

Rule drafting philosophy

30 April 2026



Enquiries

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

E aemc@aemc.gov.au

T (02) 8296 7800

Reference:

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 live and work. The AEMC office is located on the land of the Gadigal people of the Eora nation. We pay respect to all Elders past and present, and to the enduring connection of Aboriginal and Torres Strait Islander peoples to Country.



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, Rule drafting philosophy, 30 April 2026

Summary

Purpose of the rule drafting philosophy

- 1 The National Electricity Rules (**NER**), National Gas Rules (**NGR**) and National Energy Retail Rules (**NERR**) (the **Rules**), maintained by the Australian Energy Market Commission (**AEMC**), have the force of law and form a fundamental part of the framework for the regulation and operation of the national energy markets in Australia.
- 2 The AEMC has developed this philosophy of key principles on best practice regulation to guide us when determining whether or not to make a Rule and in drafting Rules that contribute to the effective implementation of energy policy and the effective operation of energy markets.
- 3 This philosophy may also help stakeholders in preparing Rule change requests to submit to the AEMC, and when making submissions during our consultation processes.
- 4 This is version 2 of the philosophy. The first version was published on 8 October 2020. The purpose of the revisions is to make the document more user-friendly, concise and to provide additional practical guidance.

Key principles

- 5 The AEMC will adopt these key principles for clear, effective, certain and consistent Rules.

Box 1: Before drafting a Rule

1. **Consider whether we would have the power to make a Rule under the national energy laws**
2. **Avoid unnecessary regulation, by considering if alternative options to a Rule could better achieve the policy outcomes** - such as guidelines, standards or information resources

Box 2: When drafting a Rule

1. **Ensure the Rule, and the Rule-making process, is consistent with the national energy laws** - including that the Rule will, or is likely to, contribute to the achievement of the relevant national energy objective
2. **Make the Rule principles-based, unless a more prescriptive rule is necessary to achieve the desired policy outcome**
3. **Structure the Rule clearly**
 - Make it easy for readers to identify whether a Rule applies to them early in the text
 - Use headings and clear signposting to help readers easily find aspects relevant to them
 - Place important concepts first and do not obscure them with procedural elements
 - Organise text into small, easy-to-read segments and make use of lists
4. **Ensure the Rule is as concise as possible**
5. **Use plain English and avoid specialised or technical jargon** - unless technical terms are necessary, then clearly explain what they mean
6. **Use defined terms only where necessary** - focus on where definitions are essential for clarity, avoid adding substantive obligations to definitions and avoid circular definitions

Contents

1	Before drafting a Rule	1
1.1	We must consider whether we have the power to make a Rule	1
1.2	We should only draft a Rule if it is necessary to achieve a policy outcome	1
2	When drafting a Rule	3
2.1	We must apply Rule making tests and limitations under the national energy laws	3
2.2	We must ensure any Rules are consistent with the national energy laws	3
2.3	We should use a principles-based approach, where possible	4
2.4	We may require details to be set out in accompanying regulatory instruments	6
2.5	We should draft clear, concise and well-organised Rules	8
2.6	We should consider whether it is clearer to amend or replace an existing provision	9
2.7	We can be flexible with these drafting principles if necessary	10
	Tables	
Table 2.1:	Principles-based vs prescriptive drafting	4

1 Before drafting a Rule

Anyone can request that the AEMC make a new Rule or amend an existing Rule.

When the AEMC receives a Rule change request, we assess whether we would have the power to make the Rule and whether the Rule is necessary.

The AEMC considers best practice in regulation, as well as the relevant legal tests under the national energy laws.

1.1 We must consider whether we have the power to make a Rule

We cannot make a Rule unless the AEMC has the power to do so under the national energy laws.

Before deciding whether to proceed with a Rule change project, we will consider whether the AEMC has the relevant Rule-making power under:

- section 34 or Schedule 1 of the National Electricity Law (**NEL**),
- section 74 or Schedule 1 of the National Gas Law (**NGL**), or
- section 237 of the National Energy Retail Law (**NERL**).

The AEMC must also consider whether the Rule change request meets other criteria in the national energy laws and regulations, as set out on our [Making a rule change request page](#).¹

1.2 We should only draft a Rule if it is necessary to achieve a policy outcome

An important step when considering a proposed change to the Rules is for us to examine whether there is actually a problem to address.

The next step is for us to decide whether any action is actually required and, if so, whether a Rule is the most appropriate response.

For example, in determining whether a new Rule is appropriate, we should consider:

- whether a market body or other entity already has sufficient power and discretion under the existing regulatory framework to address the identified issue, and
- if there is sufficient power and discretion, whether greater guidance or guardrails should be introduced in relation to that power and discretion.

We recognise that a Rule or other form of regulation is not the only option to guarantee certainty of results and deliver direct and timely outcomes. Unnecessary regulation may create complexity and additional costs, which should be avoided if possible.

There are many different ways to give effect to a policy, including by:

- a Rule, which may operate alone or may provide for a guideline or procedure to be prepared,
- changes to existing guidelines or procedures,
- a standard or code,
- an agreement between an administrator or regulator and industry or market members or representatives,

¹ This is in accordance with the national energy laws and the regulations.

- information and education campaigns,²
- better enforcement of existing regulation, or
- a combination of any of the above.³

2 For example, in 2025, the AEMC worked with jurisdictions and Energy Consumers Australia to prepare information resources to support consumers through the accelerated rollout of smart meters.

3 This approach is consistent with the [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies](#), published by the Commonwealth Department of the Prime Minister and Cabinet in June 2023 ([Regulatory Impact Analysis Guide](#)).

2 When drafting a Rule

2.1 We must apply Rule making tests and limitations under the national energy laws

The AEMC must determine whether to make a Rule by applying the relevant [energy market objective](#).

The AEMC may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the relevant energy objective. Further details of how the AEMC applies the energy objectives are set out in our guide on [How the national energy objectives shape our decisions](#).

The national energy laws also set out various other Rule making tests for the AEMC which apply in certain cases - for example, the form of regulation factors and the revenue and pricing principles.⁴

The AEMC must also have regard to any relevant MCE statement of policy principles.⁵

The energy laws impose some additional restrictions on the AEMC's Rule-making powers. For example, the AEMC cannot create new civil penalty provisions in a Rule (although, we can recommend that provisions in new Rules we have made be designated as civil penalty provisions in the regulations).⁶ Further, amendments to a Rule cannot affect a right, privilege or liability acquired, accrued or incurred under the original Rule.⁷

2.2 We must ensure any Rules are consistent with the national energy laws

The Rules made by the AEMC must be consistent with the national energy law under which they are made. The Rule should be appropriate to, and enhance the operation of, that legislative scheme. Inconsistencies or a conflict between a Rule and the relevant national energy law will create uncertainty in how the Rule is to be applied and may make the Rule (or part of it) invalid.

We should:

- consider how legal instruments such as the Rules are read and interpreted, including how the Courts derive meaning from contested provisions by examining the relevant text, context and purpose of the provision⁸
- draft Rules in a way that avoids legal or practical problems when it comes to their interpretation, implementation and application.

For example, a Rule may address issues that are also addressed in the relevant national energy law, but should avoid repeating provisions or obligations that are set out in the law. Repeating such provisions or obligations creates a risk of an inconsistent restatement in the Rules, as well as creating confusion as to where the obligation comes from – the laws or the Rules.⁹ Where a Rule addresses a subject that is also addressed in the law, we must draft the Rule carefully to ensure the resulting combination of obligations and powers is clear to the affected parties and can be applied in practice.

⁴ See Part 7, Division 1, Subdivision 2 of the NEL; Chapter 9, Part 1, Division 2 of the NGL; and Part 10, Division 1, Subdivision 2 of the NERL.

⁵ See section 33 of the NEL, section 73 of the NGL and section 225 of the NERL.

⁶ Section 36 of the NEL. Section 2AA(1)(c) of the NEL provides that a provision of the Rules that is to be designated as a civil penalty provision is prescribed by the Regulations as a civil penalty provision.

⁷ Clause 33(1)(c) of Schedule 2 to the NEL and clause 43(1)(c) of Schedule 2 to the NGL.

⁸ Guides such as Pearce and Geddes, *Statutory Interpretation in Australia* can be helpful for this.

⁹ See page 15 of the [How to draft - Secondary legislation drafting toolkit](#), published by the New Zealand Parliamentary Counsel Office in August 2025 (**NZ Drafting Toolkit**).

2.3 We should use a principles-based approach, where possible

If the policy position is to make a Rule, then we need to consider how prescriptive the Rule should be.

A Rule may range between being principles-based or prescriptive:

Table 2.1: Principles-based vs prescriptive drafting

Principles-based	Prescriptive
The objectives are specified in the Rule, but the regulated entities can choose how they meet the objectives.	The manner or means of obtaining the objective are specified in the Rule, or in other regulatory instruments with which the Rule requires regulated entities to comply.

We should generally use a **principles-based** approach to Rule drafting.

However, where necessary to achieve a specific policy outcome, a Rule may have detailed provisions that should be clearly expressed, legally effective, and fit-for-purpose.

2.3.1 Principles based drafting focuses on outcomes

Principles-based drafting focuses on desired outcomes or objectives, without setting out in great detail how those outcomes or objectives are to be met or achieved.¹⁰ The emphasis is on the end result, rather than set processes or procedures.

General principles are more likely to remain relevant. Actions taken under these principles can evolve as the market environment changes.¹¹ Provisions drafted in this way may ensure the Rule is more adaptable to different factual scenarios and future changes in the energy landscape, such as changes in technology.

Principles-based regulation allows maximum flexibility among affected groups as to how they achieve compliance.¹² This may encourage innovation and reduce costs.

It is then the role of the regulator or enforcing authority to monitor outcomes and work with industry to ensure that the desired outcomes are achieved.

2.3.2 Prescriptive drafting focuses on inputs and processes

Prescriptive drafting seeks to specify the application and operation of the relevant provisions in all circumstances. Prescriptive provisions focus on inputs, processes and procedures of a particular activity.

A prescriptive drafting approach intends to make it very clear and certain as to what constitutes compliance. By setting out requirements in detail, such as specific actions, timeframes and deadlines, the provisions provide standardised solutions and facilitate straightforward enforcement.

¹⁰ This form of drafting may also be referred to as outcome-based or performance-based.

¹¹ See page 18 of the [Regulatory simplification](#) report published by the Australian Securities & Investments Commission in September 2025.

¹² Regulatory Impact Analysis Guide, page 19.

2.3.3 The level of detail will depend on each case

While the AEMC should generally adopt principles-based drafting where possible, the level of detail to be included in a set of Rules and any associated instruments will depend on the nature of the subject matter in each case.

The boxes below set out circumstances where it may be appropriate to adopt principles-based or prescriptive drafting, including key risks and benefits associated with each approach.

Box 3: Principles-based approach

Use this approach if:

- there are new products and services, constant innovation, market participants with significantly different characteristics or capabilities, or diverse participant preferences,
- we expect there to be significant technological change over time,
- the required policy outcome can be clearly expressed and measured, or
- there are different potential compliance methods and a “one size fits all” approach is not necessary.

Consider the risks

This approach may:

- create uncertainty in some situations,
- increase the burden on participants to justify their approach to compliance,
- make monitoring and enforcement more difficult in some circumstances, or
- increase disputes about the application of a particular Rule (or subordinate procedure or guideline) in a particular set of circumstances, which may be especially problematic where the provision is a civil penalty or conduct provision.

Box 4: Prescriptive approach

Use this approach if:

- the policy outcome can only be achieved if a standard process is followed in all cases and by all relevant entities,
- a high level of certainty as to compliance is required^[1] and it would be advantageous for participants to know exactly what must be done in a particular case to achieve compliance, or
- the risks or likelihood of non-compliance are high, considering the incentives to comply, the rewards for non-compliance and the available resources to monitor and enforce compliance.

Consider the risks

- Prescriptive provisions may be inflexible. They do not allow alternative approaches to achieve the desired outcomes of regulation.
- A prescriptive provision may lock in inefficient practices and inhibit innovation. They may not be suited to situations where circumstances are subject to change or where the market is constantly evolving.
- A Rule that is overly prescriptive may increase compliance costs and the regulatory burden due to unnecessary or overly complicated requirements.^[2]

- Concentrating too much on covering all potential eventualities may lead to overly complex Rules that are hard to understand and apply.
- Even with a prescriptive approach, it is likely that not all possibilities will be covered.

Note: [1] See page 30 of the [NSW Government Guide to Better Regulation](#), published by NSW Treasury in January 2019 (**NSW Better Regulation Guide**).

Note: [2] NSW Better Regulation Guide, page 30.

2.3.4 We should specify the minimum detail necessary to achieve the policy outcome

Even with a principles-based approach to drafting, we will always need to prescribe a certain level of detail in a Rule.

When drafting a Rule, it may be useful to ask these questions:

1. What policy outcome are we trying to achieve?
2. Have we clearly specified **who** must do **what action**?
3. How much of the “**how**” and “**when**” do we need to specify in order to achieve our policy outcome?
4. Is there anything we do not need to specify or can leave for someone else to specify?
5. Have we built in flexibility where things will change, or should be allowed to change?
6. Can the regulator sufficiently monitor and enforce compliance with the Rule?

2.4 We may require details to be set out in accompanying regulatory instruments

2.4.1 Principles-based Rules may allow for more prescriptive requirements in other instruments

Sometimes a mix of regulatory options should be considered to give effect to a policy. Different groups experience regulation differently and present varying levels of compliance risk. We should consider whether a mix of regulatory options would be more effective and efficient.¹³

For example, it may be appropriate for the AEMC to prepare principles-based Rules and require under the Rules (or recommend in determinations) that another entity prepare guidelines or procedures to assist participants.

This approach may ensure that the Rules are adaptable to future changes, while also allowing for greater certainty in achieving policy outcomes.

The national energy laws specifically provide that the AEMC may make Rules to allow:

- the AEMC, the Australian Energy Market Operator (**AEMO**), the Australian Energy Regulator (**AER**) and other persons or bodies to make or issue “guidelines, tests, standards, procedures and any other document”, and
- the AEMC, AEMO, the AER or a jurisdictional regulator to require compliance with such documents.¹⁴

A Rule may specify that a guideline or other document is non-binding (i.e. for guidance purposes only) or the Rule may require that participants comply with the document.

¹³ Regulatory Impact Analysis Guide, page 18.

¹⁴ See sections 34(3) of the NEL, 74(3) of the NGL and 237(3) of the NERL.

It may be appropriate for Rules to provide for guidelines, tests, standards, procedures or other documents where:

- there may be several acceptable means for regulated parties to achieve the particular outcome specified in the Rules,
- industry experience may develop over time,
- frequent adaptation to changes is required, for example in technology or communications,
- detailed procedural matters can be left to the relevant regulatory entity to develop in consultation with industry, or
- industry standards or processes should be developed or applied by a body more closely associated with the management and operations of an industry, but only to the extent that a conflict of interest would not likely arise.

However, if a matter requires clarity, certainty and enforceability, it may be more appropriate to include the matter in the Rules rather than in other documents. There may also be no overall benefit to regulated parties if long and complex requirements are merely moved from Rules to subordinate instruments.

2.4.2 Deciding which entity should be responsible for making and maintaining guidelines or procedures

If it is appropriate for provisions to be included in another instrument rather than in the Rule itself, the Rule must nominate the entity responsible for making and updating that instrument.

In determining the appropriate body to prepare these instruments, we should consider the functions and powers of bodies under the energy governance framework, particularly the national energy laws and the Australian Energy Market Agreement.

We should also consider the capabilities, incentives and potential for conflicts of roles or responsibilities of the relevant body.

2.4.3 Consultation processes for guidelines or procedures

We should consider what type of consultation process should apply to making and maintaining guidelines or procedures.

A Rule may include specific requirements for consultation,¹⁵ or the Rule may specify that consultation must be undertaken in accordance with standard consultation procedures.¹⁶

In determining the form of consultation, we should consider factors such as:

- which matters should be the focus of consultation,
- the role of industry knowledge and expertise in relation to the subject matter,
- whether the instrument is binding,
- the significance and cost to industry of any new obligations being imposed, as more significant obligations may justify more extensive consultation,
- how often the instrument is likely to need to be amended, and
- the appropriate balance of due process and reducing administrative burden.

¹⁵ For example, see clause 3.11.7(f) of the NER, where AEMO is required to consult with Registered Participants and other interested persons when making or amending those guidelines.

¹⁶ For example, see the Rules consultation procedures in rule 8.9 of the NER, distribution consultation procedures in rule 6.16 of the NER, transmission consultation procedures in rule 6A.20 of the NER, standard consultative procedure in rule 8 of the NGR, expedited consultative procedure in rule 9 of the NGR and retail consultation procedure in rule 173 of the NERR.

2.5 We should draft clear, concise and well-organised Rules

2.5.1 Structure the Rules clearly

We should always draft provisions with a view to the reader. We should aim for a layout and structure that are clear and logical and that assist the reader to find the relevant provisions and absorb their meaning quickly and easily. To achieve this:

1. Organise text into small, easy-to-read segments and make use of lists.¹⁷ Divide long slabs of text into clauses or subrules.
2. Use headings that are clear, short and specific to the topic they describe. Headings are signposts for readers. Readers may skim through headings to check whether a Rule is relevant before they read it in detail.¹⁸
3. Group related ideas together. Choose grouping methods that are appropriate to the reader and the purpose of the Rule.
4. Place the main message, or important parts, close to the front of the Chapter or Part.
5. Place the information that most people need before information that only some people need.
6. Place general or more substantive matters before specific or more procedural matters.
7. Structure the Rule so that there is a main rule, simply stated, with any exception or more specific rule separately stated.
8. Maintain consistency by adopting an order that already appears elsewhere, if that order remains appropriate.
9. Include only one idea in a single sentence, where possible.
10. Include only one sentence in each Rule, clause, subrule or paragraph, where possible.
11. Consider using schedules, especially for procedural or administrative matters.
12. Consider using tables or diagrams to present data in a more accessible form.

2.5.2 Use definitions only where necessary

We use definitions to give a standard meaning to words or phrases that occur throughout the legislation or part of the legislation. They are useful because they avoid having to repeat explanations and lengthy text, and they provide meaning and clarification.

However, too many defined terms in a single provision can make it difficult to read that provision.

To make definitions helpful to the reader, use them only when necessary and to:

- give meaning to a word that is different from its commonly understood meaning,
- give precision to a word, such as when it is vague or intended to have only one possible meaning,
- limit or extend the meaning of a word,
- avoid excessive repetition or overlong text in a document,
- allow the use of an acronym or abbreviation, and
- keep concepts used in the Rule simple, consistent, and clear.

Definitions should not:

- state the obvious or simply reiterate the dictionary definition,
- give an artificial or unnatural sense to the defined word or otherwise be misleading,

¹⁷ See page 15 of the [PCO Standard](#), published by the New South Wales Parliamentary Counsel's Office in May 2023.

¹⁸ See the Australian Government Style Manual, updated on 1 April 2025: <https://www.stylemanual.gov.au/structuring-content/headings>.

- be used elsewhere in the same document with a different intended meaning, or
- contain substantive content.¹⁹

The Rules should generally not repeat definitions found in the national energy laws unless there is a compelling reason for doing so. These definitions will automatically apply to the Rules, unless there is a contrary intention in the Rules.²⁰

If a defined term only relates to a particular section of the Rules (e.g. a particular Part, Division or Rule), it may be helpful to use a local definition that only applies to that section. A local definition at the start of that section can help the reader work through the document or focus on the relevant provisions.

2.5.3 Use plain English

If the Rules are easy to read, it will help more people understand how to follow them.

Consider these plain English tips:

1. Choose simple words, not complicated expressions. Use fewer words if possible. There is usually more than one way to express something. For example, use:
 - “must” instead of “shall” or “is required to”
 - “to” instead of “in order to”
 - “use” instead of “utilise”
 - “while” instead of “whilst”.
2. Avoid jargon and define any specialist or technical terms.
3. Use technology-neutral language where possible. Avoid drafting a provision in a way that assumes a regulated party will use a particular kind of technology, unless this is necessary to achieve the policy position.
4. Shorten only the words and phrases that are well known or used many times in the Rules. Shortened forms (such as abbreviations and acronyms) can be a type of jargon that should be defined or avoided altogether if they are used only once or twice. Shortened forms can help people read and understand content, but too many can be difficult to keep track of.
5. Use the present tense. For example, say “the regulator must publish guidelines” instead of “the regulator will publish guidelines”.
6. Use positive language, if possible. Avoid double negatives. For example, say “the regulator must approve a proposal if it complies with the criteria” instead of “the regulator cannot reject a proposal if it complies with the criteria”.
7. Be direct, by using the active voice instead of the passive voice. The active voice makes it clear who must do what. For example, say “the service provider must notify the regulator” instead of “notification must be provided to the regulator”.²¹

2.6 We should consider whether it is clearer to amend or replace an existing provision

When introducing a new concept or obligation, we should consider whether it would be clearer to add it to an existing provision or establish a separate provision to make the change more visible.

¹⁹ NZ Drafting Toolkit, page 42.

²⁰ See clause 13 of Schedule 2 to the NEL, clause 13 of Schedule 2 to the NGL and section 8 of the NERL.

²¹ See plain language guidance in the Australian Government Style Manual, updated on 20 December 2024: <https://www.stylemanual.gov.au/writing-and-designing-content/clear-language-and-writing-style/plain-language-and-word-choice>

Similarly, when amending an existing set of provisions, we should consider whether to make a series of amendments to those provisions, or to revoke all of the provisions and start again, within the scope legally permitted.²²

When amending a Rule, we should always simplify the drafting where possible.

Box 5: Amending existing provisions

Potential advantages

- A series of amendments to an existing provision may be the easiest way for us to achieve the intended outcome.
- Retaining as much familiar text as possible may help the reader understand the provision.

Potential disadvantages

- By making frequent and incremental amendments to a set of provisions over time, we may make the provisions less coherent and more difficult to follow.¹
- The new provisions may not fit well into the existing set of provisions.

Note: [1] See NZ Drafting Toolkit, page 59.

Box 6: Replacing with new provision

Potential advantages

- Opportunity for a new, simpler or more logical structure of the whole provision.
- Opportunity to draft in a plain English style.
- Opportunity to consider whether certain details should be rewritten, removed or included in other documents instead, such as guidelines or procedures.

Potential disadvantages

- May impact on regulatory certainty for market participants and their ability to understand the provisions – for example, it may be hard for participants to determine which, if any, policy positions have changed.
- May inadvertently change the effect of the re-drafted provisions.
- May take longer to draft.
- May lead to greater compliance costs or delay in implementation, with industry having to amend a range of internal compliance controls to account for changes in many provisions.

If we are drafting a Rule for an entirely new subject that the Rules do not currently deal with, then it may be more appropriate to establish new provisions in a separate Chapter or Part.

2.7 We can be flexible with these drafting principles if necessary

We should aim to adhere to the drafting principles in this philosophy. However, it may not be possible to adhere to every principle for every Rule change.

²² For example, see section 91 of the NEL which limits the AEMC's ability to make a Rule. With limited exceptions, the AEMC is not permitted to make a Rule unless it receives a request to make a Rule.

We may have to weigh up the different drafting principles if needed to, for example, achieve a particular policy objective, satisfy a number of divergent or conflicting perspectives raised during stakeholder consultation, be consistent with existing drafting, or accommodate practical implementation constraints with existing systems,²³ or constraints imposed by the relevant national energy law itself.

²³ Practically, it may only be possible to implement provisions using existing systems (for example AEMO's systems). The impact on these existing systems, or the existing system requirements, might require a drafting compromise.