



## **Customer Information**

**Dispute resolution process**  
**Customer connection to electricity networks**

**February 2016**

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# 1 Introduction

This paper outlines the process used by the Australian Energy Regulator (AER) for consideration and determination of customer connection complaints and disputes with electricity distribution businesses.

Connection disputes arise when a customer seeks connection to an electricity distribution network, and is unable to reach agreement with the distribution business on the terms and conditions of the connection offer.

The AER is responsible for resolving electricity distribution customer connection disputes under Part 10 of the *National Electricity Law*. This paper focuses primarily on resolving these types of disputes.

In addition, in Victoria, the *National Electricity (Victoria) Act 2005* confers on the AER the responsibility to resolve disputes under that Act and the *Electricity Industry Act 2000*, and to make assessments under distribution business' licence conditions.

From time to time, the AER may amend its dispute resolution process to reflect current best practice and procedures as well as any changes to the *National Electricity Law* and the *National Electricity Rules*.

This paper reflects the AER's general confidentiality and privacy principles set out in the *ACCC/AER Information Policy: The collection, use and disclosure of information*, <http://www.accc.gov.au/content/index.phtml?itemId=846791> as amended.

This paper applies to:

- Connection access disputes only.
- Retail customers only.

This paper does not apply to:

- Registered participants.
- Persons intending to become a Registered Participant.
- Persons seeking to establish connections under chapter 5 of the *National Electricity Rules*.

## Customers seeking to lodge a complaint to the AER

The AER can only investigate a connection dispute where a customer has received a formal connection offer by the distribution business.

Before the AER will investigate a connection matter, the complainant must have first attempted to resolve the issue with their electricity business. Where this has not occurred, the AER will refer the complainant back to the distribution business before undertaking any investigation.

Complaints to the AER can be made through the Australian Competition and Consumer Commission (ACCC) Infocentre, the AER inquiry email address, or by telephone. Contact details for these are provided at the end of this paper.

## Commercial resolution prior to AER decision

During the AER's customer connection dispute assessment process, the AER will not interfere in any commercial negotiations that may be undertaken by the parties. If, a commercial resolution is reached by parties prior to the AER making a final decision on a dispute, the AER will generally allow the dispute to be withdrawn by the parties.

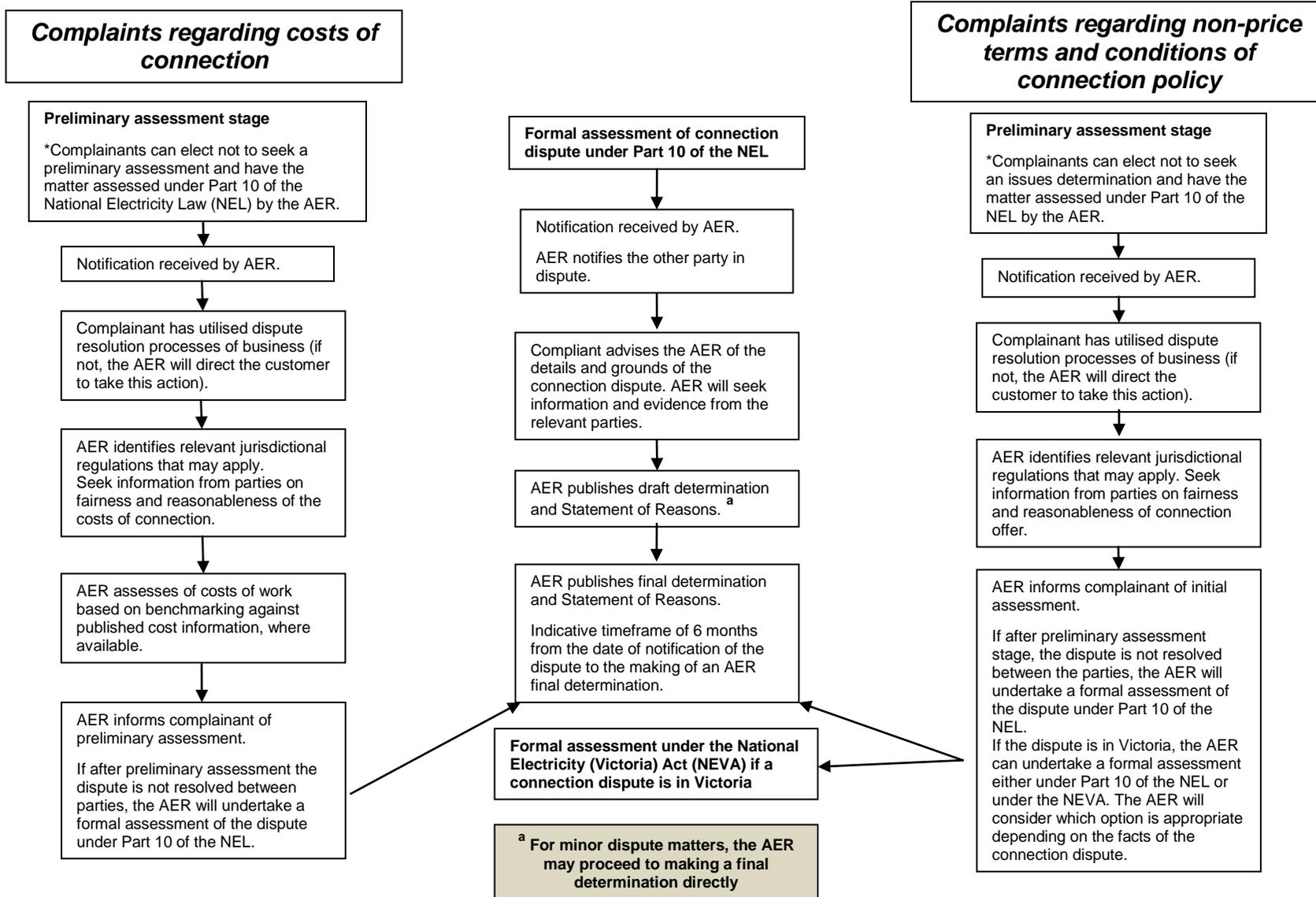
The AER has some discretion to make a decision even if a resolution has been reached. If, for example, the customer connection dispute related to a serious matter or indicated a systemic issue, it may be appropriate for the AER to make a decision.

## Mediation and negotiated outcomes

The AER has the power to resolve a dispute by mediation if the complaint is a dispute under Part 10 of the *National Electricity Law*. The AER will generally do so where the parties have consented and are willing to proceed in this way.

The AER may also seek to facilitate meetings between parties to the dispute with a view to reaching an agreed outcome. This would be a voluntary process undertaken by both parties in an attempt to reach a mutually satisfactory resolution. When facilitating such meetings, the AER does not have the power to make a binding and enforceable decision on the matters in dispute. If the negotiation process does not resolve the issue, the AER will undertake a formal assessment of the connection dispute.

# 1.1 AER retail customer connection dispute resolution process



## 2 AER's role in resolving electricity customer connection disputes

### 2.1 Disputes under the National Electricity Law

The AER is responsible for resolving retail customer connection disputes under Part 10 of the *National Electricity Law*. Section 3.3 of this paper explains the approach taken by the AER in resolving connection disputes. Connection disputes relate to disputes between a DNSP and a service applicant regarding:

- the costs of connection and
- the non-price terms and conditions of the capital contribution policy of the distribution business.

### 2.2 Disputes under state legislation and other applicable instruments

In Victoria, under the *National Electricity (Victoria) Act*, the AER can:

- resolve disputes regarding economic regulation under the *National Electricity (Victoria) Act* and the *Electricity Industry Act 2000* and
- resolve disputes on whether the terms and conditions of connection offers offered by distribution businesses in Victoria are fair and reasonable.

In Victoria, the AER can resolve matters under the *Electricity Distribution Code* (EDC), the distribution licence of the business, and relevant codes and guidelines published by the Essential Services Commission of Victoria (ESCV).

For other jurisdictions, compliance with state legislation must be resolved by relevant state enforcement bodies, as the AER does not have the power to make rulings or review compliance. The AER can only make determinations on the costs, and terms and conditions of the connection offer.

### 2.3 Fees and charges to customers

No fee is payable for the notification of a connection dispute if the notification is made by a user consuming less than 750 MWh of electricity per annum.<sup>1</sup> If the notification is made by a user consuming more than 750 MWh of electricity per annum a fee<sup>2</sup> is payable.

Under the *National Electricity Law*, the AER may charge for certain costs in relation to a connection dispute process.<sup>3</sup> The AER may also order a party to pay all or part of the costs of another party in the dispute.<sup>4</sup> Small customers are not generally charged for the costs of a dispute.

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<sup>1</sup> Clause 15 *National Electricity (South Australia) Regulations*.

<sup>2</sup> That fee is presently \$2,750.

<sup>3</sup> Section 156 of the *National Electricity Law*.

<sup>4</sup> Section 147 of the *National Electricity Law*.

### **3 Customer connection complaint or dispute assessment process**

Customer connection disputes can be broadly classified as disputes regarding the costs of connection, or disputes regarding the non-price terms and conditions of a connection offer.

#### **3.1 Complaints regarding costs of connection**

For complaints involving the costs of connection the customer must pay to a distribution business, AER staff will at first undertake a preliminary assessment of the matter to achieve a resolution.

This aim of the preliminary assessment stage is to provide the complainant with a preliminary indication of AER staff's view of the connection dispute. As many customers may not be fully aware of network construction costs, the preliminary assessment stage aims to inform the complainant of these costs.

If after the preliminary assessment stage the dispute is not resolved between the parties, the AER will undertake a formal assessment process.

##### **3.1.1 Preliminary assessment**

Based on benchmarking against similar published cost elements, AER staff will assess whether the cost components of the offer made by the distribution business are within the normal range, and are consistent with the manner of calculation in the relevant capital contributions policy. After assessing this and any other relevant information, AER staff will advise the complainant of its findings. These initial findings are not binding on the AER.

Following the AER staff's preliminary assessment, if the complainant decides to proceed to a formal assessment of the connection dispute under Part 10 of the *National Electricity Law*, the complainant should provide the AER in writing with the specific grounds for disputing the connection, addressing the matters identified and conclusions reached in the AER's staff preliminary assessment findings.

It is important to note that complainants can elect to skip the preliminary assessment stage and have the matter assessed immediately under Part 10 of the *National Electricity Law* by the AER, as outlined under section 3.3 of this paper.

##### **3.1.2 Formal assessment of connection disputes**

If after the preliminary assessment stage the dispute is not resolved between the parties, the AER will undertake a formal assessment as outlined in section 3.3 of this paper.

#### **3.2 Disputes regarding non-price terms and conditions of connection policy**

For disputes regarding non-price terms and conditions of a connection offer, AER staff will at first undertake a preliminary assessment and examine applicable regulatory instruments and legislation to determine the relevant issues relating to the dispute. If after this assessment, the customer advises that they wish to seek a formal

assessment, the AER will commence an access dispute process under Part 10 of the *National Electricity Law*.

The preliminary assessment stage aims to provide the complainant with a preliminary indication of the AER staff's view of the connection dispute. The preliminary assessment stage also aims to provide the complainant with further information on electricity rules and regulations.

It is important to note that complainants can elect to skip the preliminary assessment stage and have the matter assessed immediately under Part 10 of the *National Electricity Law* by the AER, as outlined under section 3.3 of this paper.

### **3.2.1 Preliminary assessment stage**

In the preliminary assessment stage for disputes regarding the non-price terms and conditions of a customer connection complaint, AER staff will examine applicable regulatory instruments such as electricity codes and licence conditions of the distribution business to assess whether the customer connection offer is fair and reasonable.

AER staff will notify the complainant of the outcome of its initial findings on the dispute. This may take the form of a letter to the complainant outlining staff's initial findings. These initial findings are not binding on the AER.

### **3.2.2 Formal assessment of connection disputes**

Following the AER staff's preliminary assessment, if the complainant decides to proceed to a formal assessment of the connection dispute under Part 10 of the *National Electricity Law*, the complainant should provide the AER in writing with the specific grounds for disputing the connection, addressing the matters identified and conclusions reached in the AER staff's preliminary assessment findings. The AER will undertake an assessment as outlined in section 3.3 of this paper.

#### ***Victorian framework***

In Victoria, the AER can assess whether connection offers are fair and reasonable under the provisions of the *National Electricity (Victoria) Act*. Therefore, when assessing a dispute in Victoria an AER formal decision on a customer connection complaint can be undertaken either through the applicable Victorian regulatory instruments or under the dispute process under Part 10 of the *National Electricity Law*.

The AER will consider which assessment process is more suitable based on the circumstances of the customer connection dispute. The appropriate framework will, in part, depend upon the basis on which the AER is determining the connection dispute, for example where a dispute is referred to the AER under Part 10 of the *National Electricity Law* or if it relates to a question about the application of a guideline.

#### ***Other jurisdictions***

The AER is able to resolve customer connection disputes in other jurisdictions under the *National Electricity Law* or the *National Electricity Rules*. Compliance with state legislation, however, must be resolved by relevant state enforcement bodies, as the AER does not have the power to make rulings or review compliance. The AER can

only make determinations on the costs, and terms and conditions of the connection offer.

### **3.3 Disputes under Part 10 of the National Electricity Law**

If after the preliminary assessment stage, the customer advises that it wishes to seek a formal assessment, dispute proceedings under Part 10 of the *National Electricity Law* can be commenced. The AER will undertake a formal assessment and consultation process, and will issue a draft and final determination. For minor disputes, the AER may proceed to making a final determination directly.

While the AER aims to deal with the complaint within 6 months from the date of notification of the dispute under Part 10, this indicative timeframe may be altered taking into consideration the complexity of the issues of the dispute.

Where appropriate, the AER will issue a draft determination, and accompanying statement of reasons to the parties on the fairness and reasonableness of the terms and conditions of the capital contribution policy of the distribution business. The draft determination will set out the AER's proposed approach to the final determination.

Before making a draft determination, the AER will issue directions to the parties seeking submissions and submissions-in-reply on the content of the final determination for the dispute. The AER will seek information such as:

- details of the connection offer
- the reasons the distribution business considers the connection offer to be fair and reasonable
- the reasons the complainant does not consider the connection offer to be fair and reasonable.

Parties will generally be given no less than 10 business days and no more than 20 business days to provide submissions on the content of a final determination, and at least a further 10 business days to reply to each other's initial submissions (submissions-in-reply). These indicative timeframes may vary depending on the complexity of the issues involved in the particular dispute. After receiving and considering the submissions of the parties, the AER will issue a draft determination and a supporting statement of reasons for comment by the parties.

Parties will be invited to comment in writing on the draft determination and supporting statement of reasons. A submission period of no less than 10 business days and no more than 20 business days will generally be provided. Again these timeframes are indicative and may be altered on a case-by-case basis as required.

After receiving and considering any submissions of the parties on the draft determination, the AER will proceed to make a final determination including a supporting statement of reasons on the fairness and reasonableness of the terms and conditions of the capital contributions policy relating to the matters of the dispute.

Once the AER issues its final determination and provides it to the parties, the dispute process is concluded.

### **3.3.1 Enforcement of AER's Part 10 determinations**

Determinations made by the AER under Part 10 are enforceable by court orders. The court may make all or any of the following orders in relation to a contravention, or proposed contravention of a determination under Part 10 (section 71ZA of the *National Electricity Law*):

- (a) an order granting an injunction on such terms as the Court thinks appropriate —
  - (i) restraining the other party from engaging in the conduct; or
  - (ii) requiring a person to do a specific thing
- (b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention;
- (c) any other order that the Court thinks appropriate.

### **3.3.2 Indicative timeframe of AER investigations of a connection dispute**

AER investigations of a connection dispute may take between 18 and 24 weeks (estimate). The indicative timeframe (including timing for submissions) is:

- Initial assessment: 7 weeks
- Draft consultation and determination: 5 weeks
- Consultation on draft determination: 5 weeks
- Final determination after close of consultation: 5 weeks

## Contact details

### **ACCC/AER contact details**

**By phone to ACCC/AER Infocentre: 1300 302 502**

**By email to: [AERinquiry@aer.gov.au](mailto:AERinquiry@aer.gov.au)**

**By mail to:  
Australian Energy Regulator  
GPO Box 520  
Melbourne  
Victoria 3001**

**By fax to: (03) 9290 1457**

## Glossary

ACCC	The Australian Competition and Consumer Commission
AER	The Australian Energy Regulator
Connection	To form a physical link to or through a distribution network.
Connection dispute	A customer seeks connection access to a distribution network under the <i>National Electricity Rules</i> or relevant jurisdictional legislation, and is unable to reach agreement on the terms and conditions of the connection offer with the distribution business.
Distribution Network Service Provider	A person who engages in the activity of owning, controlling, or operating a distribution system.
Registered participant	A person who is registered by <i>AEMO</i> in any one or more of the categories listed in the <i>National Electricity Rules</i> - rules 2.2 to 2.7 (in the case of a person who is registered by <i>AEMO</i> as a <i>Trader</i> , such a person is only a <i>Registered Participant</i> for the purposes referred to in rule 2.5A). However, as set out in clause 8.2.1(a1), for the purposes of some provisions of the <i>National Electricity Rules</i> - rule 8.2 only, <i>AEMO</i> , <i>Connection Applicants</i> , <i>Metering Providers</i> and <i>Metering Data Providers</i> who are not otherwise <i>Registered Participants</i> are also deemed to be <i>Registered Participants</i> .
Retail customer	A retail customer is a person who purchases electricity through energy retailers, rather than directly from the National Electricity Market (NEM). Retail customers also include embedded generators.