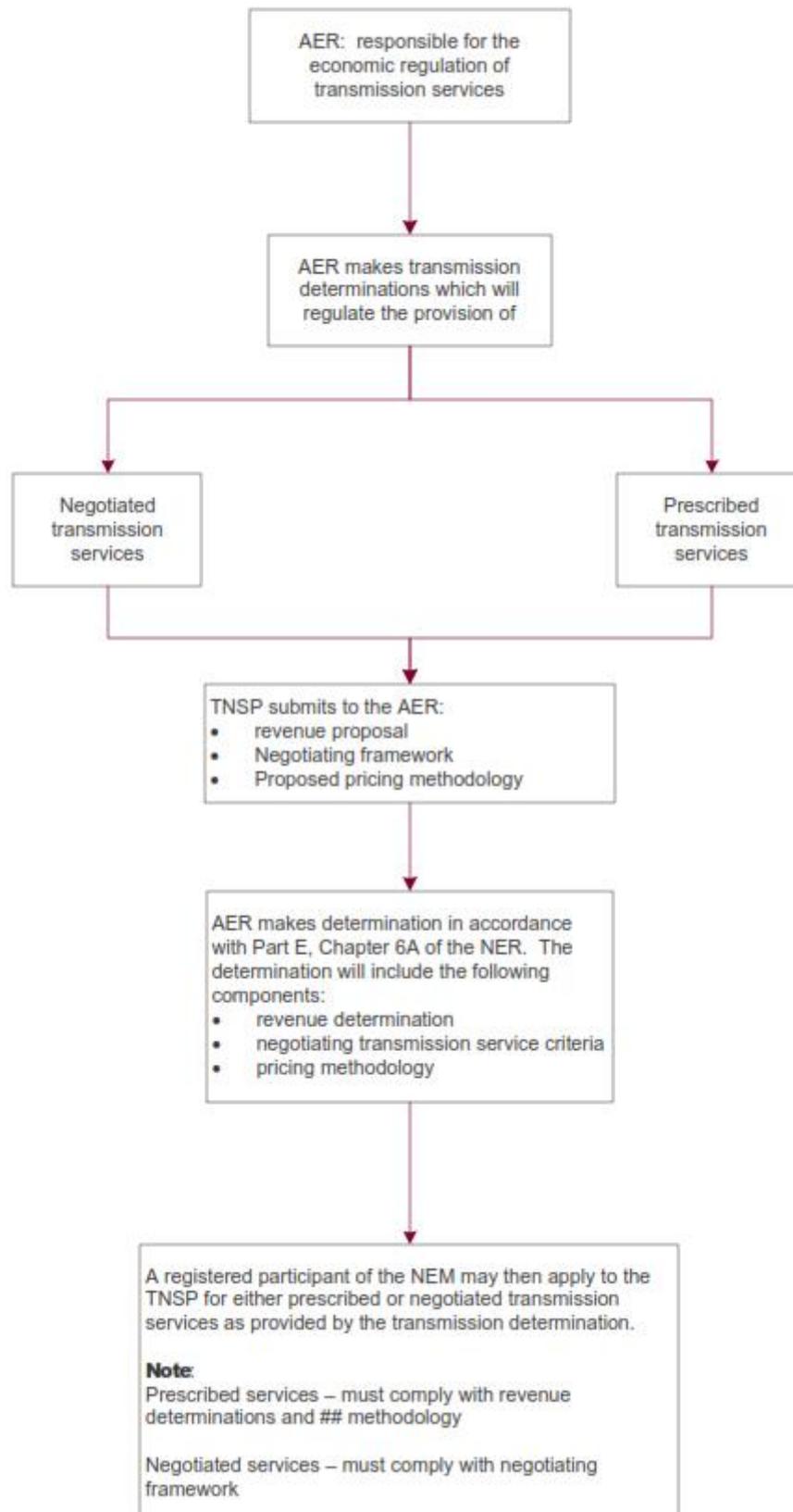
C Access Regulation – Overview

12. The AER is responsible for the economic regulation of the price and other terms of access to electricity distribution and transmission services that must be offered by distribution and transmission network service providers (**DNSPs** and **TNSPs** respectively).
13. There are two key aspects to the AER's performance of this function:
 - 13.1 **determinations** – the making of determinations governing price and other terms of access that must be offered by DNSPs and TNSPs in respect of particular distribution and transmission services; and
 - 13.2 **access disputes** – the resolution of disputes between DNSPs, TNSPs and users of distribution and transmission services.
14. The provisions regarding access regulation are primarily contained in Chapters 6 and 6A of the NER, and Part 10 of the NEL:
 - 14.1 **NER Chapter 6:** deals with the classification and making of determinations regarding **distribution services** – i.e. those services carrying electricity from a transmission service to the end user;
 - 14.2 **NER Chapter 6A:** deals with the classification and making of determinations regarding **transmission services** – i.e. those services carrying electricity from a generation facility to a distribution network;
 - 14.3 **NEL Part 10:** deals with the resolution of access disputes.
15. The diagrams on the following two pages provide an overview of the access regime for distribution services and transmission services respectively.

DISTRIBUTION SERVICES



TRANSMISSION SERVICES



D Access Regulation – Distribution Services

16. Chapter 6 of the NER governs the economic regulation of access to electricity **distribution services**.
17. Chapter 6 is structured as follows:
- Part A – Introduction**
 - Part B – Classification of Distribution Services and Distribution Determinations**
 - Part C – Building Block Determinations for Standard Control Services**
 - Part D – Negotiated Distribution Services**
 - Part DA – Connection Policies;**
 - Part E – Regulatory Proposal and Proposed Tariff Structure Statement**
 - Part F – Cost Allocation**
 - Part G – Distribution Consultation Procedures**
 - Part H – Ring-Fencing Arrangements for DNSPs**
 - Part I – Distribution Pricing Rules**
 - Part J – Billing and Settlements
 - Part K – Prudential Requirements, capital contributions and prepayments
 - Part L – Dispute Resolution
 - Part M – Separate Disclosure of Transmission and Distribution Charges
 - Part N – Dual Function Assets
 - Part O – Annual Benchmarking Report
 - Part P – Distribution Reliability Measures Guidelines
18. The only Parts of NER Chapter 6 which are considered here in depth are Parts A, B, C, D, E, G and I which are indicated above in bold.
19. Rule 6.1.1 provides that the AER is responsible for the economic regulation of distribution services – services provided by means of or in connection with a **distribution system**, being the network that conveys electricity and the connection services that form part of a network.
20. There are two key components to the AER's role in making **distribution determinations**:
- 20.1 **Classification of distribution services**
- Distribution services may be classified by the AER as either direct control services, negotiated distribution services, or unregulated:

- 20.1.1 **Direct control services** are subject to price and/or revenue regulation. They are further divided into:
- (a) **Standard control services**, which must be regulated by a building block calculation; and
 - (b) **Alternative control services**, which **may** be regulated by a building block calculation **or** an alternative form of revenue control.
- 20.1.2 **Negotiated distribution services** are not subject to direct price or revenue regulation; rather, price is agreed between the customer and the DNSP pursuant to a negotiating framework.
- 20.1.3 **Unregulated** - if the AER does not classify a distribution service at all, it will not be subject to the AER's economic regulation under NER Chapter 6.

20.2 **Terms and conditions for distribution services**

The AER's determinations set terms and conditions which must be offered by a DNSP in relation to a particular distribution service. The classification given to a distribution service will affect the matters that must be included in a distribution determination, as indicated above. A determination will apply for the length of a **regulatory control period** – usually 5 years.

21. This Part D of the Handbook is structured as follows:
- 21.1 **Classification** – how does the AER classify distribution services?
 - 21.2 **Distribution determinations** – Distribution determinations split up further to consider:
 - 21.2.1 distribution determination terms and conditions for direct control services;
 - 21.2.2 distribution determination terms and conditions for negotiated control services;
22. The process undertaken by the AER when making a distribution determination is discussed in Part E below.

Classification of distribution services

23. The classification of distribution services is dealt with in Part B of Chapter 6.
24. The process by which the AER may classify a distribution service is explained using the staged approach set out below:
- Stage 1:** classification as **direct control services** or **negotiated distribution services** (or discretion to leave unregulated);
 - Stage 2:** further classification of direct control services as either **standard control services** or **alternative control services**;
 - Stage 3:** length of classification.
25. Each stage is considered further, below.

Stage 1: Classification as direct control services or negotiated distribution services

26. **Rule 6.2.1(a)** provides that the AER **may** classify a distribution service to be provided by a DNSP as either:
- 26.1 a direct control service; or
 - 26.2 a negotiated distribution service.
27. The differences between the two are described in paragraph 20 above.
28. Distribution services may also be **prescribed** by the NER as being a direct control service or a negotiated distribution service – see NEL ss 2B and 2C.
29. Further, the AER may leave a distribution service **unclassified** – in that case, it will not be subject to economic regulation under Chapter 6.
30. When determining whether to classify a distribution service as either a direct control or a negotiated service, NER r 6.2.1(c) provides that the AER must have regard to:
- 30.1 the **form of regulation factors** (extracted below);
 - 30.2 the form of regulation (if any) **previously applicable** to the service (or services);
 - 30.3 the **desirability of consistency** in the form of regulation for similar services (both within and beyond the relevant jurisdiction); and
 - 30.4 any other relevant factor.
31. The form of regulation factors are extracted below:

NEL s 2F

The form of regulation factors are –

- (a) the presence and extent of any **barriers to entry** in a market for electricity network services;
- (b) the presence and extent of any **network externalities (that is, interdependencies)** between an electricity network service provided by a network service provider and any other electricity network service provided by the network service provider;
- (c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other service provided by the network service provider in any other market;
- (d) the extent to which any **market power possessed by a network service provider** is, or is likely to be, mitigated by **countervailing market power possessed by a network service user or prospective network service user**;
- (e) the presence and extent of any **substitute**, and the **elasticity of demand**, in a market for an electricity network service in which a network service provider provides that service;
- (f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);
- (g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to **negotiate on an informed basis** with a network service provider for the provision of an electricity network service to them by the network service provider.

Stage 2: Further classification of direct control services

32. Where the AER classifies a distribution service as a direct control services, it must also determine whether the service is classified as a **standard control service** or an **alternative control service**: NER r 6.2.2(a).
33. **Standard control service:**
- 33.1 A standard control service will be subject to a control mechanism based on a DNSPs **total revenue requirement** – an amount representing revenue calculated for the whole of a regulatory control period in accordance with a series of **building block determinations** made under Chapter 6, Part C.
- 33.2 In practical terms, services that are central to electricity supply and relied on by large numbers of customers (including services that involve building and maintaining the distribution network) will usually be standard control services.
34. **Alternative control service:**
- 34.1 Unlike standard control services, alternative control service costs are recovered through specific user charges. These may, but need not, be based on a building block calculation.
- 34.2 In practical terms, an alternative control service is likely to be more customer specific or less central to electricity supply – for example:
- 34.2.1 residential and small business metering;
- 34.2.2 public lighting attached to electricity poles;
- 34.2.3 other user requested services.
35. Rule 6.2.2(c) of the NER provides that the AER must have regard to the following factors when sub-classifying a direct control service:
- 35.1 the potential for **development of competition** in the relevant market and how the classification might influence that potential; and
- 35.2 the possible **effects of the classification on administrative costs** of the AER, the DNSP and users or potential users; and
- 35.3 the regulatory approach (if any) applicable to the relevant service immediately before the commencement of the distribution determination for which the classification is made; and
- 35.4 the **desirability of a consistent regulatory approach** to similar services (both within and beyond the relevant jurisdiction); and
- 35.5 the extent the **costs** of providing the relevant service are directly attributable to the person to whom the service is provided; and
- 35.6 any other relevant factor.

42. In deciding on a control mechanism, NER 6.2.5(c) and (d) provide that the AER must have regard to the following **factors** (with some differences **depending on whether the service is a standard control service or an alternative control service**):

	standard control	alternative control
The need for efficient tariff structures	✓	X
The possible effects of the control mechanism on administrative costs of the AER, the DNSP and users or potential users	✓	✓
The potential for development of competition in the relevant market and how the control mechanism might influence that potential	X	✓
Regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination	✓	✓
The desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction)	✓	✓
any other relevant factor	✓	✓

43. The basis on which the control mechanism is formulated is prescribed by r 6.2.6:
44. For a **standard control service**, the control mechanism **must** be of the prospective CPI minus X form, or some incentive-based variant of that form, in accordance with **Chapter 6, Part C**: NER r 6.2.6.
45. For an **alternative control service**, the control mechanism:
- 45.1 must have a basis that is stated in the distribution determination; and
- 45.2 may (but does not need to) utilise elements of Part C.
- (NER r 6.2.6)

Revenue controls for standard control services - building block determinations

46. **Part C** of Chapter 6 regulates the making of a **building block determination**, which **must** form part of the control mechanism for a standard control service, and **may** be incorporated into the control mechanism for an alternative control service.
47. Building block determinations are concerned with regulating the **revenue** that may be derived under the applicable control mechanism. The procedure and approach for the making of a building block determination by the AER involves the submission of a regulatory proposal by the DNSP – this procedure is outlined in further detail in Part E of Chapter 6 (**see Annexure 1**).
48. Rule 6.3.2 provides that a building block determination for a regulatory control period **must specify the following matters**:
- 48.1 the DNSP's **annual revenue requirement** for each regulatory year of the regulatory control period;

- 48.2 appropriate methods for the **indexation** of the regulatory asset base;
- 48.3 how any of the following are to apply, if applicable:
 - 48.3.1 **an efficiency benefit sharing scheme;**
 - 48.3.2 **a capital expenditure sharing scheme;**
 - 48.3.3 **a service target performance incentive scheme;**
 - 48.3.4 **a demand management and embedded generation connection incentive scheme;**
 - 48.3.5 a small-scale incentive scheme;
- 48.4 the commencement and length of the **regulatory control period;**
- 48.5 any other amounts, values or inputs on which the building block determination is based (differentiating between those contained in, or indexed from, the DNSP's **building block proposal** and those based on the AER's own estimates or assumptions).
- 49. The AER must prepare and publish a **post-tax revenue model** (pursuant to NER r 6.4.1), which must set out the manner in which a DNSP's annual revenue requirement is to be calculated (NER r 6.4.2).
- 50. The AER must publish the post-tax revenue model in accordance with the **distribution consultation procedures** (set out in **Annexure 1**).
- 51. Rule 6.4.3 further provides that a DNSP's annual revenue requirement is to be determined using a **building block approach**, under which the building blocks are:
 - 51.1 **indexation of the regulatory asset base** (calculated in accordance with rule 6.5.1);
 - 51.2 a **return on capital** for that year (calculated in accordance with rule 6.5.2);
 - 51.3 the **depreciation** for that year (calculated in accordance with rule 6.5.5);
 - 51.4 the estimated **cost of corporate income tax** for the DNSP for that year (calculated in accordance with rule 6.5.3);
 - 51.5 **revenue increments or decrements** (if any) for that year, based on incentive mechanisms and schemes approved by the AER
 - 51.6 on **schemes approved by the AER** in accordance with the distribution consultation procedures. The schemes provided for in the NER include any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme or small-scale incentive scheme (calculated in accordance with rules 6.5.8, 6.5.8A, 6.6.2, 6.6.3 and 6.6.4, respectively)
 - 51.7 other revenue increments or decrements (if any) arising from the use of assets from the application of control mechanisms in the previous regulatory control period;

Negotiating Framework

61. A DNSP must comply with its negotiating framework when negotiating the terms and conditions of access to the negotiated distribution service: r 6.7.2.
62. Rule 6.7.5(a) provides that a DNSP must prepare a document setting out the **procedure** to be followed during negotiations between the provider and any person wishing to receive a negotiated distribution service.
63. The negotiating framework must comply with, and be consistent with, the applicable requirements of the relevant distribution determination, as well as the minimum requirements provided in r 6.7.5(c).
64. Rule 6.7.5(c) requires that the negotiating framework for a DNSP must specify certain requirements, including but not limited to the following:
 - 64.1 a requirement for the DNSP and applicant to negotiate in **good faith**;
 - 64.2 a requirement for the DNSP and applicant to **provide any commercial information** an applicant may reasonably require to enable each party to engage in effective negotiation;
 - 64.3 a requirement for the DNSP to identify and **inform the applicant of the reasonable costs and charges**;
 - 64.4 a **reasonable period of time** for commencing, progressing and finalising the negotiations;
 - 64.5 a **dispute resolution process** which provides that disputes in relation to terms and conditions of access are to be dealt with in accordance with the relevant provisions of the NEL and NER for dispute resolution.

- 73.2 the AER's **proposed approach** (accompanied by reasons) on the following matters relevant to a forthcoming distribution determination:
- 73.2.1 **classification** of distribution services;
 - 73.2.2 the **formula** giving effect to the control mechanisms (i.e. price and revenue);
 - 73.2.3 the application of **any of the following schemes** – an efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme or small-scale incentive scheme;
 - 73.2.4 the application of the **Expenditure Forecast Assessment Guidelines**;
 - 73.2.5 whether **depreciation** will be based on forecast or actual capital expenditure in updating the regulatory asset base in accordance with clause S6.2.2B.

Where an F&A paper already applies

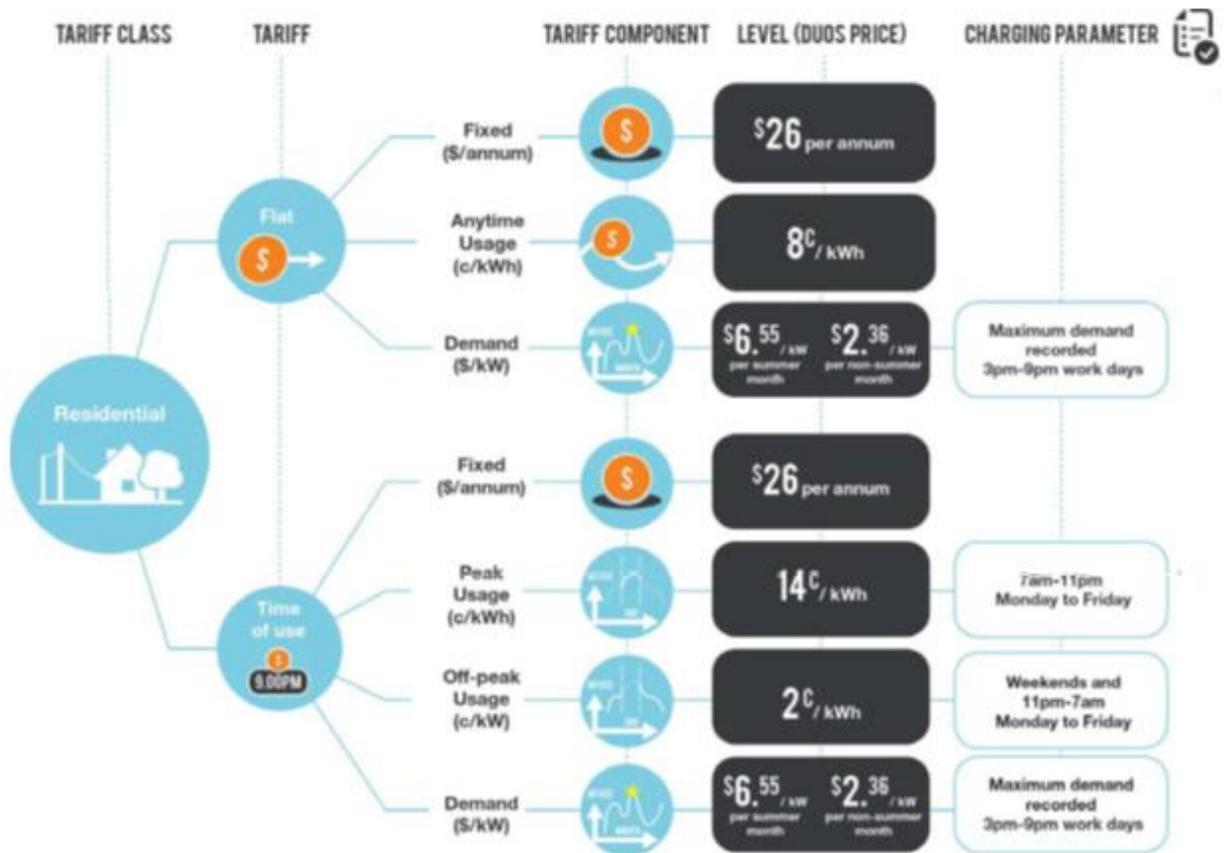
74. If an F&A paper already applies in respect of a revenue determination for the matters listed in NER r 6.8.1(b), a DNSP may make a request to the AER that an amended or replacement F&A paper be published, in accordance with the following process: (NER r 6.8.1 (c))
- 74.1 no later than **32 months** before the end of the regulatory control period, the DNSP may request the AER in writing to make an amended or replacement F&A paper, specifying the reasons for making the request;
 - 74.2 no later than **31 months** before the end of the regulatory control period, the AER must publish a notice inviting submissions on whether it is necessary or desirable to amend or replace the F&A paper;
 - 74.3 no later than **30 months** before the end of the regulatory control period, the AER must make and publish a notice that –
 - 74.3.1 states that it will make an amended or replacement F&A paper;
 - 74.3.2 the notice must be accompanied by the DNSPs request;
 - 74.3.3 state whether it will amend or replace an F&A paper in respect of any other matter additional to the matter the subject of the DNSPs request (the AER must give reasons why it considers the additional amendments or replacements are necessary).
75. Where the AER determines that it will amend or replace an F&A paper then, at least **23 months** before the end of the current regulatory control period, the AER must, after consulting with the relevant DNSP and such other persons as the AER considers appropriate, make, amend or replace the F&A paper. In that case, the AER must give a copy to the DNSP and publish it as soon as reasonably practicable.

- 79.4 a **comparison** of the DNSP's **proposed** total revenue requirement with its total revenue requirement for the **current** regulatory period and explaining any material differences between the two amounts;
- 79.5 a description of **how the DNSP has engaged with retail customers and retailers in developing the proposed tariff structure statement** and has sought to address any relevant concerns identified as a result of the engagement.

Tariff structure statement

80. The prices that DNSPs charge for direct control services are regulated by the AER through the application of tariff structure statements, which must be submitted to the AER along with a DNSPs regulatory proposal, and will ultimately form part of a determination distribution.
81. The rules regarding tariff structure statements (and pricing more generally) are provided in NER Chapter 6, **Part I**.
82. NER r 6.18.1A provides that tariff structure statements must include the following elements:
- 82.1 **tariff classes** into which retail customers for direct control services will be divided into during the relevant regulatory control period;
- 82.2 the **policies and procedures** the DNSP will apply for assigning retail customers to tariffs or reassigning retail customers from one tariff to another;
- 82.3 the **structures** for each proposed tariff;
- 82.4 the **charging parameters** (being the constituent elements of a tariff) for each proposed tariff;
- 82.5 a **description** of the approach that the DNSP will take in **setting each pricing proposal** of the DNSP during the relevant regulatory period **in accordance with the pricing principles** set out in rule 6.18.5 (and discussed in further detail below);
83. NER r 6.18.1A provides further that a tariff structure statement must:
- 83.1 comply with the **pricing principles** for direct control services;
- 83.2 be accompanied by an **indicative pricing schedule**, which sets out for each tariff for each regulatory year of the regulatory control period, the indicative pricing levels determined in accordance with the tariff structure statement.

84. By way of example, the figure below is a breakdown of Jemena Electricity's tariff classes applicable in Victoria, as published in a tariff structure statement of 25 September 2015. It provides a useful illustration of what a tariff structure might entail.



85. NER Chapter 6, Part I, provides detailed rules regarding what matters must be dealt with in a tariff structure statement, which will not be covered exhaustively in this Handbook. Among other things:

- 85.1 **rule 6.18.2** provides that a DNSP must submit for the AER's approval an **initial pricing proposal** for the first regulatory year of a regulatory control period, and a further annual pricing proposal for each relevant regulatory year for the remainder of the control period
- 85.2 **rule 6.18.3** provides rules regarding the **allocation of customers** into one or more **tariff classes**; and
- 85.3 **rule 6.18.5** sets out **pricing principles**, including that the **network pricing objective** is that the tariffs that a DNSP charges in respect of its provision of direct control services to a retail customer should reflect the DNSP's **efficient costs of providing those services** to the retailer customers.

Draft distribution determination and further consultation: NER r 6.10

95. The next step in the process requires the AER to make a **draft distribution determination**.
96. In doing so, the AER must have regard to each of the following:
- 96.1 the information included in or accompanying the **regulatory proposal** or the **proposed tariff structure statement**;
- 96.2 any **written submissions** regarding:
- 96.2.1 the AER's issues paper;
- 96.2.2 the DNSP's regulatory proposal and tariff structure statement;
- 96.2.3 the negotiated distribution service criteria;
- 96.3 **any analysis undertaken by or for the AER** that is published prior to the making of the draft distribution determination or as part of the draft distribution determination.
97. The AER must, as soon as practicable, publish:
- 97.1 the **draft distribution determination** (including notice of the making of the draft distribution determination);
- 97.2 the AER's **reasons** for suggesting that the distribution determination should be made as proposed, including the draft constituent decisions made under NER r 6.12 (classification, building block determination, etc.);
- 97.3 notice of a **predetermination conference**, for the purpose of explaining the pre-determination decision;
- 97.4 an invitation for **written submissions** on its draft distribution determination.
98. The DNSP may, not more than **45 business days** after the publication of the draft distribution determination, submit a **revised regulatory proposal or tariff structure statement**: NER r 6.10.3.

Final distribution determination: NER s 6.11

99. Following the predetermination conference and the receipt of any written submissions, the AER must make a **final distribution determination** in relation to the DNSP.
100. As soon as practicable (but not later than 2 months before the commencement of the relevant regulatory control period), the AER must publish:
- 100.1 **notice** of the making of the distribution determination;
- 100.2 the **distribution determination** itself; and
- 100.3 the **AER's reasons** for making the distribution determination in its final form, including the constituent decisions (see NER r 6.12.1).
101. In making the distribution determination, the AER must have regard to:
- 101.1 the information included in or accompanying the **regulatory proposal** and the **proposed tariff structure statement**;

- 101.2 any **written submissions** received throughout the consultation process; and
 - 101.3 any **analysis undertaken by or for the AER** that is published *prior* to the making of the distribution determination or as part of a distribution determination.
102. The AER's determination will have effect from the commencement of the next regulatory control period.

Reasons for decision

103. When giving reasons in respect of a draft and/or final distribution determination, NER s 6.12.2 provides that the AER must set out the basis and rationale of the determination, including:
- 103.1 details of the **qualitative and quantitative methods** applied in any calculations and formulae made or used by the AER;
 - 103.2 the **values adopted by the AER** for each of the input variables in any calculations and formulae, including:
 - 103.2.1 whether those values have been taken or derived from the DNSP's current building block proposal; and
 - 103.2.2 if not, the rationale for the adoption of those values;
 - 103.3 details of **any assumptions** made by the AER in undertaking any material qualitative and quantitative analyses; and
 - 103.4 **reasons for the making of any decision**, the giving or withholding of any approvals, and the exercise of any discretions as referred to in NER Chapter 6, for the purposes of the determination.

F Access Regulation – Transmission Services

104. Chapter 6A of the NER governs the economic regulation of access to electricity **transmission services**. In most respects, it broadly mirrors the provision of Chapter 6 (that is, the same concepts for distribution services will be generally relevant to transmission services).
105. Chapter 6A is structured as follows:
- Part A – Introduction**
 - Part B – Transmission Determinations Generally**
 - Part C – Regulation of Revenue – prescribed transmission services**
 - Part D – Negotiated Transmission Services**
 - Part E – Procedure – Revenue determinations, negotiating frameworks and pricing methodologies**
 - Part F – Information Disclosure
 - Part G – Cost Allocation;
 - Part H – Transmission Consultation Procedures**
 - Part I - Ring fencing provisions for accounting and functional separation in respect of all TNSPs (including Market Network Service Providers).
 - Part J – Prescribed Transmission Services – Regulation of Pricing**
 - Part K – Commercial arbitration for disputes about terms and conditions of access for prescribed and negotiated transmission services.
106. The only Parts of NER Chapter 6A which are considered here in depth are Parts A, B, C, D, E, H and J which are indicated above in bold.
107. This Part of the Handbook is structured as follows:
- 107.1 **Types of transmission services** – how does the AER classify transmission services?
 - 107.2 **Transmission service determinations** – split up further to consider:
 - 107.2.1 prescribed transmission services; and
 - 107.2.2 negotiated transmission services;
108. The process undertaken by the AER when making a transmission determination is discussed in Part G below.

Types of transmission services

109. Rule 6A.2.1 provides that the AER is **required** to make transmission determinations for a TNSP that will regulate the provision of both **prescribed transmission services** and **negotiated transmission services**.
110. The two types of transmission services are differentiated as follows:
- 110.1 **Prescribed transmission services** are subject to revenue regulation pursuant to a building block analysis.
- 110.2 **Negotiated transmission services** are not subject to direct revenue regulation; rather price and revenue are negotiated between the TNSP and the customer pursuant to a Negotiating Framework.
111. In contrast to the position regarding distribution determinations, the AER does not classify a particular transmission service as either prescribed or negotiated – rather, a registered participant in the NEM may apply to the TNSP for **either prescribed or negotiated services**: NER r 6A.1.3. There is no provision for a transmission service to remain unregulated as an ‘unclassified’ service.
112. NER r 6A.2.1 provides that the AER **must** make transmission determinations in respect of **prescribed transmission services** and **negotiated transmission services**.
113. NER r 6A.2.2 provides that a transmission determination consists of the following components:
- 113.1 a **revenue determination** in respect of the provision of prescribed transmission services (dealt with in Part B of Chapter 6A);
- 113.2 a determination relating to a TNSP’s **negotiating framework** (dealt with in Part D of Chapter 6A);
- 113.3 a determination that specifies the **Negotiated Transmission Service Criteria** (dealt with in Part D of Chapter 6A)
- 113.4 a determination that specifies the **pricing methodology** that applies (dealt with in Part J of Chapter 6A).
114. The remainder of this section will consider these key components of transmission determinations, dealing first with those components relevant to prescribed services, and then those relevant to negotiated services. The relevant provisions of the NER are very complex and will not be dealt with exhaustively; rather, we have endeavoured to set out the key structures and concepts.

Transmission determinations: prescribed transmission services

115. The components of a transmission service determination that are specific to prescribed transmission services are governed by the following Parts of Chapter 6A.
- 115.1 Part C – which concerns the calculation of **revenue** that can be recovered for **prescribed transmission services**; and
- 115.2 Part J – which concerns the **prices** that can be charged for **prescribed transmission services**.

Revenue Determination

116. The AER must make a revenue determination in respect of prescribed transmission services, in accordance with Part C of Chapter 6A.
117. These determinations are one component of an overall transmission determination (NER r 6A.2.2).
118. Importantly, under a revenue determination, the **maximum allowable revenue (MAR)** sets a cap on the revenue a TNSP may earn in a given regulatory year (NER r 6A.3.1).
119. Part C of Chapter 6A deals broadly with the following matters:
- 119.1 **revenue determinations** – r 6A.4;
- 119.2 the **post-tax revenue model** – r 6A.5;
- 119.3 matters relevant to the making of revenue determinations – r 6A.6;
- 119.4 matters relevant to the **adjustment of revenue cap** after making revenue determination – r 6A.7;
- 119.5 **contingent projects** – r 6A.8
120. A revenue determination for a TNSP must specify, for a regulatory control period, the following matters (r 6A.4.2):
- 120.1 the amount of the estimated **total revenue cap** for the regulatory control period or the method for calculating that amount;
- 120.2 the **annual building block revenue requirement** for each regulatory year of the regulatory control period;
- 120.3 the amount of the **maximum allowed revenue** for each regulatory year of the regulatory control period or the method of calculating the amount;
- 120.4 the **regulatory asset base** as at the commencement of the regulatory control period;
- 120.5 appropriate **methodologies for the indexation** of the regulatory asset base;
- 120.6 the values that are to be attributed to the performance incentive scheme parameters and the efficiency benefit sharing scheme parameters;
- 120.7 how any capital expenditure sharing scheme or small-scale incentive scheme is to apply.

121. Rule 6A.5 establishes the **post-tax revenue model**, the purpose of which is to calculate the TNSP's maximum allowed revenue under the revenue determination.
122. Rule 6A.5.2 provides that the AER must prepare and publish (and can amend) a **post-tax revenue model** in respect of a TNSP. The AER must publish the post-tax revenue model in accordance with the **transmission consultation procedures** (see **Annexure 2**).
123. The AER's **post-tax revenue model** must include: NER r 6A.5.3(a)
- 123.1 the **total revenue cap** for the provider for the **period**;
 - 123.2 the **maximum allowed revenue** for the provider for each **regulatory year**;
 - 123.3 the **annual building block revenue requirement** for the provider for the regulatory year – determined using the building block approach under NER r 6A.5.4.
124. The **post-tax revenue model** must be such that: NER r 6A.5.3(c)
- 124.1 the present value of the expected maximum allowed revenue for each regulatory year is equal to the net present value of the annual building block revenue requirement for the regulatory year;
 - 124.2 the maximum allowed revenue is expressed as a dollar amount and calculated using a CPI-X methodology;
 - 124.3 the total revenue cap for the regulatory control period is calculated as the sum of the maximum allowed revenue for the provider in each regulatory year.
125. Rule 6A.5.4 provides that the **annual building block revenue requirement** for each regulatory year of a regulatory control period must be determined using a **building block approach** under which the building blocks are:
- 125.1 indexation of the regulatory asset base;
 - 125.2 return on capital;
 - 125.3 depreciation;
 - 125.4 estimated cost of corporate income tax;
 - 125.5 revenue increments or decrements for that year arising from the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme or small-scale incentive scheme;
 - 125.6 the forecast operating expenditure accepted or substituted by the AER for that year;
 - 125.7 compensation for other risks.
126. Rule 6.5 also includes provisions regarding shared assets, expenditure forecast assessment guidelines, and capital expenditure incentive mechanisms.
127. Provisions dealing with further matters relevant to the making of revenue determinations are set out in Rule 6A.6. Those provisions deal with:
- 127.1 matters concerning the regulatory asset base;

- 127.2 return on capital;
 - 127.3 depreciation;
 - 127.4 estimated cost of corporate income tax;
 - 127.5 efficiency benefit sharing schemes;
 - 127.6 capital expenditure sharing schemes;
 - 127.7 forecast operating expenditure;
 - 127.8 forecast capital expenditure;
 - 127.9 the X factor; and
 - 127.10 pass through events.
128. Provisions regarding matters relevant to the adjustment of a revenue cap after the making of a revenue determination are set out in Rule 6A.7. Those provisions deal with:
- 128.1 applications to the AER to reopen a revenue determination for capital expenditure;
 - 128.2 network support pass through;
 - 128.3 cost pass through;
 - 128.4 service target performance incentive schemes; and
 - 128.5 small-scale incentive schemes.
129. Provisions regarding contingent projects are set out in Rule 6A.8.

Pricing methodology

130. Part J of Chapter 6A concerns the regulation of pricing for prescribed transmission services, specifically in relation to the **pricing methodology** for those services. A pricing methodology must be proposed by a TNSP, and approved by the AER in the course of making a transmission determination.
131. A pricing methodology is a methodology, formula, process or approach that (NER r 6A.24.1(b)):
- 131.1 allocates the **aggregate annual revenue requirement** for prescribed transmission services;
 - 131.2 provides for the manner and sequence of **adjustments** to the annual service revenue requirement;
 - 131.3 allocates the annual service revenue requirement to transmission network **connection points**;
 - 131.4 determines the **structure and recovery of prices** for each category of prescribed transmission services.

166. **Within 40 days** of the TNSP submitting the documents referred to above, the AER must publish:
- 166.1 an **issues paper**;
 - 166.2 an invitation for **written submissions** on the issues paper; and
 - 166.3 an invitation to attend a **public forum** on the issues paper.
167. The issues paper must identify **preliminary issues**, whether or not arising out of the documents and information referred to, that the AER considers are likely to be relevant to its assessment of the TNSP's proposal.
168. The AER must hold a public forum on the issues paper not more than 10 business days after the publication of the issues paper;
169. Any person may make a written submission regarding the issues paper and any of the documents part of the consultation process.

Draft decision and further consultation: NER r 6A.12

170. The next step in the process requires the AER to make a **draft decision** in relation to the TNSP.
171. In doing so, the AER must have regard to the following:
- 171.1 the information contained in or accompanying the **revenue proposal, proposed negotiating framework** or the **proposed pricing methodology**;
 - 171.2 any written submissions regarding:
 - 171.2.1 the AER's issues paper;
 - 171.2.2 the TNSP's revenue proposal, proposed negotiating framework or the proposed pricing methodology;
 - 171.2.3 the negotiated transmission service criteria;
 - 171.3 **any analysis undertaken by or for the AER** that is published prior to the making of the draft decision or as part of the draft decision.
172. If the AER **refuses** to approve:
- 172.1 certain amounts or values referred to in the revenue proposal; or
 - 172.2 the proposed negotiating framework; or
 - 172.3 any aspect of the proposed pricing methodology;
- the AER's draft decision **must** include details of the changes required or matters to be addressed before the AER will grant approval – see also NER r 6A.13.2.
173. The AER must, as soon as practicable, publish:
- 173.1 the **draft decision** (including notice of the making of the draft decision);
 - 173.2 the AER's **reasons** for approval or refusal to approve;

H Access Disputes

180. The process for determining access disputes is provided by NEL Part 10. The summary below does not purport to describe the access dispute process exhaustively, but provides a general outline.
181. If a **network service user** or **prospective network service user** is unable to agree with a **network service provider** about one or more aspects of access to an electricity network service provided by means of, or in connection with a distribution or transmission system, either party may notify the AER in writing that an **access dispute** exists: NEL s 125.
182. Any person can apply in writing to be made a party to an access dispute and the AER may accept the application if it considers the party has sufficient interest: NEL s 127.
183. When making an access determination, the AER:
- 183.1 **must** give effect to a network revenue or pricing determination: (NEL r 130) –
 - 183.1.1 applying to the electricity network services provided, or to be provided, that are the subject of the access dispute;
 - 183.1.2 in effect at the time the determination is made.
 - 183.2 **must refuse** to make an access determination that: (NEL r 133)
 - 183.2.1 would have the effect of preventing a network service user from obtaining a sufficient amount of an electricity network service to be able to meet the network service user's reasonably anticipated requirements, measured at the time the access dispute was notified; or
 - 183.2.2 is inconsistent with a connection agreement between the parties to the access dispute (unless the AER is of the opinion the connection agreement affects the quality and security of electricity network service being provided to another person).
184. Further provisions regarding the resolution of access disputes are set out in Chapter 6, Part L (in relation to distribution services) and Chapter 6A, Part K (in relation to transmission services) of the NER. Significantly, access disputes in relation to transmission services may be referred by the AER for determination by a commercial arbitrator: NER r 6A.30.
185. A party to an access dispute in respect of which an access determination is made must comply with the access determination: NEL s 136. Civil penalties apply to a breach of that section.
186. An access determination must be in writing and include reasons for the AER's decision.

I Network Connection, Planning and Expansion

187. Chapter 5 of the NER deals with establishing connections to a transmission network or distribution network, and for the planning and expansion of the network.
188. Network connection issues are governed by Part A of the Chapter, and planning and expansion by Part B.

Network connection

189. Part A of Chapter 5 provides the framework for connection to a **transmission network or distribution network** and access to the **national grid**.

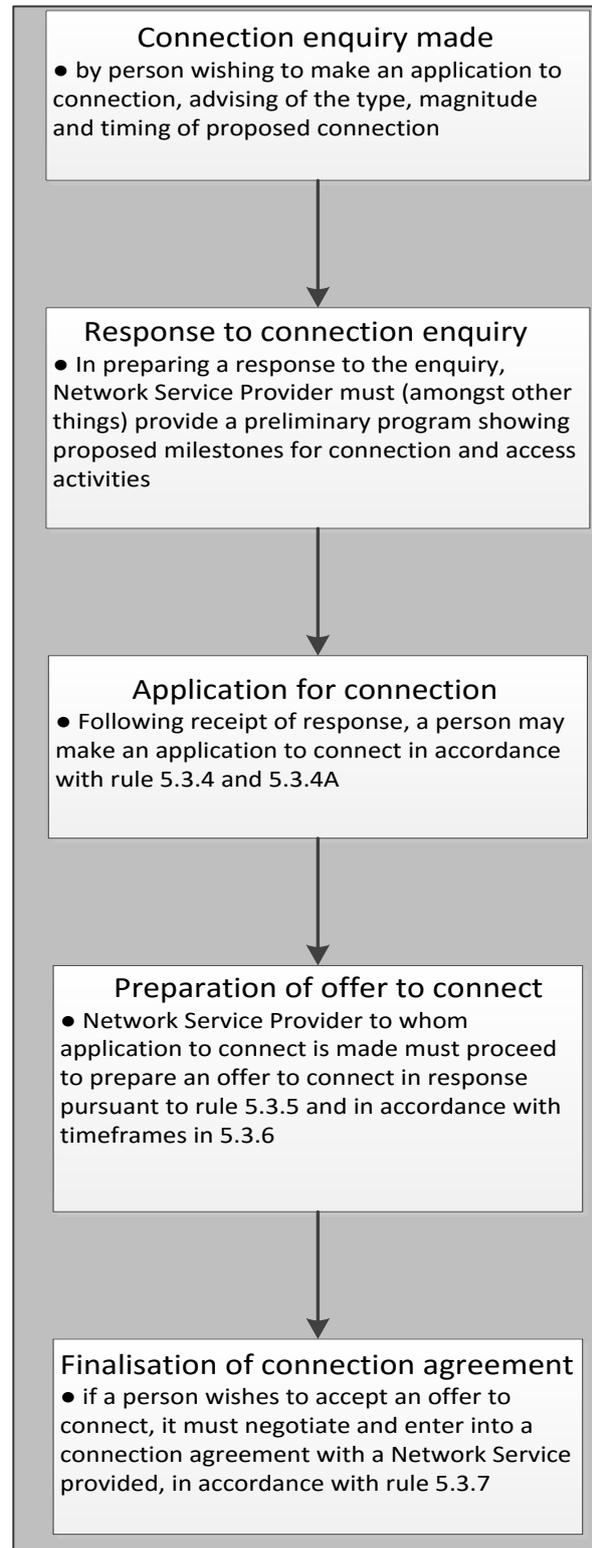
Aims and principles

190. The **aims** of Part A are set out in r 5.1.2(a)(2):
- 190.1 to detail the **principles and guidelines** governing connection and access to a network;
 - 190.2 to establish the **process** to be followed by a Registered Participant or a person intending to become a Registered Participant for **establishing or modifying a connection** to a network or for **altering generating plant connected to a network**;
 - 190.3 to address a Connection Applicant's reasonable expectations of the **level and standard of power transfer capability** that the relevant network should provide; and
 - 190.4 to establish processes to ensure **ongoing compliance** with the **technical requirements** of this Part A to facilitate management of the national grid
191. Rule 5.1.3 sets out a number of **principles** on which Part A is based:
- (a) all Registered Participants should have the **opportunity to form a connection** to a network and have **access to the network services** provided by the networks forming part of the national grid;
 - (b) the terms and conditions on which connection to a network and provision of network service is to be granted are to be set out in **commercial agreements on reasonable terms** entered into between a Network Service Provider and other Registered Participants;
 - (c) the technical terms and conditions of connection agreements regarding standards of performance must be established at levels at or above the **minimum access standards** set out in schedules 5.1, 5.2, 5.3 and 5.3a, with the objective of ensuring that the power system operates **securely and reliably** and in accordance with the **system standards** set out in schedule 5.1a;
 - (d) a Registered Participant or person intending to become a Registered Participant may request connection of a facility, modification of a connection, or alteration of connected plant at a standard below an automatic access standard if the connection, modification to the connection, or alteration of connected plant does not adversely affect:
 - (1) power system security; and
 - (2) the quality of supply to other Network Users; and

- (e) the operation of the Rules should result in the achievement of:
- (1) **long term benefits to Registered Participants in terms of cost and reliability** of the national grid; and
 - (2) **open communication and information flows** relating to connections between Registered Participants themselves, and between Registered Participants and AEMO, while ensuring the **security of confidential information** belonging to competitors in the market.

Provisions regarding network connections

192. The obligations that arise under Part A are set out in NER r 5.2, including:
- 192.1 obligations on **registered participants**: NER r 5.2.1;
 - 192.2 obligations on **network service providers**: NER r 5.2.3;
 - 192.3 obligations on **customers**: NER r 5.2.4;
 - 192.4 obligations on **generators**: NER r 5.2.5;
 - 192.5 obligations on AEMO: NER r 5.2.6.
193. The **process for establishing or modifying a network connection** is provided in NER r 5.3.
194. The diagram on this page sets out the general procedure that is followed for the establishment of a connection. Notably, a different approach applies under r 5.3A in respect of connection to an **embedded generator** – this diagram concerns only the more general procedure under r 5.3.
195. NER r 5.4 governs the **design of connected equipment**.
196. NER rules 5.4A, 5.4AA and 5.5 deal with access arrangements and network support payments.



205. NER rr 5.12 and 5.13 provide that both TNSPs and DNSPs must undertake an **annual planning review** in relation to the future operation of their networks. NER r 5.14 deals with **joint planning obligations** between adjoining networks.
206. The main purpose of these planning exercises is to ensure that the respective networks are operating efficiently, to identify any constraints on the network and to make plans for augmentation of the network where necessary. A summary of the requirements of rr 5.12 to 5.14 is set out in the table below.

	Transmission Service Provider (rule 5.12)	Distribution Service Provider (rule 5.13)
Annual Planning Review	<p>Must analyse the expected future operation of its transmission networks.</p> <p>Must conduct an annual planning review that (amongst other things):</p> <ul style="list-style-type: none"> • incorporates forecast loads; • includes a review of the adequacy of existing connection points and relevant parts of the transmission system • includes a review of planning proposals for future connection points; • considers potential augmentation that are likely to provide a net economic benefit to all those who produce, consume and transport electricity in the market 	<p>Under the planning review a DNSP must:</p> <ul style="list-style-type: none"> • determine an appropriate forward planning period for its distribution assets; • analyse the expected future operation of its network • in respect of its network: <ul style="list-style-type: none"> ○ prepare forecasts; ○ identify limitations on its network; ○ identify whether corrective action is required to address any system limitations
Annual Planning Report	<p>A Transmission Annual Planning Report must be published each year, setting out the results of the annual planning review.</p> <p>The report must set out (amongst other things):</p> <ul style="list-style-type: none"> • proposals for future connection points; • forecast of constraints and inability to meet the network performance requirements;; • sufficient detail to the size/significance of augmentations to the network; • information relating to all proposed replacement transmission network assets. 	<p>A Distribution Annual Planning Report must be published each year, setting out the results of the planning review for the forward planning period (and the minimum planning forward period for the purposes of the distribution annual planning review is 5 years).</p> <p>The Report must include (amongst other things- see further Schedule 5.8 in Chapter 5):</p> <ul style="list-style-type: none"> • information regarding the DNSP and its network; • forecasts for the forward planning period (including load forecasts and, where applicable information on total capacity, peak load, generation capacity); • forecasts of future transmission-distribution connection points and information on future transmission-distribution connection points; • forecasts of the DNSP's performance against any reliability targets in a service target performance incentive scheme; • a description of any factors that may have a material impact on its network (for example, fault levels and voltage levels)

		<ul style="list-style-type: none"> • information on system limitation for sub-transmission lines and zone substations • information on the performance of the DNSP's network • a summary of committed investments to be carried out within the forward planning period <p><u>Note:</u> There is certain information under Rule 5.13A required to be given in relation to Distribution zone substations</p>
<p>Joint Planning (NER r 5.14)</p>	<p>Each DNSP and TNSP must conduct joint planning with transmission and distribution networks to which it is connected. The relevant DNSP and/or TNSP must:</p> <ul style="list-style-type: none"> • assess the adequacy of existing transmission and distribution networks and the assets associated with transmission-distribution connection points over the next five years; • work together to ensure efficient planning outcomes; • identify any limitations or constraints that will affect both the transmission and distribution networks and which can only be addressed by corrective action that will require coordination by both the TNSP and DNSP; • where the need for a joint planning project is identified – <ul style="list-style-type: none"> ○ jointly determine plans that can be considered by relevant Registered Participants, AEMO, interested parties; ○ may agree on a lead party to be responsible for carrying out the regulatory investment test for transmission or distribution in respect of the joint planning project. 	

Regulatory investment tests

207. The AER must publish **regulatory investment tests** for:
- 207.1 transmission (referred to as **RIT-T** in the NER) in accordance with the **transmission consultation procedures** – see **Annexure 2**; and
- 207.2 distribution (referred to as **RIT-D** in the NER) in accordance with the **distribution consultation procedures** – see **Annexure 1**
208. The RIT-T and RIT-D are intended to establish clearly defined and efficient processes for transmission and distribution network investment in the NEM – TNSPs and DNSPs are required to apply the regulatory investment tests approved by the AER before making any investment decisions.
209. The overall purpose of the regulatory investment tests is to identify the credible option that **maximises the present value of net economic benefit** to all those who produce, consume and transport electricity in the National Energy Market: NER r 5.16.1(b) and 5.17.1(b)
210. In conjunction with the regulatory investment tests for transmission and distribution, the AER must also develop and publish guidelines for the **application** of each regulatory investment test. The guidelines must be published in accordance with the **distribution consultation procedures** and the **transmission consultation procedures**, respectively: NER r. 5.16.2 and 5.17.2.

Process for making investment decisions

211. The process for the making of investment decisions requires broadly the following steps:

Step 1: The AER develops and publishes the RIT-T and the RIT-D

Step 2: The AER publishes guidelines for applying the RIT-D and RIT-T

Step 3: The NSP determines whether the RIT-D or RIT-T must be applied

Step 4: Application of the RIT-D or RIT-T

212. Each step is detailed further below:

Step 1: The AER develops and publishes the RIT-T and RIT-D

213. The RIT-T and the RIT-D must be developed in accordance with the transmission and distribution **consultation procedures**, and must take into account certain matters set out in NER rr 5.16.1(c) and 5.17.1(c), which include (amongst other things) the following:

213.1 **cost-benefit analysis** (including assessments of reasonable scenarios for future supply and demand)

213.2 any test should be capable of being applied in a **predictable, transparent and consistent** manner;

213.3 the tests require the TNSP or DNSP to consider whether each credible option can deliver particular classes of **market benefits** (which include load shedding, customer interruptions) or any market benefits considered relevant by the AER;

213.4 whether **particular classes of costs** would be associated with the credible option (for example, financial costs incurred in constructing / providing the credible option).

Step 2: The AER publishes guidelines for applying the RIT-D and RIT-T

214. These guidelines must be developed and published in accordance with the transmission consultation guidelines and distribution consultation guidelines.

215. The guidelines must, for both transmission and distribution, provide guidance on the following: NER r 5.16.2 and 5.17.2.

215.1 the operation and application of the regulatory investment test for transmission and distribution;

215.2 the process to be followed in applying the regulatory investment test; and

215.3 how disputes raised in relation to the regulatory investment test are dealt with.

216. Further, the guidelines must provide guidance and working examples for transmission and distribution in respect of the matters set out in the table below: NER r 5.16.2(c) and 5.17.2(c).

Issue for guidelines	Distribution	Transmission
how to make determinations in relation to non-network options	Yes	No
what constitutes a credible option	Yes	Yes
suitable modelling periods and approaches to scenario development	Yes	Yes
acceptable methodologies for valuing the costs of credible options	No	Yes
what may constitute an externality	Yes	Yes
the classes of market benefits to be considered	Yes	Yes
acceptable methodologies for valuing market benefits of credible option	Yes	Yes (however, includes considering the option value, competition benefits and market benefits that accrue across regions).
appropriate approach to undertaking and sensitivity analysis	Yes	Yes
appropriate approaches to uncertainty and risk	Yes	Yes
where a person is sufficiently committed to a credible option for reliability corrective action to be characterised as a proponent	No	Yes

Step 3: The NSP determines whether the RIT-D or RIT-T must be applied

217. All investment projects **must** apply the RIT-T or RIT-D, unless the particular project falls within the **exceptions** that are listed in rules 5.16.3(a) and 5.17.3(a) of the NER. Some exceptions include, but are not limited to:
- 217.1 where a project is required to address an urgent and unforeseen network issue;
 - 217.2 where the estimated cost of the most expensive credible option is less than \$5 million;
 - 217.3 the cost of addressing the identified need is to be full recovered through charges (other than through transmission and distribution service charges).

Step 4: Application of the RIT-D or RIT-T

218. Application of the tests will differ between the RIT-T and the RIT-D

219. Transmission (RIT-T)

219.1 If the investment project is subject to the RIT then the TNSP must consult with all Registered Participants, AEMO and any interested parties: NER r 5.16.4(a)

219.2 The process is set out in NER rule 5.16.4 and involves the preparation and publication of reports under the following stages:

219.2.1 **project specification consultation report;**

219.2.2 **project assessment draft report** – which must be prepared if it is decided after the publication of a non-network options report that the RIT-T project will proceed; and

219.2.3 **project assessments conclusion report.**

219.3 The reports prepared will include the following types of information:

(a) description of the **identified needs** and a description of **credible options** to address the need (including, for example, alternative transmission options, demand side management, interconnectors and other network options);

(b) providing **information on the credible options**, for example on market benefits, estimated construction timetable and commissioning date and (to the extent practicable) the total indicative capital and operating and maintenance costs).

219.4 Importantly, the process of preparing the reports includes some form of **consultation with Registered Participants, AEMO and interested parties** at each stage of the process, namely:

219.4.1 under the **project assessment draft report** the RIT-T proponent must seek submissions at the project specification stage;

219.4.2 under the **project assessment conclusion report** –

(a) as well as a requirement to seek further submissions, there is the ability for relevant parties to request a meeting with the RIT-T proponent if it is requested by two or more relevant parties, and after acting reasonably, the RIT-T proponent considers that the meeting is necessary;

(b) the RIT-T proponent must prepare reports having regard to submissions received, and matters discussed at any meetings held (if any), including (in the conclusion report), a summary of the RIT-T proponent's response to submissions received from interested parties;

219.4.3 the time periods within which consultation processes must occur are provided for generally in rule 5.16.4;

219.5 Rule 5.16.4(zl) outlines the circumstances under which a project assessment draft report does not need to be prepared by a RIT-T proponent.

J Power system safety and security

231. Power system safety and security are dealt with under Part 8 of the NEL, and Chapter 4 of the NER.
232. AEMO is the primary organisation responsible for ensuring a safe and secure power system. AEMO's statutory functions, described in s 49(1) of the NEL, include to maintain and improve power system security. This role requires AEMO to manage power system security in order to avoid overload or damage to the system.

Load shedding

233. Part 8 of the NEL deals primarily with AEMO's load shedding obligations.
234. **Load shedding** involves a temporary suspension of supply to customers in a specific part or regions where system security is at risk (and is a way to avoid long lasting blackouts).
235. It is intended to operate in the event that demand in a region exceeds supply, and all other means to satisfy the demand have been exhausted.
236. Pursuant to NEL s 110, the Minister in each jurisdiction in which the NEL applies must appoint a **jurisdictional system security coordinator** for that jurisdiction.
237. Pursuant to NEL s 111, the jurisdictional system security coordinator must prepare **jurisdictional load shedding guidelines**, that will apply in that jurisdiction in relation to the shedding and restoration of loads for the purpose of enabling AEMO to maintain power system security or for reasons of public safety.
238. Further, AEMO itself must prepare **load shedding procedures** for each participating jurisdiction, that are in accordance with the load shedding guidelines for that jurisdiction: NEL s 112.
239. AEMO must use its reasonable endeavours to ensure that the national electricity system is operated in a manner that maintains the supply to sensitive loads: NEL s 114.
240. Pursuant to NEL ss 115 and 116, AEMO has powers:
- 240.1 to **direct the shedding and restoration of loads**; and
 - 240.2 to **direct registered participants to take certain actions** necessary to maintain power system security, or for reasons of public safety.
241. The scope and conditions for exercising those powers are set out in the relevant sections.

Power system security under the NER

242. Chapter 4 of the NER provides more generally for the maintenance and achievement of a secure power system, and circumstances where AEMO can **intervene** and **issue directions** in the spot market in order to re-establish a secure and reliable power system.
243. The powers and obligations that are derived from the NEL, and outlined above, are complemented by more detailed provisions under the NER that set out AEMO's obligations to maintain and monitor the operating status of the power system.

244. The provisions in Chapter 4 of the NER deal with the following matters:
- 244.1 AEMO's specific power system security responsibilities and obligations (r 4.3);
 - 244.2 power system **frequency control** (r 4.4);
 - 244.3 control of **power system voltage** (r 4.5);
 - 244.4 protection of **power system equipment** (r 4.6);
 - 244.5 power system **stability coordination** (r 4.7);
 - 244.6 power system **security operations** (r 4.8);
 - 244.7 power system **security related market operations** (r 4.9);
 - 244.8 power system **security operating procedures** (r 4.10);
 - 244.9 power system **security support** (r 4.11);
 - 244.10 **nomenclature and performance standards** (rr 4.12 – 4.17).

L National Electricity Market

258. The National Electricity Market (**NEM**) is the wholesale electricity market for the electrically connected states and territories of eastern and southern Australia – Queensland, New South Wales, the Australian Capital Territory, Victoria, South Australia and Tasmania.
259. Western Australia and the Northern Territory are not connected to the NEM. They have their own electricity systems and separate regulatory arrangements.
260. Like the wholesale gas markets, the NEM is operated by AEMO. The AEMO website describes the practical operation of the NEM as follows:

Extract from AEMO website

The NEM involves wholesale generation that is transported via high voltage transmission lines from generators to large industrial energy users and to local electricity distributors in each region, which deliver it to homes and businesses.

The transport of electricity from generators to consumers is facilitated through a ‘pool’, or spot market, where the output from all generators is aggregated and scheduled at five-minute intervals to meet demand.

The pool is not a physical thing, but a set of procedures that AEMO manages in line with the National Electricity Law and National Electricity Rules.

The market uses sophisticated systems to send signals to generators instructing them how much energy to produce each five minutes, so production is matched to consumer requirements (spare capacity is kept ready for emergencies), and the current energy price can be calculated.

<http://www.aemo.com.au/Electricity/National-Electricity-Market-NEM>

261. This Handbook will not exhaustively describe the operation of the NEM, but will provide a brief summary of the following issues:
- 261.1 AEMO’s functions in relation to the NEM;
 - 261.2 the registration of participants in the NEM under NER Chapter 2;
 - 261.3 the Market Rules provided under NER Chapter 3;

AEMO’s functions in relation to the NEM

262. AEMO’s statutory functions, stated in NEL s 49, include the following in relation to operation of the NEM:
- 262.1 to **operate and administer** the wholesale exchange;
 - 262.2 to promote the **development** and improve the **effectiveness** of the operation and administration of the wholesale exchange;
 - 262.3 to register persons as **Registered Participants**;
 - 262.4 to **exempt** certain persons from being registered as Registered Participants.

271. NER Chapter 3 provides Market Rules in relation to, among other things, the following matters:
- 271.1 prudential requirements for Market Participants – r 3.3;
 - 271.2 the establishment of the spot market – r 3.4;
 - 271.3 network losses and constraints – r 3.6;
 - 271.4 Projected Assessment of System Adequacy (**PASA**) – r 3.7;
 - 271.5 central dispatch and spot Market Operation – r 3.8;
 - 271.6 price determination – r 3.9;
 - 271.7 ancillary services – r 3.11;
 - 271.8 market intervention by AEMO – r 3.12;
 - 271.9 mandatory restrictions – r 3.12A;
 - 271.10 market information – r 3.13;
 - 271.11 administered price cap and market suspensions – r 3.14;
 - 271.12 settlements – r 3.15;
 - 271.13 the Participant Compensation Fund – r 3.16;
 - 271.14 settlements residue auctions – r 3.18;
 - 271.15 market management systems access procedures – r 3.19;
 - 271.16 reliability and emergency reserve trader – r 3.20.

M Retail Regulation

272. Although most aspects of the National Electricity Regime deal with regulation at a wholesale level, NER Chapters 5A and 6B deal with issues concerning the relationship between **distributors, retailers and retail customers**.
273. Chapter 6B of the NER deals with retail support obligations between distributors and retailers who have shared customers, and is equivalent to Part 21 of the NGR.

Electricity connection services for retail customers

274. Chapter 5A of the NER deals with electricity connection services for retail customers, and is equivalent to Part 12A of the NGR.

Types of connection services

275. NER r 5A.A.1 defines three different types of connection services available as between distributors and retail customers, each of which is regulated under NER Chapter 5A:

basic connection services

- a service involved in providing a connection between a distribution pipeline and a retail customers premises where:
 - the provision of the service involves minimal or no extension to, or augmentation of, the distribution pipeline; and
 - a model standing offer has been approved by the AER for providing that service as a basic connections service.

standard connection service

- a connection service (other than a basic connection service) for a particular class of connection applicant and for which a model standing offer has been approved by the AER

negotiated connection contract

- means a connection contract between a connection applicant and a distributor:
 - where the connection service sought by the connection applicant is neither a basic connection service nor a standard connection service; or
 - where the connection service sought by the connection applicant is a basic connection service or a standard connection service but the connection applicant elects to negotiate terms and conditions on which the connection service is to be provided.

276. The **formation of connection contracts** (ie offer, acceptance and contractual performance) is governed by NER Chapter 5A, Part F.

Basic and standard connection services

277. Chapter 5A, Part B, provides rules regarding standardised offers for basic and standard connection services between DNSPs and retail customers.
278. A DNSP **must** have a **model standing offer** to provide **basic connection services** to retail customers: NER r 5A.B.1.
279. There are two different classes of basic connection services:
- 279.1 services for retail customers who are **not embedded generators** of electricity;
- 279.2 services for retail customers who are **micro-embedded generators**.
280. A model standing offer may relate to each class of basic connection services, or may also relate to a subclass for which there is **significant demand** within the area served by the relevant distribution network: NER r 5A.B.1(c).
281. If the DNSP wishes to offer connection services that are not basic connection services, but are not individually negotiated, it **may also** submit to the AER for approval a model standing offer in respect of **standard connection services**: NER r 5A.B.4.
282. The differences between basic connection services and standard connection services, and the terms applicable to each, are set out in the table below:

Factor	Basic connection services	Standard connection services
Applying for a model standing offer	Distributor must have one or more model standing offers to provide a basic connection service to a retail customer. A distributor must submit for the AER's approval a proposed model standing offer for the AER's approval.	Distributor may submit for the AER's approval a proposed model standing offer to provide standard connection services on specified terms and conditions.
Terms and conditions of a model standing offer	When a distributor submits a proposed model standing offer, the terms and conditions must cover: <ul style="list-style-type: none"> • a description of the connection; • timeframes for commencing and completing the work; • qualifications required for carrying out the work in providing a contestable service (being a service provided by more than one supplier or on a competitive basis); • safety and technical requirements to be complied with by the provider of a contestable service or the retail customer; 	Same.

Factor	Basic connection services	Standard connection services
	<ul style="list-style-type: none"> • details of connection charges (being the charge imposed by the distributor for the connection service); • manner in which the connection charges are to be paid by the retail customer; • if the service is a basic micro EG connection service, the particular requirements with regard to the export of electricity into the distribution system. 	
AER's approval of a model standing offer	<p>The AER may approve a proposed model standing offer on specified terms and conditions if it is satisfied that:</p> <ul style="list-style-type: none"> • the services are likely to be sought by: <ul style="list-style-type: none"> ○ a significant number of retail customers in the area served by the distribution network (excluding embedded generators); or ○ micro-embedded generators. • the connection charges are consistent with the DNSP's distribution determination, including the connection policy; • the terms and conditions are fair and reasonable; • the terms and conditions comply the energy laws. 	<p>Same, save for the first factor which the AER is not required to be satisfied of when approving a model standing offer for a standard connection service.</p>
	<p>In deciding whether to approve a model standing offer to provide a basic connection service the AER must have regard to:</p> <ul style="list-style-type: none"> • the national electricity objective; • the basis upon which the DNSP has provided the service in the past; • geographical characteristics of the area served by the relevant distribution pipeline. 	<p>In deciding whether to approve a model standing offer to provide standard connection services, the AER is only required to have regard to the national electricity objective.</p>

Billing and payment rules

301. The billing and payment rules under Part A of Chapter 6B apply:
- 301.1 to **DNSPs** and **retailers** who have **shared customers**:
 - 301.2 to a **Market Customer** who is a **retailer** (to the exclusion of Part J of Chapter 6).
302. A **shared customer** is a person who is a customer of the retailer and whose premises are connected to the DNSP's distribution system.
303. A **Market Customer** is a customer who has classified any of its loads as a **market load** and who is also registered by AEMO as a Market Customer under Chapter 2. A load may be classified as a market load if electricity, supplied through the national grid to any person connected at a connection point, is purchased other than from a Local Retailer (NER r 2.3.4(a)).
304. The billing and payment rules prevail over any inconsistent provisions in a distribution determination.
305. Rule 6B.A2.1 provides that, subject to the rest of Part A, a **retailer** must pay to a **DNSP** the network charges payable in respect of each **shared customer** by the due date for payment.
306. An exception to this is where a DNSP and a shared customer agree that the customer will be responsible for paying network charges directly to the DNSP: NER r 6B.A2.2. In that case, the DNSP must notify the retailer of the direct billing arrangement.
307. The network charges must be calculated in accordance with the NER and the DNSP's distribution determination: NER r 6B.A2.3.
308. Further, DNSP's must provide a statement of charges, which must include:
- 308.1 **network charges**, separately identified, in respect of each shared customer's premises for which metering data was received;
 - 308.2 **date of issue** for the statement of charges, and **due date** for payment;
 - 308.3 **metering data** for each shared customer's premises;
 - 308.4 **any adjustments to network charges** from previous retail billing periods;
 - 308.5 where applicable, any credits for GSL payments that the DNSP is required to make in respect of a shared customer's premises.
309. Among other things, Part A of Chapter 6B also deals with:
- 309.1 adjustment of network charges;
 - 309.2 tariff reassignment;
 - 309.3 disputed statements of charges;
 - 309.4 interest; and
 - 309.5 notification of changes to charges.

Credit support regime

310. NER Chapter 6B, Part B provides a **credit support regime** which applies to DNSP and retailers in respect of shared customers. The description of the regime below is not intended to be exhaustive, but provides a broad overview of its key concepts and purpose.
311. This credit support regime applies in the context where a retailer is liable to pay a DNSP in arrears in accordance with a statement of charges issued by the DNSP under NER r 6B.A2.4.
312. The credit support regime allows a DNSP to seek credit support (ie a bank guarantee, or similar) from the retailer once the retailer's credit allowance has been exceeded in respect of those charges. For the purposes of the credit support regime, a retailer's **credit allowance** is determined pursuant to NER r 6B.B3.1.
313. NER Rule 6B.B2.1 provides that a DNSP may require a retailer to provide **credit support**, but only in accordance with the **credit support rules**, and only up to the **required credit support amount**.
314. The **required credit support amount** is determined pursuant to NER r 6B.B2.2, by calculating the amount by which a retailer's **network charges liability exceeds that retailer's credit allowance**.

Annexure 1 Distribution Consultation Procedures**NER Chapter 6, Part G, r 6.16 – Distribution Consultation Procedures**

- (a) This rule 6.16 applies wherever the *AER* is required to comply with the *distribution consultation procedures*. For the avoidance of doubt, the *distribution consultation procedures* are separate from, and (where they are required to be complied with) apply to the exclusion of, the *Rules consultation procedures* under rule 8.9.
- (b) If the *AER* is required to comply with the *distribution consultation procedures* in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, or tests, it must *publish*:
- (1) the proposed guideline, methodology, model, scheme, test or amendment;
 - (2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, methodology, model, scheme, test or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test or amendment; and
 - (3) an invitation for written submissions on the proposed guideline, methodology, model, scheme, test or amendment, or the review, (as the case may be).
- (c) The invitation must allow no less than 30 *business days* for the making of submissions, and the *AER* is not required to consider any submission made pursuant to that invitation after this time period has expired.
- (d) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test or amendment, or the review, as it considers appropriate.
- (e) Within 80 *business days* of *publishing* the documents referred to in paragraph (b), the *AER* must *publish*:
- (1) its final decision on the guideline, methodology, model, scheme, test, amendment or review that sets out:
 - (i) the guideline, methodology, model, scheme, test or amendment (if any);
 - (ii) the provision of the *Rules* under which or for the purposes of which the guideline, methodology, model, scheme, test or amendment is being prepared, made or developed or is being reviewed;
 - (iii) the reasons for the guideline, methodology, model, scheme, test or amendment; and
 - (iv) the reasons for the outcome of any review; and
 - (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, amendment or review.
- (f) Subject to paragraph (c), the *AER* must, in making its final decision referred to in paragraph (e)(1), consider any submissions made pursuant to the invitation for submissions referred to in paragraph (b)(3), and the reasons referred to in paragraph (e)(1)(iii) or (iv) must include:
- (1) a summary of each issue raised in those submissions that the *AER* reasonably considers to be material; and
 - (2) the *AER*'s response to each such issue.
- (g) The *AER* may extend the time within which it is required to publish its final decision if:
- (1) the consultation involves issues of unusual complexity or difficulty; and
 - (2) the extension of time has become necessary because of circumstances beyond the *AER*'s control.

Annexure 2 Transmission Consultation Procedures**NER Chapter 6A, Part H, r 6A.20 – Transmission Consultation Procedures**

- (a) This rule 6A.20 applies wherever the AER or the AEMC is required to comply with the transmission consultation procedures. For the avoidance of doubt, the transmission consultation procedures:
- (1) are separate from, and do not apply to, the process for changing the Rules under Part 7 of the National Electricity Law; and
 - (2) are separate from, and (where they are required to be complied with) apply to the exclusion of, the Rules consultation procedures under rule 8.9.
- (b) If the AER or the AEMC is required to comply with the transmission consultation procedures in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, tests or values, it must publish:
- (1) the proposed guideline, methodology, model, scheme, test, value or amendment;
 - (2) an explanatory statement that sets out the provision of the Rules under or for the purposes of which the guideline, methodology, model, scheme, test, value or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test, value or amendment; and
 - (3) an invitation for written submissions on the proposed guideline, model, scheme, test, value or, or the review, as the case may be.
- (c) The invitation must allow no less than 30 business days for the making of submissions, and the AER or the AEMC is not required to consider any submission made pursuant to that invitation after this time period has expired.
- (d) The AER or the AEMC may publish such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test, value or amendment, or the review, as it considers appropriate.
- (e) Within 80 business days of publishing the documents referred to in paragraph (b), the AER or the AEMC must publish:
- (1) its final decision on the guideline, methodology model, scheme, test, value, amendment or review that sets out:
 - (i) the guideline, model, methodology, scheme, test, value or amendment (if any);
 - (ii) the provision of the Rules under which or for the purposes of which the guideline, methodology, model, scheme, test, value or amendment is being prepared, made or developed or is being reviewed;
 - (iii) the reasons for the guideline, model, methodology, scheme, test, value or amendment; and
 - (iv) the reasons for the outcome of any review; and
 - (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, value, amendment or review.

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- (f) Subject to paragraph (c), the AER or the AEMC must, in making its final decision referred to in paragraph (e)(1), consider any submissions made pursuant to the invitation for submissions referred to in paragraph (b)(3), and the reasons referred to in paragraph (e)(1)(iii) or (iv) must include:
- (1) a summary of each issue raised in those submissions that the AER or the AEMC reasonably considers to be material; and
 - (2) the AER's or the AEMC's response to each such issue.
- (g) The AER or the AEMC may extend the time within which it is required to publish its final decision if:
- (1) the consultation involves issues of unusual complexity or difficulty; or
 - (2) the extension of time has become necessary because of circumstances beyond the control of the AER or the AEMC.

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CHAPTER 4: THE NATIONAL ENERGY CUSTOMER FRAMEWORK

A Overview and Structure of the legislation

1. The National Energy Customer Framework (**NECF**) comprises the National Energy Retail Law (**NERL**), the National Energy Retail Rules (**NERR**) and the National Energy Retail Regulations (**NERL Regulations**).
2. This chapter deals primarily with the NERL's key regulatory components, which are:
 - 2.1 the relationship between **retailers** and **small customers** under Part 2 and the attendant components of pricing guidelines, hardship policies and energy marketing;
 - 2.2 the relationship between **distributors** and **customers** under Part 3;
 - 2.3 the **compensation** and **complaints management processes** available under Parts 4 and 7;
 - 2.4 the **retailer authorisation regime** under Part 5;
 - 2.5 the **Retailer of Last Resort (RoLR) scheme** under Part 6; and
 - 2.6 the **National energy Retail Consultation Procedure** under the NERR.

National Energy Retail Objective and Statements of Policy Principles

3. The National Energy Retail Objective is set out in NERL s 13:

NERL s 13 - National Energy Retail Objective

The objective of this Law is to promote **efficient investment in, and efficient operation and use of**, energy services for **the long term interests of consumers** of energy with respect to **price, quality, safety, reliability** and **security of supply** of energy.

4. NERL s 14 further provides that the Ministerial Council of Energy (**MCE**) may issue a **statement of policy principles** in relation to any matters that are relevant to the performance and exercise by the AEMC of its functions and powers in:
 - (a) making the NERR; or
 - (b) conducting a review into the NERR (see NERL s 232 for further detail on NERR reviews).
5. At the time of writing, there are no currently issued MCE Statements of Policy Principles.¹

¹ See the AEMC's 'MCE Statements of Policy Principles' webpage at <<http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/MCE-statements-of-policy-principles>>.

Application and structure of the NERL

6. The NERL is a schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*. To have the force of law in a state or territory, the NERL must be incorporated, and can be modified or opted-in, through application legislation and instruments. Currently, the NERL operates in:
 - 6.1 the ACT and Tasmania since 1 July 2012;
 - 6.2 South Australia since 1 February 2013;
 - 6.3 New South Wales since 1 July 2013; and
 - 6.4 Queensland since 1 July 2015.
7. The NERL has been modified to some extent in each of the above participating jurisdictions. These varying modifications have been documented by the AEMC.²
8. The NERL is not currently operative in Victoria, Western Australia or the Northern Territory. Western Australian and the Northern Territory are said to be not adopting the NECF, as separate energy industry frameworks apply in these jurisdictions.³
9. While the NECF and NERL do not deal with pricing, they are regarded as providing a base level of protection for small customers, while achieving retail energy market efficiency and effectiveness.⁴
10. The NERL is divided into 15 Parts and these comprise:

Part	Part Summary
1	Addresses preliminary matters, such as key definitions, jurisdictional matters and the NERL's objectives and policy principles.
2	Covers the contractual arrangements between retailers and small customers, including both residential customers and business customers.
3	Regulates the contractual relationships between distributors and both small customers and large customers.
4	Deals with small customer complaints and dispute resolution.
5	Details the regime by which retailers are required or exempted from holding a retailer authorisation to sell energy.
6	Establishes the Retailer of Last Resort (RoLR) scheme.
7	Establishes the small compensation claims regime for small customers.
8	Discusses the functions and powers of the Australian Energy Regulator (AER).
9	Concerns the functions and powers of the Australian Energy Market Commission (AEMC).

² The AEMC's table is available on its 'Guide to application of the NECF' webpage at <<http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF>>.

³ See the AEMC's 'Frequently Asked Questions (FAQ)' webpage at <<http://www.aemc.gov.au/About-Us/FAQs>>.

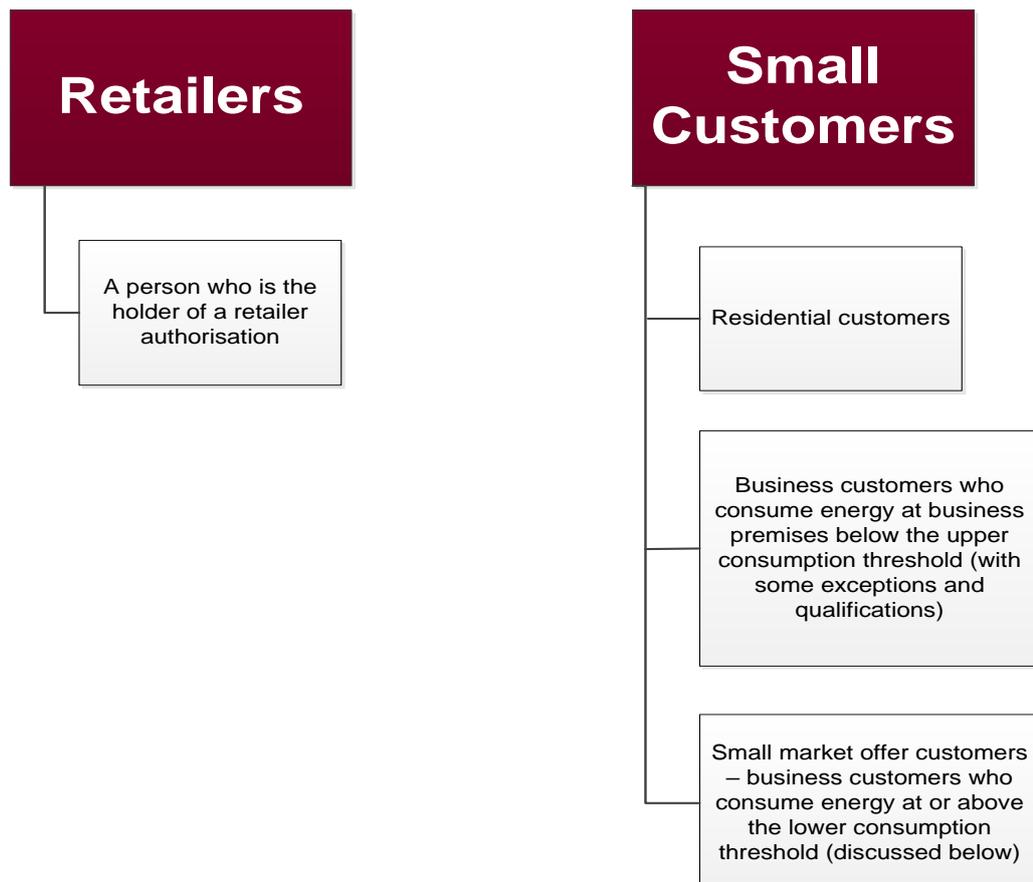
⁴ See the AEMC's 'Frequently Asked Questions (FAQ)' webpage at <<http://www.aemc.gov.au/About-Us/FAQs>>.

Part	Part Summary
10	Deals with the making of the National Gas Rules by the Australian Energy Market Commission (AEMC).
11	Sets out the method by which a relevant Minister may make NERL Regulations.
12	Deals with the AER's compliance and procedures guidelines with relation to the NECF more broadly.
13	Concerns enforceable undertakings and the instituting of proceedings in relation to NERL breaches.
14	Covers particular evidentiary matters, such as publication on websites, and evidentiary AER certificates.
15	Covers general provisions, such as immunities from liability available to parties such as distributors or the AEMC.

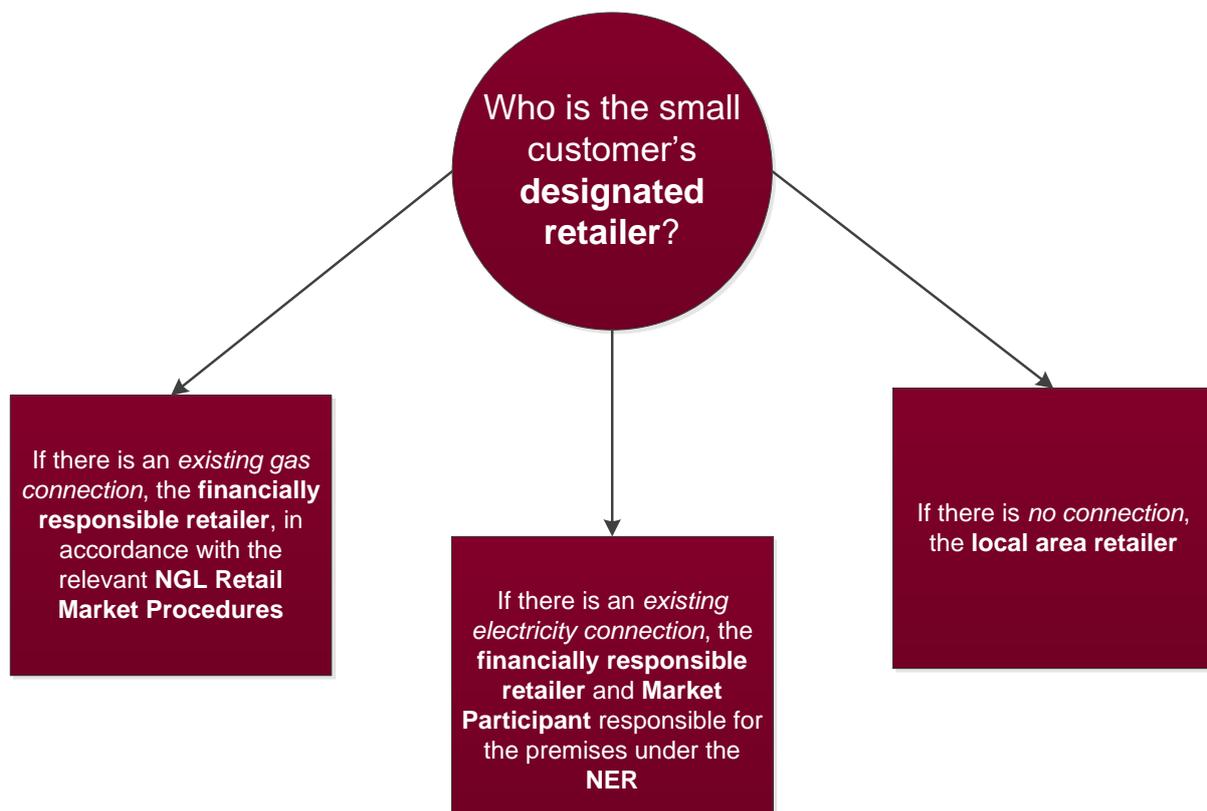
B Relationship between retailers and small customers

Retail contracts under NERL Part 2

11. NERL Part 2 regulates the contractual arrangements between **retailers** and **small customers**: NERL s 19(3). These respective parties are defined in NERL ss 2 and 5.
12. A **retailer** is defined in NERL s 2 as a person who is the holder of a retailer authorisation (retailer authorisations are discussed further at paragraph 124 of this chapter).
13. A **small customer** is defined in NERL s 5 as a customer who:
 - (a) is a residential customer; or
 - (b) is a business customer who consumes energy at business premises below the **upper consumption threshold**.
14. NERL s 6 states that a participating jurisdiction's NERL Regulations may determine the **consumption thresholds** that relate to whether a business customer is classified as a small customer or not.
15. The diagram below summarises the key characteristics of retailers and small customers:



16. The NERL obliges a retailer to offer to provide retail services to a small customer if they are the **designated retailer** for that customer. A designated retailer is either:
- 16.1 if there is **an existing connection**, the **financially responsible retailer** for the premises of the customer in the wholesale energy market. **Financially responsible** retailers in turn are either:
- (a) in the case of **electricity**—the retailer who is the financially responsible Market Participant responsible for the premises under the NER; or
 - (b) in the case of **gas**—the retailer who is responsible for settling the account for gas withdrawn from the delivery point (however described) associated with the premises under the relevant Retail Market Procedures under the NGL; or
- 16.2 where there is **no connection**, the **local area retailer** is the designated retailer and will have the obligation to offer supply to newly connecting customers in the retailer's specified local area. Local area retailers are nominated by the NERL Regulations of a participating jurisdiction.
17. The diagram below summarises who the **designated retailer** is in the relevant circumstance:



18. Under NERL s 20, **designated retailers** may provide retail services to small customers under two different types of contracts:
- 18.1 **standard retail contracts**; or
- 18.2 **market retail contracts**.
19. A retailer **must not** provide customer retail services to small customers under any other kind of contract or arrangement: NERL s 20(2).

20. The NERL also provides for **deemed customer retail arrangements** which are temporary retail service arrangements, discussed below at paragraph 43: NERL s 54.

Standard retail contracts: NERL Part 2 Division 3

21. Small customers **may** choose to enter into a **standard retail contract**, with largely prescribed model terms and conditions that cannot be altered by the retailer (**model terms**).
22. The regulation of standard retail contracts deals with the following key concepts:
- 22.1 model terms and conditions;
 - 22.2 standing offers at standing offer prices;
 - 22.3 a form of standard retail contract that complies with the NERL and NERR;
 - 22.4 compliance with the AER's Retail Pricing Information Guidelines;
 - 22.5 compliance with rules regarding permitted or required alterations to the standard retail contract.
23. The NERL requires the model terms for standard retail contracts to be set out in the NERR. Accordingly, the model terms are published in Schedule 1 of the NERR – see Attachment 1 to this Handbook.
24. When a retailer seeks to provide services to a retail customer for whom it is the designated retailer under a standard retail contract, it **must** make a **standing offer** to provide its services: NERL s 22. A standard offer involves making an offer:
- 24.1 at **standing offer prices**; and
 - 24.2 under the retailer's **form of standard retail contract**.
25. The exception to the **standard offer** obligation at NERL s 22 is where the customer is a **small market offer customer**. Small market offer customers are **business customers** who consume energy at or above the **lower consumption threshold**: NERL s 5(4). A designated retailer may fulfil its obligation to make a **standing offer** to a small market offer customer (or class of small market offer customers) by making a **market retail contract** offer (discussed below at paragraph 35): NERL s 31(1). If the **small market offer customer** declines to enter into the **market retail contract**, the designated retailer **may**, but is not obliged to, make a **standing offer** to the **small market offer customer**: NERL s 31(2).
26. A designated retailer **must** publish its **standing offer** terms and conditions on its website. Where a jurisdiction's application Act so provides, standing offers **may** include additional components, such as prescribed tariff structures: NERL ss 22(1a) and (1b).⁵
27. A retailer's standing offer prices **must** also be published and can only be varied according to the terms of the NERL: s 23.
28. Standing offer prices **must** also be presented in accordance with the **AER's retail pricing information guidelines**: NERL ss 24, 61 and 62.⁶ The most recent version of the AER's retail pricing information guidelines commenced on 1 February 2016. These guidelines are aimed at assisting customers to more easily compare standing offer prices and market offer prices offered by retailers: NERL s 61.

⁵ These provisions are relevant to interval energy data, as defined in the Electricity Rules, and interval meters.

⁶ The AER's Retail Pricing Information Guidelines are available on the AER's 'Retail Guidelines' webpage at <<https://www.aer.gov.au/retail-markets/retail-guidelines>>.

29. In order to make a standing offer, a retailer **must adopt** a form of standard retail contract and publish it on the retailer's website: NERL s 25(1). Under NERL s 25(3), a retailer's **form of standard retail contract**:
- (a) **must** adopt the relevant **model terms** with no alterations, other than **permitted alterations** or **required alterations**; and
 - (b) if there are any required alterations—**must** include those required alterations.
30. Under NERL s 25(4), **permitted alterations** are:
- (a) alterations specifying details relating to identity and contact details of the retailer; and
 - (b) minor alterations that do not change the substantive effect of the **model terms**; and
 - (c) alterations of a kind specified or referred to in the NERR.
31. Under NERL s 25(5), **required alterations** are:
- (a) alterations that the NERR require to be made to the retailer's **form of standard retail contract** in relation to matters relating to specific jurisdictions; and
 - (b) alterations of a kind specified or referred to in the NERR.
32. The NERL contemplates that retailers **may** need to **vary** the terms of a standard retail contract. Accordingly, variations are available where the NERL provides the variation is either a **permitted** or a **required alteration**: NERL s 28. **Permitted** or **required alterations** for standard retail contract **variations** are substantially similar to **permitted** or **required alterations** relating to a retailer's **adoption** of standard retail contract.
33. The following diagram represents the different kinds of **permitted** or **required alterations**:

Adoption of form of standard retail contract	Variation of standard retail contract
<p>NERL s 25 (4) - Permitted alterations are:</p> <p>(a) alterations specifying details relating to identity and contact details of the retailer; and</p> <p>(b) minor alterations that do not change the substantive effect of the model terms and conditions; and</p> <p>(c) alterations of a kind specified or referred to in the Rules.</p>	<p>NERL s 28(3) - Permitted alterations are:</p> <p>(a) alterations specifying details relating to identity and contact details of the retailer; and</p> <p>(b) minor alterations that do not change the substantive effect of the model terms and conditions; and</p> <p>(c) alterations of a kind specified or referred to in the Rules.</p>
<p>NERL s 25(5) Required alterations are:</p> <p>(a) alterations that the Rules require to be made to the retailer's form of standard retail contract in relation to matters relating to specific jurisdictions; and</p> <p>(b) alterations of a kind specified or referred to in the Rules.</p>	<p>NERL s 28(4) - Required alterations are:</p> <p>(a) alterations that the Rules require to be made to the retailer's form of standard retail contract in relation to matters relating to specific jurisdictions; and</p> <p>(b) alterations to a term or condition that is already adopted by the retailer so as to make the adopted term or condition consistent with the model terms and conditions as currently required by the Rules; and</p> <p>(c) alterations of a kind specified or referred to in the Rules.</p>

34. A designated retailer cannot decline to enter into a standard retail contract if the customer makes such a request and has complied with any relevant requirements under the NERR: NERL s 28.

Market retail contracts

35. Alternatively, small customers **may** choose to enter into the more flexible **market retail contract** with retailers for the provision of:

35.1 customer retail services; and

35.2 any other services,

as agreed between the small customer and the retailer.

36. In contrast to standard retail contracts, the NERR does not set out prescribed terms for market retail contracts. However, the NERR's Part 2 Division 7 does set out market retail contract **minimum requirements**.

37. Further market retail contract requirements appear throughout the NERR. Subject to complying with these minimum requirements, market retail contracts may change from one retailer to another.

38. Market retail contracts allow retailers the opportunity to differentiate themselves by offering **innovative products and services**.⁷ These innovations are intended to foster competition, allowing consumers to shop around for the retail product that best suits their needs.⁸
39. As with standard retail contracts, any variations to a market retail contract must be consistent with the NERR. Retailers **must** also present and publish on its website their market retail contract prices (**market offer prices**) in accordance with the AER's Retail Pricing Information Guidelines: NERL s 37

Explicit informed consent

40. The NERL requires retailers (and those marketing on their behalf) to obtain **explicit informed consent** from small customers for entry into market retail contracts (amongst other key transactions). To this end, the NERL prescribes the nature, timing and method of recording the requisite explicit informed consent, in order for the consent to be effective: NERL ss 38 to 41.
41. The requirements of explicit informed consent are set out below:

NERL s 39—Nature of explicit informed consent

(1) Explicit informed consent to a transaction is consent given by a **small customer** to a **retailer** where—

- (a) **the retailer**, or a person acting on behalf of the retailer, has clearly, fully and **adequately disclosed all matters** relevant to the consent of the customer, including each specific purpose or use of the consent; and
- (b) the **customer gives the consent to the transaction** in accordance with subsection (2); and
- (c) any **requirements prescribed by the Rules** for the purposes of this subsection have been complied with.

(2) Explicit informed consent requires the consent to be given by the small customer—

- (a) in **writing signed** by the customer; or
- (b) verbally, so long as the **verbal consent is evidenced** in such a way that it can be verified and made the subject of a record under section 40; or
- (c) by **electronic communication generated by the customer**.

42. Where there is a failure to obtain explicit informed consent, then a market retail contract may be rendered void: NERL s 41. If the issue is raised within 12 months of the relevant transaction, the customer may avoid making payments for energy supplied as a result of a void transaction: NERL s 41.

Deemed customer retail arrangements

43. The NERL also sets out that certain customers will be supplied energy under a **deemed customer retail arrangement** – this policy recognises that energy is an essential service.

⁷ See the *National Energy Retail Law (South Australia)* Bill 2nd reading speech.

⁸ See the *National Energy Retail Law (South Australia)* Bill 2nd reading speech.

44. Under NERL s 54(1), **deemed customer retail arrangements** cater for the scenario in which customers are either:
- 44.1 **Move-in customers** - meaning customers who start consuming energy at premises without first applying to a retailer for the provision of services; or
- 44.2 **Carry-over customers** - meaning customers who continue consuming energy after the previous customer retail contract has expired or terminated due to the contract having no provision to continue after expiration or termination.
45. When a small customer is covered by a deemed customer retail arrangement, the terms of the retailer's standard retail contract will apply: NERL s 55.
46. While continuity of supply on reasonable terms is vital, retailers also need to be able to identify their customers with certainty. Accordingly, move-in or carry-over customers are required to contact the retailer and take appropriate steps to enter into a customer retail contract as soon as practicable: NERL s 54(6).

The regulation of pre-payment meter systems

47. If permitted by a participating jurisdiction's application Act, small customers **may** be provided energy through a **prepayment meter system**: NERL s 56. A prepayment meter system refers to the supply of energy through a device after prepayment and when activated by a card, code or some other method: See the definition of prepayment meter system at NERL s 2.
48. Where it is permitted by the jurisdiction, prepayment meter systems **must** only be under a **market retail contract**: NERL s 57. Prepayment meter systems cannot be provided under a standard retail contract.
49. Part 8 of the NERR sets out detailed rules regarding the provision of energy through prepayment meter systems.

Customer hardship and payment plans

50. NERL Part 2 also provides for the management of hardship issues, such as **customer hardship policies** and **payment plans**, and **debt recovery**. These policies are only applicable to small, residential customers. The NERL provides at s 43 that:

The purpose of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

51. All retailers **must** maintain and implement customer hardship policies. Among other things, within 3 months of being granted a retailer authorisation, retailers **must** under NERL s 43(2)(a):
- 51.1 develop a policy; and
- 51.2 submit it to the AER for approval.
52. The NERL provides the following **minimum requirements** for customer hardship policies:

NERL s 44 – Minimum requirements for customer hardship policy

The minimum requirements for a customer hardship policy of a retailer are that it **must** contain—

- a) processes to **identify residential customers experiencing payment difficulties** due to hardship, including identification by the retailer and self-identification by a residential customer; and
- b) processes for the **early response by the retailer** in the case of residential customers identified as experiencing payment difficulties due to hardship; and
- c) **flexible payment options** (including a payment plan and Centrepay) for the payment of energy bills by hardship customers; and
- d) processes to identify **appropriate government concession programs** and **appropriate financial counselling services** and to notify hardship customers of those programs and services; and
- e) an outline of a **range of programs** that the retailer may use to assist hardship customers; and
- f) processes to **review the appropriateness** of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy; and
- g) processes or programs to assist customers with strategies to improve their **energy efficiency**, where such processes or programs are required by a local instrument; and
- h) any variations specified or of a kind specified by the AER; and
- i) any other matters required by the Rules.

53. The AER plays a central role in the approval, maintenance and variation of retailer customer hardship policies.
54. NERL s 43 provides that if the AER forms the view that a retailer's customer hardship policy requires review:
 - 54.1 the AER **may** direct the retailer to review the policy and make variations in accordance with any requirements set out by the AER; and
 - 54.2 the retailer **must**—
 - 54.2.1 vary the policy in accordance with the AER's requirements; and
 - 54.2.2 submit it to the AER for approval under this Division; and
 - 54.2.3 publish the policy, as approved by the AER, on the retailer's website as soon as practicable after it has been approved; and
 - 54.2.4 maintain and implement the policy.

55. In considering whether to approve a customer hardship policy, the AER **must** have regard to the following principles:

NERL s 45(3) – Approval of customer hardship policy or variation

- (3) The AER **must**, in considering whether to approve a customer hardship policy under subsection (1), have regard to the following principles:
- a) that the supply of energy is an **essential service** for residential customers;
 - b) that retailers should **assist hardship customers** by means of programs;
 - c) strategies to **avoid de-energisation (or disconnection)** solely due to an inability to pay energy bills;
 - d) that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a **last resort option**;
 - e) that residential customers should have **equitable** access to hardship policies, and that those policies should be **transparent** and applied **consistently**.

56. In addition to the duties of retailers to identify residential customers experiencing hardship, retailers **must** also **inform** relevant customers of the **availability** of the hardship policy where non-payment appears to be due to the customer experiencing payment difficulties due to hardship: NERL s 46.

57. Notably, in addition to the AER's hardship policy approval principles:

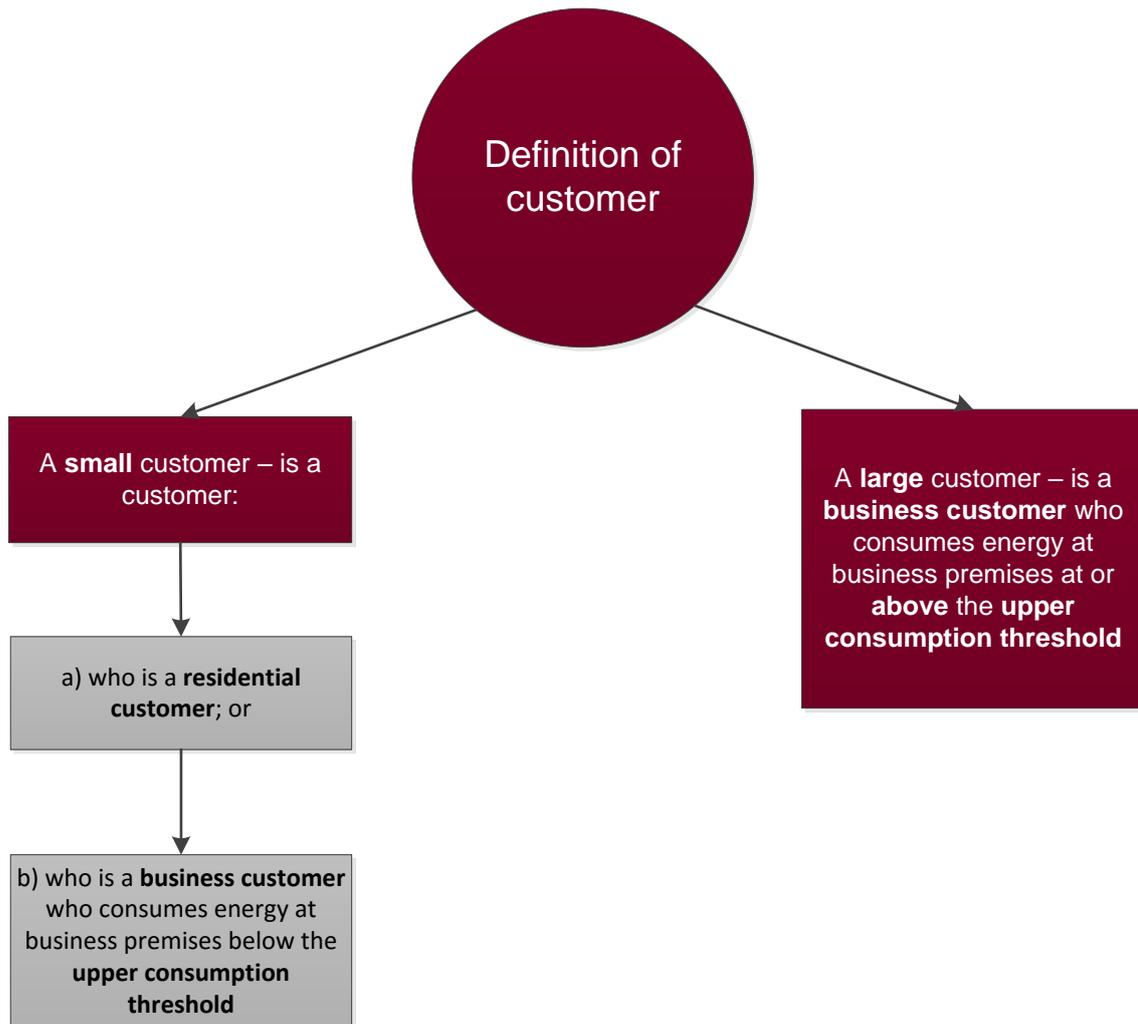
57.1 retailers **must** give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a **last resort option**: NERL s 47; and

57.2 if a residential customer is on a market retail contract and they become a hardship customer, the contract's terms and conditions have **no effect to the extent of any inconsistency** with the application of the retailer's customer hardship policy: NERL s 48.

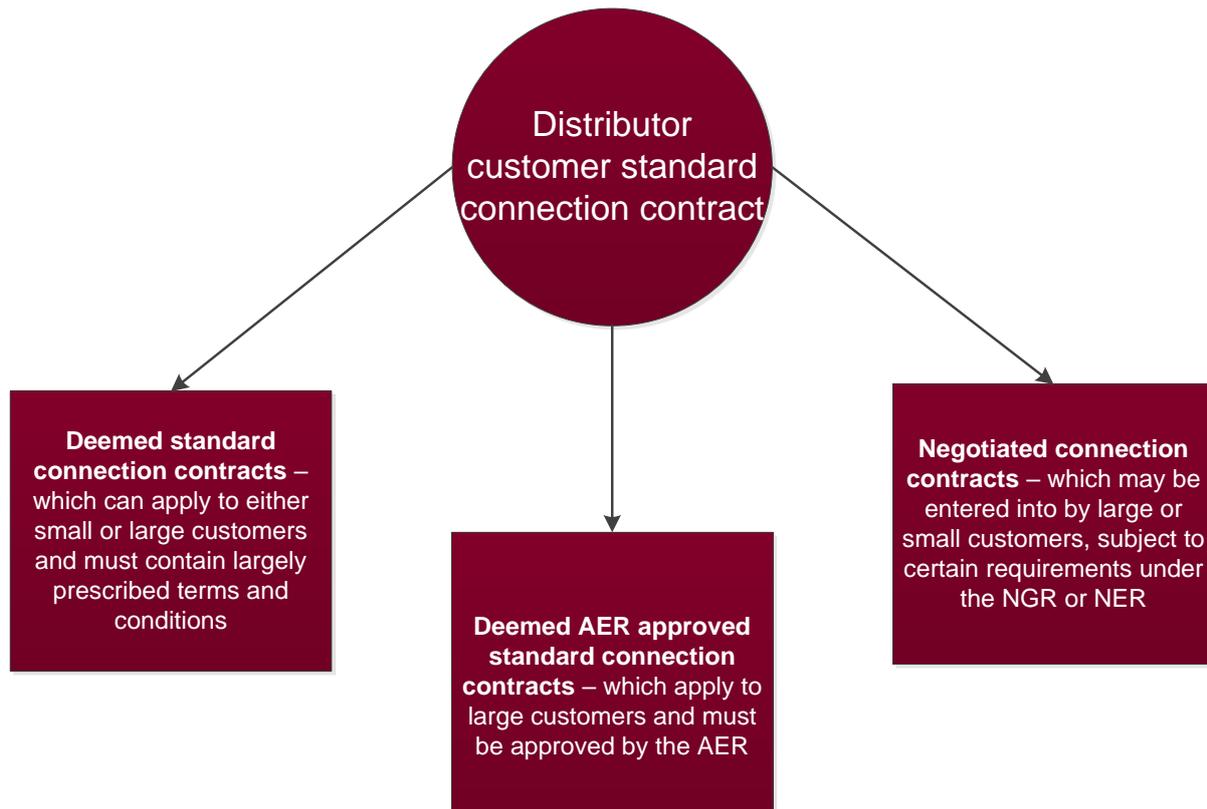
58. Hardship program indicators

59. According to the AER, in addition to approving hardship policies, the AER has an ongoing role in monitoring retailers' performance in implementing their customer hardship policies and ensuring compliance with the legal requirements.⁹ Under NERL s 285, the AER **must** include in its **retail market performance report**, retailer performance by reference to the **hardship program indicators**: see NERL ss 284 and 285(d).

⁹ See the AER's 'Energy retailers' customer hardship policies' webpage at <<https://www.aer.gov.au/retail-markets/energy-retailers-customer-hardship-policies>>.



73. Under NERL s 66, distributors have an obligation to provide connection services to customers:
- (a) who request the distributor's services; and
 - (b) whose premises are connected, or who seek to have those premises connected, to the distributor's distribution system.
74. The NERR provide that applications for customer connection services to distributors are to be made by a retailer on the customer's behalf (provided the retailer has a relevant contract with the customer): NERR r 79(2).
75. NERL Part 3 provides for three kinds of **distributor customer standard connection contracts**:



76. According to the *National Energy Retail Law (South Australia)* Bill 2nd reading speech, these distributor contracts are intended to deal with the issue of energy distributors being monopoly service providers and customers generally having limited ability to negotiate the terms and conditions of connection contracts.
77. The two deemed connection contracts aim to address this asymmetry by being either regulated as a model contract or requiring AER approval.¹²
78. While individual negotiation of connection and supply arrangements is not generally required, NERL Part 3 allows for negotiation of connection contracts by larger business customers with specific connection needs.¹³ Where connection contracts are negotiated, a negotiating framework is provided in the National Electricity and Gas Rules.¹⁴

Deemed standard connection contracts

79. **Deemed standard connection contracts** have model terms set out in the NERR, in a similar fashion to standard retail contracts offered by retailers. These deemed standard connection contract model terms are contained in Schedule 2 of the NERR - see Attachment 2 to this Handbook.
80. Distributors have obligations to adopt a **form of deemed standard connection contracts**: NERL s 69. Any terms or conditions that are inconsistent with the model terms will have no effect to the extent of the inconsistency. Distributors must also publish their deemed standard connection contracts on their website: NERL s 69(1).
81. There **must** be no **alterations** or **variations** to a deemed standard connection contract, except as permitted or required by the NERL: ss 69 and 72.

¹² See *National Energy Retail Law (South Australia)* Bill 2nd reading speech.

¹³ See *National Energy Retail Law (South Australia)* Bill 2nd reading speech.

¹⁴ See *National Energy Retail Law (South Australia)* Bill 2nd reading speech.

D Complaints and compensation management

97. The NERL establishes national compensation and complaints management regimes, comprising:
- 97.1 a **small customer complaints and dispute resolution** regime available under NERL Part 4; and
 - 97.2 a **no-fault small compensation claims** regime under NERL Part 7.

Small customer complaints and dispute resolution

98. The NERL Part 4 deals with **small customer complaints and dispute resolution**. In summary, Part 4:
- 98.1 requires retailers and distributors to develop and publish **small customer complaints handling and dispute resolution procedures** and to be a member of an **energy ombudsman scheme**; and
 - 98.2 confers on the energy ombudsmen of each participating jurisdiction certain functions and powers for receiving, facilitating and resolving complaints and disputes.
99. Complaints can be made in relation to **relevant matters**, the definition of which is set out in the table below:

NERL s 79 Definitions

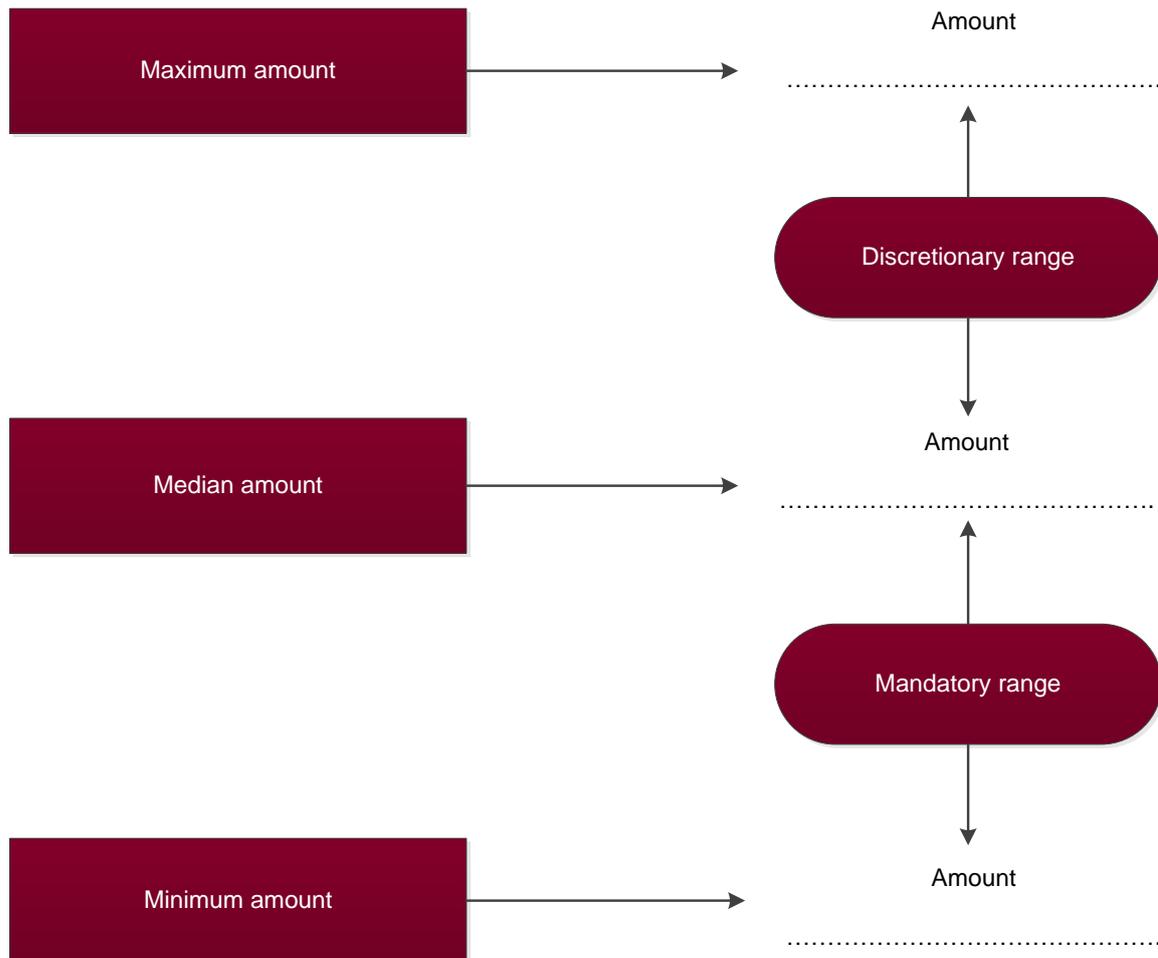
(1) In this Part—

relevant matter means a matter arising between a small customer and a retailer or distributor—

- (a) under or in connection with this Law, the National Regulations or the Rules, including but not limited to a matter concerning any of the following:
 - (i) the carrying out of an **energy marketing activity** by a person;
 - (ii) a retailer's **obligations before a customer retail contract is formed** (whether or not the contract is eventually formed);
 - (iii) a **customer retail contract** between a **small customer** and a retailer;
 - (iv) a **deemed standard connection** contract between a **small customer** and a distributor;
 - (v) a **negotiated connection contract** between a **small customer** and a distributor;
 - (vi) a **decision of a distributor** under Division 3 of Part 7 in relation to a **customer's claim for compensation**; or
- (b) under or in connection with the **NER** or **NGR** concerning a new connection or a connection alteration,

but does not include matters concerning the setting of tariffs and charges of distributors or retailers.

- amounts** can be determined by the AER: s 184. If the AER decides to determine the amounts, the AER **must** do so after consultation with responsible officers for the participating jurisdiction: NERL s 184(2).
112. Once the **amounts** of compensation have been determined, then the **range** of amounts is determined. These ranges comprise the **discretionary range** and the **mandatory range**.
113. Generally, distributors:
- 113.1 **may** reject compensation claims below the **minimum amount**, as prescribed by a participating jurisdiction's local instrument: NERL ss 181 and 188;
- 113.2 **must** advise small customers to revise any claims made above the **maximum amount** prescribed by a participating jurisdiction's local instrument, as claims above the maximum amount will otherwise be rejected: NERL ss 180 and 189;
- 113.3 **must** pay compensation claims that fall within the AER's **mandatory range**, subject to other criteria of the NERL's small compensation regime being met: NERL ss 177 and 191; and
- 113.4 **may** carry out their own assessment of a claim where the amount falls within the **discretionary range**. Small customers must either be paid:
- (a) the amount claimed; or
 - (b) a lesser amount (whether within or below the discretionary range), on the basis that the lesser amount is sufficient and addresses the need to replace or repair property: NERL s 192.
114. Distributors are not obliged to compensate **small business customers** above the **median amount** where the **business customer** has not taken **reasonable precautions** to minimise the risk of property damage: NERL s 192(5).
115. The interaction between the discretionary and mandatory ranges, and the maximum, median and minimum amounts, can be represented as follows:



116. Where the distributor pays less than the amount claimed, or if the claim is rejected, the distributor **must** provide reasons for its decision and inform the small customer of the right to refer the complaint to the relevant ombudsman: NERL ss 195-197.

Key features and limitations of the small compensation claims regime

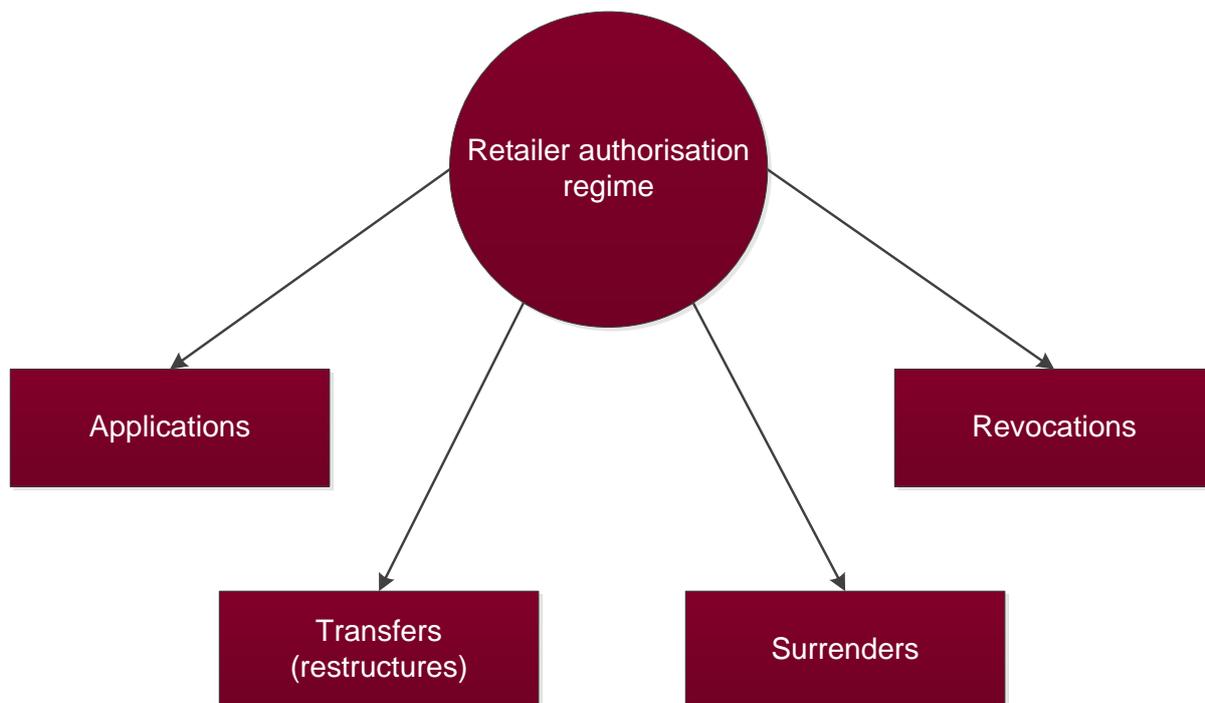
117. Distributors have duties under the NERL to provide information and advice regarding the small compensation regime. Specifically, under NERL s 186, distributors **must**:
- 117.1 **develop** and publish on their websites a summary of the small compensation claims regime in a readily understood form; and
 - 117.2 when contacted in relation to a potential claimable incident, **inform** the person of the existence of the small compensation claims regime.
118. The AER may also specify the number of claims which a small customer can make within a prescribed period before being regarded as a **repeat claimant**: NERL ss 183 and 193.
119. At present, however, the AER has not determined any such limit.
120. Where a distributor would be liable to pay compensation to a **repeat claimant**, but the distributor reasonably considers the claim forms part of an abuse of the small compensation claims regime, it is open to the distributor to reject the claim: NERL s 193.
121. If a small customer is compensated (whether by the distributor's or ombudsman's decision), NERL s 199 states with respect to the **finality of payment** of compensation:

- 121.1 the customer cannot make any further claim;
 - 121.2 the customer cannot commence or maintain proceedings; and
 - 121.3 the distributor has no further liability.
122. Aside from the **finality of payment** provision at paragraph 121, the NERL does not prevent customers from commencing or maintaining separate proceedings in respect of a **claimable incident** against a distributor: NERL s 200.
123. However, where a small customer enforces or attempts to enforce a small customer's right in respect of a **claimable incident** outside the small compensation claims regime, the distributor **may** reject the small compensation claim: NERL s 200.

E The retailer authorisation regime

An introduction to the retailer authorisation regime

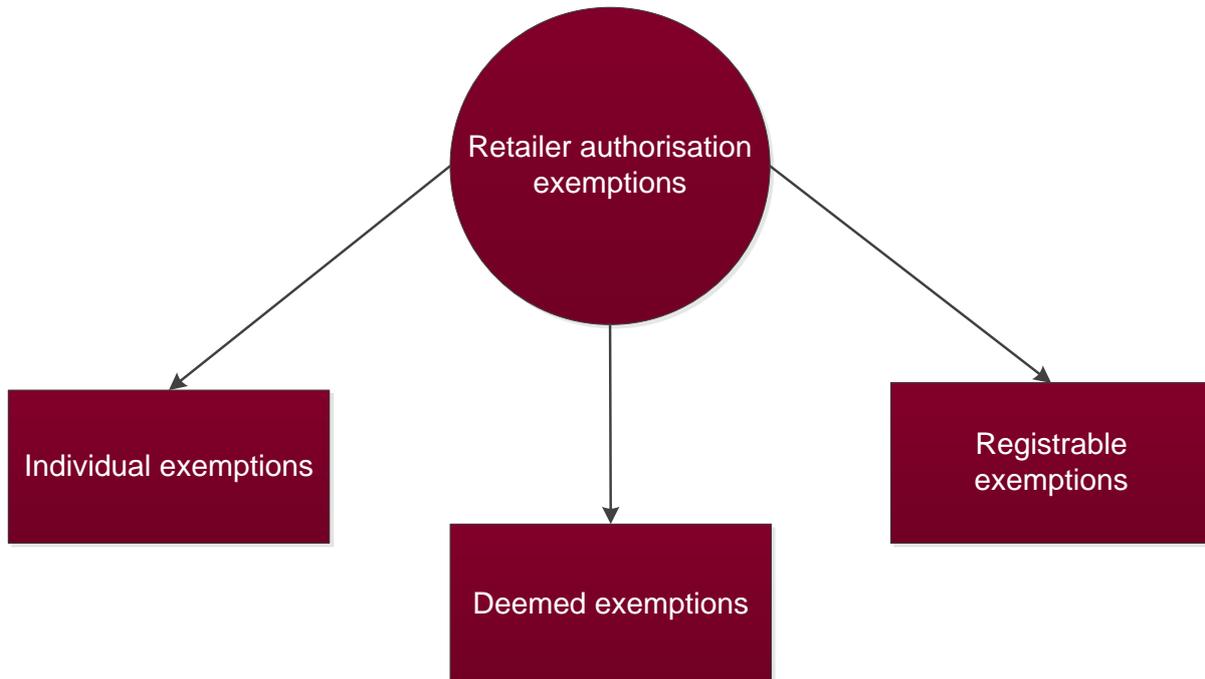
124. NERL Part 5 provides, in effect, that anyone wishing to sell energy to a person for premises **must** hold a current **retailer authorisation** granted by the AER, or be covered by an **exemption** to the authorisation regime.
125. The regime aims to:
- 125.1 introduce a uniform approach to retailer authorisation, allowing a retailer to obtain one authorisation capable of operating across all participating jurisdictions, rather than requiring separate retail licenses in each jurisdiction; and
 - 125.2 minimise the risk of retailer non-compliance or failure by a retailer, and mitigate adverse impacts of any such failure on energy markets and customers.²¹
126. NERL Part 5 covers retailer authorisation **applications**, **transfers** (including through an entity restructure), **surrenders** and **revocations**. NERL Part 5 also provides for three kinds of exemptions from the requirement to hold a retailer authorisation. The application of the retailer authorisation regime is summarised in the following diagram:



127. The AER's obligations, functions and powers in NERL Part 5 will largely be conditioned by the AER's:
- 127.1 **Retailer Authorisation Guidelines**; and
 - 127.2 **Exempt Selling Guidelines**.
128. The NERL mandates the AER to make or amend each of the **Retailer Authorisation Guidelines** and **Exempt Selling Guidelines** in accordance with the NECF's **consultation procedures**: NERL ss 117 and 118.

²¹ See *National Energy Retail Law (South Australia) Bill 2nd reading speech*.

147. The three kinds of **retailer authorisation exemptions** are summarised in the following diagram:



148. In exercising its exempt selling regulatory functions or powers, the AER:

- 148.1 **must** take into account the NERL's **policy principles**, which are set out in the table below:

NERL s 114—Manner in which AER performs AER exempt selling regulatory functions or powers

(1) The AER **must**, in performing or exercising an AER exempt selling regulatory function or power, take into account the following policy principles:

- (a) regulatory arrangements for exempt sellers **should not unnecessarily diverge** from those applying to retailers;
- (b) exempt customers should, as far as practicable, be afforded the **right to a choice of retailer** in the same way as comparable retail customers in the same jurisdiction have that right;
- (c) exempt customers should, as far as practicable, **not be denied customer protections** afforded to retail customers under this Law and the Rules.

- 148.2 and, may take into account the **exempt seller related factors** and the **customer related factors**, which are set out in the table below:

NERL s 115—Exempt seller related factors

(1) The exempt seller related factors are as follows:

- (a) whether selling energy is or will be a **core part** of the exempt seller's business or **incidental** to that business;
- (b) whether the exempt **seller's circumstances** demonstrate specific characteristics that may warrant exemption;
- (c) whether the exempt seller is **intending to profit** from the arrangement;
- (d) whether the amount of energy likely to be sold by the exempt seller is **significant in relation to national energy markets**;
- (e) the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow **appropriate obligations** to govern the applicant's behaviour rather than requiring the applicant to obtain a retailer authorisation;
- (f) the **likely cost** of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller;
- (g) any other seller related matter the AER considers relevant.

NERL s 116—Customer related factors

The customer related factors are as follows:

- (a) whether the characteristics of the **exempt customers or the circumstances** in which energy is to be sold to them by the applicant are such as to warrant exemption;
- (b) the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow the exempt customers **access to appropriate rights and protections** rather than requiring the applicant to obtain a retailer authorisation;
- (c) any other customer related matter the AER considers relevant.

F Retailer of Last Resort (RoLR) scheme

The RoLR scheme under NERL Part 6

149. NERL Part 6 provides a regime under which gas and electricity retailers are registered and appointed as **Retailers of Last Resort (RoLRs)**. The RoLR scheme is particularly relevant to ensuring security of energy supply.²⁷
150. It is principally designed to:
- 150.1 ensure that in the event of retailer failure, arrangements are in place to ensure that customers continue to receive their electricity and/or gas supply; and
 - 150.2 to bring financial security for the wholesale electricity and gas markets if a retailer fails.²⁸
151. Under NERL s 125(1), the AER **must** ensure that at all times there is a **default RoLR** for:
- 151.1 in the case of electricity - each **connection point**, which has the same meaning as it has in the NER; and
 - 151.2 in the case of gas - each **distribution system**, which under NERL s 2 is defined as:
 - (a) for a distributor who is a **regulated distribution system operator** within the meaning of the NEL—a **distribution system** within the meaning of the NEL; or
 - (b) for a distributor who is a **service provider** within the meaning of the NGL who owns, operates or controls a distribution pipeline that is a covered pipeline under that law—a **distribution pipeline** within the meaning of the NGL; or
 - (c) for a **nominated distributor** under section 12—the **nominated distribution system** that is specified under that section.
152. A default **RoLR** will be appointed by the AER in the event that a retailer:
- 152.1 loses its right to acquire, or authorisation to sell, energy;
 - 152.2 suffers an insolvency event; or
 - 152.3 otherwise ceases to sell energy to its customers,
- which are defined as **RoLR Events**: NERL s 122.

The AER's functions and powers under the RoLR scheme

153. Under the RoLR scheme, the AER's powers and functions can be summarised as follows:
- 153.1 publish **RoLR guidelines** which **must** be made and maintained in accordance with the Retail Consultation Procedure: NERL s 135;
 - 153.2 publish a **RoLR plan** setting out the procedures to be followed by relevant participants upon the occurrence of a **RoLR event**: NERL s 162;

²⁷ See the *Australian Energy Market Amendment (National Energy NERL) Bill 2011* 2nd reading speech, 17 August 2011.

²⁸ See *National Energy Retail Law (South Australia) Bill 2nd reading speech*.

NERL s 123—RoLR criteria

(1) The RoLR criteria in relation to a retailer are as follows:

- (a) the **organisational and technical capacity criterion**—the extent to which the retailer has the necessary organisational and technical capacity to meet the obligations of a RoLR, either by—
 - (i) having **adequate systems** in place for that purpose; or
 - (ii) being **able to implement adequate systems** in a timely manner for that purpose;
- (b) the **financial resources criterion**—the extent to which the retailer has adequate resources or access to adequate resources so that it will have the financial viability and financial capacity to meet the obligations of a RoLR;

Note— One matter to take into consideration under this criteria may be whether a retailer has **hedging contracts** adequate for it to be a RoLR.

- (c) the **suitability criterion**—whether the retailer is a suitable person to be a RoLR, taking into consideration—
 - (i) the **number of customers** the retailer has; and
 - (ii) the **class or classes** of customers the retailer has; and
 - (iii) the area or **areas that the retailer currently serves**; and
 - (iv) in the case of gas and where there is **no declared wholesale gas market** or short term trading market—whether and to what extent the retailer has—
 - (A) **gas available** to it by means of a distribution pipeline; and
 - (B) **capacity available** to it on that distribution pipeline and any relevant transmission pipeline, sufficient for it to be a RoLR;
- (d) any other relevant matters specified in the energy laws;
- (e) any other matters the AER considers relevant in the circumstances.

159. The AER **must** take the RoLR criteria into consideration when deciding whether to appoint a default RoLR. However, if a retailer does not meet all the criteria and there would otherwise be no default RoLR appointed, the AER can still appoint the retailer that most nearly satisfies the **financial resources criterion**. This retailer **must** then as soon as practicable after registration, take steps to meet the remaining criteria: NERL s 125.
160. Retailers who meet the RoLR criteria **may** also be appointed by the AER as **additional RoLRs**: NERL s 126. Retailers who are a **default RoLR** for one connection point or distribution system, may be registered as an **additional RoLR** for any connection point or distribution system for which it is not the **default RoLR**: NERL s 126.

Declaration of a RoLR event

169. On the occurrence of a RoLR event, the AER must decide as soon as practicable whether to issue a **RoLR notice**: NERL s 136.
170. Under NERL s 138, a RoLR notice or a notice amending a RoLR notice:
- 170.1 **must** be given to—
 - 170.1.1 the **failed retailer** at its registered office and (if different) its principal place of business; and
 - 170.1.2 any **insolvency official** of the failed retailer; and
 - 170.1.3 **AEMO**; and
 - 170.1.4 the **designated RoLR** or RoLRs; and
 - 170.1.5 the distributors; and
 - 170.1.6 the **Ministers** of the participating jurisdictions; and
 - 170.2 **may** be given to any **other person** whom the AER considers appropriate to be served; and
 - 170.3 must be published on the AER's website; and
 - 170.4 must be published by AEMO and copies provided by AEMO to all **Registered participants** within the meaning of the NEL and NGL.
171. Among other things, RoLR notices **must** specify the **transfer date** on which the failed retailer's customers are to be transferred to the relevant designated RoLR: NERL s 136(2)(e).
172. RoLR notices **may** contain requirements to be complied with by the failed retailer, a designated RoLR and any other persons who should appropriately be served with the RoLR notice: NERL s 136(3).
173. A RoLR notice **must** be **framed** so as to deal with all the customers of the failed retailer: NERL s 136(4). However, a failure to do so does not invalidate the notice.
174. NERL s 137 also includes particular functions and powers available to the AER in relation to the ongoing supply of gas following a RoLR event. These gas specific RoLR provisions deal with matters that include:
- 174.1 wholesale gas markets;
 - 174.2 short term trading markets;
 - 174.3 the availability of gas;
 - 174.4 dealings with distributors, service providers and gas producers;
 - 174.5 access disputes; and
 - 174.6 managing the novation or replacement of a failed retailer's gas sale contracts.

G National Energy Retail Consultation Procedure

Customer Consultative Groups

184. Several processes (listed below) under the NERL and NERR require or allow the AER to engage in a Retail Consultation Procedure in the course of making a decision.
185. The NERR also requires the AER to establish and maintain a **Customer Consultative Group**: NERR r 172. The **Customer Consultative Group** provides advice to the AER in relation to the AER's functions under the energy laws affecting energy consumers across participating jurisdictions: NERR r 172. The ECA is listed as one of the current members of the **Customer Consultative Group**.³⁰

The Retail Consultation Procedure

186. When required by the NERL or Rules, the AER must apply the **Retail Consultation Procedure** in accordance with NERR r 173, which can be distilled to the following points:
- 186.1 after consultation (if any) the AER considers appropriate, it must prepare a draft instrument;
 - 186.2 the AER must publish the draft instrument with a notice inviting submissions;
 - 186.3 the AER must consider all submissions received; and
 - 186.4 prepare and publish a written notice stating the reasons for making the instrument in its final form.

Application of the Retail Consultation Procedure under the NERL and Rules

187. The **Retail Consultation Procedure** applies to the following AER processes:

Section or Rule	Summary	AER right or responsibility
NERL s 61	AER Retail Pricing Information Guidelines	The AER may , in accordance with the Retail Consultation Procedure, make and amend the AER Retail Pricing Information Guidelines .
NERL s 62	Price Comparator	The AER must develop, make available and update the price comparator . In the development and updating of the price comparator, the AER must undertake such consultation as it considers appropriate .
NERL s 117	AER Retailer Authorisation Guidelines	The AER must make the AER Retailer Authorisation Guidelines in accordance with the Retail Consultation Procedure. The AER may amend the AER Retailer Authorisation Guidelines in accordance with the Retail Consultation Procedure.

³⁰ See the AER's 'Customer Consultative Group' webpage at <<https://www.aer.gov.au/about-us/customer-consultative-group>>.

Section or Rule	Summary	AER right or responsibility
NERL s 118	AER Exempt Selling Guidelines	the AER must , in accordance with the Rules, develop and maintain the AER Exempt Selling Guidelines . The AER may amend the AER Exempt Selling Guidelines in accordance with the Retail Consultation Procedure.
NERL s 135	AER RoLR Guidelines	The AER must develop, make and maintain the AER RoLR Guidelines . The AER may amend the guidelines in accordance with the Retail Consultation Procedure.
NERL s 281	AER Compliance Procedures and Guidelines	The AER must make the AER Compliance Procedures and Guidelines in accordance with the Retail Consultation Procedure. The AER may amend the AER Compliance Procedures and Guidelines in accordance with the Retail Consultation Procedure.
NERL s 286	AER Performance Reporting Procedures and Guidelines	The AER must make the AER Performance Reporting Procedures and Guidelines . The AER may amend the AER Performance Reporting Procedures and Guidelines in accordance with the Retail Consultation Procedure.
NERR r 31	Overcharge thresholds	the AER may from time to time determine a new overcharge threshold in accordance with the Retail Consultation Procedure.
NERR r 75	Hardship program indicators	the AER must , in accordance with the Retail Consultation Procedure, determine hardship program indicators . The AER may from time to time amend the hardship program indicators in accordance with the Retail Consultation Procedure.
NERR r 150	Retailer authorisation deemed exemptions	the AER may , in accordance with the Retail Consultation Procedure, determine a class of persons in respect of whom a deemed exemption is taken to be in force for retailer authorisation purposes . The AER may from time to time amend determinations under this rule in accordance with the Retail Consultation Procedure.
NERR r 151	Retailer authorisation registrable exemptions	the AER may , in accordance with the Retail Consultation Procedure, determine a class of persons in respect of whom an exemption (a registrable exemption) is registrable. The AER may from time to time amend determinations under this rule in accordance with the Retail Consultation Procedure.

Attachment 2 Model terms and conditions for deemed standard connection contracts

(Rule 81)

PREAMBLE

This contract is about the services which cover connection of your premises to our distribution system, and the energy supplied to the premises. These services are called “customer connection services”.

In addition to this contract, we are required to comply with energy laws and other consumer laws in our dealings with you.

You also have a separate contract with your retailer dealing with the sale of energy to the premises.

More information about this contract and other matters is on our website [permitted alteration: insert distributor’s website address].

1 THE PARTIES

This contract is between:

[Permitted alteration: name of distributor] who provides you with customer connection services at the premises (in this contract referred to as “we”, “our” or “us”); and

You, the customer to whom this contract applies (in this contract referred to as “you” or “your”).

2 DEFINITIONS AND INTERPRETATION

(a) Terms used in this contract have the same meanings as they have in the National Energy Retail Law and the National Energy Retail Rules (‘the Rules’). However, for ease of reference, a simplified explanation of some terms is given at the end of this contract.

(b) Where the simplified explanations in Schedule 1 differ from the definitions in the National Energy Retail Law and the Rules, the definitions in the National Energy Retail Law and the Rules prevail.

3 DO THESE TERMS AND CONDITIONS APPLY TO YOU?

3.1 These are our terms and conditions

This contract sets out the terms and conditions for the standard connection contract for customers under the National Energy Retail Law and the Rules.

3.2 Does this contract apply to you?

This contract applies to you if your premises are connected to our distribution system, and you do not have another customer connection contract with us for those premises.

3.3 What if I need a new connection?

If you require a new connection or an alteration to your existing connection we will provide you with a connection offer in accordance with either the National Electricity Rules (for an electricity connection) or the National Gas Rules (for a gas connection). That offer will contain terms and conditions relevant to the connection, which will form additional terms and conditions to this contract if you agree to the connection offer.

CHAPTER 5: THE TRIBUNAL, THE COURTS AND THE AEMC

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CHAPTER 5: THE TRIBUNAL, THE COURTS AND THE AEMC

A. Introduction

1. The previous Chapters of this Handbook have focused primarily on the role and functions of the Australian Energy Regulator and the Australian Energy Market Operator, particularly in relation to the AER's economic regulatory and retail functions, and AEMO's functions in relation to the wholesale market.

2. This Chapter focuses on the key functions, not covered in previous Chapters, which are played by the Australian Competition Tribunal, the courts and the AEMC.

3. Those functions are as follows:

3.1 **Limited Merits Review** – the Australian Competition Tribunal provides a forums in which affected parties can seek to challenge certain decisions made under the NEL and the NGL. Tribunal proceedings may only be brought on limited grounds, but within those grounds the Tribunal may re-examine the merits of the decision.

The role of the Tribunal is discussed in Part B.

3.2 **Judicial Review** – separately from the Tribunal (and with authority over the Tribunal itself), affected parties may also bring proceedings in the courts to challenge decisions made under the NEL/NER and the NGL/NGR. Judicial review proceedings must be brought in the Federal Court of Australia or the Supreme Courts of the participating jurisdictions, depending on the nature of the decision.

The grounds for judicial review are substantially more limited than those for merits review

The role of the courts is discussed in Part C of this Chapter.

3.3 **AEMC Rule-making Function** – as discussed in Chapter 1, the AEMC is responsible for making and amending the National Electricity Rules and the National Gas Rules.

The AEMC's rule-making function is discussed in Part D of this Chapter.

4. This Chapter will not provide an overview of the provisions in both the NGL and NEL as they are substantively very similar. Rather, it will focus on the provisions under the NEL and the comparable sections of the NGL will be identified in footnotes. Where there are significant differences between the NEL and NGL, these will be outlined in the body of the Chapter.

B. The Australian Competition Tribunal

5. The Australian Competition Tribunal (**the Tribunal**) is established under the *Competition and Consumer Act 2010* (Cth). Accordingly, it has a broader merits review function in relation to competition law matters more generally, outside of the operation of the National Energy Regime.
6. The Tribunal is granted jurisdiction in relation to certain matters arising under the National Energy Regime by Part 6, Division 3A of the NEL (in relation to the National Electricity Regime), and the equivalent Chapter 8, Part 5 of the NGL (in relation to the National Gas Regime).
7. Broadly speaking, the Tribunal has jurisdiction to provide **limited merits review** in relation to three types of decision. Because the nomenclature is confusing between the NGL and the NEL, we have described them as **Type 1 LMR Decisions, Type 2 LMR Decisions, and Information Disclosure Decisions.**

Type 1 LMR Decision

NEL: 'reviewable regulatory decisions'

NGL: 'designated reviewable regulatory decisions'

Type 2 LMR Decision

NGL only:
'reviewable regulatory decisions' other than
'designated reviewable regulatory decisions'

Information Disclosure Decisions

NEL s 28ZB and 54H
NGL ss 91GH and 329

8. **Type 1 LMR Decisions** – we have defined these as follows:

8.1 **all reviewable regulatory decisions** within the meaning of NEL s 71A; and

NEL s. 71A 'Definitions' – reviewable regulatory decision

- a) a 'network revenue or pricing determination' [meaning a distribution determination or a transmission determination] that sets a regulatory period; or
- b) any other determination (including a distribution determination or transmission determination) or decision of the AER under the Rules that is prescribed by the Regulations to be a reviewable regulatory decision,

but does not include a decision of the AER made under Division 6 Part 3.

8.2 **designated reviewable regulatory decisions** within the meaning of NGL s 244(d).

NGL s. 244 'Definitions' – reviewable regulatory decisions

- a) a Ministerial coverage decision; or
- b) a light regulation determination or a decision of the NCC under Chapter 3 Part 2 not to make a light regulation determination; or
- c) decision of the NCC under Chapter 3 Part 2 to revoke or not revoke a light regulation determination; or
- d) a designated reviewable regulatory decision; or
- e) an AER ring fencing determination; or
- f) a decision of the AER under section 146 to give an exemption; or
- g) an associate contract decision; or
- h) a decision of an original decision maker that is prescribed by the Regulations to be a reviewable regulatory decision,

but does not include a decision of the AER made under Chapter 10 Part 2.

9. **Type 2 LMR Decisions** – we have defined these to mean all decisions which are **reviewable regulatory decisions** within the meaning of NGL s 244, **excluding designated reviewable regulatory decisions** within the meaning of NGL s 244(d).

10. **Information Disclosure Decisions** are defined in the same terms under the NGL and NEL, as follows:

10.1 a decision to disclose information made by the AER under NEL s 28ZB and NGL s 329;

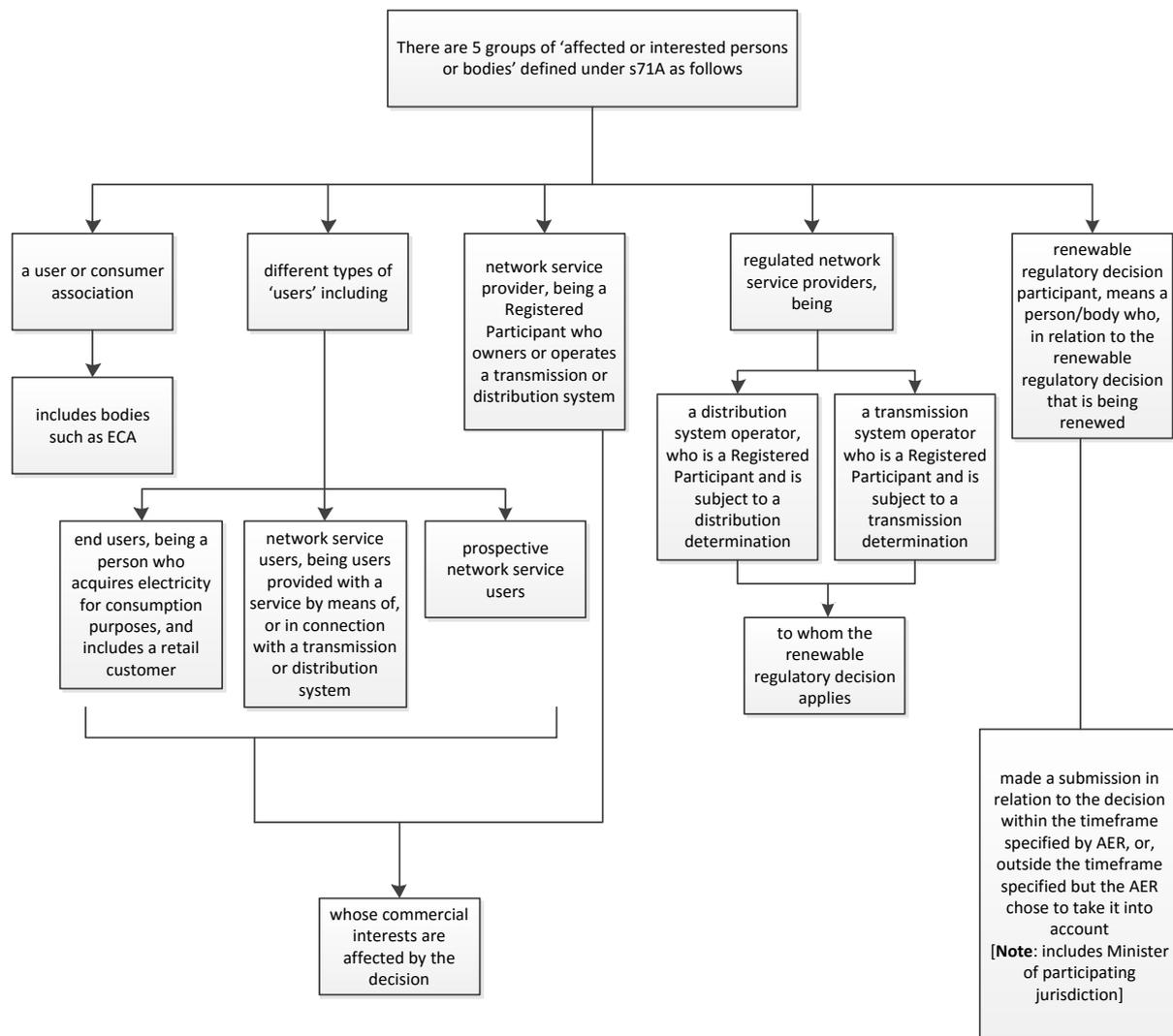
10.2 a decision to disclose information made by AEMO under NEL s 54H and NGL s 91GH.

Limited Merits Review – Type 1 and Type 2 LMR Decisions

11. For the most part, the same review processes will apply in respect of **both** Type 1 and Type 2 LMR Decisions. However, there are some instances where the review process will differ.
12. We have set out the review process by reference to the sections of the NEL (with the comparable sections of the NGL provided as footnotes).
13. Where there is any difference in the review process between Type 1 and Type 2 LMR Decisions, this difference will be specified using the defined terms.

Who may apply for review?

14. An **affected or interested person or body** may **seek leave** to apply to the Tribunal for review of a **reviewable regulatory decision**: NEL s 71B(1)¹.
15. 'Affected or interested persons or bodies' are defined to include a number of categories, illustrated below²:



¹ NGL s 245(1)

² NGL s 244 provides for the definition of 'affected or interested person or body'. The definition also includes (in addition to the persons outlined in the table above): a person whose interests are affected by a reviewable regulatory decision that is (i) a coverage determination, or (ii) a 15-year no coverage determination, or (iii) a coverage revocation determination.

Who may intervene in a review conducted by the Tribunal?

30. Parties who have not applied for a review themselves may nevertheless seek to **intervene** in a review proceeding that has been commenced by somebody else.
31. Differing rules will apply to different classes of intervener, as summarised in the table below:

Class of intervener	Basis of intervention
Regulated NSP to whom the reviewable regulatory decision applies	May intervene as of right; no need for leave: NEL s 71J ¹³
Minister of a participating jurisdiction	May intervene as of right; no need for leave: NEL s 71J ¹⁴
Reviewable regulatory decision process participant	Tribunal must grant leave on application: NEL s 71K ¹⁵
User or consumer intervener	<p>Tribunal may grant leave to intervene, including (non-exhaustively) if it is satisfied any of the following criteria are met: (NEL s 71L¹⁶)</p> <ul style="list-style-type: none"> • The proposed intervener raises a matter that will not otherwise be raised by the AER or the applicant; • The material or submissions that the proposed intervener wishes to present are likely to better presented by the proposed intervener, rather than another party; • The interests of the proposed intervener are affected by the decision under review – critically for consumer bodies, the interests of a user or consumer intervener are taken to be affected if the decision being reviewed relates to an object or purpose of the user or consumer intervener.

What grounds can be raised by an intervener?

32. An intervener in the Tribunal is not limited by the grounds of review that are raised by the applicant, and may raise additional grounds for review: NEL s 71M(1)¹⁷.
33. However, if the intervener raises a new ground of review it must show that a determination made by the Tribunal to either vary, or set aside, the decision under review on that ground would, or would be likely to, result in a materially preferable NEO decision: NEL s 71M(1a)¹⁸.

¹³ NGL s 253
¹⁴ NGL s 253
¹⁵ NGL s 254
¹⁶ NGL s 255
¹⁷ NGL s 256(1)
¹⁸ NGL s 256(1a)

Matters that may be raised in a review

34. There are some differences between Type 1 and Type 2 LMR Decisions, set out below.

Type 1 LMR Decisions

35. Under NEL s 71O the AER may –

35.1 respond to any matter raised by the applicant or intervener; and

35.2 raise any other matter that relates to –

35.2.1 a ground for review; or

35.2.2 a matter raised in support of a ground for review; or

35.2.3 a matter relevant to the issues to be considered under section 71P(2a) and (2b).

36. In a review, a regulated network service provider¹⁹ –

36.1 to whom the decision being reviewed applies; or

36.2 whose commercial interests are materially affected by the decision,

may not raise in relation to the issue of whether a ground for review exists, any matter that was not raised and maintained by the provider in submissions to the AER before the decision was made.

37. An **affected or interested person or body** (other than a regulated network service provider as indicated above), **may not raise** in relation to the issue of whether a ground for review exists, any matter that was not raised and maintained by the provider in submissions to the AER before the decision was made.

38. Subject to the restrictions indicated above, the applicant or an intervener raising a new ground **may raise** any matter relevant to the matters to be determined under NEL s 71P(2a) and (2b) – see below for more information regarding those provisions.

Type 2 LMR Decisions

39. Under the NGL, a separate process applies to Type 2 LMR Decisions, as follows:

39.1 the original decision maker²⁰ whose decision is being reviewed may raise:

39.1.1 a matter not raised by the applicant or intervener that relates to a ground for review;

39.1.2 a matter raised in support of a ground for review that is raised by the applicant or an intervener;

39.1.3 a possible outcome or effect that it considers may occur as a consequence of the Tribunal making a determination setting aside or varying the decision.

¹⁹ Under the NGL, this section applies to 'covered pipeline service providers'

²⁰ Under the NGL, 'original decision maker' means relevant Minister, the Commonwealth Minister, the AER or the NCC.

The matters to be considered by the Tribunal in making determination

51. Subject to the overall operation of NEL s 71R, the Tribunal must not consider any matter other than **review related matter**: NEL s 71R(1)(a)

NEL s 71R(6) – **review related matters** means

- (a) the application for review; and
- (b) a notice raising new grounds for review filed by an intervener; and
- (c) the submission made to the Tribunal by the parties to the review; and
- (d) decision related matter under section 28ZJ (relating to records of reviewable regulatory decisions
- (e) any other matter properly before the Tribunal in connection with the relevant proceedings.

52. While NGL s 261(1)(a) mirrors NEL s 71R(1)(a) outlined above, the meaning of ‘review related matter’ under the NGL is more expansive, as follows –

NGL s 261(6) – **review related matter** means

- (a) the application for review; and
- (b) a notice raising new grounds for review filed by an intervener; and
- (c) the submission made to the Tribunal by the parties to the review; and
- (d) –
 - (i) in the case of a designated reviewable regulatory decision – decision related matter under section 68C; or
 - (ii) in any other case –
 - (A) the reviewable regulatory decision and the written record of it and any written reasons for it; and
 - (B) any written submissions made to the original decision maker before the reviewable regulatory decision was made or the NCC before the making of an NCC recommendation;
 - (C) any reports and materials relied on by the original decision maker in making the reviewable regulatory decision or the NCC in making an NCC recommendation; and
 - (D) any draft of the reviewable regulatory decision or NCC recommendation;
 - (E) any submissions relied on the draft or final of the reviewable regulatory decision considered by the original decision maker or the draft or final NCC recommendation considered by the NCC
- (e) any other matter properly before the Tribunal in connection with the relevant proceedings.

Type 1 LMR Decisions

53. The Tribunal is required to undertake a consultation process, and may also consider certain new information as set out in the table below:

Consultation: NEL s 71R(1)(b) ²⁶	New information: NEL s 71R(3), (4) and (5) ²⁷	Obtaining information: NEL s 71R(5a) ²⁸
<p>1) Tribunal must take reasonable steps to consult with:</p> <ul style="list-style-type: none"> • network service providers or prospective network service users; • any user or consumer association or user or consumer interest groups, <p>that the Tribunal considers have an interest in the determination (other than a user or consumer interest group that is a party to the review.</p> <p>2) The Tribunal may consult with the parties described at 1) above in such manner as it thinks appropriate.</p> <p>3) Any matter arising out of the consultation can be considered by the Tribunal in addition to the review related matter.</p>	<p>1) This section will apply if, in a review, the Tribunal is of the opinion that a ground for review has been made out.</p> <p>2) The Tribunal may on application by a party to the review, allow new information or material to be submitted if the party can establish to the satisfaction of the Tribunal that the new information or material:</p> <ul style="list-style-type: none"> • was publicly available or known to be available to the AER when it was make the reviewable regulatory decision; or • would assist the Tribunal on any aspect of the determination; and • was not unreasonably withheld from the AET when it was making the reviewable regulatory decision, <p>and was, in the opinion of the Tribunal, information or material that the AER would reasonably have been expected to have considered when making the reviewable regulatory decision.</p> <p>3) ‘unreasonably withheld’:</p> <p>information or material not provided to the AER following a request for that information or material by it under the NEL or the NER is taken to have been unreasonably withheld</p> <p>the definition of ‘unreasonably withheld’ above does not limit what may constitute an unreasonably withholding of information or material.</p>	<p>1) This section will apply if in a review the Tribunal is of the view that a ground for review has been made out and that it would assist the Tribunal to obtain information or material under this subsection to determine whether a materially preferably NEO decision exists.</p> <p>2) The Tribunal may, on its own initiative, take steps to obtain information or material – this includes seeking evidence from such persons as it thinks fit</p> <p>3) An action by a person taken in response to steps taken by the Tribunal to obtain information must be limited to considering decision related material under s 28ZJ</p>

²⁶ NGL s 261(1)(b)

²⁷ NGL s 261(3a), (4) and (5)

²⁸ NGL s 261(3b) however under the NGL ‘decision related material’ is defined in s 68C

54. In addition, in the case of a **designated reviewable regulatory decision** under the NGL that is a –

54.1 decision to **make a full access arrangement decision**,

54.2 in place of an access arrangement **that the AER did not approve**,

the Tribunal **may** consider the reasons of the AER for its decision not to approve the access arrangement (NGL s 261(3d)).

Type 2 LMR Decisions

55. For a determination regarding a Type 2 LMR Decision, if the Tribunal is of the view that a ground of review has been made out, the Tribunal **may** allow **new information or material** to be submitted if the new information or material:

55.1 **would assist** it on any aspect of the determination to be made; and

55.2 was **not unreasonably withheld** from –

(a) in all cases, the original decision maker when the decision maker was making the decision; and

(b) in the case of a decision that is a **Ministerial coverage decision**, the NCC when it was making the NCC recommendation related to the Ministerial coverage decision.

Costs in a limited merits review

56. NEL s 71X provides a general power to the Tribunal to order that a party pay all or a specified part of the costs of another party to the review: NEL s 71X(1)²⁹.
57. Notwithstanding this general power, the remaining part of s 71X provides some restrictions on the Tribunal's power to order costs against certain parties to a review, summarised in the table below:

<p>AER</p>	<p>NEL s 71X(2) Must not make an order requiring the AER to pay the costs of another party to the review unless the Tribunal considers that the AER has conducted its case without due regard to:</p> <ul style="list-style-type: none"> the costs that would have to be incurred by another party to the review as a result of that conduct; or the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct; or the submissions or arguments made to the Tribunal by another party³⁰
<p>small/medium user or consumer intervener</p>	<p>NEL s 71X(2)(a) and (b) Must not make an order requiring the intervener to pay the costs of another party to the review unless the Tribunal considers that the intervener has conducted its case without due regard to:</p> <ul style="list-style-type: none"> the costs that would have to be incurred by another party to the review as a result of that conduct; or the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct³¹
<p>user/consumer intervener (that is not small/medium)</p>	<p>NEL s 71X(3) May make an order requiring the intervener to pay the costs of another party to the review if the Tribunal considers that the intervener has conducted its case without due regard to:</p> <ul style="list-style-type: none"> the costs that would have to be incurred by another party to the review as a result of that conduct; or the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct; or the submissions or arguments made to the Tribunal by another party³²

58. In respect of Type 1 LMR Decision, an order for costs against a small/medium consumer user in favour of another party in a review must be limited to the **payment of the reasonable administrative costs** (as determined by the Tribunal) of the other party: NEL s 71Y(2).
59. NEL s 71YA further provides that network service providers must not:
- 59.1 include any costs ordered by the Tribunal under a review as part of their capital expenditure or operating expenditure; or
- 59.2 recover from end users or seek a pass through of any expenditure or costs ordered by the Tribunal under a review.

²⁹ NGL s 268(1)

³⁰ NGL s 268(2), note: under the NGL consideration of the submissions or arguments made to the Tribunal by another party will only be relevant in the case of the **AER** in a review of a **designated reviewable regulatory decision**.

³¹ NGL s 268(2)(a) and (b)

³² NGL s 268(3)

Review of Information Disclosure Decisions

Application for review

60. A person whose interests are adversely affected by an **information disclosure decision** may apply to the Tribunal for a review of the decision: NEL s 71S(1)³³

NEL s71A – **information disclosure decision** means –

- (a) a decision to disclose information made by the AER under section 28ZB; or
(b) a decision to disclose information made by AEMO under section 54H.

Note: sections 28ZB and 54H authorise the disclosure of information by the AER and AEMO, respectively, in circumstances where the detriment does not outweigh the public benefit.

61. An application may only be made on the ground that –
- 61.1 the decision was **not made in accordance with the law**; or
- 61.2 the decision is **unreasonable** having regard to all the relevant circumstances.
62. An application must be made in the form and manner determined by the Tribunal, and an application must be lodged no later than 5 business days after the date of the last notice given under sections 28ZB or 54H. (NEL s 71S(2) and (4)).
63. On the application of a party to a review under this section, the Tribunal may conduct the review **in the absence of the public**: NEL s 71T³⁴
64. The member of the Tribunal presiding over the review may require the AER or AEMO (as the case requires) to give information, to make a report or to give other assistance for the purposes of the review: NEL s 71W³⁵.

Determination of the Tribunal

65. Under NEL s 71U³⁶, on receipt of an application under section 71S the Tribunal must make a determination in respect of the application. The Tribunal must only make a determination –
- 65.1 **affirming** the information disclosure decision; or
- 65.2 **forbidding disclosure** by the AER or AEMO of the information or document to which the information disclosure decision relates; or
- 65.3 **restrict** the intended disclosure by the AER or AEMO in a manner specified in the determination.
66. When making a determination **affirming** the decision, the Tribunal may perform all the functions and exercise all the powers of the AER or AEMO (as the case requires) under the NEL or NER.
67. A determination made affirming, forbidding disclosure, or restricting disclosure is taken to be a decision of the AER or AEMO (as the case requires).

³³ NGL s 263

³⁴ NGL s 264

³⁵ NGL s 267

³⁶ NGL s 265

The Rule-making Process

91. There are four stages in the Rule-making process carried out by the AEMC:
- 91.1 **Initial consideration:** see NEL s 94⁵⁰;
 - 91.2 **Consultation:** see NEL s 95⁵¹;
 - 91.3 **Draft Rule determination:** see NEL s 99⁵²;
 - 91.4 **Final Rule determination:** see NEL102⁵³.
92. This Handbook does not propose to cover the process in detail, but will cover each stage briefly below.

Stage 1: Initial consideration

93. Once the AEMC receives a request for a Rule, it must promptly consider whether:
- 93.1 the request appears to contain the **information required by the Regulations**;
 - 93.2 the request appears not to be **misconceived** or **lacking in substance**;
 - 93.3 the **subject matter** is a matter with respect to which the AEMC can make a Rule;
 - 93.4 the subject matter of the request does not to relate to the subject matter of:
 - 93.4.1 a Rule made by the AEMC in the 12 months immediately before the date of receipt of the requested Rule;
 - 93.4.2 a request for the making of a Rule not proceeded with in the 12 months immediately before the date of the active request; or
 - 93.4.3 a request for the making of a Rule in respect of which the AEMC is already taking action under the Rule making process.
94. If the AEMC considers that, having regard the above matters, it should not take any action in respect of the Rule change request, it may decide not to do so. In that case, the AEMC must provide reasons for its decision.

⁵⁰ NGL s 301

⁵¹ NGL s 303

⁵² NGL s 308

⁵³ NGL s 311

CHAPTER 6: JURISDICTIONAL ARRANGEMENTS

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CHAPTER 6: JURISDICTIONAL ARRANGEMENTS

1. This Chapter will provide an overview of the jurisdictional arrangements relating to gas and electricity in each state and territory.
2. It will indicate the application of the major components of the National Energy Regime in respect of each jurisdiction, but will not deal with the more granular jurisdictional derogations or modifications that may apply to specific provisions in the Law or the Rules. The local legislation should be consulted for further information about state and territory-specific application of the NEL, NGL and NECF.

A. Gas and Electricity

3. As described in Chapter 1, the participating state and territory jurisdictions have each introduced application legislation to give effect to the National Electricity Law and National Gas Law (which are themselves enacted by the South Australian Parliament).
4. The relevant legislation in each jurisdiction is summarised in the table below:

State / Territory	National Gas Law	National Electricity Law
Leading legislation		
SA	<i>National Gas (South Australia) Act 2008</i>	<i>National Electricity (South Australia) Act 1996</i>
Application legislation		
VIC	<i>National Gas (Victoria) Act 2008</i>	<i>National Electricity (Victoria) Act 2005</i>
NSW	<i>National Gas (New South Wales) Act 2008</i>	<i>National Electricity (New South Wales) Act 1997</i>
ACT	<i>National Gas (ACT) Act 2008</i>	<i>Electricity (National Scheme) Act 1997</i>
TAS	<i>National Gas (Tasmania) Act 2008</i>	<i>Electricity – National Scheme (Tasmania) Act 1999</i>
QLD	<i>National Gas (Queensland) Act 2008</i>	<i>Electricity – National Scheme (Queensland) Act 1997</i>
NT	<i>National Gas (Northern Territory) Act 2008</i>	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*</i> * the Northern Territory is in the process of transitioning over to the NEL in phases, with Phase 1 beginning on 1 July 2015, Phase 2 beginning on 1 July 2016 and Phase 3 beginning on 1 July 2019.
WA	<i>National Gas Access (WA) Act 2009*</i> * Western Australia has adopted a variant of the National Gas Law, with substantial amendments. One important distinction is that access to gas pipelines is regulated by the locally specific Economic Regulation Authority (WA), and not by the AER.	<i>N/A*</i> * Electricity regulation in WA is currently governed by the <i>Electricity Industry Act 2004</i> , which does not form part of the National Energy Regime. As with gas, electricity is regulated by a local authority, the Economic Regulation Authority (WA). The <i>National Electricity (Western Australia) Bill 2016</i> is currently before the WA Parliament, and (if passed) would bring WA within the national framework.

5. The next two tables provide an overview of the jurisdictional arrangements in each state and territory on the following issues relating to gas and electricity:

- 5.1 **market regulation** – who operates the gas and electricity markets in each state/territory, and how do they do this?
- 5.2 **access regulation** – who is responsible for the economic regulation of the gas and electricity industries in each state and territory.

Jurisdictional arrangements relating to the National Gas Law

State	Market Regulation	Access Regulation
VIC	AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> the declared wholesale gas market; and a natural gas services bulletin board 	Regulated by the AER
NSW	AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> the short term trading market; and a natural gas services bulletin board 	Regulated by the AER
ACT	AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> the short term trading market; and a natural gas services bulletin board 	Regulated by the AER
QLD	AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> the short term trading market; gas supply hubs; and a natural gas services bulletin board 	Regulated by the AER
SA	AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> the short term trading market; gas supply hubs; and a natural gas services bulletin board 	Regulated by the AER
TAS	AEMO operates the natural gas services bulletin board .	Regulated by the AER
NT	As the Northern Territory has adopted the NGL, it follows that its gas industry may be subject to regulation by AEMO. However, there is not presently any regulated market in existence.	Regulated by the AER
WA	NGL applies with substantial amendments. AEMO operates the Western Australian gas bulletin board, but there is not presently a regulated wholesale market.	NGL applies with substantial amendments. Regulated by the ERA (WA).

Jurisdictional arrangements relating to the electricity industry

State	Market Regulation	Access Regulation
VIC	AEMO operates the National Electricity Market	Regulated by the AER
NSW	AEMO operates the National Electricity Market	Regulated by the AER
ACT	AEMO operates the National Electricity Market	Regulated by the AER
QLD	AEMO operates the National Electricity Market	Regulated by the AER
SA	AEMO operates the National Electricity Market	Regulated by the AER
TAS	AEMO operates the National Electricity Market	Regulated by the AER
NT	<p>The Northern Territory is not connected to the National Electricity Market (NEM)*.</p> <p>The NT Government is undertaking a suite of reforms to the electricity industry to promote efficiency and competition. Part of the reforms includes the introduction of the Interim Northern Territory Electricity Market, which commenced in the Darwin-Katherine region in May 2015. It is operated by a Market Operator, which manages the wholesale exchange of electricity (in essence, playing a similar role to AEMO).</p> <p>The Power and Water Corporation in NT also has responsibility for planning, building and maintaining reliable electricity networks. It also distributes electricity across NT.</p> <p>(*the Second Reading speech of the <i>National Electricity (Northern Territory) (National Uniform Legislation) Bill 2015</i> provides that NT will not adopt the NEL and NER insofar as AEMO's role as market operator is concerned, as it is not physically connected to the NEM)</p>	Regulated by the AER; in transition to full application of the NEL
WA	NEL does not apply, but AEMO operates the Wholesale Electricity Market (WA)	Regulated by the ERA (WA), not currently subject to the NEL. Legislation that would bring Western Australia within the NEL is currently before the WA Parliament.

B. National Energy Customer Framework (NECF)

6. The only states and territories to have adopted the NECF in some form are New South Wales, the ACT, Queensland and Tasmania. The remaining jurisdictions have separate, industry specific frameworks that apply instead.
7. An overview of the states and territories where the NECF applies is provided in the table below.
8. A very detailed spreadsheet indicating the application of the NECF, including specific jurisdictional derogations and modifications, can be found on the AEMC website at the following link: <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF/15-14050-v2-Diagram-interaction-betw~-NECF-and-jur.aspx>

Jurisdictional application of the NECF

State	National Energy Customer Framework (NECF)
Lead legislation	
SA	<i>National Energy Retail Law (South Australia) Act 2011</i>
Application in remaining states and territories	
VIC	N/A
NSW	<i>National Energy Retail Law (Adoption) Act 2012</i>
ACT	<i>National Energy Retail Law (ACT) Act 2012</i>
QLD	<i>National Energy Retail Law (Queensland) Act 2014</i>
TAS	<i>National Energy Retail Law (Tasmania) Act 2012</i>
NT	N/A
WA	N/A