

Final report

Review into the arrangements for failed retailers' electricity and gas contracts

Inquiries

Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: RPR0016

About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

Copyright

This work is copyright. The Copyright Act 1968 (Cth) permits fair dealing for study, research, news reporting, criticism and review. You may reproduce selected passages, tables or diagrams for these purposes provided you acknowledge the source.

Citation

To cite this document, please use the following:

AEMC, Review into the arrangements for failed retailers' electricity and gas contracts, Final report, 20 June 2024

Summary

- 1 Regulatory agencies, market participants and governments gained valuable insights into managing energy retailer failures in the 2022 energy crisis. Using these insights, the Australian Energy Market Commission (the AEMC or Commission) has made 10 final recommendations to improve the Retailer of Last Resort (RoLR) scheme:
 - six of these recommendations simplify and improve the gas directions framework (**recommendations 1 - 6**)
 - four of these recommendations improve the RoLR scheme for gas and electricity RoLR events by enhancing clarity and access to information, reducing costs, and addressing perverse incentives (**recommendations 7 - 10**).
- 2 Our final recommendations have been shaped by three formal rounds of stakeholder feedback in response to the consultation paper, directions paper, and draft report. Bilateral stakeholder engagement has also been instrumental in shaping the Review recommendations. The Commission thanks stakeholders for their constructive and collaborative engagement throughout the Review process.

Retailer failure is managed through the Retailer of Last Resort (RoLR) scheme

- 3 The RoLR scheme protects consumers by ensuring continuity of energy supply to a customer if their retailer fails. Under the RoLR scheme, if a retailer fails the Australian Energy Regulator (AER) allocates their customers to one or more other retailers. These retailers are referred to as 'designated RoLRs'.
- 4 Between 2012 and 2022, the RoLR scheme had only been used four times, and the AER had never used its RoLR gas directions powers. In 2022, the National Electricity Market (NEM) saw record-high wholesale prices and reduced liquidity in the contract market. This put significant pressure on retailers, and contributed to a record number of retailer failures, and the AER using its gas directions powers for the first time.

Gas and electricity retailers have different approaches to managing risk

- 5 Whilst the RoLR scheme is important in facilitating the timely transfer of customers to a new retailer, it can also result in costs and risks for both the designated RoLR and customers. When a failed retailer's customers are transferred to a designated RoLR, the contracts that the failed retailer used to manage wholesale price risks for those customers are not transferred. If a designated RoLR is insufficiently hedged to cover the additional demand from its new customer base, is unable to sign new hedge contracts, or is required to purchase on the spot market at high prices to cover the additional demand, it may face financial stress. In addition, gas RoLRs may face challenges in obtaining gas.
- 6 There are different arrangements in gas and electricity markets to manage these risks:
 - **Gas** - For gas RoLR events the RoLR scheme is supported by the gas directions framework. Gas directions allow the AER to direct gas supply and pipeline capacity from a failed gas retailer to the designated RoLR. This provision helps to ensure that a designated RoLR has enough gas to supply transferred customers. There is no similar directions mechanism for electricity RoLR events.
 - **Electricity** - In the NEM, electricity is purchased through the gross pool market. This means that there is no risk that a designated RoLR will face a physical supply shortage. However, a

designated RoLR may face significant financial risks because it will not have hedging contracts in place to manage price risks from servicing transferred customers.

Our final recommendations would simplify and improve the RoLR gas directions framework

- 7 The Commission has made six recommendations (**recommendations 1 - 6**) to simplify and improve the RoLR gas directions framework, which would increase certainty and decrease administrative burden on the AER. Our recommendations would also reduce systemic risks in the market by reducing the financial strain on RoLRs in the event of a series of retailer failures, or a large retailer failure.
- 8 These six recommendations have the following key benefits:
 - expanding the gas directions trigger would better protect designated RoLRs by ensuring that they have access to important contracts held by the failed retailer (**recommendation 1**)
 - expanding the gas directions period would give designated RoLRs sufficient time to negotiate long-term contract coverage (**recommendation 2**)
 - removing the mandatory negotiations and auctions processes would simplify arrangements and reduce risks for gas producers (**recommendation 3**)
 - clarifying arrangements for contracts due to end or commence during the directions period would increase certainty for relevant parties (**recommendation 4**)
 - expanding the scope of gas directions to include gas held in storage would help ensure that designated RoLRs have the same contractual coverage as was available to the failed retailer (**recommendation 5**)
 - requiring designated RoLRs to pass on the benefits of gas directions to consumers would help ensure that consumer outcomes are prioritised (**recommendation 6**).

Our final recommendations would reduce costs associated with the RoLR scheme and provide better incentives for failing retailers

- 9 The Commission has made four recommendations (**recommendations 7 - 10**) to improve the RoLR scheme for both electricity and gas RoLR events. These recommendations would improve clarity regarding the RoLR scheme, and support timely access to information. Our recommendations would also reduce costs for both designated RoLRs and consumers, and address existing perverse incentives for retailers interacting with the RoLR scheme.
- 10 These four recommendations have the following key benefits:
 - improving the RoLR cost recovery framework would increase certainty for market participants (**recommendation 7**)
 - expanding the AER's information gathering powers under the RoLR Regulatory Information Notice (RIN) process would help ensure that designated RoLRs have timely access to important information (**recommendation 8**)
 - introducing a new bill framework would reduce the cost of RoLR events for consumers (to the extent that the failed retailer is able to pay the bill), as well as disincentivise misuse of the RoLR scheme (**recommendation 9**)
 - a new civil penalty would further disincentivise misuse of the RoLR scheme, thereby avoiding unnecessary costs being passed on to consumers (**recommendation 10**).

We considered our recommendations against four assessment criteria using regulatory impact analysis and stakeholder feedback

- 11 Considering the National Energy Retail Objective (NERO)¹ and the issues explored in the review, the Commission identified four assessment criteria, outlined below, to develop its recommendations. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.
- 12 The recommendations, if implemented, would contribute to achieving the NERO by:
 - **Supporting appropriate risk allocation:** Our recommendations reduce the risks associated with RoLR events for designated RoLRs, and ensure that failed retailers bear a more appropriate level of risk.
 - **Supporting efficiency and incentives:** Our recommendations discourage inefficient retailer exits through the RoLR scheme, where other pathways may be available.
 - **Supporting simplicity and transparency:** Our recommendations make the RoLR scheme clearer for relevant parties, and lower the administrative burden associated with RoLR events.
 - **Considering timing and practicality:** Our recommendations are practical to implement through changes to the NERL to be progressed by jurisdictions, and guideline changes to be progressed by the AER.

Jurisdictions would primarily be responsible for implementing these recommendations

- 13 These recommendations primarily involve changes to the National Energy Retail Law (NERL), meaning that they must be implemented by jurisdictions through the South Australian Parliament. The Commission notes that the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) is currently working in partnership with jurisdictions to progress a Draft Bill to implement recommendations that the Commission made in its 2021 RoLR Review.
- 14 We consider that the recommendations of this Review are important in improving the RoLR scheme, financial resilience, and outcomes for both market participants and consumers. As such, the Commission would welcome the opportunity to work constructively with jurisdictions, if and when these recommendations are progressed for implementation.
- 15 In addition to changes to the NERL, several recommendations must be implemented through changes to AER guidelines.

¹ Section 13 of the NERL.

Contents

1	The Commission has made final recommendations to improve how retailer failures are managed	1
1.1	Retailer failure is managed through the Retailer of Last Resort (RoLR) scheme	1
1.2	Governments asked the Commission for advice on the RoLR scheme when retailers failed during the energy crisis in 2022	2
1.3	Our final recommendations were shaped through three rounds of stakeholder feedback	3
1.4	Our recommendations would support financial resilience in the retail energy market	3
2	The recommendations would contribute to the energy objectives	4
2.1	The Commission must act in the long-term interests of energy consumers	4
2.2	We have applied the NERO to our recommendations	4
2.3	Our recommendations contribute to the NERO	5
3	Our recommendations simplify and improve the RoLR gas directions framework	7
3.1	Recommendation 1: Require the AER to issue directions for all RoLR events	9
3.2	Recommendation 2: extend the length of time directions apply to six months	10
3.3	Recommendation 3: Remove the mandatory negotiations framework and auction processes	11
3.4	Recommendation 4: Clarify how contracts that end or are due to commence during the direction period are treated	13
3.5	Recommendation 5: Expand the gas directions framework to include storage contracts	14
3.6	Recommendation 6: Require RoLRs to pass on the benefits from directions to customers	15
4	Our recommendations reduce costs and provide better incentives for failing retailers	18
4.1	Recommendation 7: Improve cost recovery through changes to AER guidelines	19
4.2	Recommendation 8: Expand the AER's RoLR information-gathering powers to include third parties	21
4.3	Recommendation 9: Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure	22
4.4	Recommendation 10: Introduce a new civil penalty provision for the improper use of the RoLR scheme	24

Appendices

A	Overview of the RoLR scheme and gas directions	27
A.1	RoLR registration – retailers may lodge an expression of interest with the AER to become a RoLR	28
A.2	RoLR designation - when a RoLR event is triggered the AER must appoint a designated RoLR	28
A.3	Information requirements - AEMO and retailers must provide certain information to the AER regarding potential or actual RoLR events	29
A.4	Cost recovery scheme - the NERL includes provisions that allow for RoLRs to recover some costs incurred following a RoLR event	30
A.5	Overview of existing arrangements for RoLR gas directions	30
B	Summary of other issues raised in submissions	33

Abbreviations and defined terms	35
--	-----------

Tables

Table A.1: Key terms	27
----------------------	----

Table B.1:	Summary of other issues raised in submissions	33
------------	---	----

Figures

Figure 3.1:	Recommendations to improve the gas directions framework against current arrangements	8
Figure 4.1:	Final recommendations to improve the electricity and gas RoLR scheme	18

1 The Commission has made final recommendations to improve how retailer failures are managed

This final report makes 10 recommendations to improve the Retailer of Last Resort (RoLR) scheme:

- six of these recommendations simplify and improve the gas directions framework
- four of these recommendations improve the RoLR scheme for gas and electricity RoLR events by enhancing clarity and access to information, reducing costs, and addressing perverse incentives.

Most of these recommendations involve changes to the National Energy Retail Law (NERL), meaning that they must be implemented by jurisdictions.

This chapter outlines:

- how retailer failures are currently managed through the RoLR scheme and gas directions
- that in 2022 Governments sought the Commission's advice on the RoLR scheme, in the context of an unprecedented number of retailer failures
- how our 10 final recommendations have been shaped stakeholder feedback
- how our recommendations will support ongoing financial resilience in the energy retail market.

1.1 Retailer failure is managed through the Retailer of Last Resort (RoLR) scheme

In recent years there have been higher levels of entry into the electricity and gas retail markets. Low barriers to entry support competitive markets and positive consumer outcomes. However, with these low barriers to entry we also expect to see some retailer exits, as retailers test new business models and less successful models fail.

As energy is an essential service, the National Energy Retail Law (NERL) contains a mechanism called the Retailer of Last Resort scheme, which protects consumers by ensuring continuity of energy supply to a customer if their retailer fails. In the event of a retailer failure, the Australian Energy Regulator (AER) allocates the customers of a failed retailer to one or more other retailers. These retailers are referred to as 'designated RoLRs'.

In certain circumstances during gas RoLR events, the AER may also issue a 'gas direction' which allows the AER to direct gas supply and pipeline capacity from a failed gas retailer to the designated RoLR. This provision helps to ensure that a designated RoLR has enough gas to supply transferred customers. There is no similar directions mechanism for electricity RoLR events.

1.1.1 The RoLR scheme creates risks for designated RoLRs

Whilst the RoLR scheme is an important mechanism in ensuring continuity of energy supply, it can create risks for designated RoLRs.

When a failed retailer's customers are transferred to a designated RoLR, the contracts that the failed retailer used to manage wholesale price risks for those customers are not transferred. If a designated RoLR is insufficiently hedged to cover the additional demand from its new customer base, is unable to sign new hedge contracts, or is required to purchase on the spot market at high prices to cover the additional demand, it may face financial stress. In addition, gas RoLRs may face challenges in obtaining gas.

For gas RoLR events, the directions framework allows a designated RoLR to access the physical gas supply and pipeline capacity contracts of the failed retailer. This is intended to provide the designated RoLR with the gas and pipeline capacity it needs to supply transferred customers.

For electricity RoLR events, the designated RoLR is able to access supply through the NEM gross pool market. However, the designated RoLR may face significant financial risks because it will not have hedging contracts in place to manage price risks associated with servicing newly transferred customers. This risk can be high noting that RoLR events are more likely to occur during periods of volatility, when wholesale prices are high and there is lower liquidity in the contract market.

1.2 Governments asked the Commission for advice on the RoLR scheme when retailers failed during the energy crisis in 2022

There were an unprecedented number of retailer failures in 2022 and 2023

Prior to 2022, the RoLR scheme had been used four times since the National Energy Customer Framework (NECF) was introduced in 2012. In 2022, the National Electricity Market (NEM) saw record-high wholesale prices and reduced liquidity in the contract market. This put significant pressure on retailers, and contributed to a record number of retailer failures.

Between 24 May to 1 September 2022 seven authorised retailers failed and triggered RoLR events:

- **Gas** - Weston Energy failed and triggered a RoLR event, and the AER used its RoLR gas directions powers for the first time
- **Electricity** - Pooled Energy, Enova Energy, Powerclub, Mojo Power East (also trading as People Energy), Social Energy, and Elysian all failed and triggered RoLR events

In addition, Apex Energy (an exempt seller within embedded networks) also entered administration.

Between 16 June 2023 to 21 June 2023, a further three electricity retailers (QEnergy, Mojo Power, and Sanctuary Energy) failed and triggered RoLR events.

The Commission considers that there is still potential for more retailers to exit the market. This risk is particularly significant for retailers that purchased contracts for future periods at previously elevated prices.

Governments asked the Commission for advice on managing retailer failures and improving market resilience

Noting the unprecedented number of retailer failures that occurred in mid-2022, Energy Ministers asked for the Commission's expert advice on managing retailer failures and improving market resilience. In August 2022, the Commission made a series of recommendations to Energy Ministers, including that jurisdictions implement recommendations the AEMC made in its 2021 RoLR Review to improve the RoLR scheme. DCCEE is currently working with jurisdictions to progress this implementation work.

A key recommendation supported by Energy Ministers was for the Commission to initiate this Review to consider improvements to the RoLR scheme, with a focus on:

- minimising the costs that RoLRs and customers face, and
- considering the conduct of failed retailers during RoLR events to determine whether regulatory changes are required to better protect customers.

This final report and 10 recommendations deliver upon this work.

1.3 Our final recommendations were shaped through three rounds of stakeholder feedback

We undertook three rounds of formal consultation during this Review:

- a consultation paper, published in October 2022 (12 submissions received)
- a directions paper, published in May 2023 (15 submissions received)
- a draft report, published in February 2024 (12 submissions received).

This formal consultation was supported by bilateral stakeholder engagement throughout the Review process. Stakeholder feedback has been integral in shaping the 10 final recommendations in this report.

Whilst stakeholders provided feedback on a broad range of relevant matters, several key areas of feedback emerged:

- changes could be made to simplify and improve the gas directions framework
- there were fundamental issues in introducing a directions framework for electricity RoLR events, and sharing information regarding failed retailers' hedging contracts
- measures to reduce the cost of RoLR events for both designated RoLRs and consumers were supported by stakeholders
- current arrangements can lead to misuse of the RoLR scheme, and the Commission should consider measures to disincentivise this (noting that RoLRs and consumers ultimately bear the cost of retailer failures).

This important stakeholder feedback is reflected in our 10 final recommendations.

1.4 Our recommendations would support financial resilience in the retail energy market

The Commission notes that in the NEM's competitive retail energy markets, high levels of entry, spot market exposure, and a growing penetration of renewable energy creates risks for energy retailers. With this risk, there will likely be retailer failures over time. This creates the need for efficient and effective exit arrangements that ensure continuity of supply for impacted customers, and minimise costs and systemic risks.

We consider that our recommendations would enhance the RoLR scheme as an efficient and effective exit mechanism. In addition, our recommendations would also help address market risks that retailers face, to support better market outcomes and ongoing financial resilience in the retail market.

2 The recommendations would contribute to the energy objectives

We have considered the national energy retail objective (NERO) throughout the Review process, and consider that our recommendations will promote the NERO.

2.1 The Commission must act in the long-term interests of energy consumers

In conducting reviews, the Commission must have regard to the relevant energy objectives.²

For this review, the relevant energy objective is the NERO:

The NERO is:³

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—

- (a) price, safety, reliability and security of supply of energy; and
- (b) the achievement of targets set by a participating jurisdiction—
 - (i) for reducing Australia's greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia's greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NERO.⁴

2.2 We have applied the NERO to our recommendations

The Commission must consider how to address improvements to the RoLR scheme under the legal framework. We identified the following criteria to help assess the recommendations against the NERO:

The Commission used an assessment framework to determine whether our recommendations identified in the review promote the long-term interests of consumers. The assessment framework was generally supported by stakeholders and includes the following criteria:

1. **Appropriate risk allocation.** The RoLR scheme involves the sudden transfer of customers from the failed retailer to a designated RoLR to maintain continuity of supply. While necessary, this results in a significant inefficient transfer of risk from the failed retailer to the RoLR because it cannot prepare for these customers in advance (e.g. by purchasing hedging contracts or gas supply). We therefore assess our solutions in terms of whether they assist RoLRs in managing new customers.
2. **Efficiency and incentives.** The RoLR scheme supports energy customers to maintain supply following retailer failures. To minimise costs to customers and retailers, our recommendations should seek to discourage retailers from deliberately using the RoLR scheme to exit the market.

² Section 224 of the NERL.

³ Section 13 of the NERL.

⁴ Section 224A(5) of the NERL.

3. **Simplicity and transparency.** The regulatory framework should be easily understood and enforceable. The RoLR scheme manages retailer failure of an essential service and was recently tested in the midst of volatile market conditions. Therefore, recommendations should be easily navigable by all relevant parties in periods of market stress, and enforceable by the AER to maintain market confidence.
4. **Timing and practicality.** Changes to the regulatory framework should be likely to achieve the benefits including their likelihood to be implemented. The RoLR scheme for NECF jurisdictions is primarily set out in the NERL which requires changes through the South Australian parliament. Therefore, our recommendations must be endorsed and implemented by governments or be actionable through guideline changes.

2.3 Our recommendations contribute to the NERO

This section explains the benefits of our final recommendations promote the NERO when assessed against the criteria. In summary, we consider that our recommended changes have low or negligible costs. These small costs largely arise from changes to the AER's RoLR guidelines and NERL. In contrast, the changes are likely to result in the following material benefits against the assessment framework. Our recommendations:

Reduce the risks on designated RoLRs associated with RoLR events

- Improvements to the gas directions framework would increase the likelihood, duration and scope of directions. This would enable designated RoLRs to better manage the risks of a sudden increase in customers.

Discourage inefficient exit through the RoLR scheme

- Introducing a new bill framework in electricity and gas would discourage exit through the RoLR scheme, particularly for solvent retailers as they may receive a bill for the costs of their failure.
- Introducing civil penalties for retailers who do not take all reasonable steps to avoid causing a RoLR event would discourage the use of the RoLR scheme. It would also provide better incentives for retailers seeking to exit the market to do so in a less disruptive manner through the surrender or transfer processes.
- Introducing the bill framework in gas is complementary to the gas directions framework, because the designated RoLR may incur costs even if a direction is issued.

Make the RoLR scheme clearer and lower the administrative burden

- Simplifications to the gas directions framework would decrease risk for RoLRs and the administrative burden on the AER, designated RoLRs and failed retailers.
- Clear guidance on RoLR cost recovery would help designated RoLRs prepare high quality claims with the right information and to engage with the process.
- Expanding the RoLR Regulatory Information Notices (RINs) to include all entities that may hold the failed retailer's information would supporting designated RoLRs to access important customer information in a timely manner.

Are practical to implement through guideline changes or the NERL

- The Commission has recommended a targeted set of changes in the NERL which:
 - simplify and improve the RoLR gas directions framework
 - introduce a bill framework in electricity and gas for the RoLR cost recovery scheme
 - introduce civil penalties for retailers who do not take all reasonable steps to avoid causing a RoLR event

- make minor amendments to improve the clarity and efficacy of the RoLR scheme.
- Where appropriate, the Commission also recommended practical guideline updates for the RoLR cost recovery scheme and information about the RoLR RIN process, and we encourage the AER to consider guideline changes where practicable.

In addition to the above, we also consider that our recommendations would result in lower prices for consumers:

- improvements to the gas directions framework would enable the designated RoLR to supply customers at lower prices (to the extent that the failed retailer holds valuable gas contracts)
- the bill framework would reduce the costs of the RoLR event that are paid for by consumers via the RoLR cost recovery process (to the extent the failed retailer is able to pay the bill).

3 Our recommendations simplify and improve the RoLR gas directions framework

The Commission has made six recommendations to simplify and improve the RoLR gas directions framework, which would increase certainty and decrease administrative burden on the AER. Our recommendations would also reduce systemic risks in the market by reducing the financial strain on RoLRs in the event of a series of retailer failures, or a larger retailer failure. Figure 3.1 sets out these recommendations and compares them against the existing arrangements.

The six final recommendations have largely been maintained from the draft report, reflecting the strong stakeholder support for the draft recommendations. We have made minor refinements to recommendations 1 and 5 in response to stakeholder feedback. These refinements are outlined in further detail in this chapter.

Our six recommendations to simplify and improve the RoLR gas directions framework would have the following key benefits:

- expanding the gas directions trigger would better protect designated RoLRs by ensuring that they have access to important contracts held by the failed retailer (**recommendation 1**)
- expanding the gas directions period would give designated RoLRs sufficient time to negotiate long-term contract coverage (**recommendation 2**)
- removing the mandatory negotiations and auctions processes would simplify arrangements and reduce risks for gas producers (**recommendation 3**)
- clarifying arrangements for contracts due to end or commence during the directions period would increase certainty for relevant parties (**recommendation 4**)
- expanding the scope of gas directions to include gas held in storage would help ensure that designated RoLRs have the same contractual coverage as was available to the failed retailer (**recommendation 5**)
- requiring designated RoLRs to pass on the benefits of gas directions to consumers would help ensure that consumer outcomes are prioritised (**recommendation 6**)

Figure 3.1: Recommendations to improve the gas directions framework against current arrangements

	Current process	Final recommendations 1-6	
Direction to supply gas	When is the direction issued; there is no declared wholesale gas market or short term trading market or where, in the opinion of the AER, sufficient capacity or gas is not available in a short term trading market	The AER must issue gas directions in the event of a gas RoLR, unless it reasonably considers that doing so would not benefit the designated RoLR or consumers.	Recommendation 1
	What must the directed entity do: can be directed to make gas supply and pipeline capacity available to the designated RoLR that was available to the failed retailer immediately before the transfer date on equivalent terms. <i>The designated RoLR "may but is not obligated to" use any or all of the gas</i>	Expand the scope of directions to include storage contracts and the gas held in storage by the failed retailer.	Recommendation 5
	Customer benefits from directed gas: no requirement on the designated RoLR to pass through any low costs from the directed gas onto customers	Place a requirement that designated RoLRs must pass the financial benefits of gas directions on to customers.	Recommendation 6
Direction to negotiate	What negotiation must take place: as soon as practicable after the transfer date, commence negotiations for novation or replacement contract.	There is no requirement to negotiate. The failed retailer and gas supplier may go out to market immediately and sell the gas supply contract for the period beyond the direction period.	Recommendation 3
	Who negotiates: the gas supply counterparty must commence negotiations with the designated RoLR and failed retailer (if still solvent) for either the novation or a replacement contract.	There is no requirement to negotiate. However, the designated RoLR and the failed retailer can negotiate for the novation of the contract if they wish.	
Duration and when the direction ends	<ul style="list-style-type: none"> If, after 3 months, no agreement is reached, the failed retailer must put the gas up for sale by auction. Must use best endeavours to ensure the auction is completed and gas sold within 6mths of the transfer date. Direction ceases to have effect once contract is sold either to the RoLR within the 3mths, or to another counterparty after the 3mths. 	<ul style="list-style-type: none"> Period of direction is extended from 3 months to 6 months. No mandatory negotiation takes place, and the auction process is removed. Direction ceases to have effect if the contract is sold to the designated RoLR within the 6 months, or after the 6 months. 	Recommendation 2
Directions for contracts that begin or expire during directions	What happens if the contract expires during the direction period? Currently ambiguous	Make explicit that the direction: <ul style="list-style-type: none"> cannot continue in force after a contract is or would have been due to expire during the direction period. continues in force if a contract has extension terms that are at the sole discretion of the failed retailer. 	Recommendation 4
	What happens if the contract was due to commence during the direction period? Currently ambiguous	Make explicit that the direction applies for contracts that are due to commence during the directions period.	

Source: AEMC

3.1 Recommendation 1: Require the AER to issue directions for all RoLR events

Recommendation 1 is to amend section 137 of the NERL to require the AER to issue directions for all RoLR events, except if it reasonably considers that issuing the direction would not benefit the designated RoLR or consumers. This would give market participants more certainty that gas directions will be issued in RoLR events, and give designated RoLRs better access to contracts held by the failed retailer. Following stakeholder feedback on our draft recommendation, as part of our final recommendation, we consider that the AER should be given 'reasonable time' to gather information when considering whether to issue a gas direction, and issue a RoLR notice as soon as practicable after the RoLR event occurs.

This section describes:

- an overview of the issue that this recommendation aims to address
- stakeholder feedback to our draft recommendation
- our final recommendation to require the AER to issue directions for all RoLR events, except if it reasonably considers that issuing the direction would not benefit the designated RoLR or consumers.

3.1.1 The current gas directions provisions create uncertainty and do not take into account the financial risks that RoLRs may face

Under the NERL, the AER may issue a gas direction when there is no declared wholesale gas market or short-term trading market (STTM) or where, in the opinion of the AER, sufficient capacity or gas is not available in a STTM to enable gas supply to the RoLR's new customers.⁵ The Commission considers that these current arrangements do not appropriately reflect the significant financial risks that designated RoLRs can face if they are required to buy gas from the spot market at elevated prices, even with sufficient capacity.⁶

3.1.2 Stakeholders supported the Commission's draft recommendation requiring the AER to issue directions

Stakeholder responses to the draft report supported the Commission's draft recommendation.⁷ AGL highlighted that this change recognises that RoLR events expose designated RoLRs to a range of risks beyond gas supply.⁸ Stakeholders raised two minor issues in their submissions:

- The AER outlined that they should explicitly be given reasonable time to gather necessary information before issuing a direction.⁹
- AGL recommended that the Commission clarify that the AER will be able to issue directions for both supply contracts and pipeline capacity, per the current arrangements.¹⁰

⁵ Clause 137(1) of the NERL.

⁶ See the draft report for more information.

⁷ Submissions to the draft report, AER, p. 2. AGL, p. 2. Origin, p. 2. Momentum, p. 1. AEC, p. 2.

⁸ AGL, submission to the draft report, p. 2.

⁹ AER, submission to the draft report, p. 2.

¹⁰ AGL, submission to the draft report, p. 2.

3.1.3 Requiring directions to be issued will improve certainty for designed RoLRs

Our final recommendation is that the AER should be required to issue directions for gas RoLR events, except if it reasonably considers that issuing the direction would not benefit the designated RoLR or consumers. In deciding whether to issue a direction we recommend that the AER should have reasonable time to gather the required information, but should decide whether to issue a direction as soon as practicable after the RoLR event occurs.

Requiring the AER to issue directions will provide more certainty

We consider that the financial costs of RoLR events could cause a significant impact on designated RoLRs and should be a basis for gas directions. Requiring the AER to issue gas directions, unless doing so would not benefit the designated RoLR or consumers, better protects designated RoLR(s) and consumers.¹¹

For the majority of RoLR events we expect that directions will be issued, providing certainty for designated RoLRs and gas producers. In circumstances where there may be little or no benefit to the RoLR or consumers, the AER can use its discretion not to issue directions. For example, they may occur where:

- the directed contract would expire before the AER could reasonably issue a RoLR direction
- the volume of gas supplied in the contract is small and the benefit is less than the administrative burden of issuing the direction.

Should participants require further clarity, the AER may outline its approach to issuing directions through the RoLR guidelines. For the avoidance of doubt, this recommendation will apply to directions for gas supply, pipeline capacity and storage as per recommendation 5 of this report.

The AER can only issue a direction once certain information is known

Our final recommendation includes a minor refinement to our draft recommendation, to recognise that the AER requires time to gather the required information to make a direction. We anticipate that, at a minimum, in order for the AER to make a decision as to whether it should issue a direction it would need to find out:

- who the failed retailer has contracted with
- the terms and conditions of the contracts
- the impact of the transferred customers on the designated RoLR, which may be the volume of gas expected from the transferred customers.

We recognise the importance of timeliness during RoLR events in reducing uncertainty for all parties involved. In making this recommendation we consider that the AER should issue (or determine that they will not be issuing), directions as soon as reasonably practicable after the RoLR event occurs.

3.2 Recommendation 2: extend the length of time directions apply to six months

Recommendation 2 is to extend the length of time gas directions can apply for, from three months to six months. This provides a more appropriate level of support for designated RoLRs to manage the transferred customer load whilst they contract for longer-term gas supply. This recommendation is unchanged from the draft report.

This section describes:

¹¹ See section 2.1.2 of the draft report for further information.

- an overview of this issue that this recommendation aims to address
- our final recommendation to extend the length of time RoLR gas directions can apply.

3.2.1 A three-month directions period does not provide adequate support for designated RoLRs

RoLR gas directions are intended to allow a designated RoLR to avoid buying gas from the spot market while it works to understand its transferred customer load, and negotiates longer-term contracts for this new load.

Three months does not provide adequate time for the designated RoLR to fully understand its new customer load and negotiate for new supply contracts. This was supported by stakeholder feedback to the directions paper.¹² The Commission also notes that RoLR events are also likely to occur during volatile market conditions, requiring RoLRs to negotiate for new supply in a short time frame when spare supply may be scarce and/or highly-priced.

3.2.2 We recommend extending the directions period to six months to provide more appropriate support for RoLRs

We recommend amending section 137(1) of the NERL to specify that the length of time directions apply is six months. This recommendation is consistent with the Commission's decision in our draft report. Stakeholder feedback to the draft report also supported this recommendation.¹³

As noted above, RoLR events are likely to occur during volatile market conditions. In the case of gas, this is almost exclusively during winter when demand is highest. We therefore consider that a six-month directions period would provide sufficient coverage to designated RoLRs, because this would provide coverage for the duration of the winter during which the RoLR event occurs.

A six-month directions period would also give the designated RoLR adequate time to negotiate new contracts following the end of the directions period, which would also be outside of winter when there is typically more supply in the market.¹⁴

3.3 Recommendation 3: Remove the mandatory negotiations framework and auction processes

Recommendation 3 is to amend the NERL to remove:

- the mandatory negotiation process between the failed retailer and designated RoLR, and
- the subsequent auction process if negotiations are unsuccessful.

The mandatory negotiations process is unnecessary because our recommendation to extend the directions period to six months (recommendation 2) means that designated RoLRs will have sufficient time to go to market and secure new contracts, if required. Furthermore, the auction process may create risks for gas producers which are typically the counter party to most gas supply contracts, and can be removed as failed retailers are already incentivised to sell their contracts following a RoLR event. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation aims to address
- our final recommendation to remove the mandatory negotiations framework and auctions processes.

¹² See section 2.2.1 of the draft report.

¹³ Submissions to the Draft report, AGL, p. 2. Origin, p. 2. Alinta, p. 4. AER, p. 2.

¹⁴ See section 2.2.2 of the draft report for further information.

3.3.1 The mandatory negotiation framework and auction process have limitations and risks

The mandatory negotiation framework may not operate as intended in volatile conditions

The mandatory negotiation process occurs when a direction is issued. This process allows the directed parties to negotiate for the transfer or novation of the failed retailer's contracts for the period after the RoLR gas direction ends. During this negotiation the failed retailer will aim to maximise the return on its supply contracts, whether this be through a negotiated transfer to the designated RoLR or through selling its contracts in the open market.

If the failed retailer considers that selling its contracts in the open market will deliver the most value, it could frustrate negotiations in order to do so. This is a likely outcome noting that RoLR events typically occur in volatile market conditions where gas prices are elevated.

The auction process creates risks for gas producers

The auction process forces the failed retailer's contracted gas supply to be delivered back to the market to ensure that the failed retailer can't retain this contracted supply and potentially exacerbate scarcity. Stakeholder feedback to the directions paper outlined that the auction process represents several risks for gas producers, as below:

- The auction process allows confidential contract terms to be shared with parties involved in the auction process.
- Gas producers don't have a say in who can be involved in the auction process. This could result in a party that does not meet the producer's credit or risk requirements winning the auction. It is unclear how such a conflict would be resolved, resulting in significant risk and uncertainty for the gas producer.

3.3.2 The mandatory negotiations and auction process are no longer required

Consistent with our draft recommendation, our final recommendation is to remove:

- the mandatory negotiation process between the failed retailer and designated RoLR, and
- the subsequent auction process if negotiations are unsuccessful.

Stakeholders supported this recommendation in submissions to the draft report.¹⁵

Mandatory negotiation is unnecessary under our recommended six-month directions period

Recommendation 2 of this report (which is to extend the gas directions period to six months) removes the need for mandatory negotiations, as designated RoLRs will have sufficient time to go out to market to secure new contracts, if required. We note that even without mandatory negotiation, the designated RoLR and failed retailer may still negotiate for the transfer of the contracts if they choose to do so. Further, we consider that the mandatory negotiation process will likely be unsuccessful, even if negotiation principles were to be introduced.¹⁶ We therefore recommend that the mandatory negotiation process is removed.

The auction process can create significant risks for producers and should be removed

The auction process represents material risks for gas producers, and we consider that a failed retailer would already be strongly incentivised to sell their gas supply contracts even without an auction process.¹⁷ This is because they would likely be subject to take or pay arrangements and

¹⁵ Submissions to the draft report, AER, p. 2. AGL, pp. 2-3. Alinta, p. 4. Origin, p. 2.

¹⁶ See section 2.3.2 of the draft report.

¹⁷ See section 2.3.2 of the draft report.

their contracts would be valued highly during the volatile conditions in which RoLR events typically occur. We therefore recommend that the auction process is also removed.

Removing the auction process means changes are required to clarify when directions end

Under current arrangements, the auction process serves as an end date for directions where a negotiated outcome is not reached. Removing the auction process would mean the endpoint for a direction may be undefined. We recommend that directions would end:

- when the directed contracts are novated to the designated RoLR, or
- at the end of the six-month direction period.

3.4 Recommendation 4: Clarify how contracts that end or are due to commence during the direction period are treated

Recommendation 4 is to amend the NERL to clarify that:

- if the contract to which the direction relates expires during the directions period, then the direction ceases to have effect in relation to that contract
- if there is an extension option in the contract, and the designated RoLR exercises that extension option, then the direction will continue to apply to that contract for the duration of the directions period
- directions apply to contracts that are due to commence during the directions period.

These recommendations would better clarify the arrangements for designated RoLRs and gas producers during the directions period. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation aims to address
- our final recommendation to clarify how contracts that end or are due to commence during the direction period are treated.

3.4.1 The NERL does not specify how contracts that expire during directions should be treated

The NERL outlines that contracts directed by the AER are to be made available to the designated RoLR on the same terms and conditions as available to the failed retailer. However, the NERL does not specify how contracts that expire or begin during the directions period, or how options to extend in directed contracts are treated.

We consider that specific guidance regarding these arrangements would give market participants more clarity and certainty during RoLR events.

3.4.2 For contracts due to expire, the direction applies until the expiry of the contract

Consistent with our draft recommendation, our final recommendation is that the NERL should be amended to clarify that:

- if the contract to which the direction relates expires during the directions period, then the direction ceases to have effect in relation to that contract
- for contracts that are due to commence during the directions period, the direction applies from the commencement of the contract
- directions should include options to extend where the decision to extend is at the sole discretion of the retailer.

Where an option to extend is executed, the direction to supply this gas would continue to apply until either the end of the supply period in the extension or the end of the direction period - whichever comes first.

These recommendations help ensure that the designated RoLR has the same contractual coverage as was available to the failed retailer. They also clarify the obligations for gas producers during the directions period. These recommendations are consistent with our draft report and supported by stakeholders¹⁸. For further detail on the Commission's analysis please see sections 2.4.2 and 2.4.3 of the draft report.

3.5 Recommendation 5: Expand the gas directions framework to include storage contracts

Recommendation 5 is to amend the NERL to specify that storage contracts held by the failed retailer, including the gas already held in storage, can be the subject of a gas direction. For the gas held in storage, we recommend that the NERL be amended to specify that the designated RoLR is required to pay the failed retailer for gas withdrawn from storage.

This section describes:

- an overview of the issue that this recommendation aims to address
- stakeholder feedback to our draft recommendation
- our final recommendation to expand the gas directions framework to include storage contracts.

3.5.1 Storage contracts can form an important part of a retailer's contracting strategy

The current gas directions framework enables the AER to direct the failed retailers' contracts for gas supply and pipeline capacity. The AER cannot direct gas storage contracts or gas held in storage by the failed retailer.

Gas storage is typically used by retailers to manage peak gas demand days when additional supply over the amount contracted through supply or transport agreements may be required to meet customer demand. As such, these contracts can form an important part of a retailer's contracting and supply strategy.

Excluding storage from the contracts eligible to be directed means that the designated RoLR does not have the same contractual coverage that the failed retailer had to serve the transferred customers.

3.5.2 Stakeholders responded to our draft recommendation to include storage contracts in the directions framework

The Commission's draft recommendation enabling the AER to direct gas storage contracts held by the failed retailer, including the gas already held in storage, was supported by stakeholders.¹⁹

AGL expressed concern that the requirement for the AER to determine a reasonable compensation price for the gas held in storage may not reflect the initial cost of gas to the failed retailer.²⁰ AGL suggested that if the price of the gas is valued relatively high the designated RoLR may not receive any benefit from the direction. If the gas was simply valued at the prevailing market conditions,

18 Submissions to the draft report, AER, p. 2. AGL, p. 3. Origin, p. 2. Momentum, p. 1. Alinta, p. 4.

19 Submissions to the draft report, AGL, p. 3. Origin, p. 2. AER, p. 2. Momentum, p. 1.

20 AGL, submission to the draft report, p. 3.

AGL noted that this could incentivise perverse behaviours by the failed retailer prior to a RoLR event.

Alinta considered that gas supply contracts have an inherent value attached to them the same as gas held in storage and should be valued in a similar way.²¹

3.5.3 Including storage will better support designated RoLRs

Our final recommendation is that the AER should be able to direct storage contracts held by the failed retailer, including the gas already held in storage. For the gas held in storage, the designated RoLR would be required to pay the failed retailer for gas withdrawn from storage, and the AER would be responsible for determining the price of this gas.

This recommendation would have two components:

- Storage contracts, that is, the right to inject, store, and withdraw gas, would be directed in a similar way to gas supply contracts. That is, the storage provider would be required to provide storage services on the same terms provided to the failed retailer.
- Gas held in storage would be available for the designated RoLR to use, but the designated RoLR must compensate the failed retailer for the gas.

Expanding the directions' framework to include storage contracts, and gas held in storage, is necessary to ensure the designated RoLR has access to the same peak demand coverage as the failed retailer.

The failed retailer will be compensated for gas already held in storage

Consistent with the Commission's position in the draft report, gas already held in storage has already been paid for by the failed retailer. Meaning that the failed retailer is entitled to compensation for the acquisition of their gas held in storage. We are recommending that when determining this price the AER should, as close as practicable, represent the price as the cost to the failed retailer for storing the gas. This price is likely to include:

- the cost of the gas being stored
- the cost to transport the gas to the storage facility
- the cost of storing the gas at the storage facility.

The AER may clarify its approach to determining this price through the RoLR guidelines if required.

3.6 Recommendation 6: Require RoLRs to pass on the benefits from directions to customers

Recommendation 6 is to amend the NERL to require designated RoLRs to pass on the benefits of RoLR gas directions to customers and report to the AER on how they have achieved this. This would ensure that customer outcomes are prioritised, and would help mitigate the risk that directions give designated RoLRs a financial advantage. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation aims to address
- our final recommendation to require RoLRs to pass on the benefits of directions to customers.

²¹ Alinta, submission to the draft report, pp. 4-5.

3.6.1 Gas directions may result in a financial advantage for the designated RoLR

The RoLR gas directions framework is intended to provide the designated RoLR with contractual coverage. This allows the RoLR to avoid buying gas at elevated prices from the spot market whilst it works to understand its transferred customer load, and negotiates longer-term contracts. Depending on the prices specified in the directed contracts and other retail costs, the designated RoLR may be charging customers more than their cost to serve them. This can result in the designated RoLRs receiving a financial advantage from directions, and is inconsistent with the intention of the gas directions framework.

3.6.2 Requiring benefits to be passed on ensures consumer outcomes are prioritised

Consistent with our draft recommendation, our final recommendation is that designated RoLRs should be required to pass on the benefits of RoLR gas directions to customers, and report to the AER on how they have met this requirement. This would help ensure that consumer outcomes are prioritised, and would limit the risk that designated RoLRs gain financial advantage as a result of gas directions. Stakeholders supported this recommendation in submissions to the draft report.

A principles-based approach would best allow designated RoLRs to comply with this recommendation

Consistent with our position in the draft report we recommend a principles-based approach in requiring RoLRs to pass on the benefits of RoLR gas directions.²² In response to the Commission's draft recommendation, stakeholders reiterated that a principles-based approach is required, noting that retailers contract a portfolio of gas, and that each RoLR event has its own specific conditions.²³

We maintain that the benefits of gas directions should be shared with the customers that the RoLR event has impacted. For example, large gas customers that are transferred to a specific RoLR deemed large customer retail arrangement may need to be treated differently in terms of the benefits sharing compared to standard retail customers. A principles-based approach allows designated RoLRs to consider these interactions when passing on benefits.

A reporting obligation with a civil penalty would help ensure that benefits are passed on

To provide certainty that the benefits of the directions have been passed on to consumers, designated RoLRs would be required to report to the AER on how they have met this obligation. This would enhance transparency and provide assurances that benefits have been passed on to customers.²⁴ Where designated RoLRs require further information on this reporting requirement, the AER may use its discretion to provide further guidance in the RoLR guidelines.

We recommend attaching a civil penalty to the requirement for designated RoLRs to report to the AER on how it has passed on gas directions benefits. This will help ensure that designated RoLRs comply with their reporting obligations.²⁵

As outlined above, principles-based requirement with reporting obligations is the best approach for ensuring benefits from directions are passed on to consumers. However, we acknowledge that enforcing a principles-based requirement represents challenges and consumers need to be

22 See Section 2.6.2 of the directions paper for further details.

23 Submissions to the directions paper, Origin, pp. 2-3. AGL, pp. 3-4.

24 AER, submission to the consultation paper, pp. 1-2.

25 The AER's submission to the consultation paper suggested that the AEMC should consider recommending that a civil penalty be applicable to this obligation to encourage compliance

confident that the benefits from directions are being passed on.²⁶ Noting this we consider that a civil penalty for the reporting obligation will encourage compliance with the requirement.

In reporting to the AER we expect that designated RoLRs would be required to show:

- the benefit they received from the directed contract/s
- how this benefit was passed onto customers.

²⁶ See AER, submission to the draft report, p. 2.

4 Our recommendations reduce costs and provide better incentives for failing retailers

In addition to our recommendations to simplify and improve the RoLR gas directions framework, we have made four recommendations to improve the electricity and gas RoLR scheme. These are set out in Figure 4.1.

The four final recommendations have largely been maintained from the draft report, reflecting stakeholder support for the draft recommendations. We have made minor refinements to recommendation 10 in response to stakeholder feedback. These refinements are outlined in further detail in this chapter.

These four recommendations have the following key benefits:

- improving the RoLR cost recovery framework would increase certainty for market participants (**recommendation 7**)
- expanding the AER's information gathering powers under the RoLR RIN process would help ensure that designated RoLRs have timely access to important information (**recommendation 8**)
- introducing a new bill framework would reduce the cost of RoLR events for consumers (to the extent that the failed retailer is able to pay the bill, as well as disincentivise misuse of the RoLR scheme (**recommendation 9**))
- a new civil penalty would further disincentivise misuse of the RoLR scheme, thereby avoiding unnecessary costs being passed on to consumers (**recommendation 10**).

Figure 4.1: Final recommendations to improve the electricity and gas RoLR scheme

	Current process	Final recommendations 7-10	
Retailer failure event	Information for the designated RoLR(s): the AER can use RoLR regulatory information notices (RINs) to gather information needed to manage new customers. The AER can issue RoLR RINs to the failed retailer, any insolvency official of the failed retailer, and anyone else given a RoLR notice.	Expand the section of the NERL for regulatory information notices to include retailer agents and third parties that hold relevant information for the designated RoLR/s.	Recommendation 8
	No arrangements exist to discourage retailer exit through the RoLR scheme	The AER issues a notice for a pending bill to the failed retailer for the designated RoLR cost recovery scheme. This does not have an immediate impact beyond putting the failed retailer on notice for receiving a bill in the future.	Recommendation 9
		Introduce a new Tier 1 civil penalty provision for retailers that did not take all reasonable steps to avoid causing a RoLR event.	Recommendation 10
Preparing cost recovery claims	Time period for RoLR cost recovery application: nine-months following the RoLR event	The AER update its pre-existing RoLR guidelines to help the designated RoLR prepare the cost recovery application. The updated RoLR guidelines will specify the: <ul style="list-style-type: none"> types of costs the AER would reasonably consider information needed for the AER to assess the claim period for which the designated RoLR can claim costs timing and process the AER will use to consider applications. 	Recommendation 7
Determining cost recovery claims	The AER considers the RoLR cost recovery scheme application. It must also complete a round of public consultation as part of this process.	Amend this process to improve clarity and certainty on timing by requiring the AER specify timing in its guidelines for when it will: publish the claim, publish a consultation paper, and make the decision.	
After the AER determines the cost recovery application	The AER approves or rejects the RoLR cost recovery application. <ul style="list-style-type: none"> If approved: <ul style="list-style-type: none"> The AER instructs the relevant DNSP to pay the designated RoLR the value of the approved RoLR cost recovery scheme. The DNSP then recovers the value of the RoLR cost recovery scheme through a positive cost pass through to customers. If rejected, then no further actions take place. 	<ul style="list-style-type: none"> In addition to the existing arrangements, the AER issues a bill to the failed retailer around the time that the AER completes the actions in the current process. The failed retailer had been put on notice about this at the point of failing through the notice for a pending bill. If able, the failed retailer pays the AER the bill for the RoLR cost recovery scheme. The AER then: <ul style="list-style-type: none"> pays the DNSP what it receives from the failed retailer, and instructs the DNSP to pass this through to customers through a negative cost pass through to customers. 	Recommendation 9

Source: AEMC analysis

4.1 Recommendation 7: Improve cost recovery through changes to AER guidelines

Recommendation 7 is to improve cost recovery clarity for market participants through changes to AER guidelines. This would be done by expanding the NERL to require the AER to provide specific guidance in its RoLR cost recovery guidelines on:

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

This would increase certainty for market participants regarding the types of costs RoLRs may claim, the process that they must follow, and facilitate a more timely cost recovery process. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation aims to address
- our final recommendation to improve cost recovery clarity through changes to AER guidelines, which remains unchanged from our draft recommendation.

4.1.1 The current RoLR cost recovery process does not provide detailed guidance to relevant parties

Under the NERL, RoLRs may apply to the AER to recover costs incurred through participating in or preparing for a RoLR event. The NERL includes a set of principles that the AER must be guided by when considering RoLR cost recovery applications, and the AER's RoLR guidelines contain further detail regarding the form of the cost recovery application and the information that should be included.

In response to the Review consultation and directions papers, stakeholders considered that there is currently not enough clarity or guidance in the AER's RoLR guidelines regarding the types of costs that RoLRs can claim.

The Commission also notes that whilst the NERL requires that the AER must publish RoLR cost recovery claims and undertake a public consultation, there is no guidance in either the NERL or AER guidelines regarding how long the AER may take to complete the RoLR cost recovery assessment process.

This can create uncertainty for designated RoLRs and other relevant stakeholders. For example, designated RoLRs may need to incur financing costs in between when a RoLR event occurs and when the associated cost recovery process is finalised. Uncertainty regarding timing may increase costs and complexities in financing.

Similarly, as part of the cost recovery process, retailers may need to adjust consumer tariffs in a distribution area to recover approved RoLR cost recovery amounts from customers. Noting that consumer bills are capped at the DMO, more certainty regarding cost recovery timing would assist relevant parties in consumer tariff planning, and the AER's DMO determination.

Stakeholders considered that improving clarity on the RoLR cost recovery scheme through the guidelines would:

- help designated RoLRs obtain finance for the period between the RoLR event and eventual payment

- increase certainty and therefore reduce the risks associated with the RoLR scheme and potentially encourage new RoLR registrations
- be a simple and feasible solution to implement.²⁷

4.1.2 Enhancing the RoLR cost recovery guidelines will improve clarity and certainty

Consistent with our draft recommendation, our final recommendation is to improve clarity regarding the RoLR cost recovery scheme by expanding the NERL to specify the types of information that the AER must include in its RoLR cost recovery guidelines. This would give market participants more certainty regarding the costs that RoLRs may claim, and the timing and process to recover costs. We also consider that this would support a more efficient and timely cost recovery process. Stakeholders were generally supportive of this proposal in submissions to the draft report.²⁸

We have identified four key areas that we recommend that the AER should be required to provide guidance on:

1. The types of costs that designated RoLRs may reasonably claim: The Commission notes that both in electricity and gas RoLR events, there are a range of costs that RoLRs may reasonably be able to apply for. The AER should at a minimum specify how it will consider energy, hedging, financing, and environmental costs in RoLR cost recovery claims.

2. The information the AER may require to assess these claims: It is important that the AER is able to obtain the right information so that it can assess cost recovery claims in a timely and efficient manner. The AER should provide guidance on the types of information it may require in order to assess RoLR cost recovery claims. This would assist both the RoLR in preparing its cost recovery claim, and the AER in the assessment process, and facilitate a more efficient process.

3. The period for which designated RoLRs may claim costs: The AER should provide guidance on the length of time for which a RoLR may claim costs. We do not recommend a length of time and consider that the AER should have discretion in specifying a period in its guidelines. The AER could consider a nine-month period, noting that this is in line with the period within which a RoLR cost recovery application must be made. The AER should assess the appropriateness of a nine-month period against the types of costs it would reasonably consider, and the information that must be provided to support a claim.

4. The timing and process that the AER will use to assess applications: The AER should provide guidance on the length of time and process it will use to assess cost recovery applications. This would increase certainty and support impacted parties in their business planning and decision-making.

This guidance should be sufficiently flexible so that the AER can consider the unique facts and circumstances of each RoLR event

Some stakeholders stated that AER guidance should be flexible, noting the unique circumstances of different RoLR events, and the potential for new RoLR-related costs in an evolving market.²⁹ We recommend that the AER's guidance is sufficiently flexible, so that the AER can consider the unique facts and circumstances associated with different RoLR events and cost recovery claims.

²⁷ See section 2.3.1 of the directions paper for further information

²⁸ Submissions to the draft report, Engie, pg. 1., Momentum Energy, pg. 2., AEC, pg. 2., AER, pg. 3., AGL, pg. 4. Alinta, pg. 4., EnergyAustralia, pg. 1. RedEnergy and Lumo, pg. 2.

²⁹ Submissions to the draft report: Origin Energy pg. 3, AEC pg. 2

4.2 Recommendation 8: Expand the AER's RoLR information-gathering powers to include third parties

Recommendation 8 is to expand the AER's existing RoLR information-gathering powers under the NERL so that it extends to third parties that hold relevant information. This recommendation would help ensure that designated RoLRs have timely access to information required to support the smooth transition of customers from the failed retailer, including where requisite information is held by third parties. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation aims to address
- our final recommendation to expand the AER's RoLR information gathering powers to include third parties.

4.2.1 The AER RoLR Regulatory Information Notice (RIN) process can be time-consuming and does not cover parties that hold some required information

Following a retailer failure, a designated RoLR may need prompt access to certain information to help manage its new customers.

Currently, the AER may use the RoLR Regulatory Information Notice (RIN) process to assist a designated RoLR in accessing requisite information. Under the RoLR RIN process, the AER may serve a retailer (or former retailer) with a regulatory information notice.

Under current arrangements, RoLR RINs may only be issued to parties that can also be issued a RoLR notice (i.e. retailers). This may hinder the ability of the AER (and therefore the designated RoLR) to gather important information in a timely manner, noting that retailers often have contractual arrangements with third parties whereby the third party holds the relevant information, such as a retailer's customer database. The AER cannot currently compel the third party to share this information.³⁰

4.2.2 Expanding the AER's RoLR information-gathering powers will enable a more effective customer transfer process

Consistent with our draft recommendation, our final recommendation is to expand the NERL to allow the AER to issue RoLR RINs to the failed retailer's agents and third parties in possession of the failed retailer's information. This would not expand the types of information that the AER is empowered to gather under the RoLR RIN process, only the types of parties from whom it can request this information.

This will assist the AER and designated RoLRs in gathering important information in a timely manner, thereby improving their ability to effectively manage transferred customers and ensure positive customer outcomes.

The Commission supports the AER pursuing RoLR guideline changes so that market participants better understand the RoLR RIN process

The Commission does not consider that changes to the NERL are required to improve the process for collecting, or limiting the use of, information collected through RoLR RINs. However, consistent with our position in the draft report, we support the AER's proposal to specify its approach to information-gathering through changes to its RoLR guidelines.³¹ We consider that these changes

³⁰ See further information regarding the AER RoLR RIN process in appendix A

³¹ See section 3.2.2 of the draft report for further information

would support a more efficient RoLR RIN process, and therefore improve the ability of designated RoLRs to access important information in a more timely manner.

The Commission supports the AER developing templates to improve the accuracy of information provided under RoLR RINs

The AER has advised that it could improve the process for gathering accurate and complete information by creating a template for completion, to be issued alongside any RoLR RIN.³² This process would be familiar to retailers as the AER currently requires retailers to fill out information templates for quarterly retailer performance reporting.

Consistent with our position in the draft report, the Commission supports procedural changes by the AER to improve the accuracy and format of information provided to designated RoLRs. The Commission considers that this approach is preferable to specifying in the NERL or rules how retailers collect and store information, which would be costly to implement. We also consider that this change would improve the efficiency and timeliness of the RoLR RIN process.

4.3 Recommendation 9: Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure

Recommendation 9 is to amend the NERL to introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure. This would reduce the overall cost of retailer failures for consumers. It would also disincentivise misuse of the RoLR scheme as a low-cost, commercial way to exit the market, noting that the designated RoLR and ultimately consumers bear these costs. This recommendation is unchanged from the draft report.

This section describes:

- an overview of this issue that this recommendation seeks to address
- our final recommendation to introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure.

4.3.1 Consumers primarily bear the costs of RoLR events

As noted in section 4.1 of this report, the RoLRs are able to recover costs incurred whilst acting as a RoLR through the cost recovery scheme. Once a RoLR cost recovery claim has been considered and approved by the AER, these costs are recovered from consumers, via a distribution network cost pass-through process. This means that it is consumers who ultimately bear the majority of costs associated with a retailer failure.

Noting that consumers rather than failed retailers bear the costs associated with RoLR events, retailers can misuse the RoLR scheme as a low-cost, commercial mechanism to exit the market whilst other parties bear the cost of its failure.

In response to our consultation paper, stakeholders were supportive of exploring measures that would require a failed retailer to pay for the cost of its failure, rather than customers.³³ Stakeholders were also supportive of measures that would disincentivise misuse of the RoLR scheme.

³² See section 3.2.2 of the draft report

³³ See section 2.4 of the directions paper for further information

4.3.2 A new bill framework would reduce costs for consumers and deter misuse of the RoLR scheme

Consistent with our draft recommendation, our final recommendation is to introduce a new framework that allows the AER to issue a failed retailer a bill for the costs associated with its failure. This framework has three key steps:

1. **The AER issues a notice:** The AER issues the failed retailer with a notice when the RoLR event occurs, advising it that it will potentially be subject to a cost recovery bill issued following the designated RoLR cost recovery scheme. A debt does not crystallise at this point.
2. **The AER issues a bill:** The AER considers and approves the designated RoLR's cost recovery claims through the existing RoLR cost recovery process. Once the AER has approved the designated RoLR's cost recovery claim, this cost information is used by the AER to issue the failed retailer with a bill. Prior to issuing the failed retailer with a bill, the AER may consider the facts and circumstances of the RoLR event to evaluate the utility of issuing a bill. Only once the bill is issued the debt would crystallise, and the AER would be required to pursue this debt consistent with its obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
3. **Recovered funds are returned to consumers:** To the extent that funds are recovered from the failed retailer through the bill framework, these funds are returned to consumers through a distribution network negative cost pass-through process.

This bill framework would provide a mechanism to return the costs incurred as a result of RoLR events back to consumers, to the extent that this is possible. This framework would also disincentivise retailers misusing the RoLR as under this recommendation they would face a bill for the cost of their failure.

Stakeholders were supportive of measures to reduce the cost of RoLR events for customers, and to disincentivise misuse of the RoLR scheme, and were generally supportive of our recommended bill framework.³⁴

This new bill framework would not impact the timeliness of the RoLR cost recovery process

In response to the draft report, some stakeholders were concerned that a new bill framework could delay the RoLR cost recovery process. We do not consider that this is a risk because the proposed bill framework and the RoLR cost recovery scheme are two separate processes.³⁵

As noted in section 4.1 of this report, under the existing RoLR cost recovery process a designated RoLR may lodge a cost recovery claim with the AER, consistent with the AER's RoLR cost recovery guidelines. The AER is responsible for assessing these claims. If and when a claim is approved by the AER, the designated RoLR will recover costs from customers through a network cost pass through.

Our recommended bill framework is not a mechanism for designated RoLRs to directly recover costs. Designated RoLRs will continue to recover costs through the existing cost recovery process. The bill framework is a mechanism to return any successfully recovered funds back to customers. As such, the recommended bill framework would not impact the timeliness of designated RoLRs recovering costs.

We note that this bill framework will not be effective in all circumstances

34 Submissions to the draft report: Origin Energy, pg. 3., Engie, pg. 1., Momentum Energy, pg. 2., AEC, pg. 2., AFMA, pg. 1., AGL, pg. 5, EnergyAustralia, pg. 1.

35 Submissions to the draft report: Origin Energy pg. 3

The Commission acknowledges stakeholder feedback that a bill framework will not be effective in certain circumstances, such as where a failed retailer is insolvent and unable to pay a bill.³⁶ Consistent with our position in the draft report, we do not recommend additional changes to strengthen the likelihood that a bill is paid, such as requiring retailers to register a security interest in favour of the AER on the Personal Property Securities Register. We noted potential costs and risks raised by stakeholders in response to the directions paper. We consider that these costs and risks would influence day-to-day retailer activities, and increase barriers to entry and innovation.³⁷

Most stakeholders were strongly of this position in the draft report.³⁸ Ausgrid and Energy Queensland opposed this position and proposed that the Commission should recommend that retailers be required to register a security interest in favour of the AER on the PPSR.³⁹

4.4 Recommendation 10: Introduce a new civil penalty provision for the improper use of the RoLR scheme

Recommendation 10 is to amend the NERL to introduce a new civil penalty provision that requires retailers to take all reasonable steps to avoid exit through the RoLR scheme. This recommendation would disincentivise the misuse of the RoLR scheme as a low-cost, commercial way to exit the market. Following stakeholder feedback to the draft recommendation, as part of our final recommendation we consider that the AER should provide guidance regarding what constitutes 'reasonable steps'. This would enhance clarity and support certainty for market participants.

This section describes:

- an overview of this issue that this recommendation aims to address
- stakeholder feedback to our draft recommendation to introduce a new civil penalty provision
- our final recommendation to introduce a new civil penalty provision.

4.4.1 Retailers can currently use the RoLR scheme as a low-cost way to exit the market, passing costs onto designated RoLRs and consumers

As noted in chapter 1 of this report, the principal purpose of the RoLR scheme is to ensure continuity of energy supply to customers in the event of a retailer failure.

In response to the Review consultation paper, some stakeholders expressed concerns that under current arrangements retailers can misuse the RoLR scheme as a commercial mechanism to exit the market.⁴⁰ For example, when a retailer is exposed to high spot prices for its customer load, it could intentionally choose to not meet its prudential requirements to offload its customer base at no cost. It could then sell its hedge contracts at a profit. In these circumstances, the designated RoLR and consumers bear the cost of the retailer 'failure'.

The Commission considers that a new mechanism to bill retailers for the cost of their failure (Recommendation 9), will assist in addressing these issues. However, we also note that this may be an insufficient deterrent in some instances, and consider that additional measures are warranted.

36 Submissions to the draft report: AGL, pg. 5., Alinta, pg. 6., Ausgrid, pg. 2.

37 See section 3.3.3 of the draft report

38 Submissions to the draft report: AER, pg. 1., AGL, pg. 5.,

39 Submissions to the draft report: Ergon Energy/Energex, pg. 1., Ausgrid, pg. 2.

40 Submissions to the consultation paper: EnergyAustralia, pg. 2., AFMA, pg. 2., AGL, pg. 2.

4.4.2 Stakeholders responded to our draft recommendation to introduce a new civil penalty

In response to stakeholder feedback regarding potential misuse of the RoLR scheme, draft recommendation 10 of the draft report was to introduce a new civil penalty provision for retailers that do not take all reasonable steps to avoid exit through the RoLR scheme. The draft recommendation noted that this could be supplemented by guidance regarding what constitute 'reasonable steps', in the NERL, NERR, or AER RoLR guidelines.

Stakeholders were largely supportive of the intent of this draft recommendation

Stakeholders were generally supportive of the intent of this draft recommendation. They considered that there was a strong policy rationale to introduce a new civil penalty provision to deter misuse of the RoLR scheme.⁴¹

Stakeholders considered that there should be guidance regarding what constitute 'reasonable steps'

A number of stakeholders considered that in implementing a new civil penalty provision, there should be sufficient clarity and guidance to retailers regarding what constitutes 'reasonable steps' taken to avoid triggering a RoLR event. Some stakeholders noted that without guidance, such a penalty may be open to subjectivity and interpretation, or create an unintended barrier to exit. Stakeholders also noted that some instances of retailer failure may be due to circumstances beyond the retailer's control, such as emergency circumstances and market interventions observed in mid-2022.⁴²

Some stakeholders were concerned that there may be issues regarding incentives

Some stakeholders expressed concerns that the proposed civil penalty provision may create perverse incentives. For example, a failing retailer may avoid appointing an insolvency practitioner, for fear of triggering a RoLR event.⁴³

The Commission does not consider this to be a risk. If the board of a failed retailer acts genuinely and in good faith to comply with their obligations to avoid trading whilst insolvent, then it would not be open to the AER to find the retailer breached this provision. Acting to ensure compliance with the law could not be considered 'unreasonable'.

4.4.3 A new civil penalty would deter misuse of the RoLR scheme

Our final recommendation is to introduce a new civil penalty provision for retailers that did not take all reasonable steps to avoid exit through the RoLR scheme. We recommend that in its RoLR guidelines, the AER should provide guidance regarding the concept of 'reasonable steps', to provide further clarity and certainty to market participants. Noting that there may be unique facts and circumstances surrounding different RoLR events, this guidance should not be prescriptive and should allow for flexibility.

This recommendation would discourage misuse of the RoLR scheme, and encourage exit through other pathways where feasible

A new civil penalty provision would discourage misuse of the RoLR scheme, as a commercial and low-cost way for retailers to exit the market where other avenues are available to them. This would in turn minimise the risk that designated RoLRs and consumers must bear unnecessary retailer 'failure' costs, that could have been avoided.

41 Submissions to the draft report: Origin Energy, pg. 2., Engie, pg. 1., AGL, pg. 5.,

42 Submissions to the draft report: AGL pg. 5., Alinta, pg. 6., Red and Lumo, pg. 3.

43 Submissions to the draft report: Ergon Energy/Energex, pg. 2, Ausgrid, pg. 3.

The Commission notes that there are a range of alternate exit arrangements available to retailers outside of the RoLR scheme, that do not pass costs on to designated RoLRs and customers. This includes the surrender process and the transfer process, both of which are administered by the AER to facilitate an orderly retailer exit.⁴⁴

Additional guidance regarding what constitutes 'reasonable steps' will support clarity and certainty

As part of our final recommendation, the Commission considers that the AER should provide further guidance regarding what constitutes 'reasonable steps' taken by a failed retailer to avoid exit through the RoLR scheme. This additional guidance will enhance clarity and guidance for market participants. This approach is also consistent with the approach taken in Recommendation 7 of this report, which is for the AER to increase clarity and guidance regarding the RoLR cost recovery scheme.

The Commission considers that the AER is best placed to consider what guidance is most appropriate, and does not propose to define 'reasonable steps' as part of this recommendation.

As part of the supporting guidance provided by the AER, in addition to providing guidance on what constitutes 'reasonable steps', the AER could also consider providing guidance on the types of conduct that may constitute a breach of the civil penalty. For example, the AER could consider case studies that illustrate conduct that may trigger a breach, such as where retailers have sought to shed their customer base so that they can sell valuable hedge positions or gas supply contracts.

Other examples could include a failure to promptly notify the AER in accordance with retailer obligations in s. 150 of the NERL, or refusing to engage with a potential buyer where this could have facilitated an orderly transfer of the business and avoided a subsequent RoLR event.

⁴⁴ Further detail on these processes can be found in section 3.4.2 of the Review draft report

A Overview of the RoLR scheme and gas directions

This appendix provides additional information regarding how the RoLR scheme currently operates, to support understanding of the recommendations contained in this report. This section outlines key terms, how retailers may participate as RoLRs under the scheme, information requirements before and after RoLR events, and cost recovery arrangements. This section also outlines how the gas directions framework currently operates alongside the RoLR scheme for failed gas retailers and other relevant parties.

Table A.1: Key terms

Term	Description
Designated RoLR	A registered RoLR that is appointed or taken to be appointed as a designated RoLR for a RoLR event (NERL, section 122)
Failed retailer	A retailer (or former retailer) in relation to which a RoLR event has occurred (NERL, section 122)
RoLR event	<p>The NERL defines the following events or circumstances as a 'RoLR events':</p> <ul style="list-style-type: none"> • revocation of a retailer's authorisation; • suspension of the right of a retailer to acquire electricity or gas from the wholesale exchange or wholesale gas or short-term trading market (AEMO initiated) or ceasing to be a registered participant; • appointment of an insolvency official; • an order to wind up the retailer is made or a resolution is passed to wind up the retailer; • the retailer ceases selling energy (for reasons other than the transfer or surrender of its retailer authorisation, or the transfer of all or some of its customers to another retailer, or selling or otherwise disposing of all or part of its business); • any other event or circumstances prescribed in the National Regulations (NERL, section 122)
RoLR cost recovery scheme	A designated RoLR may apply to the AER to recover costs incurred on or after a RoLR event. A default RoLR may also apply to recover costs incurred in preparing for RoLR events (NERL, Division 9)
Transfer date	The date on which the customers of the failed retailer are transferred to the relevant designated RoLR (NERL, sections 122; 136(2)(e)). On and from the transfer date, and in relation to the customers transferred to it and subject to and in accordance with the RoLR Procedures, the designated RoLR assumes the functions and powers of the failed retailer under the energy laws (NERL, section 140)

Source: NERL

A.1 RoLR registration – retailers may lodge an expression of interest with the AER to become a RoLR

Under the NERL, the AER must both initially and afterwards at times it considers appropriate, call for expressions of interest from retailers to register as a RoLR.⁴⁵ Retailers can lodge an expression of interest to become a RoLR both in response to a call from the AER, or at any other time.⁴⁶ A RoLR expression of interest may contain proposals regarding:

- customers or classes of customer the retailer will accept as its customers if it were to be appointed a designated RoLR following a RoLR event
- numbers of customers the retailer will accept if it were to be appointed a designated RoLR following a RoLR event
- variation to the retailer's RoLR cost recovery scheme⁴⁷

The AER must ensure that there is a 'default' RoLR appointed for each electricity point at all times. The AER must also ensure that there is no more than one default RoLR registered for each connection point. A retailer's concurrence is not required for the AER to appoint and register it as a default RoLR.⁴⁸

Retailers can also submit an expression of interest to the AER to become an 'additional RoLR'.⁴⁹ There are two categories of additional RoLRs:

- Firm offers: an offer by the retailer to act as an additional RoLR under the terms and conditions outlined in the retailer's expression of interest. This will include details on the number and classes of customers it will take on in a RoLR event.
- Non-firm offer: an expression of interest by a retailer to act as an additional RoLR. Prior to any appointment as an additional RoLR, the AER will confirm with the retailer whether it is still prepared and capable of being appointed under the terms and conditions proposed in the expression of interest.

Under the NERL, retailers must meet certain criteria to become a RoLR. This includes criteria regarding a retailer's organisational and technical capacity, financial resources, and suitability, as well as any other criteria the AER considers relevant.⁵⁰ The AER must publish and maintain a register of RoLRs.⁵¹

A.2 RoLR designation - when a RoLR event is triggered the AER must appoint a designated RoLR

When a RoLR event is triggered, a designated RoLR is appointed for each electricity connection point. This designated RoLR is responsible for taking on new customers and facilitating customer transfers from the failed retailer. Under the NERL, the default RoLR is taken to be appointed the designated RoLR, unless the AER appoints a registered RoLR as a designated RoLR in respect of a RoLR event before the event actually occurs, and notifies AEMO before the transfer date. The AER must notify a registered RoLR before appointing it as designated RoLR, but the AER does not require the consent of the registered RoLR to appoint it as a designated RoLR.⁵²

45 NERL, section 124(1)

46 NERL, section 124(2)

47 NERL, section 124(4)

48 NERL, section 125

49 NERL, section 126

50 NERL, section 123

51 NERL, section 127

52 NERL, section 132

When determining whether to appoint a registered RoLR as the designated RoLR, the AER must consider:

- Whether the registered RoLR has a cost recovery scheme, and if so, what costs are recoverable and what is the quantum of these costs
- The imminence of the RoLR event
- The RoLR criteria, which includes consideration of the retailer's organisational and technical capacity, its financial viability and capacity, and its suitability.⁵³

The AER may appoint more than one designated RoLR for a RoLR event if the AER is of the opinion that it is appropriate to do so. When making the appointments, the AER must allocate responsibility for particular customers or classes of customers to each designated RoLR in a manner consistent with the RoLR guidelines.⁵⁴

A.3 Information requirements - AEMO and retailers must provide certain information to the AER regarding potential or actual RoLR events

Under the NERL, there are information obligations on AEMO and retailers to promptly inform the AER of any event, circumstance, or matter regarding a potential RoLR event or the ability of a retailer to maintain continuity of sale to its customers.⁵⁵

The AER may also serve a retailer (or former retailer) with a regulatory information notice. Such a notice may be served either in connection to a RoLR event that has occurred or through the AER's powers under Division 3, whether or not a RoLR event has occurred.⁵⁶

The notice may require a retailer (or former retailer) to provide specific information to the AER, AEMO, a registered RoLR, and/or a distributor. The notice may also be served on an insolvency official of a failed retailer.⁵⁷ Information requested by the AER in a RoLR regulatory information notice may include:

- the names, contact details, billing addresses, and energy supply addresses of all the retailer's customers;
- the meter identifier for each of those customers;
- the network tariff code(s) of the distributor for each of those customers;
- details of each customer's actual consumption of energy;
- whether any customer is a hardship customer and if so details of which customer;
- whether the premises of any customer are registered under the Rules as having life support equipment and if so details of which premises;
- whether any customer is in receipt of a tariff payment, credit, or other benefit under a feed-in arrangement prescribed by the National Regulations for the purpose of this paragraph, and if so details of which customer and relevant details;
- details of customer classification under the Rules;
- details of any pension, health or social security payments to, rebate for or benefits or concessions of a customer;

53 NERL, section 133

54 NERL, section 134

55 NERL, section 150

56 NERL, section 152

57 NERL, section 152

- in the case of a failed retailer - any direct debit arrangements by a customer, or Centrepay arrangements with the retailer.⁵⁸

Upon being served with a RoLR regulatory information notice, the retailer, former retailer, or insolvency official named in the notice must comply.⁵⁹ Civil penalties are attached to this provision.⁶⁰

A.4 Cost recovery scheme - the NERL includes provisions that allow for RoLRs to recover some costs incurred following a RoLR event

Under the NERL, RoLRs can apply to the AER to recover costs incurred through participating in or preparing for a RoLR event. RoLRs cannot recover any costs incurred through a RoLR event other than in accordance with the scheme provided for in Part 6 Division 9 of the NERL.⁶¹ The designated RoLR assumes no financial or other liabilities of the failed retailer where that liability accrues before the customer transfer date.⁶²

After receiving a cost recovery application, the AER may request additional information from the RoLR that the AER considers necessary to make a determination. The retailer must comply with any such request. The AER must also publish a notice of the application on its website and invite submissions on the application for a minimum of 20 business days.

In deciding whether to grant or refuse an application for cost recovery, the AER must be guided by the following principles:

- the registered RoLR should be provided with a reasonable opportunity to recover reasonable costs incurred with respect to the RoLR scheme
- the recovery of costs should allow for a return commensurate with the regulatory and commercial risks with respect to the RoLR scheme
- the registered RoLR will itself bear some costs, in proportion to its customer base.⁶³

The AER's RoLR guidelines contain further detail regarding the form and information to be included in an application for a RoLR cost recovery scheme.⁶⁴

As part of the AER's cost recovery determination, the AER must make a determination that one or more distributors are to make a payment towards the cost of the scheme. This is a 'RoLR cost recovery scheme distributor payment determination' and is made after consultation with the distributor/s concerned. The distributor/s are required to make payments to a RoLR in accordance with their liability under the determination.⁶⁵

A.5 Overview of existing arrangements for RoLR gas directions

When a gas retailer fails, the RoLR scheme facilitates the transfer of the failed retailer's customers to a new retailer known as the designated retailer. This operates in the same way as the electricity RoLR process. However, in gas there is also a framework under the NERL that allows the AER to

58 NERL, section 154

59 NERL, section 156

60 NERL, section 156

61 NERL, section 165

62 NERL, section 140

63 NERL, section 166

64 AER RoLR guidelines, p.1.

65 NERL, section 167

direct gas supply and pipeline capacity to be supplied to the designated RoLR(s).⁶⁶ This provision helps ensure that the designated RoLR has enough gas to supply the transferred customers.

An outline of the gas directions process is described below:

- **When can a RoLR gas direction be triggered?** The AER may issue a direction when there is no declared wholesale gas market or short-term trading market, or where in the opinion of the AER there is not sufficient capacity or gas available in the short-term trading market to enable gas supply to the RoLR's new customers.⁶⁷
- **What can be directed?** A direction can apply to contracts held by the failed retailer immediately before the transfer date for pipeline capacity to transport gas, and contracts for gas supply.⁶⁸ The contracts held by the failed retailer can be directed regardless of where the supply in the contract comes from. For instance, a failed retailer's contract for gas supply from a Victorian gas field can be made available to a designated RoLR in Queensland.
- **Who are the directions issued to?** Directions can be issued to distribution or transmission service providers (for pipeline capacity), producers, or any other entity that has contracted to sell gas to the failed retailer (for gas supply).⁶⁹
- **What must the directed entity do?** A directed entity must make the gas supply or pipeline capacity that was available to the failed retailer immediately before the transfer date available to the designated RoLR. It must make this supply or capacity available on the same terms that were available to the failed retailer. The designated RoLR may, but is not obligated to, use any or all of the gas or pipeline capacity..⁷⁰
- **What happens under the mandatory negotiations for a replacement or novation of a contract?** As soon as practicable after the transfer date, negotiations should commence for the contracts that were directed.⁷¹ This process facilitates the designated RoLR negotiating for contracts held by the failed retailer for the period after the directions ends.⁷²
 - For gas supply, the mandatory negotiations depend on the circumstances of the retailer failure. Two scenarios are set out below:
 - If the contract continues in force despite the RoLR event, the failed retailer must commence negotiations between the designated RoLR and the gas producer.
 - If the contract is terminated because of the RoLR event, the gas producer must commence negotiations with the designated RoLR.
- **What happens if no negotiation agreement is reached?** If there is no agreement after three months from the transfer date, the contract must be put up for sale, or dispute resolution must begin.
 - For gas supply, the directed entity (either the failed retailer or gas producer) must put the gas that is the subject of the contract up for sale by auction. It must use its best endeavours to complete the auction process within an additional three months.⁷³

66 NERL, section 137

67 NERL, section 137

68 NERL, section 137(1)(a)-(c). The transfer date is specified in the RoLR notice issued by the AER and is the date on which the customers of the failed retailer are transferred to the relevant designated RoLR. See section 136(2)(e)

69 NERL, section 137(1)(a)-(c)

70 NERL, section 137(4)

71 NERL, section 137(8);(12)

72 NERL, section 137

73 NERL, section 137(12)(c)(i)-(iii)

- For pipeline capacity, the designated RoLR, or the distribution or transmission service provider may commence an access dispute.⁷⁴
- **When does the direction end?** The direction continues in force until a novation or termination and replacement with a new contract has been completed.⁷⁵ Where no agreement is reached, the direction continues in force until:
 - the gas has been sold (gas supply)
 - an access determination has seen effect (pipeline capacity).

74 NERL, section 137(10)

75 NERL, section 137

B Summary of other issues raised in submissions

Table B.1: Summary of other issues raised in submissions

Stakeholder	Issue	Response
AFMA	AFMA considered that the AEMC's recommendations should consider and address the practical challenges of applying proposed reforms to retailers within corporate groups.	Consistent with our position in the draft report, we considered stakeholder concerns about the potential difficulty of enforcing the bill. The proposed bill framework will use the existing legislation and common law which can in certain instances trace debts to parent or holding companies. At this point, we do not have evidence that energy retailers pose risks that would require additional measures beyond what currently exists in legislation. Therefore, the Commission has not proposed additional measures in our recommendation.
Alinta	Alinta advised that it does not support a directions framework that creates obligations for independent commercial parties to enter into supply agreements. These obligations, in Alinta's view, would force disclosure of commercial information and increases the risk of potential commercial detriment with existing or future counterparties.	Alinta's view raises a fundamental issue with the existing directions framework. The Commission remains supportive of a gas directions framework.
Alinta	Alinta considered that gas supply contracts have an inherent value attached to them and should be valued in a similar way to gas held in storage.	We acknowledge that gas supply contracts have an inherent value, as outlined by Alinta, however the directions process for supply contracts does not remove the failed retailer's ownership of the contract. Directing gas already held in storage does change the ownership of the gas, requiring compensation for this mandatory acquisition. We disagree that directed gas supply contracts should be compensated. Whilst supply contracts have an inherent

Stakeholder	Issue	Response
		value, the directions process does not remove the failed retailer's ownership of the contract in the same way that directing gas held in storage does.
Ergon Energy/Energex, Ausgrid	<p>Two network stakeholders (Ergon Energy/Energex, Ausgrid) were not supportive of the Commission's decision not to proceed with a recommendation that retailers must register a security interest in favour of the AER on the PPSR. In addition, these stakeholders raised a number of proposals not previously raised in response to either the consultation paper or directions paper, including:</p> <ul style="list-style-type: none"> that the PPSR requirement should be extended to requiring retailers to register a security interest in favour of DNSPs for network charges that it should be a condition of entry in section 90 of the NERL for granting retailer authorisation, that retailers provide a bank guarantee in favour of the relevant DNSP to the AER, sufficient to cover 3 months of market volatility that the AER should conduct financial accounting assessments of retailers to assess the risk of RoLR events and assess whether the amount held by a DNSP in bank guarantee (as recommended above) is sufficient that the AER seeks a statutory change similar to that which the ATO has, to claim priority payment in the case of retailer insolvency. 	<p>We do not propose to progress these issues as part of our final recommendations. Regarding the PPSR proposal or other mechanisms designed to strengthen the likelihood that a bill is paid by a failed retailer, we maintain our position in the draft report, which is that the known potential negative impacts and risks would outweigh the possible benefits of such measures. This position was informed by extensive stakeholder feedback to the directions paper.</p> <p>We note that a number of these matters have not previously been raised in earlier stages of the Review, and as such, have not been formally consulted on. We note that such changes (for example, a requirement for retailers to lodge 3 months of bank guarantees to the AER in favour of DNSPs) could have potentially significant impacts for market participants, and as such would require further in-depth consultation and consideration to progress.</p> <p>Finally, we note that a key intent of these recommendations is to minimise the financial risks that RoLRs face as a result of their participation in the RoLR scheme. We note that whilst networks face risks in the event of retailer failure, these are different to the specific and unique risks that designated RoLRs face.</p>

Source: Submissions to the draft report, AFMA, Alinta, Ergon Energy/Energex, Ausgrid

Abbreviations and defined terms

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AFMA	Australian Financial Markets Association
Commission	See AEMC
DMO	Default Market Offer
DCCEEW	Department of Climate Change, Energy, Environment and Water
DWGM	Declared Wholesale Gas Market, in Victoria
GSA	Gas supply agreement
GTA	Gas transportation agreement
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
PPSR	Personal Property Securities Register
RIN	Regulatory information notice
RoLR	Retailer of Last Resort
SoLR	Supplier of Last Resort (equivalent RoLR scheme used in the UK)
STTM	Short term trading market
ToR	Terms of Reference