



Australian Energy Market Commission

CONSULTATION PAPER

**REVIEW OF THE RETAILER OF LAST
RESORT SCHEME**

22 OCTOBER 2020

REVIEW

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 INTRODUCTION

On 8 October 2020 the ministerial forum of Energy Ministers (formerly COAG Energy Council) requested the Australian Energy Market Commission (Commission or AEMC) conduct a review to provide advice to governments on updating the Retailer of Last Resort (RoLR) scheme.¹ The request follows the Commission's analysis and recommendations in the 2020 Retail energy competition review final report to amend the RoLR scheme to improve outcomes for small customers and to enhance the financial market stability of the national electricity market (NEM).² The review's terms of reference (TOR) detail that a Final report be finalised three months after initiation of the review by the Commission.³

The aim of this review is to refine the Commission's recommendations to improve the RoLR scheme and provide an opportunity for stakeholder input. The Commission considers that it is an appropriate time to consider changes to the RoLR scheme due to the heightened risks prevalent in the electricity sector due to the COVID-19 pandemic, which may last for a prolonged period.

However, the time required to implement changes are potentially lengthy due to the required law or rule change processes that will follow this review. Given this, changes need to be considered in the context of not only the pandemic but as addressing systemic issues with the RoLR scheme to improve its effectiveness for the next internal or external shock to the electricity sector that heightens the risk of retailer default.

The Commission acknowledges that stakeholders' ability to engage in extra consultation processes are strained given the impact of the pandemic and existing consultation processes underway. However, consultation on these changes are not considered to be a significant burden given they have been raised by the Commission previously and address relatively minor amendments to the existing RoLR scheme rather than major reform. Also, commencing this process now is important to ensure amendments to the NER and NERL can be implemented as soon as possible to improve outcomes for NEM financial market stability and consumers from use of the RoLR scheme.

This paper:

- provides an introduction and background to the review
- identifies the key issues for consideration by the review and questions to facilitate consultation
- opens up the review for stakeholder input on other issues related to the RoLR scheme for the purposes of identifying RoLR issues that may warrant further consideration in future processes
- outlines the process for making submissions.

1 See Review of the retailer of last resort project page on the AEMC's website.

2 AEMC, 2020 Retail energy competition review, Final report, 30 June 2020.

3 Exclusive of holiday periods.

1.1 The RoLR scheme

1.1.1 Overview of the RoLR scheme

Electricity is considered an “essential” service. It is therefore considered undesirable for customers to be disconnected for reasons outside their control, such as the insolvency of their retailer.⁴ For this reason, the National Energy Retail Law (NERL) sets out a mechanism to be followed in the event of the failure of a retailer, to ensure the orderly transfer of retail customers to new retailers without disruption of supply. This mechanism is known as the RoLR scheme.⁵

The RoLR scheme may be triggered if there is a RoLR event, such as a retailer becomes insolvent, or does not meet the financial obligations required by the Australian Energy Market Operator (AEMO), or ceases to be a Registered Participant in the wholesale market. If the RoLR scheme is triggered the customers of the failed retailer are immediately allocated to one or more other retailers who have volunteered to perform the role of the RoLR.⁶ Transferred customers are placed on the standard retail contract of these retailers, which typically have higher prices than market offers but may also have stronger consumer protections (as these contracts use the model terms and conditions for standard retail contracts).⁷

Under normal circumstances, the RoLR scheme has worked effectively for the failure of small retailers. It has been invoked several times in the history of the NEM⁸ without interruption in service for end-use customers and without wider impacts on the retail market. However, to date, the RoLR events that have occurred have been relatively small—the largest, in the case of Jackgreen, involving the transfer of around 67,500 electricity customers,⁹ and, in the case of the two most recent RoLR events, no customer transfers at all.¹⁰ See Table 1.1 and appendix A for more information on the RoLR scheme.

1.1.2 Existing RoLRs

The AER must maintain and publish on its website a register of RoLRs.¹¹ The register must include particulars of each retailer, including whether a retailer is registered as a default RoLR (and if so, the connection points or distribution systems it is a default RoLR for) or an

4 Nevertheless, the National Energy Retail Rules (NERR) do allow for the possibility of disconnection of a customer as a consequence of the failure of its retailer.

5 The RoLR scheme under the NERL is managed by the AER and applies in New South Wales, Queensland, Tasmania, South Australia and the Australian Capital Territory. In Victoria the Essential Services Commission manages its own RoLR scheme.

6 Currently this role is played by AGL (NSW, QLD, SA), Origin (ACT, NSW, QLD, SA), EnergyAustralia (NSW), ActewAGL (ACT), and Aurora (Tasmania). Source: AER [Register of RoLRs](#)

7 NERL, section 145.

8 Including Energy One (2007), Jackgreen (2009), Go Energy (2016) and Urth Energy (2017).

9 This included New South Wales with 47,000 customers (EWON, Jackgreen – the failure of an energy retailer, September 2010, p.1.), Queensland with 17,500 customers (EOQ, Annual Report 2010, p.10.) and Victoria with 3,000 customers (EWOV, Submission to the AEMC First Interim Report - NEM financial market resilience, p. 3.)

10 A RoLR notice was issued on 29 June 2018 in relation to COzero Energy Retail Pty Ltd, which had no customers to transfer. A RoLR notice was issued for Flow Systems Pty Ltd on 15 February 2019, which was an embedded network operator with 2000 customers, the AER decided not to revoke Flow Systems’ authorisation and Flow Systems was sold to Brookfield FS Holdings Pty Ltd on 15 April leading to Flow Systems no longer being under external administration and returning to trading as usual.

11 NERL, section 127.

additional RoLR, and what conditions, if any, apply. The register shows whether an additional RoLR is registered with a 'firm' or 'non-firm' offer.¹²

Table 1.1: List of registered RoLRs (electricity only)

RETAILER	CATEGORY	REGION
ActewAGL	Default RoLR	Australian Capital Territory, New South Wales
AGL	Default RoLR, Additional RoLR firm	New South Wales, Queensland, South Australia
Aurora Energy	Default RoLR	Tasmania
EnergyAustralia	Default RoLR	New South Wales
Origin Energy	Default RoLR, Additional RoLR non-firm	Australian Capital Territory, New South Wales, Queensland, South Australia

Source: For more information see <https://www.aer.gov.au/retail-markets/retailer-failure/register-of-ro-lrs>.

1.1.3

RoLR terms

Table 1.2: RoLR terms

TERM	DESCRIPTION
Additional RoLR	A retailer may seek registration to be an additional RoLR for an electricity connection point or gas distribution system for which they are not the default RoLR. In the event of retailer failure, the AER may appoint as the designated RoLR an additional RoLR instead of, or in addition to, the default RoLRs. (NERL section 126)
Backup RoLRs	A registered RoLR who may be designated if a default RoLR fails. Backup RoLR arrangements are not a category of registration under the NERL. These are practical arrangements the AER will determine based on registered default RoLRs and additional RoLRs. Backup RoLR arrangements are required in the event of the failure of a default RoLR. (AER, Retailer of Last Resort statement of approach, November 2011, p.9.)
Default RoLR	A retailer appointed and registered as a default RoLR. (NERL section 122)
Designated RoLR	A registered RoLR who is appointed or is taken to be appointed as a designated RoLR for a RoLR event. (NERL section 122)
Failed retailer	A retailer (or former retailer) in relation to whom a RoLR event has occurred. (NERL section 122)
Insolvency official	A receiver, receiver and manager, administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function. (NERL

¹² Explanation of 'firm' and 'non-firm' offers is included in the appendix.

TERM	DESCRIPTION
	section 122)
Registered RoLR	A retailer registered with the AER as a RoLR. (NERL section 122)
Relevant designated RoLR	For a customer, in relation to a RoLR event, means: (a) if only one RoLR is designated for the event, that RoLR (b) if more than one RoLR is designated for the event, the RoLR allocated to the customer. (NERL section 122)
RoLR cost recovery scheme	A designated RoLR can apply to the AER to recover the costs that it incurs on or after a RoLR event. A default RoLR may also apply to recover costs incurred in preparing for RoLR events. (NERL Division 9)
RoLR criteria	The RoLR criteria require the retailer to demonstrate adequate financial resources, necessary organisational and technical capacity suitable to be the RoLR and any other matters the AER considers relevant. The AER must take the RoLR criteria into consideration when deciding whether to register RoLRs. (NERL section 123)
RoLR event	The NERL defines a number of triggers of a "ROLR event": revocation of retailer's authorisation; retailer market suspension (AEMO initiated) or retailer cessation as a registered participant; appointment of an insolvency official; an order to wind up the retailer is made or a resolution is passed to wind up the retailer; the retailer ceases selling energy (for reasons other than the transfer or surrender of its retailer authorisation; or transfer of all or some of its customers to another retailer; or selling or otherwise disposing of all or part of its business); any other event or circumstances prescribed in the National Regulations. (NERL section 122)
RoLR notice	The AER must decide whether or not to issue a notice as soon as practicable after the RoLR event occurs. A RoLR notice includes; that a RoLR event has occurred, specifies the failed retailer and the registered RoLR(s) appointed by the notice as designated RoLRs, the transfer date and any other information the AER considers necessary or desirable. (NERL section 136)
RoLR procedures	RoLR Procedures are procedures published by AEMO that deal with any matters relating to the operation or implementation of the RoLR scheme, including, for the purpose of identifying the roles and responsibilities of various parties if a RoLR event were to occur that impacted on AEMO's Market Settlement and Transfer Solution (MSATS) or on business-to-business communications. (NERL section 144)
RoLR register EoI	The RoLR register expression of interest (EoI) contains such information as will enable the AER to take the RoLR criteria into consideration in relation to the retailer. It also may contain proposals as to the number and classes of customers the retailer will accept if it were to be appointed a designated RoLR in respect of a RoLR event. It may also contain variation to the retailer's RoLR

TERM	DESCRIPTION
	cost recovery scheme. (NERL section 124)
RoLR scheme	Means the RoLR scheme constituted by the NERL, the RoLR procedures and the National Regulations. (NERL section 122)
Transfer date	The date on which the customers of the failed retailer are transferred to the relevant designated RoLR. On and from the transfer date, and in relation to the customers transferred to it and subject to and in accordance with the RoLR Procedures, the designated RoLR assumes the functions and powers of the failed retailer under the energy laws. (NERL section 136(2)(e))

1.2 2020 Retail energy competition review final report

Through the 2020 Retail energy competition review final report the Commission assessed the retail market under the COVID-19 pandemic conditions. The Commission traced through the effects of the pandemic on consumers, retailers and the market as a whole. The Commission recommended changes to regulatory frameworks to improve consumer protections and enhance retail market financial resilience in the immediate term, and in the long term for future shocks.

COVID-19 was declared a pandemic by the World Health Organisation (WHO) on 12 March 2020.¹³ The Commonwealth Government started closing borders in early February, and by 20 March all foreign nationals were banned from entering Australia.¹⁴ Jurisdictional governments started closing non-essential services and imposing social distancing measures in late March 2020. These measures have had a significant impact on energy consumers.

The most significant effect of the pandemic is an increase in the number of residential and small business consumers which are under financial stress and are therefore likely to face difficulty paying their energy bills. The Commission found that a relatively small increase in the number of non-paying customers could quickly place some retailers in a position where their cash-flow is negative (that is, where their revenue falls short of their expenses).

Given this the Commission assessed the adequacy of the existing market and regulatory framework to deal with the potential for retailer failures. The Commission updated the extensive analysis it previously conducted in the NEM financial market resilience review for pandemic conditions. These specific conditions relate to the failure of a retailer or retailers with a large number of customers, due to a significant increase in the number of customers who are deferring or unable to pay their bills. This may:

- heighten the risk of the existing RoLR scheme triggering financial contagion across the sector through the transfer of non-paying customers to retailers who already have a growing number of non-paying customers

¹³ <https://twitter.com/WHO/status/1237777021742338049>

¹⁴ <https://www.pm.gov.au/media/border-restrictions>

- result in both paying and non-paying customers being automatically placed on the receiving retailer's standing retail contracts, when experience shows that it will take many years for customers to shift onto lower priced market offer contracts
- reduce competitive pressure on prices generally through the loss of second and third tier retailers who have over recent years been increasing their market shares at the expense of the "Big 3".

To address these risks the Commission considered that changes should be made to improve the RoLR scheme outcomes for small customers. The Commission's RoLR recommendations included:

- removing the RoLR requirement for small customers to be placed on the standard retail contract, to improve consumer outcomes, if a RoLR event occurs
- making some of the changes to the RoLR scheme as previously recommended in the NEM financial market resilience review. Those changes included:
 - providing greater clarity on RoLR cost recovery arrangements
 - delaying designation of RoLRs
 - delaying requirements for the RoLR to provide credit support to AEMO associated with the additional customers.

The Commission also recommended removing the RoLR scheme from the NERL and including it in the National Energy Retail Rules (NERR) through rule changes.

For more information on the Commission's analysis and recommendations see chapter seven of the 2020 Retail energy competition review final report.¹⁵

1.3 Terms of reference

The TOR for this review set out that its purpose is to advise on amendments to the RoLR scheme. The output of this review will be a final report to the ministerial forum of Energy Ministers (formerly COAG Energy Council) that includes:

- policy advice on changes to the National Electricity Rules (NER), that could subsequently form the basis of a rule change request to the AEMC
- policy advice for recommended changes to the NERL
- advice on other RoLR issues that could warrant further consideration in future processes.

The scope of the changes to the RoLR scheme to be considered includes those recommended by the Commission and listed in section 1.2 above.¹⁶ The Commission will also consult on an additional issue suggested by the AER, on making RoLR plan requirements less prescriptive.

In addition, the Commission may consult on and consider stakeholder feedback on other issues related to the RoLR scheme for the purposes of identifying issues that may warrant further consideration at a later time.

¹⁵ Final report can be accessed here <https://www.aemc.gov.au/market-reviews-advice/2020-retail-energy-competition-review>.

¹⁶ It does not include the recommendation to remove the RoLR scheme from the NERL as this cannot be considered sufficiently within the required time frame.

A reference group, comprising jurisdictional representatives and the AER, has been formed to provide input to this review. This reference group will provide input during the review on the importance, priority and acceptability of the issues and proposed solutions considered through the review and provide guidance to the Commission with the aim of streamlining the jurisdictional processes which would follow the review, if the Commission's recommendations are accepted.

1.4 Consultation and next steps

Under this review's TOR, the Commission is required to consult with the AER, the Australian Energy Market Operator, energy departments of jurisdictions which participate in the RoLR scheme, consumer groups and ombudsmen of jurisdictions which participate in the RoLR scheme. The Commission plan to consult with these stakeholders through the established reference group, submissions to the consultation paper and directly as the review progresses.

Stakeholders are invited to provide a submission to this consultation paper by 19 November 2020. Following this the Commission will develop a final report, planned for publication on 25 February 2021.

2 KEY ISSUES FOR CONSULTATION

The main output of this review is to further develop policy advice to provide to governments on changes to the NER and NERL to improve RoLR scheme outcomes for small customers and to enhance the financial market stability of the NEM. Policy advice developed through consultation on proposed changes to the NERL are considered a preliminary step to the jurisdictional processes which would follow the review to implement legislative changes. Policy advice on the NER may form the basis of a subsequent rule change request to the AEMC.

The key issues that the Commission would like stakeholder feedback on are explored in the following section. These issues are primarily those recommended in the 2020 Retail energy competition review final report. The recommendation to remove the RoLR scheme from the NERL is not included in this review due to the limited time frame to consider such a large change. The one additional issue that has been included is to reduce the level of prescription included in the NERL for RoLR plans.

The Commission would like to flag that although the primary consideration of the changes to the RoLR scheme are to improve the RoLR scheme in regards to electricity customers, the RoLR scheme in the NERL applies to both electricity and gas. As a number of retailers have both electricity and gas customers, a retailer failure may create financial system instability across both electricity and gas markets. Given this, the Commission considers it appropriate that the policy advice this review will provide to governments on changes to the RoLR scheme should extend, where possible and appropriate, to a retailer failure in gas markets to provide for a simpler and more comprehensive implementation.

2.1 Retail contracts for RoLR customers

2.1.1

Context

A RoLR event under the current provisions in the NERL would result in both paying and non-paying small customers being automatically placed on a RoLR deemed small customer retail arrangement, on the terms and conditions of the receiving retailer's standard retail contract. The prices applicable to the RoLR deemed small customer retail arrangement are the relevant designated RoLR's standing offer prices, with any variations in accordance with or consequent to the applicable RoLR cost recovery scheme.¹⁷

2.1.2

Issue

Given the heightened risk of RoLR events occurring due to the pandemic, the current RoLR scheme may have long-lasting impacts on market structure and conditions. Specifically, over the past ten years the retail sector in the NEM has gradually become more competitive, with 40 active retail electricity brands and with smaller retailers consistently gaining market share

¹⁷ NERL, section 145. The RoLR designation process is described in more detail in the appendix.

from the 'Big 3' incumbent retailers.¹⁸ There has also been a general trend of increasing proportion of customers moving from standard to market retail offers.¹⁹

The current registered RoLRs are limited to the 'Big 3' retailers for the majority of the NEM.²⁰ The failure of a number of retailers would therefore reduce competition in the market because the failing retailer's customers would be transferred to the 'Big 3' retailers and be placed on standard retail contracts. Such an event would reverse many of the structural competitive gains that have been made in the market over the last decade.

2.1.3 Proposed solution

The Commission recommended in its 2020 Retail energy competition review final report that the obligation for customers to be transferred to the designated RoLR's standard retail contracts should be amended. Under this change registered RoLRs would have the ability to submit, for the AER's approval, a market offer to be used for RoLR customers. The AER would assess the benefits of any such market offer (in relation to tariffs and non-price terms and conditions) against the tariffs and non-price benefits of the RoLR's standard retail contract. If the AER approved a RoLR's market offer, the customers of a failed retailer would be placed onto this offer instead of a standing offer.

2.1.4 Analysis

The Commission considers this change will give the AER greater flexibility to protect customers' interests with respect to price through competition in the RoLR designation process. This is particularly important as it often takes a number of years for customers to shift away from standard contracts onto lower priced market retail contracts. The Commission also considers competition in the RoLR appointment process is needed in order to realise the benefit of this change. Given the 'Big 3' retailers are the only registered RoLRs for the majority of the NEM, a reduction in the barriers to increased retailer participation in the RoLR scheme is also required. Amending the RoLR cost recovery and designation processes may provide additional incentives to other retailers becoming RoLRs.²¹ These proposed amendments are described later in the chapter.

In addition, this change itself may be reducing a barrier to becoming a RoLR in that retailers may consider placing a large number of customers on standing offers onerous in relation to the higher level of consumer protections included in standard retail contracts. For example communication requirements for these contracts may be more burdensome to fulfil for retailers. This factor would be important for the AER to consider in approving any market offers for RoLR customers to enable the benefit of lower prices for consumers without compromising on adequate consumer protections.

¹⁸ AEMC, 2020 Retail energy competition review, Final report, 30 June 2020, p.23.

¹⁹ The proportion of customers on market offers over 2018/19 was 50.8% for the Australian Capital Territory, 87.7% for New South Wales, 60.3% for Queensland although this includes the regional Queensland which has limited retail competition, 91.6% for South Australia and 3.2% for Tasmania. AER Retail energy market performance update for Quarter 3, 2019-20.

²⁰ Aurora and ActewAGL currently play this role in Tasmania and the Australian Capital Territory respectively.

²¹ The primary incentive to become a RoLR is the opportunity to increase customer numbers.

QUESTION 1: RETAIL CONTRACTS FOR ROLR CUSTOMERS

- a. Do you agree that removing the requirement for RoLR customers to be placed on standard retail contracts would improve RoLR scheme customer outcomes?
- b. Are there any consequential changes to the RoLR scheme that should be made if this change is made?

2.2 RoLR cost recovery arrangements

2.2.1

Context

For the costs incurred in participating in, or preparing for, a RoLR event the NERL includes a process for RoLRs to apply to the AER for cost recovery.²² The designated RoLR does not take on any of the liabilities or obligations of the failed retailer.

On receipt of an application the AER must determine a “RoLR cost recovery scheme”.

The AER has provided examples of how it may exercise its powers in hypothetical “RoLR cost recovery scheme” determinations:

- In the event of a small retailer failure, the customers of the failed retailer should bear a greater proportion of the costs (such as administrative costs) through an upfront fee, with the remainder recovered through a distributor payment.²³
- In the event of a large retailer failure, the AER may opt for the entire cost recovery to be managed through distributor payments to spread the costs across a wide customer base and minimise impacts. The AER may also consider recovering RoLR scheme costs through a combined upfront fee (paid by the customers of the failed retailer) and a distributor payment determination.²⁴

2.2.2

Issue

Under the existing arrangements the designated RoLR may be able to recover all of its reasonable costs. However, the NERL provisions provide the AER with broad discretions on cost recovery and this may undermine the confidence of the designated RoLR - and those who finance it - that the RoLR can recover all of its reasonable costs. This lack of certainty may also discourage other retailers from becoming ROLRs.

If cost recovery is delayed and uncertain, it could present cash flow problems for the RoLR(s) and make it more difficult for them to secure financing. Where the RoLR event involves the failure of a large retailer, this could result in financial distress or failure of the RoLR, and lead to cascading retailer failure and instability in the NEM.

²² NERL, section 166. Under the AER’s RoLR guidelines, applications must be made within nine months of the relevant RoLR event. See AER, Retailer of last resort statement of approach, November 2011.

²³ AER, Retailer of last resort statement of approach, November 2011, p.21.

²⁴ Ibid, p.19.

2.2.3

Proposed solution

The 2020 Retail energy competition review final report recommended cost recovery changes targeted to address the uncertainty of cost recovery and its impact on cash flow, financing, and access to credit support.²⁵ This recommendation included the following changes to the RoLR scheme in the NERL to provide increased certainty that a RoLR can quickly recover its reasonable RoLR costs:

- Remove the requirement in the NERL²⁶ that, when making its cost recovery decision, the AER be guided by the principle that the registered RoLR will itself bear some of the costs in proportion to its customer base.
- Further clarify the AER's approach to RoLR cost recovery by introducing an additional cost recovery principle in to the NERL - that the actions of the designated RoLR in performing its obligations have been prudent in the circumstances.
- Further clarify the types of costs that may be recovered by specifying, without limitation, the types of costs that the RoLR has the right to recover in relation to a RoLR event. These costs may include:
 - administration costs
 - additional energy costs in relation to the acquired customers (to the extent that they are not recovered in the prices charged to those customers)
 - financing costs in relation to additional credit support that is required to be provided to AEMO in relation to the acquired customers
 - financing costs to cover the period from when the costs are incurred and when they are recovered under this mechanism.
- Specify a three month period from the date of the RoLR event during which a RoLR cost recovery application must be made while providing the AER discretion to allow the recovery of costs beyond the initial three-month period where the RoLR can provide evidence that it is prudent to do so. For default RoLRs, this three month time frame would apply from the date of appointment as a default RoLR.²⁷
- Enable the AER to fast-track all or part of a RoLR cost recovery application where the RoLR costs claimed are clearly identifiable and quantifiable by providing the AER discretion over the length of consultation required. The NERL currently requires a minimum 20 day consultation period for RoLR cost recovery applications.
- Specify that the AER is only able to amend the costs recoverable under a RoLR cost recovery scheme if that determination is affected by a material error or deficiency such as the provision of false or misleading information to the AER.
- Clarify that the full recovery of RoLR costs should be undertaken through distributor payment determinations as the NERL is currently unclear as to the mechanism that should be used to recover RoLR costs.

25 AEMC, 2020 Retail energy competition review, Final report, 30 June 2020

26 NERL, section 166.

27 Please see appendix for more information around default RoLRs.

2.2.4

Analysis

The Commission considers these recommendations remain relevant. They offer an appropriate balance between providing customers with protection from the pass through of inefficient costs, while recognising that the RoLR is performing an important function by ensuring customers have continuity in retail services following the failure of a retailer. Reducing the financial uncertainty and cash flow risk faced by the designated RoLR(s) would have a number of benefits:

- The designated RoLR would be likely to have more success in borrowing funds to cover the short-term costs of being a RoLR because it would have more certainty that reasonable RoLR costs can be recovered and about the timing of cost recovery. Also improving cash flow after a RoLR event would likely reduce the risk of cascading retailer failure.
- Similarly, the designated RoLR would be likely to have more success in obtaining the additional credit support required for AEMO because its future cash flows would be more certain.
- Increased certainty over cost recovery could encourage an increase in the number of retailers volunteering to become RoLRs. The appointment of multiple RoLRs would reduce the impact of the RoLR event on each designated RoLR, spread the risks of being a RoLR among several retailers, and reduce the likelihood that the RoLRs experience financial distress or failure.
- By increasing the potential for multiple RoLRs it may also improve the long term competitiveness of the market by spreading the failed retailer's customers across a range of retailers. An increase in the number of RoLRs may also lead to RoLRs offering to bear more of the cost burden as they compete for the failed retailer's customers.

QUESTION 2: ROLR COST RECOVERY ARRANGEMENTS

- a. Do you agree that the proposed changes would improve certainty for retailers around RoLR cost recovery arrangements?
- b. Do you agree that increased certainty over cost recovery would provide an incentive for an increased number of retailers to volunteer to become RoLRs?

2.3

Framework for RoLR designation

2.3.1

Context

When a RoLR event is triggered, a designated RoLR is appointed for each electricity connection point. The default RoLR is taken to be appointed as the designated RoLR, unless the AER appoints a registered RoLR as a designated RoLR before the event actually occurs, and notifies AEMO before the transfer date.²⁸

²⁸ NERL, section 132.

The AER has noted that the imminence of the RoLR event is a major factor in its selection of designated RoLRs for appointment. The earlier the warning the AER has of an impending RoLR event, the more registered RoLRs it will be able to consider.²⁹

Where there is less than a few hours' notice of a RoLR event, the AER has indicated it is most likely to appoint default RoLRs. With short notice (ie, up to 48 hours), the AER suggests it may also be able to consider additional RoLRs with firm offers.³⁰ Additional RoLRs with firm offers have agreed not to be consulted prior to being appointed as designated RoLRs (up to the maximum number of customers permitted by their terms and conditions). Where the AER has more than 48 hours' notice of a RoLR event it may consider (and consult with) other registered RoLRs. This would include non-firm additional RoLRs who have not agreed to be designated without further consultation at the time of an event.³¹

2.3.2

Issue

The current provisions of the NERL make it unlikely that any retailer other than the default RoLR would be appointed as the designated RoLR, given the limited time frame for the AER to designate anyone other than the default RoLR. Where the retailer in financial distress is large, this is likely to be problematic for the default RoLR because it would take on the liabilities and credit support requirements relating to a large number of customers.

It is also possible although unlikely given a RoLR would have to meet the RoLR scheme financial resources criteria³², that the retailer facing suspension is a default RoLR, and that there are no firm additional RoLRs, or backup RoLRs, that could be appointed readily to take on its customers. In this case, the AER could be forced to make a decision at very short notice with no specific legal structure and limited information to guide it given the RoLR scheme does not contemplate this situation. This situation could require the AER to appoint a retailer as a designated RoLR without its consent. Given this it may be appropriate to delay the designation of a RoLR.

2.3.3

Proposed Solution

The Commission, in its 2020 Retail energy competition review final report, recommended a delay in RoLR designation through amending the NERL to increase the time allowed for the AER to advise AEMO of the designated RoLR(s), up to 24 hours after the RoLR event. Protocols between AEMO and the AER would need to be amended to ensure consistency with this amended time frame. This delay would result in the AER issuing a notice identifying the designated RoLR(s) 24 hours later than under the existing NECF framework, and the designated RoLR(s) would be informed of their appointment up to 24 hours later than they are at present. This would give the AER more time to assess the most appropriate allocation

²⁹ AER, Retailer of last resort statement of approach, November 2011.

³⁰ Description of the type of offers that a RoLR may offer are included in the appendix.

³¹ Ibid.

³² NERL section 123. The RoLR financial resources criterion requires the retailer to demonstrate the extent to which it has adequate resources or access to adequate resources so that it will have the financial viability and capacity to meet the obligations of being a RoLR.

of customers following a RoLR event, and to negotiate with different retailers to allocate customers to designated RoLR(s).

This change would require a distinction to be made between the following dates, which currently occur simultaneously under the NERL RoLR provisions:

- the date that the RoLR event occurs (for example the date of the suspension of the failed retailer from the NEM by AEMO, which constitutes a RoLR event under the NERL), which would reflect the RoLR transfer date
- the date that the designated RoLR is taken to be appointed.

The designated RoLR would be liable to AEMO for the energy consumed from the transfer date, while also being entitled to bill customers for energy consumed from that same point in time, as is the case under the current NECF provisions.³³ This delay in designation will mean there will be a period in which the designated RoLR is building up liabilities for the failed retailer's customers but has not yet been advised that it is the designated RoLR. During this time the RoLR is likely to be unhedged in relation to the energy purchases of the RoLR customers.

Changes to RoLR notices

Implementing the delay to the designation of the RoLR would require changes to the notices issued to affected participants, institutions and the public. Currently, after a RoLR event occurs, the AER must decide as soon as practicable whether to issue a RoLR notice.³⁴ Delaying the designation of the RoLR by up to 24 hours would require:

- The AER to issue a RoLR notice as soon as practicable following a RoLR event rather than the current requirement to decide as soon as practicable whether to issue a RoLR notice. This notice would identify the date that the RoLR event occurred, the failed retailer and the transfer date.
- The AER to issue a RoLR designation notice to identify the appointed RoLRs within 24 hours of the RoLR event.

These changes would not preclude the AER from publishing a RoLR notice and a RoLR designation notice at the same time. The AER would maintain its current ability to appoint a designated RoLR before a RoLR event. There would also be no change to the current provision that where the AER determines to not designate a RoLR or issue a RoLR notice, the default RoLR is taken to be appointed.³⁵

2.3.4

Analysis

The Commission considers these recommendations remain relevant. The advantages of delaying the designation of the RoLR(s) include:

³³ The transfer date may be on, before or after the publication of the RoLR notice by the AER, but if the RoLR event involves a revocation of a retail authorisation or suspension from the spot market, the transfer date is the date of revocation or suspension - see NERL, section 136(5).

³⁴ NERL, section 136.

³⁵ NERL, section 132(1).

- Facilitating multiple RoLRs - The main limitation on the AER's ability to appoint multiple RoLRs relates to the tight timing of designation prior to a RoLR event occurring. Spreading customers between a number of retailers may also help maintain the long term competitiveness of the retail market, since it could reduce the concentration of customers in a small numbers of retailers.
- More time to consider the optimal allocation of customers - With more time available, the AER may be better placed to judge which retailers have sufficient financial resources to meet the obligations of the RoLR, and therefore to minimise the risk of the designated RoLR(s) failing. There would be more time for the AER to negotiate terms with potential RoLRs. There would be greater capacity for the AER to involve retailers who have made non-firm offers to be additional RoLRs. These retailers would have the benefit of knowing more about the extent of obligations they would incur as a designated RoLR (such as the number of customers involved and the current spot market prices).
- Reducing uncertainty on RoLR notices - amendments to require the AER to issue a RoLR notice as soon as practicable would reduce the current uncertainty in relation to when a RoLR event has occurred due to the AER's discretion over when to provide this notice.³⁶

While a delay in designating the RoLR means the RoLR would inherit an unhedged exposure to the spot price for all energy consumed over a longer period, the impact would be mitigated when combined with the recommendations to increase the certainty that the RoLR's reasonable costs would be recovered. Furthermore, the proposed changes to the timeline provide an opportunity for the AER to hold discussions with potential RoLRs, so retailers would likely be aware of their potential appointment and could begin preparations to put any required hedging contracts into place as soon as possible after appointment.

Separating the notices for RoLR events and RoLR designation may cause confusion to the customers of the failed retailer if they do not have information on who the designated RoLR is and when they will be transferred. However, the Commission considers the benefits to customers and market participants of delaying RoLR designation outweighs the inconvenience of not knowing which retailer(s) will take over the RoLR load for a short period of time. Also, if the RoLR is in communication with the AER throughout the appointment process a delay in designation may also increase the time a RoLR has to inform customer support staff.

QUESTION 3: FRAMEWORK FOR ROLR DESIGNATION

- a. Do you agree that it would be beneficial to delay RoLR designation?
- b. If so, in implementing the recommendation to delay designation of the RoLR, what is the best approach and timing of the AER's notices to communicate the RoLR event and designated RoLR to market participants and consumers?

³⁶ This is in relation to RoLR events following the suspension of a retailer from the wholesale market, or where a retailer ceases to be a registered participant in relation to the purchase of electricity through the wholesale market.

2.4 AEMO credit support requirements

2.4.1 Context

A participant must provide an amount of credit support to AEMO which is at least equal to its maximum credit limit (MCL).³⁷ AEMO can change a participant's prudential settings at any time with one business day's notice.³⁸ Any changes that result in an increased MCL require the participant to increase its level of credit support.

A failure by the retailer to provide this increased credit support by the relevant time constitutes a default event.³⁹ AEMO may then issue a default notice to the participant. If this is not rectified by 1pm the following day (or a later deadline agreed to in writing by AEMO), then AEMO may issue a suspension notice, under which AEMO notifies the market participant of the date and time from which it is suspended from trading, and the extent of that suspension.⁴⁰

Since the RoLR has responsibility for the acquired customers from the time of the transfer date specified in the RoLR notice,⁴¹ its outstandings to AEMO will increase over the following month as energy is consumed. Nonetheless, it is required to post credit support for the full MCL when notified by AEMO, which could be immediately, or up to a week after acquiring the additional customers.

2.4.2 Issue

If the increase in credit support required by AEMO is substantial, it is possible that an otherwise solvent retailer could fail to meet these obligations in the time currently allowed. Should that occur, AEMO would be entitled to issue the designated RoLR with a default notice on the same day.⁴² If the default event is not remedied by 1pm the next day (or any later deadline agreed to in writing by AEMO), AEMO may issue a suspension notice.⁴³ Suspension would constitute a second RoLR event,⁴⁴ and could potentially have a cascading effect in which retailers are progressively suspended after being designated as RoLRs, leading to financial contagion and instability in the NEM. While the financial capabilities of the existing RoLRs make this an unlikely outcome, it is nonetheless a dynamic that could occur under the current RoLR scheme.

2.4.3 Proposed solution

The Commission, in its 2020 Retail energy competition review final report, recommended changes to delay the increase in AEMO credit support requirements. The recommendation

37 NER, clause 3.3.5. AEMO determines an MCL for each participant based on a two per cent probability that a participant's outstandings to AEMO will exceed its MCL by the time the participant is suspended from the market, restricting residual settlement risk to very low probability events. The two per cent probability is referred to as the NEM prudential standard.

38 NER, clause 3.3.8(m).

39 AEMO's current prudential monitoring process allows credit support to be delivered by 10.30am Sydney time on the MCL effective date.

40 NER, clause 3.15.21(c).

41 NERL, section 140.

42 NER, clause 3.15.21(b).

43 NER, clause 3.15.21(c).

44 NERL, section 122.

sought to amend the NER to insert a minimum time before AEMO can require increased credit support from the designated RoLR as a result of its increased customer load. There would be a one-week 'period of grace' in relation to credit support requirements following a RoLR event, following which the required credit support would be ramped up in increments over a period of four weeks until it reaches the level that fully reflects the additional load of the customers from the RoLR event. This would more closely reflect the RoLR's increase in outstandings over this time as energy is consumed and its obligations to pay AEMO increase.

The precise form of credit support ramping would be set out in the credit limit procedure which AEMO is required to develop through public consultation under clause 3.3.8 of the NER. However, the Commission recommended that the NER be amended to require AEMO to take into account the desired form of credit support ramping.

2.4.4

Analysis

The Commission considers these recommendations remain relevant. The changes give the RoLR more time to meet AEMO credit support provisions in relation to RoLR customers, which may be significant. This will reduce the risk of financial contagion occurring through operation of the RoLR scheme.

The recommended changes to the AEMO credit support requirements seek a balance between two factors:

1. On the one hand, allowing the designated RoLR to take up its new customers without having to bear the immediate risk or cost of sharply increased credit support requirements, thereby reducing the likelihood of cascading retailer failure.
2. On the other hand, decreasing the amount of collateral held by AEMO and raising the possibility that, if the designated RoLR collapsed and was unable to pay AEMO, generators may be short-paid.

QUESTION 4: AEMO CREDIT SUPPORT REQUIREMENTS

- a. Do you agree that the current AEMO credit support requirements heighten the risk of financial contagion occurring through operation of the RoLR scheme?
- b. Do you agree that AEMO's credit support requirements should be, as proposed, amended through a rule change request to address this issue?

2.5

RoLR plan requirements

2.5.1

Context

The RoLR scheme includes requirements for the AER to develop, make and maintain RoLR plans that are published on the AER's website.⁴⁵ A RoLR plan includes details of the procedures to be followed by the participants in the event of a RoLR event, including direct

⁴⁵ NERL, section 162.

communication with customers of a failed retailer, and regular exercises to be carried out by the participants in the plan. In developing a RoLR plan the AER must ensure that the participants are consulted and regularly participate in RoLR plan exercises.⁴⁶

2.5.2 Issue

Elements of the RoLR plan provisions are prescriptive and limit the AER to give effect to the policy objectives in a flexible and proportionate manner. In addition, the drafting no longer reflects the current market arrangements as it assumes, for example, that RoLR events affect all the specified market participants. In practice, RoLR events involving embedded network retailers do not affect AEMO or distributors. The AER is also required to prepare and publish the conduct of each RoLR exercise it undertakes. Technically, this includes internal staff exercises which may not be appropriate to publish.

2.5.3 Proposed solution

These two minor issues can be addressed through changes to section 163 of the NERL of a change from “must” to “may” and inclusion of “external”. This would see section 163 as below:

Without limitation, a RoLR plan ~~must~~ may—

(a) provide that exercises are to be held at such times as the AER considers appropriate and that a report on the conduct of each external exercise be published on the AER’s website; ...

2.5.4 Analysis

The Commission considers that these changes provide the AER with appropriate flexibility in its communication and publication requirements without materially affecting the RoLR scheme.

QUESTION 5: ROLR PLAN REQUIREMENTS

- a. Do stakeholders agree that this minor amendment would provide the AER with appropriate flexibility?

⁴⁶ The participants in a RoLR plan are the AER, AEMO, registered RoLRs, distributors or other parties as nominated by the AER.

3 OTHER ISSUES FOR CONSULTATION

The RoLR review TOR include provision for the Commission to consult on and consider stakeholder feedback on other issues related to the RoLR scheme for the purposes of identifying issues that may warrant further consideration in future processes. A number of issues have been identified below. Stakeholders are also encouraged to identify other issues present in the RoLR scheme.

3.1 Appointment of administrator as a trigger for a RoLR event

3.1.1 Issue

The RoLR scheme defines a RoLR event as occurring following a number of events or circumstances including the appointment of an insolvency official, or external administrator, in respect of the retailer or any property of the retailer. The appointment of an administrator does not necessarily reflect the actual commercial viability of a retailer, or its ability to continue operating in an ongoing manner. A retailer may be able to continue trading and meet financial obligations following the appointment of an administrator and return to solvency. Avoiding the retailer failure would lead to less disruption for customers than a RoLR process.

The appointment of an administrator as a trigger for a RoLR event may act as a disincentive for a retailer facing financial distress from initiating voluntary administration. Delaying voluntary administration may increase the probability that a retailer facing financial distress will ultimately fail.

3.1.2 Proposed solution

Alternatively, the appointment of an administrator could be the trigger for a pre-RoLR monitoring process by the AER, which may not lead to a RoLR event if the retailer survives the administration process. The AER would be made aware of the appointment and monitor the financial viability of the retailer. The AER may require additional reporting requirements from the administrator during this period.

3.1.3 Analysis

The Commission considers that this potential solution would provide the AER greater discretion in relation to the RoLR process. While this discretion may be beneficial to customers and the market in certain circumstances, there are significant risks associated with discretion of this magnitude.

The Commission notes that the Commonwealth Government is also making changes to the national insolvency framework to enable more Australian small businesses to quickly restructure and to survive the economic impact of COVID-19.⁴⁷

⁴⁷ This will include a new debt restructuring process for small businesses to provide a faster and less complex mechanism for financially distressed but viable firms to restructure their existing debts, and maximise the chance of them surviving.

QUESTION 6: APPOINTMENT OF ADMINISTRATOR AS A TRIGGER FOR A ROLR EVENT

- a. Is the appointment of an administrator an appropriate trigger for a RoLR event?
- b. Would the appointment of an administrator be more appropriate to trigger a monitoring process by the AER? If so:
 - What type of reporting from the administrator to the AER would be appropriate?
 - What are some alternative triggers for a RoLR event following the appointment of an administrator?

3.2 RoLR arrangements for embedded networks

3.2.1 Issue

A growing number of customers are provided energy through embedded network arrangements.⁴⁸ Embedded network customers supplied by an exempt seller have no default or designated retailer assigned to their connection point if the exempt seller fails. The additional stress from the pandemic will test the already-limited consumer protection framework within embedded networks.⁴⁹

3.2.2 Proposed solution

The Commission has previously found, in its review *Updating the regulatory frameworks for embedded networks*, that the current regulatory arrangements for embedded electricity networks are not fit for purpose, including in relation to RoLR arrangements, and has recommended a suite of law and rule changes to fix these issues.⁵⁰ The Commission's recommendation in this review was the establishment of a modified set of RoLR arrangements for embedded networks, where the retailer at the parent connection point would become the RoLR in the event of the failure of an off-market retailer.

Alternative arrangements to provide ROLR arrangements for embedded networks, include the following options:

- The AER could be given powers to appoint a RoLR for the embedded network if the exempt seller has not arranged for another retailer to take on the role. This arrangement could include:
 - the AER appointing a default RoLR for the distribution network to which the embedded network is connected (similar to the experience for on-market customers)

⁴⁸ Embedded networks are private electricity networks – that is, they are owned and operated by parties that have been exempted from the requirement to register with AEMO – which serve multiple customers and are connected to another distribution or transmission system through a parent connection point. Embedded networks are often found in apartment blocks, community housing and caravan parks.

⁴⁹ In many jurisdictions, embedded network customers do not have access to as many rebates and concessions as on market customers, and do not have access to certain national protections such as hardship policies.

⁵⁰ AEMC, *Updating the regulatory frameworks for embedded networks*, Final report, 20 June 2019.

- alternatively, the AER could call for expressions of interest from authorised retailers or exempt sellers to be the appointed RoLR to the failed embedded network.
- The AER's exempt sellers guidelines could be updated to require exempt sellers to make arrangements with an authorised retailer or exempt seller to be the default RoLR for their network in the event of failure. The nominated RoLR could be reported to the AER and required to take on the customers in the event of the exempt seller failure.

3.2.3

Analysis

The Commission considers that as well as providing continuity of supply to embedded network customers, its previous proposed modified set of embedded network RoLR arrangements may provide some measure of protection to parent retailers in that they would then be able to recover costs in relation to the consumption of the embedded network customers, from customers at child connection points directly.

The Commission acknowledges that there may be other methods of increasing consumer protections in embedded networks in relation to risks surrounding the failure of an off-market retailer. The Commission notes that it will not be providing formal policy advice, in the final report, around this issue. The advice the Commission provides on this issue and others in this section are for the purposes of identifying issues that may warrant further consideration in future processes. In addition, the Commission notes it has already provided a comprehensive package of changes to laws, rules and regulations to address this issue and others as part of its *Updating the regulatory frameworks for embedded networks* review.⁵¹

QUESTION 7: ROLR ARRANGEMENTS FOR EMBEDDED NETWORKS

- a. Should embedded networks have some form of RoLR arrangements?
- b. If yes, what solution is appropriate to provide embedded network customers with RoLR arrangements?

3.3

Other issues

3.3.1

Whether sections of the RoLR scheme could be better placed in the NERR

The Commission considered, in the 2020 Retail energy competition review final report, that as competition in the retail market develops over time and the number of retailers in the NEM continues to increase it will be important that the RoLR scheme continues to evolve. In order to make changes to the RoLR scheme adaptable over the long term, the Commission recommended that the RoLR provisions in the NERL should be removed and the provisions should be included in the NERR through rule changes. This would enable the Commission, based on rule change requests from stakeholders, to make changes as new issues are identified and market conditions change. This will allow the RoLR scheme to remain fit for purpose over time.

⁵¹ Ibid.

3.3.2

Stakeholder identified issues

The Commission encourages stakeholders to identify other issues with the RoLR scheme. This will assist the Commission in informing governments through the final report on the scale and detail of issues that may warrant further consideration and how the RoLR scheme could evolve over time.

QUESTION 8: OTHER ISSUES

- a. Would it be beneficial to include elements of the RoLR scheme in the NERR?
- b. What other issues are there with the RoLR scheme and how could they be addressed?
- c. Are there other changes, outside of those included in this review, that would reduce barriers for retailers to volunteer as RoLRs?
- d. Are there other changes, outside of those included in this review, that would improve the effectiveness of the RoLR scheme?

4 LODGING A SUBMISSION

Written submissions on this consultation paper must be lodged with the Commission by 19 November 2020 online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code RPR0015.

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions. The Commission publishes all submissions on its website, subject to a claim of confidentiality.

All enquiries on this project should be addressed to Samuel Martin on (02) 8296 0646 or samuel.martin@aemc.gov.au.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
MCL	Maximum credit limit
NEL	National Electricity Law
NEO	National electricity objective
NERL	National Energy Retail Law
NER	National Electricity Rules
NERR	National Energy Retail Rules
NERO	National energy retail objective
NGL	National Gas Law
NGO	National gas objective
RoLR	Retailer of last resort
TOR	Terms of reference

A ROLR SCHEME

This appendix sets out additional detail on the existing regulatory framework for a failed retailer to exit the market through the RoLR mechanism.

A.1 RoLR registration

The AER must both initially and afterwards at such times as it considers appropriate call for an expression of interest from retailers for registration as a RoLR. A retailer may lodge an expression of interest with the AER either in response to an AER call for expressions of interest or at any other time. A RoLR expression of interest may contain proposals as to:

- customers or classes of customers the retailer will accept as its customers if it were to be appointed a designated RoLR in respect of a RoLR event
- numbers of customers the retailer will accept if it were to be appointed a designated RoLR in respect of a RoLR event
- variation to the retailer's RoLR cost recovery scheme.⁵²

The NERL requires a "default RoLR" to be appointed by the AER ahead of time for each electricity connection point.⁵³ In practice, default RoLRs are generally the original incumbent retailers in the area who previously acted as RoLRs under the former jurisdictional schemes. Retailers can also submit an expression of interest to the AER to become an 'additional RoLR'. The AER has established two categories of additional RoLRs:

- the 'firm offer' category where retailers pre-commit to the terms and conditions under which they would be appointed as a RoLR
- the 'non-firm' category where retailers register their interest in being a RoLR but do not commit themselves to acting in that role.

The AER must maintain and publish a register of RoLRs.⁵⁴

A.2 RoLR designation

When a RoLR event is triggered, a designated RoLR is appointed for each electricity connection point, and is responsible for taking on new customers and facilitating customer transfers from the failed retailer. Under the NERL, the default RoLR is taken to be appointed as the designated RoLR, unless the AER appoints a registered RoLR as a designated RoLR in respect of a RoLR event before the event actually occurs, and notifies AEMO before the transfer date.⁵⁵

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

52 NERL, section 124.

53 NERL, section 125.

54 NERL, section 127.

55 NERL, section 132.

- whether the registered RoLR has a RoLR cost recovery scheme, and if so what costs are recoverable and what is the amount of those costs
- the imminence of the RoLR event
- the extent to which the retailer has the necessary organisational and technical capacity to meet the obligations of a RoLR
- the extent to which the retailer has adequate resources or access to adequate resources so that it will have the financial viability and financial capacity to meet the obligations of a RoLR
- whether the retailer is suitable to be a RoLR taking into consideration the number and class of customers the retailer has and the areas which the retailer serves.⁵⁶

The AER may consider appointing more than one designated RoLR for a RoLR event if the AER is of the opinion that it is appropriate to do so having regard to the size of, or other circumstances surrounding, the event. When making the appointments, the AER must allocate responsibility for particular customers or classes of customers to each designated RoLR.⁵⁷

A.3 Cost recovery

The NERL incorporates a process through which a designated RoLR can apply to the AER to recover the costs that it incurs on or after a RoLR event.⁵⁸ A default RoLR may also apply to recover costs incurred in preparing for RoLR events.⁵⁹ The designated RoLR retailer does not take on any of the liabilities or obligations of the failed retailer.

On receipt of an application the AER must determine a “RoLR cost recovery scheme”. The AER must be guided by the following principles:

- the registered RoLR should be provided with a reasonable opportunity to recover the reasonable costs that it incurs with respect to the RoLR scheme
- the recovery of costs should allow for a return commensurate with the regulatory and commercial risks with respect to the RoLR scheme
- the registered RoLR will itself bear some of the costs, in proportion to its customer base.⁶⁰

The AER is required to make a determination on how much of a RoLR’s costs should be recovered from one or more DNSPs, who are entitled to recover this cost from their customers.⁶¹

AER statement of approach

56 The AER can also take into consideration any other matters the AER considers relevant in the circumstances. NERL, section 133.

57 NERL, section 134.

58 NERL, section 166. Under the AER’s RoLR guidelines, applications must be made within nine months of the relevant RoLR event. See AER, Retailer of last resort statement of approach, November 2011.

59 NERL, section 166(3)(a).

60 NERL, section 166(7).

61 NERL, section 167.

The AER has published a RoLR statement of approach, which includes some guidance as to the general principles for cost recovery scheme determinations.⁶² In summary, the AER's guidance on applying the principles for cost recovery are:

- actions of the designated RoLR in performing its obligations should be prudent and minimise the costs incurred in the circumstances
- limits will not be imposed on the classes or magnitude of costs as the RoLR should be provided with reasonable opportunity to recover its reasonable costs incurred
- cost recovery should not result in onerous price shocks for small customers, as this may present hardship issues for some customers
- cost recovery should occur over the largest customer base which is appropriate to the RoLR event.⁶³

The AER has the ability to negotiate the terms and conditions of a potential cost recovery scheme with registered RoLRs in the process of designating a RoLR. For example, the AER can designate a RoLR based on its willingness to bear a higher share of the cost. The AER has also indicated that one of the objectives of the RoLR scheme is to protect customers' interests with respect to price through competition in the RoLR appointment process.⁶⁴

A.4 Contingency events

If the AER receives notice of or otherwise becomes aware of any event, circumstance or matter that it has reason to believe may or will affect, or give rise to some risk of affecting, continuity of the sale of energy to a retailer's customers, the AER may utilise its powers under the RoLR provisions in the NERL.⁶⁵ If the AER was to act under these contingency powers it may request financial information from a retailer and consult with AEMO. The AER may ask one or more registered RoLRs if it wants to be appointed as a designated RoLR for that event. The AER may give notice that it considers there is a risk of a RoLR event, and of the grounds for its view, to relevant parties after providing that notice to AEMO and Ministers in participating jurisdictions.⁶⁶

62 AER, Retailer of last resort statement of approach, November 2011.

63 Ibid, p.19.

64 AER, RoLR final statement of approach, Nov 2011, p. 3.

65 NERL section 130.

66 Ibid.