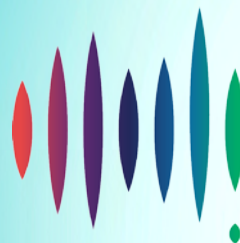




Maddocks

National Energy Regulation Handbook



**ENERGY
CONSUMERS
AUSTRALIA**

NATIONAL ENERGY REGULATION HANDBOOK

Foreword

Chapter 1:	Overview of the National Energy Regime	1
Chapter 2:	The National Gas Regime	24
Chapter 3:	The National Electricity Regime	72
Chapter 4:	The National Energy Customer Framework	141
Chapter 5:	The Tribunal, the Courts and the AEMC	207
Chapter 6:	Specific Jurisdictional Arrangements	231

Foreword

From Energy Consumers Australia

In 2004, the Council of Australian Governments (COAG) First Ministers made the Australian Energy Market Agreement to create the National Energy Market. The overarching objective of that agreement is the promotion of the long term interest of consumers with regard to price, quality and reliability of electricity and gas services.

The agreement also provided for the creation of three market institutions. These are the Australian Energy Market Commission (AEMC), which is responsible for rule making and market development advice, the Australian Energy Market Operator (AEMO) and the Australian Energy Regulator (AER). Separating the roles of governments, the rule maker and development adviser, the operator and the regulator was a key market design choice in the development of national energy markets.

This handbook is designed to be a comprehensive overview of the rules governing the supply of energy in Australia. It has been prepared by experts in energy law and covers, at a high level, every significant aspect of the legal framework governing the production, transportation and sale of electricity and gas in the areas covered by the national regulatory regime. Some information is also provided about Western Australia and the Northern Territory.

The National Electricity and Gas Rules are amended multiple times each year through the AEMC's processes. It will not be possible to update this handbook with every change, so if you are interested in a particular area I encourage you to consult the rules or laws themselves.

We will, however, ensure that this handbook continues to fulfil its intended purpose – to help energy consumers, consumer advocates and those who work in the industry and sector to better understand the governance of energy markets in Australia.

For those seeking to drive improvements in how consumers receive energy services, this handbook will only be the beginning. There is a wealth of further material about our shared energy challenges and opportunities on the Energy Consumers Australia website.

I hope you find this handbook to be a useful resource. I am confident it will provide readers with an invaluable foundation in a complicated and complex area and help us all to more effectively work to promote the long term interests of energy consumers.

Rosemary Sinclair

CEO

Energy Consumers Australia

rosemary.sinclair@energyconsumersaustralia.com.au

02 9220 5500

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.

Matthew Peckham
Special Counsel
Maddocks Lawyers

Robert Gregory
Partner
Maddocks Lawyers

Contributors: Dariel De Sousa, Katie Amanatidis, Rafael Perez, Stephanie McLennan



This work is subject to copyright owned by Maddocks and is licensed under the terms of the Creative Commons Attribution 4.0 International license: <https://creativecommons.org/licenses/by/4.0/legalcode>

CHAPTER 1: OVERVIEW OF THE NATIONAL ENERGY REGIME

A	Background and Structure of the Regime	2
	Objectives and means of regulation	2
	Interaction with the supply chain	4
	Structure of the legislation	4
	Rules and Procedures	5
B	Common Concepts	6
	The National Gas, Electricity and Energy Retail Objectives	6
	The Form of Regulation Factors	7
	The Revenue and Pricing Principles	7
C	The Principal Regulatory Bodies	8
	The Australian Energy Regulator	8
	The Australian Energy Market Commission	8
	The Australian Energy Market Operator	9
	The National Competition Council	9
	Ministerial Council on Energy, and individual Ministers	9
	The Australian Competition Tribunal	9
	The Federal Court of Australia	9
	The Energy Ombudsmen	9
	Energy Consumers Australia	9
D	The National Gas Regime	10
	Coverage, classification and access to gas pipelines	11
	Regulation of wholesale gas markets	12
	Retail regulation – gas	14
E	The National Electricity Regime	15
	Network security and planning	16
	Classification and access to distribution and transmission networks	17
	Regulation of the National Electricity Market and metering requirements	18
	Retail regulation – electricity	20
F	The National Energy Customer Framework	21
	Retail and customer connection contracts	21
	Compensation and complaint management	22
	Authorisation regime	22
	Retailer of Last Resort scheme	23

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.

B Common Concepts

21. The overlapping nature of the three core components in the National Energy Regime is reinforced by common concepts that apply to each.
22. The most important of these are:
 - 22.1 the **Objectives** – these influence the interpretation of the NER more generally; and
 - 22.2 the **Form of Regulation Factors** – these influence the form (and extent) of the regulation to which gas pipelines or electricity networks will be subjected;
 - 22.3 the **Revenue and Pricing Principles** – these influence the maximum price or revenue to be derived from infrastructure which is subject to regulation.
23. Although expressed in terms which take into account the differences in subject matter between gas, electricity and the NECF, these common concepts are broadly as set out below.

The National Gas, Electricity and Energy Retail Objectives

24. Each of the National Gas Law, the National Electricity Law, and the National Energy Retail Law² specify a common statutory objective, which influences the manner in which the Laws are to be interpreted and the principal regulatory bodies are to carry out their functions.

The Objectives

The objective of this Law is to promote **efficient investment in, and efficient operation and use** of...

[natural gas services / electricity services / energy services]

... **for the long term interests of consumers**...

of [natural gas / electricity / energy]

... with respect to the **price, quality, safety, reliability and security of supply** of ...

[natural gas / electricity / energy].

In the case of the National Electricity Law, the objectives are also with respect to the **reliability, safety and security of the national electricity system**.

² National Gas Law s23, National Electricity Law s7, National Energy Retail Law s13

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.

The Australian Energy Market Operator

31. AEMO's primary role under the NER is to operate the National Electricity Market (**NEM**) and the wholesale gas markets. Among other things, that role includes the registration of market participants, the making of Procedures to regulate the conduct of those markets, and the publishing of information to the market.

The National Competition Council

32. The National Competition Council is responsible for making recommendations to the relevant Minister regarding the coverage (ie regulation) of gas pipelines under the National Gas Law, and the classification and extent of regulation applicable to covered pipelines.

Ministerial Council on Energy, and individual Ministers

33. The Ministerial Council may (but has not yet done so) publish policy principles under each of the National Electricity, Gas and Energy Retail Laws, which would apply to guide the AEMC in the exercise of its Rule-making powers.
34. Among other things, individual jurisdictional or Commonwealth Ministers are responsible for determining (after taking into account the recommendation made by the NCC) whether a gas pipeline is to be covered (ie regulated) under the National Gas Law, the classification of the pipelines and the extent of regulation applicable.

The Australian Competition Tribunal

35. An person who has been affected by a reviewable regulatory decision (eg an access determination by the AER) may apply to the Tribunal for a review of that decision. This process is known as **limited merits review**.

The Federal Court of Australia

36. A person who is aggrieved by a decision of the Tribunal may apply further for judicial review by the Federal Court of Australia – applications for judicial review are decided upon narrow grounds, primarily concerning legal and procedural correctness.

The Energy Ombudsmen

37. The relevant Energy Ombudsman (or equivalent) in each of the participating jurisdictions may exercise functions under the NECF for receiving, facilitating and resolving small customer complaints and disputes, including complaints in relation to the no-fault small compensation claims regime.

Energy Consumers Australia

38. Energy Consumers Australia Ltd (**ECA**) is a consumer advocacy body established in January 2015 as an initiative of the COAG Energy Council. Its statutory object is:

To promote the long term interests of Consumers of Energy with respect to the price, quality, safety, reliability and security of supply of Energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on National Energy Market matters of strategic importance or material consequence for Energy Consumers, in particular for Residential Customers and Small Business Customers.

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.

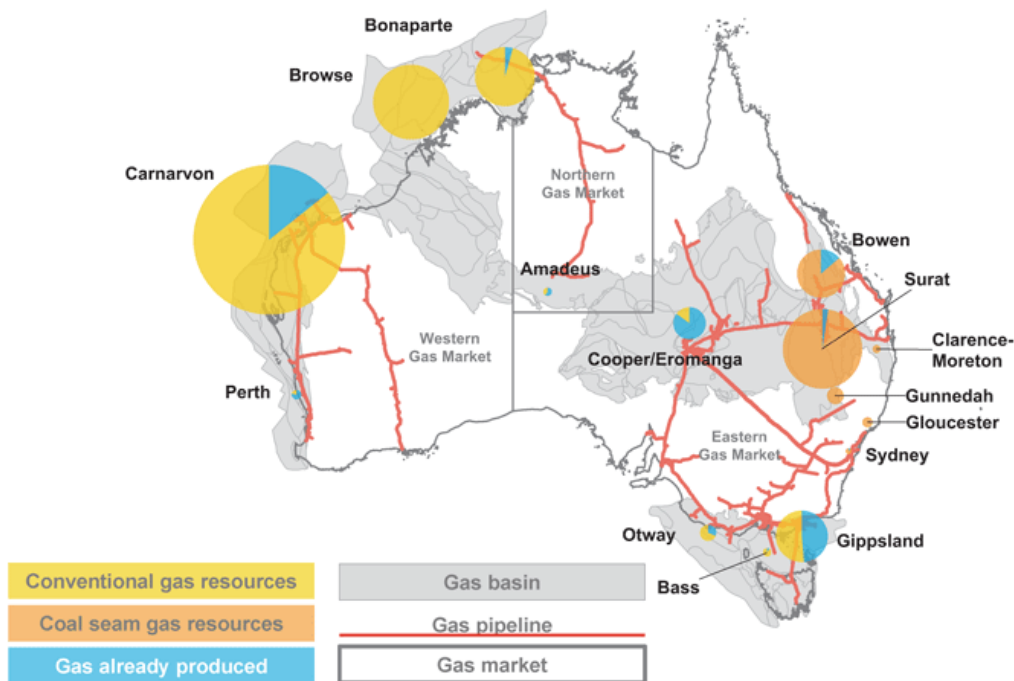


Figure 1 source: Parliamentary Library

- 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

Classification and access to distribution and transmission networks

66. The regime governing access to distribution and transmission networks is primarily contained in Chapters 6 and 6A of the National Electricity Rules, dealing with distribution and transmission networks respectively.
67. In respect of **distribution networks**, Chapter 6 of the Rules provides that the AER **must** make one or more **distribution determinations** for each Distribution Network Services Provider (**DNSP**). At a conceptual level, a distribution determination made by the AER under the National Electricity Regime serves a similar function to the access arrangements approved by the AER under the National Gas Regime.
68. The effect of a distribution determination is to regulate access to a distribution service for a **regulatory control period** of 5 or more years.
69. In the course of making a distribution determination, the AER must determine:
 - 69.1 **whether to classify** the distribution service – if not classified, the distribution will be effectively unregulated;
 - 69.2 if classified, whether to classify the distribution service as a **direct control service** or a **negotiated distribution** service – in the former case, the result is that the distribution determination must contain a **control mechanism** for the regulation of price and/or revenue;
 - 69.3 if the distribution service is classified as a direct control service, whether to classify that service as a **standard control service** or an **alternative control service** – in the former case, the control mechanism must be determined using a 'building block calculation' prescribed in the Rules, whereas in the latter case the control mechanism may be formulated on an alternative basis.
70. The classification of the distribution services into the categories specified above will impact on the terms and obligations that are contained in the distribution determination, and under the Rules more generally.
71. Chapter 6 of the Rules provides further that **access disputes** in respect of distribution determinations may be referred for hearing and determination by the AER.
72. In respect of **transmission networks**, Chapter 6A of the Rules provides that the AER must make one or more **transmission determinations** for each Transmission Network Service Provider (**TNSP**) in respect of **prescribed transmission services** and **negotiated transmission services** – the former are subject to more direct regulation than the latter.
73. A transmission determination must include:
 - 73.1 a **revenue determination**, regulating the revenue to be derived in respect of any prescribed transmission services;
 - 73.2 a **negotiating framework** determination and **Negotiated Transmission Service Criteria**, relating to the provision of negotiated transmission services; and
 - 73.3 a **pricing methodology determination**.
74. Chapter 6A provides that access disputes in respect of transmission determinations may be referred to the AER. However, in contrast to Chapter 6, in the case of transmission determinations the AER will oversee a process by which the access dispute is determined by a private commercial arbitrator, and not by the AER itself.

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.

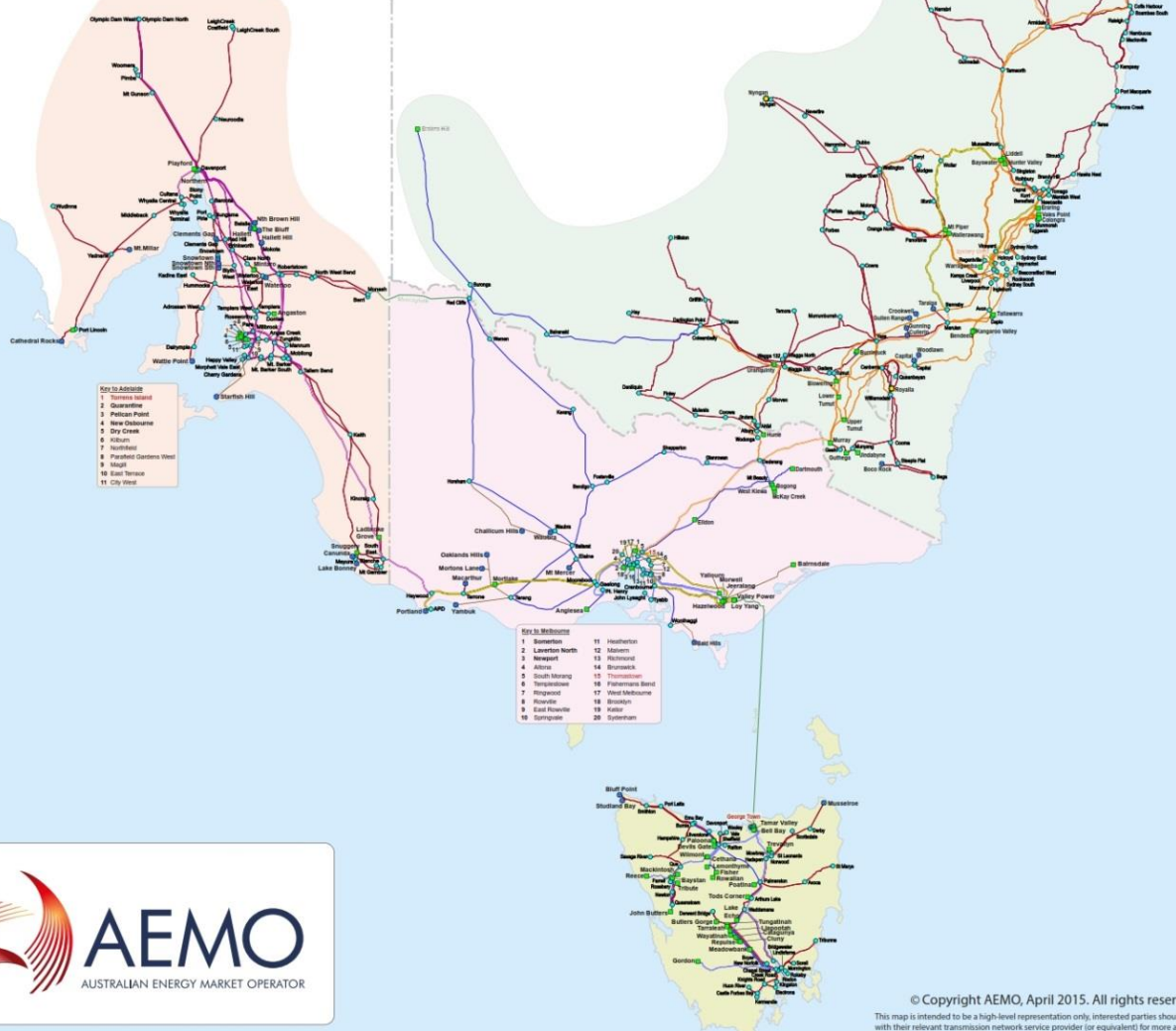
REGIONAL BOUNDARIES for the NATIONAL ELECTRICITY MARKET

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



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.

F The National Energy Customer Framework

84. The NECF is focused on protecting retail consumers, and deals with the following issues:
- 84.1 **retail energy contracts** – regulating the relationships:
 - 84.1.1 between **retailers and small customers**; and
 - 84.1.2 between **distributors and customers**;
 - 84.2 **compensation and complaint management**, including:
 - 84.2.1 small customer complaints and dispute resolution;
 - 84.2.2 a regime for making and determining small compensation claims;
 - 84.3 a **requirement that energy retailers be authorised** by the AER; and
 - 84.4 the establishment of a **Retailer of Last Resort** scheme, to deal with circumstances where an energy retailer fails, or loses the right to acquire or sell energy under the NER more broadly.
85. The NECF commenced in the ACT and Tasmania on 1 July 2012, South Australia on 1 February 2013, New South Wales on 1 July 2013 and Queensland on 1 July 2015. It does not currently apply to Victoria or the Northern Territory.

Retail and customer connection contracts

86. Part 2 of the National Energy Retail Law regulates the contractual arrangements between **retailers** and **small customers**, including both residential customers and business customers who consume energy below a specified upper threshold.
87. Small customers may choose either a **standard retail contract**, with largely prescribed terms and conditions that cannot be altered by the retailer, or a more flexible **market retail contract** - subject to complying with minimum terms and conditions, the market retail contract may change from one retailer to another. Model terms and conditions for standard retail contracts are contained in Schedule 1 of the National Energy Retail Rules.
88. Among other things, Part 2 of the National Energy Retail Law also provides for:
 - 88.1 the management of customer hardship issues, including payment plans and debt recovery;
 - 88.2 disclosure and other obligations in respect of energy marketing activities;
 - 88.3 the regulation of pre-payment meter systems; and
 - 88.4 the publication of Retail Pricing Information Guidelines and an online price comparator service by the AER.
89. Part 3 of the National Energy Retail Law regulates the relationships between **distributors** and **customers**, and provides for three types of customer connection contracts:
 - 89.1 **deemed standard connection contracts** – with largely prescribed terms and conditions, and primarily for small customers;
 - 89.2 **deemed AER approved standard connection contracts** – with terms and conditions to be approved by the AER, for large customers;

- 89.3 **negotiated connection contracts** – which may be entered into by large or small customers, subject to certain requirements under the National Gas Rules or the National Electricity Rules.
90. Model terms and conditions for deemed standard connection contracts are contained in Schedule 2 of the National Energy Retail Rules.

Compensation and complaint management

91. Part 4 of the National Energy Retail Law deals with **small customer complaints and dispute resolution**. This Part:
- 91.1 confers on the **energy ombudsmen** of each participating jurisdiction certain functions and powers for receiving, facilitating and resolving complaints and disputes;
 - 91.2 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**.
92. Part 7 of the National Energy Retail Law establishes a **no-fault small compensation claims regime** to enable small customers to make small claims for compensation from **distributors** who provide customer connections services to their premises. At present, the scope of this regime is limited to compensation for property damage.
93. Although claims are handled initially by the distributors themselves, small customers who are dissatisfied by the handling of their claim may lodge a complaint with the relevant energy ombudsman.

Authorisation regime

94. Part 5 of the National Energy Retail Law 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.
95. Applications for authorisation are made to the AER, which must consider the applicant's organisational and technical capacity, financial resources, and suitability to hold a retailer authorisation, as well as any submissions from the public. In addition to the process by which authorisation is granted, Part 5 also provides for the transfer or surrender of authorisations, and their revocation by the AER.
96. Part 5 also gives the AER power to exempt persons, or classes of persons, from the retailer authorisation requirement – this is intended to apply where requiring authorisation may not be appropriate.

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.

CHAPTER 2: THE NATIONAL GAS REGIME

A	Overview and Structure of the Legislation	25
B	Conceptual, administrative and general matters	27
	National Gas Objective and other key concepts.....	27
	Principal regulatory bodies	27
	Manner in which the AER must perform or exercise economic regulatory functions or powers ...	29
C	Access Regulation - Overview	31
D	Access Regulation – Coverage and Classification of Pipelines	32
	Application for pipeline coverage	32
	Stage 1: Application to the NCC	33
	Stage 2: Determination by the Minister	38
	Other matters	38
E	Access Regulation - Greenfields Pipeline Incentives	39
	15 year no-coverage determinations	39
	Price regulation exemptions	40
	Early termination	41
F	Access Regulation - requirements on covered pipelines	42
	General requirements for all covered pipelines	42
	Structural and operational separation requirements.....	43
	Full regulation and full access arrangements	44
	Price and revenue regulation	46
	Light regulation and limited access arrangements	46
	Overview: comparison between full v light regulation – requirements and obligations	48
G	Access Regulation – Access Disputes.....	49
H	Regulation of wholesale gas markets	50
	The Declared Wholesale Gas Market – Victoria.....	51
	The Short Term Trading Market - Victoria	55
I	Retail Regulation	57
	Gas connection services for retail customers.....	57
	Retail support obligations between distributors and retailers	62
J	ACCC Inquiry into the East Coast Gas Market (April 2016)	64
	Annexure 1 Standard Consultative Procedure.....	66
	Annexure 2 Expedited Consultative Procedure	70

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:

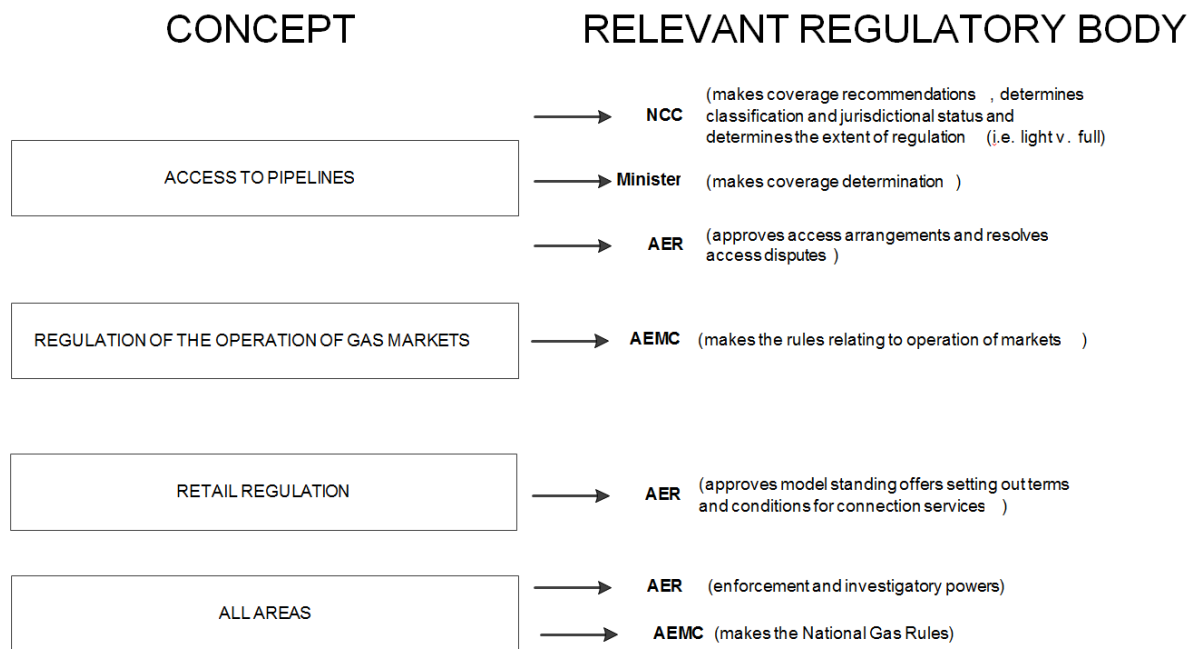
7.3.1 **Enforcement**: monitors compliance, investigates and may conduct proceedings in respect of breaches of the NGL and NGR;

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)

- For the purposes of subsections (2)(a)(ii), a reference to a “reference service” in the

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:

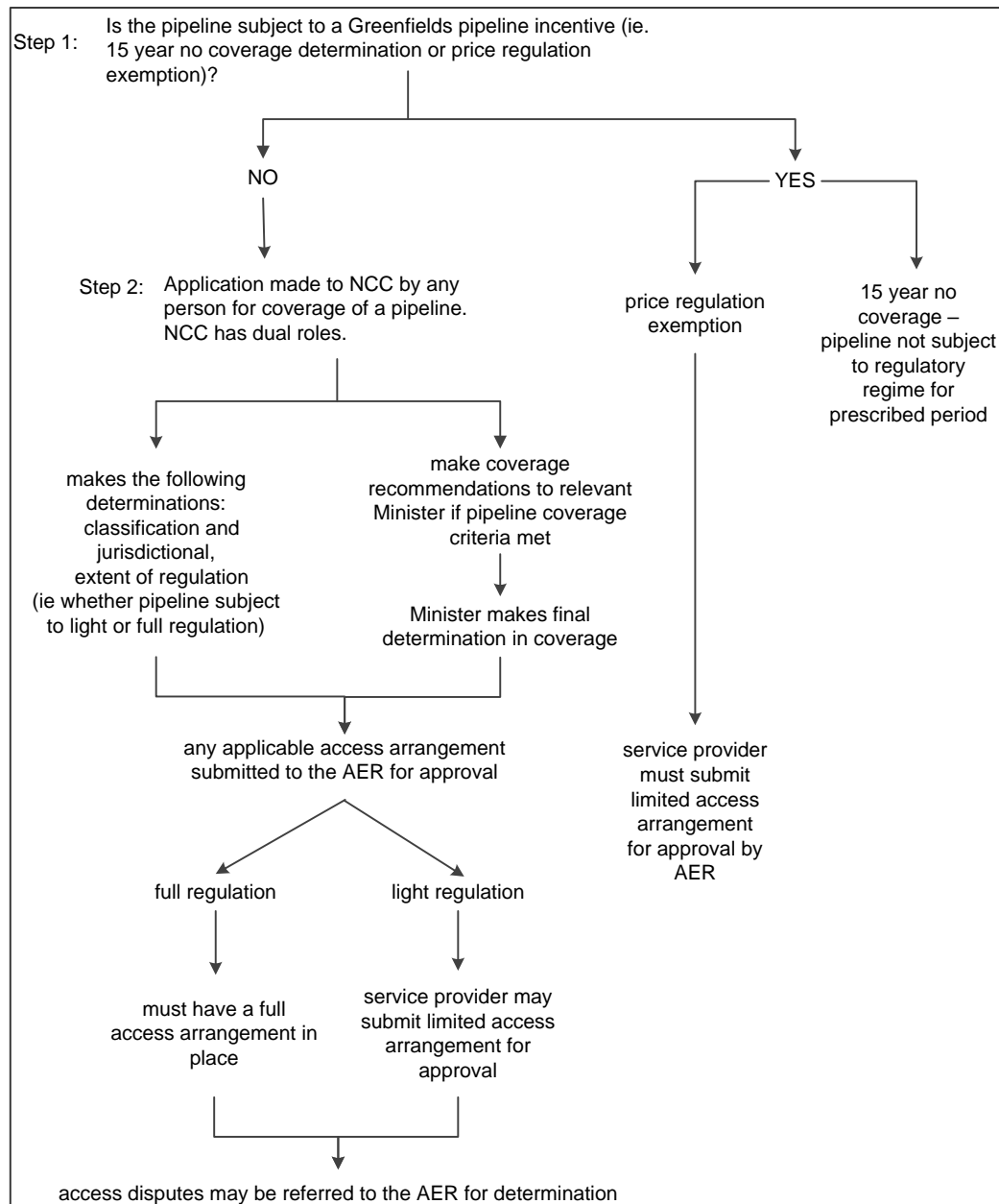
11.1 **Chapter 3:** Sets out the process for when a pipeline will be subject to regulation (known as 'coverage'), the classification of the pipeline (as transmission or distribution) and the level of regulation a pipeline will be subject to;

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:



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**.

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:

- (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**.

- page 33

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'

- ### Classification of a pipeline's jurisdictional status

-
- ```
graph LR; subgraph Transmission; A1[transmission pipeline] --> B1[cross-boundary]; A1 --> B2[wholly situated within a participating jurisdiction]; B1 --> C1[relevant Minister is the Commonwealth Minister]; B2 --> C2[relevant Minister is the designated Minister*]; end; subgraph Distribution; A2[distribution pipeline] --> B3[cross-boundary]; A2 --> B4[wholly situated within a participating jurisdiction]; B3 --> C3[the relevant Minister is the minister of the participating jurisdiction as determined by the NCC]; B4 --> C4[the relevant Minister is the designated Minister*]; end;
```
- \* designated Minister is defined in the governing Act of the jurisdiction

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

**s.14 Jurisdictional determination criteria – cross boundary distribution pipelines**

The pipeline jurisdictional determination criteria are –

- (a) whether **more gas is to be delivered** by a cross boundary distribution pipeline in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;
- (b) whether **more customers to be served** by a cross boundary distribution pipeline are resident in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;
- (c) whether **more of the network** for a cross boundary distribution pipeline is in the jurisdictional area of 1 participating jurisdiction than in the jurisdictional area of any other participating jurisdiction;
- (d) whether 1 participating jurisdiction has **greater prospects for growth** in the gas market served or to be served by a cross boundary distribution pipeline than any other participating jurisdiction;
- (e) whether the **regional economic benefits** from competition are likely to be greater for 1 participating jurisdiction than for any other participating jurisdiction.

Extent of Regulation

- 32. Finally, at the time an application is made for coverage of a pipeline under section 92, the NCC **must** also consider whether the pipeline should be subject to **light regulation** or **full regulation**: NGL s 109. This requirement does not apply to pipelines specifically designated under the Regulations or the local application Act of a specific jurisdiction.
- 33. Unless the NCC determines otherwise, a covered pipeline will be subject to full regulation.
- 34. The key difference between full regulation and light regulation concerns the means and extent of regulation concerning terms of access:
  - 34.1 In the case of **full regulation pipelines**, a CPSP must submit an access arrangement to the AER for approval. The access arrangement provides for **up-front price regulation**, as it must specify a reference tariff which has been approved by the AER.
  - 34.2 In contrast, **light regulation pipelines** do not require an access arrangement, although a limited access arrangement may still be submitted to the AER (to provide certainty regarding the terms of access on issues other than price).
- 35. Critically, light regulation does not exempt a CPSP from regulatory oversight of price altogether – rather, access disputes are dealt with through an arbitration process, under which the AER may determine access prices and other terms **upon referral of a dispute**.
- 36. The principles governing the making or revocation of a determination that a covered pipeline will be subject to light regulation are set out in NGL s 122 (extracted below).



**s 122 Principles governing light regulation determinations**

- (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**:
- (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 –
    - (i) the **likely costs** that may be incurred by an efficient services provider;
    - (ii) the **likely costs** that may be incurred by **efficient users / prospective users**; and
    - (iii) the **likely costs** of **end users**.
- (2) In doing so, the NCC –
- (a) **must** have regard to the **national gas objective**; and
  - (b) **must** have regard to the **form of regulation factors**; and
  - (c) **may** have regard to any **other matters it considers relevant**.

**S 16 Form of regulation factors**

The form of regulation factors are –

- (a) the presence and extent of any **barriers to entry** in a market for pipeline services;
- (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;
- (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;
- (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**;
- (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;
- (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 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.

*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);

- 50.2.3 **must** take into account any submissions or comments the relevant Minister has requested for the purposes of making the decision;
- 50.2.4 **may** take into account any relevant submissions and comments made to the NCC by the public (that the AER may receive under the standard consultative procedure)
- 50.3 **must** make a 15 year no-coverage determination where he/she is **not** satisfied that the pipeline criteria criteria are met;
- 50.4 **must not** make a 15-year no-coverage determination where he/she **is** satisfied that the pipeline coverage criteria are met.

*Price regulation exemptions*

- 51. If a greensfield pipeline project for construction of an **international pipeline** is proposed, or has commenced, the service provider may, before the pipeline is commissioned, **apply to the NCC** for a **price regulation exemption** for the pipeline: NGL s 160.
- 52. If such a **price regulation exemption** is made, the services provided by means of the pipeline will not be subject to price / revenue regulations for a period of 15 years: NGL s 167.
- 53. In making a recommendation to the Commonwealth Minister, the NCC must weigh the benefits to the public of granting the exemption against the detriment to the public: NGL s 163.
- 54. In doing do, NGL s 163 provides that the NCC:
  - 54.1 must have regard to the NGO with particular reference to –
    - 54.1.1 the implications of the exemptions for the relevant markets; and
    - 54.1.2 any other possible effects on the public interest; and
  - 54.2 any other matter the NCC considers relevant.
- 55. Once a recommendation is made to the Commonwealth Minister, NGL s 165 provides that he/she:
  - 55.1 **must** have regard the NGO (in the same way as the NCC);
  - 55.2 **must** have regard to the NCC's recommendation (but is not bound by it);
  - 55.3 **may** take into account any relevant submissions and comments made to the NCC by the public;
  - 55.4 **may** have regard to any other relevant matter.
- 56. Within 60 business days of being granted a price regulation exemption, a service provider must submit a **limited access arrangement** to the AER for approval – see below for further detail.

### *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.

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.

*Structural and operational separation requirements*

64. Structural and operational separation requirements for CPSPs are set out in Chapter 4, Part 2 of the NGL, and Part 6 of the NGR.
65. These requirements concern:
  - 65.1 the **ring-fencing** of regulated and unregulated services; and
  - 65.2 the prohibition of **associate contracts** that are anti-competitive or not consistent with competitive parity.

Ring fencing

66. From the **compliance date** (six months after a pipeline is covered), it is prohibited for the CPSP to carry on a **related business** – that is, a business of producing, selling or purchasing natural gas or processable gas, except to the extent necessary for the safe and reliable operation of a covered pipeline or to enable the CPSP to provide balancing services: NGL s 139.
67. Further:
  - 67.1 a CPSP must ensure that none of its **marketing staff** also work for an associate of the CPSP that takes part in a related business: NGL s 140; and
  - 67.2 a CPSP must prepare, maintain and keep **separate accounts** in respect of pipeline services for each separate covered pipeline, in addition to a consolidated set out accounts for the CPSPs business as a whole: NGL s 141.
68. The AER also has powers to make a **ring-fencing determination** requiring a CPSP to do, or refrain from doing, additional things specified in the determination (for example, ensuring that its business and business activities are conducted, structured and arranged in the manner specified in the determination).
69. The principles which govern the making of a ring-fencing determination are set out in NGL ss 143 – 145 and NGR Part 6.
70. A CPSP may also apply to the AER for an exemption in respect of the ring-fencing obligations described above: NGL s 146.

Associate contracts

71. An **associate contract** is defined in the NGL as
  - 71.1 a contract, arrangement or understanding (**CAU**) between a **service provider** and an **associate** of the service provider in connection with the provision of an associate pipeline service; or
  - 71.2 a CAU between a service provider and any person in connection with the provision of an associate pipeline service that provides a direct or indirect benefit to an associate and that is not at arm's length.
72. A CPSP must not enter into or give effect to an associate contract that:
  - 72.1 has the purpose or likely effect of **substantially lessening competition** in a market: NGL s 147; or
  - 72.2 is inconsistent with the **competitive parity rule**: NGL s 148;

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.



## Public notice and submissions

78. Following receipt of an access arrangement proposal, the AER must publish a notice on its website, and must allow a period of at least 20 business days within which interested parties may make written submissions in respect of the proposal: NGR r 58.

## Draft decision and submissions

79. After considering submissions and any other matters it considers relevant, the AER must make an **access arrangement draft decision** and state the reasons for the decision: NGR r 59.
80. Detailed rules governing the approval of full access arrangements are set out in Parts 9 (Price and Revenue Regulation) and 10 (Other provisions) of the NGR.
81. The draft decision must indicate whether the AER is prepared to approve the arrangement as it is submitted and, if not, explain the nature of the revisions that are required to make the proposal acceptable (and give at least 15 days for any revisions to be made).
82. The AER must give a copy of the draft decision to the service provider, publish the draft decision on its website, and again allow a period of at least 20 business days within which interested parties may make written submissions.
83. A service provider may submit additions or other amendments to its proposal to address matters raised in the draft decision, however these amendments are limited to those necessary to address matters raised by the AER: NGR r 60. In that event, the AER must publish the revised access arrangement proposal on its website as soon as practicable after receiving it.

Hearing

84. The AER **may** hold a hearing in relation to a draft decision on its **own initiative** or **on request by any person**: NGR r 61.
85. Requests for a hearing must be made in writing within 10 business days after the publication of the draft decision, and provide the applicant's details and reasons for requesting a hearing.
86. If the AER refuses a request for a hearing, it must provide written reasons for doing so.
87. Any information regarding a hearing (including time and place) must be placed on the AER's website.

### Final decision

88. The AER must, after considering submissions and any other matters it considers relevant, make a final decision to either approve or refuse the access arrangement proposal: NGR r 62.
89. The decision must be made within 6 months of the initial access arrangement proposal, although this period may be extended by up to 2 months if the access arrangement proposal is subsequently revised.
90. The final decision must state the reasons for the decision, and must be provided to the CPSP and published on the AER's website.
91. In the event that the AER **refuses to approve** an access arrangement proposal, the AER must itself propose an access arrangement, or a revision to 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:

| <b>Part 9, Division 3 Building Block Approach</b>                                                                                                               |                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGR r 76</b>                                                                                                                                                 | <b>Total Revenue</b>                                                                                                                                       |
| 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 <b>return on the projected capital base</b> for the year (See Divisions 4 and 5); and                                                                    |
| (b)                                                                                                                                                             | <b>depreciation of the projected capital base</b> for the year (See Division 6); and                                                                       |
| (c)                                                                                                                                                             | the <b>estimated cost of corporate income tax</b> for the year (See Division 5A); and                                                                      |
| (d)                                                                                                                                                             | increments or decrements for the year resulting from the <b>operation of an incentive mechanism to encourage gains in efficiency</b> (See Division 9); and |
| (e)                                                                                                                                                             | a forecast of <b>operating expenditure</b> 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:

- 100.1 it must not engage in **price discrimination** when providing light regulation services, unless that price discrimination is conducive to efficient service provision: NGL s 136;
- 100.2 it must **publish terms and conditions of access** to light regulation services, including the prices on offer for the services, on its website: NGR r 36;
- 100.3 it must **report to the AER regarding access negotiations** for light regulation services: NGR r 37.
- 101. Despite the fact that a full access arrangement is not required, a CPSP providing light services **may** nonetheless submit a **limited access arrangement** in respect of light regulation services for approval by the AER: NGL s 116.
- 102. A limited access arrangement governs the terms of access to a pipeline covered by light regulation, but does not include any provisions concerning price or revenue regulation, which are found only in full access arrangements.
- 103. The practical benefit for a CPSP in submitting a limited access arrangement for approval by the AER is that it provides greater certainty regarding the terms and conditions governing access to the pipeline than would otherwise be the case.
- 104. If a limited access arrangement has been submitted and approved by the AER, the AER must apply the terms of that arrangement in the event the AER is called upon to determine an access dispute: NGL s 189. In the absence of such an arrangement, the terms of access that may be imposed by the AER to resolve the dispute will be relatively more uncertain. Access disputes are explained in greater detail below.
- 105. Rule 45 of the NGR provides that limited access arrangement proposal must:
  - 105.1 identify and describe the **pipeline** to which it relates;
  - 105.2 describe the **pipeline services** proposed to be offered;
  - 105.3 state the **terms and conditions** (other than price) for access to the pipeline services likely to be sought by a significant part of the market;
  - 105.4 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;
  - 105.5 set out the **capacity trading requirements** – see further NGR r 105;
  - 105.6 set out any **extension and expansion requirements** – see further NGR r 104;
  - 105.7 state the terms and conditions for **changing receipt and delivery points**;
  - 105.8 state the **review submission date** (if applicable) and the **expiry date** for the access arrangement.
- 106. Rule 55 of the NGR provides that the AER must deal with a limited access arrangement proposal made by a CPSP in accordance with the **expedited consultative procedure – see Annexure 2**.

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

**G Access Regulation – Access Disputes**

107. The process for determining access disputes is provided by NGL Chapter 6 and NGR Part 12. The summary below does not purport to describe the access dispute process exhaustively, but provides a general outline.
108. Once a pipeline is covered, if a **user or prospective user** is unable to agree with a **service provider** about one or more aspects of access to a pipeline service, either party may notify the AER in writing that an **access dispute** exists: NGL s 181.
109. Any person can apply in writing to be made a party to such a dispute and the AER may accept the application if it considers the party has a sufficient interest: NGL s 183.
110. When making an **access determination** to determine an access dispute, the AER:
- 110.1 **may** deal with any matter relating to the provision of a pipeline service to a prospective user: NGL s 193;
  - 110.2 **must** give effect to any full / limited access arrangement applying to the pipeline: NGL s 189;  
  
(This is an important factor, as it gives CPSPs some security in the way a determination will be decided, and is a key reason why CPSPs subject to light regulation may decide to voluntarily submit a limited access arrangement when they are not required to do so.)
  - 110.3 **may** take into account past contributions of capital to fund installations / construction of new facilities: NGL s 190;
  - 110.4 **may**, but need not, require a service provider to provide a pipeline service to a prospective user: NGL s 192;
  - 110.5 **must** refuse to make an access determination if:
    - 110.5.1 the pipeline service the subject of the dispute could be provided on a genuinely competitive basis by a person other than the service provider or associate of the service provider: NGL s 187;
    - 110.5.2 it would prevent or deprive users / prospective users / any person of contractual rights or rights under a previous access determination: NGL s 188.
111. An access determination must be in writing and include reasons for the AER's decision.



- ## The Declared Wholesale Gas Market – Victoria

- 
- DECLARED TRANSMISSION SYSTEM**
- OTHER TRANSMISSION PIPELINES**
- INJECTION POINT**
- CITY GATE**
- COMPRESSION STATION**
- LNG** LIQUEFIED NATURAL GAS STORAGE
- DCG** DANDENONG CITY GATE
- VICTORIA**
- NEW SOUTH WALES**
- Legend:**
- DECLARED TRANSMISSION SYSTEM (Orange line)
  - OTHER TRANSMISSION PIPELINES (Grey line)
  - INJECTION POINT (Red square)
  - CITY GATE (Black square)
  - COMPRESSION STATION (Orange circle with black dot)
  - LNG LIQUEFIED NATURAL GAS STORAGE (Red square with black dot)
  - DCG DANDENONG CITY GATE (Red square with black dot)
- Map Labels:**
- Australian Pipeline Trust
  - Culcairn
  - Albury
  - Wodonga
  - Springhurst CS
  - NSW Interconnect
  - Koonoomoo
  - Echuca
  - Kyabram
  - Bendigo
  - Carisbrook
  - Wollert CS
  - Ballarat
  - Brooklyn CS
  - Geelong
  - Longford Pipeline
  - Gooding CS
  - Lurgi Pipeline
  - VicHub Longford
  - Eastern Gas Pipeline
  - Bass Gas
  - Yolla
  - Tasmanian Gas Pipeline
  - Bass Straight Fields
  - Casino, Minerva, Geographe and Thylacine Fields
  - Iona
  - SEA Gas
  - UGS
  - South West Pipeline
  - Western Transmission System
  - SEA Gas Pipeline
  - Gas Pipelines Victoria

- 14 October 2016 – Version 1.0



- 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)



- 128.2.2 AEMO also produces operating schedules a number of times each gas day for each market participant, which specify the market price and each market participant's injection and withdrawal quantities
- 128.3 determining the **market price**:
  - 128.3.1 AEMO must have regard to particular principles under the Rules to establish pricing schedules for the trading of gas on the DWGM;
- 128.4 the administration of a **participant compensation fund**;
- 128.5 the **allocation and reconciliation** of gas injections and withdrawals;
- 128.6 facilitating **settlement of transactions** between market participants;
- 128.7 **prudential requirements**:
  - 128.7.1 regarding the security that market participants are required to provide and maintain (and AEMO must determine and provide written confirmation in respect of each market participant's exposure)
- 128.8 **technical matters**, which in turn may include:
  - 128.8.1 **connection** to the declared transmission system:
 

AEMO's role is to review all proposed connection from a system operation and security perspective, and establish security standards and requirements in respect of connections
  - 128.8.2 **LNG storage**:
 

AEMO's role being to schedule LNG injection bids;
  - 128.8.3 **gas quality**:
 

AEMO must approve a gas quality monitoring system, which monitors the quality of gas injected and withdrawn from the declared transmission system and provides for the continuous measurement of gas quality data;
  - 128.8.4 **metering**:
 

metering is the process that measures the quantity and quality of gas flowing through the DTS - AEMO's role is to maintain a metering register of all metering installations that provide metering data used for settlement purposes;
  - 128.8.5 dealing with **unaccounted for gas**.
- 128.9 **market information**:
  - 128.9.1 AEMO has responsibility for making certain information available to the market (i.e. publishing operating schedules, pricing schedules and market prices), market audits and planning reviews, etc;
- 128.10 **intervention and market suspension**: Part 19, Division 5 provides AEMO with powers to intervene in and/or suspend the market in the case of emergencies or system security threats, and set out the circumstances under which AEMO may do so.

## AEMO Wholesale Market Procedures

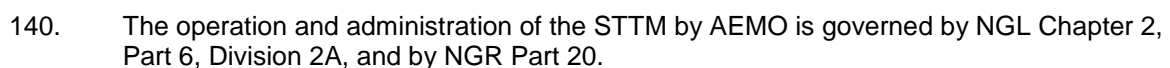
129. Further, AEMO has the power to make Wholesale Market Procedures, a form of statutory instrument directed at the regulation of the DWGM: see NGL ss 91BL-91BM.
130. The Procedures may deal with any matters specified in the Rules or any other matter relevant to a DWGM on which the NGL or the NGR contemplate the making of Procedures: NGL s 91BM.
131. Among other things, NGL s 91BM provides that the Procedures may:
  - 131.1 confer functions or powers on AEMO;
  - 131.2 may confer functions or powers, or impose obligations, on registered participants., exempted participants or other persons;however, the Procedures cannot create an offence or provide for a criminal or civil penalty.

## Agreements in respect of the DTS

132. AEMO's functions in relation to the DTS also include the power to enter in agreements with the DTS service provider and with individual facility owners.
133. In Victoria, APA-GasNet (**APA**) is the DTS service provider that owns and maintains the DTS and related facilities used to transport gas from injection points to withdrawal points.
134. NGL s 91BE requires that the DTS service provider must have a **service envelope agreement** with AEMO for the control, operation, safety, security and reliability of the DTS.
135. Further, it is prohibited for a person to connect a **facility** (being a pipeline, gas storage facility, a gas fired electricity generator or any other plant or equipment that could have a material impact on the operation of the DTS) to the DTS without AEMO's permission, or authorisation pursuant to an access determination: NGL s 91BF.
136. As a condition of granting permission, AEMO may require a facility owner to enter into an **operating agreement** with AEMO in relation to the operation of the facility: s 91BG. Among other things, an operating agreement may deal with the following:
  - 136.1 balancing, monitoring and regulation of gas flows;
  - 136.2 scheduling of gas flows;
  - 136.3 maintenance of a balancing account;
  - 136.4 the provision of operational information;
  - 136.5 operating pressures;
  - 136.6 the safety, security and reliability of the DTS and the facility;
  - 136.7 emergency arrangements.
137. A party to an service envelope agreement or an operating agreement may apply to the AER to resolve a dispute in relation to the agreement, in circumstances where the AER is satisfied that that the applicant made a reasonable, but unsuccessful attempt to negotiate the dispute directly.

138. The SSTM is described by AEMO as:

139. A map depicting the STTM is included below:



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

## Registration of market participants

142. NGL s 91BRd prohibits a person from participating in the STTM in a registrable capacity unless registered (or exempted) by AEMO in accordance with the Rules.
143. A person participates in the STTM in a registrable capacity if they supply or withdraw natural gas from an STTM hub, or are otherwise classified as a participant under the Rules: NGL s 91BRC.

### AEMO's functions under the STTM

144. AEMO's market functions under the STTM are provided for in NGL s 91BRB and Chapter 20 of the NGR, as follows:
- 144.1 **Market operator service:** being the service by which capacity is provided with AEMO being required to estimate the maximum quantity of gas likely to be required on each day;
  - 144.2 **Scheduling and pricing:** AEMO must establish and maintain schedules that determine quantities and prices;
  - 144.3 **Ownership, risk and responsibility for gas:** providing for AEMO's ability to effect the transfer of title to natural gas supplied to a hub;
  - 144.4 **Contingency gas:** allowing shippers to make contingency offers and bids by increasing or decreasing the quantity of gas supplied to a hub – the shippers may submit such offers and bids to AEMO;
  - 144.5 **Settlement:** AEMO must manage the billing and settlement of transactions.
  - 144.6 **Prudential requirements:** regarding the types of security that market participants are required to provide and maintain (and AEMO must determine and provide written confirmation in respect of each market participants exposure).

## 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).

| <b>NGR r119M</b> | <b>Connection charges criteria</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)              | Connection charges (or the method for calculating connection charges) for a particular connection service must be consistent with the following criteria: <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (2)              | For the purposes of applying the connection charges criteria: <ul style="list-style-type: none"> <li>(a) in determining the present value of expected incremental revenue, the requirements of rule 79(4) [which sets out the process for determining <b>present value of expected incremental revenue</b>] apply;</li> <li>(b) the relevant connection assets are taken to include any augmentation of the distribution pipeline required to accommodate the new connection or connection alteration</li> <li>(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"> <li>(i) the connection assets required;</li> <li>(ii) the discount rate;</li> <li>(iii) the expected life of the connection;</li> <li>(iv) the incremental cost of purchasing and installing the connection assets;</li> <li>(v) the expected gas consumption and the tariffs applicable to supply services relating to the connection;</li> <li>(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.</li> </ul> </li> </ul> |

### 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                                                                                                                                    |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Applying for a model standing offer</b>            | <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>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Distributor <b>may</b> submit for the AER's approval a proposed model standing offer to provide standard connection services on specified terms and conditions. |
| <b>Terms and conditions of a model standing offer</b> | <p>When a distributor submits a proposed model standing offer, the terms and conditions must cover:</p> <ul style="list-style-type: none"> <li>a <b>description</b> of the connection;</li> <li><b>timeframes</b> for commencing and completing the work;</li> <li><b>qualifications</b> 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);</li> <li><b>safety and technical requirements</b> to be complied with by the provider of a contestable service or the retail customer;</li> <li>details of <b>connection charges</b> (being the charge imposed by the distributor for the</li> </ul> | Same                                                                                                                                                            |

| Factor                                          | Basic connection services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Standard connection services                                                                                                                                          |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 | <p>connection service);</p> <ul style="list-style-type: none"> <li>○ <u>note</u>: overview of connection charges provided in the next section.</li> <li>• manner in which the connection charges are to be paid by the retail customer</li> </ul>                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                       |
| <b>Obligations on distributors</b>              | <p>The distributor must submit to the AER with its proposed model standing offer:</p> <ul style="list-style-type: none"> <li>• a declaration that the distributor considers its proposed connection charges to be consistent with the connection charges criteria;</li> <li>• details of the basis on which the distributor has applied the connection charges criteria</li> </ul>                                                                                                                                                                | Same                                                                                                                                                                  |
| <b>AER's approval of a model standing offer</b> | <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"> <li>• 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;</li> <li>• the connection charges are consistent with the connection charges criteria;</li> <li>• the terms and conditions are fair and reasonable;</li> <li>• the terms and conditions comply the energy laws.</li> </ul> | 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"> <li>• the national gas objective;</li> <li>• the basis upon which the distributor provided the service in the past;</li> <li>• geographical characteristics of the area served by the relevant distribution pipeline.</li> </ul>                                                                                                                                               | 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**

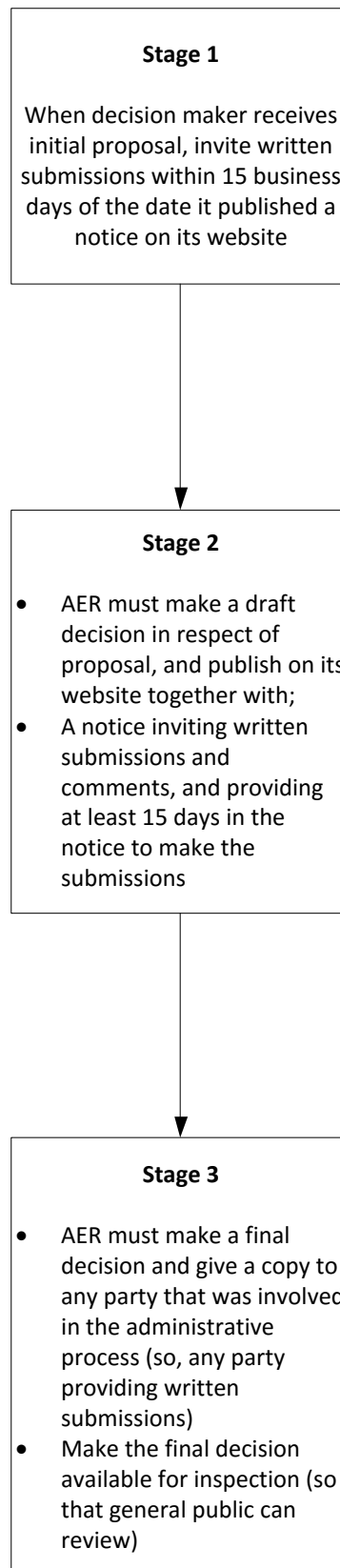
- (6) If the Law requires a decision maker to deal with a proposal in accordance with the standard consultative procedure, the decision maker must proceed in accordance with this rule.
- (7) The decision maker must proceed as follows:
- (a) the decision maker must publish a notice on its website and 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;
  - (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.
- (8) A draft or final decision must:
- (a) be in writing; and
  - (b) state the terms of the decision and the reasons for it.
- (9) 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

**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
    - 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.
- (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
  - (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



Diagram of the public consultation aspect of the standard consultative procedure



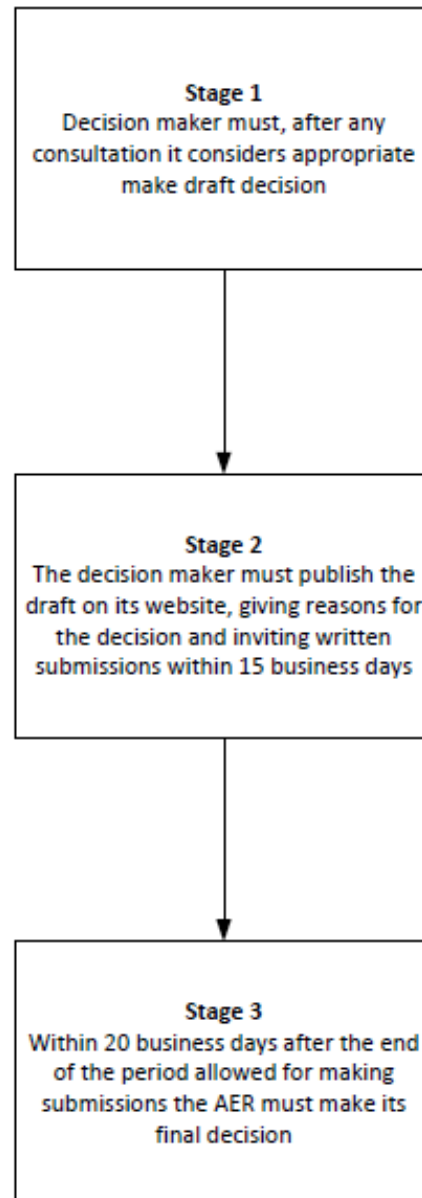
**Annexure 2      Expedited Consultative Procedure****NGR r 9 Expedited consultative procedure**

- (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**

|                   |                                                                                          |            |
|-------------------|------------------------------------------------------------------------------------------|------------|
| <b>A</b>          | <b>Overview and structure</b>                                                            | <b>73</b>  |
| <b>B</b>          | <b>Conceptual, administrative and general matters</b>                                    | <b>75</b>  |
|                   | National Electricity objective and other key concepts                                    | 75         |
|                   | Principal regulatory bodies                                                              | 75         |
|                   | Manner in which the AER must perform or exercise economic regulatory functions or powers | 77         |
| <b>C</b>          | <b>Access Regulation – Overview</b>                                                      | <b>79</b>  |
| <b>D</b>          | <b>Access Regulation – Distribution Services</b>                                         | <b>82</b>  |
|                   | Classification of distribution services                                                  | 83         |
|                   | Distribution determinations for direct control services                                  | 86         |
|                   | Distribution determinations for negotiated distribution services                         | 89         |
| <b>E</b>          | <b>Access Regulation – Process for making a Distribution Determination</b>               | <b>91</b>  |
|                   | AER framework and approach paper                                                         | 91         |
|                   | DNSP submission of regulatory proposal and tariff structure statement                    | 93         |
|                   | AER decision-making process                                                              | 96         |
| <b>F</b>          | <b>Access Regulation – Transmission Services</b>                                         | <b>99</b>  |
|                   | Types of transmission services                                                           | 100        |
|                   | Transmission determinations: prescribed transmission services                            | 101        |
|                   | Transmission determinations: negotiated transmission services                            | 104        |
| <b>G</b>          | <b>Access Regulation – Process for making a Transmission Determination</b>               | <b>106</b> |
|                   | AER framework and approach paper for revenue determinations                              | 106        |
|                   | TNSP Submission of revenue proposal, negotiating framework and pricing methodology       | 107        |
|                   | AER decision-making process                                                              | 108        |
| <b>H</b>          | <b>Access Disputes</b>                                                                   | <b>111</b> |
| <b>I</b>          | <b>Network Connection, Planning and Expansion</b>                                        | <b>112</b> |
|                   | Network connection                                                                       | 112        |
|                   | Network Planning and Expansion                                                           | 114        |
| <b>J</b>          | <b>Power system safety and security</b>                                                  | <b>123</b> |
|                   | Load shedding                                                                            | 123        |
|                   | Power system security under the NER                                                      | 123        |
| <b>K</b>          | <b>Electricity Metering</b>                                                              | <b>125</b> |
|                   | NER Chapter 7 – Metering Generally                                                       | 125        |
|                   | NEL Part 8A – Smart Metering Services                                                    | 125        |
| <b>L</b>          | <b>National Electricity Market</b>                                                       | <b>126</b> |
|                   | AEMO's functions in relation to the NEM                                                  | 126        |
|                   | Registration of participants in the NEM                                                  | 127        |
|                   | Market Rules                                                                             | 128        |
| <b>M</b>          | <b>Retail Regulation</b>                                                                 | <b>130</b> |
|                   | Electricity connection services for retail customers                                     | 130        |
|                   | Retail support obligations between distributors and retailers                            | 135        |
| <b>Annexure 1</b> | <b>Distribution Consultation Procedures</b>                                              | <b>138</b> |
| <b>Annexure 2</b> | <b>Transmission Consultation Procedures</b>                                              | <b>139</b> |

---

## 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.**

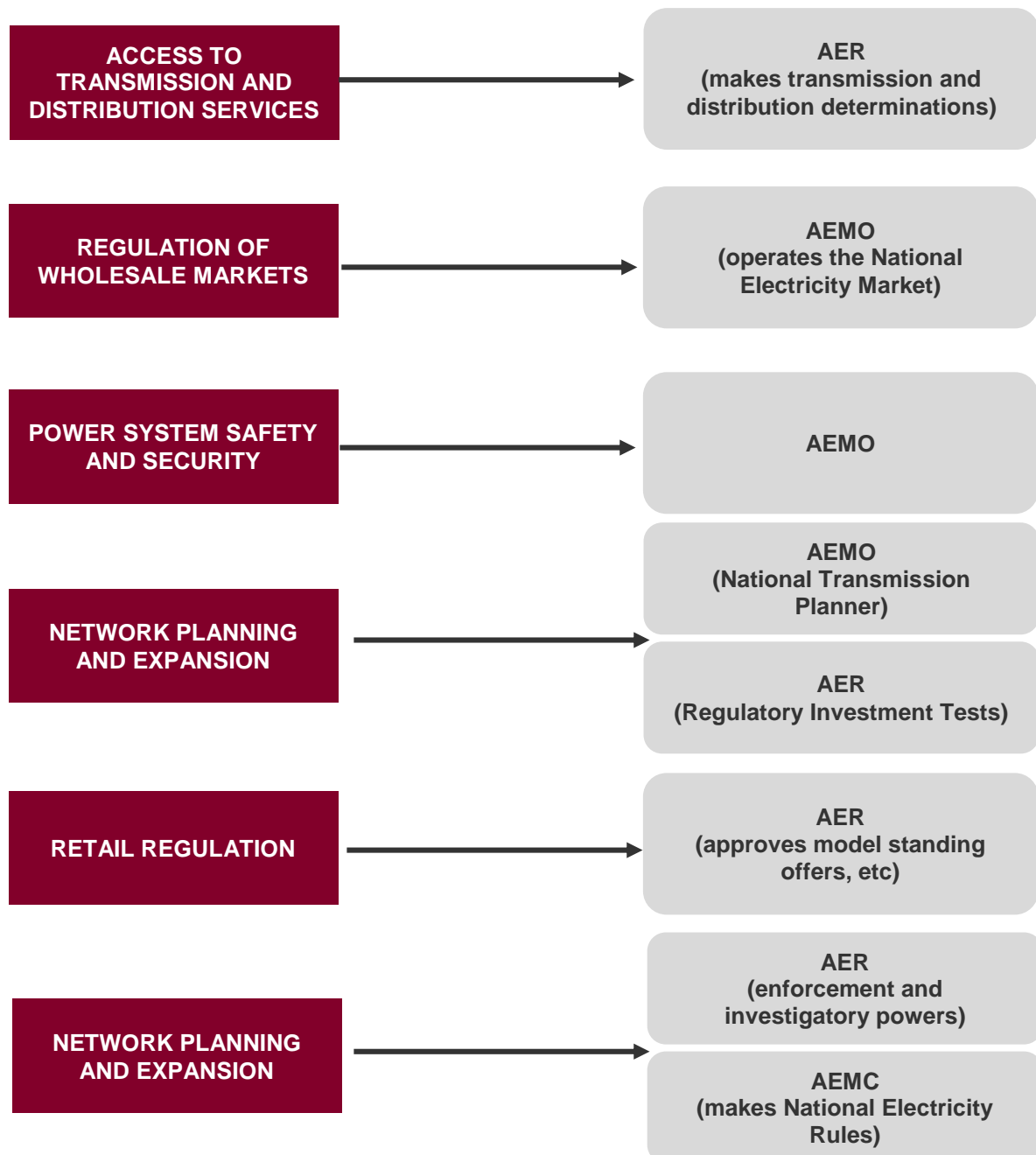
7. The Form of Regulation Factors (NEL s 2F) and the Revenue and Pricing Principles (**RPPs**) (NEL s 7A) are also critical concepts applicable to the National Electricity Regime, and are discussed in Chapter 1 of this Handbook.

### *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 WA<sup>1</sup>. 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.

<sup>1</sup> 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)**

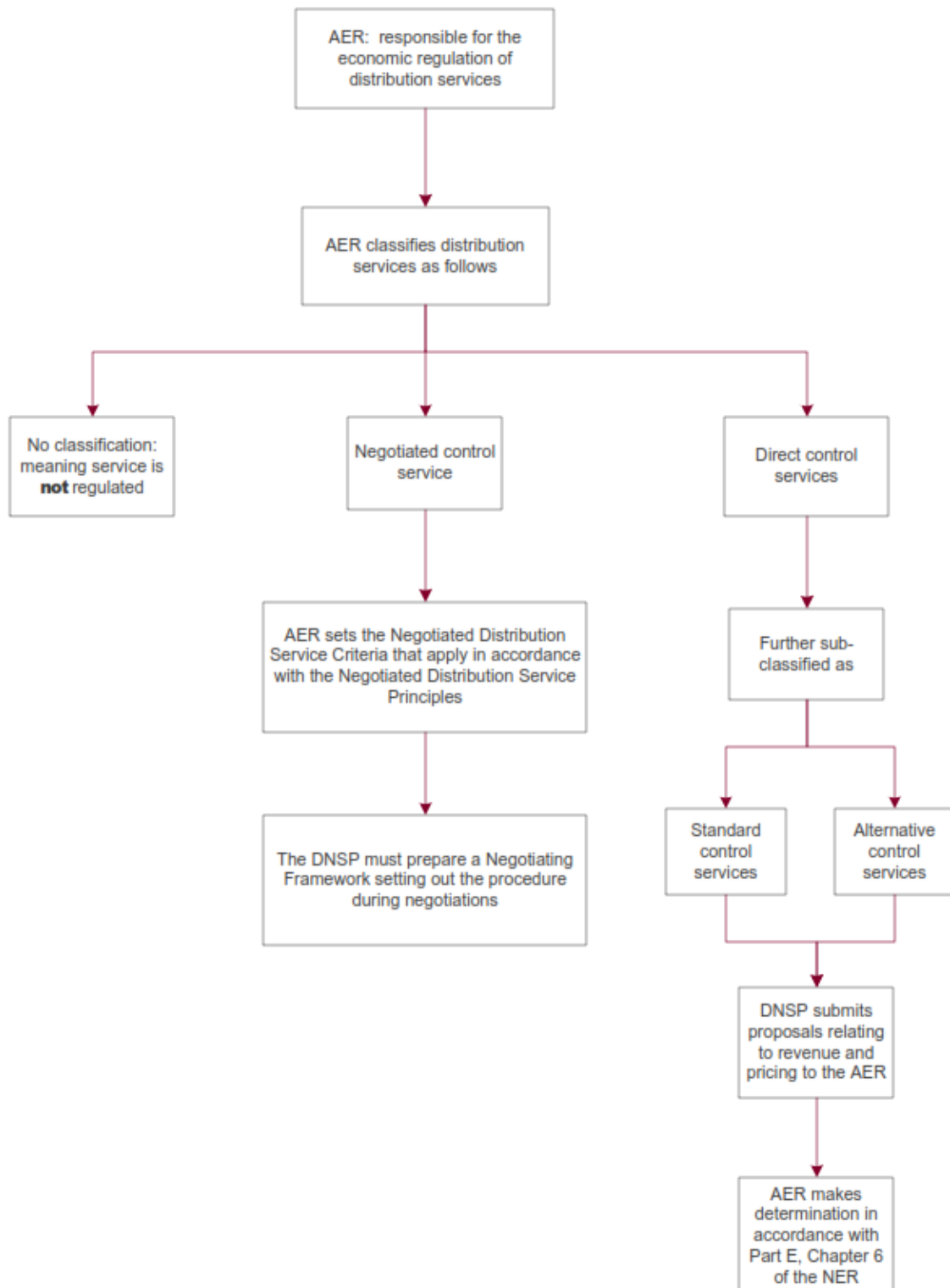
- (2) In addition, the AER –
  - (a) must take into account the revenue and pricing principles –
    - (i) when exercising a discretion in making those parts of a distribution determination or transmission determination relating to direct control network services; or
    - (ii) when making an access 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.

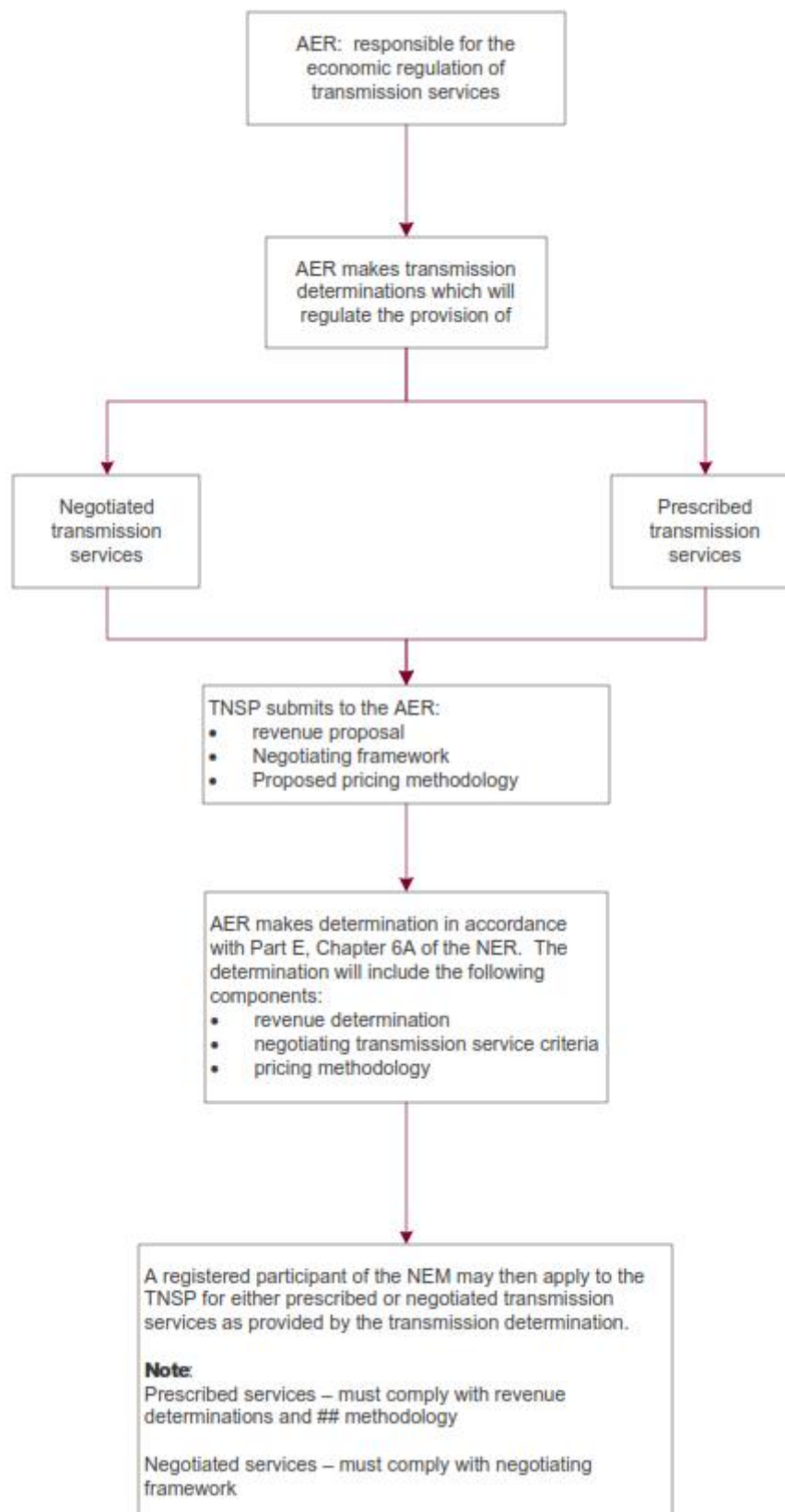
## C Access Regulation – Overview

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.

36. Rule 6.2.3 provides that a classification forms part of a distribution determination and will continue for the term of a **regulatory control period** for which that determination applies.
37. The practical effect is that a distribution service's classification will be considered by the AER in the course of making a new distribution determination at the end of a regulatory control period.

38. The **terms and subject matter** of a distribution determination for a direct control service are governed by **Parts B** of NER Chapter 6 (with reference to a number of other Parts in respect of various issues).
39. Rule 6.2.4(a) provides that the AER must make a distribution determination for each DNSP.

40. Rule 6.2.5(a) provides that a distribution determination **must** impose controls over:

- 40.1 the **price** of direct control services;
- 40.2 the **revenue** to be derived from direct control services; or
- 40.3 both price and revenue.

41. Rule 6.2.5(b) provides that the **control mechanism may** consist of:

- 41.1 a schedule of fixed prices;
- 41.2 **caps on the prices** of individual services;
- 41.3 **caps on the revenue** to be derived from a particular combination of services;
- 41.4 **tariff basket price control** – ie, a cap on the average increase in prices from one year to the next, also known as a weighted average price cap;
- 41.5 **revenue yield control** – ie, a cap on the average revenue per unit of electricity sold that a distributor can recover; or
- 41.6 a **combination** of any of the above.

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;

- 51.8 revenue decrements arising from the use of assets that provide standard control services to provide other services;
- 51.9 the **forecast operating expenditure** for that year (calculated in accordance with rule 6.5.6).
- 52. Part C of Chapter 6 sets out very detailed rules regarding the formulation of a building block mechanism – we do not propose to address those matters in detail.

*Distribution determinations for negotiated distribution services*

- 53. The rules that govern **negotiated distribution services** are contained in Chapter 6, Part D.
- 54. Negotiated distribution services are services where the provider is able to negotiate access terms and conditions.
- 55. Among other things, Part D provides for:
  - 55.1 the **Negotiated Distribution Service Principles**;
  - 55.2 the determination of **Negotiated Distribution Service Criteria**;
  - 55.3 the determination of a **negotiating framework**.

Negotiated Distribution Service Principles

- 56. Before considering the necessary frameworks and criteria, NER r 6.7.1 provides a set of Negotiated Distribution Service Principles that that apply to negotiated distribution services.
- 57. The Principles are lengthy, so they are not reproduced here.

Negotiated Distribution Service Criteria

- 58. A DNSP must comply with its Negotiated Distribution Service Criteria when negotiating the terms and conditions of access to the negotiated distribution service: r 6.7.2.
- 59. Rule 6.7.4 provides that a distribution determination by the AER is to set out the criteria to be applied:
  - 59.1 by the provider in negotiating –
    - 59.1.1 **terms and conditions** of access for negotiated distribution services (including **prices** to be charged for the provision of the services).
    - 59.1.2 any **access charges** which are negotiated by the provider during the regulatory control period.
  - 59.2 by the AER in resolving access disputes about terms and conditions of access including:
    - 59.2.1 the **price** that is to be charged for the provision of a service; and
    - 59.2.2 any **access charges** that are to be paid.
- 60. The Negotiated Distribution Service Criteria must give effect to and be consistent with the Negotiated Distribution Service Principles: NER r 6.7.4(b).

### 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.

## **E Access Regulation – Process for making a Distribution Determination**

65. This Part of the Handbook follows on from Part D, which discussed the key substantive concepts applied in the making of a distribution determination. This Part is concerned with the **process** for making distribution determinations.
66. The process for the AER in making a **distribution determination** is provided in NER Chapter 6, Part E.
67. The stages in that process are as follows:
  - 67.1 the AER must publish a framework and approach paper (**F&A paper**);
  - 67.2 the DNSP submits a **regulatory proposal and tariff structure statement**;
  - 67.3 the AER conducts a **preliminary examination**;
  - 67.4 the AER **consults** with interested parties;
  - 67.5 the AER publishes a **draft distribution determination**, and invites further consultation;
  - 67.6 the AER makes a **final distribution determination**;
  - 67.7 the AER provides **reasons** for its decision.

### *AER framework and approach paper*

68. The AER must make and publish a document, known as a **framework and approach paper (F&A paper)**, for the purpose of setting out the approach it will follow when making a **distribution determination**.
69. The F&A paper sets out how the AER will approach the regulation of distribution services, and assists DNSPs in preparing a regulatory proposal to submit to the AER for approval.
70. Subject to rule 6.12.3 (relating to the extent of the AER's discretion in making a distribution determination) and rule 6.25(d) (relating to dual function assets), an F&A paper will not be binding on the AER or the DNSP.
71. The approach the AER must take when making the F&A paper will depend upon whether or not an F&A paper is already in existence.

### Where no F&A paper already exists

72. The AER must make and publish an F&A paper, if no applicable F&A paper already exists for the distribution determination: NER r 6.8.1.
73. NER r 6.8.1(b) provides that an F&A paper **must** set out the following matters:
  - 73.1 the AER's **decision** (accompanied by reasons for the decision) on the following matters relevant to a forthcoming distribution determination:
    - 73.1.1 the **form of the control mechanisms** (i.e. the price and revenue mechanisms that will be applicable – see rule 6.2.5)
    - 73.1.2 as to whether Part J of Chapter 6A will apply to determine the **pricing of transmission standard control services** provided by any **dual function assets** owned, controlled or operated by the DNSP.

- 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.



*DNSP submission of regulatory proposal and tariff structure statement*

76. A DNSP must submit a **regulatory proposal** and a proposed **tariff structure statement**:  
NER r 6.8.2.
77. These must be submitted to the AER:
- 77.1 **17 months** before the expiration of a distribution determination that applies to the DNSP; **or**
- 77.2 if no distribution determination applies, **3 months** after being required to do so by the AER.

Regulatory proposal

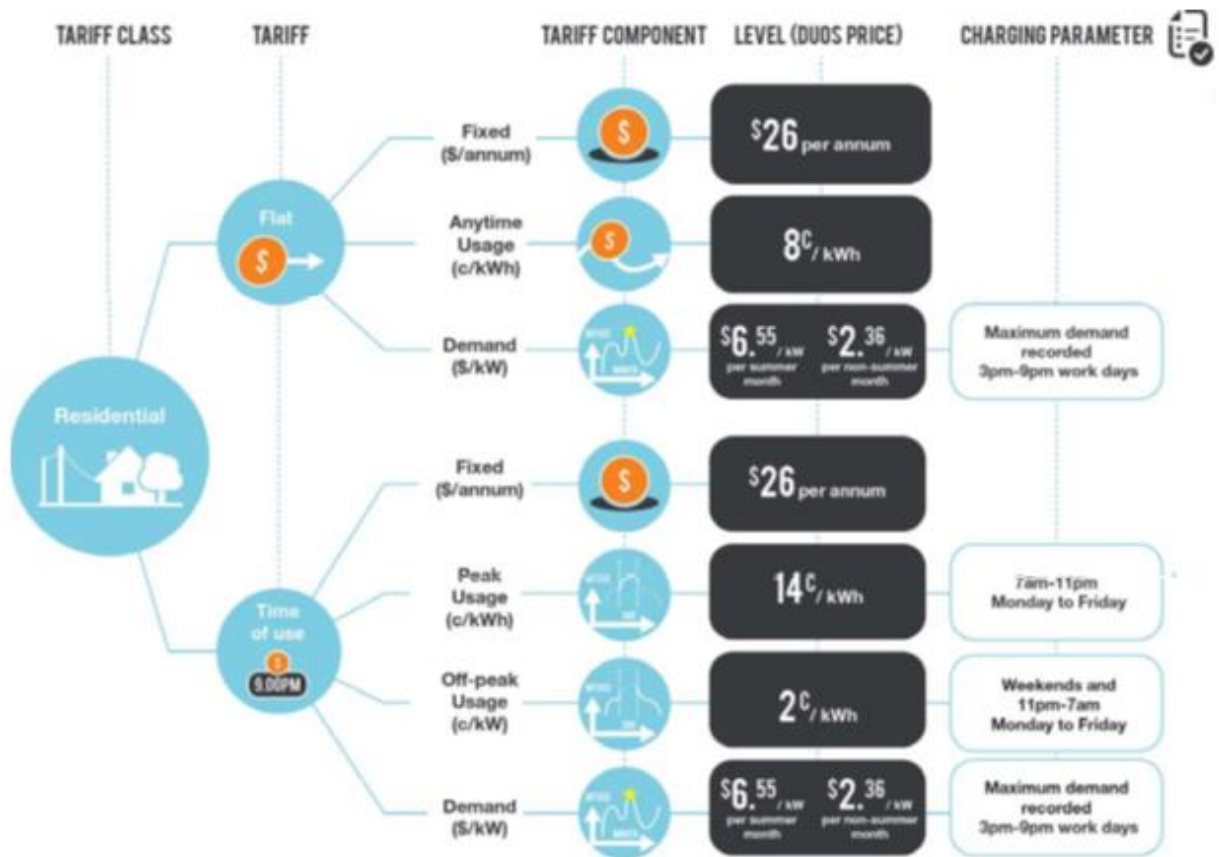
78. NER r 6.8.2(c) provides that a regulatory proposal must include (but is not limited to) the following elements:
- 78.1 a **classification proposal**:
- 78.1.1 showing how the distribution services to be provided by the DNSP should be classified;
- 78.1.2 where the DNSP's opinion on classification differs from what is provided for in an F&A paper, including reasons for the difference;
- 78.2 for services classified as a *standard control service* – a **building block proposal**;
- 78.3 for services classified as *alternative control services* – a demonstration of the application of the **control mechanism**;
- 78.4 for services classified as *negotiated distribution services* – the proposed **negotiating framework**;
- 78.5 the proposed **connection policy**;
- 78.6 a description of how the **proposed tariff structure statement** complies with the **pricing principles** for direct control services, which must also be accompanied by:
- 78.6.1 an indicative pricing schedule;
- 78.6.2 information required by the Expenditure Forecast Assessment Guidelines set out in the F&A paper.
79. A regulatory proposal must be accompanied by an **overview paper**, which includes the following:
- 79.1 a **summary of the regulatory proposal** the purpose of which is to explain the regulatory proposal in reasonably plain language to electricity consumers;
- 79.2 a description of how a DNSP has **engaged with electricity consumers** in developing the regulatory proposal and has sought to address any relevant concerns identified as a result of that engagement;
- 79.3 a description of the **key risks and benefits** of the regulatory proposal for electricity consumers;

- 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.

*AER decision-making process*Preliminary examination: NER r 6.9

86. Before making a decision on a distribution determination, if the AER considers that:
- 86.1 a **regulatory proposal**;
  - 86.2 a **tariff structure statement**; or
  - 86.3 any **accompanying information**;
- submitted by a DNSP **does not comply** with the NEL or the NER, the AER **may** notify the DNSP that the documents must be resubmitted: NER r 6.9.1.
87. The notice must indicate why, and in what respects, the AER considers the relevant document to be non-compliant: NER r 6.9.1.
88. The DNSP must resubmit the documents in an amended form that complies with the relevant requirements set out in the notice within 20 days: NER r 6.9.2.

Consultation: NER r 6.9.3

89. Once the AER is satisfied the documents submitted are compliant (or that there is sufficient compliance) with the requirements of the NEL and NER, it must publish:
- 89.1 the DNSP's **regulatory proposal, tariff structure statement** and any accompanying information submitted (or resubmitted);
  - 89.2 the AER's proposed **Negotiated Distribution Service Criteria** for the DNSP; and
  - 89.3 an **invitation for written submissions** on those documents.
90. That requirement is subject to provisions regarding disclosure of confidential information, which are governed by NER r 6.9.2A.
91. **Within 40 days** of the DNSP submitting the documents referred to above, the AER must publish:
- 91.1 an **issues paper**;
  - 91.2 an **invitation for written submissions** on the issues paper; and
  - 91.3 an invitation to attend a **public forum** on the issues paper.
92. The AER's 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 DNSP's proposal.
93. The AER must hold a public forum on the issues paper not more than 10 business days after the issues paper is published.
94. Any person may make a written submission regarding the issues paper and any of the documents part of the consultation process.

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.

- Transmission determinations: negotiated transmission services*

- ## Negotiated Transmission Service Principles

- ### Negotiated Transmission Service Criteria

- page 104

- 142.1 by the provider in negotiating –
  - 142.1.1 **terms and conditions** of access for negotiated transmission services (including **prices** to be charged for the provision of the services).
  - 142.1.2 Any **access charges** which are negotiated by the provider during the regulatory control period.
- 142.2 by a commercial arbitrator in **resolving any dispute** between a TNSP and a person wanting to receive the services in relation to –
  - 142.2.1 terms and conditions of access for the service (including price); and
  - 142.2.2 any access charges that are to be paid.
- 143. The Negotiated Transmission Service Criteria must give effect to and be consistent with the Negotiated Transmission Service Principles: NER r 6A.9.4(b).

#### Negotiating Framework

- 144. A TNSP must prepare, for approval by the AER in the course of making a transmission determination, a document setting out the **procedure** to be followed during negotiations between the provider and any person wishing to receive a negotiated transmission service.
- 145. The negotiating framework will **form part of the transmission determination**, and must comply with and be consistent with the applicable requirements of a transmission determination, and certain minimum requirement set out in NER r 6A.9.5(c).
- 146. As a minimum, the negotiating framework must specify (amongst other things):
  - 146.1 a requirement for the TNSP and applicant to negotiate **in good faith**;
  - 146.2 a requirement for the TNSP and applicant to provide any **commercial information** an applicant may reasonably require to enable each party to engage in effective negotiation;
  - 146.3 a requirement for the TNSP to **identify** and inform the applicant of the **reasonable costs and charges**;
  - 146.4 a **reasonable period of time** for the commencing, progressing and finalising the negotiations
  - 146.5 a **dispute resolution process** which provides that disputes in relation to terms and conditions of access are to be dealt with in accordance with Part K of Chapter 6A.

## **G Access Regulation – Process for making a Transmission Determination**

147. This Part of the Handbook follows on from Part F, which discussed the key substantive concepts applied in the making of a transmission determination. This Part is concerned with the **process** for making transmission determinations.
148. The process the AER must follow in making a transmission determination is provided in NER Chapter 6A, Part E. Those provisions are very detailed, so this Part of the Handbook is not intended to be exhaustive.
149. The stages in that process are as follows:
- 149.1 the AER must publish a framework and approach paper (**F&A paper**) in respect of revenue determinations;
  - 149.2 the DNSP submits a **revenue proposal, pricing methodology and negotiating framework** to the AER;
  - 149.3 the AER conducts a **preliminary examination**;
  - 149.4 the AER **consults** with interested parties;
  - 149.5 the AER publishes a **draft decision**, and invites further consultation;
  - 149.6 the AER makes a **final decision**;
  - 149.7 the AER provides reasons for its decision.

### *AER framework and approach paper for revenue determinations*

150. The AER must make and publish a document, known as a **framework and approach paper (F&A paper)**, for the purpose of setting out its approach in making **revenue determinations**.
151. The F&A paper sets out how the AER will approach the regulation of revenue for transmission services and assists TNSPs in preparing a revenue proposal to submit to the AER for approval.
152. However, an F&A paper is not binding on the AER or the TNSP: NER r 6A.1.10A(f).

### Where no F&A paper already exists

153. The AER must make and publish an F&A paper, if no applicable F&A paper already exists in respect of a revenue determination for the matters listed below: NER r 6A.10.1A.
154. NER r 6A.10.1A(b) provides that an F&A paper **must** set out the AER's **proposed approach** (accompanied by reasons) on the following matters:
- 154.1 the application to the TNSP of any
    - 154.1.1 **service target performance incentive scheme**; or
    - 154.1.2 **efficiency benefit sharing scheme**;
    - 154.1.3 **capital expenditure sharing scheme**;
    - 154.1.4 **small-scale incentive scheme**.
  - 154.2 the application of the **Expenditure Forecast Assessment Guidelines**;

- 154.3 whether **depreciation** will be based on forecast or actual capital expenditure in updating the regulatory asset base in accordance with clause S6A.2.2B.

Where an F&A paper already applies

155. If an F&A paper already applies in respect of a revenue determination for the matters listed in NER r 6A.10.1A(b), a TNSP is able to make a request to the AER that an amended or replacement F&A paper be published, in accordance with the following process: (NER r 6A.10.1A(c))
- 155.1 no later than **32 months** before the end of the regulatory control period, the TNSP may request the AER in writing to make an amended or replacement F&A paper, specifying the reasons for making the request;
- 155.2 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;
- 155.3 no later than **30 months** before the end of the regulatory control period, the AER must make and publish a notice that –
- 155.3.1 states that it will make an amended or replacement F&A paper;
- 155.3.2 the notice must be accompanied by the TNSPs request;
- 155.3.3 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 TNSPs request (the AER must give reasons why it considers the additional amendments or replacements are necessary).
156. 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 TNSP 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 TNSP and publish it as soon as reasonably practicable.

*TNSP Submission of revenue proposal, negotiating framework and pricing methodology*

157. A TNSP must submit a revenue proposal, a negotiating framework proposal and a pricing methodology proposal to the AER for approval: NER r 6A.10.1.
158. These must be submitted to the AER by:
- 158.1 **17 months** before the expiration of a transmission determination that applies to the TNSP; **or**
- 158.2 if no transmission determination applies, **3 months** after being required to do so by the AER.
159. Among other things, a TNSP's revenue proposal must:
- 159.1 include a statement of whether the proposal is consistent with the most recent **National Transmission Network Development Plan**, and give reasons for any inconsistencies (r 6A.10.1(f)(1));
- 159.2 be accompanied by any **information required by the Expenditure Forecast Assessment Guidelines** as set out in the F&A paper (r 6A.10.1(h));

- 159.3 comply with the requirements of any relevant **regulatory information instrument** (r 6A.10.1(c)).
160. Rule 6A.10.1(g) provides that a revenue proposal must be accompanied by an overview paper, which includes the following:
- 160.1 a **summary of the revenue proposal** the purpose of which is to explain the revenue proposal in reasonably plain language to electricity consumers;
  - 160.2 a description of how the TNSP has **engaged with electricity consumers** in developing the revenue proposal and has sought to address any relevant concerns identified as a result of that engagement;
  - 160.3 a description of the **key risks and benefits** of the revenue proposal for electricity consumers;
  - 160.4 a **comparison** of the TNSP's proposed total revenue cap with its total revenue cap for the current regulatory period.
161. The requirements for a pricing methodology and negotiating framework are discussed in Part F above.

*AER decision-making process*

Preliminary examination : NER r 6A.11

162. Before making a decision on a revenue determination, if the AER determines that:
- 162.1 a revenue proposal;
  - 162.2 a proposed negotiating framework;
  - 162.3 a proposed pricing methodology; or
  - 162.4 any accompanying information;
- submitted by a TNSP **does not comply with the NEL, the NER or any relevant regulatory information instrument**, the AER **must** notify the TNSP as soon as possible, and provide written reasons: r 6A.11.1.
163. The TNSP **must resubmit** the documents in an amended form that complies with the relevant requirements set out in the notice within 1 month: r 6A.11.2.

Consultation : NER r 6A.11.3

164. **As soon as practicable** once the AER is satisfied the documents submitted are compliant, it must publish:
- 164.1 the TNSP's **revenue proposal, negotiating framework, pricing** and any accompanying information submitted (or resubmitted);
  - 164.2 the AER's proposed **Negotiated Transmission Service Criteria** for the TNSP; and
  - 164.3 an **invitation for written submissions** on those documents.
165. That requirement is subject to provisions regarding disclosure of confidential information, which are governed by NER r 6A.11.2A.



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

- 14 October 2016 – Version 1.0

- Final decision: NER s 6A.13

- Reasons for decision: NER r 6A.14.2

- page 110

## 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**.

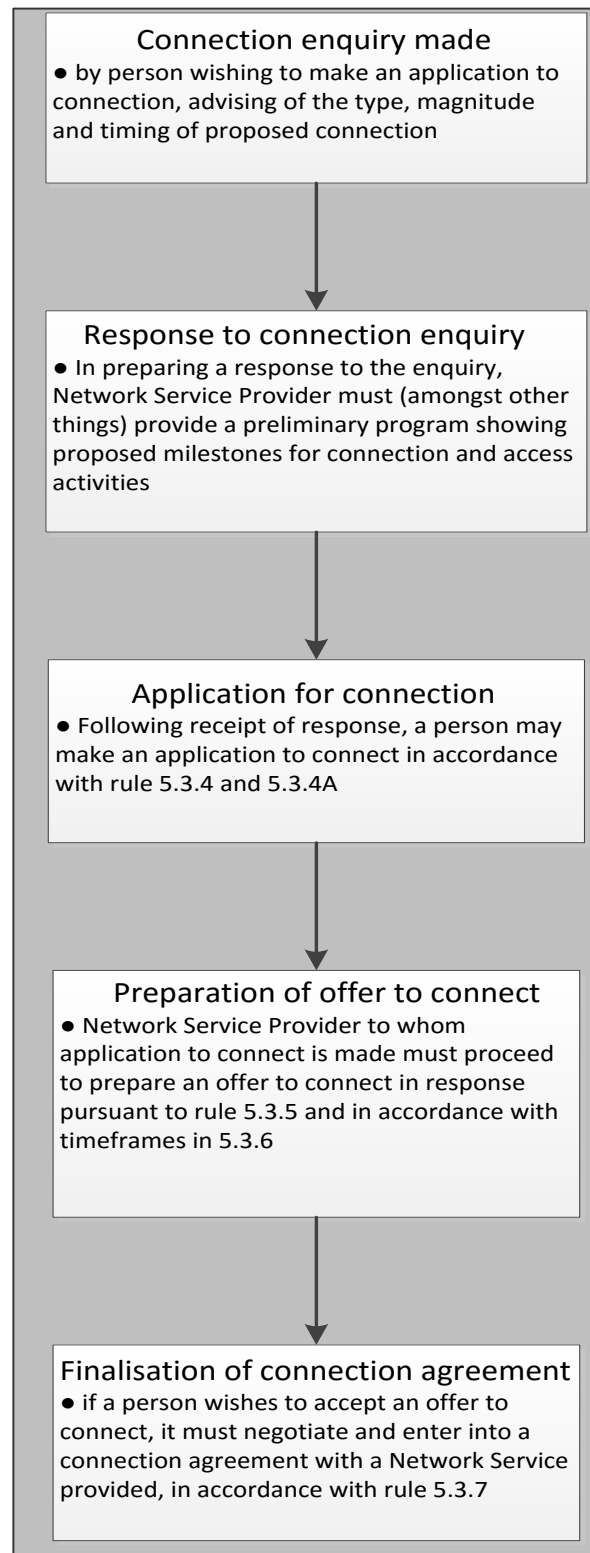
### Aims and principles

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.



197. NER r 5.7 deals with **inspection and testing** of the network, including rights for registered participants to enter and inspect facilities owned by another registered participant, or to request the testing of those facilities, in certain situations to determine whether they are compliant with relevant rules or the terms of a relevant connection agreement.
198. NER r 5.8 deals with the **commissioning** of new facilities. Among other things:
- 198.1 NER r 5.8.1(a) provides that a registered participant must ensure that any of its **new or replacement equipment is inspected and tested** to demonstrate that it complies with relevant Australian Standards, the NER and any relevant connection agreement.
  - 198.2 NER r 5.8.2 provides that a registered participant seeking to connect to a network must co-operate with the relevant Network Service Provider(s) and AEMO to **develop procedures** to ensure that the commissioning of the connection and connected facility is carried out in a manner that:
    - 198.2.1 **does not adversely affect other Registered Participants or affect power system security or quality of supply** of the power system; and
    - 198.2.2 **minimises the threat of damage** to any other Registered Participant's equipment.
199. Disconnection and reconnection is dealt with by NER r 5.9.

#### *Network Planning and Expansion*

200. Part B of Chapter 5 deals with network planning and expansion.
201. This commentary will not cover Part B exhaustively, but will deal primarily with the following issues:
- 201.1 **planning and reporting obligations** for NSPs;
  - 201.2 **regulatory investment tests**;
  - 201.3 AEMO's **National Transmission Planning** functions.

#### Planning and reporting obligations for TNSPs and DNSPs

202. NER r 5.11 deals with forecasts of connection to transmission networks, and the identification of system limitations.
203. Broadly, that rule provides that **registered participants** must provide **NSPs** with **short term and long term electricity generation, market network service and load forecast information** (set out in Schedule 7 to Chapter 5 of the NER) in relation to each connection point which connects that registered participant to a transmission network of the NSP in question, and any other relevant information reasonably required by the NSP.
204. In turn, the NSP must extrapolate those forecasts for the purposes of a planning analysis. If the NSP's analysis indicates that **any relevant technical limits of the transmission or distribution service will be exceeded**, the NSP must **notify** any affected registered participants and AEMO of those limitations, and of the expected time for undertaking any **proposed corrective action**.

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.

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



|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>information on system limitation for sub-transmission lines and zone substations</li> <li>information on the performance of the DNSP's network</li> <li>a summary of committed investments to be carried out within the forward planning period</li> </ul> <p><u>Note:</u> There is certain information under Rule 5.13A required to be given in relation to Distribution zone substations</p> |
| <b>Joint Planning<br/>(NER r 5.14)</b> | <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"> <li>assess the adequacy of existing transmission and distribution networks and the assets associated with transmission-distribution connection points over the next five years;</li> <li>work together to ensure efficient planning outcomes;</li> <li>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;</li> <li>where the need for a joint planning project is identified – <ul style="list-style-type: none"> <li>jointly determine plans that can be considered by relevant Registered Participants, AEMO, interested parties;</li> <li>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.</li> </ul> </li> </ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                       |

### 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.

220. **Distribution (RIT-D)**

- 220.1 The procedure that must be followed by RIT-D proponents mirrors the procedure under transmission, with a few notable differences;
- 220.2 Importantly, a RIT-D proponent is also required to consult with Registered Participants, AEMO, interested parties and non-network providers.
- 220.3 The procedure to be followed by a RIT-D is as follows:
  - 220.3.1 **non-network options report** – similar to a project specification consultation report under transmission;
  - 220.3.2 **draft project assessment report** – which must be prepared if it is decided after the publication of a non-network options report that the RIT-D project will proceed (save for certain exemptions);
  - 220.3.3 **final project assessment report** – RIT-D proponent must publish a final report having regard to submissions received on the draft report.
- 220.4 The reports prepared will include the following types of information (amongst other things):
  - 220.4.1 description of the **identified need** (including the technical characteristics of the need such as the size of load reduction or additional supply, location, contribution to power system security or reliability);
  - 220.4.2 a summary of **potential credible options** to address the identified need (including network options and non-network options);
  - 220.4.3 for each potential credible option **information** on the **technical definition or characteristics** of the option, the estimated construction timetable and commissioning date and the total indicative cost);
  - 220.4.4 **information** to assist non-network providers wishing to present **alternative potential credible options**.
- 220.5 As is the case under transmission, the process of preparing the reports under each stage involves consultation with Registered Participants, AEMO, non-network providers and interested parties, in particular under the draft project assessment stage, as follows:
  - 220.5.1 the RIT-D proponent must publish a **request for submissions** on the matters set out in the draft project assessment report;
  - 220.5.2 if a proposed preferred option has the potential to, or is likely to, have an adverse impact on the quality of the service experienced by consumers of electricity then the RIT-D proponent must **consult directly with those affected customers** in accordance with a process reasonably determined by the RIT-D proponent.
  - 220.5.3 the **time periods** within which consultation processes must occur are provided for generally in rule 5.17.4;
- 221. Registered Participants, the AEMC, Connection Applicants, Intending Participants, AEMO, interested parties and non-network providers may, by notice to the AER, dispute conclusions made by the RIT-T or RIT-D proponent, as follows:

- 221.1 for RIT-T decisions, in relation to:
    - 221.1.1 the application of the RIT-T;
    - 221.1.2 the basis upon which the RIT-T proponent has classified the preferred option as being for reliability corrective actions;
    - 221.1.3 the RIT-T's assessment regarding whether the preferred option will have a material inter-network impact;
  - 221.2 for RIT-D, on grounds that:
    - 221.2.1 the RIT-D proponent has not applied the RIT-D in accordance with the Rules;
    - 221.2.2 there was a manifest error in the calculations performed by the RIT-D proponent in applying the RIT-D.
  - 222. The **AER may determine such disputes** pursuant to NER r 5.16.5 and 5.17.5.
  - 223. The **factors that the AER must take into account** when making such determinations are set out as follows:
    - 223.1 for determinations relating to a RIT-T proponent – see NER r 5.16.5(f) and (g);
    - 223.2 for determinations relating to a RIT-D proponent – see NER r 5.17.5(f) and (g).
- AEMO's role as National Transmission Planner
- 224. Chapter 5 of the NER also deals with AEMO's role as the **National Transmission Planner**. That role is one of AEMO's statutory functions prescribed by s 49 of the NEL.
  - 225. Among other things, NEL s 49(2) provides that, in AEMO's role as National Transmission Planner, AEMO has the following functions:
    - 225.1 to prepare, maintain and publish a plan for the development of the national transmission grid (**National Transmission Network Development Plan (NTNDP)**) in accordance with the NER;
    - 225.2 to establish and maintain a **database of information** relevant to planning the development of the national transmission grid (and to make the database available to the public);
    - 225.3 to keep the national transmission grid under **review** and provide **advice** on the development of the grid or projects that could affect the grid;
    - 225.4 to provide a **national strategic perspective** for transmission planning and coordination;
    - 225.5 to develop any **forecasts** of electricity demand at a regional or connection point level.
  - 226. In carrying out the functions described above, AERMO must have regard to the NEO.
  - 227. The annual process that AEMO must undertake for the preparation and publishing of the NTNDP is set out in NER r 5.20, and outlined below:

### 227.1 Preliminary consultation (r 5.20.1)

227.1.1 AEMO is required to publish by 30 January each year –

- (a) a document that sets out the **NTNDP inputs** that AEMO proposes to use for the preparation or revision of the NTNDP (the nature of those inputs is governed by NER r 5.20.4);
- (b) a document known as a **statement of material issues**, summarising the issues that AEMO considers to be the material issues involved in the preparation or revision of the NTNDP for the following calendar year and giving an indication of AEMO's preliminary views on how the issues should be resolved;

227.1.2 AEMO is also required to publish an **invitation for written submissions** to be made within a period of at least 30 days on the following:

- (a) the proposed NTNDP inputs;
- (b) the content of the NTNDP as it applies for the current year;
- (c) issues raised in the statement of material issues;

227.1.3 **Any person may make a written submission** to AEMO on the proposed NTNDP inputs, the content of the NTNDP as it applies for the current year, or an issue raised in the statement of material issues within the period specified in the invitation

## 227.2 Publication of NTNDP (r 5.20.2)

227.2.1 AEMO must publish, by 31 December each year, the NTNDP for the following year – the factors which must be taken into account in preparing the NTNDP are set out in in r 5.20.2.

228. In addition to the publication of the annual NTNDP itself, AEMO must also establish, maintain and make available to the public the **NTNDP database**, which includes the NTNDP inputs which AEMO used in preparing the most recent NTNDP. The matters which must be included in the database are set out in NER r 5.20.4.

229. NER r 5.21 sets out a series of further obligations on AEMO to publish information and guidelines, and to provide advice, in relation to its National Transmission Planner functions.

230. NER r 5.22 provides certain **last resort planning powers** to the AEMC.

## 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).



## K Electricity Metering

- 245. Market customers are required to install metering equipment to record electricity consumption, and it is AEMO's responsibility to register, accredit and audit the metering services provided.
- 246. The information gathered from metering equipment is also forwarded to AEMO for use in calculating and preparing accounts for financial settlement.
- 247. These services are dealt with under Part 8A of the NEL and Chapter 7 of the NER, and perform the function of measuring the amount of electric energy consumed.

### *NER Chapter 7 – Metering Generally*

- 248. Chapter 7 of the NER deals with electricity metering. A brief and non-exhaustive summary is given below.
- 249. Among other things, before participating in the market in respect of a connection point, a market participant must ensure that the connection point has a metering installation and that the metering installation is registered with AEMO: NER r 7.1.2.
- 250. AEMO is responsible for establishing, maintaining and publishing procedures in relation to electricity metering services (r 7.1.3) and for the collection, processing and delivery of metering data (r 7.2.1A).
- 251. Metering installation arrangements are dealt with by NER r 7.3.
- 252. Rules governing meter providers and metering data providers are set out in NER r 7.4, while payment for metering and metering data services is dealt with in NER r 7.3A.
- 253. NER r 7.5 provides that AEMO must maintain a metering register of all metering installations and check metering installations that provide metering data used for AEMO account statements.
- 254. Inspection, testing and audit of metering installations is dealt with in NER r 7.6.
- 255. Entitlement to metering data and access to metering installations is dealt with in NER r 7.7.
- 256. Security of metering installations and data is dealt with in NER r .8.

### *NEL Part 8A – Smart Metering Services*

- 257. Part 8A of the NEL provides that a Minister of a participating jurisdiction may require certain regulated distribution system operators to conduct a **trial or assessment of smart electricity meters**, and deals with the subject matter and purposes of such a trial or assessment.

## 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.

263. NER r 3.2 sets out AEMO's **market responsibilities** in relation to the operation of the NEM. Among other things, these include:
- 263.1 to **operate and administer** the market in accordance with NER Chapter 3;
  - 263.2 to establish, maintain and publish a **register** of all current market participants;
  - 263.3 to establish **procedures for consultation** with registered participants in respect of the manner in which AEMO fulfils its functions and obligations under the NER;
  - 263.4 to publish annually **performance indicators** to monitor AEMO's performance in respect of its market management functions;
  - 263.5 to operate and administer a **spot market** for the sale and purchase of electricity and market ancillary services;
  - 263.6 to manage the **day to day operation of the power system**;
  - 263.7 to determine the market's requirement for **non-market ancillary services**, and to acquire such services;
  - 263.8 to provide a **financial settlements service**, including billing and clearance for all market trading.

*Registration of participants in the NEM*

264. Section 11 of the NEL provides that a person must not engage in the following activities unless that person is a **registered participant** in relation to that activity, or has been exempted from the requirement of registration:
- 264.1 **owning, controlling or operating generating systems** connected to the interconnected national electricity system;
  - 264.2 **owning, controlling or operating a transmission system or distribution system** that forms part of the interconnected national electricity system;
  - 264.3 **purchasing electricity** through a wholesale exchange.
265. AEMO may grant a registration or exemption pursuant to NEL ss 12 and 13.
266. The registration process is governed by NER Chapter 2, which deals with the registration of several different categories of **registered participants**:
- 266.1 **Generators**, whose role is to own, control or operate generating systems that are connected to transmission or distribution systems (set out in Rule 2.2);
  - 266.2 **Customers**, who engage in the activity of purchasing electricity supplied through a transmission or distribution system to a connection point (set out in Rule 2.3);
  - 266.3 **Small Generation Aggregators**, whose role is to supply electricity from one or more small generating units to a transmission or distribution system (set out in Rule 2.3A);
  - 266.4 **Metering Coordinators**, who engage in the coordination and provision of metering services at a connection point (set out in Rule 2.4A);
  - 266.5 **Network Service Providers**, whose role is to engage in the activity of owning, controlling or operating a transmission or distribution system (set out in Rule 2.5);

- 266.6 **Traders**, in order to participate in auctions (set out in Rule 2.5A); and
- 266.7 **Reallocators**, in order to participate in reallocation transactions (set out in Rule 2.5B).
- 267. Further, NER r 2.4 provides that customers, small generation aggregators, generators and NSPs may be registered as **Market Participants**. Market Participants are distinguished from other registered participants in that they may trade electricity in the spot market, rather than trading with, for example, local retailers only.
- 268. In order to obtain and maintain their registration, Market Participants must comply with certain **prudential requirements** set out in NER Chapter 3.

#### *Market Rules*

- 269. The Market Rules which govern the operation of the NEM are set out in NER Chapter 3.
- 270. Chapter 3 is intended to give effect to the **market design principles** set out in NER r 3.1.4, which are summarised as follows:
  - 270.1 minimisation of AEMO decision-making to allow Market Participants the **greatest amount of commercial freedom** to decide how they will operate in the market;
  - 270.2 maximum level of **market transparency** in the interests of achieving a very high degree of market efficiency;
  - 270.3 **avoidance of any special treatment in respect of different technologies** used by Market Participants;
  - 270.4 **consistency** between central dispatch and pricing;
  - 270.5 **equal access** to the market for existing and prospective Market Participants;
  - 270.6 ensuring market ancillary services are, to the extent that it is efficient, acquired through **competitive market arrangements** and as far as practicable determined on a dynamic basis. Where dynamic determination is not practicable, competitive commercial contracts between AEMO and service providers should be used in preference to bilaterally negotiated arrangements;
  - 270.7 actions to ensure the **safety and security** of the network must not be affected by competitive market arrangements;
  - 270.8 where arrangements require participants to pay a proportion of AEMO costs for ancillary services, charges should where possible be allocated to provide **incentives to lower overall costs of the NEM**. Costs unable to be reasonably allocated this way should be apportioned as broadly as possible whilst minimising distortions to production, consumption and investment decisions; and
  - 270.9 where arrangements provide for AEMO to acquire an ancillary service, AEMO should be responsible for settlement of the service.

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                                                                                                                                           |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Applying for a model standing offer</b>            | <p>Distributor <b>must</b> have one or more model standing offers 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 <b>may</b> submit for the AER's approval a proposed model standing offer to provide standard connection services on specified terms and conditions.</p> |
| <b>Terms and conditions of a model standing offer</b> | <p>When a distributor submits a proposed model standing offer, the terms and conditions must cover:</p> <ul style="list-style-type: none"> <li>• a <b>description</b> of the connection;</li> <li>• <b>timeframes</b> for commencing and completing the work;</li> <li>• <b>qualifications</b> 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);</li> <li>• <b>safety and technical requirements</b> to be complied with by the provider of a contestable service or the retail customer;</li> </ul> | <p>Same.</p>                                                                                                                                                           |

| Factor                                          | Basic connection services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Standard connection services                                                                                                                                                         |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                 | <ul style="list-style-type: none"> <li>• details of <b>connection charges</b> (being the charge imposed by the distributor for the connection service);</li> <li>• manner in which the connection charges are to be paid by the retail customer;</li> <li>• if the service is a basic micro EG connection service, the particular requirements with regard to the export of electricity into the distribution system.</li> </ul>                                                                                                                                                                                                                                                                 |                                                                                                                                                                                      |
| <b>AER's approval of a model standing offer</b> | <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"> <li>• the services are likely to be sought by: <ul style="list-style-type: none"> <li>○ a significant number of retail customers in the area served by the distribution network (excluding embedded generators); or</li> <li>○ micro-embedded generators.</li> </ul> </li> <li>• the connection charges are consistent with the DNSP's distribution determination, including the connection policy;</li> <li>• the terms and conditions are fair and reasonable;</li> <li>• the terms and conditions comply the energy laws.</li> </ul> | <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"> <li>• the national electricity objective;</li> <li>• the basis upon which the DNSP has provided the service in the past;</li> <li>• geographical characteristics of the area served by the relevant distribution pipeline.</li> </ul>                                                                                                                                                                                                                                                                                         | <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> |



## page 133

### Applications for connection services

289. Applications for connection services are governed by Chapter 5A, Part D.
290. NER r 5A.D.2 provides that a DNSP must, after receiving an enquiry about a connection service, provide the enquirer with the information required to make an **informed application**.
291. An application for a connection service must be in the form determined by the DNSP, and may be made by:
- 291.1 a **retail customer**;
  - 291.2 a **retailer or other person acting on behalf of a retail customer**;
  - 291.3 a **real estate developer** who seeks connection services for premises comprised by a retail estate development.
292. If a DNSP reasonably requires additional information to assess the application, it may require the connection applicant to provide the necessary information.
293. A DNSP must, within 10 days after receiving an application:
- 293.1 advise the connection applicant whether the proposed connection service is a **basic** connection service, a **standard** connection service or **neither**;
  - 293.2 if the connection service is neither or the connection applicant elects for a negotiated connection contract, then the DNSP **must** advise the connection applicant of the **negotiated connection process** and of the **possible costs / expenses** related to the negotiations.

### Connection charges

294. Provisions regarding connection charges are contained in NER Chapter 5A, Part E.
295. Rule 5A.E.1 sets out the **connection charge principles**, which are detailed and are not extracted here in their entirety.
296. Among other things, the connection charge principles provide that a retail customer who applies for a connection service for which an augmentation is required **cannot** be required to make a capital contribution towards the costs of the augmentation if:
- 296.1 the application is for a **basic connection service**; or
  - 296.2 a relevant **threshold** in the DNSP's connection policy is **not exceeded**.
297. Rule 5A.E.2 requires that a connection offer must be accompanied by a schedule containing an itemised statement of connection costs.
298. Rule 5A.E.3 governs the development of **connection charge guidelines** by the AER. Among other things:
- 298.1 The AER must develop and publish guidelines for the development of connection policies setting out the circumstances in which connection charges are payable and the basis for determining the amount of such charges by DNSP's, in accordance with the **distribution consultation procedures** – see **Annexure 1** to this Chapter of the Handbook: rule 5A.E.3

- 298.2 The purpose of the guidelines is to ensure connection charges:
- 298.2.1 are **reasonable** taking into account the efficient costs of providing connection services and the revenue a prudent operator would require to provide the connection services;
  - 298.2.2 provide, without undue administrative cost, **a user-pays signal to reflect the efficient cost of providing the connection services**;
  - 298.2.3 **limit cross-subsidisation** of connection costs between different classes of retail customer;
  - 298.2.4 If the connection services are contestable – are **competitively neutral**.
- 298.3 The guidelines must (among other things):
- 298.3.1 describe the circumstances under which the DNSP may receive a capital contribution (and the amount of the contribution), repayment or financial guarantee from a retail customer or real estate developer
  - 298.3.2 establish principles for fixing a threshold (based on capacity or any other measure the AER thinks fit) below which retail customers are exempt from a requirement to pay connection charges for an augmentation to the distribution network necessary to make the connection
  - 298.3.3 describe the methods for calculating the augmentation component for the connection assets;
  - 298.3.4 describe the method for calculating:
    - (a) the amount of a refund of connection charges for a connection asset when an extension asset originally installed to connect the premises of a single retail premises is used, within 7 years of its installation, to connect other premises and thus comes to the benefit of 2 or more retail customers; and
    - (b) the threshold below which the refund is not payable
- 298.4 In developing the guidelines, the AER must have regard to:
- 298.4.1 **historical and geographical differences** between networks;
  - 298.4.2 **inter-jurisdictional differences** related to regulatory control mechanisms, classification of services and other relevant matters;
  - 298.4.3 the circumstances in which connection services may be provided by person other than the DNSP (and are therefore **contestable**).

*Retail support obligations between distributors and retailers*

299. Chapter 6B of the NER deals with the following aspects of retail markets:
- 299.1 **billing and payment rules** (and matters incidental to billing and payment); and
  - 299.2 **credit support regimes**, dealing with requirements for credit support and provision of credit support from retailers.
300. Each aspect is considered separately below.

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.

**(cont)**

**(cont)**

- (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.



## CHAPTER 4: THE NATIONAL ENERGY CUSTOMER FRAMEWORK

|          |                                                                                               |            |
|----------|-----------------------------------------------------------------------------------------------|------------|
| <b>A</b> | <b>Overview and Structure of the legislation.....</b>                                         | <b>142</b> |
|          | National Energy Retail Objective and Statements of Policy Principles .....                    | 142        |
|          | Application and structure of the NERL .....                                                   | 143        |
| <b>B</b> | <b>Relationship between retailers and small customers.....</b>                                | <b>145</b> |
|          | Retail contracts under NERL Part 2 .....                                                      | 145        |
|          | Standard retail contracts: NERL Part 2 Division 3 .....                                       | 147        |
|          | Market retail contracts .....                                                                 | 149        |
|          | Deemed customer retail arrangements .....                                                     | 150        |
|          | The regulation of pre-payment meter systems.....                                              | 151        |
|          | Customer hardship and payment plans.....                                                      | 151        |
|          | Energy Marketing Rules .....                                                                  | 154        |
| <b>C</b> | <b>Relationship between distributors and customers .....</b>                                  | <b>155</b> |
|          | Deemed standard connection contracts .....                                                    | 157        |
|          | Deemed AER approved standard connection contracts .....                                       | 158        |
|          | Negotiated connection contracts .....                                                         | 159        |
| <b>D</b> | <b>Complaints and compensation management .....</b>                                           | <b>160</b> |
|          | Small customer complaints and dispute resolution .....                                        | 160        |
| <b>E</b> | <b>The retailer authorisation regime.....</b>                                                 | <b>166</b> |
|          | An introduction to the retailer authorisation regime .....                                    | 166        |
|          | Applications for retailer authorisation .....                                                 | 167        |
|          | Transferring or surrendering authorisations .....                                             | 168        |
|          | AER authorisation revocation .....                                                            | 168        |
|          | Exemptions from retailer authorisations .....                                                 | 169        |
| <b>F</b> | <b>Retailer of Last Resort (RoLR) scheme .....</b>                                            | <b>172</b> |
|          | The RoLR scheme under NERL Part 6 .....                                                       | 172        |
|          | The AER's functions and powers under the RoLR scheme .....                                    | 172        |
|          | AEMO's functions and powers under the RoLR scheme .....                                       | 173        |
|          | The RoLR selection process.....                                                               | 173        |
|          | Appointment of a designated RoLR.....                                                         | 175        |
|          | Declaration of a RoLR event.....                                                              | 176        |
|          | Transfer of responsibility.....                                                               | 177        |
|          | Arrangements for the sale of energy to transferred customers .....                            | 177        |
|          | RoLR cost recovery schemes.....                                                               | 178        |
| <b>G</b> | <b>National Energy Retail Consultation Procedure.....</b>                                     | <b>179</b> |
|          | Customer Consultative Groups.....                                                             | 179        |
|          | The Retail Consultation Procedure .....                                                       | 179        |
|          | Application of the Retail Consultation Procedure under the NERL and Rules .....               | 179        |
|          | <b>Attachment 1 Model terms and conditions for standard retail contracts .....</b>            | <b>183</b> |
|          | <b>Attachment 2 Model terms and conditions for deemed standard connection contracts .....</b> | <b>195</b> |

## 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.<sup>1</sup>

<sup>1</sup> 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.<sup>2</sup>
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.<sup>3</sup>
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.<sup>4</sup>
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).                                                    |

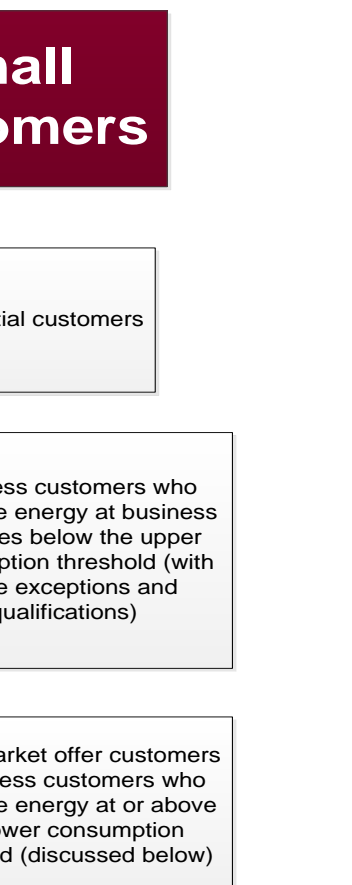
<sup>2</sup> The AEMC's table is available on its 'Guide to application of the NECF' webpage at <<http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF>>.

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

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

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

- etailers and small  
L ss 2 and 5.
- retailer authorisation  
apter).
- ess premises below
- may determine the  
classified as a small
- 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:

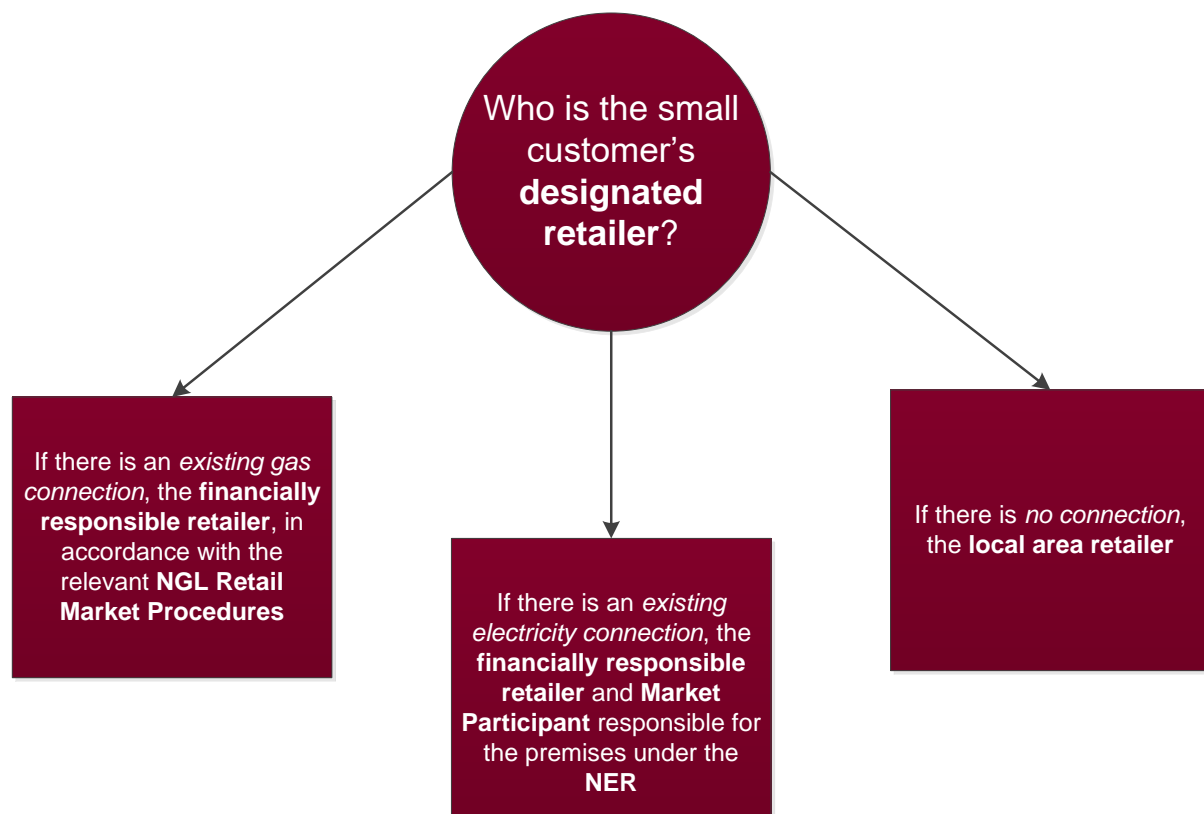
16.1 if there is **an existing connection**, the **financially responsible retailer** for the premises of the customer in the wholesale energy market. **Financially responsible** retailers in turn are either:

(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 **mark 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).<sup>5</sup>
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.<sup>6</sup> 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.

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

<sup>6</sup> 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><b>NERL s 25 (4) - Permitted alterations are:</b></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><b>NERL s 28(3) - Permitted alterations are:</b></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><b>NERL s 25(5) Required alterations are:</b></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><b>NERL s 28(4) - Required alterations are:</b></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**.<sup>7</sup> These innovations are intended to foster competition, allowing consumers to shop around for the retail product that best suits their needs.<sup>8</sup>
39. As with standard retail contracts, any variations to a market retail contract must be consistent with the NERL. 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.

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

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

- ### *The regulation of pre-payment meter systems*

- ### Customer hardship and payment plans

- 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.*

- page 151

#### 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.<sup>9</sup> 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).

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

- ### Payment plans

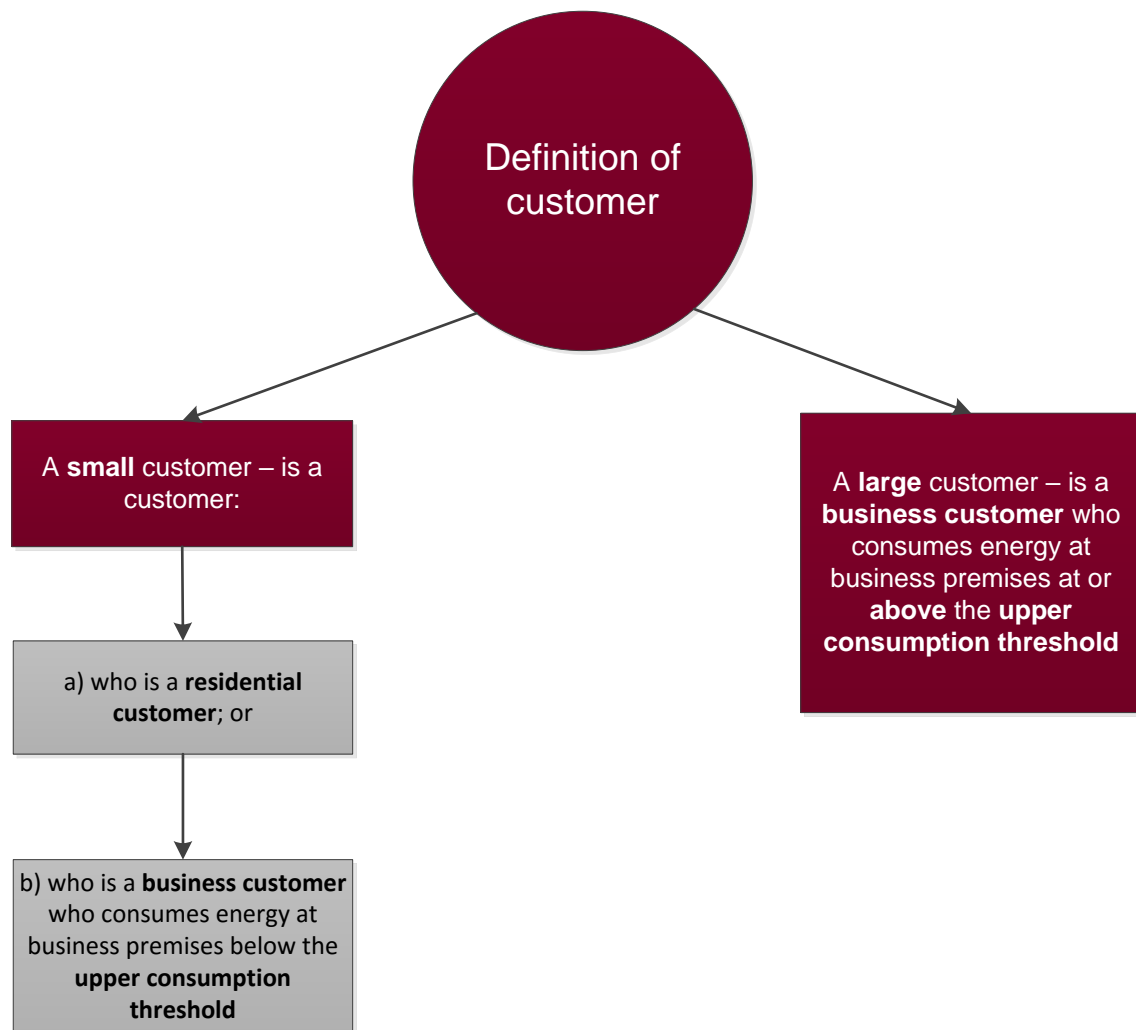
- ## Debt recovery proceedings

- ## Energy Marketing Rules

- 14 October 2016 – Version 1.0

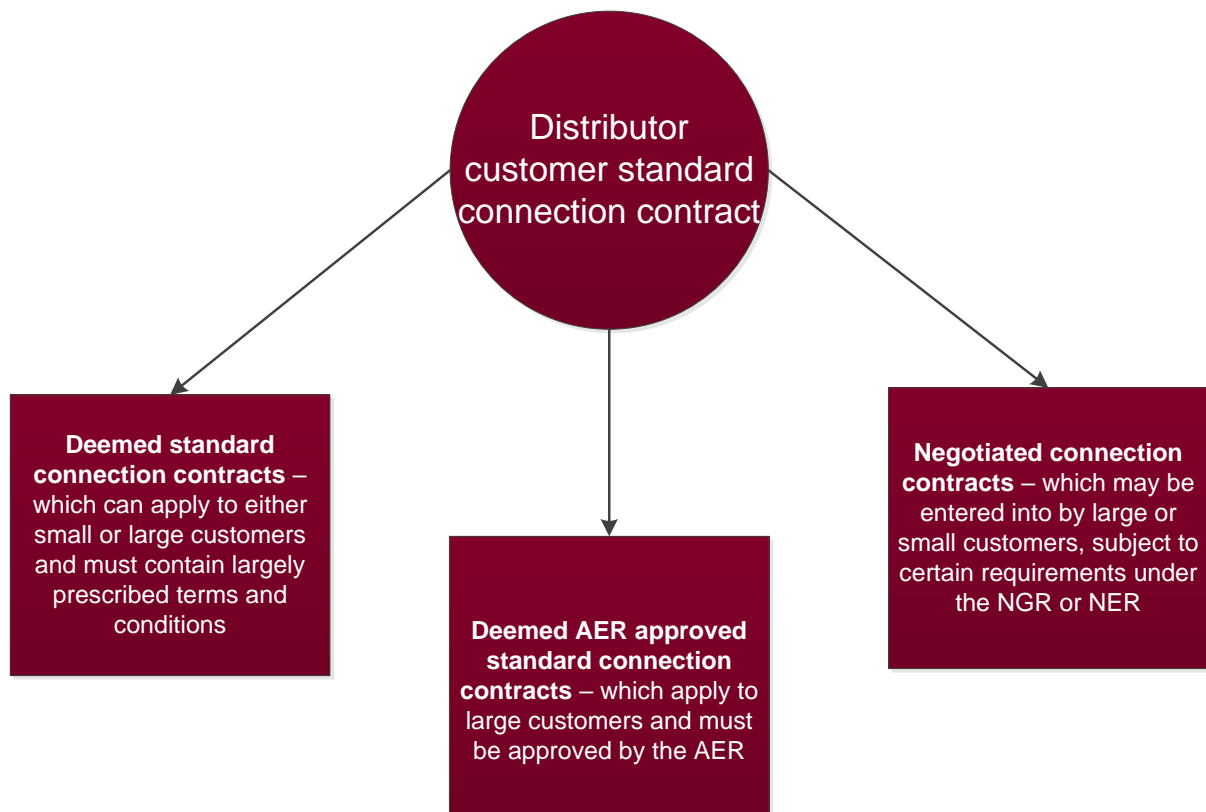
69. NERL Part 3 regulates the relationships between **distributors** and **customers**.
70. Under NERL Part 3, distributors have connection service obligations to both **small customers** and **large customers**, whether in relation to electricity or gas. These connection service obligations relate to:
  - 70.1 new connections;
  - 70.2 connection alterations; and
  - 70.3 ongoing supply services.
71. These distributor obligations mirror and support a retailer's obligations to make standing offers to sell energy to **small customers**.<sup>11</sup>
72. The following diagram sets out the differences between **small customers** and **large customers** under NERL s 5, that are relevant to the relationship between distributors and customers:





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 2<sup>nd</sup> 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.<sup>12</sup>
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.<sup>13</sup> Where connection contracts are negotiated, a negotiating framework is provided in the National Electricity and Gas Rules.<sup>14</sup>

#### *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.

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

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

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

82. The NERL also prescribes conditions as to the **formation** of a deemed standard connection contract: NERL s 70.
83. In the case of a **new connection** or a **connection alteration**, a distributor's form of deemed standard connection contract (including any additional terms and conditions relating to the new connection or connection alteration) takes effect on acceptance by the customer of the distributor's connection offer in accordance with the requirements under—
  - (a) in the case of **electricity** – NER Chapter 5A; or
  - (b) in the case of **gas** – NGR Part 12A.
84. In the case of an **existing connection** that is not the subject of a connection alteration, a contract takes effect under NERL s 70(3):
  - (a) in the case of premises that are **not energised** - the customer's premises become re-energised (or reconnected); or
  - (b) in the case of premises that **are energised**—the customer commences to take supply of energy at those premises.
85. If an **existing connection customer** is **reclassified** as a small customer for particular premises, then the deemed standard connection contract takes effect when the customer receives notice of the reclassification: NERL s 70(4).

*Deemed AER approved standard connection contracts*

86. The NERL is less prescriptive and provides more scope for commercial negotiations between large customers and distributors.<sup>15</sup> As such, NERL Part 3 enables distributors to prepare and submit to the AER for approval one or more proposed forms of standing connection contracts applicable to one or more classes of **large** customers: NERL s 75(1). Upon approval, these contracts become **deemed AER approved standard connection contracts**.
87. A distributor **may** prepare and **submit** to the AER for approval one or more proposed forms of standard connection contracts applicable to one or more **classes of large customers**: NERL s 75. The AER **must** determine to approve a proposed form of standing connection contract, if it is satisfied that the terms and conditions of the contract are **fair and reasonable** and comply with any applicable requirements of the **energy laws** (i.e. the NGL, NEL and NERL, associated Rules and participating jurisdiction legislation): NERL s 75(2).
88. On approval, the proposed standard form connection contract becomes the **deemed energy regulator approved standard connection contract** for the specified class of large customer of the distributor: NERL s 75(4). The contract must be published on the distributor's website to be operative: NERL s 75(6). Notably, all large customers **may** constitute a single class of large customers: NERL s 75(7).
89. NERL s 76 also prescribes the method of **formation** of a deemed AER approved standard connection contract: NERL s 76.
90. The **formation** of a deemed AER approved standard connection contract is taken to occur between a distributor and a large customer, or class of large customers, as set out in NERL s 76.

<sup>15</sup> See the *Australian Energy Market Amendment (National Energy NERL) Bill 2011* (Cth) 2<sup>nd</sup> reading speech, 17 August 2011.

91. In the case of a **new connection** or **connection alteration**, a contract takes effect between the distributor and a large customer, or class of large customers, on acceptance by the customer of the distributor's connection offer in accordance with the requirements under:
- (a) in the case of **electricity** - the NER Chapter 5A; or
  - (b) in the case of **gas** - the NGR Part 12A.
92. Under NERL s 76(4) and (4a), in the case of an **existing connection**:
- 92.1 if a **small** customer (business or non-residential) becomes reclassified as a large customer; or
  - 92.2 a **large** customer falls into a relevant class of large customers subject to a deemed AER standard connection contract,
- then the distributor's relevant deemed AER approved standard connection contract takes effect when the customer receives notice of the reclassification.
93. The AER also has the power to **amend** and **replace** a **deemed AER approved standard connection contract** with a replaced or amended deemed AER approved standard connection contract: NERL s 77. The provisions relevant to **preparation, submission by distributors** and **AER approval** apply also to **amending** or **replacing** deemed AER approved standard connection contract: NERL 77(2). A deemed AER approved standard connection contract **may** be amended from time to time: NERL s 77(2).

*Negotiated connection contracts*

94. The final form of connection contract enabled by the NERL is the **negotiated connection contract**. A distributor may enter into a negotiated connection contract with any kind of customer, whether large or small: NERL s 67(c).
95. When the customer is a **small customer**, the contract must adhere to the requirements and negotiating framework in Chapter 5A of the NER or Part 12A of the NGR: NERL s 78(1). Moreover, NERL s 78(2) requires distributors to provide:
- 95.1 **information** to the small customer of its right to have a deemed standard connection contract;
  - 95.2 an **explanation of the differences** between the deemed and negotiated contract; and
  - 95.3 an **explanation of the implications** of the differences.
96. The NERR also provides **minimum requirements** with respect to small customer negotiated connection contracts: See NERL Part 4 Div 4. These minimum requirements largely relate to complaints and dispute resolution information, and restrictions on limiting distributor liabilities.

## 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.

100. At present, a **relevant matter** does not include the setting of tariffs and charges of distributors or retailers: NERL s 79.
101. The NERL anticipates that small customers will make any complaints initially to the relevant retailer or distributor for internal resolution: NERL s 82. The NERL provides that an energy ombudsman **may** decline to investigate a matter in the absence of a retailer or distributor being given an opportunity to resolve the matter: NERL s 84(3).
102. Among other things, every retailer and distributor **must** do the following with respect to complaints management:
  - 102.1 **develop** and publish on its website standard complaints and dispute resolution procedures: NERL s 81;
  - 102.2 regularly **review** these procedures: NERL s 81;
  - 102.3 ensure these procedures are **substantially consistent** with AS ISO 10002-2006 (*Customer satisfaction—Guidelines for complaints handling in organizations*) as amended and updated from time to time: NERL s 81;
  - 102.4 handle complaints in accordance with its **published procedures**, and advise the customer in a timely way of the outcome, including any reasons for its decision: NERL section 82;
  - 102.5 **inform** a small customers dissatisfied with the internal decision of the right to take the matter to relevant energy ombudsman: NERL s 82(5); and
  - 102.5.1 meet particular **information sharing** requirements with respect to the energy ombudsman: NERL s 85.
103. Further, retailers and distributors **must** be members of, or subject to, **an energy ombudsman scheme** in each jurisdiction in which it provides services to small customers: NERL s 86.
104. When a matter is referred to an energy ombudsmen for resolution, NERL s 84 sets out specific functions and powers available to the ombudsmen. The exercise of these powers and functions **must** be consistent with the NERL and the energy ombudsman's constitution provisions: NERL s 84.

#### *Small compensation claims regime*

105. Part 7 of the NERL establishes an **opt-in**, no-fault **small compensation claims regime** to enable small customers to make small claims for compensation from **distributors** who provide customer connection services to the customer's premises: NERL s 176.
106. At present, none of the participating jurisdictions has **opted-in** to the regime.<sup>16</sup> However, Victoria is planning to adopt a modified form of the NERL's small compensation claims regime.<sup>17</sup> The Victorian small compensation claims regime will be set out in a local instrument, and is expected to incorporate elements of Victoria's current **voltage variation**

<sup>16</sup> See the AER's 'Other retail roles' webpage at <<https://www.aer.gov.au/retail-markets/other-retail-roles#small-compensation-claims-regime>>.

<sup>17</sup> See also the Victorian Department of Economic Development, Jobs, Transport and Resources' 'The National Energy Customer Framework in Victoria' webpage at <<http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/national-energy-customer-framework/the-national-energy-customer-framework-in-victoria>>.

**regime**, which allows customers to reclaim the replacement value of equipment damaged by voltage variations.<sup>18</sup> No date has yet been set for the introduction of the Victorian regime.

107. The NERL small compensation claims regime is designed to provide small customers with small claims a low cost way to obtain compensation for (mainly) damage to their property without needing to prove negligence.<sup>19</sup> The *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech contemplated that the types of small claims that would typically arise would involve damage to electrical and electronic goods, such as televisions and computers.<sup>20</sup>
108. The *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech also contemplated that the small compensation claims regime would:
  - 108.1 provide an **incentive** for distribution businesses to actively manage their quality of supply, rather than pay compensation for potentially avoidable incidents;
  - 108.2 assist distribution businesses with their **management of liability** by reducing the need for small customers to potentially seek legal action for damage;
  - 108.3 offer small customers an **uncomplicated tool** to claim compensation; and
  - 108.4 **reduce the burden** of dispute resolution involving property damage through jurisdictional ombudsman schemes as small customers can deal directly with the distribution business and need only involve the energy ombudsman if they are dissatisfied with the outcome of a claim.
109. The NERL gives some scope for a participating jurisdiction's NERL Regulations to determine the categories and scope of matters that are **claimable incidents** or **compensable matters**: NERL s 179(1). While certain events may be a **claimable incident** in relation to a distributor's provision of services, the event may not be a **compensable matter**. The NERL is clear that the following are not **compensable matters**:
  - (a) death;
  - (b) personal injury;
  - (c) except as provided in the NERL Regulations or a local instrument, economic loss or damage to intangible property; or
  - (d) any other matter prescribed in the NERL Regulations or a local instrument as not being compensable: NERL s 179(2).
110. Claims under the small compensation claims regime are handled directly by distributors, rather than ombudsmen. Nevertheless, small customers who are dissatisfied by their distributor's handling of their claim may subsequently lodge a complaint with the relevant energy ombudsman: NERL s 197.

#### Amounts and ranges of small compensation payable under the small compensation claims regime

111. Compensation is only payable in relation to particular **amounts** and **ranges**. The **amounts** comprise a **minimum** amount, **median** amount and **maximum** amount: NERL s 184. If a participating jurisdiction has opted-in to the small compensation claims regime, these

<sup>18</sup> See the Victorian Department of Economic Development, Jobs, Transport and Resources' 'The National Energy Customer Framework in Victoria' webpage at <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/national-energy-customer-framework/the-national-energy-customer-framework-in-victoria>

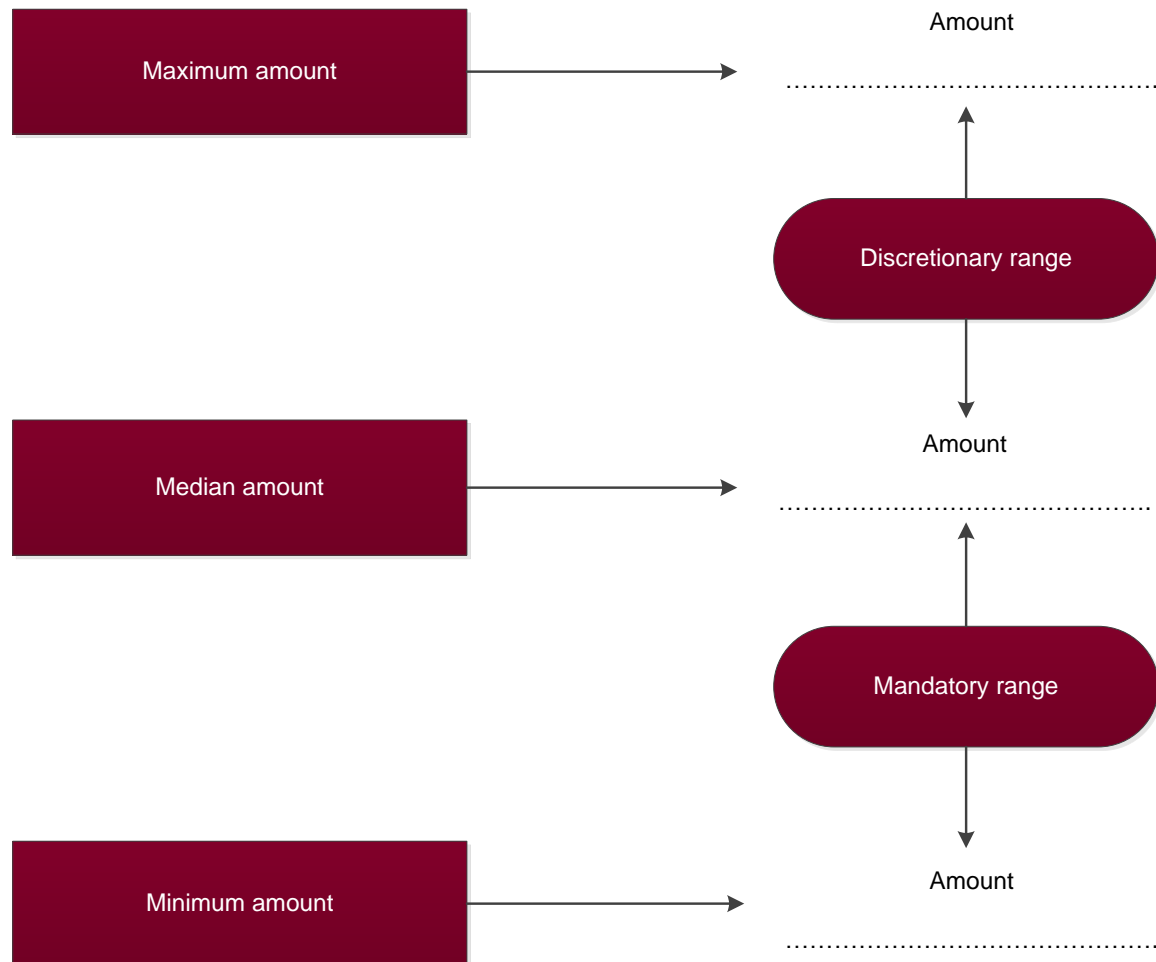
<sup>19</sup> See *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech.

<sup>20</sup> See *National Energy Retail Law (South Australia) Bill 2<sup>nd</sup>* reading speech.

**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:

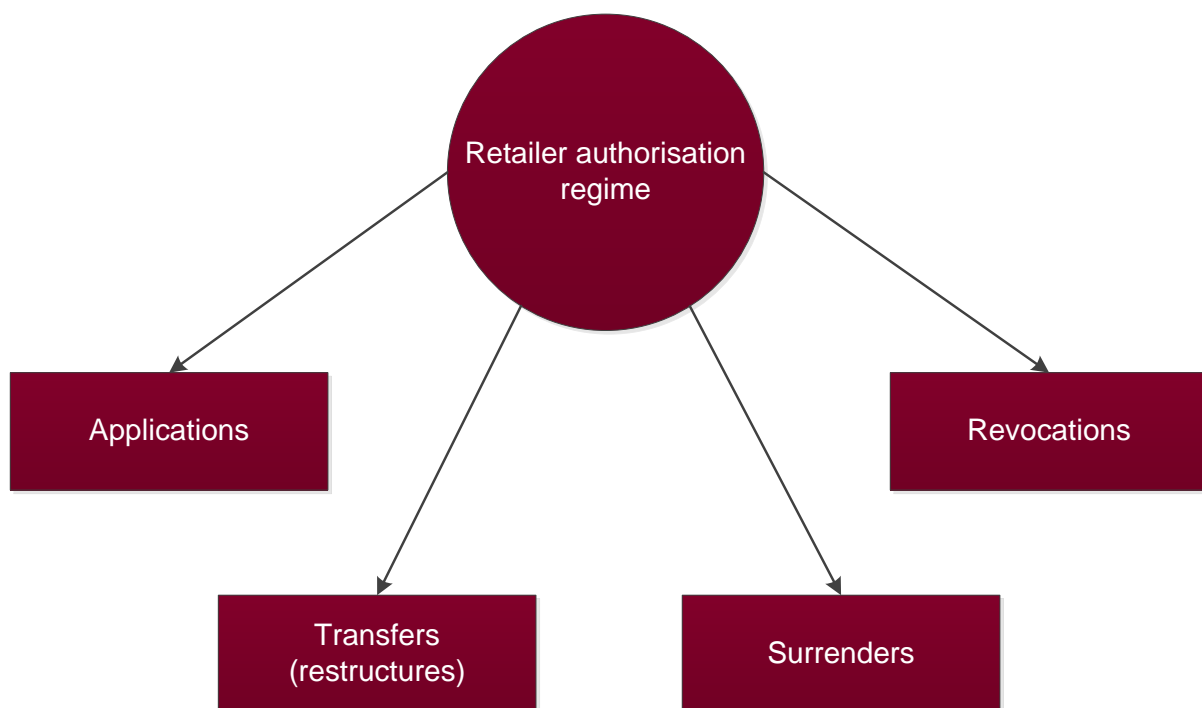


- 121.1 the customer cannot make any further claim;
  - 121.2 the customer cannot commence or maintain proceedings; and
  - 121.3 the distributor has no further liability.
122. Aside from the **finality of payment** provision at paragraph 121, the NERL does not prevent customers from commencing or maintaining 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.<sup>21</sup>
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.

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

*Applications for retailer authorisation*

129. NERL s 88 provides that a person (**seller**) **must not** engage in the activity of selling energy unless the seller:
- 129.1 holds a current retailer authorisation; or
  - 129.2 is an exempt seller.
130. However, this provision must be read in conjunction with particular requirements under the NGL or NEL, as the case may apply.<sup>22</sup> Ultimately, the decision to grant an authorisation (or exemption) rests with the AER.
131. Under NERL s 90, applications for authorisation are made to the AER. The AER **must** then consider the **entry criteria** which are set out below:

**NERL s 90—Entry criteria**

(1) The entry criteria in relation to an application are as follows:

- (a) the **organisational and technical capacity criterion**—the applicant must have the necessary organisational and technical capacity to meet the obligations of a retailer;
- (b) the **financial resources criterion**—the applicant must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer;
- (c) the **suitability criterion**—the applicant must be a suitable person to hold a retailer authorisation.

132. In considering the **suitability criterion** under NERL s 90(4), the AER **may** take into consideration such matters as it thinks relevant, including:
- 132.1 the **previous commercial dealings** of the applicant and its **associates** (which has the same meaning as provided in Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth)); and
  - 132.2 the **standards of honesty and integrity** shown in previous commercial dealings of the applicant and its associates.
133. Among other things, the NERL further provides that the AER (in brief):
- 133.1 **must** publish a copy of the application on the AER's website, or give details in relation to the application: NERL s 91;
  - 133.2 **invite** written submissions about the application: NERL s 91;
  - 133.3 **may grant** an application in full or with conditions: NERL s 93; and
  - 133.4 upon granting or refusing an application, **must publish** the outcome on the AER's website: NERL ss 96 and 97.

<sup>22</sup> See NEL s 11(4) on electricity market activities, and NGL ss 91LB regarding registration for retail gas markets, 91BJ regarding registration for declared wholesale gas market participation and 91BRD regarding registration for participation in short term trading markets.

*Transferring or surrendering authorisations*

134. NERL Part 5 also provides for the **transfer** or **surrender** of authorisations. Applications for an authorisation transfer **must** be made by both the transferor and proposed transferee: NERL s 102.
135. When deciding on a transfer application under NERL s 103(2), the AER **must not** grant the applications unless it is satisfied:
  - 135.1 the proposed **transferee** meets the **entry criteria**; and
  - 135.2 arrangements relating to the transfer will appropriately manage any issues concerning customers of the proposed transferor.
136. In contrast to the retailer authorisation application process, the AER is under no obligation to publish a transfer application or the AER's final decision. Instead, the AER must only advise the AEMO and distributors when a retailer authorisation is transferred: NERL s 103(6).
137. A transfer can also be taken to occur following an **entity restructure** in some cases. Namely, where a retailer authorisation is held jointly by two or more persons as a partnership or joint venture, a change in the composition of the partnership will be taken to be a transfer of the retailer authorisation: NERL s 104A.
138. The NERL also details the process relating to the **surrender** of a retailer authorisation: NERL s 105. Essentially, a retailer **must** seek approval from the AER before surrendering its retailer authorisation.
139. Before providing approval under NERL s 105, the AER:
  - 139.1 **must** be satisfied that arrangements relating to the surrender will appropriately manage the transfer of customers to another retailer;
  - 139.2 **may** impose conditions on the transfer of customers after consulting AEMO;
  - 139.3 **must** publish its decision to approve the surrender; and
  - 139.4 **must** advise the AEMO and distributors of its decision.

*AER authorisation revocation*

140. The AER **may** decide to revoke a retailer authorisation under NERL s 107 where:
  - 140.1 there has been a **material failure** by the retailer to meet its obligations under the energy laws and there is a **reasonable apprehension** that the retailer will be unable to meet its obligations in the future; or
  - 140.2 in the case of **electricity** – the retailer is in breach of any requirement under section 11(4) of the NEL relating to the purchasing of electricity through a wholesale exchange; or
  - 140.3 in the case of **gas** - the retailer is in breach of a requirement under NGL:
    - 140.3.1 s 91LB, as it applies to a **user or non-scheme pipeline user** (within the meaning of the NGL), to be **registered** (or exempted from registration) in order to participate in a regulated **retail gas market**;
    - 140.3.2 s 91BJ, as it applies in relation to a **declared wholesale gas market**, to be **registered** (or exempted from registration) in order to participate in

that market and to sell natural gas to customers that has been transported through the relevant declared transmission system; or

140.3.3 s 91BRD, as it applies to a **short term trading market**, to be **registered** (or exempted from registration) in order to participate in that market.

141. Following revocation, the seller **must** comply with any conditions imposed by the AER for the transfer of customers to another retailer: NERL s 108.

#### *Exemptions from retailer authorisations*

142. NERL Part 5 also gives the AER power to exempt persons, or classes of persons, from the retailer authorisation requirements.

143. The exemptions framework has been designed to recognise the wide variety of supply arrangements that exist and ensure the AER has flexibility to apply obligations to exempt sellers which protect the interests of the exempt seller's customers and are appropriate to the seller's individual circumstances.<sup>23</sup>

144. The exemption framework is intended to apply where requiring authorisation may not be appropriate. For instance, given the costs and obligations associated with holding a retailer authorisation, small entities such as caravan parks, which on-sell incidental amounts of energy, may need to be exempted.<sup>24</sup> Other unique situations may also require special arrangements.<sup>25</sup>

145. Part of the exemption framework is the AER requirement to maintain and publish on the AER website the **Public Register of Authorised Retailers and Exempt Sellers**: NERL s 119.

146. Under NERL s 110, there are three kinds of exemptions provided for in the NERR, as follows:

146.1 **individual exemptions** – which involve individual applications and are granted on a case-by-case basis, taking into account an individual seller's particular circumstances.<sup>26</sup> The NERR provides how individual exemption applications must be made to the AER: See NERR Part 9 Div 4;

146.2 **deemed exemptions** – which apply to classes of persons in respect of whom the AER has determined an exemption is taken to be in force; and

146.3 **registrable exemptions** – which are also a deemed exemption but require an application to the AER for registration, so that the exemption may be in force: See NERL s 110 and NERR r 151. The AER, in accordance with the Retail Consultation Procedure, may determine a class of persons in respect of whom an exemption is registrable: NERR r 151(1). Once the person in the relevant class is registered on the AER's **Public Register of Authorised Retailers and Exempt Sellers**, the exemption comes into force: NERR r 151(2).

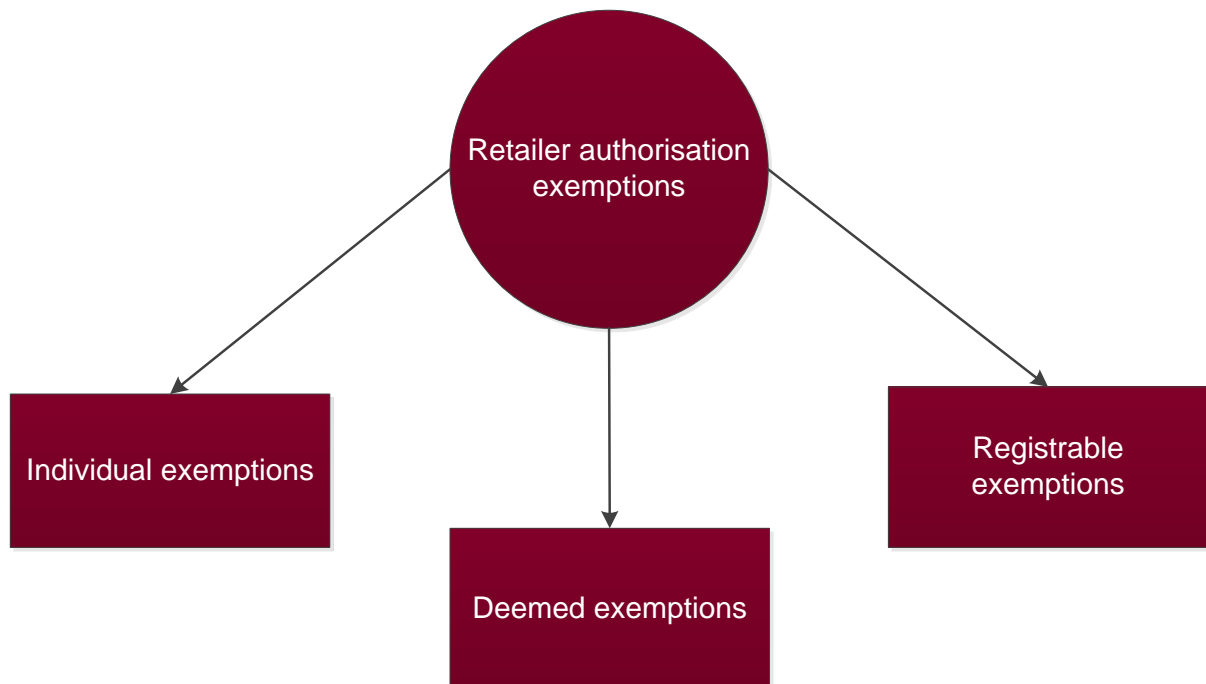
<sup>23</sup> See *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech.

<sup>24</sup> See *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech.

<sup>25</sup> See *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> reading speech.

<sup>26</sup> See *National Energy Retail Law (South Australia)* Bill 2<sup>nd</sup> 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:

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

- ### NERL s 116—Customer related factors

- (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.<sup>27</sup>
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.<sup>28</sup>
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;

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

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



- 153.3 appoint and register **default** or **additional RoLRs**: NERL ss 125 and 126;
- 153.4 maintain and publish a **register of RoLRs**, which is to include registered **default RoLRs** and **additional RoLRs**: NERL s 127;
- 153.5 appoint **designated RoLRs** in relation to a **RoLR event**: NERL s 132;
- 153.6 request financial information following the happening of a RoLR or **contingency event** that will affect, or gives rise to some risk of affecting, the continuity of the sale of energy to a retailer's customers is at risk: NERL s 130;
- 153.7 issue **RoLR regulatory information notices**, which allows the AER to investigate breaches of the energy laws: NERL s 151;
- 153.8 make **RoLR cost recovery scheme determinations** and **RoLR cost recovery scheme distributor payment determinations**: NERL ss 166 and 167; and
- 153.9 in consultation with AEMO, prepare a **report for the MCE** on a RoLR event: NERL s 172.

*AEMO's functions and powers under the RoLR scheme*

- 154. The NERL provides that AEMO **may** make **RoLR procedures** that relate to the operation or implementation of the RoLR scheme. The **RoLR procedures** can include matters concerning the transfer of customer from a failed retailer to a designated retailer: NERL s 144.
- 155. In addition, the NERL states that AEMO **may** require a failed retailer (or the relevant insolvency official) to provide AEMO, distributors or designated RoLRs, customer information. This includes requesting customer information that is not usually provided in other circumstances: NERL s 149.
- 156. Under NERL s 150, AEMO is under an obligation to notify the AER of anything that might affect:
  - 156.1 a retailer's ability to maintain continuity of the sale of energy to its customers; or
  - 156.2 a risk of a RoLR event.
- 157. Similarly, retailers **must** notify AEMO and the AER of matters that might affect the retailer's ability to maintain continuity of the sale of energy, or of a risk of a RoLR event: NERL s 150.

*The RoLR selection process*

- 158. For a retailer to be selected as a **default RoLR** or **additional RoLR**, a retailer **must** meet the **RoLR criteria** under NERL s 123, which are reproduced in the table below:

## 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.

161. The AER **must** both initially and afterwards at such times as it considers appropriate, call for expressions of interest (**RoLR register EoI**) from retailers for registration as a RoLR: NERL s 124(1). The AER **must** publish a notice of each **RoLR register EoI** on the AER website: NERL s 124(7).
162. The RoLR scheme also includes some flexibility to adapt to new means of providing additional energy security. If the AEMO advises the AER that a RoLR may be registered on a basis other than for an electricity connection point or a gas distribution system, the AER **may** register the RoLR on this **new basis**: NERL s 129.
163. The AER also has powers to **terminate** RoLR registration (other than a default RoLR): NERL s 128. Among other attendant conditions, RoLR registration may be terminated in either of the following ways:
  - (a) the registered RoLR **applying to the AER** pursuant to NERL s 128 for its registration to be terminated; or
  - (b) the AER giving to the registered RoLR **a notice to show cause** why its registration should not be terminated.
164. Any proposed termination pursuant to these processes must be published by the AER on the AER website: s 128(6). The AER must also invite submissions on the proposed termination: NERL s 128(2).

*Appointment of a designated RoLR*

165. If a RoLR event occurs, the default RoLR is taken to be appointed as the **designated RoLR**: NERL s 132.
166. Alternatively, the AER may, by notice in writing, appoint a registered RoLR (**other than the default RoLR**) as a designated RoLR in respect of a RoLR event **before the event** actually occurs: NERL s 132(2).
167. When appointing a designated RoLR, NERL s 133 requires the AER to take into account matter such as:
  - 167.1 the **RoLR criteria** under NERL 123 and set out above;
  - 167.2 whether the registered RoLR has a **RoLR cost recovery scheme** – discussed further below at paragraph 180;
  - 167.3 the **imminence** of the RoLR event; and
  - 167.4 any other relevant matters.
168. The AER can appoint **more than one retailer** as a designated RoLR if the AER is of the opinion that it is **appropriate** to do so having regard to the size of, or other circumstances surrounding, the event: NERL s 134. When making such appointments, the AER must:
  - 168.1 **allocate responsibility** for particular customers or classes of customers to each designated RoLR: NERL s 134(2); and
  - 168.2 to the maximum practicable extent, make the appointments and allocations in accordance with the **AER RoLR Guidelines**, except to the extent that the AER is satisfied that compliance with the guidelines would be inappropriate in the circumstances: NERL s 134(3).

*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.

*Transfer of responsibility*

175. Under NERL s 140, once a **transfer date** has been specified by the AER, each person who was a customer of a failed retailer immediately before the transfer date:
- 175.1 ceases to be a customer of the failed retailer on that date; and
  - 175.2 becomes a customer of the relevant designated RoLR immediately after so ceasing to be a customer of the failed retailer.
176. Accordingly, the **designated RoLR** assumes the functions and powers of the failed retailer under the energy laws and assumes the NERL responsibilities associated with the transfer of customers: NERL s 140.
177. The NERL also provides that contracts for the sale of energy between a failed retailer and each customer become terminated on the transfer date: NERL s 141. NERL s 141 also sets out particular transitional issues that may arise following the transfer of a failed retailer's customers. These issues are (in brief):
- 177.1 **rights and obligations** that have already accrued: NERL s 141(2);
  - 177.2 **complaints or disputes** between a failed retailer and a small customer: NERL s 141(4);
  - 177.3 cancelling **direct debit authorisations**: NERL s 141(5)
  - 177.4 **advance payments** made by the customer towards their energy bill: NERL s 141(6);
    - 177.4.1 customer payments for **service orders** to the failed retailer: NERL s 141(7);
    - 177.4.2 **payment plans** in force: NERL s 141(8);
    - 177.4.3 paid **security deposits**: NERL s 141(9); and
    - 177.4.4 small customers on **prepayment meter market retail contracts**.

*Arrangements for the sale of energy to transferred customers*

178. Where customers of a failed retailer become the customers of a designated RoLR, the following arrangements are taken to apply:
- 178.1 in the case of **small customers** under NERL ss 145 and 147:
    - 178.1.1 a **RoLR deemed small customer retail arrangement** applies;
    - 178.1.2 the terms and conditions of the **RoLR deemed small customer retail arrangement** are the designated RoLR's **standard retail contract**;
    - 178.1.3 the applicable prices are the designated RoLR's **standing offer prices**, with any variations in accordance with the applicable **RoLR cost recovery scheme**;
    - 178.1.4 small customers are not required to stay with the designated RoLR for a minimum period of time;
    - 178.1.5 if a small customer is still on a **RoLR deemed small customer retail arrangement** three months after the transfer date, the designated

RoLR's standard retail contract is taken to have been formed between the small customer and designated retailer; and

- 178.1.6 the small customer and designated retailer may seek to negotiate a **market retail contract** after the three month period, or from an earlier date as agreed by the designated RoLR.

179. in the case of **large customers** under NERL ss 146 and 148:

- 179.1.1 a **RoLR deemed large customer retail arrangement** applies;
- 179.1.2 the terms and conditions of the **RoLR deemed small customer retail arrangement** are the terms published by the designated retailer but they must be fair and reasonable;
- 179.1.3 large customers are **not required** to stay with the designated RoLR for a **minimum period** of time and the parties may agree to terminate the arrangement at any time;
- 179.1.4 the designated RoLR may serve a **notice** on the large customer stating that the RoLR deemed large customer retail arrangement will be terminated after the period of 6 months after the transfer date unless a retail contract is formed: NERL s 148. However, the designated retailer is under no obligation to initiate negotiations with the large customer.

#### *RoLR cost recovery schemes*

180. Registered RoLRs (including but not limited to designated RoLR) cannot recover costs incurred in relation to the RoLR scheme except in accordance with a **RoLR cost recovery scheme** determined under the NERL: NERL s 165. According to the AER:
- 180.1 RoLRs are likely to incur a range of administrative and supply costs that are above normal business expenditure. It is necessary that a RoLR be provided with an opportunity to recover these costs in a timely manner to avoid the risk of this additional financial burden setting off a cascade of retail business failures.<sup>29</sup>
181. On application by a registered RoLR, the AER **must determine** a RoLR cost recovery scheme for the RoLR. The AER **must** publish on its website when it receives a RoLR cost recovery scheme application, and it must invite submissions on any such application: NERL s 166(5). The AER's must also publish a copy of its decision on its website: NERL s 166(10).
182. Under NERL s 166(7), the AER's determination decision **must** be based on the following principles:
- 182.1 a registered RoLR should be provided with a reasonable **opportunity to recover** reasonable costs;
- 182.2 the recovery of costs should allow for a **return commensurate** with the regulatory and commercial risks with respect to the RoLR scheme; and
- 182.3 the registered RoLR **will itself bear** some of the costs, in proportion to its customer base.
183. As part of its RoLR cost recovery scheme determination, the AER **must** consult with any distributors concerned, and make a **RoLR cost recovery scheme distributor payment determination**, whereby a concerned distributor **must** make payments towards the costs of the RoLR scheme: NERL s 167.

<sup>29</sup> AER, *Retailer of last resort cost recovery scheme: Issues Paper*, November 2010, page 1.

## **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**.<sup>30</sup>

### *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                                                                                                                                                                                                                              |
|-------------------|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NERL s 61</b>  | <b>AER Retail Pricing Information Guidelines</b> | The AER <b>may</b> , in accordance with the Retail Consultation Procedure, make and amend the <b>AER Retail Pricing Information Guidelines</b> .                                                                                                         |
| <b>NERL s 62</b>  | <b>Price Comparator</b>                          | The AER <b>must</b> develop, make available and update the <b>price comparator</b> . In the development and updating of the price comparator, the AER <b>must</b> undertake such consultation <b>as it considers appropriate</b> .                       |
| <b>NERL s 117</b> | <b>AER Retailer Authorisation Guidelines</b>     | The AER <b>must</b> make the <b>AER Retailer Authorisation Guidelines</b> in accordance with the Retail Consultation Procedure. The AER <b>may</b> amend the AER Retailer Authorisation Guidelines in accordance with the Retail Consultation Procedure. |

<sup>30</sup> 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                                                                                                                                                                                                                                                                                                                                             |
|-------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NERL s 118</b> | <b>AER Exempt Selling Guidelines</b>                       | the AER <b>must</b> , in accordance with the Rules, develop and maintain the <b>AER Exempt Selling Guidelines</b> . The AER <b>may</b> amend the <b>AER Exempt Selling Guidelines</b> in accordance with the Retail Consultation Procedure.                                                                                                                             |
| <b>NERL s 135</b> | <b>AER RoLR Guidelines</b>                                 | The AER <b>must</b> develop, make and maintain the <b>AER RoLR Guidelines</b> . The AER <b>may</b> amend the guidelines in accordance with the Retail Consultation Procedure.                                                                                                                                                                                           |
| <b>NERL s 281</b> | <b>AER Compliance Procedures and Guidelines</b>            | The AER <b>must</b> make the <b>AER Compliance Procedures and Guidelines</b> in accordance with the Retail Consultation Procedure. The AER <b>may</b> amend the <b>AER Compliance Procedures and Guidelines</b> in accordance with the Retail Consultation Procedure.                                                                                                   |
| <b>NERL s 286</b> | <b>AER Performance Reporting Procedures and Guidelines</b> | The AER <b>must</b> make the <b>AER Performance Reporting Procedures and Guidelines</b> . The AER <b>may</b> amend the <b>AER Performance Reporting Procedures and Guidelines</b> in accordance with the Retail Consultation Procedure.                                                                                                                                 |
| <b>NERR r 31</b>  | <b>Overcharge thresholds</b>                               | the AER <b>may</b> from time to time determine a new <b>overcharge threshold</b> in accordance with the Retail Consultation Procedure.                                                                                                                                                                                                                                  |
| <b>NERR r 75</b>  | <b>Hardship program indicators</b>                         | the AER <b>must</b> , in accordance with the Retail Consultation Procedure, determine <b>hardship program indicators</b> . The AER <b>may</b> from time to time amend the <b>hardship program indicators</b> in accordance with the Retail Consultation Procedure.                                                                                                      |
| <b>NERR r 150</b> | <b>Retailer authorisation deemed exemptions</b>            | the AER <b>may</b> , in accordance with the Retail Consultation Procedure, determine a <b>class of persons</b> in respect of whom a <b>deemed exemption</b> is taken to be in force for <b>retailer authorisation purposes</b> . The AER <b>may</b> from time to time amend <b>determinations</b> under this rule in accordance with the Retail Consultation Procedure. |
| <b>NERR r 151</b> | <b>Retailer authorisation registrable exemptions</b>       | the AER <b>may</b> , in accordance with the Retail Consultation Procedure, determine a <b>class of persons</b> in respect of whom an <b>exemption (a registrable exemption)</b> is registrable. The AER <b>may</b> from time to time amend <b>determinations</b> under this rule in accordance with the Retail Consultation Procedure.                                  |



**Attachment 1 Model terms and conditions for standard retail contracts**

**(Rule 12)**

## PREAMBLE

This contract is about the sale of energy to you as a small customer at your premises. It is a standard retail contract that starts without you having to sign a document agreeing to these terms and conditions.

In addition to this contract, the energy laws and other consumer laws also contain rules about the sale of energy and we will comply with these rules in our dealings with you. For example, the National Energy Retail Law and the National Energy Retail Rules ('the Rules') set out specific rights and obligations about energy marketing, payment methods and arrangements for customers experiencing payment difficulties.

You also have a separate contract with your distributor, called a customer connection contract. The customer connection contract deals with the supply of energy to your premises and can be found on your distributor's website.

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

## 1 THE PARTIES

This contract is between:

[Permitted alteration: name of designated retailer] who sells energy to you at your 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 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 given at the end of this contract 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 a standard retail contract for a small customer under the National Energy Retail Law and the Rules.

### 3.2 Application of these terms and conditions

These terms and conditions apply to you if:

- (a) you are a residential customer; or
- (b) you are a business customer who is a small customer; and
- (c) you request us to sell energy to you at your premises; and
- (d) you are not being sold energy for the premises under a market retail contract.

### 3.3 Electricity or gas

Standard retail contracts apply to electricity and gas, but some terms may be expressed to apply only to one or the other. If we are your retailer for both electricity and gas, you have a separate contract with us for each of them.

**4 WHAT IS THE TERM OF THIS CONTRACT?**

#### 4.1 When does this contract start?

This contract starts on the date you satisfy any pre-conditions set out in the National Energy Retail Law and the Rules, including giving us *acceptable identification* and your contact details for billing purposes.

#### 4.2 When does this contract end?

- (a) This contract ends:
  - (i) if you give us a notice stating you wish to end the contract—subject to paragraph (b), on a date advised by us of which we will give you at least 5 but no more than 20 business days notice; or
  - (ii) if you are no longer a small customer:
    - (A) subject to paragraph (b), on a date specified by us, of which we will give you at least 5 but no more than 20 business days notice; or
    - (B) if you have not told us of a change in the use of your energy—from the time of the change in use; or
  - (iii) if we both agree to a date to end the contract—on the date that is agreed; or
  - (iv) if you start to buy energy for the premises from us or a different retailer under a customer retail contract—on the date the market retail contract starts; or
  - (v) if a different customer starts to buy energy for the premises—on the date that customer's contract starts; or
  - (vi) if the premises are disconnected and you have not met the requirements in the Rules for reconnection—10 business days from the date of disconnection.
- (b) If you do not give us safe and unhindered access to the premises to conduct a final *meter* reading (where relevant), this contract will not end under paragraph (a) (i) or (ii) until we have issued you a final bill and you have paid any outstanding amount for the sale of energy.
- (c) Rights and obligations accrued before the end of this contract continue despite the end of the contract, including any obligations to pay amounts to us.

### 4.3 Vacating your premises

- (a) If you are vacating your premises, you must provide your forwarding address to us for your final bill in addition to a notice under clause 4.2(a)(i) of this contract.
- (b) When we receive the notice, we must use our best endeavours to arrange for the reading of the *meter* on the date specified in your notice (or as soon as possible after that date if you do not provide access to your *meter* on that date) and send a final bill to you at the forwarding address stated in your notice.
- (c) You will continue to be responsible for charges for the premises until your contract ends in accordance with clause 4.2 of this contract.



- (b) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of energy, its quality, fitness for purpose or safety, other than those set out in this contract.
- (c) Unless we have acted in bad faith or negligently, the National Energy Retail Law excludes our liability for any loss or damage you suffer as a result of the total or partial failure to supply energy to your premises, which includes any loss or damage you suffer as a result of the defective supply of energy.

## 8 PRICE FOR ENERGY AND OTHER SERVICES

### 8.1 What are our tariffs and charges?

- (a) Our tariffs and charges for the sale of energy to you under this contract are our standing offer prices. These are published on our website and include your distributor's charges.
- (b) Different tariffs and charges may apply to you depending on your circumstances. The conditions for each tariff and charge are set out in our standing offer prices.

**Note:**

We do not impose any charges for the termination of this contract.

## 8.2 Changes to tariffs and charges

- (a) If we vary our standing offer prices, we will publish the variation in a newspaper and on our website at least 10 business days before it starts. We will also include details with your next bill if the variation affects you.
- (b) Our standing offer prices will not be varied more often than once every 6 months.

### 8.3 Variation of tariff due to change of use

If a change in your use of energy means you are no longer eligible for the particular tariff you are on, we may transfer you to a new tariff under our standing offer prices:

- (a) if you notify us there has been a change of use—from the date of notification; or
- (b) if you have not notified us of the change of use—retrospectively from the date the change of use occurred.

#### 8.4 Variation of tariff or type of tariff on request

- (a) If you think you satisfy the conditions applying to another tariff or type of tariff under our standing offer prices, you can ask us to review your current circumstances to see whether that tariff or type of tariff can apply to you.
- (b) If you meet the requirements for another tariff or type of tariff and request us to do so, we must:
  - (i) transfer you to that other tariff within 10 business days; or
  - (ii) transfer you to that other type of tariff from the date the *meter* is read or the type of *meter* is changed (if needed).

## 8.5 Changes to tariffs or type of tariff during a billing cycle

If a tariff applying to you changes during a billing cycle, we will calculate your next bill on a proportionate basis.

## 8.6 GST

- (a) Amounts specified in the standing offer prices from time to time and other amounts payable under this contract may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount is stated to include GST.

- ## 9 BILLING

- (a) to you at the address nominated by you; or
- (b) to a person authorised in writing by you to act on your behalf at the address specified by you.

- (a) the amount of energy consumed at your premises during the billing cycle (using information obtained from reading your *meter* or otherwise in accordance with the Rules); and
- (b) the amount of fees and charges for any other services provided under this contract during the billing cycle; and
- (c) the charges payable for services provided by your distributor, including connection charges if you have asked for a new connection or connection alteration and have not made alternative arrangements with your distributor.

- (a) We may estimate the amount of energy consumed at your premises if your *meter* cannot be read, if your *metering data* is not obtained (for example, if access to the *meter* is not given or the *meter* breaks down or is faulty), or if you otherwise consent.
- (b) If we estimate the amount of energy consumed at your premises to calculate a bill, we must:
  - (i) clearly state on the bill that it is based on an estimation; and
  - (ii) when your *meter* is later read, adjust your bill for the difference between the estimate and the energy actually used.
- (c) If the later *meter* read shows that you have been undercharged, we will allow you to pay the undercharged amount in instalments, over the same period of time during which the *meter* was not read (if less than 12 months), or otherwise over 12 months.
- (d) If the *meter* has not been read due to your actions, and you request us to replace the estimated bill with a bill based on an actual reading of the *meter*, we will comply with your request but may charge you any cost we incur in doing so.

(a) 4 times in the previous 12 months, where this contract relates to electricity; or

(b) in the previous 12 months, where this contract relates to gas.

#### 9.4A Your electricity (only) consumption information

Upon request, we must give you information about your electricity consumption for up to 2 years free of charge. However, we may charge you if:

- (a) we have already given you this information 4 times in the previous 12 months; or
- (b) the information requested is different in manner or form to any minimum requirements we are required to meet; or
- (c) the information is requested by a representative you have authorised to act on your behalf, and that request is part of a request the representative makes to us in relation to more than one customer.

## 9.5 Bill smoothing

We may, where you agree, arrange for you to pay your bills under a bill smoothing arrangement, which is based on a 12 monthly estimate of your energy consumption.

## 10 PAYING YOUR BILL

### 10.1 What you have to pay

You must pay to us the amount shown on each bill by the date for payment (the *pay-by date*) on the bill. The *pay-by date* will be no earlier than 13 business days from the date on which we issue your bill.

## 10.2 Issue of reminder notices

If you have not paid your bill by the *pay-by date*, we will send you a *reminder notice* that payment is required. The *reminder notice* will give you a further due date for payment which will be not less than 6 business days after we issue the notice.

### 10.3 Difficulties in paying

- (a) If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options.
- (b) If you are a residential customer and have told us that you have difficulty paying your bill, we must offer you the option of paying your bill under a payment plan. However, we are not obliged to do so if you have had 2 payment plans cancelled due to non-payment in the previous 12 months or have been convicted of an offence involving the illegal use of energy in the previous 2 years.
- (c) Additional protections may be available to you under our Customer Hardship Policy and under the National Energy Retail Law and the Rules if you are a customer experiencing payment difficulties due to hardship. A copy of our Customer Hardship Policy is available on our website.

## 10.4 Late payment fees

If you have not paid a bill by the *pay-by date*, we may require you to pay a late payment fee, which is part of our standing offer prices published on our website.

[Required alteration: deletion of this clause is a required alteration where late payment fees for small customers under a standard retail contract are not permitted by a State or Territory law].

## 11 METERS

- (a) You must allow safe and unhindered access to your premises for the purposes of reading and maintaining the *meters* (where relevant).
- (b) We will use our best endeavours to ensure that a *meter* reading is carried out as frequently as is needed to prepare your bills, consistently with the *metering rules* and in any event at least once every 12 months.

## 12 UNDERCHARGING AND OVERCHARGING

## 12.1 Undercharging

- (a) If we have undercharged you, we may recover the undercharged amount from you. If we recover an undercharged amount from you:
  - (i) we will not charge interest on the undercharged amount; and
  - (ii) we will offer you time to pay the undercharged amount in instalments over the same period of time during which you were undercharged (if less than 12 months), or otherwise over 12 months.
- (b) The maximum amount we can recover from you is limited to the amount that has been undercharged in the 9 months immediately before we notify you, unless the undercharge is your fault, or results from your unlawful act or omission.

## 12.2 Overcharging

- (a) Where you have been overcharged by less than [required alteration: insert current overcharge threshold], and you have already paid the overcharged amount, we must credit that amount to your next bill.
- (b) Where you have been overcharged by [required alteration: insert current overcharge threshold] or more, we must inform you within 10 business days of our becoming aware of the overcharge and, if you have already paid that amount, we must credit that amount to your next bill. However, if you request otherwise, we will comply with that request.
- (c) If you have stopped buying energy from us, we will use our best endeavours to pay the overcharged amount to you within 10 business days.
- (d) If you have been overcharged as a result of your own fault or unlawful act or omission, we may limit the amount we credit or pay you to the amount you were overcharged in the last 12 months.

### 12.3 Reviewing your bill

- (a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.
- (b) If you ask us to, we must arrange for a check of the *meter* reading or *metering data* or for a test of the *meter* in reviewing the bill. You will be liable for the cost of the check or test and we may request payment in advance. However, if the *meter* or *metering data* proves to be faulty or incorrect, we must reimburse you for the amount paid.
- (c) If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:
  - (i) the portion of the bill that you do not dispute; or
  - (ii) an amount equal to the average of your bills in the last 12 months.

## 13 SECURITY DEPOSITS

### 13.1 Security deposit

We may require that you provide a *security deposit*. The circumstances in which we can require a *security deposit* and the maximum amount of the *security deposit* are governed by the Rules.



## Interest on security deposits

Where you have paid a *security deposit*, we must pay you interest on the *security deposit* at a rate and on terms required by the Rules.

## Use of a security deposit

- (a) We may use your *security deposit*, and any interest earned on the *security deposit*, to offset any amount you owe under this contract:
  - (i) if you fail to pay a bill and as a result we arrange for the disconnection of your premises; or
  - (ii) in relation to a final bill (i.e. a bill we issue when you vacate the premises or when you stop purchasing energy from us at your premises or when you request that your premises be disconnected).
- (b) If we use your *security deposit* or any accrued interest to offset amounts owed to us, we will advise you within 10 business days.

### Return of security deposit

- (a) We must return your *security deposit* and any accrued interest in the following circumstances:
  - (i) you complete 1 years' payment (in the case of residential customers) or 2 years' payment (in the case of business customers) by the *pay-by dates* on our initial bills; or
  - (ii) subject to clause 14.3 of this contract, you stop purchasing energy at the relevant premises under this contract.
- (b) If you do not give us any reasonable instructions, we will credit the amount of the *security deposit*, together with any accrued interest, to your next bill.

## DISCONNECTION OF SUPPLY

### When can we arrange for disconnection?

Subject to us satisfying the requirements in the Rules, we may arrange for the disconnection of your premises if:

- (a) you do not pay your bill by the *pay-by date* and, if you are a residential customer, you:
  - (i) fail to comply with the terms of an agreed payment plan; or
  - (ii) do not agree to an offer to pay the bill by instalments, or having agreed, you fail to comply with the instalment arrangement;
- (b) you do not provide a *security deposit* we are entitled to require from you; or
- (c) you do not give access to your premises to read a *meter* (where relevant) for 3 consecutive *meter* reads; or
- (d) there has been illegal or fraudulent use of energy at your premises in breach of clause 16 of this contract; or
- (e) we are otherwise entitled or required to do so under the Rules or by law.

## Notice and warning of disconnection

Before disconnecting your premises, we must comply with relevant warning notice requirements and other provisions in the Rules. However, we are not required to provide a warning notice prior to disconnection in certain circumstances (for example, where there has been illegal or fraudulent use of energy at your premises or where there is an emergency or health and safety issue).



### 14.3 When we must not arrange disconnection

- (a) Subject to paragraph (b), your premises may not be disconnected during the following times ('the protected period'):
  - (i) on a business day before 8.00am or after 3.00pm; or
  - (ii) on a Friday or the day before a public holiday; or
  - (iii) on a weekend or a public holiday; or
  - (iv) on the days between 20 December and 31 December (both inclusive) in any year; or
  - (v) if you are being disconnected under clause 14.1(a), during an extreme weather event.
- (b) Your premises may be disconnected within the protected period:
  - (i) for reasons of health and safety; or
  - (ii) in an emergency; or
  - (iii) as directed by a *relevant authority*; or
  - (iv) if you are in breach of clause 6.5 of your customer connection contract which deals with interference with energy equipment; or
  - (v) if you request us to arrange disconnection within the protected period; or
  - (vi) if your premises contain a commercial business that only operates within the protected period and where access to the premises is necessary to effect disconnection; or
  - (vii) where the premises are not occupied.

## 15 RECONNECTION AFTER DISCONNECTION

- (a) We must request your distributor to reconnect your premises if, within 10 business days of your premises being disconnected:
  - (i) you ask us to arrange for reconnection of your premises; and
  - (ii) you rectify the matter that led to the disconnection; and
  - (iii) you pay any reconnection charge (if requested).
- (b) We may terminate this contract 10 business days following disconnection if you do not meet the requirements in paragraph (a).

16      **WRONGFUL AND ILLEGAL USE OF ENERGY**

### 16.1 Use of energy

You must not, and must take reasonable steps to ensure others do not:

- (a) illegally use energy supplied to your premises; or
- (b) interfere or allow interference with any energy equipment that is at your premises except as may be permitted by law; or
- (c) use the energy supplied to your premises or any energy equipment in a manner that:
  - (i) unreasonably interferes with the connection or supply of energy to another customer; or
  - (ii) causes damage or interference to any third party; or
- (d) allow energy purchased from us to be used otherwise than in accordance with this contract and the Rules; or

- (e) tamper with, or permit tampering with, any *meters* or associated equipment.

## 17 NOTICES AND BILLS

- (a) Notices and bills under this contract must be sent in writing, unless this contract or the National Energy Retail Law and the Rules say otherwise.
- (b) A notice or bill sent under this contract is taken to have been received by you or by us (as relevant):
  - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
  - (ii) on the date 2 business days after it is posted; or
  - (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically and the use of electronic communication has been agreed between us.
- (c) Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.

18 **PRIVACY ACT NOTICE**

We will comply with all relevant privacy legislation in relation to your personal information. You can find a summary of our privacy policy on our website. If you have any questions, you can contact our privacy officer.

## 19 COMPLAINTS AND DISPUTE RESOLUTION

## 19.1 Complaints

If you have a complaint relating to the sale of energy by us to you, or this contract generally, you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

**Note:**

Our standard complaints and dispute resolution procedures are published on our website.

## 19.2 Our obligations in handling complaints

If you make a complaint, we must respond to your complaint within the required timeframes set out in our standard complaints and dispute resolution procedures and inform you:

- (a) of the outcome of your complaint and the reasons for our decision; and
- (b) that if you are not satisfied with our response, you have a right to refer the complaint to [required alteration: insert name of relevant energy ombudsman].

**20**                    **FORCE MAJEURE**

### 20.1 Effect of force majeure event

If either party to this contract cannot meet an obligation under this contract because of an event outside the control of that party ('a force majeure event'):

- (a) the obligation, other than an obligation to pay money, is suspended to the extent it is affected by the force majeure event for as long as the force majeure event continues; and
- (b) the affected party must use its best endeavours to give the other party prompt notice of that fact including full particulars of the event, an estimate of its likely

duration, the extent to which the affected party's obligations are affected and the steps being taken to remove, overcome or minimise those effects.

## 20.2 Deemed prompt notice

If the effects of a force majeure event are widespread, we will be deemed to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the event or otherwise as soon as practicable.

### 20.3 Obligation to overcome or minimise effect of force majeure event

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

## 20.4 Settlement of industrial disputes

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

## 21 APPLICABLE LAW

*The laws of [required alteration: insert name of the relevant participating jurisdiction where the customer's premises are located] govern this contract.*

## 22 RETAILER OF LAST RESORT EVENT

If we are no longer entitled by law to sell energy to you due to a Retailer of Last Resort (RoLR) event occurring in relation to us, we are required under the National Energy Retail Law and the Rules to provide relevant information (including your name, billing address and *metering* identifier) to the entity appointed as the relevant designated retailer for the RoLR event and this contract will come to an end.

**23**                      **GENERAL**

## 23.1 Our obligations

Some obligations placed on us under this contract may be carried out by another person. If an obligation is placed on us to do something under this contract, then:

- (a) we are taken to have complied with the obligation if another person does it on our behalf; and
- (b) if the obligation is not complied with, we are still liable to you for the failure to comply with this contract.

## 23.2 Amending this contract

- (a) This contract may only be amended in accordance with the procedures set out in the National Energy Retail Law.
- (b) We must publish any amendments to this contract on our website.

### Simplified explanation of terms

**billing cycle** means the regular recurrent period for which you receive a bill from us;

**business day** means a day other than a Saturday, a Sunday or a public holiday;

**customer** means a person who buys or wants to buy energy from a retailer;

**customer connection contract** means a contract between you and your distributor for the provision of customer connection services;

**designated retailer** means the financially responsible retailer for the premises (where you have an existing connection) or the local area retailer (where you do not have an existing connection) for your premises;

**disconnection** means an action to prevent the flow of energy to the premises, but does not include an *interruption*;

**distributor** means the person who operates the system that connects your premises to the distribution network;

**emergency** means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the distribution system or transmission system, or that destroys or damages, or threatens to destroy or damage, any property;

**energy** means electricity or gas;

**energy laws** means national and State and Territory laws and rules relating to energy and the legal instruments made under those laws and rules;

**force majeure event** means an event outside the control of a party;

**GST** has the meaning given in the GST Act (*A New Tax System (Goods and Services Tax) Act 1999* (Cth));

**National Energy Retail Law** means *the Law* of that name that is applied by each participating State and Territory;

**relevant authority** means any person or body who has the power under law to direct us, including the Australian Energy Market Operator and State or Federal Police;

**residential customer** means a person who purchases energy principally for personal, household or domestic use at their premises;

**retailer** means a person that is authorised to sell energy to customers;

**RoLR event** means an event that triggers the operation of the Retailer of Last Resort scheme under the National Energy Retail Law;

**Rules** means the National Energy Retail Rules made under the National Energy Retail Law;

**security deposit** means an amount of money paid to us as security against non-payment of a bill in accordance with the Rules;

**small customer** means:

- (a) a residential customer; or
- (b) a business customer who consumes energy at or below a level determined under the National Energy Retail Law;

**standing offer prices** means tariffs and charges that we charge you for or in connection with the sale and supply of energy. These are published on our website.

---

## 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.







- ## 6.5 Obligations if you are not an owner

page 196



- ## 8 OUR LIABILITY

- ## 9 ACCESS TO THE PREMISES

Under the energy laws, you must provide us and our authorised representatives (together with all necessary equipment) safe and unhindered access to the premises, including taking appropriate action to prevent menacing or attack by animals at the premises, at any reasonable time to allow us to:

- If we or our representatives seek access to the premises under clause 9.1 above, we will:

- page 197





- (ii) carries a warning of the consequences of failing to comply with the notice; and

### 12.3 Life support equipment

If you are a small customer, we must not disconnect your premises if they are registered as having *life support equipment*, except in an emergency.

## 12.4 When we must not disconnect

- (a) Subject to paragraph (b), and otherwise in accordance with the Rules, if you are a small customer we must not disconnect the premises during the following times ('the protected period'):
  - (i) on a business day before 8.00am or after 3.00pm; or
  - (ii) on a Friday or the day before a public holiday; or
  - (iii) on a weekend or a public holiday; or
  - (iv) on the days between 20 December and 31 December (both inclusive) in any year; or
  - (v) if you are being disconnected for a failure to pay, during an extreme weather event.
- (b) Your premises may be disconnected within the protected period:
  - (i) for reasons of health and safety; or
  - (ii) in an emergency; or
  - (iii) as directed by a *relevant authority*; or
  - (iv) if you are in breach of clause 7 which deals with wrongful and illegal use of energy; or
  - (v) if your retailer makes such a request on your behalf; or
  - (vi) if your premises contain a commercial business that only operates within the protected period and where access to the premises is necessary to effect disconnection; or
  - (vii) where the premises are not occupied.

## 12.5 Our rights after disconnection

The disconnection of the premises does not limit or waive any of the parties' rights and obligations under this contract arising before disconnection, including any of your obligations to pay amounts to us or your retailer.

## 12.6 Disconnection fee

If you have not complied with a *disconnection warning notice* and we arrive at the premises to disconnect the premises but do not do so because you rectify the matter referred to in the *disconnection warning notice*, you will be liable to pay a reasonable fee for our attendance at the premises.

## **13 RECONNECTION AFTER DISCONNECTION**

### **13.1 Where we must reconnect**

- (a) If you are a small customer, we must arrange for reconnection of the premises if, within 10 business days of your premises being disconnected:
  - (i) where your retailer asked for the disconnection—if we are asked by your retailer to reconnect the premises; or
  - (ii) in other circumstances—if:
    - (A) you ask us to arrange for reconnection of your premises; and
    - (B) you rectify the matter that led to the disconnection; and
    - (C) you pay any reconnection charge.
- (b) We may terminate this contract 10 business days following disconnection if the requirements in paragraph (a) are not met.

### **13.2 Timeframe for reconnection**

If you are a small customer and at the time of the request for reconnection:

- (a) you or your retailer have made arrangements for payment of the relevant reconnection charge; and
- (b) you have complied with our requirements under the relevant energy laws; and
- (c) the necessary infrastructure to re-energise the premises remains in place; and
- (d) you provide safe and unhindered access to the premises,

we must re-energise the premises within [required alteration: insert the applicable service standard as to time for re-energisation], unless you request a later time.

### **13.3 Wrongful disconnection**

If we disconnect the premises where we did not have a right to do so, we must reconnect the premises as soon as possible and without charge.

## **14 NOTICES AND BILLS**

- (a) Notices and bills (where relevant) under this contract must be sent in writing, unless this contract or the Rules say otherwise.
- (b) A notice or bill sent under this contract is taken to have been received by you or by us (as relevant):
  - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (which excludes depots) (in our case) or successfully faxed to the party (which occurs when the sender receives a transmission report to that effect); or
  - (ii) on the date two business days after it is posted; or
  - (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically and the use of electronic communication has been agreed between us.

## **15 PRIVACY ACT NOTICE AND ACCESS TO INFORMATION**

### **15.1 Privacy of personal information**

We will comply with all relevant privacy legislation in relation to your personal information. You can find a summary of our privacy policy on our website. If you have any questions, you can contact our privacy officer.

### Access to information - electricity only

Upon request, we must give you information about your energy consumption or our charges for customer connection services for up to 2 years free of charge. We may charge you a reasonable fee for information requested;

- (a) more than 4 times in the previous 12 months; or
- (b) that is different in manner and form to any minimum requirements we are required to meet; or
- (c) by a representative you have authorised to act on your behalf, and that request is part of a request the representative makes to us in relation to more than one customer.

### Access to information - gas only

Upon request, we must give you information about your energy consumption or our charges for customer connection services. We may charge you a reasonable fee for information requested more than once in any 12 month period.

## COMPLAINTS AND DISPUTE RESOLUTION

## Complaints

If you have a complaint relating to the supply of energy to the premises, or this contract generally, you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

**Note:**

Our standard complaints and dispute resolution procedures are published on our website.

## Our obligations in handling complaints or disputes

If you make a complaint, we must respond to your complaint within the required timeframes in our standard complaints and dispute resolution procedures and inform you:

- (a) of the outcome of your complaint and the reasons for our decision; and
- (b) that, if you are not satisfied with our response and you are a small customer, you have a right to refer the complaint to [required alteration: insert name and contact details of the relevant energy ombudsman].

## FORCE MAJEURE

### Effect of force majeure event

If, either you or we cannot meet an obligation under this contract because of an event outside the control of the party ('a **force majeure event**):

- (a) the obligation, other than an obligation to pay money (including, in our case, a payment for failure to meet a guaranteed service level), is suspended to the extent it is affected by the event for so long as the event continues; and
- (b) the affected party must use its best endeavours to give the other prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which its obligations are affected and the steps taken to remove, overcome or minimise those effects.

### Deemed prompt notice

If the effects of a force majeure event are widespread we will be taken to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the event or otherwise as soon as practicable.

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

The laws of [required alteration: insert name of participating jurisdiction in which the distributor's distribution system is located] govern this contract.

## Our obligations

Some obligations placed on us under this contract may be carried out by another person.  
If an obligation is placed on us to do something under this contract, then:

- ## GST

- ### 19.3 Amending this contract

- (a) This contract may only be amended from time to time in accordance with the procedures set out in the National Energy Retail Law.
- (b) We must inform you of any material amendments to this contract as required by the National Energy Retail Law.

**billing cycle** means the regular recurrent period for which we charge for customer connection services;

**business day** means a day other than a Saturday, a Sunday or a public holiday;

**connection point** means the point at which a distribution system connects to an energy installation or equipment that serves the premises of one or more customers;

**customer** means a person who buys or wants to buy energy from a retailer;

**customer connection services** include services relating to the flow of energy to your premises;

**disconnection** means an action to prevent the flow of energy to the premises, but does not include an *interruption*;





## CHAPTER 5: THE TRIBUNAL, THE COURTS AND THE AEMC

|           |                                                                 |            |
|-----------|-----------------------------------------------------------------|------------|
| <b>A.</b> | <b>Introduction</b>                                             | <b>208</b> |
| <b>B.</b> | <b>The Australian Competition Tribunal</b>                      | <b>209</b> |
|           | Limited Merits Review – Type 1 and Type 2 LMR Decisions         | 211        |
|           | Review of Information Disclosure Decisions                      | 223        |
| <b>C.</b> | <b>Judicial Review – the Federal Court and the State Courts</b> | <b>224</b> |
|           | Applications for judicial review                                | 224        |
|           | Other types of court proceedings                                | 225        |
| <b>D.</b> | <b>The AEMC’s Rule-Making Functions</b>                         | <b>226</b> |
|           | Scope of the Rule-making power                                  | 226        |
|           | Tests for Rule-making by the AEMC                               | 227        |
|           | Initiating the Rule-making process                              | 227        |
|           | Contents of a Rule request                                      | 228        |
|           | Alternate and consequential Rules                               | 228        |
|           | The Rule-making Process                                         | 229        |

---

## 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;

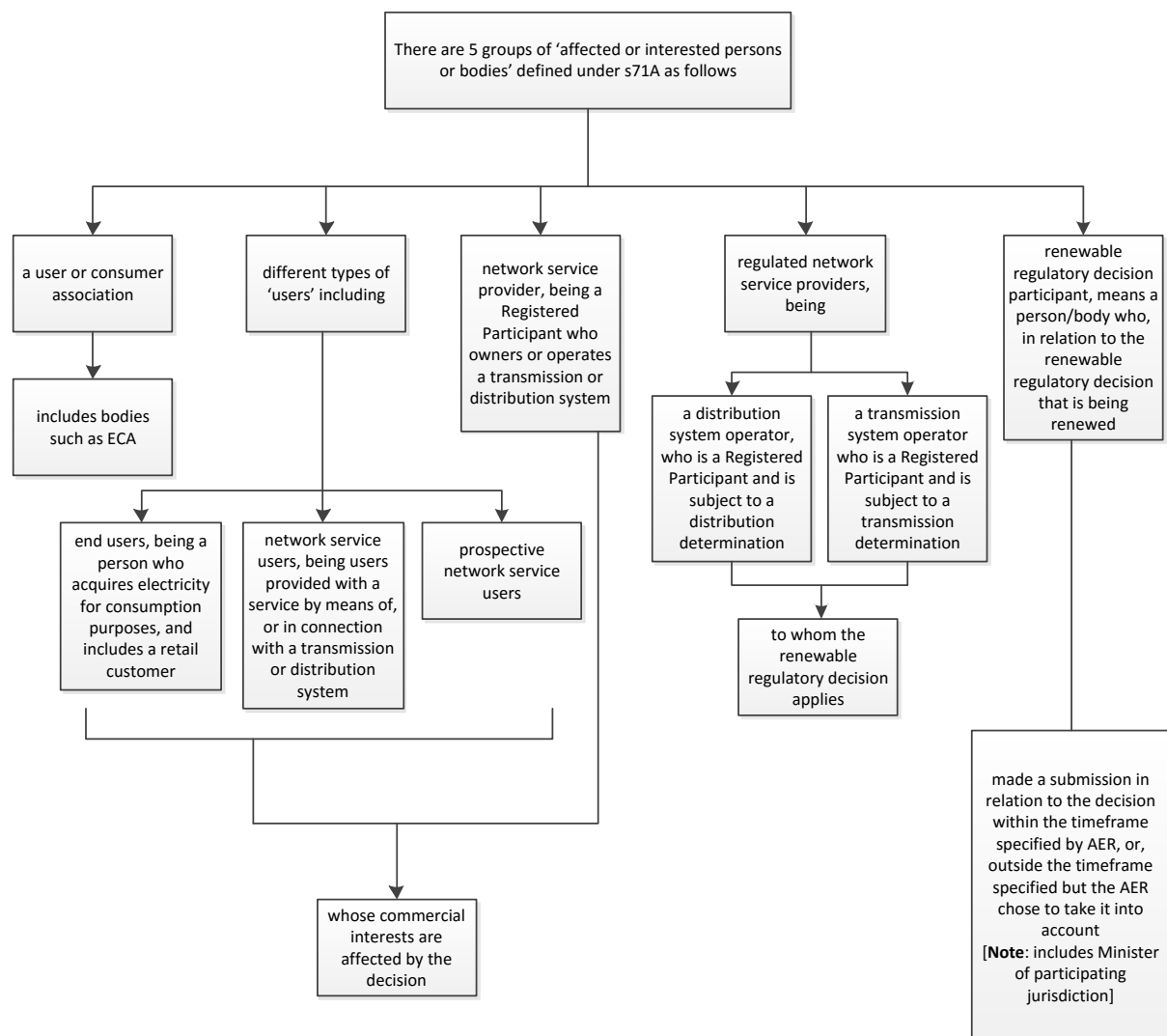
10.2 a decision to disclose information made by AEMO under NEL s 54H and NGL s 91GH.

### *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)<sup>1</sup>.
15. 'Affected or interested persons or bodies' are defined to include a number of categories, illustrated below<sup>2</sup>:



<sup>1</sup> NGL s 245(1)

<sup>2</sup> 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.

16. An application for review under NEL s 71B must be made no later than **15 business days** after the reviewable regulatory decision is published: NEL s 71D<sup>3</sup>.

17. An application for review must specify the grounds of review that are relied upon: NEL s 71B(2)<sup>4</sup>.

18. NEL s 71C provides that an application for review may only be made on one or more of the following grounds<sup>5</sup>:
  - 18.1 the AER made an **error of fact** in its findings of facts, and that error of fact **was material to the making of the decision**;
  - 18.2 the AER made more than 1 error of fact in its findings of fact, and that those **errors of fact, in combination**, were material to the making of the decision;
  - 18.3 the exercise of the AER's **discretion was incorrect**, having regard to all of the circumstances;
  - 18.4 the AER's **decision was unreasonable**, having regard to all the circumstances.
19. The application must also specify the manner in which a determination made by the Tribunal to either vary or set aside the AER's decision, on the basis of one or more of the grounds of review, would, or would be likely to, result in a **materially preferable NEO decision**.
20. The requirement for a **materially preferable NEO decision** is a critical test that must be established before the Tribunal can vary or set aside the AER's decision, and is discussed in further detail below.

21. Sections 71E to 71H of the NEL<sup>6</sup> provide the conditions and relevant criteria which govern the question of whether the Tribunal will grant leave to apply for review under s 71B.

22. These relate to:
  - 22.1 whether there is a serious question to be tried in respect of the grounds of review and the 'materially preferable NEO decision' test;
  - 22.2 the financial significance of the decision;
  - 22.3 the applicant's conduct and participation in relation to the AER's decision-making process.

<sup>6</sup> NGL s 248 - 251

23. **Serious question to be tried:**

23.1 NEL s 71E<sup>7</sup> contains two threshold which **must** be met before leave can be granted. The Tribunal must **not** grant leave unless it appears to the Tribunal that:

23.1.1 **there is a serious issue to be heard and determined** as to whether a ground for review set out in s 71C exists;

23.1.2 the applicant has established a **prima facie case** that a determination made by the Tribunal to either vary, or set aside, the decision would, or would be likely to, result in a **materially preferable NEO decision** (note: this second threshold applies to a Type 1 LMR Decision only).

24. NEL ss 71F to 71H provide for conditions in which leave to apply for review must, or may, be refused.

25. **Financial significance threshold: (Type 1 LMR Decisions only)**

25.1 NEL s71F<sup>8</sup> will apply if leave to apply under section 71B(1) is in relation to a decision that is a network revenue or pricing determination and the ground of review relied upon relates to the amount of revenue that may be earned by a regulated network service provider specified in the decision. It provides a threshold of financial significance for the granting of leave to apply to the Tribunal.

25.2 In those circumstances set out above, s 71F provides that the Tribunal **must not grant leave** to apply for review, unless the amount that is specified in the decision **exceeds** a financial threshold – being the lesser of \$5,000,000 or 2% of the average annual regulated revenue of the regulated service provider.

25.3 Note this factor does not apply to Type 2 LMR Decisions.

26. **Timely participation threshold:**

26.1 NEL s 71G provides a 'participation threshold' which applies to the following<sup>9</sup>:

26.1.1 **'users'**, including network service user, prospective network service user or end user, whose commercial interests are affected by the decision;

26.1.2 **network service providers** (being a distribution or transmission operator, who is a Registered Participant, and is subject to a distribution or transmission determination, respectively) whose commercial interests are affected by the decision; and

26.1.3 **user or consumer associations.**

26.2 The Tribunal **must not grant leave** to apply under s. 71B(1) of the NEL to any of the persons indicated above, if that person or body:

26.2.1 **did not make a submission or comment in relation to the making of the decision following an invitation by the AER to do so** under the NEL or NER; or

<sup>7</sup> NGL s 248

<sup>8</sup> NGL s 249 - under the NGL this section applies if leave to apply for review relates to **an error in a designated reviewable regulatory decision** that is a **full access arrangement decision** (i.e. a decision by the AER to approve a full access arrangement proposal).

<sup>9</sup> NGL s 250 - under the NGL this section applies to the following persons: users, user or consumer associations and a person whose interests are affected by a reviewable regulatory decision that is a coverage determination, a 15-year no-coverage determination or 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 <sup>13</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Minister of a participating jurisdiction                         | May intervene as of right; no need for leave: NEL s 71J <sup>14</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Reviewable regulatory decision process participant               | Tribunal <b>must</b> grant leave on application: NEL s 71K <sup>15</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| User or consumer intervener                                      | <p>Tribunal <b>may</b> grant leave to intervene, including (non-exhaustively) if it is satisfied any of the following criteria are met: (NEL s 71L<sup>16</sup>)</p> <ul style="list-style-type: none"> <li>The proposed intervener raises a <b>matter that will not otherwise be raised by</b> the AER or the applicant;</li> <li>The material or submissions that the proposed intervener wishes to present are likely to <b>better presented by the proposed intervener</b>, rather than another party;</li> <li>The <b>interests</b> of the proposed intervener are <b>affected</b> 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 <b>object or purpose of the user or consumer intervener</b>.</li> </ul> |

### 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)<sup>17</sup>.
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)<sup>18</sup>.

<sup>13</sup> NGL s 253

<sup>14</sup> NGL s 253

<sup>15</sup> NGL s 254

<sup>16</sup> NGL s 255

<sup>17</sup> NGL s 256(1)

<sup>18</sup> NGL s 256(1a)

## page 216

- 39.2 a party (other than the original decision maker) to a review may not raise a matter that was not raised in submissions in relation to the decision before that decision was made.

#### Tribunal must make determination

40. Following an application for review of a decision, if the Tribunal grants leave it must make a determination in respect of the application: NEL s 71P(1)<sup>21</sup>.
41. A determination made by the Tribunal may (NEL s 71P(2)<sup>22</sup>):
- 41.1 **affirm** the reviewable regulatory decision; or
  - 41.2 **vary** the reviewable regulatory decision; or
  - 41.3 **set aside** the reviewable regulatory decision and **remit the matter back to the AER** to make the decision again in accordance with any direction or recommendation of the Tribunal.
42. A determination to affirm, vary or set aside the reviewable regulatory decision is taken to be a decision of the AER for the purposes of the NEL: NEL s 71P(5)<sup>23</sup>.
43. NEL s 71Q<sup>24</sup> provides a non-binding time limit for the making of determinations:
- 43.1 The Tribunal must use its best endeavours to make a determination within 3 months of the Tribunal granting leave for the application to be made (known as the '**standard period**').
  - 43.2 If the Tribunal is unable to make a determination within the standard period, it must extend the standard period by notice in writing. The Tribunal may extend the standard period, or any further extended periods, more than once;
  - 43.3 The Tribunal must publish a notice in a newspaper circulating generally throughout Australia and on its website stating it has extended the period and specifying the date by which it must now use its best endeavours to make the determination.

#### Determinations to set aside or vary a decision

##### Type 1 LMR Decisions

44. NEL s 71P(2a) provides that the Tribunal may **only** make a determination to **vary** or **set aside** a decision if the following tests are satisfied:
- 44.1 the Materially Preferable NEO Decision Test; and
  - 44.2 in respect of a determination to vary a decision, the Complexity Test.
45. Those tests are as follows:
- 45.1 **Materially Preferable NEO Decision Test:** the Tribunal is satisfied that to do so will, or is likely to, result in a decision that is **materially preferable to the reviewable regulatory decision in making a contribution to the national electricity objective** (a **materially preferable NEO decision**) (and if the Tribunal is not so satisfied it must affirm the decision).

<sup>21</sup> NGL s 259(1)

<sup>22</sup> NGL s 259(2)

<sup>23</sup> NGL s 259(5)

<sup>24</sup> NGL s 260

- 45.2 **Complexity Test:** where a decision is made to **vary** a decision – the Tribunal is satisfied that to do so will **not require the Tribunal to undertake an assessment of such complexity** that the preferable course of action would be to set the decision aside and remit it back to the AER.
46. In connection with the operation of NEL s 71P(2a), the Tribunal must:
- 46.1 consider how the constituent components of the reviewable regulatory decision interrelate with each other and with the matters raised as a ground for review;
  - 46.2 take into account the **revenue and pricing principles**;
  - 46.3 in assessing the extent of the contribution to the achievement of the national electricity objective, consider the decision as a whole;
  - 46.4 the following matters must not, in themselves, determine the question about whether a **materially preferable NEO decision** exists –
    - 46.4.1 the establishment of a ground for review under NEL s 71C(1);
    - 46.4.2 consequences for, or impacts on, the **average annual regulated revenue** for a regulated network service provider;
    - 46.4.3 that the amount that is specified in or derived from the reviewable regulatory decision exceeds the amount specified in NEL s 71F(2).
47. Where the Tribunal makes a decision to vary or set aside, it must **specify in its determination:** NEL s 71P(2c)<sup>25</sup>
- 47.1 the manner in which it has taken into account the interrelationship between the constituent components of the decision and how they relate to the matters raised as a ground for review; and
  - 47.2 where a decision is made to **vary** the decision – the reasons why it is proceeding to make the variation (in light of the requirement that the Tribunal not make a decision to vary the decision where it would undertake an assessment of such complexity that the preferable course of action would be to set aside).
48. The effect of the Complexity Test is to encourage the Tribunal to set aside, rather than vary, if the assessment required for it to vary a decision would be too complex for it to adequately manage.

### Type 2 LMR Decisions

49. Under the NGL, a separate process applies to a decision by the Tribunal to set aside a Type 2 LMR Decision. In deciding whether to set aside such decisions, the Tribunal must have regard to the nature and relative complexities of –
- 49.1 the decision; and
  - 49.2 the matter the subject of the review,
50. The 'Materially Preferable NEO Decision Test' does not apply.

---

<sup>25</sup> NGL s 259(4c)

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

<sup>26</sup> NGL s 261(1)(b)

<sup>27</sup> NGL s 261(3a), (4) and (5)

<sup>28</sup> 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)<sup>29</sup>.
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:

|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AER</b>                                                 | <b>NEL s 71X(2)</b><br><b>Must not</b> 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: <ul style="list-style-type: none"> <li>the costs that would have to be incurred by another party to the review as a result of that conduct; or</li> <li>the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct; or</li> <li>the submissions or arguments made to the Tribunal by another party<sup>30</sup></li> </ul>      |
| <b>small/medium user or consumer intervener</b>            | <b>NEL s 71X(2)(a) and (b)</b><br><b>Must not</b> 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: <ul style="list-style-type: none"> <li>the costs that would have to be incurred by another party to the review as a result of that conduct; or</li> <li>the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct<sup>31</sup></li> </ul>                                                             |
| <b>user/consumer intervener (that is not small/medium)</b> | <b>NEL s 71X(3)</b><br><b>May make</b> 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: <ul style="list-style-type: none"> <li>the costs that would have to be incurred by another party to the review as a result of that conduct; or</li> <li>the time required by the Tribunal to hear the review, or another party to prepare their case, as a result of the conduct; or</li> <li>the submissions or arguments made to the Tribunal by another party<sup>32</sup></li> </ul> |

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.

<sup>29</sup> NGL s 268(1)

<sup>30</sup> 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**.

<sup>31</sup> NGL s 268(2)(a) and (b)

<sup>32</sup> 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)<sup>33</sup>

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 71T<sup>34</sup>
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 71W<sup>35</sup>.

### Determination of the Tribunal

65. Under NEL s 71U<sup>36</sup>, 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).

---

<sup>33</sup> NGL s 263

<sup>34</sup> NGL s 264

<sup>35</sup> NGL s 267

<sup>36</sup> NGL s 265

## C. Judicial Review – the Federal Court and the State Courts

### *Applications for judicial review*

68. A person who is aggrieved by:

68.1 a decision or determination of the AEMC or AEMO;

68.2 a failure to make a decision or determination by the AEMC or AEMO; or

68.3 conduct engaged in by the AEMC or AEMO in relation to the making of a decision or determination

under the NEL/NGL, the Regulations or the Rules, may apply to the **Supreme Court** of a State or to the **Federal Court** (depending on the type of decision) for judicial review: NEL s 70.

69. The actions of the AER and the Tribunal itself, as with most Commonwealth authorities, are subject to judicial review by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**), and also by the High Court under the Australian Constitution.

70. Accordingly, where a decision of the AER may be reviewed by the Tribunal, the Tribunal's decision in turn is subject to judicial review in the Federal Court. Because the Tribunal is headed by a Federal Court judge, any review of the Tribunal decision will be heard by a Full Court of the Federal Court – that is, a panel of 3 judges.

71. In judicial review, a court will not consider whether the decision was the correct or preferable one; rather, the court is only concerned about whether the decision was made according to law. Accordingly, the **scope for judicial review is substantially narrower than the scope for merits review** (even the limited merits review described above).

72. Further, a **court does not have power to vary a decision** under review – if a decision is found to be invalid by a court, because of some error of law in the making of the decision, it will generally be set aside and remitted back to the decision-maker.

### Grounds for Judicial Review

73. The main grounds on which a decision can be set aside under judicial review are set out in the ADJR Act, and listed below:

73.1 that a breach of the rules of **natural justice** occurred in connection with the making of the decision;

73.2 that **procedures** that were required by law to be observed in connection with the making of the decision were not observed;

73.3 that the person who purported to make the decision **did not have jurisdiction** to make the decision;

73.4 that the decision was **not authorized** by the enactment in pursuance of which it was purported to be made;

73.5 that the making of the decision was an **improper exercise of the power** conferred by the enactment in pursuance of which it was purported to be made – that is:

73.5.1 taking an irrelevant consideration into account in the exercise of a power;

- 73.5.2 failing to take a relevant consideration into account in the exercise of a power;
  - 73.5.3 an exercise of a power for a purpose other than a purpose for which the power is conferred;
  - 73.5.4 an exercise of a discretionary power in bad faith;
  - 73.5.5 an exercise of a personal discretionary power at the direction or behest of another person;
  - 73.5.6 an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
  - 73.5.7 an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;
  - 73.5.8 an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - 73.5.9 any other exercise of a power in a way that constitutes abuse of the power.
- 73.6 that the decision involved an **error of law**, whether or not the error appears on the record of the decision;
- 73.7 that the decision was **induced or affected by fraud**;
- 73.8 that there was **no evidence or other material to justify the making of the decision**;
- 73.8.1 this ground shall not be made out unless:
    - (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which he or she was entitled to take notice) from which he or she could reasonably be satisfied that the matter was established
    - (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.
- 73.9 that the decision was otherwise contrary to law.

#### *Other types of court proceedings*

- 74. In addition to the courts' judicial review functions, the AER and other parties may commence court proceedings to enforce private rights arising under the Law, Rules and Regulations, as with any other law.
- 75. Similarly, the AER may exercise its enforcement role by commencing proceedings seeking sanctions for certain breaches of the Law and the Rules – for example, civil penalties, injunctions, etc.

76. The AEMC has broadly equivalent Rule-making functions under both the NEL and NGL. For convenience, unless there is a significant difference between the NEL and NGL, the commentary below refers to the provisions from the NEL, with references to the NGL in footnotes.

77. Section 34 of the NEL and section 74 of the NGL provide specific subject matter in respect of which the AEMC is empowered to make Rules.

78. Section 34 of the NEL provides that the AEMC may make Rules with respect to the following **subject matter**:

78.4 any of the matters or things specified in Schedule 1 of the NEL.

79. Section 74 of the NGL provides that the AEMC may make Rules with respect to the following **subject matter**:

79.1.6 AEMO's **STTM functions** and the operation of a short term trading market of an adoptive jurisdiction;

- 79.1.7 the activities of registered participants, users, end users, and other persons in a **regulated gas market**;
- 79.1.8 the **safety, security and reliability** of pipelines;
- 79.1.9 the **connection to premises** of retail customers; and
- 79.2 AEMO's **gas trading exchange functions** and the operation of a gas trading exchange;
- 79.3 facilitating and supporting the provision of services to **retail customers**;
- 79.4 any matter of thing contemplated by the NGL, or necessary or expedient for the purposes of the NGL;
- 79.5 any of the matters referred to in **Schedule 1** of the NGL.

Scope of Rule-making power more generally

- 80. Section 34(3) of the NEL specifies the **types** of rules that the AEMC may make – these are very numerous, and illustrate the breadth and significance of the rule-making power<sup>37</sup>.
- 81. There are two important exceptions:
  - 81.1 The AEMC must not make a rule that confers a right or function, or imposes an obligation, on the MCE or a Minister, without the MCE's consent: NEL s 35<sup>38</sup>.
  - 81.2 The AEMC must not make a rule that creates an offence or provides a criminal or civil penalty: NEL s 36<sup>39</sup>.

*Tests for Rule-making by the AEMC*

- 82. Certain Rule-making tests to be applied by the AEMC are set out in ss 88 to 89 of the NEL<sup>40</sup>.
- 83. Most significantly, the AEMC may only make a Rule if it is satisfied that the Rule will or is likely to **contribute to the achievement of the national electricity objective**: NEL s 88.<sup>41</sup>
- 84. NEL ss 88A and 88B set out certain cases in which the AEMC must take into account the **form of regulation factors** and the **revenue and pricing principles**<sup>42</sup>.

*Initiating the Rule-making process*

- 85. Section 91 of the NEL provides that the AEMC may make a Rule:
  - 85.1 at the request of any person; or
  - 85.2 on its own initiative, if it considers that the proposed Rule corrects a minor error in the Rules, involves a non-material change to the Rules, or if the Rule is in respect of certain subject matters prescribed in the Regulations.<sup>43</sup>

---

<sup>37</sup> NGL s 74(1)

<sup>38</sup> NGL s 75

<sup>39</sup> NGL s 76

<sup>40</sup> NGL s 291 - 293

<sup>41</sup> NGL s 296

<sup>42</sup> NGL s 293

<sup>43</sup> NGL s 295(1)

- ### Contents of a Rule request

- ### Alternate and consequential Rules

- 49 NGL s 297

*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 94<sup>50</sup>;
  - 91.2 **Consultation:** see NEL s 95<sup>51</sup>;
  - 91.3 **Draft Rule determination:** see NEL s 99<sup>52</sup>;
  - 91.4 **Final Rule determination:** see NEL102<sup>53</sup>.
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 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.

---

<sup>50</sup> NGL s 301

<sup>51</sup> NGL s 303

<sup>52</sup> NGL s 308

<sup>53</sup> NGL s 311

### Stage 2: Consultation

95. If the AEMC receives a request to make a Rule, it **may request further information** to clarify the Rule change request: s 94A(1) of the NEL<sup>54</sup>.
96. If the AEMC decides that it should take action in respect of a request or forms an intention to make an AEMC initiated Rule, NEL s 95 provides that the AEMC must publish:
- 96.1 notice of the request or intention (**a Consultation Notice**);
  - 96.2 **a draft of the proposed Rule**;
  - 96.3 any other document prescribed by the Regulations<sup>55</sup>.
97. That Notice must invite submissions from any person or body in relation to the proposed Rule, and must at least **4 weeks** for those submissions to be made.
98. Any person may make a **written submission** to the AEMC on the proposed Rule before the closing date for submissions: NEL s 97<sup>56</sup>.
99. The AEMC may, but is not required to, hold a **public hearing** in relation to any proposed Rule: NEL s 98<sup>57</sup>.
100. NEL s 96 and 96A also set out **expedited processes** that may be applied in relation to non-controversial or urgent Rules, or where the rule has been subject to previous public consultation or an AEMC review<sup>58</sup>.

### Stage 3: Draft Rule determination

101. Subject to certain exceptions, the AEMC must generally publish a draft Rule determination, and notice of that determination, within **10 weeks** of the date of the Consultation Notice. In certain cases concerning the MCE or other regulatory bodies, the applicable period will be **5 weeks**.
102. The notice of the draft Rule determination must invite written submissions, allowing a period of at least **6 weeks** from the date of publication.
103. Any person may also request that the AEMC hold a **public meeting** on the draft Rule determination. The AEMC is not obliged to grant that request, although it must give reasons if it does not.

### Stage 4: Final Rule determination

104. Within **6 weeks** after the period for written submissions in relation to the draft Rule determination expires, the AEMC must publish the final Rule determination and notice of the making of the final Rule determination.
105. A final Rule Determination must contain the AEMC's **reasons** in relation to the making of the Rule.

---

<sup>54</sup> NGL s 302

<sup>55</sup> NGL s 303

<sup>56</sup> NGL s 306

<sup>57</sup> NGL s 307

<sup>58</sup> NGL s 304 and s 305



**CHAPTER 6: JURISDICTIONAL ARRANGEMENTS**

|          |                                                        |            |
|----------|--------------------------------------------------------|------------|
| <b>A</b> | <b>Gas and Electricity .....</b>                       | <b>232</b> |
| <b>B</b> | <b>National Energy Customer Framework (NECF) .....</b> | <b>235</b> |

## 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                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Leading legislation</b>     |                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>SA</b>                      | <i>National Gas (South Australia) Act 2008</i>                                                                                                                                                                                                                                                      | <i>National Electricity (South Australia) Act 1996</i>                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Application legislation</b> |                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>VIC</b>                     | <i>National Gas (Victoria) Act 2008</i>                                                                                                                                                                                                                                                             | <i>National Electricity (Victoria) Act 2005</i>                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>NSW</b>                     | <i>National Gas (New South Wales) Act 2008</i>                                                                                                                                                                                                                                                      | <i>National Electricity (New South Wales) Act 1997</i>                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>ACT</b>                     | <i>National Gas (ACT) Act 2008</i>                                                                                                                                                                                                                                                                  | <i>Electricity (National Scheme) Act 1997</i>                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>TAS</b>                     | <i>National Gas (Tasmania) Act 2008</i>                                                                                                                                                                                                                                                             | <i>Electricity – National Scheme (Tasmania) Act 1999</i>                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>QLD</b>                     | <i>National Gas (Queensland) Act 2008</i>                                                                                                                                                                                                                                                           | <i>Electricity – National Scheme (Queensland) Act 1997</i>                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>NT</b>                      | <i>National Gas (Northern Territory) Act 2008</i>                                                                                                                                                                                                                                                   | <i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*</i><br>* 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.                                                                                                                                                   |
| <b>WA</b>                      | <i>National Gas Access (WA) Act 2009*</i><br>* 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><br>* 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).<br>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                                                          |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| <b>VIC</b> | AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> <li>the <b>declared wholesale gas market</b>; and</li> <li>a <b>natural gas services bulletin board</b></li> </ul>                              | Regulated by the AER                                                       |
| <b>NSW</b> | AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> <li>the <b>short term trading market</b>; and</li> <li>a <b>natural gas services bulletin board</b></li> </ul>                                  | Regulated by the AER                                                       |
| <b>ACT</b> | AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> <li>the <b>short term trading market</b>; and</li> <li>a <b>natural gas services bulletin board</b></li> </ul>                                  | Regulated by the AER                                                       |
| <b>QLD</b> | AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> <li>the <b>short term trading market</b>;</li> <li><b>gas supply hubs</b>; and</li> <li>a <b>natural gas services bulletin board</b></li> </ul> | Regulated by the AER                                                       |
| <b>SA</b>  | AEMO regulates the gas market in Victoria by operating: <ul style="list-style-type: none"> <li>the <b>short term trading market</b>;</li> <li><b>gas supply hubs</b>; and</li> <li>a <b>natural gas services bulletin board</b></li> </ul> | Regulated by the AER                                                       |
| <b>TAS</b> | AEMO operates the <b>natural gas services bulletin board</b> .                                                                                                                                                                             | Regulated by the AER                                                       |
| <b>NT</b>  | 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                                                       |
| <b>WA</b>  | NGL applies with substantial amendments.<br><br>AEMO operates the Western Australian gas bulletin board, but there is not presently a regulated wholesale market.                                                                          | NGL applies with substantial amendments.<br><br>Regulated by the ERA (WA). |

## Jurisdictional arrangements relating to the electricity industry

| State      | Market Regulation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Access Regulation                                                                                                                                                 |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>VIC</b> | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>NSW</b> | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>ACT</b> | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>QLD</b> | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>SA</b>  | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>TAS</b> | AEMO operates the National Electricity Market                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Regulated by the AER                                                                                                                                              |
| <b>NT</b>  | <p>The Northern Territory is not connected to the National Electricity Market (<b>NEM</b>)*.</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 <b>Interim Northern Territory Electricity Market</b>, 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                                                                                                |
| <b>WA</b>  | 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**

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