

Notice of draft instrument

AER Retailer of Last Resort Guidelines

March 2026

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Table of Contents

1	Introduction	4
2	Scope of amendments	5
2.1	Part A: The RoLR guidelines	5
2.2	Part B: The RoLR plan	7
2.3	Not in scope	9
2.4	Consultation questions	9
2.5	Our consultation process	10
2.5	Request for submissions	11
3	Background	12
3.1	Objectives	13
4	Key areas for feedback	14
4.1	Changing to a single reference document	14
4.2	Improving the clarity and certainty of cost recovery arrangements.....	15
4.3	Allowing up to 72 hours for the AER to designate a RoLR.....	20
4.4	Allowing RoLRs to place transferred customers on ‘market retail contract offers’ .	21
4.5	Other draft positions	23

1 Introduction

Recent amendments to the Retail Law require us to update the Retailer of Last Resort guidelines and plan.¹ This update reflects how the RoLR scheme operates in practice and updates the guidelines and plan to ensure they remain clear, practical and fit for purpose.

We are taking a principles-based approach to this update, focused on simplifying processes, clarifying obligations and improving ease-of-use for stakeholders. We also propose consolidating the guidance from the guidelines, plan and statement of approach² into a single, shorter document.

We are seeking feedback on the proposed approach, including the option to streamline processes and improve cost recovery arrangements.

This notice³ sets out our draft decision and should be read alongside the draft guidelines. It explains the rationale for our draft decision and summarises stakeholder feedback received to date.

We are accepting stakeholder feedback on this consultation paper until **17 April 2026**.

Please note that, until the updated RoLR guidelines and plan are finalised, we expect stakeholders to continue to observe the current RoLR guidelines, plan and statement of approach documents.

¹ In accordance with Part 6 of Schedule 1 of the Retail Law.

² Note: The statement of approach is not required under the Retail Law but was published to provide additional guidance at the commencement of the RoLR framework.

³ National Electricity Retail Rules, r 172(2)(b).

2 Scope of amendments

We are updating the RoLR guidelines and plan to give effect to recent legislative and rule changes, and improve how the framework operates in practice. This section outlines the scope of the amendments and the areas we considered in the draft determination.

Document format

The draft *RoLR Guidelines and Plan* clarify the AER's approach to RoLR designation, cost recovery and transferred customer retail contracts. Our approach is designed to minimise customer impacts during a RoLR event, while maintaining confidence in the retail energy market.

We propose to combine the existing RoLR documents into a single, easy-to-use document that contains the guidance from the RoLR guidelines, plan and statement of approach. Part A of the combined document includes the RoLR guidelines and relevant guidance previously included in the statement of approach⁴. Part B of the combined document contains the RoLR plan, which is a functional document for use before, during and after a RoLR event.

2.1 Part A: The RoLR guidelines

Part A of the consolidated RoLR document is the RoLR guidelines. Under the Retail Law, the guidelines must:

- specify the circumstances in which the appointment of more than one designated RoLR for a RoLR event may occur⁵
- specify the manner of determining the allocation of the designated RoLRs to particular customers or classes of customers⁶
- specify how compliance with the requirements of section 148A(3) will be assessed⁷
- provide for any other matter that the AER considers necessary in the circumstances.⁸

The guidelines may also (without limitation):

- make different provision for the failure of large retailers, small retailers and retailers that are default RoLRs⁹

⁴ NB: The statement of approach is not required under the Retail Law but was published to provide additional guidance at the commencement of the RoLR framework.

⁵ s 135(2)(a) of the Retail Law.

⁶ s 135(2)(b) of the Retail Law.

⁷ s 135(2)(b) of the Retail Law.

⁸ s 135(c) of the Retail Law.

⁹ s 135(3) of the Retail Law.

- specify the form of and information to be included in a RoLR register Expression of Interest (EoI)¹⁰
- specify the form of and information to be included in an application for a RoLR cost recovery scheme¹¹
- provide for any other matter the AER considers necessary with respect to the RoLR scheme.¹²

In this draft determination, we discuss our approach to incorporating the relevant legislative amendments into the guidelines and ask for feedback on the updates to guidance for cost recovery arrangements,¹³ the details on how RoLRs could take up the option of providing a market retail contract offer (called designated contracts),¹⁴ and the circumstances we would consider the extended timeframe for the AER to designate a RoLR.¹⁵ We also ask for feedback on our approach to streamlining of the RoLR documents into a principles-based, single guidance document.

In 2024, the Australian Energy Market Commission (AEMC) completed another review of the RoLR framework. We have included the intent of recommendation 7 of AEMC RoLR Review 2024 in our updates. The intent of this recommendation is to improve cost recovery clarity for market participants through changes to AER guidelines. This would be done by expanding the Retail Law to require the AER to provide specific guidance in its RoLR cost recovery guidelines on the:

- types of costs RoLRs can claim and supporting information requirements
- period for which RoLRs can claim costs
- timing and process the AER will follow to assess cost recovery claims.

Additionally, new rules will introduce secondary settlement points for residential and small business electricity customers in December 2026.¹⁶ Secondary settlement points are optional additional connection points that allow different parts of a customer's energy use to be charged separately. For example, a customer with an electric vehicle may be able to access lower prices for that aspect of their energy use if they charge their vehicle when there is low demand. They might then sell excess energy when demand is higher, bringing benefits to the customer and energy system.

Under the RoLR scheme, the AER must ensure that a single default RoLR is registered for each electricity connection point and each gas distribution system at all times. As such, the

¹⁰ s 135(5)(a) of the Retail Law.

¹¹ s 135(5)(b) of the Retail Law.

¹² s 135(5)(c) of the Retail Law.

¹³ Amendments to s 166 of the Retail Law.

¹⁴ Insertion of s 148A to 148C of the Retail Law.

¹⁵ Amendments to s 132 of the Retail Law.

¹⁶ AEMC, National Electricity Amendment (Unlocking CER benefits through flexible trading) Rule 2024; National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2024.

AER now registers default electricity RoLRs by reference to both primary connections and secondary settlement points, and this is reflected in the draft guidelines.

2.2 Part B: The RoLR plan

Part B of the consolidated RoLR document is the RoLR plan. The RoLR plan remains a functional document that we have developed in consultation with AEMO and participating jurisdictions. While we are only required to consult with RoLR plan participants (listed in section 1.3 of the RoLR plan) under the Retail Law, it will be part of the single consolidated document and we welcome any feedback on Part B in submissions.

2.2.1 Legislative amendments in the plan

There are 2 legislative amendments reflected in the draft RoLR plan.

The first is to improve the enforceability of existing provisions within the RoLR scheme by amending the time to respond to an AER direction for gas access and pipeline capacity from 'immediate' to 'within 24 hours'.¹⁷

This clearly defined window provides greater clarity and now operationalises the transfer of gas customers. No updates to the draft guidelines are required to reflect this reform. However, we have referenced this requirement in the draft RoLR plan.

The second is to remove prescriptive exercise requirements in RoLR plan to give greater flexibility to how and when exercises are conducted.¹⁸

We have updated the draft plan to state that we will conduct targeted RoLR exercises in response to specific needs, such as material changes to the RoLR plan, rule changes that have introduced new complexity, or an extended period without an actual RoLR event. We will publish reports and share outcomes with relevant stakeholders where relevant. This recognises that most exercises are internal to the AER (and/or with AEMO) and not of broader stakeholder interest. This approach would reduce the regulatory burden on RoLR scheme participants while maintaining the capability to respond to future RoLR events.

2.2.2 Other changes to the RoLR plan

We have also made some changes in the RoLR plan that have not been specifically called for by the legislative amendments.

Stronger customer data requirements

We have updated the draft plan to include stronger customer data requirements. Default RoLRs expressed strong concerns regarding the quality of customer data provided by failed retailers to them after a RoLR event and said that poor quality data can be a significant obstacle to efficient customer transfers. This is particularly important for vulnerable customers, including hardship customers, life support customers, customers receiving

¹⁷ s 137 of the Retail Law.

¹⁸ s 163(a) of the Retail Law.

concessions and customers affected by family violence. In the draft plan, we propose that the failed retailer must also provide:

- additional information for transferred hardship customers: the details of the hardship arrangement, such as the payment plan details
- details of customers who have Centrepay arrangements in place for the payment of their energy bills
- details of customers affected by family violence.¹⁹

We have also updated the plan to include the new Retail Law requirement that designated RoLRs keep records of customer transfers for at least 2 years and give information to the transferred customers in accordance with the RoLR plan.²⁰

Accounting for RoLR responsibilities in Victoria

The AER assumed responsibility for RoLR arrangements in Victoria in July 2024 under the National Energy Retail Law (Victoria) Act 2024. To account for this change, we have updated the RoLR plan to add the Essential Services Commission Victoria (ESCV) as a RoLR participant and have updated the information sharing and communication obligations relating to this change. We have also added definitions and explanations to account for specific adjustments to the RoLR scheme application under the National Energy Retail Law (Victoria) Regulations 2024.

Incorporating family violence obligations

We added the requirements related to family violence obligations that became a part of the National Energy Retail Rules (Retail Rules) in 2023, including communication requirements.

Requirement to inform of any gas supply or capacity issues

Finally, the Weston Energy gas RoLR event in 2022 highlighted the importance of the AER having up-to-date supply and capacity information when considering whether to make a direction for gas in a RoLR notice. Recognising this, we have added a notification requirement for default RoLRs. In circumstances where the AER has notified a default RoLR that we have formed the reason to believe that there is a risk of a RoLR event, the default RoLR must notify us as soon as it becomes aware that the gas supply or capacity available to it may be insufficient to service the customers of the failed retailer.

¹⁹ This is to avoid the need for repeat disclosure and to ensure customers receive the relevant protections immediately upon transfer to the RoLR. When victim-survivors must repeat their story of family violence to different staff it can be traumatising. It can lead them to stop seeking support or may place them at greater risk if the perpetrator monitors their calls.

²⁰ s 148C(1) of the Retail Law.

2.3 Not in scope

The amendment to the Retail Law that relates to credit support²¹ does not require any changes to the RoLR guidelines or plan, as credit support is largely dealt with by AEMO in the Credit Limit Procedures under the National Electricity Rules.²²

While we included the intent of recommendation 7 in the draft guidelines, the full recommendations from the AEMC's 2024 review of the RoLR framework have not yet been implemented in the Retail Law, and are therefore not in scope for this update.

2.4 Consultation questions

To help us consider these issues, we are seeking feedback on a range of areas, including:

Changing to a single reference document

1. Is the single reference document approach suitable for stakeholders? Please provide any specific feedback if you have any concerns about this approach.

Improving the clarity and certainty of cost recovery arrangements

2. Is the additional cost recovery guidance useful? What, if any, further information could be set out in the guidelines? Is there information specific to a gas RoLR event that would be useful?
3. Do the changes to the cost recovery template provide enough guidance to submit a cost recovery application? If not, what else would be helpful to include?
4. Is our proposed approach to consulting about cost recovery suitable? If not, please specify which aspects of the proposed approach you consider should be revised.
5. Is the 9-month timeframe for submitting a cost recovery application appropriate? If not, what timeframe would be more appropriate and why?
6. Does the AER's proposed approach to applying the amended cost recovery principles and allocating costs between distributors remain appropriate? If not, provide details of another approach and why this may be more appropriate.

Allowing up to 72 hours for the AER to designate a RoLR

7. Are there further retailer/consumer benefits or unintended risks of the AER taking up to 72 hours to designate an additional RoLR?

²¹ This reform extends the timeframe for a RoLR to meet AEMO's credit support requirements following a RoLR event by establishing a one-week grace period for designated RoLRs, followed by gradual increases over 4 weeks, to account fully for the additional customer load. See <https://hansardsearch.parliament.sa.gov.au/daily/lh/2025-09-18/8>.

²² s 166(3)(b) of the Retail Law.

Allowing RoLRs to place transferred customers on 'market retail contract offers'

8. Is the proposed timeframe of 5 business days for registered RoLRs to provide an updated designated contract reasonable in non-urgent circumstances?
9. Does the proposed approach to designated contracts provide suitable processes to encourage the use of designated contracts? If not, what could be changed?
10. Are the proposed requirements for the notice of designated market retail contract and the AER's proposed approach to assessing compliance with designated contracts clear? If not, what could be further clarified?

2.5 Our consultation process

The Retail Law enables us to undertake such consultation we consider appropriate prior to preparing the draft RoLR guidelines.²³ Given the short timeline for updating the guidelines and plan, and the number of energy consultations currently underway, we adopted a tailored approach to consultation. We consider these changes to be relatively contained, so we have engaged with stakeholders to inform the draft guidelines and plan.

We contacted energy retailers, distributors, state and territory department representatives and market bodies to seek feedback on the RoLR scheme. We met with 3 default RoLRs, the AEMC, the Australian Energy Market Operator (AEMO), the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the ESCV, to understand their experience with using the RoLR documents during RoLR events. We also asked for initial feedback on the amendments to the Retail Law, including cost recovery arrangements, the market offer and the extended timeframe for the AER to designate a RoLR.

To support effective engagement, we are offering informal briefings and providing flexible options for stakeholders to provide feedback in addition to formal written submissions, including verbally, through virtual workshops or via email, to help reduce any burden on stakeholders in our consultation processes.

As mentioned in the introduction, we are committed to streamlining and simplifying obligations and regulatory requirements, where possible. This has led to us taking a principles-based approach with the revised guidelines that we propose will enable retailers to use their judgement in determining how they meet the intent of the guidelines in line with their circumstances and the relevant RoLR event. In practice, no 2 RoLR events have been completely alike. This supports the adoption of a principles-based approach.

We are providing 20 business days for stakeholder feedback on the draft RoLR guidelines.²⁴ The final determination will set out how the feedback was considered.

²³ National Energy Retail Rules, r 173(2)(a).

²⁴ Ibid, r 173(2)(b)(iii).

2.5 Request for submissions

Interested parties are invited to make submissions to the AER regarding the draft guidelines by close of business **17 April 2026**.

Submissions should be emailed in an electronic format in Microsoft Word or another text-readable document form to AERRoLR@aer.gov.au with the email subject header "Submission – RoLR guidelines update.

Alternatively, submissions may be mailed to:

General Manager
Compliance and Enforcement
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601.

You can also email us at AERRoLR@aer.gov.au with enquiries about this paper, lodging a submission, or to schedule a meeting directly.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. All non-confidential submissions will be published on the AER website. For further information regarding the use and disclosure of information provided to the AER, see the [ACCC/AER Information Policy](#) available on the AER's website.

Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

We will publish a final determination, RoLR guidelines and RoLR plan by **18 June 2026**, at which time the revised requirements set out in the final determination will take effect.

3 Background

In February 2021, the AEMC completed a review of the RoLR scheme following concerns about heightened risks of retailer failure.²⁵ The AEMC's review concluded that the RoLR scheme had worked effectively to date for the failure of small retailers, without supply interruption for customers or wider impacts on the retail market. However, the review identified several areas where the existing arrangements could be improved to reduce financial risk, lower barriers to retailers participating as RoLRs and improve outcomes for customers following a RoLR event. The review also highlighted the need to provide additional flexibility in the RoLR mechanisms and the limitations of the scheme to manage large scale retail failure.

In response, on 18 December 2025, the *National Energy Retail Law (Retailer of Last Resort) Amendment Act 2025* (the Act) amended the Retail Law to provide greater flexibility and certainty in the operation of the RoLR scheme and the National Electricity Law to make related administrative changes. Changes to credit support and prudential requirements for RoLRs were also made in the National Electricity Rules.

The reforms contained in the Retail Law are to:

1. improve the clarity and certainty of cost recovery arrangements following a RoLR event
2. extend the timeframe to 72 hours for the AER to designate a RoLR following a retailer failure to allow for more time to appoint multiple RoLRs if appropriate
3. extend the timeframe for a RoLR to meet AEMO's credit support requirements following a RoLR event
4. remove prescriptive RoLR plan requirements to enable the AER to improve efficiency and reduce regulatory burden
5. give RoLRs the option to include market retail contract offers (called designated contracts) in their applications to the AER to become registered RoLRs
6. improve the enforceability of existing provisions within the RoLR scheme by amending the time to respond to an AER direction for gas access and pipeline capacity from 'immediate' to 'within 24 hours'.

In response to persistent wholesale price volatility and the failure of 10 small retailers during 2022 and 2023, the AEMC conducted a further review of the RoLR framework in 2024.²⁶ Recommendations from that review are currently under consideration by the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) and may result in further amendments to the Retail Law. From this review, we incorporated the intent

²⁵ AEMC, *Review of the retailer of last resort scheme* (21 February 2021), <https://www.aemc.gov.au/market-reviews-advice/review-retailer-last-resort-scheme>.

²⁶ AEMC, *Review into the arrangements for failed retailers' electricity and gas contracts* (20 June 2024), <https://www.aemc.gov.au/market-reviews-advice/review-arrangements-failed-retailers-electricity-and-gas-contracts>.

of the recommendation to improve the RoLR cost recovery framework through the AER guidelines (recommendation 7). However, the full recommendations would require further changes to Retail Law and will be incorporated into a future update to the RoLR documents.

3.1 Objectives

The purpose of the update to the RoLR documents is to:

- clarify, simplify and streamline regulatory obligations
- ensure the *RoLR Guidelines and Plan* document can be efficiently implemented and effectively enforced
- incorporate practical experience gained from past RoLR events
- improve the clarity and certainty of RoLR cost recovery arrangements
- establish a simplified *RoLR Guidelines and Plan* document that will enable a straightforward update to reflect future legislative changes.

4 Key areas for feedback

This section sets out the key areas for feedback on proposed amendments to the RoLR guidelines. Our update was informed by an assessment of the amendments against existing guidance, stakeholder feedback received to date and considered the RoLR objectives to ensure continuity of supply, and timely and efficient administration of RoLR events. We have also considered the experience gained from actual RoLR events and the need to ensure the guidelines remain fit for purpose.

4.1 Changing to a single reference document

We have proposed to combine the existing RoLR documents into a single, easy-to-use document that combines the information from the RoLR guidelines, plan and statement of approach.

Retailers gave feedback that having to navigate between separate documents was unnecessarily confusing and that the content in the documents did not align with practical experience with implementing the framework, particularly around the designation of RoLRs.

Taking this feedback on board, we have used a principles-based approach that acknowledges that the approach to a RoLR event may vary depending on the circumstances of the event. As the statement of approach is not required under the Retail Law and was published to provide additional guidance at the commencement of the RoLR framework, we are now proposing to discontinue it and, instead, to incorporate relevant content from it into the revised guidelines. We have tried to reduce duplication, simplify language and improve alignment in the guidelines. We have also removed obligations that were no longer relevant and replaced assumptions with learnings from actual RoLR events.

The previous guidelines and statement of approach both contained information which referenced the same issues (Table 1).

Table 1: Overlap areas identified in review of previous RoLR Guidelines and RoLR Statement of Approach

Guidelines	Statement of approach
Cost recovery	
6.1 Information to be included in an application for a RoLR cost recovery scheme	5.1 General principles for cost recovery scheme determination
6.2 Form of application for a RoLR cost recovery scheme	5.2 General principles for the distributor payment determination
7.1 Time limits on RoLR cost recovery scheme applications	5.3 Cost recovery examples for hypothetical RoLR event scenarios

Guidelines	Statement of approach
<p>7.2 Ex-post recovery of costs incurred on and after a RoLR event</p> <p>7.4 Non-assessment of RoLR cost recovery scheme applications which do not conform to the requirements in RoLR guidelines</p> <p>Appendix D: Form of application for a RoLR cost recovery scheme</p>	
Registration	
<p>5.1 Information to be included in a RoLR register EOI</p> <p>5.2 Form for RoLR registration EOI</p> <p>5.3 Form to renew additional RoLR with firm offer registration</p>	<p>3.2 Expressions of Interest</p>

We also propose including the RoLR plan as Part B to enable a single reference document and make it easier for stakeholders to identify and understand their obligations.

Question 1: Is the single reference document approach suitable for stakeholders? Please provide specific feedback if you have any concerns about this approach.

4.2 Improving the clarity and certainty of cost recovery arrangements

The Retail Law now provides further clarity on the categories of incurred costs that could be recovered by a designated RoLR on or after a RoLR event. The changes also allow a registered RoLR to waive costs under its cost recovery scheme.²⁷

The Retail Law now provides the AER more flexibility in consulting on cost recovery applications. There remains a requirement to publish a notice of the application on our website and invite submissions and allow at least 20 business days for response. However, if we are satisfied that the costs are clearly identifiable and quantifiable, we need not include in the notice an invitation to make submissions or we can specify a period of less than 20 business days for response.²⁸ In practice, where the quantum of the application is large, we will generally invite submissions because it is likely to be of greater public interest.

²⁷ s 166(4a) of the Retail Law.

²⁸ s 166(5c) of the Retail Law.

We have focused on providing more certainty about the recovery of incurred costs. In particular, the previous cost recovery principle that the registered RoLR will itself bear some of the costs, in proportion to its customer base, has been replaced by the principle that costs not prudently incurred by the registered RoLR in meeting its obligations should not be recoverable.²⁹

The RoLR cost recovery scheme distributor payment determination is now the only allowable method of recovering costs from customers.³⁰ The Retail Law previously allowed other types of cost recovery such as tariff variations and upfront customer fees.

To date, the AER's approach to RoLR cost recovery has been to include:

- information in the guidelines about the form and substance of information to be included in an application for a cost recovery scheme as contemplated by the Retail Law
- a spreadsheet template attachment to the guidelines for RoLRs to use when submitting an application
- information in the statement of approach about the AER's approach to assessing reasonable costs, as well as scenarios demonstrating how this approach would work in practice.

SWe received limited additional feedback on the cost recovery process, beyond that provided to the AEMC in 2024. However, registered RoLRs expressed they would prefer specific guidance on categories of recoverable costs and a revised template to help them provide the evidence needed to support their application. This feedback, and our learnings from assessing the 2024 Origin Energy cost recovery determination, including in relation to opportunity costs, have informed the cost recovery section of the draft guidelines.

In updating the guidelines, we endeavoured to find a balance between providing specific guidance and the understanding that RoLR events are not uniform and may require different approaches depending on the circumstances. The draft guidelines expand and combine cost recovery guidance in the previous documents. While we have focused on principles-based guidance, we have also provided more context about what information is required when a RoLR submits an application, the types of costs that can be claimed, the AER's process for assessing cost recovery claims, and how the AER will generally apply the cost recovery principles. We have provided additional information relevant to gas RoLR events, however we have not considered a gas-related RoLR cost recovery application, so we seek stakeholder feedback on any further gas-specific costs where guidance would be useful.

We consider that these changes also meet the intent of the recommendation from the AEMC's 2024 RoLR Framework Review to improve the RoLR cost recovery framework through AER guidelines.

²⁹ s 166(7)(c) of the Retail Law.

³⁰ s 167(1) of the Retail Law.

Question 2: Is the additional cost recovery guidance useful? What, if any, further information could be set out in the guidelines? Is there information specific to a gas RoLR event that would be useful?

Information to be included in an application for a RoLR cost recovery scheme

The draft guidelines include greater specification of the information to be included in an application and associated cost recovery spreadsheet template. We have revised the template to make clear that different costs and their methodologies should be set out in different tabs and making an allowance for opportunity cost claims in different cost categories. There are also new tabs for the key details of any cost recovery undertaking the RoLR chooses to provide, as well as the RoLR's proposed distributor payment allocations.

The revised template remains high level, to reflect the broad variety of approaches that could be considered reasonable. The spreadsheet should largely stand alone. However, we expect the RoLR to clearly set out the methodologies used in the spreadsheet and provide supporting evidence or relevant documentation, as well as a cover letter summarising the total cost recovery claim, methodologies and supporting evidence.

Registered RoLRs can provide undertakings to the AER to not seek particular cost categories, or only seek certain portions of incurred costs, as part of their application. Sections 166(4a) to (4c) and 166(5d) set out the process for the giving and acceptance of an undertaking. When considering whether to accept an undertaking, we will assess whether there is sufficient clarity about how the undertaking applies to the RoLR's cost recovery application.

Question 3: Do the changes to the cost recovery template provide enough guidance to submit a cost recovery application? If not, what else would be helpful to include?

Cost recovery application process

We have added a section on the typical cost recovery application process to provide more clarity to potential applicants about the assessment and consultation process the AER will follow.

This is a principles-based approach and does not set out specific timeframes for the provision of additional information or the AER's assessment, as we recognise timeframes will be dependent on the nature and complexity of individual cost recovery applications. The AER is committed to a proportionate and efficient approach to information gathering and consulting and, as such, our decisions on cost recovery applications should be able to be implemented simply and in a timely manner. By providing a clearer application and assessment process, we aim to assist participants to provide high quality applications and supporting documentation.

We have set out a flexible, stakeholder centric approach to determining the appropriate consultation process for a given application. While the starting position is that we will consult publicly for a period of at least 20 business days, we may decide to undertake targeted stakeholder consultation and/or consult publicly for fewer than 20 days. We are more likely to

conduct a public consultation where the amount claimed is significant and/or there may be public interest in the outcome of the application.

In the draft guidelines, we also commit to transparent communication through publishing a document outlining how we have assessed the application in line with the cost recovery principles, and how we have responded to any stakeholder submissions.

Question 4: Is our approach to consulting about cost recovery suitable? If not, please specify which aspects of the proposed approach you consider should be revised.

We have retained the 9-month timeframes for submitting cost recovery applications for costs incurred:

- in relation to preparing for RoLR events after being appointed a default RoLR under the Retail Law
- on and after a specific RoLR event after being appointed as a designated RoLR.

Our experience from assessing previous cost recovery applications is that these timeframes remain fit for purpose. However, we seek feedback from stakeholders on these timeframes.

We have also set out the Retail Law process for making or amending a determination.

Question 5: Is the 9-month timeframe for submitting an application appropriate? If not, what timeframe would be more appropriate and why?

Types of costs

The draft guidelines provide more detail about certain types of costs, in particular additional energy costs and administration costs, as well as what evidence might support a claim for such costs.

We have explained that wholesale, network and environmental costs may be included, an explanation of these costs and how they might be incurred.

We have clarified the difference between direct and opportunity costs, and how these are relevant to the cost recovery scheme. A RoLR may be able to claim direct costs and/or opportunity costs depending on the circumstances. The AER expects a RoLR to clearly delineate between direct costs and opportunity costs in a cost recovery application.

Finally, an application may include relevant future anticipated costs resulting from the RoLR event which have not yet been incurred but have already been identified and quantified, provided the RoLR can demonstrate these costs are reasonable.

General principles for cost recovery scheme determination

We have consolidated the previous sections in the guidelines dealing with our application of the cost recovery principles pursuant to s 166(7) of the Retail Law. The consolidated section deals holistically with the amended cost recovery principles as well as the factors the AER will consider when deciding how to spread approved costs among distributors.

Assessment of reasonable costs

In terms of our approach to assessing the reasonableness of a cost recovery application, we have set out what we will have regard to and what information we need from the designated RoLR. We have clarified that we don't object to RoLRs making cost claims based on estimates instead of providing actual costs incurred. However, the RoLR should provide a clear and reasonable methodology for determining the costs claimed, with supporting documents of its decision-making processes.

The guidelines previously indicated that we would scrutinise default RoLR scheme preparation costs more closely than RoLR event costs. Our position was that a default RoLR would have sufficient time to scope and plan the work it needs to undertake to prepare for a RoLR event. In the revised draft guidelines we have removed this paragraph. Instead, we will assess whether the designated RoLR's actions have been prudent in the circumstances, rather than impose blanket rules about how we will apply the cost recovery principles.

Costs not prudently incurred should not be recoverable

The new principle that costs not prudently incurred should not be recoverable complements the reasonableness principle. As the word "prudence" indicates a level of foresight, we consider it appropriate that a designated RoLR will use its systems, processes and arrangements to plan how it can efficiently accommodate customers of a failed retailer and what costs might be involved. This is a relevant consideration to whether one or more costs have not been prudently incurred, and the draft guidelines reflect this.

We have clarified our position that a RoLR is not required to prove it minimised costs incurred, but it should set out the measures it took and why that approach was reasonable in the circumstances. Depending on the circumstances of the RoLR event, it may not be imprudent for the RoLR to have chosen a course of action that, in hindsight, was not the most efficient one.

Return commensurate with the regulatory and commercial risks with respect to the RoLR scheme

The AER must be guided by the principle that the recovery of costs should allow for a return commensurate with the regulatory and commercial risks with respect to the RoLR scheme. This reflects that a key objective of RoLR cost recovery is to incentivise retailers to register and remain as RoLRs, given they are providing a broader service to the market to ensure continuity of supply for customers of failed retailers.

The draft guidelines acknowledge that the relatively high churn rates of transferred customers may impact the designated RoLR's benefits with respect to the RoLR scheme.

The previous guidelines suggested that benefits would be equal to the expected revenue less the "business as usual" costs relating to the transferred customers. "Business as usual" costs were defined as "non-RoLR scheme costs incurred relating to the supply of energy to the transferred customers".

However, we considered this issue further in the Origin Energy cost recovery determination. In this instance, the AER grouped all costs, including those relating to the supply of energy to the transferred customers, and subtracted the revenue expected from those customers to

determine the total recoverable costs. We have revised the draft guidelines to reflect this streamlined approach.

Allocation of costs between distributors

Finally, the draft guidelines reflect the fact that the distributor payment determination is the only method of recovering costs from customers under the Retail Law. We have removed discussion of, and scenarios relating to, previously allowable methods such as tariff variations and upfront customer fees. We propose to apply the same general principles for allocating costs between distributors as set out in the previous guidelines. That is, costs should generally be spread across the relevant customer base for each of the affected distributors, rather than limiting cost recovery to the transferred customers. Cost recovery should not result in price shocks for small customers, as this may cause payment difficulties for some customers.

Question 6: Does the AER's proposed approach to applying the amended cost recovery principles and allocating costs between distributors remain appropriate? If not, provide details of another approach and why this may be more appropriate.

4.3 Allowing up to 72 hours for the AER to designate a RoLR

The reform extends the time for the AER to designate a RoLR from as soon as practicable to 72 hours³¹ to allow additional time to consider whether it would be appropriate to appoint additional RoLRs to disperse RoLR load.

In most instances, we do not expect to use the additional time. We would generally only consider doing so where it is likely to influence the designation outcome, such as in the event of a larger retailer failure with significant customer numbers or load. Failures involving small retailers are unlikely to warrant the use of the extended time, as the benefits of appointing additional RoLRs would generally be limited.

Appointing additional RoLRs is less likely to be beneficial for impacted customers during a small retailer failure, because the default RoLR is more likely to be able to accommodate the transfer of customers from the failed retailer without significant operational impacts. In this circumstance, it is usually more beneficial to confirm the designated RoLR decision as quickly as possible and to avoid additional administrative burden for AEMO and RoLRs, and we have spelled this out in the guidelines.

We are also mindful that designated RoLRs may be exposed to spot price risk for energy consumed during the interim period following a retailer failure, or could be delayed in taking steps to manage price risk for transferred customers, which may be significant if a failure occurs during periods of high spot prices. Where there may be concerns about the impact of the transfer of significant additional load on the default RoLR, we would consult with AEMO

³¹ s 132(1)(b) of the Retail Law.

and the default RoLR on these risks to determine whether appointing additional RoLRs is appropriate.

AEMO provided feedback that the early collaboration arrangements already captured in the RoLR are sufficient to cover this change. AEMO also noted potential challenges where customer transfers are initiated outside the 72-hour period where the allocations of NMI across RoLRs is unresolved. We acknowledge these considerations and would consult with AEMO regarding technical capacity to inform whether appointing additional RoLRs is appropriate.

If a larger retailer failure appears likely, we would generally expect to receive earlier notice or warning signals. In these circumstances, we would seek to engage with registered RoLRs as soon as possible to inform our approach to appointing additional RoLRs and use of the 72-hour window. This also informs the new requirement in the Guidelines for additional RoLRs to confirm their willingness and ability to assist on any previously agreed terms upon being notified by the AER that it has formed the reason to believe that there is a risk of a RoLR event. We would also seek to engage earlier with AEMO and default RoLRs on financial viability and other potential RoLRs to gauge their capacity and interest ahead of any RoLR event. However, unless there is sufficient capacity, and willingness from other registered RoLRs, customers may still need to be transferred to the default RoLR in the relevant jurisdiction.

Question 7: Are there further retailer/consumer benefits or unintended risks of the AER taking up to 72 hours to designate an additional RoLR?

4.4 Allowing RoLRs to place transferred customers on ‘market retail contract offers’

This reform allows a registered RoLR to put transferred small customers on a designated contract more akin to a market contract, rather than defaulting them to a standard contract. The Retail Law sets out requirements for designated contracts, including that the customer must not be in a worse position than they would have been under a standard contract. Much of this section of the draft guidelines sets out the relevant requirements of the Retail Law.

The purpose of this change is to help improve customer outcomes by enabling transferred customers to access more competitive offers immediately rather than remaining on a higher cost standing offer. It may also reduce churn away from the designated RoLR following a RoLR event, which may in turn encourage retailers to register as RoLRs.

Importantly, if the RoLR chooses this option, they must transfer all small customers to the designated contract, which does not increase administrative burden on the RoLR as they are still managing transfers to only one contract.

In our discussions with retailers, they stated that their willingness to offer a designated contract may depend on market conditions and hedging positions at the time of a RoLR event. They indicated that overly prescriptive compliance processes could discourage the consideration to offer a designated contract or delay contract updates. We took on board this feedback in developing our approach to assessing compliance with the requirements for

designated contracts and the information to be provided by registered RoLRs in a notice to the AER of a designated contract.

We also specified the information needed to be included in a designated contract in the plan.

Notice to AER of designated contract

The guidelines set out what a registered RoLR should include in a written notice to the AER where it is willing to transfer customers to a designated contract, and any subsequent variations to that contract. Our draft position is based on what information would allow us to assess the contract against the requirements in the Retail Law, while balancing any associated burden on the registered RoLR.

AER compliance assessment

The draft guidelines detail how the AER will assess the compliance of a registered RoLR's designated contract against Retail Law requirements.³² In designing our approach, we have sought to limit the compliance burden to encourage registered RoLRs to offer this type of contract to enable transferred customers to access a more competitive market contract immediately upon a RoLR event, which benefits both the customer and the retailer (by reducing customer churn).

Where we consider the designated contract requires review, we propose 5 business days for the provision of an updated contract, although the time allowed may be shorter where a RoLR event is imminent. The designated contract will already be published on the registered RoLR's website, so in deciding this timeframe, we sought to minimise the time that a contract we consider requires review is published while allowing sufficient time for the registered RoLR to update.

Smart meter customers

We have also addressed the approach for smart meter customers. RoLRs may apply either a flat rate or time-of-use standing offer, provided the customer is not placed in a worse position and is informed of their options (including how to switch to a flat rate standing offer where this is available). We did not consider it necessary to specify standing offer types in the draft guidelines, as these situations are adequately addressed through this principles-based approach.

Question 8: Is the proposed timeframe of 5 business days for registered RoLRs to provide an updated designated contract reasonable in non-urgent circumstances?

Question 9: Does the proposed approach to designated contracts provide suitable processes to encourage the use of designated contracts? If not, what could be changed?

Question 10: Are the proposed requirements for the notice of designated market retail contract and the AER's proposed approach to assessing compliance with designated contracts clear? If not, what could be further clarified?

³² s 135(2)(ba) of the Retail Law.

4.5 Other draft positions

4.5.1 Removal of 3-yearly review of registered RoLRs

Since implementation of the RoLR framework, the AER has undertaken 3-yearly reviews of default RoLRs, as per the previous guidelines. However, there is no regulatory requirement to review RoLR appointments and, in practice, there has been limited interest from retailers to become default or additional RoLRs. It can also be burdensome for default RoLRs continue to provide supporting information to verify their eligibility.

As such, we have amended the guidelines to note that default RoLR appointments are ongoing unless the AER makes a decision to terminate. We can review RoLR arrangements on an as-needed basis such as where there are material changes to the market, retailer capability or regulatory requirements. Retailers can still submit an expression of interest to become a default or additional RoLR at any time, and we will periodically seek interest from retailers to be additional RoLRs.

We have proposed this to reduce administrative burden on registered RoLRs while also allowing us to maintain regulatory oversight.

We did not receive feedback on this topic in our early engagement and would be interested in stakeholder views on the proposed approach.

4.5.2 Removal of references to backup RoLRs and additional firm RoLRs

We considered the different RoLR classifications, including backup RoLRs and the different classifications of additional RoLRs (firm and non-firm).

These classifications were originally included to provide additional options within the RoLR scheme. However, in practice, a backup RoLR has not been required in any RoLR event to date. Similarly, there has been no interest from retailers to be registered as additional RoLRs with firm offers. As these classifications are not used and do not provide a customer benefit, we have removed references to them from the guidelines.

In removing these classifications, we have not limited our ability to appoint additional RoLRs or designate appropriate RoLRs should the circumstances of a particular RoLR event require this. We also recognise that the RoLR scheme is not designed to cover a large-scale failure and that additional measures would need to take place for this type of event. Rather than accommodate for all sized failures, the *RoLR Guidelines and Plan* are focused on what would be needed for small and medium failures, which is what we have seen come through the scheme since it was developed.

Retailers interested in becoming an additional RoLR will continue to provide information on the circumstances under which they would undertake this role.

Glossary

Term	Definition
Additional RoLR	An energy retailer that has registered with the AER its non-binding commitment to take on customers if another retailer fails.
Backup RoLR	A registered RoLR who may be designated if a default RoLR fails.
Customer	Has the meaning given in s. 5(1) of the Retail Law.
Default RoLR	Has the meaning given in s. 122 of the Retail Law.
Designated RoLR	Has the meaning given in s. 122 of the Retail Law.
Designation criteria	The criteria for the appointment of a registered RoLR as a designated RoLR under s.133(1) of the Retail Law.
Distribution system	Has the meaning given in s. 2(1)(b) of the definition in the Retail Law.
Distributor payment determination	Means a RoLR cost recovery scheme distributor payment determination made in accordance with s. 167(1) of the Retail Law.
Guidelines	The RoLR guidelines (Part A) developed, made and maintained by the AER under s. 135 of the Retail Law.
Hardship policy	Means a customer hardship policy as given in s. 2 of the Retail Law.
Multiple RoLRs	In jurisdictions where there is more than one electricity connection point and/or gas distribution system, there may be multiple default RoLRs, which means multiple RoLRs are designated when a retailer operating in that jurisdiction fails.
Registered RoLR	Has the meaning given in s. 122 of the National Energy Retail Law.
Regulated entity	Has the meaning given in s. 2 of the National Energy Retail Law.
Retail consultation procedure	The procedure prescribed by rule 173 of the Retail Rules.
RoLR cost recovery scheme	The scheme prescribed by s. 166(3) of the Retail Law.
RoLR cost recovery scheme application	An application for a RoLR cost recovery scheme made under s. 166(1) of the Retail Law.
RoLR event	Has the meaning given in s. 122 of the Retail Law.
RoLR register Eol	Has the meaning given in s. 124 of the Retail Law.
RoLR scheme	Has the meaning given in s. 122 of the Retail Law.
Standing instructions	A notice from the AER to AEMO setting out the electricity and gas default RoLRs and the RoLRs in the event of first tier retailer failure.
Transferred customers	Customers of the failed retailer.