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# NATIONAL ENERGY RETAIL LAW & NATIONAL ELECTRICITY RULES DRAFTING PAPER

Implementation of Recommendations from the AEMC's Review of NEM Financial Market Resilience

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**Nick Taylor**  
Partner  
+61 2 8272 0715  
[ntaylor@jonesday.com](mailto:ntaylor@jonesday.com)

**Jason Beer**  
Associate  
+61 2 8272 0578  
[jbeer@jonesday.com](mailto:jbeer@jonesday.com)

## PURPOSE OF THIS PAPER

1. This paper sets out details on changes to the National Energy Retail Law and Regulations and draft rules for changes to the National Electricity Rules to implement recommendations set out in the Australian Energy Market Commission's (AEMC's) Final Report for its Review of National Electricity Market (NEM) Financial Market Resilience. This paper covers changes to the Retailer of Last Resort (RoLR) Scheme for electricity retailers and the process for suspending a market participant under external administration from the NEM. The reasoning for these changes is set out in detail in the AEMC's Final Report.
2. These proposed changes relate only to electricity retailers in the NEM, consistent with the scope of the Review conducted by the AEMC. However, the AEMC recommends that the application of the relevant changes to the RoLR framework in the National Energy Retail Law to gas retailers should be considered to provide for a simpler drafting and implementation process, as the National Energy Retail Law currently applies uniform provisions where possible to both electricity and gas retailers.
3. This paper is set out in three parts:
  - Part A** Amendments to National Energy Retail Law and Regulations
  - Part B** Amendments to National Electricity Rules to Implement RoLR Recommendations
  - Part C** Amendments to National Electricity Rules to Implement Participant Suspension Recommendations

## **PART A** **Amendments to National Energy Retail Law and Regulations**

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4. These changes relate to amendments to the *National Energy Retail Law* (NERL).
5. The broad aim of the amendments is to reduce the financial burden that could be faced by a RoLR following the transfer of customers to the RoLR from a failed electricity retailer. This would allow financial shocks to the NEM to be absorbed more readily and the RoLR scheme to operate more effectively in a broader set of circumstances.

### **Revised Cost Recovery Arrangements**

6. Amendments are intended to provide increased certainty that reasonable RoLR costs can be recovered, providing a more secure basis for the RoLR to seek financing, and to bring forward the recovery of costs borne by the RoLR if these costs are both easily identifiable and quantifiable.

#### ***Clarification of Purpose of RoLR Cost Recovery Scheme***

##### *Explanation*

7. Section 166 of the NERL should be amended to clarify the purpose of a RoLR cost recovery scheme in the case of an electricity retailer.

##### *Detailed changes required*

8. Section 166(1) should be amended such that it is clear that the purpose of a RoLR cost recovery scheme in the case of an electricity retailer is to create a framework which sets out the nature of the costs that a RoLR may recover pursuant to a RoLR cost recovery scheme distributor payment determination under Section 167.
9. This could be achieved by inserting the words 'which in the case of an electricity retailer, is a framework setting out the nature of the costs that a RoLR may recover pursuant to a RoLR cost recovery scheme distributor payment determination' after the word 'Division' in Section 166(1).

### ***Amended Considerations Relevant to AER RoLR Cost Recovery Determinations***

#### *Explanation*

10. Under the current arrangements, in determining a RoLR cost recovery scheme the AER must be guided by three principles set out in Section 166(7) of the NERL. The amendments are intended to remove the third limb of this test such that the AER will no longer be required to be guided by the principle that 'the registered RoLR will itself bear some of the costs, in proportion to its customer base'.
11. The amendments are also intended to introduce a new requirement that in considering cost recovery applications, the AER must have regard to the principle that only costs prudently incurred by a designated RoLR should be recoverable.

#### *Detailed changes required*

12. Section 166(7)(c) should be amended to specify that the AER must only be guided by the principle that a registered RoLR will itself bear some of the costs, in proportion to its customer base, in the event of a RoLR event involving a gas retailer.
13. A new sub-section should be inserted after section 166(7)(c) which specifies that where a RoLR event involves an electricity retailer, the AER must be guided by the principle that costs not prudently incurred by the designated RoLR in meeting its obligations should not be recoverable.

### ***Specification of Recoverable Costs***

#### *Explanation*

14. The NERL should be amended to provide a right for the RoLR to recover specified types of costs that are incurred in relation to a RoLR event. These should include:
  - a. Hedge-adjusted energy costs in relation to the acquired customers (to the extent that they are not recovered in the prices charged to those customers);
  - b. Financing costs in relation to additional credit support that is required to be provided to AEMO or DNSPs in relation to the acquired customers;
  - c. Financing costs to cover the period from when the costs are incurred and when they are recovered under this mechanism; and
  - d. Administration costs in relation to (a) – (c);
15. Section 166(3) of the NERL currently provides limited guidance as to the types of costs recoverable by a RoLR and the amendments are intended to clarify what costs a RoLR shall be entitled to recover.

16. Section 166(8) of the NERL also creates some uncertainty in relation to cost recovery, as it currently provides that the “AER may, in determining a RoLR cost recovery scheme, limit either generally or in particular cases or classes of cases the costs (and the amount of those costs) that are recoverable”. There are currently no statutory criteria to which the AER must have direct regard in determining whether to limit recoverable costs. The amendments are intended to remove this discretion.

*Detailed changes required*

17. Section 166(3)(b) should be amended to provide greater certainty that in relation to a RoLR event involving an electricity retailer, the following additional costs should be recoverable:
- a. The additional costs incurred in acquiring energy for supply to RoLR customers including costs incurred in the *market*, in acquiring hedging coverage and interregional settlement entitlements;
  - b. Financing costs in relation to additional credit support that is required to be provided to AEMO or distributors in relation to the acquired customers;
  - c. Financing costs to cover the period between when the RoLR related costs are incurred and when those recoverable costs are recovered; and
  - d. Additional administration costs associated with the RoLR event.
18. Section 166(8) should be amended to provide that the AER may only limit the costs that are recoverable in the event of a RoLR event involving a gas retailer.

***Promoting competition between retailers to become RoLRs***

*Explanation*

19. As discussed above, the AEMC has recommended removing the principle for RoLR cost recovery schemes that registered RoLRs will bear some of the costs of the RoLR event, in proportion to their customer base. However, retailers should still have the ability to offer to bear some costs associated with a RoLR event, as this may encourage retailers to offer more competitive terms to become a RoLR, where retailers see a significant benefit in being able to acquire the customers of the failed retailer.

*Detailed changes required*

20. Section 166 should be amended to include a new sub-section which provides that in relation to electricity RoLRs only, a RoLR may include as part of a cost recovery scheme application an undertaking that, should it be appointed as a designated RoLR pursuant to a section 132(2), it would not seek to recover a category of cost, or would only seek to recover a particular figure or percentage of its costs. The amendment should also stipulate that following a RoLR event, a RoLR may apply to amend its scheme by the inclusion of such an undertaking, in which case section 166(5) would not apply to that amendment.

***Time Period for RoLR Cost Recovery Applications***

*Explanation*

21. The AER currently sets out in the RoLR Guidelines that RoLR cost recovery scheme applications must be made within nine months of being appointed a default RoLR, or for designated RoLRs, within nine months of the RoLR event.

22. Amendments to the NERL to specify a period during which a RoLR cost recovery scheme must be applied for would replace the time limits set in the RoLR Guidelines. This would allow RoLRs to recover their costs in a shorter timeframe. The amendments should stipulate a three month time period but also provide the AER with a discretionary power to allow applications to be made for a RoLR cost recovery scheme beyond the initial three month period, where the RoLR can provide evidence that it was prudent to do so.

*Detailed changes required*

23. A new sub-section should be inserted after Section 166(2) which provides that in relation to a RoLR event involving an electricity retailer, unless otherwise authorised by the AER, an application for a RoLR cost recovery scheme must be made:
- a. In the case of preparatory costs incurred by a default RoLR, within three months of being appointed a default RoLR; and
  - b. In the case of a designated RoLR, within three months of the RoLR event.
24. The amendment should also stipulate that the AER may authorise an extension where the RoLR can demonstrate that such an extension would be prudent having regard to the particular circumstances of the application.

***Fast Tracked RoLR Cost Recovery Determinations***

*Explanation*

25. To encourage retailers to become RoLRs, amendments are intended to provide both greater certainty of the types of costs recoverable and a mechanism by which retailers can recover some costs, which are both clearly identifiable and quantifiable, in as short a time as possible.
26. The current regulatory framework would permit the AER to make a fast tracked determination and later amend it, so long as either an application for amendment has been received from the registered RoLR or an affected distributor, or where the AER seeks to amend the initial determination of its own volition, it has first consulted with these groups.
27. However, amendments providing explicitly for the concept of a fast tracked cost recovery scheme determination would provide greater certainty for Market Participants and provide a statutory framework more suited to the concept of a fast track recovery scheme determination.
28. To provide additional certainty in relation to recoverable costs, those costs determined to be recoverable as part of a fast tracked determination should not be able to be varied in a subsequent amendment. However, amendments must ensure that an exception to this principle would exist where a fast tracked determination or any other type of RoLR cost recovery determination includes a mistake, miscalculation, defect in form or deficiency resulting from the provision of false or misleading information to the AER. The drafting should reflect similar provisions in Rule 6.13 of the National Electricity Rules, relating to AER regulatory determinations for distribution networks service providers.
29. Amendments should also stipulate that the AER may decide to fast track only some parts of an application for a fast track determination, while deciding other parts as part of a full consultation determination. The AER will be required to determine an application for a fast tracked determination as soon as possible, or where it has determined that no part of an application can be approved, or only part of an application can be approved, it must inform

the RoLR that the AER declines to provide a fast track approval for the application, or a part of the application. The RoLR would then be able to submit that part of the application which was not approved as part of an application for a full consultation determination.

30. The current rules provide that the AER must provide at least 20 business days for consultation on a fast tracked application, which limit how quickly applications can be progressed by the AER. Amendments should provide an exception to these requirements for fast tracked applications.

*Detailed changes required*

31. A new sub-section should be inserted into Section 166 which provides that subject to any undertaking provided pursuant to the new section identified above, which allows for RoLRs to provide undertakings to accept lower recoverable costs, the costs of a RoLR may be determined pursuant to one of three types of RoLR cost recovery scheme distributor determinations:
  - a. A preparatory costs determination pursuant to which the RoLR may apply for the recovery of its costs in preparing to be a RoLR before a RoLR event occurs;
  - b. For a RoLR event involving an electricity retailer only, a fast track determination in relation to costs after a RoLR event provided that the AER considers that the costs concerned are clearly identifiable and quantifiable; and
  - c. a full consultation determination for any other relevant cost.
32. This new sub-section should stipulate that in determining an application for a fast track determination, the AER may decide to fast track only some parts of an application, while deciding other parts as part of a full consultation determination.
33. Section 166(10) should also be amended to clarify that the AER must publish a copy of its decision in relation to a RoLR cost recovery scheme and a RoLR cost recovery determination on its website.
34. A new sub-section should be inserted in Section 167 which provides that where an electricity retailer is the subject of a RoLR event, the AER must:
  - a. For preliminary costs determinations and full consultation determinations, follow the process set out in Section 166(4) to (6); and
  - b. For a fast track determination:
    - i. Follow the same process set out in Section 166(4) to (6), except that it may determine that the period for consultation may either be reduced or waived completely; and
    - ii. Either make a determination on the application as soon as possible or where it is determined that the application cannot be fast tracked, or only partially fast tracked, inform the RoLR that the AER declines to provide a fast track approval for the application or part of the application and that the RoLR may resubmit the application, or part of the application as part of an application for full consultation approval.
35. Section 168 should also be amended to stipulate that in relation to a RoLR event involving an electricity retailer, the amount determined by the AER to be recoverable under a RoLR cost recovery scheme distributor payment determination can only be amended by the AER if

it appears to the AER that the determination is affected by a material error or deficiency of one or more of the following kinds:

- a. A clerical mistake or an accidental slip or omission;
  - b. A miscalculation or misdescription;
  - c. A defect in form; or
  - d. A deficiency resulting from the provision of false or materially misleading information to the AER.
36. The amendments should also provide that:
- a. Where the AER determines that such a material error or deficiency has occurred, it must revoke the determination and make a new determination in substitution to apply from the date of the new determination;
  - b. If the AER revokes and substitutes a determination under these provisions, the substituted determination must only vary from the revoked determination to the extent necessary to correct the relevant error or deficiency; and
  - c. The AER may only revoke and substitute a determination under this provision if it has first consulted with the relevant RoLR(s) and distributor(s).

#### ***Clarifying That Recovery of RoLR Costs Must be Solely Through Distributor Payment Determinations***

##### *Explanation*

37. The current regulatory structure leaves open the possibility that the AER may provide for the recovery of RoLR costs through distributor payment determinations or alternative mechanisms such as customer specific charges. Greater certainty would be provided to Market Participants if amendments stipulated that the full recovery of RoLR costs is to occur solely through distributor payment determinations.

##### *Detailed changes required*

38. Section 167(1) should be amended to stipulate that the AER must, as part of its determination with respect to a RoLR cost recovery scheme distributor payment determination, and after consultation with the distributor or distributors concerned, require that one or more distributors are to make payments to satisfy the full costs determined to be recoverable under the scheme.

#### **Clarifying when a RoLR Notice is Required to be Issued**

##### *Explanation*

39. Whereas the current provisions provide that the AER may decide to issue a RoLR notice on the occurrence of a RoLR event, the AEMC recommends that the AER must issue a RoLR Notice when a RoLR event set out in Section 122(b) occurs. This relates to when a retailer is suspended from acquiring electricity from the wholesale market or ceases to be a registered participant in relation to the purchase of electricity through the wholesale market. This removes any uncertainty in relation to the application of the RoLR scheme following the suspension of a retailer from the wholesale market. Under the existing provisions in section

136(5) of the NERL, the transfer date for the RoLR event will be taken to be the date of the suspension of the retailer, unless an earlier date is specified.

*Detailed changes required*

40. Section 136(1) should be amended to provide that where a RoLR event set out in Section 122(b) occurs, the AER must as soon as practicable issue a RoLR notice.

## **Delaying Designation of RoLRs**

*Explanation*

41. These amendments are intended to provide the AER with time to consider alternative RoLRs to the default RoLR, after a RoLR event occurs. Under the current legislation, section 132 (1) - (2) of the NERL designates the default RoLR to be the designated RoLR, unless the AER, before the RoLR event occurs, has already appointed a different registered RoLR as a designated RoLR, and provided notice to AEMO.
42. Amendments are intended to increase the time allowed for the AER to advise AEMO of the designated RoLR(s), to up to 24 hours after the RoLR event. To achieve this, the AER would issue two notices: a RoLR notice to provide information about the RoLR event as soon as practicable after such an event, and a RoLR designation notice, which would determine who the designated RoLRs are and would be issued up to 24 hours after a RoLR event.
43. Amendments are also intended to make clear that if the AER does not issue a RoLR designation notice within 24 hours of a RoLR event, the default RoLRs would be appointed as designated RoLRs. It will continue to be the case that if the AER does not issue a RoLR notice at all, the default RoLRs will be taken to be appointed as the designated RoLRs in accordance with Section 132(1). The default RoLR would be taken to be appointed where the AER has not issued a RoLR notice within 24 hours of the RoLR event occurring. Amendments would need to confirm that where the AER has not issued a RoLR notice, the RoLR transfer date, as set out in section 136(5), would still apply.
44. The AER would continue to be able to designate a RoLR prior to a RoLR event occurring.
45. Amendments are also required to provide that the same publication and service requirements that apply to RoLR notices will apply to RoLR designation notices. The AER would be able to publish a RoLR notice and a RoLR designation notice at the same time as a single notice if considered practicable.

*Detailed changes required*

46. A new section should be inserted to provide for the concept of a RoLR designation notice. Amendments should provide that if the AER has decided to issue a RoLR notice under section 136 in relation to an electricity retailer, if it has not already done so, it may issue a RoLR designation notice within 24 hours of the RoLR event.
47. Further, amendments should provide that a RoLR designation notice must:
  - a. specify the registered RoLR or registered RoLRs appointed by the notice (or taken to be appointed) under Section 132 as a designated RoLR or designated RoLRs for the event; and



- b. if more than one designated RoLR is appointed—specify, in accordance with the AER RoLR Guidelines, the allocation of each designated RoLR to particular customers or classes of customers.
48. Amendments should also provide that a RoLR designation notice may contain requirements (not inconsistent with this Law or the RoLR Procedures) to be complied with by:
- a. a designated RoLR; and
  - b. subject to section 143(3), other persons on whom the notice is served;
- in relation to the RoLR event and in particular in relation to the transfer of customers.
49. Amendments are also required to Section 136(2) to clarify that Section 136(2)(c) and (d) should apply only in relation to a RoLR event involving a gas retailer. Further, amendments are required to Section 136(3)(b) to clarify that only in relation to a RoLR event involving a gas retailer, should a RoLR notice contain requirements to be complied with by a designated RoLR.
50. Section 132 should also be amended to clarify that sub-section (3) should only apply in relation to a RoLR event involving a gas retailer. Further sub-sections should be inserted which provide that in relation to a RoLR event involving an electricity retailer only:
- a. Despite sub-section (1) and (2), if the AER has decided to issue a RoLR notice under section 136, and the AER gives a copy of the notice to AEMO, no RoLR will be appointed until either the AER has issued a RoLR designation notice or 24 hours has elapsed since the RoLR event, whichever is the earlier; and
  - b. Appointment as a designated RoLR takes effect immediately or from an earlier or later time specified in or fixed in accordance with the RoLR designation notice for the RoLR event.
51. Section 132(1) should also be amended to provide that in relation to a RoLR event involving an electricity retailer only, the default RoLR is only taken to be appointed as the designated RoLR in respect of that event where the AER has determined not to issue a RoLR notice within 24 hours of the RoLR event occurring under Section 136(1a) or where the AER has issued a RoLR notice, but not issued a RoLR designation notice within 24 hours of the RoLR event. Where the AER has not issued a RoLR notice, the RoLR transfer date, as set out in Section 136(5), would still apply.
52. Section 138 should be amended:
- a. To provide that sub-section 138(1)(a)(iv) should only apply in relation to a RoLR event involving a gas retailer;
  - b. To include a new requirement in sub-section 138(1)(a) which stipulates that a RoLR notice must be given to the registered RoLR(s) in relation to a RoLR event involving an electricity retailer; and
  - c. To provide that in relation to a RoLR event involving an electricity retailer, the requirements of sub-sections 138(1)-(3) shall apply to a RoLR designation notice, as if it was a RoLR notice.
53. Section 139 should be amended:

- a. To provide in sub-section 139(a1) that the section applies to both a RoLR notice and a RoLR designation notice if one has been made, and that the AER may publish a RoLR notice and RoLR designation notice together if considered practicable and;
- b. To provide that 'when appointed' is inserted at the end of sub-section 139(1)(d) and sub-section 139(2)(c).

## **Amending RoLR Arrangements for Very Large Customers**

54. Amendments are intended to reduce the financial obligations inherited by the RoLR and potential for cascading retailer failures, by seeking to minimise the size of the load transferred to the RoLR. This will be achieved by increasing the awareness of very large customers of the risks associated with a retailer failure and providing incentives for these customers to organise their own alternative retailer, instead of being transferred to the designated RoLR.
55. These amendments would apply to very large customers who are defined as those with an individual connection point with consumption of 10GWh per annum or greater.
56. All large customers (including very large customers) are currently able to and would continue to have the option to arrange their own alternative retailer before a RoLR event occurs, on terms and conditions agreed by the customer and the alternative retailer. AEMO would need to be notified of this agreement by the alternative retailer.
57. If their current retailer fails, and AEMO has been notified of a large customer's alternative retailer, the large customer would be transferred (on the RoLR transfer date) to their alternative retailer.
58. If an alternative retailer is not notified to AEMO before a RoLR event, very large customers would have a one week 'period of grace' from the RoLR transfer date to organise an alternative retailer and for that retailer to notify AEMO of this arrangement. The very large customer would be transferred to that retailer with liabilities commencing from the RoLR transfer date if this was provided in the agreement between the alternative retailer and the very large customer. This grace period would only apply to very large customers rather than all large customers.
59. The very large customer would be transferred to the designated RoLR from the RoLR transfer date, unless an alternative retailer has notified AEMO that it has taken responsibility for that customer from the RoLR transfer date.
60. For those very large customers without an alternative retailer in place before a RoLR event, incentives in the form of an accelerated transfer process will be provided to encourage very large customers to include provisions in their contracts for their alternative retailer to assume liability from the RoLR transfer date as opposed to some other point during the one week period of grace. If no such provision is made, the designated RoLR would be liable for the period between the transfer date and the date that the alternative retailer assumes liability.
61. In addition, all large customers (including very large customers) would be notified of their RoLR arrangements applicable to them in their customer contracts and very large customers would also be notified annually by the AER of specific RoLR obligations applicable to them. This increased awareness of RoLR arrangements and obligations is intended to increase the potential of large and very large customers organising their own alternative retailer to reduce the load transferred to the designated RoLR.

### **Defining very large customers**

#### *Explanation*

62. Amendments are required to define what a very large customer is. The NERL already defines 'small customers' and 'large customers' according to consumption thresholds set in the National Energy Retail Regulations. A similar approach is to be taken in defining very large customers.
63. It has been determined that a very large customer should be one who consumes 10 GWh per annum or more at a single connection point.

#### *Detailed changes required*

64. A new sub-section should be inserted in Section 5 to provide that a very large customer is a business customer who consumes electricity at a single connection point at or above the very large customer consumption threshold.
65. A new sub-section should be inserted in Section 6(2) that provides that the National Energy Retail Regulations may determine or make provision for determining the very large customer consumption threshold.

### **Ability to enter into an alternative RoLR arrangement**

#### *Explanation*

66. The current legislation already provides that large customers may stipulate their own alternative retailer if a RoLR event occurs. However the current provisions only state that AEMO may transfer a large customer to their nominated alternative retailer if a RoLR event occurs. Amendments are intended to instead require that AEMO must conduct the transfer to the nominated alternative retailer.
67. In addition, amendments are intended to provide additional incentives for very large customers to either have alternative retailers in place or to quickly secure such agreements when a RoLR event occurs.
68. Whereas the current legislation requires that large customers notify AEMO of alternative retailer arrangements, amendments will instead stipulate that it is the responsibility of the retailer to notify AEMO when it is appointed a nominated alternative retailer for either a large or very large customer. This amendment reflects that retailers are better placed than customers to engage with AEMO's processes and procedures.
69. To incentivise very large customers to arrange alternative retailers and reduce the load on the designated RoLRs, if a very large customer does not have an alternative retailer agreement in place prior to the transfer date, it would not be transferred to the designated RoLR at the transfer date. Instead it would be provided with a grace period of seven days to negotiate a supply agreement with a new retailer and for that retailer to notify AEMO of that arrangement.
70. AEMO would also provide an accelerated transfer process, to incentivise very large customers to enter into alternative retailer agreements, if the alternative retailer assumes liabilities from the RoLR transfer date during the seven day grace period. Provision for an accelerated transfer process would be provided for in AEMO's RoLR Procedures.
71. If a large customer does not have a nominated retailer in place at the time of the transfer date, it will be transferred to the designated RoLR at the transfer date. If a very large

customer does not have a nominated retailer in place at the time of the transfer date, it will have seven days to organise an arrangement which provides for liabilities to be transferred from the RoLR transfer date, or after that seven days, it will be transferred to the designated RoLR.

*Detailed changes required*

72. Sub-section 140(7) should be amended such that it has the effect that subject to the RoLR Procedures, a retailer in electricity, rather than the customer, is required to notify AEMO in writing before the transfer date that in a RoLR event it has agreed with a large customer or a very large customer to be the nominated retailer for that customer.
73. Sub-section 140(7)(a) should be amended such that AEMO must transfer a customer to the nominated retailer, as opposed to the current drafting where it may transfer a customer.
74. A new sub-section should be inserted after sub-section 140(7) that provides that subject to the RoLR Procedures, if AEMO has not been notified, before the transfer date in writing, by a retailer that a very large customer has nominated that retailer to be its nominated retailer in a RoLR event:
  - a. sub-section 140(7)(1)(b) shall not apply; and
  - b. if an alternative retailer notifies AEMO within seven days of the RoLR transfer date that a customer has entered into a supply agreement with it which provides for the transfer of liabilities from the RoLR transfer date, AEMO must transfer that customer to the alternative retailer rather than the designated RoLR, with liabilities transferred to the alternative retailer from the RoLR transfer date.
75. A new sub-section should be inserted after sub-section 140(7) which provides that subject to the RoLR Procedures, if AEMO has neither been notified that a very large customer has nominated a retailer prior to a RoLR event in accordance with sub-section 140(7), or entered into an agreement with a nominated retailer within seven days of the RoLR transfer date which requires the nominated retailer to assume liabilities from the RoLR transfer date, that customer shall be transferred to the designated RoLR and the designated RoLR shall be responsible for that customer from the RoLR transfer date.

***Informing large and very large customers of RoLR arrangements***

*Explanation*

76. Currently the NERL requires that retailers notify small customers of what will happen to the customer's arrangements for the purchase of energy if a RoLR event occurs. Amendments should be made to extend this requirement to all large customers (which would also include very large customers) to increase customer awareness of their ability to organise their own alternative retailer.

*Detailed changes required*

77. A new sub-section should be inserted in Section 169 that provides that all customer retail contracts for all large customers must include a notice explaining the RoLR obligations and requirements applicable to them.

***Providing for very large customers in RoLR plans***

*Explanation*

78. The AER is required to make and maintain RoLR plans which set out amongst other things, strategies to quickly and effectively communicate details of the RoLR event to various stakeholders. Amendments are required to include provision of information specifically to very large customers.

*Detailed changes required*

79. A new sub-section should be inserted in Section 163(b) which provides that a RoLR plan must include, in the event of a RoLR event, strategies to quickly and effectively communicate to affected very large customers – details regarding the specific RoLR obligations applicable to them.

**Provision of customer information to AER**

*Explanation*

80. Amendments seek to require that retailers provide updated customer information on their very large customers to the AER on an annual basis and that the AER should be required to use that information to notify very large customers of details of specific RoLR obligations applicable to them. The customer information should include contact details and National Metering Identifier (NMI) information for each very large customer. Increased awareness of their RoLR obligations is likely to increase the potential of very large customers organising their own alternative RoLR. The AER should be required to provide NMI information only to AEMO to assist it managing the transfer process for very large customers following a RoLR event.

*Detailed changes required*

81. A new section should be inserted after Section 169 which provides that:
- a. Each retailer must provide to the AER on an annual basis, customer contact and NMI information in relation to their very large customers in the manner and form specified by the AER;
  - b. The AER shall notify very large customers of the details of specific RoLR obligations applicable to them on an annual basis; and
  - c. The AER must provide the very large customer NMI information to AEMO on an annual basis to assist it in managing the transfer process for very large customers following a RoLR event.

**National Energy Retail Law Regulation Amendments**

82. These changes relate to amendments to the *National Energy Retail Regulations*.

**Defining Very Large Customers**

*Explanation*

83. It is necessary to set a consumption threshold for the concept of a 'very large customer' as part of broader reforms to the National Energy Retail Law.

*Detailed changes required*

84. A new section should be inserted after Section 7 of the *National Energy Retail Regulations* to provide that the very large customer consumption threshold for electricity is 10 GWh per annum at a single connection point.

## **PART B**

### **Amendments to National Electricity Rules to implement RoLR Recommendations**

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85. These drafting changes relate to amendments to the *National Electricity Rules*.
86. The broad aim of these amendments is reduce credit support requirements for a designated RoLR following a RoLR event, to reduce the impacts of increased credit support requirements on the RoLR and the potential for cascading retailer failures.
87. Transitional provisions would also need to be drafted to allow AEMO time to amend its credit limit procedures before the new rules are required to be applied.

#### **Delay in AEMO credit support requirements**

##### *Explanation*

88. Amendments are intended to require AEMO to include in the credit limit procedures, the process and methodology by which AEMO will determine the prudential settings for a RoLR. Amendments will stipulate that AEMO should endeavour to ensure that the RoLR's maximum credit limit (MCL) is not increased in respect of its RoLR load for seven days after the RoLR transfer date. Amendments are also required to allow the RoLR's trading limit to be increased to reflect the expected outstandings of the RoLR load for the first seven days after the RoLR transfer date, require AEMO to include the methodology for this change in the trading limit in the credit limit procedures, and notify the RoLR of this change in their trading limit. As the RoLR's MCL is not increased for this seven day period, but its trading limit is increased, it is possible that the prudential standard for the RoLR may be breached during this period.
89. For a period of four weeks following the seventh day after the transfer date, AEMO will amend the RoLR's credit support obligations by an amount reflecting the expected outstandings of the RoLR in respect of its RoLR load until the RoLR's prudential settings fully reflect all load for which it is financially responsible. The RoLR's prudential settings, including both its MCL and trading limit, will reflect its full load for which it is financially responsible five weeks following the RoLR transfer date.
90. The AEMC's recommendations in relation to AEMO credit support requirements are intended to balance the immediate impact to a designated RoLR of sharply increased credit support requirements and the consequences to the NEM and generators if the amount of collateral held by AEMO was not sufficient in the event of a RoLR collapse.

##### *Proposed drafting changes*

91. Clause 3.1.1A should be amended to provide for additional defined terms used in the amended provisions that follow. Specifically, the following term should be added with the following definitions:
- a. **RoLR load** in respect of a *Market Participant* means the *load* associated with the *connection points* transferred to the *Market Participant* in its capacity as a *RoLR* under the *NERL*;

- b. **RoLR transfer date** has the same meaning as “*transfer date*” in section 122 of the *NERL*; and
- c. **TL grace period** means the period from the RoLR transfer date until the effective date of a change in the *RoLR*’s MCL under clause 3.3.8(da)(2).
92. Proposed drafting changes are set out below:

### Proposed drafting changes

#### 3.1.1A Definitions

In this Chapter:

**credit limit procedures** means the procedures developed, *published* and maintained by *AEMO* under clause 3.3.8.

**credit period** means the sum of the payment period and the reaction period as determined by *AEMO*.

**maximum credit limit** means the minimum amount of *credit support* a *Market Participant* must provide to *AEMO* for the relevant credit period, as determined by *AEMO* in accordance with clause 3.3.8.

**outstandings limit** means *AEMO*’s estimate of the maximum value that a *Market Participant*’s *outstandings* can reach over the payment period if the *Market Participant* has lodged *credit support* equal to the maximum credit limit.

**payment period** means the number of days in a *billing period* plus the number of days until payment is due with respect to transactions for that *billing period*.

**prudential margin** means the allowance made by *AEMO* in determining a *Market Participant*’s maximum credit limit for the accrual of the *Market Participant*’s *outstandings* during the reaction period.

**prudential probability of exceedance** means the probability of the *Market Participant*’s maximum credit limit being exceeded by its *outstandings* at the end of the reaction period following the *Market Participant* exceeding its *outstandings* limit on any day, and failing to rectify this breach.

**prudential settings** means the maximum credit limit, *outstandings* limit and prudential margin as determined by *AEMO* in accordance with clause 3.3.8.

**prudential standard** means the value of the prudential probability of exceedance, expressed as a percentage, and as specified under clause 3.3.4A, to be used by *AEMO* to determine the prudential settings to apply to *Market Participants*.

**reaction period** means a period of 7 days. It represents, for the purpose of calculating the prudential settings, the time from the day that a *Market Participant*’s *outstandings* exceeds its *trading limit* to when the *Market Participant* is suspended from trading under clause 3.15.21(c) if the exceedance is not rectified.

**RoLR load in respect of a *Market Participant*** means the *load* associated with the *connection points* transferred to the *Market Participant* in its capacity as a *RoLR* under the *NERL*.

**RoLR transfer date** has the same meaning as “*transfer date*” in section 122 of the *NERL*.

**TL grace period** means the period from the RoLR transfer date until the

effective date of a change in the RoLR's MCL under clause 3.3.8(da)(2).

93. Clause 3.3.8(b) should be amended to provide an exception to the objective which would otherwise apply, except in relation to RoLRs under the proposed new paragraph (da).
94. A new paragraph, paragraph 3.3.8(da), should be inserted after clause 3.3.8(d) which provides that the credit limit procedures must include the process and methodology by which AEMO will determine the prudential settings for a Market Participant who becomes financially responsible for connection points in its capacity as a RoLR under the NERL, so that, as far as reasonably practicable:
- a. the RoLR's MCL is not increased in respect of its RoLR load for 7 days after the RoLR transfer date;
  - b. from the first business day that is at least 7 days after the RoLR transfer date, the RoLR's MCL is changed by an amount (if any) reflecting the expected outstandings of the RoLR in respect of its RoLR load over a period of one week, taking into account the factors in paragraph (d);
  - c. the RoLR's MCL is further changed at weekly intervals by not more than an amount calculated in accordance with paragraph (2), until the RoLR's prudential settings fully reflect all load for which it is financially responsible;
  - d. the RoLR's outstandings limit and prudential margin are determined and applied to correspond with changes to its MCL in respect of RoLR load;
  - e. the RoLR's prudential settings fully reflect all load for which it is financially responsible within a period of 5 weeks after the RoLR transfer date; and
  - f. to the extent applicable to trading other than in respect of RoLR load, the RoLR's prudential settings are to be calculated and applied in accordance with the methodology that would otherwise apply under paragraph (d).
95. A new paragraph, paragraph 3.3.8(db), should also be inserted to require AEMO to set out the methodology for changes to the RoLR's trading limit in AEMO's credit limit procedures. Clause 3.3.8(n) should also be amended to require AEMO to notify Market Participants of changes to their trading limit where this trading limit is increased due to becoming a RoLR, as part of AEMO's existing requirements to notify Market Participants of any change to the Market Participant's prudential settings.
96. Clause 3.3.8(j) should be amended to provide that the paragraph is subject to the new proposed paragraph (da) identified above.
97. Proposed drafting changes are set out below:

**Proposed drafting changes**

**3.3.8            Credit limit procedures and prudential settings**  
**Credit limit procedures**



- (a) This clause sets out the framework for the establishment and determination of the prudential settings for *Market Participants* in the *NEM*.
- (b) The objective of the credit limit procedures is to establish the process by which *AEMO* will determine the prudential settings for each *Market Participant* so that the prudential standard is met for the *NEM*, except as contemplated in relation to *RoLRs* under paragraph (da).
- (c) *AEMO* must develop, and, at all times, *publish* and maintain the credit limit procedures that details the methodology to be used by it to determine the prudential settings to apply to *Market Participants*.
- (d) Subject to paragraph (e), in developing the methodology to be used by *AEMO* to determine the prudential settings to apply to *Market Participants*, *AEMO* must take into consideration the following factors:
  - (1) the *regional reference price* for the *region* for which the prudential settings are being calculated;
  - (2) the time of year;
  - (3) the volatility of *load* and *regional reference price* for the *regions*;
  - (4) *AEMO's* estimate of the *generation* and *load* for each *Market Participant*;
  - (5) the relationship between average *load* and *peak load* for each *Market Participant*;
  - (6) any *prospective reallocations* for the period being assessed;
  - (7) the correlation between *energy*, *reallocations* and the *regional reference price*;
  - (8) the statistical distribution of any accrued amounts that may be owed to *AEMO*;
  - (9) the relevant time period for which the prudential settings are being calculated; and
  - (10) any other factors *AEMO* considers relevant having regard to the objective of the credit limit procedures under paragraph (b).
- (da) The credit limit procedures must include the process and methodology by which *AEMO* will determine the prudential settings for a *Market Participant* who becomes *financially responsible* for *connection points* in its capacity as a *RoLR* under the *NERL*, so that, as far as reasonably practicable:
  - (1) the *RoLR's* MCL is not increased in respect of its *RoLR* load for 7 days after the *RoLR* transfer date;
  - (2) from the first *business day* that is at least 7 days after the *RoLR* transfer date, the *RoLR's* MCL is changed by an amount (if any) reflecting the expected *outstandings* of the *RoLR* in respect of its *RoLR* load over a period of one week, taking into account the factors in paragraph (d);
  - (3) the *RoLR's* MCL is further changed at weekly intervals by not more than an amount calculated in accordance with paragraph (2), until the *RoLR's* prudential settings fully reflect all *load* for which it is *financially responsible*;
  - (4) the *RoLR's* *outstandings* limit and prudential margin are determined and applied to correspond with changes to its MCL in respect of *RoLR* load;
  - (5) the *RoLR's* prudential settings fully reflect all *load* for which it is

financially responsible within a period of 5 weeks after the RoLR transfer date; and

(6) to the extent applicable to trading other than in respect of RoLR load, the RoLR's prudential settings are to be calculated and applied in accordance with the methodology that would otherwise apply under paragraph (d).

(db) The credit limit procedures must include the methodology AEMO will use to determine the increase in the value of a Market Participant's trading limit under clause 3.3.10(b) during the TL grace period.

- (e) In determining the prudential margin, AEMO must not take into account estimates of a Market Participant's:
- (1) quantity and pattern of *trading amounts* where the estimate of the aggregate of all *trading amounts* for the period being assessed is a positive amount; and
  - (2) quantity and pattern of *reallocation amounts* where the estimate of the aggregate of all *reallocation amounts* for the period being assessed is a positive amount.
- (f) At least once a year, AEMO must review, prepare and *publish* a report on the effectiveness of the methodology developed under this clause in achieving the objective of the credit limit procedures under paragraph (b), with any recommendations for the enhancement of the methodology.
- (g) Subject to paragraph (h), AEMO must comply with the *Rules consultation procedures* when making or amending the credit limit procedures.
- (h) AEMO may make minor or administrative amendments to the credit limit procedures without complying with the *Rules consultation procedures*.

#### **Prudential settings**

- (i) AEMO must determine the prudential settings to apply to *Market Participants* in accordance with:
- (1) the objective of the credit limit procedures under paragraph (b); and
  - (2) the credit limit procedures.
- (j) Subject to paragraph (da), ~~the~~ the outstandings limit and prudential margin are interdependent, and AEMO must determine these simultaneously to meet the prudential standard for the *NEM*.
- (k) The maximum credit limit for a *Market Participant* is the dollar amount determined by AEMO using the following formula:

$$\text{MCL} = \text{OSL} + \text{PM}$$

where:

MCL is the maximum credit limit;

OSL is the outstandings limit; and

PM is the prudential margin.

- (l) AEMO must review the prudential settings that apply to each *Market Participant* no later than a year after the last determination or review of the *Market Participant's* prudential settings.
- (m) At any time, and for any reason that is consistent with objective of the credit limit procedures under paragraph (b), AEMO may change the prudential settings that apply to a *Market Participant*, provided that any change to the *Market Participant's* prudential settings applies no earlier than one *business day* after the date AEMO notifies the *Market*

*Participant of changes to its prudential settings.*

- (n) *AEMO must notify, in writing, the Market Participant of any determination or change of a Market Participant's prudential settings, and any change in a Market Participant's trading limit that is taken to have been made under clause 3.3.10(b), and provide reasons for that determination or change.*

98. A new paragraph should be inserted in clause 3.3.10 which provides that if a Market Participant becomes financially responsible for connection points in its capacity as a RoLR under the NERL, then for the TL grace period the value of the trading limit calculated under the first paragraph is taken to be increased by an amount reflecting the expected outstandings of the RoLR in respect of its RoLR load for a period of 7 days after the RoLR transfer date.
99. Proposed drafting changes are set out below:

#### Proposed drafting changes

##### 3.3.10 Trading limit

- (a) The trading limit for a Market Participant is the dollar amount determined by AEMO using the following formula

$$TL = CS - PM$$

where:

**TL** is the *trading limit*;

**CS** is the *credit support* provided by the *Market Participant*; and

**PM** is the prudential margin determined by *AEMO* in accordance with clause 3.3.8

**Note:**

If the prudential margin exceeds the *credit support*, the *trading limit* will have a negative value.

- (b) If a Market Participant becomes financially responsible for connection points in its capacity as a RoLR under the NERL, then for the TL grace period the value of TL calculated under paragraph (a) is taken to be increased by an amount reflecting the expected outstandings of the RoLR in respect of its RoLR load for a period of 7 days after the RoLR transfer date.

## Delay in additional DNSP credit support requirements

### *Explanation*

100. The AEMC's recommendations in relation to DNSP credit support requirements are intended to further minimise the risk that credit support obligations on a RoLR, particularly in the case

of a large retailer failure, could cause financial distress to the RoLR and potentially have a cascading effect throughout the NEM.

101. Part B of Chapter 6B of the NER establishes a right for DNSPs to require retailers to provide credit support, in accordance with the credit support clauses and only up to the required credit support amount.
102. Under the current regulatory framework, a retailer must provide credit support within 10 business days of the DNSP's request.
103. Amendments are intended to extend this period to five weeks following the RoLR transfer date in relation to increased customer loads that a designated RoLR would incur as a result of a RoLR event by excluding the RoLR related forecast network charges from the network charges liability (NCL) for that period.

*Proposed drafting changes*

104. Clause 6B.B2.3 should be amended to provide that where a retailer has been appointed as a designated RoLR in relation to a RoLR event that has occurred under the National Energy Retail Law, the forecast network charges related to those shared customers of the retailer acquired as a result of the RoLR event, shall not be included in forecast network charges related to those RoLR customers for a period of five weeks from the RoLR transfer date.
105. Proposed drafting changes are set out below:

**Proposed drafting changes**

**6B.B2.3 Determining a retailer's NCL**

- (a) A *Distribution Network Service Provider* must estimate the amount of a *retailer's* average billed and unbilled *network charges liability* in accordance with the following formula:

$$NCL = \sum NCLc$$

where NCLc means the forecast *network charges* (determined as an average daily amount for a *retail billing period*) relating to those *shared customers* of the *retailer* for which the maximum *days outstanding (MDO)* is the same, multiplied by that MDO where MDO for those *customers* is calculated as:

$$MDO = FCCP/2 + RBP/2 + IPPL$$

where

FCCP (final customer consumption period) is the number of *days* in the average period of consumption covered in a *statement of charges* issued by the *Distribution Network Service Provider* to the *retailer* in respect of those *customers'* consumption of electricity; and

RBP (*retail billing period*) is the number of *days* in the *retail billing period* applicable to the *retailer*; and

IPPL (invoice preparation and payment lag) is the number of *days* between the end of a *retail billing period* covered by a *statement of charges* and the *date of issue* of the statement, plus the number of *days* allowed for payment of the *network charges* by the *retailer*.

(aa) If:

- (1) a retailer has been appointed as a designated RoLR in relation to a RoLR event under the NERL; and
- (2) that RoLR event has occurred.

then, for a period of five weeks from the RoLR transfer date on which the retailer acquires shared customers from a failed retailer as a result of the RoLR event (RoLR customers), that retailer's network charges liability must not include the forecast network charges related to those RoLR customers.

- (b) A Distribution Network Service Provider must estimate the network charges liability of a retailer.
  - (1) as at the date the Distribution Network Service Provider requests credit support from the retailer, or
  - (2) on the date the Distribution Network Service Provider recalculates the required credit support amount under the credit support clauses.

## **PART C**

### **Amendments to National Electricity Rules to implement Participant Suspension Recommendations**

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106. These drafting changes relate to amendments to the *National Electricity Rules*.
107. The broad aim of these amendments is to clarify the possibility of not suspending a Market Participant, or parts of its activities from the market when it is under external administration.

#### **Removing restrictions on participants under external administration from participating in the NEM in clause 3.3.1**

##### *Explanation*

108. Amendments to clause 3.3.1 are intended to remove the requirement that a Market Participant must, whilst participating in the market, not be under external administration. This requirement appears to have been included only to ensure credit worthiness for participation in the spot market. That provision appears not to serve any other purpose.
109. This requirement would not be satisfied if AEMO enables a generating unit or any other activity to continue if a participant enters external administration under the proposed changes to the participant suspension framework, and as such, this rule would either need to be removed or an exception to this rule introduced.
110. Other amendments detailed later to clause 3.15.21 and the new proposed clause 3.15.21A would make it clear that the general requirement is for a participant to be free of external administration but provide a limited exception for it.

111. On that basis clause 3.3.1(b) is redundant and instead of the introduction of an exception, the requirement should be deleted.

*Proposed drafting changes*

112. Clause 3.3.1(b) and the accompanying guidance note should be removed.

**Proposed drafting changes**

**3.3.1 Market Participant criteria**

Each *Market Participant* must whilst participating in the *market*:

- (a) be resident in, or have a permanent establishment in, Australia;

**Note**

This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

- ~~(b) not be under external administration (as defined in the Corporations Act) or under a similar form of administration under any laws applicable to it in any jurisdiction;~~

**Note**

~~This clause is classified as a civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)~~

- (c) not be immune from suit in respect of the obligations of the *Market Participant* under the *Rules*; and
- (d) be capable of being sued in its own name in a court of Australia.

## Providing AEMO with discretion to partially suspend a participant

*Explanation*

113. Amendments to clause 3.15.21 seek to confirm that AEMO may suspend one or more of the relevant registrations of a Market Participant who fails to remedy a default event in the required time period. Further AEMO may choose to only suspend specified activities undertaken under a market registration. This ability to partially suspend a Market Participant would apply to all Market Participants rather than only those under external administration.

*Proposed drafting changes*

114. Clause 3.15.21(c) should be amended to provide that a suspension notice may be issued in relation to relevant registrations and/or a subset of activities undertaken under a particular registration.

**Proposed drafting changes**

**3.15.21 Default procedure**

- (c) If the *default event* is not remedied by 1.00 pm (*Sydney time*) the next *day* following the date of issue of the *default notice* or any later deadline agreed to in writing by AEMO, or if AEMO receives notice from the *defaulting Market Participant* that it is not

likely to remedy the default, then AEMO may issue a "**suspension notice**" in relation to one or more of a Market Participant's relevant registration(s) or a subset of its activities under a particular registration, under which AEMO notifies the *defaulting Market Participant* of the date and time from which it is suspended from trading and the extent of that suspension.

## **Framework for AEMO to apply when considering suspension of a Market Participant under external administration**

### *Explanation*

115. The AEMC has identified that risks to the market and other participants of not precluding Market Participants under external administration from participating in the market may arise. As a result, a framework should be included in the rules for AEMO to apply in determining whether to suspend a participant under external administration. These amendments are intended to clarify the matters that will be taken into account by AEMO when determining whether or not to suspend, or partially suspend, a Market Participant who is under external administration.
116. The AEMC has determined that AEMO should be required to have regard to at least the following matter:
- a. whether the Market Participant has a sufficient source of guaranteed funding to meet any trading amounts relevant to the activities for which it is registered.
117. It is also important to provide that AEMO may have regard to other factors it determines to be relevant in addition to the matter stipulated above.
118. These amendments are also intended to provide AEMO with the ability to impose conditions on a Market Participant who is under external administration, where AEMO has decided to not to issue a suspension notice or issue a suspension notice which is limited in scope.

### *Proposed drafting changes*

119. Amendments should introduce new drafting that deals specifically with AEMO's decision to suspend a Market Participant under external administration. Amendments could be in the form of a new rule that sets out:
- a. the matters AEMO must have regard to in determining whether to not issue a suspension notice, or deciding to issue a suspension notice which is limited in scope for a Market Participant who is under external administration; and
  - b. certain additional provisions to apply when AEMO decides not to suspend one or more registrations or a subset of the activities under a particular registration of a Market Participant who is under external administration.
120. Amendments should stipulate that AEMO must have regard to the matter outlined in paragraph 116(a) above, when determining whether to not issue a suspension notice, or deciding to issue a suspension notice which is limited in scope for a Market Participant who is under external administration. The amendments should also provide that AEMO must have regard to any other factors it considers relevant to the Market Participant.

121. Amendments should also stipulate that where AEMO has decided not to suspend a Market Participant or to issue a suspension notice that is limited in scope, it should notify both the Market Participant and the AER of that decision.
122. Further, amendments should provide that AEMO, by notice in writing and copied to the AER, may impose conditions on a Market Participant where a suspension notice has not been issued or a suspension notice which is limited in scope has been issued. The Market Participant must comply with any conditions imposed by AEMO on them.

**Proposed drafting changes**

**3.15.21A Framework for considering suspension of a Market Participant who is under external administration following a default event**

- (a) This rule sets out:
- (1) the matters to which AEMO must have regard to in determining whether to not issue a suspension notice, or deciding to issue a suspension notice which is limited in scope for a Market Participant who is under external administration, pursuant to clause 3.15.21(c); and
  - (2) certain additional provisions to apply when AEMO decides not to suspend one or more registrations or a subset of activities under a particular registration of a Market Participant who is under external administration.
- (b) Where a Market Participant is under external administration, AEMO must have regard to the following matters in determining whether to issue a suspension notice, or to issue a suspension notice that is limited in scope:
- (1) whether the Market Participant has a sufficient source of guaranteed funding to meet any trading amounts relevant to the activities for which it is registered; and
  - (2) any other factors AEMO considers relevant to the Market Participant.
- (c) AEMO must notify the Market Participant and the AER in writing of any decision to not issue a suspension notice or issue a suspension notice which is limited in scope under clause 3.15.21A(b).
- (d) By notice in writing to the Market Participant and copied to the AER, AEMO may impose conditions on a Market Participant where it has determined not to issue a suspension notice or issue a suspension notice which is limited in scope under clause 3.15.21A(b) and the Market Participant must comply with these conditions.