

Rule determination

National Electricity Amendment (Allowing AEMO to accept cash as credit support) Rule 2025

Inquiries

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

E aemc@aemc.gov.au

T (02) 8296 7800

Reference: ERC0403

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, Allowing AEMO to accept cash as credit support, Rule determination, 26 June 2025

Summary

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a final determination to make a more preferable final rule to amend the credit support arrangements in the National Electricity Market (NEM) in response to a rule change request submitted by Delta Electricity (the proponent).
- 2 The final rule will allow cash to be provided to the Australian Energy Market Operator (AEMO) to be used as credit support in the NEM, increasing optionality and flexibility in the credit support arrangements. This will enable benefits for market participants and consumers while maintaining the strength of the prudential framework. The final rule will also enable a more timely distribution of delayed credit support payments.
- 3 The final rule will commence on 1 November 2026.

The final rule will increase credit support optionality and flexibility in the NEM

- 4 In the NEM, the prudential framework allows AEMO to manage financial risks in the event that a participant defaults and is unable to pay its outstanding settlement. Market participants are required to provide credit support as part of their prudential requirements when they are net debtors in the NEM (typically retailers).
- 5 Under the existing arrangements, participants are only allowed to provide credit support in the form of a guarantee or bank letter of credit which must be issued by an entity that meets various acceptable credit criteria.
- 6 The final rule will allow participants to each provide up to \$20 million of cash as credit support in the NEM. This will increase the optionality and flexibility for participants providing credit support, as cash presents a new option that allows participants to provide credit support directly to AEMO without relying on a third-party.
- 7 Increased optionality and flexibility in the credit support arrangements under the final rule will deliver several key benefits for participants providing credit support:
 - **reduced costs:** participants will be able to provide credit support using the least cost option available to them
 - **reduced risks of failing to provide credit support:** participants can use cash if they are unable to obtain other forms of credit support or need to provide credit support on short notice.
- 8 These benefits will have a positive impact on the broader NEM by supporting retailers in offering lower prices to consumers, increasing investment in service innovation, and/or expanding offerings for consumers. In turn, this will support increasing competition in, and reducing barriers to entry into, the retail market which will lead to consumer benefits.
- 9 The final rule will be most beneficial for small and prospective retailers, who play a critical role in driving competition and value for consumers in the NEM. Smaller retailers may face different costs, risks, and pressures compared to other participants, such as higher financing costs and lower access to capital. Therefore, the benefits of increased optionality and flexibility in providing credit support will be more material for small and prospective retailers.
- 10 Additionally, allowing participants to provide credit support without reliance on a third-party lender will also address the issue raised by the proponent. In the rule change request, the proponent noted that it was unable to obtain credit support from lenders under the existing arrangements due to their exposure to fossil fuels.

The final rule will reduce and manage potential risks from allowing cash

- 11 While the Commission considers there to be substantial benefits in allowing cash to be used as a form of credit support, these arrangements will also introduce some potential new risks. By allowing cash as credit support, a market participant that uses cash as credit support could lead to a liquidator seeking to clawback that cash if the market participant becomes insolvent. If a clawback were to occur, this would create a shortfall which the market would need to bear.
- 12 In making our final rule, we have introduced multiple layers of protection that will reduce and manage these clawback and insolvency-related risks from allowing cash to be used as credit support. These layers of protection include:
 - seeking to clarify that the whole default procedure, including the provision and use of cash as credit support, will fall within the Corporations Act displacement provisions in the National Electricity Law (NEL)
 - granting AEMO a first ranking charge, return rights, and set off rights over cash provided as credit support
 - limiting the amount of cash each participant can provide as credit support to \$20 million, in turn limiting the maximum size of a clawback in respect of a single participant
 - participants receiving payments from AEMO (typically generators) bearing any clawback costs, avoiding any exposure to AEMO and reducing risks of contagion.
- 13 We consider that these layers of protection will allow the strength of the prudential framework to be maintained while enabling material net benefits from allowing cash as credit support.
- 14 We consider that cash used as credit support will fall within the displacement provisions in the NEL. However, we recognise the value of an appropriate amendment to the NEL to provide absolute certainty to stakeholders on the elimination of clawback and insolvency-related risks. Given some stakeholders expressed support for such an amendment and that the AEMC does not have powers to amend the NEL, we recommend Energy Ministers approve appropriate amendments to the NEL to explicitly remove any potential residual clawback and insolvency-related risks associated with cash credit support.

The final rule will reduce impacts from delayed credit support payments

- 15 The final rule will allow AEMO to distribute any delayed credit support payments to any short-paid participants through the routine revised statements process. This will enable a more timely distribution of delayed credit support payments to participants and reduce impacts of temporary settlement shortfalls.
- 16 We consider that this change will address an existing issue where, if credit support does not pay out within a short time period, AEMO may have insufficient funds to pay participants their due amount. Under the existing arrangements, AEMO can distribute any delayed payments to participants at the next end of financial year (EOFY), leaving participants to bear the shortfall for potentially up to 12 months.
- 17 By enabling the distribution of payments to participants through the routine revised statements process, this will reduce the length of time participants are short paid. In turn, this will reduce the impacts and costs for participants from being temporarily short paid. When the *Shortening the settlement cycle* rule commences on 9 August 2026, the earliest routine revised statements will be issued by AEMO at 20 business days following the end of a billing period.

The final rule will contribute to the National Electricity Objective

- 18 The final rule will contribute to the National Electricity Objective (NEO) by supporting and promoting efficient investment in, and operation of, electricity services in the NEM. This is through reducing costs and risks for participants providing credit support, which will lead to material long-term benefits for consumers.
- 19 In addition to considering the NEO, the Commission has considered the issues raised in the rule change request and assessed the final rule against four assessment criteria when making this final determination. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria. The more preferable final rule will contribute to achieving the NEO by:
- **promoting flexible credit support arrangements:** by allowing cash as credit support, participants will have more options and flexibility to provide credit support and meet their prudential requirements
 - **promote predictable and stable credit support arrangements:** there will be more predictability and stability for participants to provide credit support, while maintaining the strength and stability of the prudential framework
 - **not materially impacting emissions reductions:** noting the complexity and uncertainty in potential outcomes under the existing arrangements, we consider the final rule will not have a material impact on emissions reductions
 - **maintaining safety, security and reliability:** allowing cash as credit support is likely to resolve any potential risks to safety, security, and reliability with the existing credit support arrangements.

The Commission has considered stakeholder feedback in making its decision

- 20 Our final determination has been shaped by stakeholder feedback. Throughout our assessment of the proponent's rule change request, we have received feedback from a range of stakeholders which has informed our decision-making. This feedback includes 13 submissions from stakeholders in response to the draft determination which are discussed and responded to throughout this final determination, as well as submissions to the consultation paper that were discussed in the draft determination.
- 21 While this rule change was originally proposed by the proponent in relation to specific issues they experienced, the Commission has recognised, based on feedback from other stakeholders, that issues in the existing credit support arrangements have broader relevance, in particular for smaller retailers. We have made a final rule that reflects the broader benefits to many participants and consumers from allowing cash as credit support.
- 22 The majority of stakeholders supported allowing cash as credit support and considered this will deliver benefits for participants providing credit support while managing clawback and insolvency-related risks. Some stakeholders proposed minor changes to the draft rule to allow cash, with multiple stakeholders suggesting the cash limit be increased from the proposed \$5m value.
- 23 Stakeholder views were mixed on the other main aspects of the draft rule, namely to allow surety bonds as credit support and to expand the requirements for credit support providers. While some stakeholders supported the draft rule as a whole, no stakeholder expressed that they would use surety bonds as credit support, if allowed. AEMO expressed multiple concerns regarding these aspects of the draft rule, as AEMO considered it could weaken the prudential framework with no clear benefits. The final rule does not allow surety bonds as credit support nor amend the credit support provider requirements.

There are a few key differences between draft rule and final rule

- 24 The Commission has made several changes from the draft rule in response to stakeholder feedback to the draft determination:
- not allowing surety bonds as credit support and no changes to the acceptable credit criteria, based on stakeholder views and concerns meaning benefits may not be material nor outweigh implementation complexity, costs, and risks
 - increasing the base value of the cash limit from \$5m to \$20m, which is in line with stakeholder views and will deliver increased benefits that will outweigh any corresponding increased clawback risks
 - requiring AEMO (instead of the AEMC) to calculate and publish the indexed cash limit to promote transparency by ensuring there is a singular location with key information for participants providing credit support to AEMO
 - changing the commencement date from 9 August 2026 to 1 November 2026, in line with a recommendation from AEMO's draft High level Implementation Analysis (HLIA) based on their ability to implement required changes
 - various changes in the rules drafting to improve clarity and functionality.
- 25 While we consider that allowing surety bonds or amending the acceptable credit criteria would not deliver net benefits at this moment in time, there may be value in reassessing these options in the future. We would hope that our work investigating the feasibility of this in this rule change request would be useful if this was to occur. We also note that participants can utilise bank guarantees which are backed by surety bonds under the existing arrangements to meet their prudential requirements.

The final rule will commence on 1 November 2026

- 26 The final rule will commence on 1 November 2026 to allow AEMO to make any changes to processes, systems, and procedures needed for the final rule to be implemented. This commencement date has been informed by AEMO's draft HLIA, which recommended the rule commence on 1 November 2026 to allow sufficient time for AEMO to develop and implement any changes alongside the implementation of other reforms in the settlement and prudential areas. Given other reforms currently being implemented, AEMO cannot implement the changes required any earlier than this date.
- 27 There are transitional provisions in the final rule for AEMO to develop and publish cash security guidelines at least three months before the final rule commences. AEMO will have sufficient time to consult on and develop these guidelines, while providing participants with at least three months to become familiar with the guidelines prior to the implementation of the final rule.

Contents

1	The Commission has made a final determination	1
1.1	The final rule will allow cash as credit support	1
1.2	Stakeholder feedback has shaped our determination	3
1.3	Our final rule complements the Shortening the settlement cycle rule	5
2	The final rule will contribute to the National Electricity Objective	6
2.1	The Commission must act in the long-term interests of energy consumers	6
2.2	We have considered whether to make a more preferable rule	7
2.3	Our more preferable final rule will contribute to the NEO	7
3	The final rule will improve credit support arrangements in the NEM	11
3.1	The final rule will increase credit support optionality and flexibility	11
3.2	Risks and costs associated with the final rule will be managed	13
3.3	Enabling a more timely distribution of delayed credit support payments	17
4	How the final rule will operate	18
4.1	The final rule will allow cash to be used as credit support	18
4.2	The final rule will enable earlier distribution of shortfall payments	26
4.3	The final rule will commence on 1 November 2026	27
5	We have made changes from the draft rule to the final rule	31
5.1	The final rule does not allow surety bonds as credit support	31
5.2	The final rule does not change the acceptable credit criteria	33

Appendices

A	Rule making process	34
A.1	The proponent proposed a rule to allow AEMO to accept cash as credit support	34
A.2	The process to date	35
B	Credit support arrangements in the NEM and other energy markets	36
B.1	Existing credit support arrangements in the NEM	36
B.2	Credit support arrangements in other energy markets	36
C	Options to mitigate clawback risks	38
C.1	Corporations Act displacement provision in the NEL	38
C.2	Set off arrangements	39
C.3	Security	40
C.4	Netting arrangements	42
C.5	Providing cash for credit support as a pre-payment	43
D	Legal requirements to make a rule	44
D.1	Final rule determination and final rule	44
D.2	Power to make the rule	44
D.3	Commission's considerations	44
D.4	Making electricity rules in the Northern Territory	45
D.5	Civil penalty provisions and conduct provisions	45

E	Summary of other issues raised in submissions	46
---	---	----

F	Abbreviations and defined terms	47
---	---------------------------------	----

Tables

Table E.1:	Summary of other issues raised in submissions	46
------------	---	----

Figures

Figure 3.1:	AEMO indicative assessment of implementation impacts - cash credit support	16
Figure 4.1:	AEMO settlement timeframes with default	26
Figure 4.2:	AEMO indicative implementation timeline	29

1 The Commission has made a final determination

The Australian Energy Market Commission (AEMC or Commission) has made a final determination to make a more preferable final rule (final rule) in response to a rule change request submitted by Delta Electricity (the proponent) proposing that the Australian Energy Market Operator (AEMO) be allowed to accept cash as credit support.

The final rule will allow participants to provide cash as credit support in the National Electricity Market (NEM), increasing optionality and flexibility for participants to provide credit support and meet their prudential requirements. We consider that this final rule will deliver net benefits and contribute to the National Electricity Objective (NEO), without weakening the credit support arrangements. The final rule will commence on 1 November 2026.

In the NEM, market participants must provide credit support when they are a net debtor (typically retailers) to AEMO as part of their requirements under the prudential framework. The prudential framework allows AEMO to manage financial risks in the event that a participant defaults and is unable to pay its outstanding settlement. Under the existing arrangements, credit support must be provided in the form of a guarantee or bank letter of credit and must be issued by an entity that meets the acceptable credit criteria. Participants must provide credit support not less than their Maximum Credit Limit (MCL), which can be greater than or equal to zero.

This chapter provides an overview of:

- the final rule to increase optionality and flexibility to provide credit support in the NEM
- key considerations that have shaped our determination, including input from stakeholders and consideration of key risks.

1.1 The final rule will allow cash as credit support

The final rule will allow participants to provide cash as credit support to AEMO, without relying on a third-party credit support provider. This will increase optionality and flexibility in the credit support arrangements, enabling participants to reduce costs of obtaining credit support and reduce risks of failing to provide credit support. The final rule will contribute to the NEO by delivering these benefits and promoting the long-term interests of consumers.

The final rule will also enable a more timely distribution of delayed credit support payments to participants. This means that, if there is a delayed credit support payment such that participants bear a shortfall, the amount of time participants are short paid will be reduced. In turn, this will reduce impacts and costs to participants in such situations.

1.1.1 The final rule will reduce costs and risks for participants

By allowing participants to provide cash as credit support, this will increase optionality and flexibility and deliver two key benefits for participants:

- reduced costs
- reduced risks of failing to provide credit support.

By providing cash as credit support, participants may be able to avoid fees and reduce costs associated with obtaining credit support from a lender. The materiality of cost reductions will vary between participants depending on their required amount of credit support and their current arrangements. However, small and prospective retailers are likely to have more material cost reductions due to higher financing costs and lower access to capital. In aggregate, we expect that there will likely be material potential cost reductions for participants across the NEM.

The final rule will also reduce risks of participants failing to provide credit support and being suspended from the NEM. If participants experience a change in their Maximum Credit Limit (MCL) and need to increase their credit support lodged with AEMO, they could be suspended from the NEM if they are unable to update their credit support accordingly in a timely manner.¹ Similarly, if participants are required to provide credit support but are unable to provide an accepted form of credit support (currently only guarantees and bank letters of credit), they could also be suspended. Allowing participants to provide cash as credit support to AEMO avoids reliance on a third-party for updating or obtaining credit support, thereby reducing these potential risks.

We consider that these benefits for participants will flow on to consumers, as reduced costs and risks will support retailers offering lower costs to consumers, increasing investment in service innovation, and increasing competition in the retail market.

We have also made a final rule to allow for delayed credit support payments to be distributed to participants through the routine revised statements process. This is consistent with the draft determination, and will enable a more timely distribution of delayed credit support payments to participants. Under the existing arrangements, delayed credit support payments result in a settlement shortfall to participants, with payments distributed to any short-paid participants at the end of financial year (EOFY). We consider that distribution at EOFY can result in unnecessary costs to participants, as they may be short-paid for up to 12 months.

For more information on the benefits of the final rule, see section 3.1.

1.1.2 The final rule will reduce and manage clawback risks

In making this final determination, we have been cognisant of the potential for increased risk in the prudential framework by allowing cash as credit support. There is a potential risk that cash used as credit support could be ‘clawed back’ as an unfair preference payment if the participant, who provided the cash, becomes insolvent.² For more information, see section 3.2.1.

The final rule includes several layers of protection that we consider will sufficiently reduce and manage these clawback and insolvency-related risks. These layers of protection will work to maintain the strength of the prudential arrangements while enabling material net benefits to be delivered from allowing cash as credit support. See section 4.1.2 for more information on the layers of protection included in the final rule, with appendix C providing additional information on various options we considered to reduce and manage clawback risks.

Compared to the draft rule, the clawback risks are greater under the final rule. This is because the limit on the amount of cash each participant may provide was increased from \$5m in the draft rule to \$20m in the final rule. In turn, this increases the maximum potential size of a single clawback. However, we consider that the other layers of protection will sufficiently reduce risks, and that the additional benefits will outweigh this increase in risk.

While we consider that the layers of protection will be effective at reducing clawback and insolvency-related risks, for completeness we recommend Energy Ministers approve appropriate amendments to the National Electricity Law (NEL) to address stakeholder concerns of potential clawback and insolvency-related risks associated with the use of cash as credit support.

¹ Under clause 3.3.5 of the NER, participants are required to provide valid credit support that, in aggregate, is not less than their MCL. In other words, the MCL is the minimum amount of credit support a participant must provide.

² References in this determination to clawbacks correspond to the potential for a liquidator, appointed to an insolvent market participant, seeking to recover any cash deposits paid by the participant to AEMO as an unfair preference payment if the payment results in AEMO receiving more in the liquidation of the participant in respect of an unsecured debt than it would have received otherwise.

We recommend an amendment to the NEL to eliminate clawback risks

We recommend Energy Ministers approve amendments to the NEL to eliminate stakeholder concerns of potential clawback and insolvency-related risks associated with the provision and use of cash as credit support in the NEM.

The current NEL allows the National Electricity Regulations (Regulations) to declare provisions that are a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act, 2001 (Cth)* (Corporations Act).³ The NEL outlines that these provisions may relate to the functions of AEMO under procedures relating to defaults by retailers, among other aspects of the National Electricity Rules (NER). The Regulations declare clause 3.15.21 (default procedures) of the NER to be a displacement provision.⁴

We consider that the provision of credit support (including cash) by a market participant to AEMO is for the purposes of AEMO exercising its functions under procedures relating to defaults. This means that the provision of cash credit support falls within the existing Corporations legislation displacement provisions, mitigating clawback and insolvency-related risks. Our final rule adds a note in clause 3.15.21 (default procedures) that clarifies this point.⁵

In response to the draft determination, several stakeholders supported an amendment to the NEL to address concerns about the potential uncertainty of clawback risk from cash credit support.⁶ SA Water considered that a NEL amendment could enable future loosening of restrictions on cash credit support.⁷

While we consider that the multiple layers of protection in this final rule will reduce clawback and insolvency-related risks, we recognise the value of obtaining absolute certainty for stakeholders on the elimination of clawback risks through an appropriate amendment to the NEL. For example, an amendment could specify explicitly that rules relating to cash provided and used as credit support are Corporations legislation displacement provisions.

Since the AEMC does not have powers to amend the NEL, we recommend Energy Ministers approve amendments to the NEL to explicitly remove any potential residual clawback and insolvency-related risks associated with cash credit support, to participants in the NEM.

1.2 Stakeholder feedback has shaped our determination

Our final determination to increase optionality and flexibility for participants providing credit support has been shaped by stakeholder feedback and considerations to maintain the strength of the prudential framework.

While this rule change was originally proposed by the proponent in relation to specific issues they experienced, the Commission has recognised, based on feedback from other stakeholders, that issues in the existing credit support arrangements have broader relevance, in particular for smaller retailers. We have made a final rule that reflects the broader benefits to many participants and consumers from allowing cash as credit support.

Throughout our assessment of the proponent's rule change request, we received and considered feedback from a range of stakeholders. In response to our draft determination, we received 13

³ Section 10A of the NEL.

⁴ Section 5A of the National Electricity Regulations.

⁵ See section 4.1.2 for more information.

⁶ Submissions to the draft determination: AEMO, p.3; Origin Energy, p.1; SA Water, p.1.

⁷ Submission to the draft determination: SA Water, p.1.

stakeholder submissions; we received 20 stakeholder submissions in response to our consultation paper.

The majority of stakeholders supported allowing cash as credit support, with some stakeholders proposing changes seeking to improve the draft rule. Stakeholder views were mixed on the other main aspects of the draft rule, namely to allow surety bonds as credit support and broadening the pool of acceptable credit support providers.

Feedback from stakeholders was a crucial input into the Commission's decision-making for this final determination. Details on stakeholder views are discussed and responded to throughout this final determination, as well as our draft determination, with other issues raised included in appendix E.

In response to stakeholder views and to ensure the final rule works effectively to deliver benefits, we made several changes relative to the draft rule:

- not allowing surety bonds as credit support and no changes to the acceptable credit criteria, based on stakeholder views and concerns meaning benefits may not be material nor outweigh implementation complexity, costs, and risks.
- increasing the base value of the cash limit from \$5m to \$20m, which is in line with stakeholder views and will deliver increased benefits that will outweigh any corresponding increased clawback risks
- requiring AEMO (instead of the AEMC) to calculate and publish the indexed cash limit to promote transparency by ensuring there is a singular location with key information for participants providing credit support to AEMO
- changing the commencement date from 9 August 2026 to 1 November 2026, in line with a recommendation from AEMO's draft High level Implementation Analysis (HLIA) based on their ability to implement required changes
- various changes in the rules drafting to improve clarity and functionality.

Our decision to not allow surety bonds nor expand the acceptable credit criteria was based on stakeholder views and concerns regarding the proposed changes. The benefits of allowing surety bonds as credit support to AEMO are likely to be only cost reductions, which may not deliver material benefits nor outweigh implementation complexity, costs, and risks.

A key benefit of surety bonds is allowing participants to free up working capital, since surety bonds are typically unsecured, and can be used to preserve bank limits for other purposes. However, we note that participants can access these benefits under the existing arrangements by using bank guarantees which are backed by surety bonds.⁸ This means that the potential benefits of allowing surety bonds in the NER would be through potentially lower fees and costs compared to other forms of credit support.

In addition to consideration of stakeholder feedback, we have sought to maintain the strength of the prudential framework in making this final determination. We consider that, while there are potential new risks associated with the clawback of cash credit support, the layers of protection included in the final rule will work to materially reduce and manage risks. Within the context of the broader prudential arrangements, we consider that the final rule will maintain the strength of the prudential arrangements.

⁸ This is because, with a bank-fronted surety bond, AEMO receives a bank guarantee for credit support that meets the current credit support requirements.

1.3 Our final rule complements the *Shortening the settlement cycle* rule

This final determination complements the *Shortening the settlement cycle* rule made on 12 December 2024, which made a rule to:⁹

- shorten the settlement cycle to nine business days following the end of a billing period
- introduce a new routine revision at 20 business days following the end of a billing period.

A key benefit of shortening the settlement cycle is that the MCLs of participants will be lowered, and thus they will need to provide lower amounts of credit support. Lower credit support amounts will lower financing costs and working capital requirements for participants, and will be of particular benefit for smaller retailers.

The final rule to allow cash as credit support will complement these benefits of the *Shortening the settlement cycle* rule change. This is because, while a shorter settlement cycle will lower credit support amounts for participants, allowing participants to provide cash as credit support will further enable lower costs to participants providing credit support. Furthermore, allowing cash as credit support delivers additional flexibility in the credit support arrangements. Our final rule will commence on 1 November 2026, after the commencement of the *Shortening the settlement cycle* rule on 9 August 2026.

⁹ The AEMC project page for the *Shortening the settlement cycle* rule change can be found [here](#).

2 The final rule will contribute to the National Electricity Objective

The final rule will contribute to the National Electricity Objective (NEO) by promoting improved efficient investment in, and operation of, electricity services in the NEM.

Allowing cash as credit support will enable reduced costs and risks for participants providing credit support and address issues raised by the proponent and other stakeholders. This will contribute to the NEO by promoting more efficient investment and operation in the NEM. Furthermore, benefits for participants from the final rule will flow through to, and deliver material long-term benefits for, consumers. These benefits will outweigh clawback and insolvency-related risks associated with cash used as credit support, particularly as the final rule seeks to reduce and manage these risks.

This chapter outlines how the final rule will contribute to the NEO, why we made a more preferable final rule, and how the final rule meets our assessment criteria. Details on the benefits and risks of the final rule are discussed in chapter 3.

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

The Commission can only make a rule if it is satisfied that the rule will, or is likely to contribute to, the achievement of the relevant energy objectives.¹⁰ The NEO is:¹¹

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system; and
- (c) 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 NEO.¹²

We consider that the final rule will contribute to the NEO by promoting efficient investment in, and operation of, electricity services for the long term interests of consumers. The final rule is likely to deliver benefits for participants providing credit support such that the credit support arrangements operate more efficiently, which will lead to benefits for consumers. We consider that these benefits will outweigh potential risks and costs associated with allowing cash as credit support, such that it will contribute to the NEO on balance. See chapter 3 for more information.

¹⁰ Section 88(1) of the NEL.

¹¹ Section 7 of the NEL.

¹² Section 32A(5) of the NEL.

As described in our guidelines on how we consider the national energy objectives, we can weight each component of the NEO as we consider appropriate in the circumstances.¹³ In our consultation paper, we considered weighting the reliability, safety and security components of the NEO higher than the emissions component due to the particular circumstances of the proponent. Consistent with the NEO, we still considered emissions in making our determination on the rule change request. Regardless, we consider that our final rule will maintain reliability, safety and security in the NEM and will not materially impact emissions reductions.¹⁴

2.2 We have considered whether to make a more preferable rule

The Commission may make a more preferable rule that is different, including materially different, to a proposed rule if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO.¹⁵

The rule change request from the proponent sought to allow cash as credit support in the NEM, aiming to ensure the continued supply of secure and reliable electricity in the NEM, promote efficiency, and potentially reduce operating costs for market participants.¹⁶ Specifically, the proponent proposed for cash to be allowed as credit support by amending NER clause 3.3.2(b) to insert 'cash or' after the word 'is'.^{17,18}

For this rule change, the Commission has made a more preferable final rule that we consider, compared to the rule change request, will address risks arising from allowing cash as credit support and deliver additional benefits. The more preferable final rule, while broadly aligned with the rule change request to allow cash as credit support, seeks to mitigate clawback and insolvency-related risks that the rule change request did not address and we consider should be mitigated. The benefits and risks of the final rule are discussed in chapter 3.

For more information on the legal requirements for our decision, see appendix D.

2.3 Our more preferable final rule will contribute to the NEO

The Commission must consider how to address issues associated with the existing options to provide credit support in the NEM against the legal framework.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO:

- flexibility
- predictability and stability
- emissions reductions
- safety, security, and reliability.

¹³ AEMC, How the national energy objectives shape our decisions, Final guidelines, 1 August 2024, p.15. See also section 88(2) of the NEL regarding the application of the national electricity objective by the AEMC.

¹⁴ See section 2.3 for further discussion.

¹⁵ Section 91A of the NEL.

¹⁶ See appendix A and the rule change request published on our website for more information.

¹⁷ Delta Electricity, Rule Change Proposal - Allowing AEMO to accept cash as credit support, 17 October 2024, p.2.

¹⁸ For reference, clause 3.3.2(b) of the NER states that credit support must be an obligation in writing that "is a guarantee of bank letter of credit in a form prescribed by AEMO".

These assessment criteria reflect the key potential impacts, costs, and benefits of the rule change request for impacts within the scope of the NEO. Our reasons for choosing these criteria are set out in chapter 4 of the consultation paper.¹⁹

The rest of this section explains why the final rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

2.3.1 The final rule will promote flexible credit support arrangements

We consider that flexibility in providing credit support will improve under the final rule. This is due to the increased optionality for participants to provide credit support by allowing cash as credit support.

The existing options for providing credit support are guarantees or bank letters of credit, which must come from a lender that meets the acceptable credit support provider criteria.²⁰ While this ensures a high level of strength in the prudential arrangements, the limited options available to participants creates a degree of inflexibility in obtaining and providing credit support.

Allowing cash as credit support will greatly promote flexibility in the credit support arrangements. Participants will no longer be required to obtain credit support from a third-party, as they could provide cash directly to AEMO by themselves. Providing cash will also allow participants to flexibly respond to changes in their MCL in a more timely manner. Flexibility will also increase for AEMO, who will be able to draw on any cash provided as credit support without needing to contact and arrange for a lender to pay out at short notice.²¹

The majority of stakeholder submissions to the draft determination supported allowing cash as credit support and increasing flexibility in the credit support arrangements.²²

2.3.2 The final rule will promote predictable and stable credit support arrangements

The final rule will expand the credit support options that participants can use to meet their prudential requirements by allowing participants to provide cash in addition to bank guarantees. By making corresponding changes to the NER, this offers predictability and stability to participants in what options for credit support they can provide to AEMO.

The stability of participants in being able to meet their prudential requirements will likely increase, as participants will have greater optionality and flexibility to ensure that they can provide credit support as required and avoid risks of failing to provide credit support.

We acknowledge that there is a degree of uncertainty associated with clawback and insolvency-related risks of the final rule. However, we consider that the layers of protection in the final rule will sufficiently maintain stability in the strength of the prudential framework.

2.3.3 The final rule will not materially impact emissions reductions

We consider that the final rule will not have a material impact on emissions reductions and that the benefits from the final rule will outweigh any impacts on emissions reductions. We have sought to address the broader point raised in the rule change request that there are benefits in

¹⁹ The consultation paper for this project can be found [here](#).

²⁰ See clause 3.3.2(b) of the current NER.

²¹ If a lender is delayed in paying the credit support to AEMO, this could lead to a shortfall in payments to participants until AEMO is able to distribute payments to participants.

²² Submissions to the draft determination: AEMO, p.1; AFMA, p.1; AGL, p.1; Alinta Energy, p.1; Essential Energy, p.1; EUAA, p.2; GloBird Energy, p.1; Origin Energy, p.1; ZEN Energy, p.2.

having more flexibility in credit support arrangements, which will enable potential reductions in costs and risks for participants.

However, it is worth considering that maintaining the current arrangements could potentially, in theory, lead to some potential emissions reductions in respect of the proponent, Delta Electricity. This is because the proponent stated in its rule change request that they have not been able to obtain and provide credit support from the end of 2024 under the existing arrangements, which could potentially lead to their suspension from the NEM if it is required to provide credit support. Since the proponent operates the 1320MW coal-fired Vales Point power station, a suspension on their generation activities could lead to emissions reductions.²³

We consider the counterfactual for assessing the impact on emissions is complex and uncertain, as there are multiple factors and dependencies that could affect outcomes. For example, AEMO has discretion under clause 3.15.21 (default procedure) of the NER in suspending participants when they are in default to AEMO. Of particular note, AEMO has flexibility to suspend participants from specific registration categories, such as suspending a participant from being a retailer but not suspending them in relation to being a generator. AEMO has not indicated what decision it might make if the proponent were required but unable to provide credit support, however it is worth noting that AEMO has statutory obligations to maintain power system security and promote the effectiveness of the NEM. Regardless, even if the proponent's generation activities were suspended, potential emissions reductions may be immaterial. For example, other thermal plants may need to increase output for demand to be met, or Vales Point power station may only be non-operational for a short period if it is acquired by another party (or a government) for operation and/or to maintain reliability.

This discussion could be generalised for possible future issues for other fossil-fuel exposed participants in obtaining credit support. While there are multiple dependencies and uncertainties in potential outcomes under the existing arrangements, we consider that the final rule will likely not have a material impact on emissions reductions. We have also weighed any impact on emissions reductions from amending the credit support arrangements against key benefits such as lowering costs to consumers and ensuring reliability, which we consider will deliver broader benefits and net positive outcomes.

In response to the draft determination, EUAA considered that the draft rule would not have negative impacts on emissions, as there is no indication that the life of Vales Point power station would be extended as a result and/or other thermal generation would be needed if the proponent were suspended due to not providing credit support.²⁴ As discussed above, we consider that the final rule will not have a material impact on emissions reductions.

2.3.4 The final rule will maintain safety, security and reliability

We consider that the final rule will maintain safety, security and reliability.

There is a potential risk under the current arrangements that the proponent and their generation operations could be suspended from the market by AEMO if they are unable to provide credit support. This could have implications on safety, security and reliability in the NEM. However, similar to the discussion above on emissions reductions, suspension of generation operations might not occur or be long-lasting.

²³ The current expected closure year for Vales Point is 2033, which can be found on AEMO's Generation Information webpage [here](#).

²⁴ Submission to the draft determination: EUAA, p.1.

Nonetheless, the final rule will allow the proponent, or any other participant in similar circumstances, to provide cash as credit support. This will ensure that safety, security and reliability will be maintained as participants could avoid potential suspension from not meeting prudential requirements.

In response to the draft determination, EUAA expressed concerns about serious risks to the short and long term stable supply of electricity if the draft rule did not proceed.²⁵ EUAA considered that these risks outweigh the clawback and insolvency-related risks to AEMO from allowing cash as credit support.²⁶ As discussed above, we consider that there could be potential risks to safety, security, and reliability if the status quo is maintained, however this is unclear and such risks may not materialise.

²⁵ Submission to the draft determination: EUAA, p.1.

²⁶ Ibid.

3 The final rule will improve credit support arrangements in the NEM

The final rule will increase optionality and flexibility in the credit support arrangements for the NEM by allowing participants to provide cash as credit support. We consider that this will deliver material benefits for participants, through addressing issues raised by the proponent and stakeholders and reducing costs and risks in providing credit support. We acknowledge the potential risks from clawback and insolvency-related risks, however we consider that the final rule sufficiently reduces and manages these risks such that net benefits will be delivered.

This chapter outlines the key benefits and risks associated with the final rule.

3.1 The final rule will increase credit support optionality and flexibility

We consider that increasing the optionality and flexibility for participants to meet their prudential requirements by allowing cash as credit support will lead to net benefits. The key benefits are:

- **reduced costs:** participants will be able to provide credit support using the least cost option available to them
- **reduced risks of failing to provide credit support:** participants can use cash if they are unable to obtain other forms of credit support or need to provide credit support on short notice.

In response to the draft determination, the majority of stakeholders supported allowing cash as credit support and considered that the increased optionality and flexibility will deliver benefits for participants.²⁷

3.1.1 Increasing optionality will allow participants to provide credit support at least cost

Participants are currently required to obtain a bank guarantee or letter of credit for credit support, and are accordingly charged fees by the credit support provider. By allowing participants to provide cash as credit support, the final rule will enable potential cost reductions for many participants by avoiding costs associated with obtaining credit support from a credit support provider.

The materiality of these cost reductions will vary between participants depending on their required amount of credit support and their current arrangements. This means that there may be no potential cost reductions from using cash credit support for some participants, but material and meaningful cost reductions for other participants (such as small and prospective retailers).

We expect the aggregate cost reductions across all participants in the NEM is likely to be material. These cost reductions will lead to reduced operating costs for retailers and reduced barriers to entry. In turn, this will support increased investment in service innovation, expanded offerings for consumers, a more competitive retail market and lower prices for consumers, all contributing to benefits for consumers.

Cost reductions will likely be more material for small and prospective retailers

We consider that potential cost reductions from allowing cash as credit support will be more material for small and prospective retailers, as they typically have higher financing costs and lower access to capital relative to larger retailers. Smaller retailers play a critical role in driving

²⁷ Submissions to the draft determination: AEMO, p.1; AFMA, p.1; AGL, p.1; Essential Energy, p.1; EUAA, p.1; GloBird Energy, p.1; Origin Energy, p.1; SA Water, p.1; ZEN Energy, p.2.

competition and value for consumers in the NEM, and may face different costs, risks, and pressures compared to other participants. This increases the relative importance of benefits for small retailers from improvements to the credit support arrangements.

The materiality of impacts for small retailers is further highlighted by the ability for participants to use reallocations to manage their net position and reduce their credit support obligations, and hence reduce their costs of credit support. Reallocation instruments allow two participants to request AEMO to make matching debits and credits and reflect their net positions in settlement. This can reflect effects of vertical integration or off-market hedge contracts (such as cap and swap contracts). For small non-vertically-integrated retailers, reallocations are typically more costly or difficult to access, thereby meaning reductions in credit support costs are likely to be more impactful for small retailers.²⁸

3.1.2 Increased flexibility will reduce risks of participants failing to provide credit support

There are risks to participants under the current credit support arrangements due to the reliance on obtaining credit support from a third-party to provide credit support to AEMO. If a participant is unable to obtain credit support or respond at short notice to changes in their MCL, a default event could be triggered in relation to that participant. This could lead to their suspension from the market, with potential broader impacts if a participant's retail customers are transferred to a new retailer under the Retailer of Last Resort (RoLR) scheme or if a participant is no longer able to operate generation or storage assets.

The final rule will increase the flexibility for participants to provide credit support and meet their prudential requirements available to participants by allowing them to provide cash as credit support. Allowing cash will enable participants to provide credit support without needing to seek and obtain credit support from a credit support provider, in addition to reducing the time to process and provide credit support to AEMO. This additional flexibility will reduce risks to participants of failing to provide credit support when required.

We note that the final rule does not allow surety bonds as credit support, which could have further increased flexibility for participants to provide credit support if allowed. However, this benefit would likely be low based on stakeholder interest in using surety bonds for credit support, and may be outweighed by various risks and costs. We also note that, by allowing cash as credit support, the final rule will materially increase flexibility in the credit support arrangements relative to the status quo. For more information on our decision to not allow surety bonds as credit support, see section 5.1.

Risks of failing to provide credit support due to administrative difficulties and delays will be reduced

Under the current arrangements, we understand that there are risks to participants if they are unable to provide or update their bank guarantee in the required time which could lead to their suspension. Fault could lie with participants as they should ensure they can provide sufficient credit support when needed, however there can also be administrative difficulties or delays in obtaining or updating a guarantee that the participant has no control over. For example, a bank may be delayed or too slow in approving an updated bank guarantee for a participant, which could be due to a range of reasons such as administrative delays or a lengthy approval process.

Therefore, there are risks that participants could be suspended from the market due to factors outside of their control in providing credit support to AEMO. If such scenarios arise, this could lead

²⁸ For further reference, AEMO's submission to the consultation paper for *Shortening the settlement cycle* rule change noted that more than 80% of reallocations are intra-company reallocations and, if only energy inter-company reallocations are considered, smaller retailers make up 20 to 30% of inter-company MWh reallocated.

to the unintended suspension of participants, which will have impacts on their businesses as well as potentially broader impacts on retail competition and long-term costs to consumers.

Allowing participants to provide cash will introduce an option to provide credit support on short notice and without reliance on a third-party. This added flexibility means that participants will be able to avoid risks of triggering a default event from delays in providing or updating credit support.

Risks of fossil-fuel exposed participants failing to provide credit support will be reduced

In the rule change request, the proponent claimed that they have been unable to obtain new credit support arrangements due to the ESG constraints of lenders.²⁹ We consider that the impact of ESG policies on the ability for NEM participants to obtain credit support from lenders is highly uncertain, both in the current environment and into the future. A potential indicator for future impacts could be lender ESG policies and any corresponding emissions reductions targets. However, ESG policies vary between lenders and can be altered. Combined with ESG considerations likely being only one consideration in lender decisions to offer finance, this means that it is difficult to predict the potential future impacts of ESG policies on the ability for NEM participants to obtain bank guarantees.

Nonetheless, we consider that it is prudent to allow all participants, including participants affected by ESG constraints, to provide credit support and appropriately meet prudential requirements. While it may be viewed that the inability for a participant to obtain credit support from a lender corresponds to increased risk of their default, we note that other arrangements exist beyond acceptable forms of credit support to limit default and credit risks to the market.³⁰

Allowing participants to provide cash as credit support will allow participants who cannot obtain credit support from lenders to meet their prudential requirements. This reduces risks to such participants of failing to provide credit support when required. It is worth noting that our final rule includes a limit on the amount of cash each participant can provide as credit support, which is intended to manage potential clawback risks and costs. Participants who are unable to obtain credit support from lenders will need to operate with this limit in mind.

3.2 Risks and costs associated with the final rule will be managed

While the final rule will deliver benefits, there are several associated risks and costs:

- potential clawback and insolvency-related risks from the use of cash as credit support
- implementation and ongoing costs to AEMO.

The Commission has assessed these potential risks and costs and has sought to minimise them where practicable with this final determination. By managing these risks in the final rule, we consider that risks and costs are likely to be low and will be outweighed by the benefits discussed in section 3.1.

This section discusses the potential risks and costs from the final rule. For information on how the final rule seeks to mitigate and address clawback, see section 4.1.2.

²⁹ Delta Electricity, Rule Change Proposal - Allowing AEMO to accept cash as credit support, 17 October 2024, p.2.

³⁰ For example, the requirement for participants to provide a minimum amount of credit support serves to manage risks to the market by ensuring AEMO has access to funds in the event of short payments. Furthermore, retailers are required to obtain a retailer authorisation from the AER, in which the AER assesses the organisational, technical, and financial capacity for an organisation to operate as a retailer. The AER's Retailer Authorisation Guideline can be found [here](#).

3.2.1 Clawback and insolvency-related risks are reduced and managed

By allowing cash as credit support, there are new risks in the NEM where a market participant becomes insolvent and cash used as credit support is attempted to be clawed back by a liquidator. In effect, cash used as credit support could need to be provided to a liquidator, leaving a shortfall in the NEM (which AEMO would bear under the existing arrangements) that the cash credit support was supposed to address.

While these risks cannot be quantified to high degrees of uncertainty, we consider that the probabilities and impacts of a clawback under the final rule will be low. This is due to the certain circumstances that would need to arise for a clawback to occur, the protection provided by the NEM displacement provisions, in addition to the layers of protection in the final rule that seek to reduce the potential for, and impact of, a clawback.

Cash used as credit support could be clawed back if a participant becomes insolvent

There is a potential, albeit low, risk that the provision and use of cash credit support could constitute an unfair preference. This arises if the provision of cash credit support, and/or the use of it by AEMO, results in AEMO receiving from the participant, in respect of an unsecured debt that the participant owed to AEMO, more than AEMO would receive if the transaction were set aside and AEMO were to prove for the debt in the winding up of the market participant, and no relevant defence applies.³¹

Broadly, section 588FE of the Corporations Act is that, unless certain conditions are satisfied, a transaction that is an unfair preference may be set aside or modified (i.e. subject to claw-back) if, at the time of entering into a transaction the participant was insolvent or it became insolvent because of the transaction and the transaction occurred during the suspect period.³²

For example, in the context of defences, a court could not make an order in respect of an unfair preference which materially prejudices a right or interest of a person if (amongst other requirements) at the time when the person became a party to the transaction if:

- the person had no reasonable grounds for suspecting that the participant was insolvent (in the sense that the participant was unable to pay all its debts as and when they become due and payable) or would become insolvent if it entered into the transaction, and
- a reasonable person in their circumstances would have had no grounds for suspecting so.

Due to its role in the operation and settlement of the NEM, it is possible that AEMO may have knowledge that a market participant is having financial difficulties. This could make it harder to rely on this defence.

Clawbacks can also take place for other reasons, such other voidable transactions such as uncommercial transactions. This could result in the cash being at risk of being clawed back from AEMO.

Stakeholders support addressing clawback and insolvency-related risks

In our draft determination, we proposed to introduce multiple layers of protection that sought to mitigate and manage clawback and insolvency-related risks. We sought stakeholder input on the suitability of these layers of protection and whether they might sufficiently manage risks such that allowing cash as credit support would deliver net benefits.

³¹ Put simply, if AEMO uses cash credit support provided by a participant that becomes insolvent, and a Court held that the defences and protections under the NER and NEL did not apply, that cash could potentially be clawed back. However, the outcome of this is subject to multiple considerations.

³² *Corporations Act 2001* (Cth), sections 588FA, 588FC and 588FE(2). Generally, being in respect of an administration of liquidation, 6 months prior to the commencement of the administration or liquidation.

In response to the draft determination, multiple stakeholders considered that the layers of protection were reasonable and sufficient at reducing and managing clawback and insolvency-related risks.³³ AEMO's submission noted that:³⁴

AEMO acknowledges the significant work in the draft rule to reduce the impact of the associated clawback risk. As such, the flexibility and efficiency benefits can be realised without materially affecting the ability to meet the framework's key objectives.

AGL supported the proposed measures to address clawback risk, but considered that allowing cash as credit support will ultimately increase the risk profile of the prudential framework.³⁵ Origin Energy considered that the effectiveness of the proposed measures is unclear.³⁶

We consider that the layers of protection are likely to materially reduce potential clawback and insolvency-related risks. While we acknowledge that there might be some small residual risk from allowing cash as credit support (absent an appropriate amendment to the NEL), it is likely to be immaterial such that the strength of the prudential framework is maintained.

Therefore, consistent with our draft determination, our final rule includes layers of protection to mitigate and manage clawback risks, including:

- seeking to clarify that the whole default procedure (clause 3.15.21 of the NER), including the provision and use of cash credit support, will fall within the Corporations Act displacement provisions in the NEL
- granting AEMO a first ranking charge, return rights and set off rights over cash provided as credit support
- limiting the amount of cash each participant can provide as credit support to \$20 million, in turn limiting the maximum size of a clawback in respect of a single participant
- participants receiving payments from AEMO (typically generators) bearing any clawback costs, avoiding any exposure to AEMO and reducing risks of contagion.

It is worth noting that the level of residual risk is higher under the final rule compared to the draft rule. This is because the cash limit has been increased from \$5m in the draft rule to \$20m in the final rule. We made this decision based on stakeholder feedback on the value of the limit, such that we consider any increase in risk will likely be outweighed by an increase in benefits. We also consider that the other layers of protection will be sufficient at reducing risks holistically to maintain the strength of the prudential framework.

While we consider that these layers of protection will be effective, we also acknowledge that absolute certainty on the elimination of clawback and insolvency-related risks could be obtained through an appropriate amendment to the existing Corporations Act displacement provisions in the NEL. Since NEL amendments are not within the remit of the AEMC and stakeholders supported an appropriate NEL amendment, we recommend Energy Ministers approve appropriate amendments to the NEL.

For more information on the layers of protection in the final rule to reduce and manage clawback risks, see section 4.1.2.

33 Submissions to the draft determination: AEMO, p.2; Delta Electricity, p.3; Essential Energy, p.1; GloBird Energy, p.1.

34 Submission to the draft determination: AEMO, p.1.

35 Submission to the draft determination: AGL, pp.2-3.

36 Submission to the draft determination: Origin Energy, p.1.

3.2.2 Implementation and ongoing costs are likely to be low

In the draft determination, we considered that implementation and ongoing costs of the draft rule would likely be low and be materially outweighed by the benefits of increased flexibility and optionality in the credit support arrangements.

AEMO published a draft High Level Implementation Assessment (HLIA) on 8 May 2025, with an updated version published on 3 June 2025.³⁷ AEMO's indicative assessment for allowing cash as credit support was that implementation impacts would be low, with the exception of system impacts that would be medium due to changes to the prudentials, billing, and markets portal systems.³⁸

Figure 3.1: AEMO indicative assessment of implementation impacts - cash credit support

People	Process and procedures	System
Low	Low	Medium
<ul style="list-style-type: none"> Increased volume of interactions between participant and AEMO 	<ul style="list-style-type: none"> New process for receipt and repayment of cash securities Cash security guidelines 	<ul style="list-style-type: none"> Updates to systems to include cash security in trading positions Changes to manage interest payments Changes to billing systems for the repayment of cash May require new functionality and new workflows, leveraging existing market system

Source: AEMO, Cash security draft HLIA stakeholder forum, 9 May 2025

Note that AEMO's draft HLIA did not assess in detail implementation considerations from allowing surety bonds or expanding credit support provider requirements, which were proposed in the draft rule. This means that AEMO's draft HLIA remains largely relevant in relation to the final rule.

Based on AEMO's draft HLIA and the changes from draft rule to final rule, we expect implementation and ongoing costs from the final rule to be low for AEMO and participants. We expect that implementation costs will primarily be for AEMO to update the necessary systems and procedures. As such, it is highly likely that implementation and ongoing costs of the final rule will be materially outweighed by the benefits discussed in section 3.1.

AEMO's draft HLIA has also informed our determination for the final rule to commence on 1 November 2026. While implementation impacts are likely to be low in general, AEMO will need time to develop, consult (where appropriate), and test any changes before implementation. AEMO cannot implement the changes required any earlier than this date, since this will need to be done in parallel to the implementation of multiple other major reforms. The draft rule proposed to commence on 9 August 2026, however the final rule has a later commencement date to account for these implementation considerations raised by AEMO. For more information on the commencement of the final rule, see section 4.3.

³⁷ AEMO's HLIA can be found [here](#).

³⁸ AEMO, Cash as Credit Support Draft High Level Implementation Analysis (HLIA) v0.2, June 2025, p.10.

3.3 Enabling a more timely distribution of delayed credit support payments

The final rule will introduce a new mechanism to allow AEMO to distribute any credit support, received after the cut-off for the funds on the settlement day, through the routine revised settlement process.³⁹ Without this new mechanism, any delayed credit support payments are distributed to any short-paid participants at the next EOFY, imposing costs on any short-paid participants for up to 12 months. The mechanism brings this forward such that short-paid participants are paid any late credit support funds (typically) 25 business days after they were originally due payment. The operation of the new mechanism is outlined in more detail in section 4.2.

The mechanism was proposed in the draft rule to address a risk of temporary short-payment from the use of surety bonds as credit support, which may not pay out in time to avoid a settlement shortfall on the day of settlement. Compared to the draft rule, this risk does not increase as the final rule does not allow surety bonds as credit support. However, this risk already exists in the current arrangements if a credit support provider (e.g. a bank) does not pay out in time for AEMO to complete the settlement run without short payment. Under the current arrangements, this would result in participants being short-paid until EOFY. Enabling a more timely distribution of delayed credit support payments addresses this risk in the prudential framework.

³⁹ When the *Shortening the settlement cycle* rule commences on 9 August 2026, there will be a new routine revision at 20 business days following the end of a billing period.

4 How the final rule will operate

We have made a more preferable final rule to improve credit support arrangements in the NEM. As discussed in chapter 3, we consider that the final rule will address issues raised by the proponent and stakeholders by increasing optionality and flexibility for participants in providing credit support.

This chapter outlines how the final rule will operate, by:

- allowing participants to each provide up to \$20 million of cash as credit support (section 4.1)
- enabling delayed credit support payments to be distributed to participants in a more timely manner (section 4.2)
- commencing on 1 November 2026 (section 4.3).

4.1 The final rule will allow cash to be used as credit support

Box 1: Participants will be allowed to use cash as credit support

The final rule will allow participants to use cash as credit support in the NEM, which will allow participants to reduce credit support costs and risks of failing to provide credit support. To reduce and manage clawback and insolvency-related risks associated with allowing cash as credit support, there are several layers of protection:

- seeking to clarify that the whole default procedure in the NER, including the provision and use of cash credit support, will fall within the Corporations Act displacement provisions in the NEL
- granting AEMO a first ranking charge, return rights and set off rights over cash provided as credit support
- limiting the amount of cash each participant can provide as credit support to \$20 million
- participants receiving payments from AEMO (typically generators) bearing any clawback costs.

The final rule will allow participants to provide cash as credit support to meet their prudential requirements. This will enable participants to provide credit support directly to AEMO without relying on a third-party credit support provider.

The final rule also includes provisions to mitigate and manage clawback and insolvency-related risks. These provisions, which include a \$20m limit on the amount of cash credit support each participant can provide, are described in section 4.1.2.

Aspects of the final rule relating to allowing cash as credit support remain largely unchanged from the draft determination. Key changes from the draft determination are:

- increasing the limit on the amount of cash credit support each participant can provide from \$5m to \$20m
- requiring AEMO, instead of the AEMC, to calculate and publish the indexed cash limit on its website each year
- minor amendments to the rules drafting to improve clarity and functionality.

4.1.1 Market participants will be allowed to provide cash as credit support

The final rule will allow participants to provide cash as credit support to AEMO.⁴⁰ As with other forms of credit support, cash provided as credit support will contribute to participant obligations to provide credit support that is greater than or equal to their current and individual MCL. Participants can provide multiple forms of credit support to meet their obligations, both under the existing arrangements and under the final rule. For example, a participant could provide a combination of cash and bank guarantees that, in aggregate, is not less than their MCL to comply with their prudential requirements.

The existing arrangements require participants who do not meet the acceptable credit criteria to obtain credit support from an entity that does meet those criteria and is not a market participant.⁴¹ However, under the final rule, all participants will be allowed to provide cash for their credit support obligations. Participants will not be allowed to provide cash as credit support on behalf of another participant.

AEMO will be required to publish a guideline to outline the processes and procedures for providing cash as credit support. Furthermore, AEMO will be able to set conditions regarding the use of cash, which should be included in its guidelines.⁴² We consider that this will provide AEMO with the ability to manage any operational issues and/or allow them to flexibly manage risks. For example, AEMO may impose requirements on requests for repayment/return of cash credit support to a participant. We expect AEMO to clearly communicate with stakeholders on any conditions and corresponding reasons.

AEMO must pay interest on cash provided as credit support, less any liabilities or expenses incurred by AEMO for processing or managing the cash.⁴³

Cash provided to AEMO as credit support will be managed as a Rule Fund.⁴⁴ This will combine and store cash provided as credit support in a single fund, will ensure individual accounting for each participant, and allow interest and administrative costs to be effectively managed. Managing cash credit support in this manner is similar to the management of cash security deposits provided in response to call notices.⁴⁵

The final rule also includes layers of protection against clawback and insolvency-related risks, associated with allowing cash as credit support. See section 4.1.2 for discussion on these protections.

Stakeholders supported allowing cash as credit support

In response to the draft determination, the majority of stakeholders supported allowing cash as credit support and considered that the increased optionality and flexibility will deliver benefits for participants.⁴⁶ AEMO considered that:⁴⁷

⁴⁰ See clause 3.3.2 of the final rule.

⁴¹ The acceptable credit criteria are outlined clause 3.3.2 of the NER.

⁴² See clause 3.3.2A(c) of the final rule.

⁴³ Note that the final rule does not specify the interest rate. Similar to the treatment of interest on security deposits provided to AEMO, participants will receive any actual interest (or other income) earned on their cash provided to AEMO, less any liabilities or expenses. See clause 3.3.13B(c) in the final rule.

⁴⁴ See clause 1.11 of the final rule.

⁴⁵ Refer to rule 1.11 of the NER, which defines the security deposit fund used to manage security deposits (cash) provided by participants in response to call notices.

⁴⁶ Submissions to the draft determination: AEMO, p.1; AFMA, p.1; AGL, p.1; Essential Energy, p.1; EUAA, p.1; GloBird Energy, p.1; Origin Energy, p.1; SA Water, p.1; ZEN Energy, p.2.

⁴⁷ Submission to the draft determination: AEMO, p.1.

Allowing the use of cash as credit support represents a pragmatic enhancement to the prudential framework, offering market participants greater flexibility and operational efficiency. AEMO acknowledges the significant work in the draft rule to reduce the impact of the associated clawback risk. As such, the flexibility and efficiency benefits can be realised without materially affecting the ability to meet the framework's key objectives.

We agree with stakeholders that allowing cash as credit support will increase optionality and flexibility for participants providing credit support. This will deliver benefits from reduced costs and risks, as discussed in section 3.1.

Other stakeholder feedback on specific aspects of the draft determination are discussed where appropriate in the below sections.

We made several minor changes to improve the operation of the final rule

In making this determination to accept cash as credit support, we made several changes to improve the clarity and functionality of the final rule. Predominantly, these are minor wording and phrasing changes that do not have a material (if any) impact on the operation of the final rule. We have also made some minor changes to improve the operation of the final rule:

- interest earned on cash credit support to be paid to participants on a weekly basis (instead of an annual basis)
- AEMO must make payments at least 2 business days (instead of 1 day) prior to issuing routine revised statements for them to be distributed to participants.

We consider that these changes will facilitate the effective and practical operation of the final rule and will not have any material impact on participants.

In response to the draft determination, AEMO provided feedback on the draft rule to ensure the rule drafting is clear, consistent, and facilitates the efficient implementation of the policy intent.⁴⁸

We also made several changes to the limit on the amount of cash each participant can provide. This is discussed below in section 4.1.2.

4.1.2 The final rule reduces and manages clawback and insolvency-related risks

Allowing cash to be used as credit support could increase clawback and insolvency-related risks to the market, where a market participant becomes insolvent and cash used as credit support is clawed back by a liquidator. These risks are described in section 3.2.

In making this final determination, the Commission has considered, and sought to address these, risks. While these risks cannot be eliminated through this rule change, we consider that they can be mitigated and managed such that the final rule will deliver net benefits. To achieve this, the final rule includes multiple layers of protection to mitigate risks, including:

- seeking to clarify that the whole default procedure (clause 3.15.21 of the NER), including the provision and use of cash credit support, will fall within the Corporations Act displacement provisions in the NEL
- granting AEMO a first ranking charge, return rights and set off rights over cash provided as credit support
- limiting the amount of cash each participant can provide as credit support to \$20 million, in turn limiting the maximum size of a clawback in respect of a single participant

⁴⁸ Submission to the draft determination: AEMO, pp.7-8.

- participants receiving payments from AEMO (typically generators) bearing any clawback costs, avoiding any exposure to AEMO and reducing risks of contagion.

These layers of protection were proposed in the draft determination, with the only change for the final rule being to increase the cash limit from \$5m to \$20m.

This section provides more detail on each layer of protection, along with stakeholder views on individual protections. See appendix C for information on the range of options considered to mitigate clawback and insolvency-related risks.

Corporations Act displacement

The Corporations Act contains the insolvency regime, including the clawback provisions related to unfair preferences. The Corporations Act can be expressly displaced, such that these provisions do not apply, in a law of a State or Territory in certain circumstances.

The NEL Regulations currently provide for a displacement of the Corporations Act for clause 3.15.21 (default procedure). This regulation was made under section 10A of the NEL which provides that the NEL Regulations may declare provisions of the Rules that relate to any of the following:

- the application by AEMO of money in any security deposit fund
- the functions of AEMO under procedures relating to defaults by retailers.

The final rule includes amendments to aspects of the NER that include the default procedure to provide for set off arrangements (discussed below) as part of the default procedures.⁴⁹

Additionally, the final rule inserts a note in clause 3.15.21 of the NER that is intended to clarify that the provision of credit support by a participant to AEMO is for the purposes of AEMO exercising its functions under the default procedures. These are intended to get the benefit of the existing Corporations legislation displacement provision.

Where an amendment is made to a provision that is subject to a Corporations Act displacement provision, there is a requirement under the Corporations Act that the amendment is not material. For an amendment to not be material, it must not materially reduce the range of persons, acts, and circumstances to which the Corporations Act would otherwise apply.⁵⁰ We consider that the final rule does not change the market participants to whom the default procedures apply to and are not material changes as they are within the scope of the existing default procedures (including set off for security deposits and the use of credit support).

Overall, we consider that the final rule will clarify that the whole default procedure (clause 3.15.21 of the NER) will fall within the displacement provisions in the NEL, and reduce clawback and insolvency-related risks associated with the provision and use of cash credit support.

However, we consider that greater certainty could be obtained through an appropriate amendment to the NEL to eliminate such risks arising from Chapter 5 of the Corporations Act.⁵¹ For example, the NEL could specify that rules relating to cash provided as credit support are Corporations legislation displacement provisions. The AEMC does not have powers to amend the NEL and any amendment would need to be endorsed and implemented by Energy Ministers. As such, we recommend to Energy Ministers that the NEL be amended to eliminate clawback and insolvency-related risks.

⁴⁹ See clause 3.15.21(b) of the final rule.

⁵⁰ See section 5G(17) of the Corporations Act.

⁵¹ For example, an appropriate amendment could expressly specify that the cash credit support rules are Corporations legislation displacement provisions.

First ranking charge

The final rule seeks to ensure that the rights of the participant to the return of any monies in the cash security fund are subject to a first ranking charge in favour of AEMO securing payment of any money actually or contingently owing by the participant to AEMO.⁵² The final rule also provides that any cash security provided to AEMO as credit support must not be, and must not become, subject to any security interest, trust or other proprietary interest other than in favour of AEMO.⁵³

While there are issues with relying solely on security, the inclusion of the charge is likely to be incrementally beneficial and will not adversely affect the set-off rights afforded to AEMO. AEMO may elect to register this charge on the PPSR, but the intention is the set off rights are its primary mechanism and protection.⁵⁴

Return rights

The final rule includes provisions that AEMO must return the cash credit support, subject to any liabilities and expenses, to the market participant if:⁵⁵

- it ceases, or intends to cease, being a market participant, and the market participant has paid all money owing to AEMO, and
- AEMO reasonably considers that the participant will not owe any money to AEMO in the future.

If an administrator or restructuring practitioner claimed a lien over the cash credit support, or another person claimed a security interest, trust or other proprietary interest in it, the final rule is intended to have the effect that they should not be able to recover any cash credit support until the above has occurred.

The participant may also request the return of cash as long as AEMO will maintain credit support that, in aggregate, is no less than the participant's MCL. For example, a participant could swap out cash provided as credit support for a bank guarantee. We note that AEMO may impose further conditions or requirements for the return of cash credit support, through the cash security guidelines.

Set off rights

Cash provided as credit support will be held by AEMO in a specific Rule Fund. The final rule makes amendments so that, if a default event occurs in relation to the participant, AEMO may set off:⁵⁶

- any amount owing by AEMO to the participant in respect of the return to that participant of monies in the cash security fund, against
- any amounts actually or contingently owing by the participant to AEMO pursuant to the NER.

The set off right provides more robust protections against clawback risk than registering a security interest under the PPSR, particularly where it gets the benefit of the Corporations Act displacement provision.

Having a set off arrangement also attracts the operation of section 553C(1) of the Corporations Act which provides for the automatic set-off of mutual credits, mutual debts and other mutual dealings with an insolvent company that is being wound up (provided there is no notice of insolvency).

⁵² See clause 3.3.2A(e) of the final rule.

⁵³ See clause 3.3.2A(d) of the final rule.

⁵⁴ Set-off rights themselves should not be a security interest to which the PPSA applies. It is a more complex question whether a charge will need to be registered under the PPSA where created under the Rules in this case. See discussion in appendix C.

⁵⁵ See clause 3.3.13B of the final rule.

⁵⁶ See clause 3.15.21(b) of the final rule.

Cost allocation to participants receiving net payments

While the aforementioned layers of protection seek to reduce the likelihood of a clawback, there remains a non-zero risk for a clawback to occur. If a clawback were to occur, AEMO would bear the costs under the existing arrangements since they have no mechanism to recover costs.

We consider this is not appropriate and that AEMO should not be exposed to clawback risks and costs. As noted by AEMO:⁵⁷

In the absence of a legislated solution to fully remove clawback risk, any NER change allowing for cash as credit support will need a clear mechanism for AEMO to fully recover any related liabilities if they are incurred, at the time they are incurred. As the independent non-profit market operator who facilitates the settlement and prudentials framework on behalf of market participants, exposure to potentially significant unfunded liabilities presents a serious threat to AEMO's solvency and the ongoing orderly operation of energy systems and markets.

As such, our final rule utilises the existing mechanism in clause 3.15.22 of the NER that distributes settlement shortfalls among participants.⁵⁸

When AEMO is required to make payments in relation to a clawback of cash used as credit support, it can recover that amount from participants in the current billing period. The amount will be recovered on a pro-rata basis from participants who are receiving net payments (typically generators) from AEMO. Mathematically, a participant receiving payment from AEMO during a billing period will receive a reduced payment from a clawback equal to:

$$\$_{\text{participant received}} = \$_{\text{participant due}} \times \frac{\$_{\text{total NEM received}} - \$_{\text{clawback cost}}}{\$_{\text{total NEM due}}}$$

This mechanism, which remains as proposed in the draft determination, will allow AEMO to recover any clawback costs in a timely manner using processes that are simple, effective, and familiar. We expect that this will reduce uncertainty and complexity in the outcomes for participants in the event of a clawback, while allowing AEMO to avoid financial exposure from clawback and insolvency-related risks.

Several stakeholder submissions to the draft determination provided feedback on the allocation of clawback costs:

- AGL considered the risk of clawbacks should not be arbitrarily allocated to generators, who already bear a risk providing electricity to the market on credit. Noting that the beneficiaries of this rule change are primarily small retailers, AGL considered more equitable options to distribute clawback risk should be explored.⁵⁹
- Delta Electricity suggested consideration of backdating clawback costs for a more equitable distribution of clawback risk, where costs are spread proportionally across participants based on the billing period in which the default occurred.⁶⁰

57 Submission to the consultation paper: AEMO, p.1.

58 In clause 3.15.22 (maximum total payment in respect of a billing period) of the NER, if there are insufficient received funds for AEMO to pay generators in a billing period, the generators receive payments that are reduced proportional to the settlement shortfall.

59 Submission to the draft determination: AGL, p.4.

60 Submission to the draft determination: Delta Electricity, p.3.

- GloBird Energy suggested charging an ongoing fee from participants providing cash as credit support, which could be accumulated in a funding pool and used towards future retailer failures and cost recovery.⁶¹

We recognise that this cost allocation does not place the risks of a clawback from the use of cash onto participants that are providing cash as credit support. A framework to allocate risks to participants providing cash would need to be an ex-ante mechanism, likely similar to the mechanism proposed by GloBird Energy. This is because an ex-ante mechanism would allocate risks to all cash providers, including any cash provider that eventually defaults and becomes insolvent.⁶² However, due to the expected low probability of a clawback and large range of potential costs, we consider that any ex-ante mechanism would be inefficient, materially reduce benefits, and/or still have residual risk remaining.

We also consider that generators are better placed than retailers for bearing any losses from clawback costs with the least likelihood for financial contagion. If retailers (or more generally, participants paying amounts to AEMO) were required to bear the costs, they would be required to make additional payments to AEMO during a billing period, which would increase complexity and increase risks for retailers defaulting on that payment or future payments. Due to their role in the NEM, we expect generators to be more capable of bearing and managing any potential clawback costs, thereby lowering risks of financial contagion.

There could be merit in distributing clawback costs among generators based on the billing period in which a default occurs, as opposed to distributing costs based on the billing period when AEMO is required to make payments. However, this would increase complexity for AEMO to recover costs due to the likely long period of time between the initial default and the time in which a clawback occurs.⁶³ Furthermore, given the expected low probability of clawbacks and the presence of the existing settlement shortfall process, we consider that allocating costs as per the final rule to be a simple, effective, and appropriate approach.

\$20m limit on the amount of cash credit support each participant can provide

The final rule will impose a \$20 million limit on the amount of cash each participant can provide as credit support.⁶⁴ We consider that this value of \$20m will balance the benefits of allowing cash against the potential costs of a clawback.

We consider the cash limit of \$20m is needed to prevent participants from providing excessively large amounts of cash as credit support. If a participant provides a large amount of cash credit support, this could potentially lead to large clawback costs on participants. In setting the value of the cash limit at \$20m, we considered a range of potential risks and impacts, such as risks from a single retailer failure and clawback, multiple coincident retailer failures and clawbacks, and financial contagion.⁶⁵

Furthermore, we expect that a \$20m limit will allow most of the benefits of cash credit support to be achieved. Many participants (including small retailers) will not be affected by the \$20m limit

61 Submission to the draft determination: GloBird Energy, p.2.

62 Conversely, any ex-post mechanism to recover clawback costs from cash providers would result in a defaulting participant, who provided cash as credit support that gets clawed back, avoiding costs they create.

63 For example, backdated costs would need to account for the exit of any market participants or could result in a participant due to receive payment from AEMO needing to make a payment to AEMO.

64 See clause 3.3.2A of the final rule.

65 It is worth noting multiple coincident retailer failures could result in multiple clawbacks that result in costs to participants exceeding \$20m in aggregate. While we have not quantified this risk, we have qualitatively assessed it and the potential impacts when determining the \$20m cash limit.

and will be able to provide their entire MCL in cash.⁶⁶ Consequently, benefits for these participants from using cash as credit support will not be reduced or impacted by the limit.

Some participants will not be able to fully rely on cash as credit support if their MCL is greater than \$20m. If this is the case, they could still provide up to \$20m in cash credit support but will be required to utilise another form of credit support to fulfil their prudential requirements. We recognise that this may reduce the potential benefits for such participants, however they should be capable of obtaining other forms of credit support and will still retain the flexibility benefit of being able to provide cash credit support on short notice.⁶⁷

This \$20m cash limit is higher than the proposed \$5m cash limit in the draft determination. Compared to the draft determination, we consider that the additional benefits from a \$20m cash limit will outweigh any potential increased risks and costs. This view is informed using confidential information from AEMO on participants MCLs (anonymised and segmented) that allowed us to consider the magnitude of potential benefits, as well as stakeholder feedback to the draft determination where multiple stakeholders expressed a preference for the cash limit to be increased:

- AFMA, Alinta Energy, Delta Electricity, and GloBird Energy considered that the limit should be increased to \$20m.⁶⁸ These stakeholders considered a \$20m limit would provide a more appropriate balance between ensuring benefits and managing risks compared to the \$5m limit in the draft rule.
 - Delta Electricity supported their view by calculating the net positions of a participant with a generator out of service and a 100MW retail load under certain conditions (length of generator outage and average spot price).⁶⁹
- AEMO considered that the limit would represent a reasonable balance between the benefits for participants providing cash as credit support and the level of risk the market is willing to accept, and that participants are best placed to comment on the value of the limit.⁷⁰
- AGL considered that the \$5m limit is appropriate but should not be set at a higher value than \$5m, as it should be set at the absolute minimum level required as it introduces risk into the prudential framework.⁷¹
- Origin Energy considered a limit higher than \$5m may be warranted, as it is unnecessarily restrictive and should accommodate the credit obligations of larger retailers which find themselves subject to credit support restrictions. However, Origin Energy also noted that a higher limit may increase the size of potential clawbacks.⁷²
- SA Water supported the \$5m limit, but considered there would be additional flexibility benefits by allowing participants to provide additional cash on a short-term basis, reducing long-term risks to the market. For example, participants could provide up to an extra \$5m cash (for a total of \$10m) for a period of no more than 30 days within any three-month period.⁷³

66 This is based on confidential information from AEMO on participant MCLs (anonymised and segmented).

67 For example, participants could provide cash credit support below the \$20m limit, to allow additional cash credit support to be provided if needed.

68 Submission to the draft determination: AFMA, p.1; Alinta Energy, p.1; Delta Electricity, p.1; GloBird Energy, p.1.

69 Submission to the draft determination: Delta Electricity, p.2.

70 Submission to the draft determination: AEMO, p.3.

71 Submission to the draft determination: AGL, p.2.

72 Submission to the draft determination: Origin Energy, p.1.

73 Submission to the draft determination: SA Water, p.1.

Our final rule will index the \$20m limit to the Australian Consumer Price Index (CPI) published by the Australian Bureau of Statistics.⁷⁴ This will be important in maintaining the value of benefits over time in allowing participants to provide cash as credit support.

AEMO will be required to calculate and publish the updated value of the \$20m limit each year on its website. This differs from the draft determination, which proposed for the AEMC to calculate and publish the indexation-adjusted cash limit. We consider that it will be more appropriate to market participants for AEMO (instead of the AEMC) to calculate and publish updated cash limit each year to ensure participants can easily and transparently find the current cash limit alongside other relevant prudential information. AEMO's website is a singular location for participants to find a wide variety of relevant procedures, guides, and information relating to the prudential arrangements in the NEM, including detailed information on how AEMO calculates participant MCLs. We do not expect calculating and publishing the indexation-adjusted cash limit to materially increase administrative burden on AEMO, given the simplicity and annual frequency of calculating and publishing the indexation adjusted cash limit.

4.2 The final rule will enable earlier distribution of shortfall payments

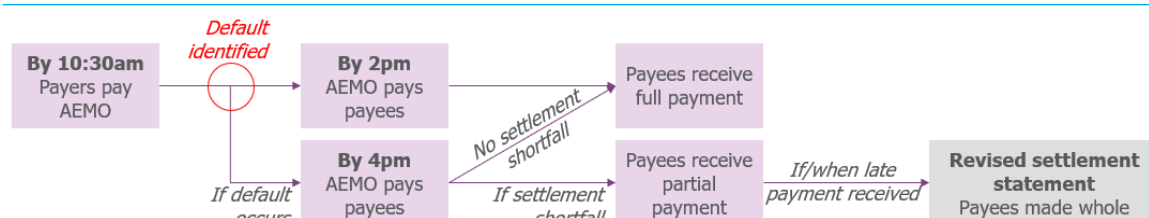
Box 2: The final rule will enable the more timely distribution of shortfall funds received

The final rule will introduce a new mechanism to allow AEMO to distribute any credit support, received after the cut-off for the funds on the settlement day, through the routine revised settlement process.

Under the existing arrangements, the delayed credit support payments are distributed to any short-paid participants at the next EOFY, imposing costs on any short-paid participants for up to 12 months. The new mechanism will bring this forward such that any short-paid participants receive delayed funds in a more timely manner.

The final rule allows AEMO to distribute any delayed credit support payments through the revised settlement statements process.⁷⁵ Delayed credit support payments refers to funds that are received from credit support too late to be paid out in the settlement run during which the credit support was called upon. AEMO's settlements schedule requires credit support to pay out and the settlement run to be completed within a five and a half hour window, as illustrated in Figure 4.1 below.

Figure 4.1: AEMO settlement timeframes with default



⁷⁴ See clause 3.3.2A(f-h) of the final rule.

⁷⁵ See clause 3.15.22A of the final rule.

As this rule commences after the *Shortening the settlement cycle* rule (which commences on 9 August 2027), there are three routine revised statements which AEMO can use to distribute delayed credit support payments to short-paid participants:⁷⁶

- R_0 - issued 20 business days after the end of the relevant billing period
- R_1 - issued approximately 20 weeks after the end of the relevant billing period
- R_2 - issued approximately 30 weeks after the end of the relevant billing period.

Prior to the commencement of this rule, any late credit support will be distributed to short-paid participants at the end of the financial year (EOFY).⁷⁷ We consider that distribution at EOFY can result in unnecessary costs to participants, as they may be short-paid for up to 12 months. Under the new mechanism, short-paid participants will typically only be short for 25 business days, which will materially reduce impacts and costs. This is broken down below:⁷⁸

- final statements are issued 7 business days after the end of the billing period
- final settlement occurs 9 business days after the end of the billing period
 - this is when participants may be short-paid due to delayed credit support payments
- R_0 revised settlement statements are issued 20 business days after the end of the billing period
- R_0 revisions are included in the final statements issued *not less than* 8 business days after the R_0 revised statements (for example, 32 business days after the end of the billing period)
- final statements incorporating any R_0 revisions are paid 2 business days after the final statements are issued (for example, 34 business days after the end of the billing period)
 - this is when any short-paid participants will be paid any delayed credit support payments.

We note that this mechanism was included in the draft determination to ensure a more timely payout of credit support from surety bonds. However, we recognised that distribution of delayed credit support payments at EOFY is a more general issue within the existing arrangements, as it could occur due to (by way of example) the late payment from a bank when AEMO calls upon a bank guarantee. Therefore, we have retained this new mechanism in the final rule to resolve the existing issue, despite not allowing surety bonds as credit support.

Few stakeholders provided feedback on this mechanism in response to the draft determination, with AFMA supporting its inclusion and AEMO considering it to be a beneficial change to the process overall, while questioning whether it could be expanded to cover any type of shortfall.⁷⁹ We consider that there could be value in expanding this mechanism to cover any type of shortfall, however it is beyond the scope of this rule change and would need to be consulted more broadly.

4.3 The final rule will commence on 1 November 2026

Box 3: The final rule will commence on 1 November 2026

Our decision for the final rule to commence on 1 November 2026 has been informed by AEMO's High Level Implementation Analysis, which recommended a commencement date of 1 November

⁷⁶ For more information on *Shortening the settlement cycle*, see the [project page](#).

⁷⁷ See clause 3.15.23 of the NER.

⁷⁸ More information on the timeframes for routine revised statements and settlement can be found in AEMO's [Shortening the settlement cycle high level implementation assessment](#).

⁷⁹ Submissions to the draft determination: AEMO, p.8; AFMA, p.1.

2026. This will provide AEMO with sufficient time to develop and implement necessary system and procedure changes.

AEMO will be required to publish cash security guidelines at least three months prior to the commencement of the final rule. This will provide participants time to understand the guidelines prior to the rule commencement.

The final rule will commence on 1 November 2026. This will provide AEMO with sufficient time to develop and implement necessary system and procedure changes, and has been informed by AEMO's draft HLIA which recommended the final rule commence on 1 November 2026.

This commencement date is later than the draft commencement date of 9 August 2026. Our decision is based on implementation considerations and recommendations from AEMO that it cannot implement the required changes earlier than 1 November 2026, due to other major reforms to be implemented in 2025 and 2026 that affect settlements and prudentials.

The final rule also includes transitional provisions for AEMO to develop and publish cash security guidelines at least three months before 1 November 2026. This will provide participants with three months to understand the cash security guidelines prior to rule commencement.

We note that the rule commencement date of 1 November 2026 will coincide with the final effective date of the *Unlocking CER benefits through flexible trading* rule.

4.3.1 AEMO recommended rule commencement on 1 November 2026

The rule commencement date of 1 November 2026 differs from the draft determination, which proposed for the draft rule to commence on 9 August 2026. Our decision has been informed by implementation analysis from AEMO, who will need to develop and implement various changes to systems and procedures. AEMO recommended the final rule commence on 1 November 2026, as:⁸⁰

- AEMO and industry have a significant amount of delivery congestion in the Settlements and Prudentials area over the next two years, specifically with the "Project Energy Connect", "Improving Security Frameworks for the Energy Transition", "Shortening the Settlement Cycle", and "Integrating Price Responsive Resources into the NEM" projects. This delivery congestion is putting significant pressure on specific AEMO resources over 2025 and 2026
- The commencement date for the Shortening the Settlements Cycle reform is Sunday 9 August 2026, however the implementation also includes an industry transition period that indicatively completes in October 2026. Shortening of the settlement cycle will alter market participants' credit support requirements, as the time period between billing week and settlement is reduced. Moreover, as part of the transition, AEMO will need to facilitate any consequential prudential collateral return which would lead to congestion for key functional resources in that period
- AEMO anticipates limited overlap in procedural updates between Shortening the Settlements Cycle and Cash Security, as outlined in Section 4 [of the draft HLIA]
- Typically, reform implementation projects which require industry consultation take a minimum of 18 months from final determination to rule commencement. This allows for

80 AEMO, Cash as Credit Support Draft High Level Implementation Analysis (HLIA) v0.2, June 2025, p.15.

industry consultation, AEMO and industry development, and industry testing / change management

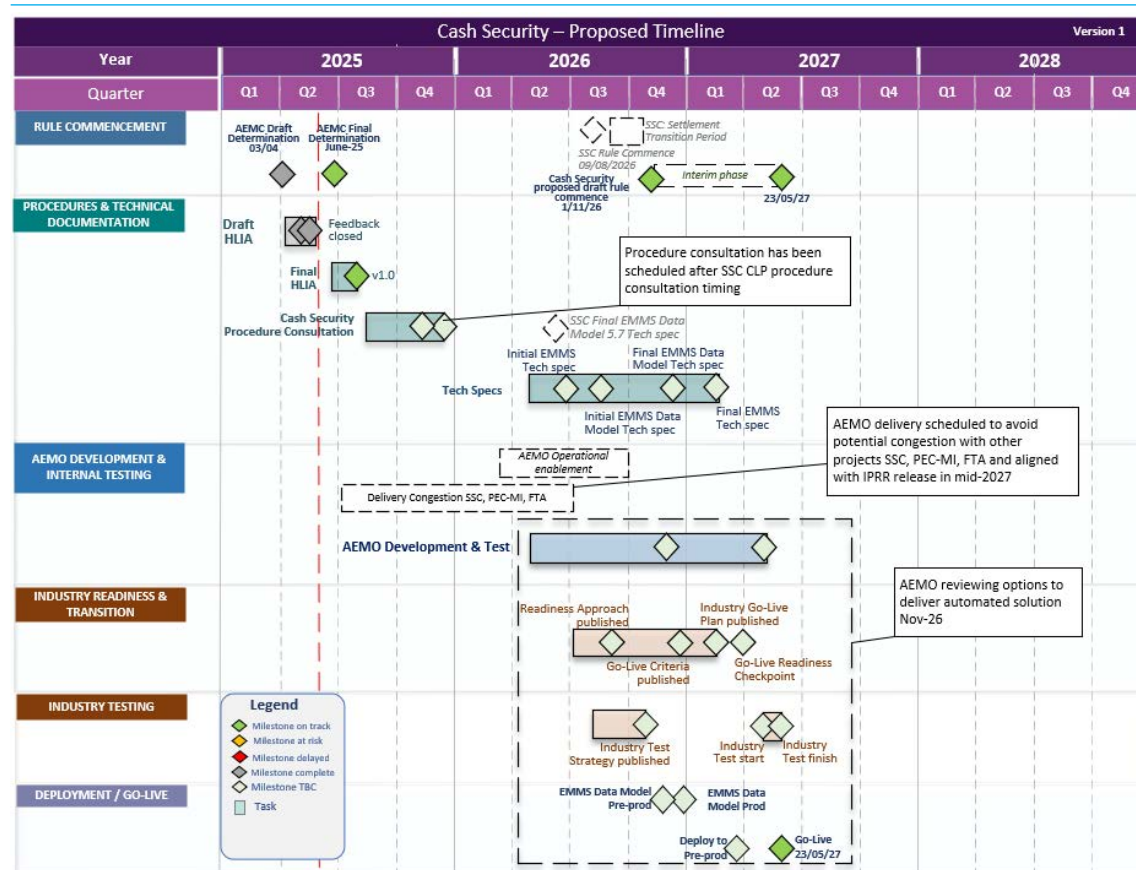
- To manage operational intensity and risk associated with cash security, AEMO would look to automate these processes. The required system changes would be deployed via AEMO's established twice-yearly release approach to minimise environment management, testing and deployment costs. Given the amount of Settlements and Prudentials system changes currently underway, AEMO would manage its delivery capacity closely during the congested timeframe.

In short, while AEMO recognises the value of allow cash to be used as credit support as soon as practicable, it is facing significant delivery congestions in the Settlements and Prudentials areas over 2025 and 2026.⁸¹

We consider that AEMO's analysis and reasons for recommending rule commencement on 1 November 2026 are reasonable, with an earlier rule commencement likely to increase implementation risks and complexity for this final rule and/or other reforms. As such, the final rule will commence on 1 November 2026. While this is later than the draft commencement date of 9 August 2026, we recognise that AEMO is not able to implement the necessary changes any earlier.

An indicative implementation timeline from AEMO from the draft HLIA is shown in Figure 4.2.

Figure 4.2: AEMO indicative implementation timeline



Source: AEMO, Cash as Credit Support Draft High Level Implementation Analysis v0.2, June 2025

Note: This indicative timeline is from AEMO's high level implementation analysis as of June 2025 and could be subject to change.

4.3.2 Some stakeholders provided mixed feedback on the commencement date

There was limited feedback from stakeholders on the proposed commencement date in the draft determination. Delta Electricity considered that implementation should be brought forward from 9 August 2026 to December 2025, as it considered the rule change to be relatively simple and urgent and it noted the AEMC had previously proposed to expedite the rule change.⁸² Conversely, AGL supported the proposed implementation date of 9 August 2026, as this would enable participants to review and prepare for any changes.⁸³

We acknowledge the views of stakeholders on implementation timeframes, however our decision for the final rule to commence on 1 November 2026 has been informed by AEMO's implementation analysis and recommendation.

We recognise that participants will not be allowed to provide cash as credit support until the final rule commences on 1 November 2026. In the interim, participants required to provide credit support will need to obtain and provide currently accepted forms of credit support (guarantees or bank letters of credit) to AEMO. Participants, who are unable to obtain an accepted form of credit support under the existing arrangements, will need to continue to manage any potential risk of being required to provide credit support. For example, this could involve the purchasing and use of reallocations to manage net positions and MCLs, or management of net or retail load to reduce underlying market exposure. We acknowledge that this may not be a preferable outcome for such participants, however we consider that the rule should not commence earlier due to the implementation considerations raised by AEMO.

⁸² Submission to the draft determination: Delta Electricity, p.3.

⁸³ Submission to the draft determination: AGL, p.4.

5 We have made changes from the draft rule to the final rule

In making this final rule, we have made several changes relative to the draft rule.

The draft determination proposed to allow surety bonds as credit support and to expand the pool of credit support providers. The final rule does not include either of these aspects of the draft rule. Note that this would not change the arrangements from the status quo, as surety bonds cannot currently be used as credit support in the NEM and the acceptable credit criteria would remain unchanged.

Our decision to not allow surety bonds nor expand the acceptable credit criteria was based on stakeholder views and concerns regarding the proposed changes. The benefits of surety bonds are likely to be only cost reductions, which may not deliver benefits material enough to outweigh implementation complexity, costs, and risks due to likely low participant uptake.

This chapter outlines our reasoning for final rule to:

- not allow surety bonds as credit support
- not make any changes to the acceptable credit criteria.

Relative to the draft rule, we have also made changes for the final rule relating to allowing cash as credit support (such as increasing the cash limit to \$20m) and the commencement date. These changes are discussed in their respective sections of chapter 4, which discusses how the final rule will operate.

5.1 The final rule does not allow surety bonds as credit support

The draft determination proposed to allow surety bonds as credit support to further increase optionality and flexibility in the credit support arrangements. However, our final rule does not allow surety bonds as we do not consider the benefits outweigh the costs and risks they would introduce at this time.

Notwithstanding this, we note that this may not be the case in the future if there is greater participant interest in providing surety bonds to AEMO as credit support and insurers are more willing or capable of accommodating the timing of payment necessary for credit support to avoid temporary settlement shortfalls.

We also note that participants can use bank-fronted surety bonds under the current arrangements, as AEMO ultimately receives a guarantee for credit support that meets the credit support requirements.

5.1.1 The benefits of surety bonds are offset by some key drawbacks

We consider surety bonds offer two key benefits compared to other accepted forms of credit support under the final rule:

- they can have lower costs when sourced from jurisdictions outside Australia (compared to bank guarantees and domestic surety bonds) due to different capital regulations
- they can free up capital for participants as they are typically unsecured (compared to bank guarantees, which are generally secured) and can preserve bank limits for other purposes.

Additionally, allowing sureties to provide surety bonds as credit support in the NEM could lead to overall credit support cost reductions for participants. This is because the increased competition

among credit support providers could apply downward pressure on the costs of guarantees and/or surety bonds. We note that the impact and magnitude of such competition benefits is currently unclear, but could be a relevant consideration in future.

However, while there are these potential benefits from allowing surety bonds, the provision of surety bonds to AEMO as credit support would come with two notable drawbacks:

- Sureties are not expected to meet the short call-to-payment timeframes (less than about three hours, see Figure 4.1) that are required to avoid a settlement shortfall. Typical surety bond language around the timing of payment is that they must “pay immediately upon demand”, which typically results in payment being made within 48 hours of demand.⁸⁴ This means that introducing surety bonds would introduce a systemic temporary settlement shortfall risk into the prudential framework. While the late credit support distribution mechanism outlined in section 4.2 would somewhat address this issue, it would still result in participants being short-paid for 25 business days.
- Realising the potential cost savings of surety bonds would likely require accepting bonds from overseas jurisdictions. This may introduce risks that need to be more thoroughly examined and assessed due to accepting credit support from issuers governed by foreign financial regulation regimes.

5.1.2 Stakeholders expressed concerns about risks and questioned the materiality of benefits

In response to the draft determination, stakeholders provided a range of feedback on allowing surety bonds as credit support:

- AEMO, AFMA, and Delta Electricity noted the additional administrative complexity introduced by allowing surety bonds and questioned whether it is offset sufficiently by the benefits.⁸⁵
- AEMO, Delta Electricity, and SA Water acknowledged the potential benefits of surety bonds, but noted that participant uptake is required for benefits to materialise and questioned whether there is sufficient interest from participants.⁸⁶
- AGL and Origin Energy considered that allowing surety bonds would increase the level of risk in the NEM prudential framework by introducing new and less familiar counterparties.⁸⁷
- Marsh considered the introduction of surety bonds would be a positive development, with the potential to expand the pool of credit providers in the NEM.⁸⁸
- SA Water noted that government requirements prohibit it from using surety bonds, and suggests that other government entities may be subject to similar requirements.⁸⁹

5.1.3 We consider surety bonds would not deliver benefits at this moment in time

The benefits of introducing surety bonds would be proportional to their uptake by stakeholders. Noting the low interest from stakeholders in response to the draft determination, the final rule does not allow surety bonds as credit support.

We consider allowing surety bonds would result in increased administrative complexity and cost for AEMO, introduce a systemic risk of temporary settlement shortfall, and introduce new and less familiar risks to the prudential framework. Combined with implementation costs for AEMO to

⁸⁴ Submission to the draft determination: Marsh, p.1.

⁸⁵ Submissions to the draft determination: AEMO, pp.6-7; AFMA, p.1; Delta, p.3.

⁸⁶ Submissions to the draft determination: AEMO, pp.6-7; Delta, p.3; SA Water, p.1.

⁸⁷ Submissions to the draft determination: AGL, p.3; Origin Energy, p.1.

⁸⁸ Submission to the draft determination: Marsh, p.1.

⁸⁹ Submission to the draft determination: SA Water, p.1.

make any necessary system changes, we consider that the potential benefits of allowing surety bonds would not outweigh the risks and costs at this moment in time.

However, we consider that there may be value in reconsidering surety bonds for credit support in the future, if there is greater interest from participants and if issues and concerns regarding the use of surety bonds can be addressed.

5.1.4 **Bank guarantees backed by surety bonds are currently allowed and can deliver certain benefits**

It is worth noting that bank guarantees backed by surety bonds (i.e. bank-fronted surety bonds) are permitted under the final rule, as they are effectively a bank guarantee that is financially backed by a surety bond and AEMO only receives (and is only exposed to) the bank guarantee. These bank-fronted surety bonds are typically unsecured, and as such provide the benefits of freeing up participant capital and not consuming bank limits. While there are costs associated with employing this structure, we note they are an alternative credit support option available to participants seeking these benefits.

5.2 **The final rule does not change the acceptable credit criteria**

Under the current arrangements, credit support providers (who are not a central borrowing authority of an Australian State or Territory) must be regulated by the Australian Prudential Regulation Authority (APRA). The draft determination proposed to broaden the selection of providers of credit support by also allowing credit support providers that are regulated by a member of the Basel Committee on Banking Supervision (BCBS), or that have regulatory equivalence with Australia as determined by AEMO. These changes were proposed to further increase options for credit support and enable potentially lower cost credit support from other jurisdictions (such as surety bonds issued from outside Australia).

In response to the draft determination, multiple stakeholders expressed concerns about increased risks and complexity, and opposed the proposed change.⁹⁰ AEMO considered that the inclusion of non-APRA providers could expose the market to increased counterparty risk.⁹¹

In addition to the proposed changes in the draft rule, Marsh proposed additional changes (regarding residence in Australia and the acceptable credit rating) in relation to the use of surety bonds.⁹² Noting that the final rule does not allow surety bonds as credit support, we consider that the suggested changes would not deliver any benefits.

Avenue Bank considered that the current acceptable credit ratings are too restrictive for credit support providers, and suggested expanding the acceptable credit rating to include providers where the security support a bank guarantee is invested predominantly in cash or highly rated debt securities.⁹³ We consider that the current acceptable credit rating is sufficient at ensuring the prudential arrangement are robust, and that any benefits from expanding the acceptable credit rating are unclear and may not outweigh any corresponding increase in risk.

Our final rule does not make any changes to the acceptable credit criteria. Having considered stakeholder feedback and our decision to not allow surety bonds as credit support, the potential benefits from changing the acceptable credit criteria would likely be low to non-existent and would likely be outweighed by the potential costs and risks.

⁹⁰ Submissions to the draft determination: AEMO, pp.5-6; AFMA, p.2; AGL, p.3; Origin Energy, p.2.

⁹¹ Submission to the draft determination: AEMO, p.5.

⁹² Submission to the draft determination: Marsh, p.1.

⁹³ Submission to the draft determination: Avenue Bank, pp.1-2.

A Rule making process

In October 2024, the AEMC received a rule change request from Delta Electricity (the proponent) to allow AEMO to accept cash as credit support.

The rule making process for a standard rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
 - stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

The Commission has used a longer-than-standard process for this rule change due to the complexity of the issues involved. A notice under section 107 of the NEL extending the time for making the draft rule was published on 19 December 2024.

A final rule was made on 26 June 2025 with this final determination.

You can find more information on the rule change process on our website.⁹⁴

A.1 The proponent proposed a rule to allow AEMO to accept cash as credit support

On 1 October 2024, the AEMC received a rule change request from Delta Electricity (the proponent) to amend the NER and National Gas Rules (NGR) to allow AEMO to accept cash to meet credit support requirements in the NEM and Short Term Trading Market (STTM). On 17 October 2024, the proponent resubmitted the rule change request to clarify that the proposed changes only relate to the NER and NEM.

Under the NER, credit support must be provided when required and in the form of a bank guarantee or a letter of credit from an acceptable credit support provider.⁹⁵ The proponent considered that:⁹⁶

A significant number of financial institutions, that would be acceptable to AEMO, are no longer providing financing facilities to fossil fuel generators. While the energy transition is progressing, there will be an ongoing reliance on fossil fuel generators, at least in the immediate future. There is an urgent and emerging need to ensure that market participants who, due to the ESG policies of credit support providers, are unable to meet the requirements of Rule 3.3.2(b) have alternative options.

The proponent also noted that their current bank guarantee facility was due to expire at the end of 2024 and, due to their association with thermal coal, they had been unsuccessful in obtaining new arrangements for a bank guarantee from an accepted credit support provider.⁹⁷

⁹⁴ See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

⁹⁵ See appendix B for more information on the current credit support arrangements.

⁹⁶ Delta Electricity, Rule Change Proposal - Allowing AEMO to accept cash as credit support, 17 October 2024, p.2.

⁹⁷ Ibid.

The proponent considered that the current arrangements should be broadened to allow participants to provide credit support in a form other than a bank guarantee or letter of credit. Specifically, the proponent proposed that cash should be allowed as credit support and that NER clause 3.3.2(b) be amended by inserting 'cash or' after the word 'is'.⁹⁸ The proponent considered that this would contribute to the NEO by ensuring the continued supply of secure and reliable electricity in the NEM, in addition to promoting efficiency and potentially reducing operating costs for market participants.⁹⁹

The proponent also considered that the rule change request was simple, non-controversial, and relatively urgent, and requested that the proposal be assessed under the expedited rule change process.¹⁰⁰

A.2 The process to date

On 24 October 2024, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.¹⁰¹ A consultation paper identifying issues for consultation was also published. Submissions to the consultation paper closed on 21 November 2024. The Commission received 20 submissions from stakeholders in response to the consultation paper.

In the consultation paper, the Commission considered that the rule change request was a request for an urgent rule as defined in section 87 of the NEL. Accordingly, the Commission proposed to use the expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 7 November 2024.

The Commission received one written request not to expedite the rule change request. The Commission decided that the reasons contained in the written request were not misconceived nor lacking in substance. Accordingly, the Commission is assessing the rule change request under the standard rules consultation process.¹⁰²

On 19 December 2024, the Commission published a notice under section 107 of the NEL advising of the extension to the time for making this draft determination. The time for making the draft determination was extended to 3 April 2025.

On 3 April 2025, the Commission published a draft rule determination including a draft rule to allow cash and surety bonds as credit support, and broaden requirements for credit support providers. The Commission received 13 submissions from stakeholders on the draft rule determination, with stakeholder feedback discussed and responded to throughout this final rule determination. A summary of other issues raised in submissions and the Commission's response to each issue is contained in appendix E.

98 For context, NER clause 3.3.2(b) corresponds to the accepted forms of credit support that can be provided.

99 Delta Electricity, Rule Change Proposal - Allowing AEMO to accept cash as credit support, 17 October 2024, p.3.

100 Ibid, p.1.

101 This notice was published under section 95 of the NEL.

102 Under section 96 of the NEL, the AEMC must not make a rule under the expedited process if the AEMC receives a written request not to do so and if the reasons in the request are not, in the AEMC's opinion, misconceived or lacking in substance.

B Credit support arrangements in the NEM and other energy markets

This appendix provides a brief summary of the existing credit support arrangements in the NEM and credit support arrangements in other energy markets.

B.1 Existing credit support arrangements in the NEM

In the NEM, market participants are required to meet prudential requirements under Rule 3.3 in the NER. These prudential requirements aim to ensure stability in the NEM in the event of a participant defaulting. Participants are required to lodge credit support that AEMO can use to cover shortfalls if that participant defaults and is unable to settle its outstandings.

There are multiple key aspects of the existing credit support arrangements in the NEM:

- The prudential standard which targets no payment shortfall in 98% of participant defaults. This means that AEMO should determine prudential settings to have sufficient prudential collateral such that there would only be settlement shortfalls to market participants in 2% of participant defaults.
- Participants must provide credit support that is not less than their maximum credit limit (MCL). The MCL is based on the sum of an outstandings limit (an estimate of maximum participant outstandings over the payment period) and the prudential margin (an allowance for the accrual of outstandings during the reaction period).
- Allowed forms of credit support, which are only guarantees or bank letters of credit under the existing arrangements.
- Criteria for entities to be acceptable credit support providers, which include (without limitation) minimum credit ratings and the prudential supervision of APRA (unless the entity is a central borrowing authority of an Australian state or territory).
- When a participant's outstanding exceed their trading limit (calculated as difference between the amount of credit support provided and the prudential margin), they are issued a call notice. Participants are allowed to provide cash in response to call notices. It is worth noting that the provision of cash in response to call notices is not directly comparable, in terms of usage as well as clawback and insolvency-related risks, to cash provided as credit support.
- When a default event is triggered, AEMO has a range of powers to address the default event. Under the NER, potential default events include (without limitation) participants failing to pay money due for payment by the required time or participants failing to provide credit support by the required time. AEMO often has discretion in exercising its power, which may include making suspension or non-suspension decisions in relation to all or part of a participant's activities in the NEM.

For more information on the existing credit support arrangements, see Appendix C of the draft determination.

B.2 Credit support arrangements in other energy markets

It can be insightful to compare credit support arrangements in other energy markets. However, it is important to recognise that differences in legislative and regulatory environments, as well as market structures, mean that direct comparisons and inferences on the suitability of various credit support options cannot be made.

Cash is accepted as a form of credit support in many other energy markets, for example by AEMO in the WEM, NZX (New Zealand), SWEM (Singapore), and US system operators (CAISO, ISONE, NYISO, PJM, MISO, SPP). Some of these markets require participants providing cash to use a security deed or agreement to secure first priority interest of the market operators in respect of the cash, with the aim of trying to protect against a clawback in the event of a participant becoming insolvent.

Therefore, other jurisdictions accept cash as credit support and accept some degree of clawback risk, while attempting to reduce risks. While recognising the underlying differences between jurisdictions and energy markets, we consider that the final rule to allow cash as credit support will bring the NEM's credit support arrangements more in line with those of other energy markets.

For more information on credit support arrangements in other energy markets, see appendix D of the draft determination.

C Options to mitigate clawback risks

In making our final determination, we have considered a range of possible options to mitigate clawback risks associated with the use of cash as credit support. This appendix provides information on the options considered and our assessment of their viability and potential in mitigating clawback risks.

C.1 Corporations Act displacement provision in the NEL

C.1.1 Operation of section 5F of the Corporations Act

Section 5G of the Corporations Act provides a framework for Australian States and Territories to disapply the Corporations Act in full or in part. Relevantly, to enliven section 5G, in respect of a provision of a law of a State or Territory which either comes into force, or is materially amended, after the Corporations Act commenced (State Provision), the provision (where relevant, as amended) must be *“declared by a law of a State or Territory to be a Corporations legislation displacement provision for the purposes of [section 5G] (either generally or specifically in relation to the Commonwealth provision).”* The National Electricity Rules have the force of law in New South Wales, Queensland, Victoria, South Australia, Tasmania and the Australia Capital Territory.

If such a declaration is made, then the inconsistent provision of the Corporations legislation (here, Chapter 5) is taken to not:

- prohibit the doing of an act, or impose a liability for doing an act that the State Provision specifically authorises or requires, or
- operate in a State or Territory to the extent necessary to ensure that no inconsistency arises.

Section 10A of the NEL currently enables the Regulations to declare a “relevant provision” to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of the Corporations Act (which deals with external administration). The current relevant provisions most relevant to this rule change include a provision of the rules that relates to any of the following:

- the application by AEMO of money in any security deposit fund
- the functions of AEMO under procedures relating to defaults by retailers.

Relevantly, section 5A of the NEL Regulations provide the following provisions of the Rules are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act 2001 of the Commonwealth in relation to the provisions of Chapter 5 of that Act:

- clause 3.3.13A (which relates provision of security deposits)
- clause 3.15.21 (which sets out the default procedure).

If a transaction under a rule which is a Corporations legislation displacement provision was inconsistent with the sections of Chapter 5 of the Corporations Act (including those related to claw back and insolvency set-off), the relevant section of the Corporations Act should not operate to the extent of such inconsistency with the rule.

C.1.2 Application of the displacement provision to this rule change

The set off rights and first ranking security, discussed below in appendix C.2 and appendix C.3, have been included in the final rule with the intention that they will get the benefit of the Corporations Act displacement.

In its submission to the consultation paper, AEMO noted that:¹⁰³

Where a displacement provision applies to a transaction that may otherwise be an unfair preference under the Corporations Act, it will have the effect of removing clawback risk entirely, with no need for NER mechanisms to recover any liability associated with that transaction.

AEMO is of the view that the existing NEL displacement provisions do not eliminate clawback risk, because they are explicitly limited to the application of security deposits and the default process (in which AEMO is entitled to apply both security deposits and credit support). Although open to interpretation, it remains arguable that the provision of cash amounts to AEMO by an insolvent participant is a distinct transaction, which is still capable of being an unfair preference. The provision of cash as credit support increases the potential market exposure to this risk.

AEMO suggests that the most straightforward means of eliminating clawback risk from the NEM settlement and prudential process is to broaden the displacement provisions to cover all AEMO settlement and prudential transactions.

Where an amendment is made to a provision that is subject to a Corporations Act displacement provision, there is a requirement under the Corporations Act that the amendment is not material. This means that the amendment must not materially reduce the range of persons, acts and circumstances to which the Corporations Act would otherwise apply.¹⁰⁴

Our final rule has added a note to clause 3.15.21 (default procedures) of the NER that is intended to clarify that the provision of credit support by a participant to AEMO is within the existing displacement provision that relates to the functions of AEMO in relation to default procedures. We consider the final rule will not materially reduce the range of persons, acts and circumstances to which the Corporations would otherwise apply, given that the amendments (including set offs and the use of credit support) are within the scope of the existing default procedure.

However, we consider that an amendment to the NEL, such that the Corporations Act displacement provisions expressly include the rules related to cash credit support, could provide greater certainty on the elimination of clawback risk by specifying that the use of cash as credit support is a displacement provision. Since the AEMC does not have powers to amend the NEL, we recommend to Energy Ministers that the NEL be amended accordingly to eliminate clawback risk.

C.2 Set off arrangements

A set off occurs when one or both parties set off their monetary obligations to each other. The set off rights in the amended clause 3.15.21(b) of the final rule are intended to be the key rights of AEMO in respect of cash credit support under the default procedures in clause 3.15.21(b) of the NER.

While the NER has the force of law, section 553C(1) of the Corporations Act also provides for the set off of mutual credits, mutual debts and other mutual dealings between an insolvent company that is being wound up. The circumstances in which such set off may not apply are discussed below.

In respect of the provision of the cash credit support and set-off right in a particular circumstance, there is a potential risk that there may be an unfair preference. This could occur if the provision of

¹⁰³ Submission to the consultation paper: AEMO, p.7.

¹⁰⁴ See section 5G(17) of the Corporations Act.

the cash credit support and/or exercise of the set-off right resulted in AEMO receiving from the participant, in respect of an unsecured debt that the participant owed to AEMO, more than AEMO would receive if the transaction were set aside and AEMO were to prove for the debt in the winding up of the market participant, and no relevant defence applies. Broadly, section 588FE of the Corporations Act is that, unless certain conditions are satisfied, a transaction that is an unfair preference may be set aside or modified (i.e. subject to claw-back) if, at the time of entering into a transaction the participant was insolvent or it became insolvent because of the transaction and the transaction occurred during the suspect period.¹⁰⁵

In the context of defences, a court could not make an order in respect of an unfair preference which materially prejudices a right or interest of a person if (amongst other requirements) at the time when the person became a party to the transaction:

- the person had no reasonable grounds for suspecting that the participant was insolvent (in the sense that the Australian Company was unable to pay all its debts as and when they become due and payable) or would become insolvent if it entered into the transaction; and
- a reasonable person in their circumstances would have had no grounds for so suspecting.

Furthermore, AEMO may not be entitled to claim the benefit of a set-off under section 553C(1) if AEMO had notice of the fact that the participant was insolvent at the relevant time (when AEMO is provided the cash credit support or entered into the transaction). This may be relevant given AEMO's role in the operation of the market and its settlement processes. Additionally, one of the requirements for set off under section 553C(1) to apply is mutuality.¹⁰⁶

Therefore, a set off does not eliminate clawback risk. However, the final rule includes amendments intended to support, together with section 10A of the NEL and related Regulations, the aspects of NER related to the provision of the cash credit support and set-off right being Corporations Act displacement provisions in relation to Chapter 5 (External administration) of the Corporations Act. The sections of the Corporations Act relevant to voidable transactions (including unfair preferences) and section 553C are in Chapter 5 of that Act.

As the Personal Property Securities Act (PPSA) does not apply to any right of set-off, AEMO should not need to register a financing statement merely in respect of the set-off right. Also, the exercise of a set-off right should not be subject to the stay on the enforcement of security during the administration of an Australian company under section 440B of the Corporations Act.

C.3 Security

C.3.1 Security interests

AEMO could accept cash and register a security interest in the cash. In the WEM, participants are allowed to provide cash as credit support to AEMO subject to entering into a security deposit deed. In doing so, this gives rise to a security interest under the PPSA and is registered on the Personal Property Securities Register (PPSR) in order to safeguard the security.

There are a number of limitations with accepting cash as credit support and relying on the PPSR to eliminate clawback risk:

¹⁰⁵ *Corporations Act 2001* (Cth), sections 588FA, 588FC and 588FE(2).

Generally, being in respect of an administration of liquidation, 6 months prior to the commencement of the administration or liquidation. Note that clawbacks can also take place for other reasons, for example other voidable transactions such as uncommercial transactions.

¹⁰⁶ This means that the obligations must be owing between parties in the same capacities and each party must be both beneficially entitled to performance of the other party's obligations and personally liable for its obligations. This may be an issue where the market participant is a trustee or a partner. Mutuality may also be affected where the participant purports to grant security in its rights of the participant under the NER, including the return of the cash security deposit.

- If the stay on the enforcement of security during the administration of an Australian company under section 440B of the Corporations Act 2001 applied, then AEMO could not enforce the security during the administration of a market participant except with the administrator's consent or the leave of the Court. Whilst the stay would not invalidate the security, it could result in AEMO being unable to enforce the security in the cash to discharge any outstanding settlement amount.
- Registering cash credit support on the PPSR does not address clawback risks, as it would not resolve a scenario where the provision of cash is a voidable transaction in the first place.
- If an interest in personal property is a 'security interest' within the meaning of the PPSA, then the security interest must be perfected. This is most often done by way of registration of that security interest on the PPSR. Perfection determines priority between secured parties when the grantor of the security interest becomes insolvent. AEMO's security, even if registered on the PPSR, may not be first ranking.¹⁰⁷ It may not be practical for AEMO to negotiate and enter priority deeds with financiers of each market participant providing cash as credit support to ensure AEMO's priority over the cash security.
- Using the PPSR for a large number of participants providing cash as credit support would be administratively burdensome.

Due to these limitations, we consider the use of the PPSR would not eliminate clawback risk nor could be relied upon to materially reduced clawback risk.

C.3.2 First ranking charge

While the final rule has been prepared on the basis that set-off rights could be used in respect of cash credit support, clause 3.3.2A(e) of the final rule provides that the rights of the participant to the return of any monies in the cash security fund are subject to a first ranking charge in favour of AEMO securing payment of any money actually or contingently owing by the participant to AEMO pursuant to the NER.

There is a potential risk that, if AEMO sought to enforce the charge in respect of a participant, the stay on the enforcement of security during the administration of a participant under section 440B of the Corporations Act. However, as noted above, the final rule includes amendments intended to support, together with section 10A of the NEL and related Regulations, the aspects of the NER related to the charge provision of the cash credit support and set-off right in a particular circumstance being Corporations legislation displacement provisions in relation to Chapter 5 (External administration) of the Corporations Act.¹⁰⁸ The enforcement of security is distinct from the exercise of set-off rights, which are not expected to be subject to this stay on administration. Set-off rights are also excluded from the "ipso facto stays".

Determining whether the PPSA applies to the charge is complex given that charge is provided for in the final rule and the NER have the force of law on the basis previously discussed. Given this complexity, while the PPSA does not require a secured party to "perfect" its security interest in the collateral, AEMO may wish to perfect the charge by registration of a financing statement in respect of the grantor on the PPSR and perfect any other security interests granted to it. This may mitigate the risks that, if AEMO does not do so and a court were to determine that the PPSA does apply to this charge:

- another security interest may take priority

¹⁰⁷ For example, where the market participant has already granted all monies security to another secured party (which is not uncommon).

¹⁰⁸ Section 440B of the Corporations Act is in Chapter 5 of that Act.

- another person may acquire an interest in the collateral free of the secured party's security interest, and
- it may not be able to enforce the security interest against the participant if the participant becomes subject to winding up, administration or restructuring, executes a deed of company arrangement or makes a restructuring (that is, the security interest may vest in the grantor).

However, despite these considerations regarding registrations, the inclusion of the charge is likely to be incrementally beneficial and not adversely affect the set-off rights to be afforded to AEMO under the final rule (noting that the set-off rights themselves should not be a security interest to which the PPSA applies and AEMO is not obliged to use set off arrangements).

Accordingly, there may still be some value in the use of the PPSR by AEMO when accepting cash as credit support, however we also recognise that the potential administrative burden might not be proportional to additional benefits. Our final rule does not place any obligations or expectations on the use of the PPSR.

In addition, the final rule includes provisions intended to minimise the risk that any cash security provided to AEMO as credit support is or becomes subject to any security interest, trust or other proprietary interest (whether legal, equitable or statutory), other than in favour of AEMO at any time whilst it is held by AEMO, unless AEMO has (in its absolute discretion) agreed otherwise with the participant.

C.4 Netting arrangements

The Payment Systems and Netting Act 1998 (PSNA) was enacted to remove certain legal doubts as to the efficacy of netting operations in Australia. The PSNA validates netting under certain close-out netting contracts, market netting contracts, approved real time gross settlement payment systems and multilateral netting arrangements. This applies despite any other law (including the insolvency provisions of the Corporations Act, essentially provisions concerning voidable and void transactions) but, in some cases, subject to certain specified stay provisions.

C.4.1 Close out netting arrangements

The PSNA can apply to a 'close-out netting contract', as defined in that Act, and we have considered whether cash credit support could be provided pursuant to a close-out netting contract between a participant and AEMO.

Some of the benefits of a close-out netting contract include that, if the PSNA applied to validate close-out netting under it:

- the PSNA does not require that mutuality be present for netting to take place (unlike the insolvency set-off provisions in section 553C of the Corporations Act)
- the protection under the PSNA would be available both prior to, and following, the participant becoming subject to insolvency proceedings
- close-out netting is not subject to the stay on the enforcement of security during the administration of an Australian company (under section 440B of the Corporations Act, as described above).

However, the complexities associated with this option include:

- There would need to be a contract created between AEMO and each market participant who provides cash credit support. This could be a very short form contract reflecting the NER or it may be possible for the contract to be created in the NER. However, this would be a major conceptual change given the NEM was changed from contractual framework under the

National Electricity Code to the National Electricity Rules in 2005 due to competition concerns. Any contractual arrangements would require careful consideration, including in respect of liability, minimum legal requirements for contracts and competition issues.

- AEMO could not rely on the PSNA protection of close-out netting in respect of an obligation created by a transaction that was entered into when AEMO had reasonable grounds for suspecting that the participant was insolvent at that time or would become insolvent because of matters including entering into the transaction or doing an act, or making an omission, for the purposes of giving effect to the transaction.

While close-out netting arrangements could have potential in mitigating clawback and other insolvency-related risks, due to these limitations and the complexity of this option, we consider that close-out netting contracts are not the preferred method for mitigating clawback risks.

C.4.2 Market netting contracts

Another type of netting arrangement described in the PSNA is a market netting contract.

As an example, the clearing and settlement facility operated by the ASX Clear Pty Limited is approved as a netting market and the PSNA provides protection from reversal or invalidation under insolvency law for the termination, calculation and netting of obligations, payments and transfers of property to meet obligations and the enforcement of security by ASX Clear.

While this approach would significantly reduce clawback risk, it would require significant restructuring of the NEM, including contracts between AEMO and market participants and AEMO potentially requiring a financial markets licence under Ch 7 of the Corporations Act 2001.

As such, we consider that market netting contracts would be an overly complex and disproportional response to the intended purpose of mitigating clawback risks.

C.5 Providing cash for credit support as a pre-payment

AEMO could receive the cash as a pre-payment of a settlement, however there are several limitations with this approach:

- a pre-payment is still subject to clawback and other insolvency-related risks, although where it relates to a transaction (in this case a sale of electricity or other services) for which both parties give consideration, then it is unlikely that a preference or clawback risk will arise
- pre-payments would usually be applied to amounts owing on a periodic basis, however cash provided as credit support would not be intended to be applied to pay settlement amounts in the ordinary course of trading
- if the cash was paid to AEMO as a pre-payment of the amounts estimated to be due under a final statement, there is a risk that all of the GST payable over the course of the arrangement would be payable up front (even where the final statement has not yet been issued).¹⁰⁹

Due to these limitations, we do not consider that structuring cash credit support as a pre-payment would be an appropriate method to mitigate clawback risks.

¹⁰⁹ In other words, the GST liability would be accelerated.

D Legal requirements to make a rule

This appendix sets out the relevant legal requirements under the NEL for the Commission to make a final rule determination.

D.1 Final rule determination and final rule

In accordance with section 102 of the NEL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by the proponent.

The Commission's reasons for making this final rule determination are set out in chapter 3 and chapter 2.

A copy of the more preferable final rule is attached to and published with this final determination. Its key features are described in chapter 4.

D.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules.

The more preferable final rule falls within section 34 of the NEL as it relates to regulating:¹¹⁰

- the operation of the national electricity market
- the operation of the national electricity system for the purposes of the safety, security and reliability of that system
- the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system.

Additionally, by amending the credit support arrangements for participants in the NEM, the more preferable final rule falls within the matters set out in item 3 of Schedule 1 to the NEL as it relates to prudential requirements to be met by a person before being registered as a registered participant, and as a registered participant.¹¹¹

D.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the final rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the final rule will or is likely to contribute to the achievement of the NEO
- submissions received during second round consultations
- the application of the final rule to the Northern Territory
- the likely benefits and costs of the final rule, outlined in chapter 3
- the assessment criteria of the final rule, outlined in section 2.3.

¹¹⁰ NEL section 34(1)(a)(i)-(iii).

¹¹¹ Item 3 of Schedule 1 of the NEL.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹¹²

D.4 Making electricity rules in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.¹¹³ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.

The more preferable final rule does not relate to parts of the NER that apply in the Northern Territory, as it amends provisions in NER chapter 3 that do not apply to the Northern Territory. As such, the Commission has not considered Northern Territory application issues.

D.5 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as civil penalty provisions or conduct provisions.

The NEL sets out a three-tier penalty structure for civil penalty provisions in the NEL and the NER.¹¹⁴ A Decision Matrix and Concepts Table, approved by Energy Ministers, provides a decision-making framework that the Commission applies, in consultation with the AER, when assessing whether to recommend that provisions of the NER should be classified as civil penalty provisions, and if so, under which tier.¹¹⁵

Where the final rule amends provisions that are currently classified as civil penalty provisions, the Commission does not propose to recommend to the Energy Ministers' Meeting any changes to the classification of those provisions.¹¹⁶ The AER has indicated it supports this recommendation to not make any changes to the classification of provisions affected by the final rule.

¹¹² Under s. 33 of the NEL and s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

¹¹³ These regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016

¹¹⁴ Further information is available [here](#).

¹¹⁵ The Decision Matrix and Concepts Table is available [here](#).

¹¹⁶ In the final rule, clauses 3.3.2, 3.3.5, 3.3.6(b), 3.3.7(b), and 3.3.13(a)(4) have been amended to extend their application to include cash provided as security. These clauses are currently classified as tier 3 civil penalty provisions.

E Summary of other issues raised in submissions

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

Stakeholder	Issue	Response
AEMO	AEMO provided various comments and feedback on rule drafting to ensure the final rule is clear, consistent, and facilitates the efficient implementation of the policy intent.	We have taken these comments and feedback on rule drafting into consideration for the final rule.
AEMO	Indexing would require AEMO to adjust its systems annually, and the change would be so negligible (based on recent average inflation rates) that it would take many years for more participants to provide their full MCL using cash.	We consider that indexation of the cash limit is important for it to maintain its real value (and the benefits of cash credit support) over time. We expect that adjustments to AEMO systems to account for the change in cash limit to not be overly burdensome.
AFMA	A more comprehensive review of the prudential arrangements is warranted.	We acknowledge that there may be value in a broader review of the prudential frameworks. Consideration of such a review is not within scope of this rule change.
AGL	There is a risk of participants exploiting structural decisions to manipulate the cash limit to their advantage. Safeguards should be implemented to prevent misuse, such as eligibility requirements or limiting the use of cash to a parent company (instead of a market participant).	We expect the benefits of, and opportunities for, participants manipulating the cash limit are low under the final rule, particularly when factoring in other considerations. We do not consider that additional safeguards are needed at this point in time, however this could be revisited if material issues arise.
AGL	The AER may need to re-examine the retailer authorisation process for new participants, as participants that provide cash as credit support would no longer be scrutinised by banks in obtaining a bank guarantee.	We consider that the prudential framework and the existing retailer authorisation process should prevent any material increases in risk as a result of participants potentially not being scrutinised by banks for guarantees. We acknowledge that there could be value in a re-examination of the retailer authorisation process, however this is a matter to be considered by the AER.
Alinta Energy	There is merit in a more comprehensive review of the prudential requirements in both the electricity and gas market, as there may be benefits from a harmonised prudential framework.	We acknowledge that there may be value in a broader review of the prudential frameworks. Consideration of such a review is not within scope of this rule change.

F Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
APRA	Australian Prudential Regulation Authority
Commission	See AEMC
Corporations Act	<i>Corporations Act, 2001 (Cth)</i>
CPI	Consumer Price Index
EOFY	End of financial year
ESG	Environmental, social, and governance
HLIA	High Level Implementation Analysis
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NEM	National Electricity Market
NGR	National Gas Rule
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
MCL	Maximum credit limit
PPSA	<i>Personal Property Securities Act 2009</i>
PPSR	Personal Property Securities Register
Proponent	The organisation who submitted the rule change request to the Commission
PSNA	<i>Payment Systems and Netting Act, 1998 (Cth)</i>
RoLR	Retailer of Last Resort
STTM	Short Term Trading Market