

QUEENSLAND TREASURY

# **National Energy Retail Law (Queensland) Regulation 2014**

**Discussion Paper**

**May 2025**

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## Executive Summary

This discussion paper outlines the review Queensland Treasury has undertaken of the National Energy Retail (Queensland) Law Regulation 2014 (NERLQ Regulation) which is due to expire on 1 September 2025. The review is being undertaken to determine whether the NERLQ Regulation should be allowed to expire, be remade as is, or be remade with amendments.

In accordance with the Queensland Government Better Regulation Policy, this review asked three key questions:

- Has the regulation been effective (i.e., is it still achieving the original policy objectives and purpose)?
- Has the regulation been efficient (i.e., does the cost/benefit of having the regulation outweigh any impacts, and is the regulation the least cost option)?
- Has the existence of the regulation impacted competition?

Based on available information, analysis against the policy objectives and feedback Queensland Treasury has received previously, initial results indicate the NERLQ Regulation has generally been operating effectively and efficiently and not impacted competition.

### Findings:

1. The NERLQ Regulation has been assessed as effective.
2. The NERLQ Regulation has been assessed as generally efficient.
3. The operation of the NERLQ Regulation derogations has been generally efficient, however a number of amendments are recommended to further improve efficiency (refer Table 4).
4. The NERLQ Regulation has not had a negative impact on competition.

At this stage, it is recommended the NERLQ Regulation be retained, with some amendments to the Queensland derogations to improve efficiency moving forward. It is also recommended consideration be given to making the derogation to Rule 49A(1)(b) – \$20 cap on market contract exit fees – a civil penalty provision, to be administered by the Queensland Competition Authority.

Queensland Treasury considers that remaking the NERLQ Regulation with amendments will:

- ensure the continued effective and efficient operation of the NERLQ Regulation;
- minimise impacts (including financial) on consumers, especially concession / hardship customers;
- protect regional customers from higher service costs in remote areas;
- is consistent and aligns with the NERL regulatory framework;
- not increase regulatory burden;
- not impact retailers or distributors; and
- not impact government.

## Invitation for feedback

Queensland Treasury invites written submissions from all interested parties and members of the community on the discussion paper. Written comments and answers to the questions raised in this document should be provided by 5pm Friday 6 June 2025. Queensland Treasury will take account of all submissions received by the due date.

You can send your comments to:

[Energy.Reform@epw.qld.gov.au](mailto:Energy.Reform@epw.qld.gov.au)

[Subject line should read: NERLQ Regulation 2014 Review: Discussion Paper – <add name here>]

or

NERLQ Regulation 2014 Review: Discussion Paper  
Distribution, Consumer and Innovation  
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As this is a public consultation process, the Queensland Government is committed to openness in its considerations of public policy. For this reason, written comments and submissions may be published on Queensland Treasury's website. Please mark clearly any comments or information you wish to be kept confidential.

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# 1. Introduction

Regulations, as subordinate legislation, have a limited lifespan and need to be reviewed every ten (10) years. This discussion paper outlines the review undertaken on the National Energy Retail Law (Queensland) Regulation 2014 (NERLQ Regulation), as the regulation is due to expire on 1 September 2025.

The NERLQ Regulation forms a small but important part of the National Energy Customer Framework (NECF). The NECF is a suite of national regulatory instruments that aim to protect customers and provide safeguards with respect to the sale and supply of energy and includes the National Energy Retail Law (NERL), the National Energy Retail Rules (NERR), the National Energy Retail Regulations, the National Electricity Rules (NER) and the National Gas Rules.

The NECF applies in the Australian Capital Territory, New South Wales, Queensland, South Australia and Tasmania, and applies in part in Victoria and the Northern Territory.

In order for the NERL regime to apply, each participating jurisdiction must pass its own legislation adopting the NERL<sup>1</sup> and the NERR. When this occurs, a state or territory may also choose to change the way the NERL or the NERR applies, for example by creating additional customer protections and obligations for businesses in that state or territory<sup>2</sup>.

The NERL and NERR as they apply in Queensland (referred to as the NERLQ and NERRQ) contain several state-based modifications (derogations) to the NERL and NERR. These are primarily intended to maintain existing Queensland policy and regulatory arrangements, and ensure arrangements are appropriate for Queensland consumers.

A number of the derogations are contained in the NERLQ Regulation and the effectiveness and efficiency of those derogations has been assessed as part of this review.

## 2. Assessing the NERLQ Regulation

The performance of the NERLQ Regulation has been assessed against three key questions.

- Has the regulation been effective (i.e. is it still achieving the original policy objectives and purpose)?
- Has the regulation been efficient (i.e. does the cost/benefit of having the regulation outweigh any impacts, and is the regulation the least cost option)?
- Has the existence of the regulation impacted competition?

### 2.1 Has the regulation been effective?

As stated in the NERLQ Act explanatory notes the policy objectives and purpose of the Act<sup>3</sup> was “to:

1. *Apply as a law of Queensland the National Energy Retail Law to regulate the sale and supply of energy (electricity and gas) to consumers. The National Electricity Retail Law is contained in a Schedule to the National Energy Retail Law (South Australia) Act 2011 of South*

<sup>1</sup> The NERL is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011* (NERL) of South Australia.

<sup>2</sup> The *National Energy Retail Law (Queensland) Act 2014* applies the NERL as a law of Queensland. The Queensland specific modifications to the NERL are contained in a Schedule to this Act, and the Queensland derogations to the NERR are contained in the NERLQ Regulation.

<sup>3</sup> National Energy Retail Law (Queensland) Bill 2014, [Explanatory Notes](#), page 1.

*Australia. The enactment of this Bill is part of a uniform scheme of legislation applying that Law (which relates to the sales and supply of energy to customers by retailers and distributors) in the States and the Australian Capital Territory (participating jurisdictions).*

2. *Modify the application of the National Energy Retail Law to:*
  - a. *ensure that regional electricity customers can continue to access supply despite weak market competition and are provided services on a fair and reasonable basis*
  - b. *support advancement of the Queensland Government's electricity industry reform priorities by providing additional customer protection and support to small customers following the removal of regulated prices in South East Queensland."*

As stated in the NERLQ Regulation explanatory notes<sup>4</sup>, the objectives of the regulation were ... "to:

1. *support the application, as a law of Queensland, of the National Energy Retail Law contained in a Schedule to the National Energy Retail Law (South Australia) Act 2011;*
2. *support the implementation of the national energy retail scheme contained in the National Energy Retail Law, as applied in Queensland;*
3. *support modifications made to the National Energy Retail Law, as applied in Queensland;*
4. *modify the application of the National Energy Retail Rules:*
  - a. *to ensure that regional electricity customers can continue to access supply on a fair and reasonable basis; and*
  - b. *to support advancement of the Queensland Government's electricity industry reform priorities by providing additional customer protection to small customers; and*
5. *support the modifications made to the National Energy Retail Rules by prescribing a regulator for the modified provisions."*

The NERLQ Regulation is achieving **Objective 1** by:

- nominating local area retailers for electricity and gas (Part 2, NERLQ Regulation)
- nominating Ergon Energy Corporation Limited as the distributor for its small, isolated electricity networks in regional Queensland and nominating Australian Gas Networks Limited as the distributor for its Wide Bay gas network in regional Queensland (Part 2, NERLQ Regulation)
- declaring that the price comparator service maintained by the Australian Energy Regulator will apply for Queensland (Part 7, NERLQ Regulation).

The NERLQ Regulation is achieving **Objective 2** by prescribing conditions that will apply to retail exemptions for gas to be held by Maranoa Regional Council and Western Downs Regional Council (Part 5, NERLQ Regulation).

The NERLQ Regulation is achieving **Objective 3** by having prescribed:

- a regulator (i.e., the QCA) for modifications concerning price monitoring and associated electricity reforms (Part 4, NERLQ Regulation)
- Ergon Energy Queensland Pty Ltd as an 'assigned retailer' for certain provisions, ensuring that obligations to offer legislated standard retail contracts at regulated prices to small and large customers in regional Queensland continue to apply (Part 3, NERLQ Regulation).

<sup>4</sup> National Energy Retail Law (Queensland) Regulation 2014, [Explanatory notes](#) for SL 2014 No. 339, page 1.



The NERLQ Regulation is achieving **Objective 4** having:

- ensured regional electricity customers can continue to access supply on a fair and reasonable basis, through the creation of:
  - rules obliging electricity on-suppliers in regional Queensland to charge large consumers no more than the relevant regulated price (Part 8, NERLQ Regulation)
  - standard connection and retail contracts applying to premises using card-operated meters in regional and remote Queensland (Part 6, NERLQ Regulation)
- supported the advancement of the Queensland Government's electricity industry reform priorities by providing additional customer protection to small customers, by creating rules (Part 8, NERLQ Regulation) obliging electricity retailers to:
  - inform all customers of the available options to pay bills including in advance
  - charge for electricity meter tests after testing, and only if the meter is not faulty
  - provide customers with advance notice of increases in market contract prices
  - provide customers with advance notice of expiry of fixed term benefits
  - offer at least one market contract with no exit fee whenever they offer a market contract with an exit fee
  - cap market contract exit fees at a maximum of \$20.

The NERLQ Regulation is achieving **Objective 5** having prescribed QCA as the regulator for each modified or new rule (Part 4, NERLQ Regulation).

The NERLQ Regulation has also been modified as the energy sector has evolved. Since the NERLQ Regulation commenced it has been amended seven (7) times. A summary of the amendments is presented in Table 1 below.

**Table 1: Summary of amendments to the NERLQ Regulation**

Date / Act Reference	Summary of amendment
26/06/2015	Amendments <sup>5</sup> : <ul style="list-style-type: none"> <li>• nominated an alternative local area retailer for the Energex distribution area, transferring the responsibility from Sun Retail Pty Ltd to its parent company Origin Energy Electricity Limited</li> <li>• rectified a reference to an incorrect Origin Energy Limited subsidiary</li> <li>• removed references to Envestra Limited following a change in company name.</li> </ul>
11/08/2017	<p>The amendments<sup>6</sup> created an exception to the restriction on the sale of energy placed on Ergon by subsection 19C(4) NERL as it applies in Queensland (section 14, Schedule 1, NERLQ Act) for the purpose of implementing the Solar for Public Housing Trial.</p> <p>The Trial aims to enable tenants access to cheaper solar power for public housing tenants in Cairns, Rockhampton and Logan Public housing tenants face multiple barriers to accessing solar power such as the upfront cost of solar PV systems and short-term tenancy which can prevent an investment in solar PV from being recouped over time by those making that investment.</p>
26/01/2018	<p>The amendments<sup>7</sup> align Queensland legislation with changes to national energy law that enhanced competition in electricity metering services in two main ways:</p> <ul style="list-style-type: none"> <li>• updating terminology such as definitions for specific terms related to metering to be consistent with the National Electricity Rules and the National Energy Retail Rules</li> <li>• aligning Queensland legislation with the new roles and responsibilities set out in the National Electricity Rules and the National Energy Retail Rules.</li> </ul>
16/03/2018	<p>The amendments<sup>8</sup> removed unnecessary duplication between an existing state-based modification to the National Energy Retail Law (Queensland) Regulation 2014 (rule 48A) and the commencement of a new rule (rule 48A - Retailer notice of end of fixed benefit period of a market retail contract) that requires retailers to send a notice to customers on such contracts 20 to 40 business days before their benefit (such as a price discount) changes.</p> <p>Without these amendments, the presence of two rule 48As may have caused confusion for retailers and other market participants.</p>
8/02/2019	<p>The amendments affected three (3) Queensland derogations.</p> <ul style="list-style-type: none"> <li>• Estimated meter reads (rule 29) derogation was removed – an amendment to the NERR made it easier for small customers to fix inaccurate estimated bills by</li> </ul>

<sup>5</sup> Page 1, National Energy Retail Law (Queensland) and Another Regulation Amendment Regulation (No. 1) 2015, [Explanatory notes](#).

<sup>6</sup> Page 1, National Energy Retail Law (Queensland) (Solar for Public Housing Trial) Amendment Regulation 2017, [Explanatory Notes](#).

<sup>7</sup> Page 2, Electricity Legislation (Competition in Metering) Amendment Regulation 2018, [Explanatory Notes](#).

<sup>8</sup> Pages 2-3, Electricity and Other Legislation (Price Determinations) Amendment Regulation 2018, [Explanatory Notes](#).

Date / Act Reference	Summary of amendment
	<p>providing their own reading of an electricity or gas meter to their retailer, duplicating the Queensland derogation.</p> <ul style="list-style-type: none"> <li>• Early price change notification (rule 46 and clause 8.2 of Schedule 1) was amended – an amendment to the NERR required retailers to notify their electricity and gas customers at least five business days before their energy prices changed (i.e. either increase or decrease to provide greater transparency and assist consumers to avoid potential bill shock. This derogation was amended to ensure consistency with the new Rule, while retaining the Queensland requirement to provide at least 10 business days' notice of a price increase.</li> <li>• The fixed benefit notification (rule 48A) derogation was removed – an amendment to the NERR and the finalisation of the Benefit Change Notice Guidelines requires energy retailers to notify electricity and gas customers when benefits, such as discounts in their contract, are about to end or change. These new requirements exceeded the Queensland derogation.</li> </ul>
27/10/2023	<p>The amendment enabled Queensland specific electricity bill messaging relating to 2023-24 cost of living relief measures, to appear on the front page of residential customer electricity bills as far as practicable by electricity retailers operating in Queensland.</p> <p>The Queensland Government undertook significant financial action to minimise the impacts recent events had on Queenslanders' electricity bills. As a result, Queensland customers received significantly more bill relief than what was originally proposed under the national Energy Bill Relief Fund. It is important that this information was front and centre on any bill information being presented to customers so that the proactive role of the Queensland Government could be fully realised and understood by Queensland electricity customers.</p> <p>This amendment expired on 1 July 2024 and has subsequently been removed.</p>
28/06/2024	<p>The amendment enabled Queensland specific electricity bill messaging relating to 2024-25 cost of living relief measures, to appear on the front page of residential customer electricity bills as far as practicable by electricity retailers operating in Queensland. The amendment expires on 1 July 2025.</p>

Each amendment has ensured the continued effectiveness of the NERLQ Regulation.

**Finding 1: The NERLQ Regulation has been assessed as effective.**

**Question 1: Do stakeholders agree with the assessment that the NERLQ Regulation has generally been effective as a regulatory instrument? If not, why not?**

It is recommended that the current 'nominated retailer', 'nominated distributor', 'assigned retailer', 'prescribed regulator' and 'application of price comparator', be retained unchanged. The current bodies have been undertaking the roles required of them (as per the NERL and NERR) without issue since the commencement of the NERLQ Regulation in 2014. Queensland Treasury is not aware of any compelling evidence available that changing any of the current arrangements would lead to better consumer outcomes. Queensland Treasury is of the view that to change such arrangements now would create significant administrative and regulatory burden for the government and the need to establish new organisations, the costs of which would eventually be passed down and paid for by the consumer. During this time of increasing cost of living pressures, any unnecessary changes that do not result in consumer benefit should be avoided.

**Recommendation 1: Parts 1<sup>9</sup>-7 of the NERLQ Regulation be retained unchanged.**

**Question 2: Do stakeholders agree that Parts 1-7 of the NERLQ Regulation should be retained unchanged? If not, why not?**

## 2.2 Has the regulation been efficient?

There are three (3) components to assessing efficiency:

- general / overall assessment of efficiency
- efficiency of Queensland derogation
- efficiency of penalty provisions for Queensland derogations.

### 2.2.1 General assessment of efficiency

When a Regulatory Impact Statement was originally prepared for the NERL in 2009, it was identified that there was the potential for energy retailers to achieve significant savings from the adoption of the NERL. The potential benefits to retailers are detailed below<sup>10</sup>

- Increased efficiencies through the removal of inter-jurisdictional regulatory duplication would achieve regulatory harmonisation as much as possible.
- Regulatory harmonisation (and the associated reduced regulatory duplication) would benefit retailers by:
  - improving efficiencies in operating across jurisdictional boundaries – less red tape, less duplication of effort to meet regulatory requirements if the retailer operates in more than one jurisdiction

<sup>9</sup> Part 1 of the NERLQ Regulation is introductory in nature and describes key definitions and the commencement date for the regulation.

<sup>10</sup> Ministerial Council on Energy - Standing Committee of Officials (July 2009), *Regulation Impact Statement: A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers* (NERL RIS).

- potentially reducing the significant costs and barriers for new retailers entering the market
- would allow for longer term efficient allocation of resources and clear price signals for investment (as a result of more competitive energy pricing).
- Where retailers are obligated to offer supply to energy customers, the long-term effect through monitoring and compliance is that better quality information is available to regulators.
- With better quality data the retailer could better understand the range and nature of hardship experienced by energy customers, make properly informed decisions about future investment, and improve product designs leading to the successful expansion of their customer base.
- Clear articulation of hardship regimes would increase the likelihood of retailers recovering payments owed.
- Retailers would be able to avoid costly de-energisation – re-energisation cycles.
- The framework would allow for clear articulation of roles and responsibilities between retailers and distributors leading to reduction in administrative overlap reducing costs.
- More enforcement options would benefit retailers and prevent costly court action to remedy non-compliance.

It was estimated that the broad reform package, incorporating the NERL, could achieve savings of around \$12 million per annum for operating costs, and depreciation of establishment costs, for a retailer entering a new state market<sup>11</sup>.

The NERL RIS also identified inefficiencies associated with the pre-NERL regime that inhibit a retailer's ability to compete effectively, including:

- requirements for retailers to obtain a separate retail licence in each state, with different licence conditions attaching to each of these licences
- inconsistent and varying codes and guidelines (which include billing, hardship, reporting and marketing requirements) that sit under these licences
- increased compliance costs due to different regulatory obligations in each state
- the need to tailor business processes and systems for each jurisdiction.

For consumers, the NERL RIS stated that<sup>12</sup>:

*“Energy consumers in some States or Territories may have the benefit of a more rigorous suite of consumer protections compared to other States or Territories. However, the compliance burden on retailers and distributors indirectly impacts energy customers through market inefficiencies, less competitive energy pricing and less innovative service offerings.”*

The review of the NERL undertaken in 2019 found it was reasonable to argue that the greater the number of rules and regulations a retailer must comply with, the greater impact compliance costs and requirements to operate several business systems will have on the business. Therefore, it is also reasonable to expect that the implementation of uniform legislation should achieve a material benefit for retailers seeking to operate across state borders.

Feedback from retailers has indicated general agreement that the NERL regulatory framework has resulted in benefits or efficiency savings<sup>13</sup>, especially in IT systems, product development, and training of personnel<sup>14</sup>. There was also general agreement that having a consistent and transparent

<sup>11</sup> NERL RIS, p.11.

<sup>12</sup> NERL RIS, p.7.

<sup>13</sup> Submissions from Amaysim, AGL, Energy Australia, Ergon, ERM Power, Origin Energy, Simply, Dodo.

<sup>14</sup> Submissions from Energy Australia, ERM Power and Dodo,

framework across multiple jurisdictions increases the ability of retailers to achieve regulatory compliance. While it is difficult to calculate costs in quantitative values, as this would require retailers and distributors to provide commercially sensitive material, the overall sense that Queensland Treasury has gained through previous consultation is that retailers consider the NERL to be a positive outcome and that it has achieved, at least in part, the anticipated benefits and efficiency gains.

Another general retailer sentiment is that any derogation away from the NERL impacts on retailer efficiencies gained from regulatory harmonisation. However, given Queensland's derogations were in place before the adoption of the NERL, the extent of this impact is greatly offset by the gains made by the adoption of the NERL regulatory framework in Queensland.

Given the critical part the NERLQ Regulation plays in the NERL, and how it applies in Queensland, and that it has been regularly updated to ensure it is as consistent as possible with the national framework, the NERLQ Regulation has been assessed as generally efficient.

**Finding 2: The NERLQ Regulation has been assessed as generally efficient.**

**Question 3: Do stakeholders agree with the assessment that the NERLQ Regulation has generally been efficient as a regulatory instrument? If not, why not?**

### 2.2.2 Efficiency of Queensland derogations

In Queensland, any modifications to the NERL are made under section 12(1) of the NERLQ Act are contained in Part 8 and Schedule 5 of the NERLQ Regulation.

#### Amendments to Queensland's derogations

The Australian Competition & Consumer Commission (ACCC), as part of its 2018 Retail Electricity Pricing Inquiry, recommended that each NERL jurisdiction review its derogations and unwind any derogations that are not based on jurisdiction-specific characteristics or needs that cannot be met by NERL-wide rules (recommendation 27). The ACCC also recommended future derogations be limited to situations where there are jurisdiction-specific needs that cannot be addressed by a NERL-wide rule change (recommendation 28).

The AEMC has recommended states and territories recommit to harmonising energy regulation wherever possible to reduce the costs borne by customers where retailers are required to comply with multiple regulatory frameworks<sup>15</sup>.

Since the NERL was adopted, a number of Queensland's state-specific derogations have been amended or removed, generally to ensure consistency with new national rules made by the AEMC. Table 2 outlines the various derogation changes that have been made since July 2015.

<sup>15</sup> AEMC 2019 Retail Energy Competition Review Final Report, p.xi.

Table 2: Amendments to Queensland derogations

Date of change	Qld derogation	Amendment made
26/06/2015	Rule 152B(2)&(3) – General condition for exempt seller in Origin Energy Electricity Limited retail area	<i>Amendment to the ‘nominated retailers for electricity’ and ‘nominated distributor for electricity’</i> – replaced existing nominees with the correct company names.
11/08/2017	New section 9A (Sale of energy under the Solar for Public Housing Trial)	<i>Amendment to Part 3 (Assigned retailer)</i> – created an exception to the restriction on the sale of energy placed on Ergon Energy Queensland by subsection 19C(4) of the NERLQ for the purpose of implementing the Solar for Public Housing Trial (the Trial) which aimed to enable access to cheaper solar power for public housing tenants. Public housing tenants face multiple barriers to accessing solar power such as the upfront cost of solar PV systems and short-term tenancy which can prevent an investment in solar PV from being recouped over time <sup>16</sup> .
26/01/2018	Competition in metering related amendments	Amendments were made to align the NERLQ Regulation with changes to national energy law to enhance competition in electricity metering services by <sup>17</sup> : <ul style="list-style-type: none"> <li>• updating terminology, such as definitions for specific terms related to metering, to be consistent with the National Electricity Rules (NER) and the NERR</li> <li>• aligning Queensland legislation with the new roles and responsibilities set out in the NER and the NERR.</li> </ul>
28/09/2018	s.19C(1)(b)(ii) – non-reversion policy	<i>Removal of derogation</i> – The government removed the non-reversion policy for households and small businesses, effectively enabling small customers of a privately owned retailer to return to the government-owned retailer, Ergon. The policy previously prevented regional customers from ever returning to Ergon if they switched to another retailer <sup>18</sup> . The removal of this derogation for small customers was intended to provide these customers more choice.
28/09/2018	Rule 22A(4) – No new fees and charges on standing offers	<i>Amendment of derogation</i> – The Queensland derogation for rule 22A was amended to extend the ban on new types of fees and charges on standing offers for electricity in SEQ until 30 June 2020. The original derogation was for two years, designed as a transitional provision to support customers in the transition to price deregulation. The derogation was extended for a further two years to allow time for it to be

<sup>16</sup> Page 1, National Energy Retail Law (Queensland) (Solar for Public Housing Trial) Amendment Regulation 2017 – [Explanatory Notes](#).

<sup>17</sup> Page 2, Electricity Legislation (Competition in Metering) Amendment Regulation 2018 – [Explanatory notes](#).

<sup>18</sup> Clause 13(2), Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2018 - [Explanatory Notes](#) (September 2018).



Date of change	Qld derogation	Amendment made
		assessed as part of the NERL Review and for any subsequent legislative amendments to be made <sup>19</sup> .
07/02/2019	Rule 29 – Estimated meter reads	<i>Removal of derogation</i> – In August 2018, the AEMC made a rule change (to rule 29) to make it easier for small customers to fix inaccurate estimated bills by providing their own reading of an electricity or gas meter to their retailer. The rule commenced on 1 February 2019. This change made the rule consistent with the Queensland derogation for rule 29. As a result, the Queensland derogation was removed.
07/02/2019	Rule 46(4) – Advance price change notification	<i>Partial removal of derogation</i> – In September 2018, the AEMC published a final Rule determination requiring retailers to notify their small electricity and gas customers at least five business days before their energy prices change (i.e. either increase or decrease) (rule 46 and Schedule 1, clause 8.2) in order to provide greater transparency and assist consumers in avoiding any unexpected price changes. The commenced on February 2019. The Queensland Government amended the rule 46(4) and Schedule 1, clauses 8.2 and 8.2A derogations to ensure consistency with the new rule (i.e. at least five business days' notice for a price decrease) while retaining the Queensland specific requirement for retailers to provide at least ten business days' notice of a price increase. The new national rule also prescribes the contents and delivery method of the notice, which the Queensland derogation did not.
07/02/2019	Rule 48A – Fixed benefit notification	<i>Removal of derogation</i> – In November 2017, the AEMC made a rule change that requires retailers to notify energy customers when benefits in their market retail contract are about to end or change (rule 48A and 48B). Queensland already had a rule 48A derogation which required retailers to notify customers when their fixed benefits were about to expire. The new national rule provided an enhanced level of protection for consumers, and as a result, the Queensland Government decided to remove its derogation to rule 48A.

## Review of Queensland's derogations

As part of this review, Queensland Treasury has assessed the current NERR derogations to determine whether further harmonisation (or efficiency) can be achieved without impacting adversely on Queensland consumers.

It is recommended that derogations remain in place unchanged where:

- they address specific regional Queensland or other technical matters (e.g. COM rule requirements) that still apply today, or

<sup>19</sup> Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2018 - [Explanatory Notes](#) (September 2018).



- b. removing or modifying them would result in a lessening of the existing customer protections, without sufficient offsetting benefit.

The relevant derogations that meet this test are summarised in Table 3 below.

**Table 3: Current Queensland derogations from the NERR recommended to be retained**

Provision	Rule Derogation	Short Explanation	Initial Assessment
<b><i>Part 2 Modification of application of Rules for electricity distributors</i></b>			
Definitions	Amendment to Rule 3 (Definitions)	The definitions for 'metering rules' and 'metering coordinator' have been replaced with ones that describe Ergon Energy Distribution's role in regional Queensland.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
Pre-contractual duty of distributors	Replaces Rule 17(2) with (2) & (3)	Subsection (2) has been amended to include extra references to small customers. Subsection (3) has been added to describe Ergon Energy Distribution's role in regional Queensland.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
Varying notice period for distributor planned interruptions	Inserts a new Rule 90A	The new Rule provides an ability for a distributor to vary a notice informing a customer of a change to a planned interruption of their electricity supply.	<b>Retain</b> Derogation required in order for a distributor operating in Queensland to be able to vary the timing of planned outages given changes in circumstances (e.g. due to weather events, other urgent priority work). The NERR does not contain an equivalent power.
Enquiries or complaints relating to the retailer	Inserts a new subsection Rule 101(1A)	Requirement for the distributor and retailer to work together to respond to an enquiry or complaint and consistent with any relevant procedures.	<b>Retain</b> Derogation required to ensure this rule does not apply to Ergon Energy Distribution in isolated networks, which is appropriate given the supply arrangements that exist in these locations in regional Queensland.
<b><i>Part 3 Modification of application of Rules for electricity retailers and particular exempt sellers</i></b>			
Definitions	Amendment to Rule 3 (Definitions)	The definition for 'metering coordinator' has been replaced with one that describe Ergon Energy Distribution's role in regional Queensland.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
Request for information about sale of energy	Inserts a new subsection 19(1)(e)	If requested, a designated retailer must provide a small customer with information about the retailer's standing offer and other information, including the pay-in-advance option under rule 32(5).	<b>Retain</b> Additional requirement for designated retailers to inform customers of the availability of different payment options, including the option to pay a bill in advance under Rule 32(5).
Information on bills	Inserts a new	Derogated away from the AER's Better Bills Guideline in	<b>Retain</b>

Provision	Rule Derogation	Short Explanation	Initial Assessment
	subsection 25AA	order to enable messaging about the 2024-25 Cost of Living Rebate to appear on the front pages of small customer electricity bills.	Rule is time-limited and due to expire on 1 July 2025.
Required information	Replaces Rule 64(1)(a)	Outlines the information about the market contract that the retailer must provide in writing to a small customer.	<b>Retain</b> While it still reflects the original intent of Rule 64(1)(a) it has been reworded to reflect Queensland derogations as well (i.e. Rules 19(1)(e) and 49A(1)).
Information on retailer planned interruptions – electricity	Replaces 'NMI' with 'meter identifier' in Rule 99A(2)	Changes the reference in the Rule from 'NMI' to 'meter identifier'.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
General condition for exempt seller in Ergon Energy distribution area	Inserts a new Rule 152A	Prevents exempt sellers operating in the Ergon Energy distribution area from charging large customers more than the standing offer price for such customers.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
General condition for exempt seller in Origin Energy Electricity Limited retail area	Inserts a new Rule 152B	Prevents exempt sellers operating in the Origin Energy Electricity Limited retail area from charging large customers more than the standing offer price for such customers.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
Model condition for changes to tariffs and charges	Omits Item 8.2 and the new Item 8.2A	Ensures these two model conditions do not apply to retailers operating in regional Queensland.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
<b>Part 4 Modification of application of Rules for electricity retailers and distributors offering particular contracts</b>			
Disclosure requirements for standard retail contract (card-operated meters)	Inserts a new Rule 13A	Information provision requirements that a retailer must comply with if the information is requested by a small customer on a standard retail contract.	<b>Retain</b> This is an appropriate additional requirement for retailers with customers that have COMs.
Pre-contractual request to designated retailer for sale of energy (SRC)	Omits Rule 18 (3) & (4)	Derogation removed parts of Rule 18 (Pre-contractual request to designated retailer for sale of energy (SRC)) related to meters other than COMs.	<b>Retain</b> This change ensures that the Rule remains appropriate for customers with COMs.
Responsibility of small customer in response to	Inserts a new Rule 18A	Requires a small customer with a COM to ensure there is safe and unhindered access to the meter at the premises.	<b>Retain</b> This is an appropriate additional requirement for customers that have COMs.

Provision	Rule Derogation	Short Explanation	Initial Assessment
request for sale of energy			
Frequency of bills (SRC)	Omits Rule 24	Removes the requirement for a retailer to provide a small customer with a bill once at least every 100 days.	<b>Retain</b> As customers with COMs do not receive bills this Rule is redundant and not appropriate for these customers.
Overcharging (SRC and MRC)	Replaces Rule 31	Derogation removes the references to bills as COM customers do not receive bills.	<b>Retain</b> As customers with COMs do not receive bills this modification makes the rule more appropriate for customers with COMs.
Termination of standard retail contract (SRC)	Omits Rule 70(2) & (3)	Removes the requirements that relate to meters other than COMs	<b>Retain</b> This change ensures that the Rule remains appropriate for customers with COMs.
Payment by Centrepay (SRC and MRC)	Replaces Rule 74(2)	The Rule requires a retailer to allow a hardship customer to use Centrepay if it available. The derogation adds a reference to COMs.	<b>Retain</b> This change ensures the Rule remains appropriate for customers with COMs.
Division 5 Additional rules for disconnection of card-operated meter premises	New Pt 6, Div 5, 122A	This rule contains requirements for disconnection of COMs used in regional Queensland.	<b>Retain</b> This change ensures the Rules for the de-energisation (or disconnection) of premises for small customers remain appropriate for customers with COMs.
Discontinuation of use of card-operated meter system	124A	If a small customer is a life support customer, the retailer must replace a card-operated meter installed in a small customer's premises with a standard meter, at no cost to the customer, and provide information about the retail contract options available to the customer.	<b>Retain</b> This change ensures the Rules for customers with life support equipment remain appropriate for customers with COMs.

The remaining 9 derogations (listed below) required further assessment to determine whether removal or amendment would result in an improvement in the efficiency of the NERLQ Regulation:

- Part 2 Modification of application of Rules for electricity distributors:
  - i) Distributor planned interruptions (maintenance, repair, etc.) - Replaces Sch 2, item 10.2
- Part 3 Modification of application of Rules for electricity retailers and particular exempt sellers:
  - ii) Variation to market offer price - Replaces Rule 46(4)
  - iii) Early termination fee for market contracts - Replaces Rule 49A(1)(b), and (2)-(7)
  - iv) Limit on early termination charge - Inserts a new Rule 49B
  - v) Contents of disconnection warning notice - Inserts a new Rule 110(2)(c)(iii)
  - vi) Model condition for changes to tariffs and charges - Replaces Sch 1, Item 8.2(a1)(i) and inserts a new Item 8.2A

- vii) Model condition for customers reviewing their bills - Replaces Sch 1, Item 12.3(b)
- Part 4 Modification of application of Rules for electricity retailers and distributors offering particular contracts:
  - viii) Undercharging (SRC and MRC) - Replaces Rule 30(2)(a)
  - ix) Provision of information – Replacement of Rule 86

The assessment is summarised in Table 4 with a detailed analysis following.

**Table 4: Current Queensland derogations from the NERR recommended to be retained unchanged, retained with amendments, or removed**

<i>Provision</i>	<i>Rule Derogation</i>	<i>Short Explanation</i>	<i>Initial Assessment</i>
<b><i>Part 2 Modification of application of Rules for electricity distributors</i></b>			
i) Distributor planned interruptions (maintenance, repair, etc.)	Replaces Sch 2, item 10.2	Condition 10 (Interruption to supply services) – model terms and conditions of deemed standard connection contracts.	<b>Remove</b> The amendments made to item 10.2(b) in 2019 put in place requirements and protections which exceed those in the derogation.
<b><i>Part 3 Modification of application of Rules for electricity retailers and particular exempt sellers</i></b>			
ii) Variation to market offer price	Replaces Rule 46(4)	A retailer must give customers on a market retail contract at least 10 business days' notice of any price increase. Price decreases must be notified as soon as possible and no later than the next bill.	<b>Remove</b> Achieves alignment with national requirements, maintaining 10 business day requirement likely to result in minimal customer benefit while creating unnecessary administrative burden on retailers.
iii) Early termination fee for market contracts	Replaces Rule 49A(1)(b), and (2)-(7)	Early termination charge (exit fee) for a fixed term market retail contract or a fixed benefit period can be no more than \$20.	<b>Retain</b> Even though few market offers contain these fees, Queensland Treasury has assessed it as prudent to retain the fee cap to limit the amount retailers can charge.
iv) Limit on early termination charge	Inserts a new Rule 49B	A retailer must offer at least one market retail contract that has no early termination charge.	<b>Remove</b> The current market is significantly competitive and there are very few, if any, market offers that still use this fee. If desired, the customer can easily change to a similar market offer without early termination charges.
v) Contents of disconnection warning notice	Inserts a new Rule 110(2)(c)(iii)	A disconnection warning notice for a small customer must include, among other things, information on government-funded energy rebates, concessions or relief schemes.	<b>Retain</b> The additional information to be provided on disconnection notices may assist potentially vulnerable customers in accessing available government assistance by increasing their

<i>Provision</i>	<i>Rule Derogation</i>	<i>Short Explanation</i>	<i>Initial Assessment</i>
			awareness of its existence.
vi) Model condition for changes to tariffs and charges	Replaces Sch 1, Item 8.2(a1)(i)	Implements Rule 46(4) (10 business day notification for a price increase)	<b>Remove</b> Consistent with recommendation for Rule 46(4).
vi) Model condition for changes to tariffs and charges	Removes the effect of Sch 1, Item 8.2 for regional Queensland	Regional Queensland derogation.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
vi) Model condition for changes to tariffs and charges	Inserts a new Item 8.2A	This derogation requires all variations to a customer's tariffs and charges to be included in their next bill regardless of the reason	<b>Retain</b> Maintains customer protection around the provision of billing information.
vi) Model condition for changes to tariffs and charges	Removes the effect of Sch 1, Item 8.2A for regional Queensland	Regional Queensland derogation.	<b>Retain</b> Derogation required to ensure NERL arrangements continue to be appropriate for regional Queensland.
vii) Model condition for customers reviewing their bills	Replaces Sch 1, Item 12.3(b)	If the review of a bill leads to a meter test and if the meter is found to not be faulty then the customer may be charged for the meter test.	<b>Remove</b> This is now redundant given the amendment to Sch 1, Item 12.3 on 19 March 2020.
<b><i>Part 4 Modification of application of Rules for electricity retailers and distributors offering particular contracts</i></b>			
viii) Undercharging (SRC and MRC)	Replaces Rule 30(2)(a)	Where the retailer is proposing to recover an amount undercharged to the customer, the retailer can only recover the undercharged amount 9 months prior to the customer being notified. The derogation extended this to 12 months for COM customers.	<b>Remove</b> The need for the derogation has been negated by the upgrade of COMs that can be accessed remotely.
ix) Provision of information	86	On 1 March 2016 Rule 86 in the NERR was replaced with Rules 86A (specific to electricity) and Rule 86B (specific to gas)	<b>Retain with amendments</b> An amended derogation needs to just switch off the requirement for COMs installed in the customer's premises within 12 months after the request.

## DETAILED ANALYSIS

### Part 2 Modification of application of Rules for electricity distributors

#### i) Distributor planned interruptions (maintenance, repair, etc.) - Replaces Sch 2, item 10.2

The current Schedule 2 (Model terms and conditions for deemed standard connection contracts), Item 10.2 of the NERR states:

##### **10.2 Distributor planned interruptions (maintenance, repair, etc)**

- (a) *We may make distributor planned interruptions to the supply of energy to the premises under the Rules for the following purposes:*
  - (i) *for the maintenance, repair or augmentation of the transmission system or the distribution system, including maintenance of metering equipment; or*
  - (ii) *for the installation of a new connection or a connection alteration to another customer.*
- (b) *If your energy supply will be affected by a distributor planned interruption and clause 6.4(d)(iii) does not apply:*
  - (i) *we may seek your explicit consent to the interruption occurring on a specified date; or*
  - (ii) *we may seek your explicit consent to the interruption occurring on any day within a specified 5 business day range; or*
  - (iii) *otherwise, we will give you at least 4 business days notice of the interruption by mail, letterbox drop, press advertisement or other appropriate means.*

The Queensland derogation states:

##### **10.2 Distributor planned interruptions (maintenance, repair, etc.)**

- (a) *We may make distributor planned interruptions to the supply of energy to your premises under the Rules for the following purposes—*
  - (i) *for the maintenance, repair or augmentation of the transmission system or the distribution system, including maintenance of metering equipment;*
  - (ii) *for the installation of a new connection or a connection alteration to another customer.*
- (b) *If your energy supply will be affected by a distributor planned interruption we will, unless you have agreed to a different notice period, notify you of the distributor planned interruption at least 4 business days before the interruption is to occur by mail, letterbox drop, press advertisement or other appropriate means.*

The Queensland derogation to item 10.2 was originally put in place when the NERLQ Regulation commenced 19 December 2014. Item 10.2 (NERR) originally stated<sup>20</sup>:

##### **10.2 Distributor planned interruptions (maintenance, repair, etc)**

- (a) *We may make distributor planned interruptions to the supply of energy to the premises under the Rules for the following purposes:*
  - (i) *for the maintenance, repair or augmentation of the transmission system or the distribution system, including maintenance of metering equipment; or*
  - (ii) *for the installation of a new connection or a connection alteration to another customer.*
- (b) *If your energy supply will be affected by a distributor planned interruption, we will give you at least 4 business days notice by mail, letterbox drop, press advertisement or other appropriate means.*

The Queensland derogation derogated away from 10.2(b) and added the concept whereby the affected customer may agree to a different notice period:

<sup>20</sup> NERR, Version 10, 1 December 2017 – 31 January 2018



**10.2 Distributor planned interruptions (maintenance, repair, etc.)**

- (a) We may make distributor planned interruptions to the supply of energy to your premises under the Rules for the following purposes—
- (i) for the maintenance, repair or augmentation of the transmission system or the distribution system, including maintenance of metering equipment;
  - (ii) for the installation of a new connection or a connection alteration to another customer.
- (b) If your energy supply will be affected by a distributor planned interruption we will, unless you have agreed to a different notice period, notify you of the distributor planned interruption at least 4 business days before the interruption is to occur by mail, letterbox drop, press advertisement or other appropriate means.

On 1 February 2019, item 10.2(b) (NERR, [Version 17](#)) was amended to add a life support component, an EIC component, and, an option for the "interruption occurring on any day within a specified 5 business day range" (see related highlighted text below). The Queensland derogation was not consequentially amended to reflect these new aspects of item 10.2:

**10.2 Distributor planned interruptions (maintenance, repair, etc)**

- (b) If your energy supply will be affected by a distributor planned interruption and clause 6.4(d)(iii) does not apply:
- (i) we may seek your explicit consent to the interruption occurring on a specified date; or
  - (ii) we may seek your explicit consent to the interruption occurring on any day within a specified 5 business day range; or
  - (iii) otherwise, we will give you at least 4 business days notice of the interruption by mail, letterbox drop, press advertisement or other appropriate means.

Given the wording of the current 10.2(b), it is reasonable to conclude that the item was amended to strengthen the stated customer protections by adding the three concepts detailed above and exceeds the Queensland derogation as it currently stands, leaving the derogation redundant.

**Recommendation:** Remove the Queensland derogation to Schedule 2, item 10.2.

### **Part 3 Modification of application of Rules for electricity retailers and particular exempt sellers**

#### **ii) Variation to market offer price - Replaces Rule 46(4)**

The current Rule 46(4) of the NERR states:

**46 Tariffs and charges**

- (4) The notice must:
- (a) be given at least five business days before the variation in the tariffs and charges are to apply to the customer; and
  - (b) be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

*Note—This subrule is classified as a tier 2 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)*

The current Queensland derogation replaces Rule 46(4)(a) with:

- (a) be given—
  - (i) if the variation results in an increase in the tariffs and charges applying to the customer— at least 10 business days before the variation is to apply to the customer; or



*(ii) if the variation results in a decrease in the tariffs and charges applying to the customer—  
at least 5 business days before the variation is to apply to the customer;*

Prior to the NERL, changes to prices and benefits were not required to be notified in advance, but rather were outlined in the customer's next bill. At the time, changes in the regulated price were widely reported in the media before they took effect, so individual customer notification 'no later than then next bill' was considered adequate.

However, in a competitive market, it was believed that without notification, customers would be much less likely to be aware of, and understand, any price change before it came into effect, making it difficult for customers to properly budget for a potential price increase, or, to prompt them to shop around for a better deal. For this reason, in 2014 Queensland opted to derogate and require retailers to give at least 10 business days' notice for a price increase.

An analysis of the potential impacts from the derogation found the derogation was not expected to generate significant costs to retailers provided there was flexibility around how the notice was delivered.

On 1 February 2019, a new national rule (rule 46) commenced requiring retailers to give customers at least five business days' notice of a price change (increase or decrease). The rule also provides greater prescription around the content of the notification. Specifically, the rule requires retailers to:

- provide advance notice of price increases and decreases, five business days in advance of the change
- use the customer's preferred form of communication
- clearly indicate that the notice is a price change notice
- include the date of the change, the customer's existing tariffs and new tariffs, inclusive of GST, so they are easy to compare
- provide a prompt that the customer can access their historical billing and usage data if required.

A number of exemptions apply, including for customers on regulated retail prices and those who may have already received a price change notice as a result of their fixed benefit period ending.

Following commencement of the new rule, Queensland amended its state-based derogation to align with the national requirement to provide at least five business days' notice for a price decrease. However, the decision was made to retain the existing derogation requiring 10 business days' advance notice for a price increase.

Previous feedback from the AER, AEC and retailers indicated they had supported the removal of the derogation requiring 10 business days' notice for the reasons detailed below.

- It would take Queensland one step closer to national consistency which would provide real benefit to consumers in terms of cost efficiency gains, and reduce confusion when contacting retailers as retailers would be required to comply with less derogations.
- There are operational challenges with the 10 day requirement – 10 business days is a very tight timeframe, especially as retailers often do not get sufficient notice from the AER regarding approved network prices to meet the 10 day requirement.
- An additional five business days' notice provides only a marginal amount of benefit for consumers (if any).

This was also consistent with retailers' previous position stated as part of the consultation undertaken for the AEMC rule change: Advance Notice of Price Changes<sup>21</sup>. In those submissions, retailers indicated that the logistical costs (especially associated with mail outs and Australia Post scheduling) outweigh any supposed customer benefits (like reducing bill shock)<sup>22</sup>. Specific examples include:

- "... the size of our customer base means that our mailout has to be staggered over approximately 10 business days to manage impact both on mail house and on our customer contact centres..." (EnergyAustralia Pty Ltd)<sup>23</sup>; and
- "Four weeks is insufficient for larger retailers to do price changes for the entire cost-stack as well as coordinate customer-tailored notifications, particularly as third-party providers require time for coding and coordination and will be responsible for delivering a large portion of this work." (AGL Energy)<sup>24</sup>.

While consumer groups supported consistency (although it was noted that earlier notification would not prevent the consumer from potentially being charged more), early notification was highlighted as being very important to prevent bill shock.

Consumer groups also suggested the derogation be increased from 10 business days to 20-40 business days to align with the fixed benefit change notification; however, no further evidence was provided to support this position. An increased timeframe would also not allow for Australia Post's reduced delivery schedule<sup>25</sup>.

Consumer groups' support for the price increase notification period to be at least 10 business days is consistent with their previous position stated as a part of the consultation undertaken for the AEMC rule change: Advance Notice of Price Changes<sup>26</sup>. In those submissions, not only was the 10 business days advocated for<sup>27</sup>, there was also agreement that the notification should appear in the form of a percentage change rather than a flat number<sup>28</sup>, as this was considered to be simpler for the customer to understand and more meaningful.

Queensland Treasury agrees that advance notice of a price change is an important consumer right that should be maintained. The period of advance notice also needs to be sufficient to give consumers time to take action before a new price comes into effect, such as budgeting to minimise payment difficulties, changing their consumption patterns to reduce future bills, or engaging in the market to shop around for a more competitive plan.

However, Queensland Treasury also acknowledges that providing 10 business days' advance notification of a price increase may be difficult for some retailers to comply with, particularly those with a substantial proportion of their customer base still on paper notification. Those retailers who have customers in multiple jurisdictions may also find it difficult, more so if Queensland continues its own different requirement (i.e., 10 business days' advance notification instead of the national five business days).

<sup>21</sup> <https://www.aemc.gov.au/rule-changes/advance-notice-price-changes>.

<sup>22</sup> AEC, EnergyAustralia, Origin Energy, Alinta, AGL, Simply Energy, Red/Lumo.

<sup>23</sup> <https://www.aemc.gov.au/sites/default/files/2018-08/EnergyAustralia.pdf>

<sup>24</sup> [https://www.aemc.gov.au/sites/default/files/2018-08/RuleChange Submission RRC0015 - AGL Energy - 180816.pdf](https://www.aemc.gov.au/sites/default/files/2018-08/RuleChange%20Submission%20RRC0015%20-%20AGL%20Energy%20-%20180816.pdf)

<sup>25</sup> From once a day to once every three days in some areas.

<sup>26</sup> <https://www.aemc.gov.au/rule-changes/advance-notice-price-changes>.

<sup>27</sup> By QCA, COTA and ECA.

<sup>28</sup> QCA, PIAC and COTA.

It also acknowledged that this is likely to be further compounded by changes to Australia Post's scheduling arrangements<sup>29</sup>, which could make it difficult for retailers to provide 10 business days' notice, particularly prior to the commencement of the financial year.

The changes to Australia Post's mail delivery service have been driven by the general shift to digital communications with less dependency on paper-based mail. The delivery times for standard letters (including energy bills) has also changed. The expected delivery time for regular letters<sup>30</sup> is now 3-5 business days (in urban areas – depending on the destination), up from the previous 1-3 business days. Letters sent from interstate (which may be the case for interstate-based retailers) may take an additional 1-2 business days<sup>31</sup> to reach their destinations.

In a worst-case scenario, to meet the rule's 10 business day notice requirement, a retailer may have to get notices in the post up to 19 business days before the price change commences. Prior to the start of each financial year, retailers would need to receive any relevant regulated prices (e.g., final network tariff prices from the AER) at least five weeks prior to 1 July. Retailers have indicated this does not always occur<sup>32</sup>. Retaining this derogation in effect sets up retailers to fail in some circumstances.

Overall, Queensland Treasury considers that providing customers with at least five business days' notice of a price change balances a consumer's right to be informed of a price change before it occurs against the commercial and operational requirements of retailers to provide the advance notice.

Consistent with the AEMC's findings from its rule change process<sup>33</sup>, Queensland Treasury also considers that providing 10 business days' notice is likely to result in minimal additional benefit for consumers beyond the minimum five business days' notice required under the national rule. The national rule also provides retailers with maximum opportunity to stagger any bulk mail outs to ensure the minimum timeframe is still met.

Harmonising with the national rule should also assist in improving the efficient operation of the market, and is consistent with the ACCC's recommendation for jurisdictions to unwind state-based derogations that are not based on jurisdiction-specific characteristics or needs that cannot be met by NERL-wide rules.

It is therefore recommended that the Queensland derogation requiring retailers to provide at least 10 business days' notice of a price change be removed (i.e. s.23(9)(b) NERLQ and rule 46(4)). As a result, retailers in Queensland will be required to comply with the national requirement to provide customers with at least five business days' notice of any price change.

Queensland Treasury considers there is benefit in applying an advance notice period equally to both standing offers and market offers, particularly for retailers in terms of harmonising the administration of the rules. It is therefore considered appropriate to apply the same requirement to both standing and market offers.

<sup>29</sup> From once a day to once every three days in some areas.

<sup>30</sup> Regular letters now cost \$1.00 each to send. Priority letters can be delivered in 1-4 business days but cost \$1.50 each to send (reference: [Australia Post website](#)).

<sup>31</sup> [Delivery speeds and coverage - Australia Post](#).

<sup>32</sup> Feedback from the CIRG Forum 11 April 2019.

<sup>33</sup> <https://www.aemc.gov.au/rule-changes/advance-notice-price-changes>.

**Recommendation:** It is recommended the Queensland derogation requiring retailers to provide at least 10 business days' notice of a price increase be removed. As a result, retailers will be required to comply with the national requirement to provide customers with at least five business days' notice of any price change.

### iii) Early termination fee for market contracts - Replaces Rule 49A(1)(b), and (2)-(7)

The current Rule 49A states:

#### **49A Early termination charges**

- (1) A term or condition of a fixed term retail contract has no effect to the extent that it provides for payment of an early termination charge (however described), unless:
  - (a) the contract includes details of the amount or manner of calculation of the early termination charge; and
  - (b) the early termination charge is a reasonable estimate of the costs to the retailer resulting from the early termination.
- (2) For the purposes of subrule (1)(b), the costs to the retailer are the reasonable costs incurred or to be incurred by the retailer, and do not include costs based on lost supply or lost profits.
- (3) Subject to subrule (4), a term or condition of a market retail contract that is not a fixed term retail contract has no effect to the extent that it provides for the payment of an early termination charge (however described).
- (4) Subrules (1) and (3) do not prevent the imposition of an early termination charge due to the early termination of a fixed benefit period, even if this coincides with the termination of the market retail contract.
- (5) An early termination charge (however described), payable where a customer terminates a fixed benefit period early, only has effect if:
  - (a) the contract includes details of the amount or manner of calculation of the early termination charge; and
  - (b) the early termination charge is a reasonable estimate of the costs to the retailer resulting from the early termination.
- (6) For the purposes of subrule (5)(b), the costs to the retailer are the reasonable costs incurred or to be incurred by the retailer, and do not include costs based on lost supply or lost profits.
- (7) This rule is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract.

The Queensland derogation replaces Rule 49A(1)(b) and (2)-(7) with the following:

- (b) the early termination charge is—
  - (i) for the early termination of a fixed term contract—no more than \$20; and
  - (ii) for the early termination of a fixed benefit—no more than \$20.
- (2) Subject to subrule (3), a term or condition of a market retail contract that is not a fixed term retail contract has no effect to the extent that it provides for the payment of an early termination charge (however described).
- (3) Subrule (1) and (2) do not prevent the imposition of an early termination charge due to the early termination of a fixed benefit period, even if this coincides with the termination of the market retail contract.
- (4) An early termination charge (however described), payable if a customer terminates a fixed benefit period early, only has effect if the contract includes details of the amount or manner of calculation of the early termination charge.
- (5) This rule is a minimum requirement that is to apply in relation to small customers who purchase energy under a market retail contract.

When the NERL was introduced elsewhere in the National Electricity Market (NEM), the requirements for exit fees were originally tied to the reasonable costs incurred by retailers from customers moving to a different retailer. However, when Queensland adopted the NERL, derogations were put in place to help minimise the impact of exit fees on customers under the new framework. This particular derogation has the effect of capping early termination fees on market contracts can be no more than \$20. At the time the derogation was put in place, customers opting for a contract without an exit fee could be expected to pay a slightly higher price compared to other market contracts. However, as they would still derive some price benefit compared to a standard retail contract, this was considered an acceptable trade-off at the time. It was also believed that access to these contracts would promote customer engagement by building consumer confidence.

Since then, competition between retailers has intensified and several new retailers have entered the SEQ market. Increased competitive pressure has also resulted in a more diverse range of offers being made available and a move away from fixed term contracts and exit fees. The vast majority of market offers in both SEQ and in other NERL jurisdictions have no exit fees attached to them. As at June 2019, only two retailers in SEQ were still charging an exit fee on a small number of their offers. A similar trend has been observed in other states, with only one retailer in NSW and two retailers in South Australia charging an exit fee<sup>34</sup>.

In previous years, some retailers advocated for the removal of this derogation, while consumer groups supported retaining the derogation. Given current cost-of-living pressures and the continued existence of exit fees (however rare), the need remains for continued price protections with respect to exit fees. Queensland Treasury therefore recommends the \$20 cap on exit fees in Queensland (Rule 49A) remains in place. It considers this strikes an appropriate balance between allowing those retailers who, for various reasons, wish to charge an exit fee, with limiting the financial impact on consumers should they wish to switch offers. It would seem difficult to argue customers can respond to poor service by switching retailers if, to do so, incurs a substantial termination cost.

**Recommendation: Retain the Queensland derogation to Rule 49A(1)(b) and (2)-(7).**

#### **iv) Limit on early termination charge – Inserts a new Rule 49B**

This Queensland derogation inserts a new rule:

***49B Particular requirement for retailers offering fixed term retail contracts***

*If a retailer offers a customer a market retail contract that includes a term or condition in the contract for the payment of an early termination charge (however described) (an early termination charge clause), the retailer must also offer the customer a market retail contract that does not include an early termination charge clause.*

This requirement means retailers must provide at least one market offer with no exit fee and was intended to provide a “no risk” option to consumers who are not confident about engaging in the market. It was considered such customers would benefit if at least one market contract without an exit fee were available from each retailer, and that this would not add costs to other market contract offerings.

As mentioned in the previous section, at the time this derogation was put in place, customers opting for a contract without an exit fee could be expected to pay a slightly higher price compared to other market contracts. However, as they would still derive some price benefit compared to a standard retail

<sup>34</sup> Where exit fees are used, it is the same two retailers charging these fees across jurisdictions.

contract, this was considered an acceptable trade-off. It was also believed that access to these contracts would promote customer engagement by building consumer confidence.

However, today's market is significantly more competitive and as a result, exit fees are now seldom used. The vast majority of market offers in both SEQ and in other NERL jurisdictions have no exit fees attached to them. As a result, there seems little reason to retain the requirement for retailers to offer at least once market contract with no exit fee. Even those retailers who do charge an exit fee, only do so on a very small number of offers. For these reasons, Queensland Treasury recommends the derogation requiring retailers to offer at least one market contract with no exit fee (Rule 49B) be removed as soon as practicable.

**Recommendation: Remove the Queensland derogation Rule 49B.**

**v) Contents of disconnection warning notice - Inserts a new Rule 110(2)(c)(iii)**

This Queensland derogation inserts a new rule:

Rule 110(2)(c)—

*insert—*

- (iii) if the customer is a residential customer—include information in relation to government-funded energy charge rebates, concessions or relief schemes; and

This additional requirement sits in conjunction with Rule 110 (NERR):

**Part 6 De-energisation (or disconnection) of premises—small customers**

**110 Disconnection warning notices—retailers and distributors**

**(1) Nature of disconnection warning notices**

*A disconnection warning notice is a notice issued by a retailer or a distributor as applicable to warn a customer that the customer's premises will or may be de-energised.*

**(2) Particulars to be included in disconnection warning notices**

*A disconnection warning notice must:*

- (a) state the date of its issue; and
- (b) state the matter giving rise to the potential de-energisation of the customer's premises; and
- (c) where the notice has been issued for not paying a bill:
  - (i) state the date on which the disconnection warning period ends; and
  - (ii) state that payment of the bill must be made during the disconnection warning period; and
- (d) for matters other than not paying a bill—allow a period of not fewer than 5 business days after the date of issue for the customer to rectify the matter before de-energisation will or may occur; and
- (e) inform the customer of applicable re-energisation procedures and (if applicable) that a charge will be imposed for re-energisation; and
- (f) include details of the existence and operation of the energy ombudsman, including contact details;
- (g) include details of the telephone number of the retailer and the distributor (as applicable).

For customers who may be struggling to pay their energy bills, access to the right information and services is vital to ensuring they receive the support they need. This is especially important for those struggling to meet their energy costs and at risk of having their power supply disconnected.



The NERL requires retailers to provide advice on any available government-funded rebates and concessions at certain points in time, including when establishing a new customer (rule 19), as part of an energy bill (rule 25(1)(s) and rule 25A), and when offering or applying a payment plan to a hardship customer (rule 33(3)).

In addition, when issuing a disconnection notice, rule 110(2) of the NERR requires energy retailers to include a range of information, such as applicable re-energisation procedures and the existence and operation of the energy ombudsman. However, it does not require retailers to include information on available government-funded financial assistance or relief schemes, which could potentially assist the customer and prevent them from being disconnected.

When the NERL was adopted in Queensland, the state-based derogation was introduced to require retailers to include information on government-funded energy rebates, concessions and relief schemes in disconnection warning notices (see rule 110(2)(c)(iii) stated above). It was considered that providing information regarding available financial assistance and support in the disconnection warning notice may be an effective means through which to engage customers and reduce the incidence of disconnection. There was also a similar requirement under the previous state-based regime to provide information regarding assistance prior to disconnection.

Unwinding the Queensland derogation, and applying a consistent approach to the NERL, would increase regulatory harmonisation and could help reduce the cost for retailers of having to comply with different state-based requirements. However, given the obvious benefit to consumers, Queensland Treasury considers there is value in this derogation being retained – it ensures customers at risk of being disconnected are fully informed of all available government-funded support they may be eligible for.

**Recommendation: Retain the derogation: Rule 110(2)(c)(iii).**

**vi) Model condition for changes to tariffs and charges - Replaces Sch 1, Item 8.2(a1)(i) and inserts a new Item 8.2A**

The current model condition for standard retail contracts, Item 8.2(a1)(i) states:

**8.2 Changes to tariffs and charges**

*(a1) We will also:*

*(i) notify you at least five business days before the variation in the tariffs and charges are to apply to you;*

The Queensland derogation replaces subsection (i) with:

*(i) notify you—*

*(A) if the variation results in an increase in the tariffs and charges applying to you—  
at least 10 business days before the variation is to apply to you; or*

*(B) if the variation results in a decrease in the tariffs and charges applying to you—  
at least 5 business days before the variation is to apply to you;*

This derogation is to ensure the model conditions for changes to tariffs and charges is consistent with the Rule 46(4)(a) derogation (see Section A.3). As the recommendation in section A.3 is to remove the derogation to Rule 46(4)(a), it is also being recommended to remove this derogation.

**Recommendation: Remove the derogation to schedule 1, item 8.2(a1)(i).**

The Queensland derogation also includes a statement that follows item 8.2(b):

*Required alteration: deletion of clause 8.2 if you are a retailer who sells electricity to small customers whose standing offer prices are notified prices for the retailer within the meaning of the Electricity Act 1994, section 90(4).*

This derogation removes item 8.2 (stated below) as a model condition for standard retail contracts offered by Ergon Energy Retail (EER) in regional Queensland. Given the different way prices are set in regional Queensland (i.e. via a process undertaken by the QCA) it is appropriate this derogation remain in effect.

## **8.2 Changes to tariffs and charges**

*(a) If we vary our standing offer prices, we will publish the variation in a newspaper and on our website at least 10 business days before it starts.*

*(a1) We will also:*

- (i) notify you at least five business days before the variation in the tariffs and charges are to apply to you; and*
- (ii) deliver the notice by your preferred form of communication where you have communicated this to us, or otherwise by the same method as that used for delivery of your bill.*

*(a2) The notice must:*

- (i) specify that your tariffs and charges are being varied;*
- (ii) specify the date on which the variation will come into effect;*
- (iii) identify your existing tariffs and charges inclusive of GST;*
- (iv) identify your tariffs and charges as varied inclusive of GST;*
- (v) specify that the tariffs and charges identified in paragraphs (a2)(iii) and (iv) are inclusive of GST; and*
- (vi) specify that you can request historical billing data and, if you are being sold electricity, energy consumption data, from us.*

*(a3) Despite clause 8.2 of this contract, we are not required to provide a notice under paragraph (a1):*

- (i) where you have entered into a standard retail contract with us within 10 business days before the date on which the variation referred to in clause 8.2(a) is to take effect, and we have informed you of such variation;*
- (ii) where your standing offer prices are regulated, or are otherwise set by legislation, a government agency or regulatory authority;*
- (iii) where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme; or*
- (iv) where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to you.*

*(a4) Despite paragraph (a1)(i), we will provide you with the notice under paragraph (a1) as soon as practicable, and in any event no later than your next bill, where the variations to your tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of the NER. For the purpose of providing a notice under this paragraph (a4), the reference to:*

- (i) "are being varied" in paragraph (a2)(i) is taken to be "are being varied or have been varied (whichever is applicable)"; and*
- (ii) "will come into effect" in paragraph (a2)(ii) is taken to be "will come into effect or has come into effect (whichever is applicable)".*

*(b) Our standing offer prices will not be varied more often than once every 6 months.*

**Recommendation: Retain the regional Queensland derogation to schedule 1, item 8.2.**



Item 8.2A is an additional Queensland condition which states:

**8.2A Changes to tariffs and charges**

*If we vary our standing offer prices and the variation applies to you, we will include details of the variation in your next bill.*

While item 8.2(a4) contains a similar requirement, it only applies to changes “where the variations to your tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of the NER”. This derogation requires all variations to a customer’s tariffs and charges to be included in their next bill regardless of the reason. Keeping customers informed on their billing information is considered an important aspect of consumer protections. So much so, the AER has published a Better Bills Guideline that “provide guidance to retailers on preparing and issuing bills that make it easy for small customers to understand billing information”<sup>35</sup>. Therefore, it is recommended this derogation be retained.

**Recommendation: Retain the additional requirement of schedule 1, item 8.2A.**

The Queensland derogation also includes a statement that follows item 8.2A:

*Required alteration: deletion of clause 8.2A if you are a retailer who sells electricity to small customers whose standing offer prices are notified prices for the retailer within the meaning of the Electricity Act 1994, section 90(4).*

This derogation removes item 8.2A as a model condition for standard retail contracts offered by EER in regional Queensland. Given the different way prices are set in regional Queensland (i.e. via a process undertaken by the QCA) it is appropriate that this derogation remain in effect.

**Recommendation: Retain the regional Queensland derogation to schedule 1, item 8.2A.**

**vii) Model condition for customers reviewing their bills – Replaces Sch 1, Item 12.3(b)**

The derogation to Schedule 1, Item 12.3(b) was a consequential amendment to the derogation Queensland put in place for Rule 29 (Billing disputes (SRC and MRC)), subsections (5) and (6), NERR.

At that time Rule 29(5)&(6), NERR (Version 1), stated:

- (5) If the small customer requests that, in reviewing the bill, the meter reading or metering data be checked or the meter tested:*
  - (a) the retailer must, as the case may require:*
    - (i) arrange for a check of the meter reading or metering data; or*
    - (ii) request the responsible person to test the meter; and*
  - (b) the customer must pay for the cost of the check or test (which the retailer may request be paid in advance); and*
  - (c) if the meter or metering data proves to be faulty or incorrect, the customer must be reimbursed for the cost of the check or test; and*
  - (d) if a retailer is required to reimburse an amount paid in advance for a meter check under paragraph (c) and that amount has been paid by the retailer to the distributor (or responsible person) to undertake the test, the distributor must reimburse the retailer for that amount.*
- (6) Where, after conducting a review of the bill, the retailer is satisfied that it is:*

<sup>35</sup> [Better bills guideline - Version 2 | Australian Energy Regulator \(AER\)](#)

- (a) correct, the retailer may require the small customer to pay the amount of the bill that is still outstanding; or
- (b) incorrect, the retailer:
  - (i) must adjust the bill in accordance with rule 30 or 31, as the case requires; and
  - (ii) may require the customer to pay the amount (if any) of the bill that is still outstanding; and
  - (iii) must refund (or set off against the amount in subparagraph (ii)) any amount paid in advance under subrule (5).

In conjunction with this, Schedule 1, Item 12.3, NERR (Version 1) stated:

*12.3 Reviewing your bill*

- (a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.
  - (b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill. You will be liable for the cost of the check or test and we may request payment in advance. However, if the meter or metering data proves to be faulty or incorrect, we must reimburse you for the amount paid.
- I If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:*
- (i) the portion of the bill that you do not dispute; or*
  - (ii) an amount equal to the average of your bills in the last 12 months.*

The Queensland derogation for Rule 29 (5) & (6) replaced the content with:

*omit, insert—*

- (5) A small customer may request that the meter reading or metering data be checked or the meter tested.*
- (5A) If a request is made under subrule (5), the retailer must (as the case may require)—*
  - (a) arrange for a check of the meter reading or metering data; or*
  - (b) request the responsible person to test the meter.*
- (5B) If, after arranging for a check or test under subrule (5A), the retailer is satisfied the check or test proves that the meter is not faulty and is operating correctly, the small customer must pay for the cost of the check or test.*
- (6) If, after arranging for a check or test under subrule (5A), the retailer is satisfied the check or test proves that the meter is faulty or not operating correctly, the retailer—*
  - (a) must adjust the small customer's bill in accordance with rule 30 or 31, as the case requires; and*
  - (b) may require the small customer to pay the amount (if any) of the bill that is still outstanding.*
- (6A) If the retailer conducts a review of a bill under subrule (1) and the retailer is satisfied that the bill is—*
  - (a) correct—the retailer may request the small customer to pay the amount of the bill that is still outstanding; or*
  - (b) incorrect—*
    - (i) the retailer must adjust the bill in accordance with rule 30 or 31, as the case requires; and*
    - (ii) the retailer may require the small customer to pay the amount (if any) of the bill that is still outstanding.*

For Schedule 1, Item 12.3, the derogation stated:

*omit, insert—*

*(b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill.*

*(ba) If we carry out the check or test and—*

*(i) the meter proves to be operating correctly or the metering data is accurate, we may request that you pay for the cost of the check or test; or*

*(ii) the meter proves to be operating incorrectly or the metering data is inaccurate, we cannot charge you for the cost of the check or test.*

*[Required alteration: deletion of paragraph (ba) is a required alteration if you are not an electricity retailer.]*

The initial derogation changed the “you will be liable for the cost” to “we may request you pay” for a meter test where the meter and/or meter read was found to be not faulty or incorrect.

On 1 February 2019, Rule 29 (5) and (6) were amended to state:

*(5) If the small customer requests that, in reviewing the bill, the meter reading or metering data be checked or the meter tested:*

*(a) the retailer must, as the case may require:*

*(i) arrange for a check of the meter reading or metering data; or*

*(ii) request the responsible person or metering coordinator (as applicable) to test the meter; and*

*(b) the retailer may require the customer to pay for the cost of the check or test if the check or test shows that the meter or metering data was not faulty or incorrect.*

*(5A) For the purpose of subrule (5), a small customer request made under subrule 21(3A) is not to be treated as a request for the meter reading or metering data to be checked or the meter tested.*

*(6) Where, after conducting a review of the bill, the retailer is satisfied that it is:*

Given how close this new wording matched the Queensland derogation, it was decided the derogation was redundant and it was removed from the NERLQ Regulation on 8 February 2019. However, despite the amendment to Rule 29 in the NERR, the required consequential amendment to Schedule 1, Item 12.3 was not made. Therefore, the existing Queensland derogation had to remain in place.

Item 12.3 was finally updated on 19 March 2020 (Version 20, NERR) and now states:

### **12.3 Reviewing your bill**

*(a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.*

*(b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill. However, you may be required to pay for the cost of the check or test, if the check or test shows that the meter or metering data was not faulty or incorrect.*

*(c) If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:*

*(i) the portion of the bill that you do not dispute; or*

*(ii) an amount equal to the average of your bills in the last 12 months*

The current wording in the NERR is consistent with the intent of the original Queensland derogation. Therefore, this derogation is now redundant and can be removed.

**Recommendation:** Remove the derogation to Schedule 1, Item 12.3, NERR.

#### ***Part 4 Modification of application of Rules for electricity retailers and distributors offering particular contracts***

##### **viii) Undercharging (SRC and MRC) – Replaces Rule 30(2)(a)**

This derogation only applies where there are card operated meters (COMs) in existence. COMs differ from standard meters in that they operate on a pre-payment basis where the customer has a card that they can load money onto (in effect purchasing electricity credits) and determine specifically where and when they use electricity. COM communities are called as such due to the widespread use of COMs to measure residential electricity consumption instead of the standard type 4<sup>36</sup>, 5<sup>37</sup> or 6<sup>38</sup> meters used at the majority of residences across Queensland.

COM communities are those where it has been identified that pre-paying for electricity would reduce the likelihood of unpaid electricity bills and resulting disconnections. The use of cards that hold credit have a number of advantages including:

- individuals have direct control on when and where they choose to use their electricity credits – essential in communities where communal living and sharing of assets and utilities is the norm;
- individuals have immediate and direct control over the amount of electricity they consume based on the current resources (including income) they have at their disposal; and
- individuals can better budget income allocated to electricity costs as a portion of their income<sup>39</sup>.

COM communities are located in remote parts of Queensland (see Appendix B).

NERR Rule 30(2)(a) states:

##### **30 Undercharging (SRC and MRC)**

*(2) Where a retailer proposes to recover an amount undercharged the retailer must:*

- (a) unless the amount was undercharged as a result of the small customer's fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 9 months before the date the customer is notified of the undercharging;*

The Queensland derogation replaces Rule 30(2)(a) with:

- (a) unless the amount was undercharged as a result of the small customer's fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 12 months before the date the small customer is notified of the undercharging;*

This derogation was put in place in 2014. At that time Ergon (or its metering coordinator) needed to attend the COMs to update the price on the meter. As most COM communities are remote / isolated, annual visits to these communities was not always possible for a variety of reasons (e.g., extended

<sup>36</sup> Type 4 electricity meter – smart digital meter (further explanation is provided in the text below).

<sup>37</sup> Type 5 electricity meter – interval meter (electricity consumption recorded at 30 minute intervals and manually read by a meter reader). Ref: [METERING OVERVIEW \(essentialenergy.com.au\)](https://essentialenergy.com.au/metering-overview).

<sup>38</sup> Type 6 electricity meter – basic accumulation meter. (Ref: [METERING OVERVIEW \(essentialenergy.com.au\)](https://essentialenergy.com.au/metering-overview))

<sup>39</sup> Note that ~81.3 per cent of these COM communities have a median weekly household income of less than 70 per cent of the Queensland median weekly household income (Ref: [2021 Queensland, Census Aboriginal and/or Torres Strait Islander people QuickStats | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au/2021-queensland-census-aboriginal-and-or-torres-strait-islander-people-quickstats)).

wet /cyclone season, damage to infrastructure such as roads, etc.). There have been historical instances where COMs were not adjusted to reflect the correct notified prices for an extended period of time. However, the 2017-18 meter upgrade program resulted in the installation of COMs that allow for the remote update of prices being charged; this means there is no longer a requirement to physically update the notified price on the meter as long as the meter operates as it should<sup>40</sup>.

Ergon has noted that undercharging is not typically an issue for COMs. While Ergon is entitled to recover undercharges due to an incorrect rate being applied or a meter fault, Ergon is unlikely to do so given COMs do not establish accounts in a customer's name (i.e., difficult to identify the financially responsible party). However, Ergon is hesitant to support an amendment to the provision should an issue occur at a future time (e.g., meter fault) that requires the metering coordinator to physically attend a meter in an isolated community<sup>41</sup>.

Given this difficulty in successfully identifying the financially responsible party, and that these communities are some of the most economically disadvantaged<sup>42</sup>, it is considered highly unlikely Ergon would use this provision to recoup losses associated with undercharging. Therefore, it is recommended this derogation be removed.

**Recommendation: Remove the derogation to Rule 30(2)(a) for COMs.**

#### **ix) Provision of information – Replacement of Rule 86**

The current Queensland derogation was put in place on 19 December 2014 and states:

*Rule 86—*

*omit, insert—*

##### **86 Provision of information**

*(1) A distributor must, if requested by a customer or a customer's retailer, give information to the customer or the customer's retailer about the customer's energy consumption or the distributor's charges.*

*Note—This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)*

*(2) If more than 1 request is made in any 12-month period, the distributor may charge a reasonable amount to give the customer or customer's retailer the information.*

*(3) However, if the request is made on or from 1 July 2016, the distributor must provide the following information—*

*(a) the customer's average energy consumption for the customer's premises for the 12 months preceding the last scheduled meter reading or estimation;*

*(b) the distributor's charges for the customer's premises for the 12 months preceding the last scheduled meter reading or estimation.*

*(4) This rule does not apply if a card-operated meter was installed in the customer's premises within 12 months after the request.*

At the time Rule 86 stated:

##### **86 Provision of information**

*A distributor must, on request by a customer or a customer's retailer, provide information about the customer's energy consumption or the distributor's charges, but*

<sup>40</sup> Advice received from Ergon, email 22 February 2024.

<sup>41</sup> Advice received from Ergon, email 22 February 2024.

<sup>42</sup> [2.08 Income - AIHW Indigenous HPF](#)

*information requested more than once in any 12 month period may be provided subject to a reasonable charge.*

*Note: This rule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)*

Currently, there is no Rule 86 in the NERR. There is a Rule 86A and 86B, which replaced Rule 86 on 1 March 2016:

**86A Provision of information - electricity**

- (1) In the case of electricity, a distributor must, on request by a customer, customer authorised representative or a customer's retailer, provide information about the:*
- (a) customer's energy consumption or export for the previous 2 years in the manner and form required by the metering data provision procedures; or*
  - (b) distributor's charges.*
- (2) Subject to paragraph (3), information referred to in paragraph (1) must be provided without charge.*
- (3) Information under paragraph (1) may be provided subject to a reasonable charge where it has been requested:*
- (a) directly by a customer more than 4 times in any 12 month period;*
  - (b) in a different manner or form than that specified in the metering data provision procedures; or*
  - (c) by a customer authorised representative as part of a request for information about more than one customer.*

*Note: This rule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)*

**86B Provision of information - gas**

- (1) In the case of gas, a distributor must, on request by a customer or a customer's retailer, provide information about the customer's energy consumption or the distributor's charges, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.*

*Note: This rule is classified as a tier 3 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)*

Rule 86A increases a customer's ability to access their data without charge. The derogation removes this requirement if a COM was installed 12 months after the data request. Suggest current wording of Rule 86A is superior to the requirements outlined in the Rule 86 derogation. Recommend the new derogation be limited to switching off Rule 86A requirements for COMs installed at the customer's premises within 12 months after the request.

**Recommendation:** Amend the derogation to Rule 86 to apply to rule 86A and limit it to switching off the requirements for Rule 86A for COMs installed at the customer's premises within 12 months after the request.

**Finding 3:** The operation of the NERLQ Regulation derogations has been generally efficient, however a number of amendments are recommended to improve efficiency moving forward.



**Question 4: Do stakeholders agree with the recommendations to remove, retain or retain with amendments, the current Queensland derogations? If not, why not?**

### 2.2.3 Efficiency of penalty provisions for Queensland derogations

Compliance and enforcement for the NERL/ NERR is managed by the AER with their approach underpinned by the national energy retail objective<sup>43</sup>. The AER's *"approach to compliance and enforcement aims both to encourage compliance and to address and deter non-compliance. It allows us to hold specific parties that fail to comply with their obligations under the national energy laws to account"*<sup>44</sup>.

There are a number of enforcement options available to the AER when responding to breaches of the NERL/NERR<sup>45</sup>, including:

- administrative resolutions (e.g., retailers committing to 'voluntary undertakings', such as improving internal operational procedures or conducting staff training)
- issuing infringement notices (or fines)
- court enforceable undertakings (e.g., a commitment by a retailer to undertake an audit to ensure that the business has identified the root cause of the breach and taken steps to mitigate the risk of future breaches)
- civil proceedings (court-based outcomes).

The AER has discretion in deciding whether to take enforcement action and what kind of action is taken. The AER decides on the most appropriate enforcement tool to ensure the best possible outcome for consumers and industry in a timely manner that manages risk proportionately<sup>46</sup>.

Infringement notices are an appropriate and cost-effective method for relatively minor offences where a penalty must be imposed immediately to be effective, and, where the matter of whether or not there has been a breach of law is clear cut<sup>47</sup>. This is a key consideration when determining what parts of a regulatory framework should be penalty provisions.

The AER can issue infringement notices when it has reason to believe a 'natural person' or 'body corporate' has breached a civil penalty provision<sup>48</sup>. Civil penalties have been set by the NERL at not more than \$33,900 for a 'natural person' and not more than \$170,000 for a 'body corporate'<sup>49</sup>.

However, normal practice is that infringement notice penalties should not exceed 20 per cent of the relevant civil penalty<sup>50</sup>. When determining the actual amount for an infringement notice the NERL provides a list of matters that must be considered<sup>51</sup>, including (but not limited to):

- the nature and extent of the breach
- the nature and extent of any loss or damage suffered as a result of the breach
- the circumstances in which the breach took place

<sup>43</sup> Section 13, NERL.

<sup>44</sup> Section 3, AER (July 2021), [AER Compliance and Enforcement Policy](#), Commonwealth of Australia.

<sup>45</sup> Section 3.2, AER (July 2021), [AER Compliance and Enforcement Policy](#), Commonwealth of Australia.

<sup>46</sup> Section 3.2, AER (July 2021), [AER Compliance and Enforcement Policy](#), Commonwealth of Australia.

<sup>47</sup> Section 6.2.1, [A guide to framing Commonwealth offences, infringement notices and enforcement powers](#) (May 2024).

<sup>48</sup> Section 3.5, COAG Energy Council, (June 2018), [AER Powers and Civil Penalty Regime: Consultation Paper](#).

<sup>49</sup> [Section 4A](#), NERL.

<sup>50</sup> Section 6.3, [A guide to framing Commonwealth offences, infringement notices and enforcement powers](#) (May 2024).

<sup>51</sup> [Section 294](#), NERL.

- whether the person has engaged in any similar conduct and been found to be in breach of a provision of this Law, the National Regulations or the Rules in respect of that conduct.

When the NERLQ Regulation derogations were assessed as a part of this review, their status as a penalty provision was also examined. There are currently two (2) Queensland derogations that are penalty provisions (see Table 5) and there is no recommendation to alter the penalty status of these provisions.

**Table 5: Current NERLQ Regulation derogations that are also penalty provisions**

Provision	Title
Rule 17(2) and (3)	Pre-contractual duty of distributors
Rule 31(1)	Overcharging (SRC and MRC)

Designating rules as penalty provisions mean they are eligible for a more appropriate compliance response (i.e. the issuing of a fine) as opposed to going directly to court action for any breaches. This review has identified one derogation that would be suitable to be nominated as penalty provisions (see Table 6).

**Table 6: Current NERLQ Regulation derogation proposed as new penalty provision**

Provision	Summary	Reasoning
Rule 49A(1)(b)	Early termination charges for fixed term retail contracts, capped at \$20	Rule 49A is not currently a penalty provision, however it is considered a disincentive is required for rule 49A(1)(b) to ensure the \$20 cap on exit fees is met.

As part of the NERLQ framework, there must be a 'prescribed regulator' for derogation penalty provisions. Consistent with other Queensland derogations, the QCA is recommended as the "prescribed regulator" for the proposed penalty provisions.

**Recommendation 2:** It is recommended consideration be given to making the derogation to Rule 49A(1)(b) – \$20 cap on market contract exit fees, a civil penalty provisions, to be administered by the QCA.

**Question 5:** Do stakeholders agree with the additional penalty provision and for the QCA to be the regulator? If not, why not?

## 2.3 Has the existence of the regulation impacted competition?

Clause 5 of the Competition Principles Agreement states (ss5(1)):

*"The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:*

*(a) the benefits of the restriction to the community as a whole outweigh the costs; and*

*(b) the objectives of the legislation can only be achieved by restricting competition."*

Has the existence of the NERLQ Regulation impacted competition? Yes, in a positive way. The main reason for the regulation's existence was to enable Queensland to take the final step in the implementation of full retail competition in the gas and electricity sector in SEQ and enabling energy players in Queensland to operate in the NEM.



The QCA releases reports every year assessing the competitiveness of the electricity retail market in SEQ. Note that full competition does not exist in regional Queensland due to the operation of the Uniform Tariff Policy and therefore does not form a part of this assessment.

In SEQ, the QCA uses five (5) criteria to assess the competitiveness of the retail market in SEQ<sup>52</sup>:

- extent of market rivalry between retailers
- movement of prices and costs
- spread of prices available in the market
- apparent inactivity or disengagement of some customers
- complexity of the market.

### 2.3.1 Extent of market rivalry between retailers

The QCA identified there was competition on price between retailers despite the higher prices in 2023–24 and observed a wide range of prices for each of the tariffs and tariff combinations which means that many customers could still find a cheaper plan in 2023–24 if they shopped around, as not all retailers increased their prices to the same extent<sup>53</sup>.

The QCA found that competition between retailers using innovative tariffs and service offerings continued to be evident in 2023–24. Although no new retail tariffs or plans emerged in SEQ in 2023–24, many retailers continued to provide innovative offerings that were introduced in previous years<sup>54</sup>. Competition on non-financial incentives also continued, with almost half of retailers attaching non-financial incentives to at least one of their residential flat rate market offers.

Retailers' incentives to provide more innovative offerings are expected to increase as more customers obtain a smart meter.

The QCA also found that switching activity of customers between and across retailers and retailer groups indicates that competitive rivalry exists between retailers operating in SEQ<sup>55</sup>. They also noted the Herfindahl-Hirschman Index (HHI)<sup>56</sup> has been on the decline from the second half of 2016–17 until 2021–22 indicating that competition was developing positively in the SEQ retail electricity market. While there was a slight increase in the HHI in 2021–22 and 2022–23, after several retailers exited the market and some customers switched from smaller retailers to larger retailers, the residential HHI has gradually declined since late 2022. As a result, the QCA does not consider the HHI in 2023–24 to be inconsistent with a competitive retail electricity market<sup>57</sup>.

It can therefore be concluded the operation of the NERLQ Regulation does not have an impact on the extent of market rivalry between electricity retailers.

### 2.3.2 Movement of prices and costs

In a competitive market, changes in network, energy and retail costs should be reflected in prices, and this has certainly been the case in SEQ. Between 2015–16 and 2021–22, electricity prices in SEQ

<sup>52</sup> Page 81, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>53</sup> Page 82, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>54</sup> Page 83, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>55</sup> Page 84, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>56</sup> The HHI is a commonly used measure of market concentration, which is calculated by summing the squares of the market shares of all firms competing in a market. A market that has a single firm (i.e. a monopoly) has a HHI of 10,000 (100 × 100), while a theoretically perfectly competitive market has a HHI approaching zero (AEMC, [2018 Retail Energy Competition Review](#) [final report], 2018, p 25; AEMC, [2019 Retail Energy Competition Review](#) [final report], 2018, p 33; AEMC, [2020 Retail Energy Competition Review](#) [final report], 2020, p 28).

<sup>57</sup> Page 88, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

moved in the same direction as costs<sup>58</sup>. In late 2021–22 – early 2022–23 the NEM experienced extraordinary volatility as a result of international (e.g., Ukrainian war, surge in fossil fuel costs, etc.) and domestic events (e.g., COVID-19 pandemic). These events put upward pressure on wholesale energy costs and are important determinants of retailers' energy costs and of the wholesale cost of energy in the NEM more broadly. As wholesale energy costs increased, most retailers increased the prices of their market offers—in some cases substantially<sup>59</sup>.

It can therefore be concluded that operation of the NERLQ Regulation has had no impact on the movement of prices and costs for energy in Queensland.

### 2.3.3 Spread of prices available in the market

Price differences between plans is expected to accelerate competition as they provide an incentive for customers to shop around. QCA considers price dispersion to be an expected outcome in the SEQ retail electricity market, as retailers try to attract new and price-sensitive customers with lower market offers, while earning more from customers that are not engaged or less active in the market and/or are less price-sensitive and remain on more expensive market or standing offers<sup>60</sup>.

Between 2015–16 and 2018–19, price dispersion gradually increased. Following the introduction of the Default Market Offer (DMO), set by the AER, standing offer bills decreased in the September quarter of 2019, which resulted in a sharp decline in price dispersion<sup>61</sup>. Price dispersion trended upwards again during 2019–20 and 2020–21 as the lowest market offer bills continued to decrease. This trend reversed in 2021–22 when market offer bills started to increase, while increases in standing offer bills were limited by the DMO. In 2022–23, price dispersion decreased significantly as increased wholesale energy costs started to flow through to market offer prices. In 2023–24, price dispersion increased to similar levels from before 2022–23 as wholesale energy costs continued to flow through to the DMO (leading to higher standing offer prices), while the average lowest market offer decrease slightly in the second half of 2023–24<sup>61</sup>.

The biggest impacts on price dispersion in the SEQ market has been the introduction of the DMO (which acts as a price cap for standard market offers and market offers more generally) and the sudden increase in wholesale energy costs. The operation of the NERLQ Regulation has no impact on the determination of the DMO or the setting of wholesale energy costs and therefore has no effect on price dispersion in the market.

### 2.3.4 Apparent inactivity or disengagement of some customers

The QCA has found that many customers do not regularly switch retailers or plans for a variety of reasons including, they<sup>62</sup>:

- may actively choose not to engage
- may find the market too complex to navigate and can't find a plan that best suits their circumstances
- are willing to pay higher prices, as they value the benefits they receive on their electricity plan (e.g., no late payment fees or the plan being easy to understand)
- feel that the benefits of shopping around do not outweigh the costs (e.g. the time it takes to search, compare and switch)

<sup>58</sup> Page 91, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>59</sup> Page 91, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>60</sup> Page 93, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>61</sup> Page 94, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>62</sup> Page 95, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

- are not very price-sensitive
- are, for a range of reasons, vulnerable and require targeted assistance to manage their electricity plan.

The NERLQ Regulation contains derogations that aim to provide more information to customers so they are better informed of their rights and what customer support measures exist. These derogations can help to address some of the drivers of apparent inactivity or disengagement of some customers through the provision of relevant information.

### 2.3.5 Complexity of the market

The market can be considered competitive when it is transparent, market offers are easy to understand and compare, and it is easy to switch between retailers. The QCA presented findings from which it is easy to conclude that the electricity market, particularly in SEQ is very complex, for example<sup>63</sup>:

- retailers have added to market complexity by adopting marketing strategies that make it difficult for customers to directly compare plans
- comparing and assessing innovative new tariffs is challenging, for example, Energy Made Easy<sup>64</sup> does not provide full bill estimates for retail demand tariffs making plan comparisons of newer plans almost impossible
- there are systemic challenges in supporting customers experiencing vulnerability.

The AER has also referred to the ongoing complexity of the energy market and how market developments (e.g., such as the rollout of smart metering and cost-reflective tariffs) are adding additional layers of complexity to the market.<sup>65</sup>

The NERLQ Regulation contains derogations that aim to increase customer awareness of the supports available to them (especially those experiencing vulnerability). The other derogations do not in any way add to market complexity.

### 2.3.6 Summary

Table 7 below summarises the overall assessment of level of competitiveness of the SEQ market and the impact the NERLQ Regulation has on competition.

**Table 7: Summary of high-level assessment of competitiveness of SEQ electricity market**

Competitiveness criteria	Current QCA assessment	Impact of NERLQ Regulation
1. Extent of market rivalry between retailers	✓	None
2. Movement of prices and costs	✓	None
3. Spread of prices available in the market	✓ ↓	None
4. Apparent inactivity or disengagement of some customers	✓ ↓	Yes +
5. Complexity of the market.	✗	Yes +

**Legend:** ✓ Criteria fully met    ✓ ↓ Criteria partly met    ✗ Criteria not met

<sup>63</sup> Page 97, QCA, December 2024, [SEQ retail electricity market monitoring 2023–24](#).

<sup>64</sup> <https://www.energymadeeasy.gov.au/>

<sup>65</sup> Page 277, AER, November 2024, *State of the energy market 2024*

'None' no impact

Yes + positive impact

No – negative impact

**Finding 4: The NERLQ Regulation has not had a negative impact on competition.**

**Question 6: Do stakeholders agree that the NERLQ Regulation has not had a negative impact on competition? If not, why not?**

### 3. Options

When assessing the different options for whether to retain, let lapse, or amend the NERLQ Regulation, the following policy objectives were considered:

- financial burden of hardship or concession customers will not increase
- regional customers protected from higher service costs in remote areas
- consistent and aligns with the NERL regulatory framework
- does not unnecessarily increase regulatory burden
- supports the principle of evidence-based decision making
- impact on Qld taxpayer minimised.

**Question 7: Do stakeholders feel these are reasonable policy objectives? Are there any other objectives that should be included?**

The options considered are detailed below.

- 1) Let the NERLQ Regulation lapse.
- 2) Remake the regulation as is.
- 3) Remake with amendments.

These sections are then followed by an analysis of the options.

#### 3.1 Option 1 – Let the NERLQ Regulation lapse

This option involves letting the NERLQ Regulation lapse when the regulation expires on 1 September 2025. Table 8 below outlines the predicted stakeholder impacts and opportunities of the option.

**Table 8: Summary of predicted impacts for stakeholders for Option 1, if the NERLQ Regulation is allowed to lapse**

Group	Predicted impacts and opportunities
Customers	<ul style="list-style-type: none"> <li>Lessening of customer protections (as detailed in sections 2.1, 2.2 and 2.4) for customers in SEQ (especially customers at risk of vulnerability), and particularly customers in regional Queensland including COM customers potentially resulting in adverse impacts, potentially severe.</li> <li>Would have serious implications for how the UTP is to be applied.</li> </ul>
Electricity retailers (industry)	<ul style="list-style-type: none"> <li>Retailers could expect to receive benefits from this option as a result of realising full regulatory harmonization with the cessation of all NERLQ Regulation derogations.</li> <li>Lack of certainty about who the 'nominated retailer' and 'assigned retailer' will be an issue in Queensland for electricity given the specific legislative requirements that apply to these retailers (e.g. section 11 and sections 19A, 19C and 19D NERLQ), especially with respect to customers in regional Queensland.</li> </ul>
Gas retailers (industry)	<ul style="list-style-type: none"> <li>The conditions under which the Maranoa and Western Downs Regional Councils operate as gas exempt sellers would disappear. Notification would have to be given to the AER of this occurring and the Regional Councils would potentially have to reapply for their exemption, resulting in unnecessary administrative burden and potentially additional costs that may flow down to their customers.</li> <li>Lack of certainty about who the 'nominated retailer' and 'assigned retailer' will be an issue in Queensland for gas given the specific legislative requirements that apply to these retailers (e.g. section 11 and sections 19B, 19C and 19D NERLQ), especially with respect to customers in regional Queensland.</li> </ul>
Distributors	<ul style="list-style-type: none"> <li>Distributors could expect to receive benefits from this option as a result of realising full regulatory harmonization with the cessation of all NERLQ Regulation derogations.</li> <li>Lack of certainty about who the 'nominated distributor' will be an issue in Queensland for electricity and gas.</li> </ul>
QCA	<ul style="list-style-type: none"> <li>The QCA's regulatory burden would be expected to decrease under this option.</li> </ul>
AER	<ul style="list-style-type: none"> <li>The AER's regulatory and administrative burden is expected to increase under this option.</li> </ul>
Government	<ul style="list-style-type: none"> <li>The Queensland Government would cease to be compliant with certain NERL requirements, such as: stating the 'nominated retailer' for electricity and gas; stating the 'nominated distributor' for electricity and gas; stating the 'assigned retailer'; stating the 'prescribed regulator' for NERL derogations; triggering Energy Made Easy as the official price comparator, potentially opening the government up to compliance action or similar.</li> </ul>

### 3.2 Option 2 – Remake the NERLQ Regulation as is

This option involves remaking the NERLQ Regulation as is with no amendments. The predicted stakeholder impacts and opportunities associated with this option are outlined in Table 9 below.

**Table 9: Summary of predicted impacts and opportunities on different groups for Option 2, remaking the NERLQ Regulation as is**

Group	Predicted impacts and opportunities
Customers	<ul style="list-style-type: none"> <li>Existing customer protections in Queensland are maintained. No impact expected.</li> </ul>
Electricity retailers (industry)	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained. However, there is an opportunity lost to improve regulatory harmonization with the amendment and/or removal of certain derogations.</li> </ul>
Gas retailers (industry)	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained. However, there is an opportunity lost to improve regulatory harmonization with the amendment and/or removal of certain derogations.</li> </ul>
Distributors	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained. However, there is an opportunity lost to improve regulatory harmonization with the amendment and/or removal of certain derogations.</li> </ul>
QCA	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained.</li> <li>There are no additional administrative or compliance costs associated with this option for the QCA.</li> </ul>
AER	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained. However, there is an opportunity lost to improve regulatory harmonization with the amendment and/or removal of certain derogations.</li> <li>There are no additional administrative or compliance costs associated with this option for the AER.</li> </ul>
Government	<ul style="list-style-type: none"> <li>No impact is expected with the current status quo being maintained.</li> <li>There are no additional administrative or compliance costs associated with this option for the government.</li> </ul>

### 3.3 Option 3 – Remake the NERLQ Regulation with amendments

This option involves remaking the NERLQ Regulation with amendments. Table 10 below summarises the NERLQ Regulation and whether amendments are recommended.

**Table 10: Summary of recommended amendments to the NERLQ Regulation**

Section reference	Recommendation
Part 1 – Preliminary	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Part 2 – Nominated retailers and distributors	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Part 3 – Assigned retailer	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Part 4 – Prescribed regulator	<ul style="list-style-type: none"> <li>Retain generally.</li> <li>Amend section 11 to ensure new proposed penalty provision is captured.</li> </ul>
Part 5 – Exemption for exempt sellers	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Part 6 – Model terms and conditions	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>

Section reference	Recommendation
Part 7 – Application of price comparator	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Part 8 – Modification of the NERR	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Schedule 1 – Conditions of exemption for Maranoa Regional Council	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Schedule 2 – Conditions of exemption for Western Downs Regional Council	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Schedule 3 – Model terms and conditions for standard retail contract for selling electricity using card-operated meters	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Schedule 4 – Model terms and conditions for deemed standard connection contract for card-operated meter premises	<ul style="list-style-type: none"> <li>Retain unchanged.</li> </ul>
Schedule 5 – Modification of application of National Energy Retail Rules	<ul style="list-style-type: none"> <li>Retain with amendments as described in Tables 3 and 4.</li> </ul>

The predicted stakeholder impacts and opportunities associated with this option are outlined in Table 11 below.

**Table 11: Summary of predicted impacts and opportunities on different groups for Option 3 - remaking the NERLQ Regulation with amendments**

Group	Predicted impacts and opportunities
Customers	<ul style="list-style-type: none"> <li>Existing customer protections in Queensland are maintained where they have been assessed as continuing to be effective and efficient.</li> <li>No impact expected.</li> </ul>
Electricity retailers (industry)	<ul style="list-style-type: none"> <li>Minor positive impact is expected as increased regulatory harmonisation is expected to reduce administrative burden of retailers.</li> <li>There are no additional compliance costs associated with this option for electricity retailers.</li> </ul>
Gas retailers (industry)	<ul style="list-style-type: none"> <li>Minor positive impact is expected as increased regulatory harmonisation is expected to reduce administrative burden of retailers.</li> <li>There are no additional compliance costs associated with this option for gas retailers.</li> </ul>
Distributors	<ul style="list-style-type: none"> <li>Minor positive impact is expected as increased regulatory harmonisation is expected to reduce administrative burden of retailers.</li> <li>There are no additional compliance costs associated with this option for distributors.</li> </ul>
QCA	<ul style="list-style-type: none"> <li>Minor positive impact is expected with the recommendation to increase the number of penalty provisions in the NERLQ Regulation, making the QCA a more effective regulator.</li> </ul>
AER	<ul style="list-style-type: none"> <li>No impact is expected.</li> <li>There are no additional administrative or compliance costs associated with this option for the AER.</li> <li>However, the AER supports all attempts to improve regulatory harmonization with the amendment and/or removal of certain derogations.</li> </ul>



Group	Predicted impacts and opportunities
Government	<ul style="list-style-type: none"> <li>No impact is expected.</li> <li>There are no additional administrative or compliance costs associated with this option for the government.</li> </ul>

### 3.4 Analysis of options

Table 12 indicates how well the options meet the stated policy objectives (refer section 5).

**Table 12: Analysis matrix of the three (3) options against the policy objectives**

Policy objectives		Option 1	Option 2	Option 3
(i)	Financial burden of hardship or concession customers will not increase.			
(ii)	Regional customers protected from higher service costs in remote areas.			
(iii)	Consistent and aligns with the NERL regulatory framework.			
(iv)	Does not unnecessarily increase regulatory burden.			
(v)	Supports the principle of evidence-based decision making.			
(vi)	Impact on Qld taxpayer minimised.			

Achieves policy objectives
Partially meets policy objectives
Does not meet policy objectives

**Recommendation 3:** Option 3 is the preferred option for implementation – Remake the NERLQ Regulation with amendments.

**Question 8:** Do stakeholders support remaking the NERLQ Regulation with amendments? If not, why not?

**Question 9:** Are there any other considerations Queensland Treasury should consider as a part of this assessment, and why?

## 4. Conclusions of the review

Based on the information available, the analysis against the policy objectives, and the feedback Queensland Treasury has received previously, the following findings and recommendations are detailed below.

- **Findings**
  - Finding 1: The NERLQ Regulation has been assessed as effective.
  - Finding 2: The NERLQ Regulation has been assessed as generally efficient.
  - Finding 3: The operation of the NERLQ Regulation derogations has been generally efficient, however, a number of amendments are recommended to improve efficiency moving forward (refer Table 4).
  - Finding 4: The NERLQ Regulation has not had a negative impact on competition.
- **Recommendations**
  - Recommendation 1: Parts 1-7 of the NERLQ Regulation be retained unchanged.
  - Recommendation 2: It is recommended consideration be given to making the derogation to Rule 49A(1)(b) – \$20 cap on market contract exit fees, a civil penalty provision, to be administered by the QCA.
  - Recommendation 3: Option 3 is the preferred option for implementation – Remake the NERLQ Regulation with amendments.

Queensland Treasury concludes that implementing Option 3 will:

- ensure the continued effective and efficient operation of the NERLQ Regulation
- minimise impacts (including financial) on consumers, especially concession / hardship customers
- protect regional customers from higher service costs in remote areas
- is consistent and aligns with the NERL regulatory framework
- not increase regulatory burden
- not impact retailers or distributors
- not impact government.

## 5. Future work

The energy sector is rapidly evolving, and the regulatory frameworks that support the sector need to keep pace with these changes. There are a number of national reform initiatives currently underway potentially affecting the NECF's regulatory instruments and the Queensland Government will continue to review the regulatory framework to ensure it operates in Queensland effectively, protecting and delivering benefit to customers.

**Question 10: Are there any reform ideas or proposals that you think warrant further investigation by the Queensland Government?**

## 6. Consultation on the review

Throughout the review, a number of questions have been raised for stakeholders consideration:

- Question 1: Do stakeholders agree with the assessment that the NERLQ Regulation has generally been effective as a regulatory instrument? If not, why not?
- Question 2: Do stakeholders agree that Parts 1-7 of the NERLQ Regulation should be retained unchanged? If not, why not?
- Question 3: Do stakeholders agree with the assessment that the NERLQ Regulation has generally been efficient as a regulatory instrument? If not, why not?
- Question 4: Do stakeholders agree with the recommendations to remove, retain or retain with amendments, the current Queensland derogations? If not, why not?
- Question 5: Do stakeholders agree with the additional penalty provision and for the QCA to be the regulator? If not, why not?
- Question 6: Do stakeholders agree that the NERLQ Regulation has not had a negative impact on competition? If not, why not?
- Question 7: Do stakeholders feel these are reasonable policy objectives? Are there any other objectives that should be included?
- Question 8: Do stakeholders support remaking the NERLQ Regulation with amendments? If not, why not?
- Question 9: Are there any other considerations Queensland Treasury should consider as a part of this assessment, and why?
- Question 10: Are there any reform ideas or proposals that you think warrant further investigation by the Queensland Government

## Appendix A – Summary of the NERL and state-based modifications

On 1 July 2015, new national regulatory arrangements for the retail energy market commenced in Queensland, referred to as the NERL regime. The NERL, and associated regulations (e.g. NERLQ Regulation) and rules, established a national regulatory regime for retailers and distributors selling and supplying energy to residential and small business customers (small customers), and to large customers in a limited way.

The NERL's statutory objective, the National Energy Retail Objective (NERO), is:

*“...to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to:*

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

The NERO focusses the NERL on the efficiency of the retail energy industry and the long-term interests of energy customers. It does not directly address other objectives, such as social equity or technical innovation.

Under the NERL, small customers are supported by a range of customer protections, which include:

- guaranteed access to an offer of supply for electricity and gas
- requirements relating to information about, and marketing of, energy contracts
- requirements relating to customer consent, including that customers must give explicit informed consent to enter into a market retail contract (as opposed to a standard contract or deemed contract)
- a customer hardship regime, requiring retailers to develop customer hardship policies that must be approved by the Australian Energy Regulator (AER)
- access to the AER's *Energy Made Easy* price comparison website for impartial information and support to help consumers choose the best deal
- limitations on disconnection, including the processes that must be followed and restrictions on when disconnections can occur
- protections for customers in on-supply situations that are broadly equivalent to the protections provided to other customers
- requirements relating to customers with life support equipment
- information requirements for planned and unplanned interruptions
- a requirement on retailers and distributors to have, and inform customers of, complaints procedures
- retailer of last resort arrangements, so that a customer can receive an energy supply from another retailer should the current retailer be unable to continue providing the service (for example, if it goes out of business).

The consumer protections in the NERL reflect that customers should be able to access a reliable, safe and high-quality supply of energy on fair and reasonable terms, and that this supply can only be withdrawn in specific circumstances and after appropriate procedures have been followed. These protections also work in conjunction with the general protections provided through the Australian Consumer Law (ACL) and privacy legislation. The ACL offers protections for consumers in the areas

of consumer rights when buying goods and services, product safety, marketing, unfair contract terms, and prohibits misleading, deceptive or unconscionable conduct. Small energy consumers in Queensland also have access to a free independent dispute resolution service provided by the Energy and Water Ombudsman Queensland (EWOQ).

Businesses that operate under the NERL also have obligations under the Federal Government's Electricity Retail Code (the Code), which commenced on 1 July 2019. The Code is contained in the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (Cwlth) and is binding on all electricity retailers that supply electricity to small customers in the applicable distribution regions (i.e. Southeast Queensland (SEQ), NSW and South Australia). The purpose of the Code is to:

- limit the standing offer prices that are charged to residential and small business consumers
- allow consumers to compare market offers more easily
- prohibit conditional headline discounting.

This is different to the arrangement present in regional Queensland. There, the prices for residential and small business customers are set by the Queensland Competition Authority (QCA) and are referred to as regulated ('notified') prices. When setting these regulated prices, the QCA has regard to the Queensland Government's Uniform Tariff Policy<sup>66</sup> and broadly reflect the expected prices for similar SEQ customers on standing offers<sup>67</sup>.

Parties are drawn into the NERL through a registration and exemption framework, depending on the products and services offered. If a business intends to sell electricity or gas for use at premises, it must have a retailer authorisation granted by the AER, or, be exempted from needing an authorisation.

The NERL commenced in the Australian Capital Territory (ACT) and Tasmania on 1 July 2012, followed by South Australia on 1 February 2013, New South Wales on 1 July 2013 and Queensland on 1 July 2015. Victoria has not adopted the NERL - its retail energy markets are governed by the Victorian Energy Retail Code.

The NERL is administered by the AER and replaces the previous state-based energy regulatory regime prescribed under the *Electricity Act 1994* (Electricity Act) and the *Gas Supply Act 2003* (Gas Supply Act) (pre-NERL regime).

### State-based modifications for the NERL

In order for the NERL regime to apply, each participating jurisdiction must pass its own legislation adopting the NERL<sup>68</sup> and the NERR. When this occurs, a state or territory may also choose to change the way the NERL or the NERR applies, for example by creating additional customer protections and obligations for businesses in that state or territory<sup>69</sup>.

The NERL as it applies in Queensland (NERLQ) and the NERR as it applies in Queensland (NERRQ) contain several state-based modifications (derogations) to the NERL and NERR. This is primarily to maintain existing Queensland policy and regulatory arrangements, and ensure arrangements are

<sup>66</sup> The Uniform Tariff Policy (UTP) in Queensland ensures that all customers, regardless of their geographic location, pay the same price for electricity. Whether you reside in large metropolitan areas with lower electricity costs or regional and remote areas where costs are higher, the UTP aims to create equitable pricing.

<sup>67</sup> S8.3.1, page 102, QCA's, [SEQ retail electricity market monitoring 2022–23](#) (December 2023).

<sup>68</sup> The NERL is contained in a Schedule to the *National Energy Retail Law (South Australia) Act 2011* (NERL) of South Australia.

<sup>69</sup> The *National Energy Retail Law (Queensland) Act 2014* applies the NERL as a law of Queensland. The Queensland specific modifications to the NERL are contained in a Schedule to this Act, and the Queensland derogations to the NERR are contained in the NERLQ Regulation.

appropriate for Queensland consumers and support reforms in the Queensland electricity sector, including the introduction of price deregulation in SEQ.

At the time the NERL Regime was introduced in Queensland, it was considered the benefits of the derogations to the community outweighed the opportunity cost to retailers of not receiving the full efficiency benefits of a completely harmonised retail framework. Usually, these modifications were the continuation of existing arrangements in Queensland that applied prior to the commencement of the NERL Regime and were not expected to impose any significant new costs on retailers<sup>70</sup>.

Some of the derogations that were intended to provide additional protection for Queensland energy customers include the following<sup>71</sup>:

- retailers must give customers on standard retail contracts and market retail contracts at least 10 business days' notice of a price increase (section 23(9)(b) NERLQ for standard retail contracts and Rule 46(4)(a) for market retail contracts)
- retailers must advise customers in advance of the expiry of benefits on retail market contracts (Rule 48A)<sup>72</sup>
- retailers must offer at least one retail market contract with no early termination (exit) fee (Rule 49A), and the exit fee for an electricity market contract cannot be more than \$20 (Rule 49B);
- removal of barriers to lowering standing offer prices for SEQ customers (allowing retailers to lower the price at any time) (section 23(9)(a) NERLQ)
- retailers must tell consumers about flexible payment options upfront, such as pay in advance (Rule 19(1) for standard retail contracts and Rule 64(1)(a) for market retail contracts); and
- retailers must tell residential customers about government-funded concessions, rebates or relief schemes in disconnection warning notices (Rule 110(2)(c)).

A small number of derogations were also implemented to support residential and small business customers in the newly deregulated SEQ retail electricity market, including:

- for the first year of deregulation (i.e. until 30 June 2017), retailers were not able to vary the prices charged to consumers on standard retail contracts (unless the price went down) (section 23(9)(a) NERLQ)
- retailers will not be able to introduce any new types of fees and charges for consumers on standard retail contracts (section 22A(4) NERLQ).

Several measures were also introduced to maintain existing Queensland policy and regulatory arrangements, and ensure the NERL Regime was appropriate for customers in regional and remote Queensland. For instance, modifications were made to:

- maintain the restriction on state-owned retailer, Ergon Energy (Ergon) competing with market retailers
- continue the existing Queensland Government 'non-reversion' policy restricting Ergon from accepting large customers back once they have gone to another retailer (the non-reversion policy was removed for small customers in 2018, giving households and small businesses in regional Queensland the option of returning to Ergon)<sup>73</sup>;

<sup>70</sup> As outlined in the [Explanatory Notes](#) to the *National Energy Retail Law (Queensland) Act 2014*, p.5.

<sup>71</sup> Note: some of these derogations have since been removed as the NERL/NERR have evolved. This is discussed later in section 4.2.

<sup>72</sup> This derogation has since been exceeded by a new national rule which requires retailers to notify small customers when benefits, such as price discounts, change or expire. As a result, the Queensland derogation has been removed.

<sup>73</sup> Refer [section 13\(2\)](#) of the *Electricity and Other Legislation (Batteries and Premium Feed-in Tariffs) Amendment Act 2018*.

- allow the Queensland Government to continue to regulate retail pricing for electricity in regional Queensland in accordance with its retail price powers.

Most customer protections under the NERL Regime were also extended to customers on the isolated Ergon Energy distribution networks, and derogations relating to card operated meters (COM) were also put in place. COMs are a Queensland-specific issue that requires regulation to ensure adequate consumer protections are in place, as the NERL does not specifically mention this type of meter.

In 2019 the NERL underwent a review which looked at the impact of the NERL (including the state-specific modifications) on consumers of energy and whether the implementation of the Law, in comparison with the previous state-based regime, has:

- resulted in increased efficiencies, or
- adversely affected customer protection in pursuit of national consistency.

The findings of the review have been included in this report where relevant.

### **The pre-NERL regime**

Prior to 1 July 2015, all retailers selling electricity and reticulated natural gas in Queensland were required to be licensed by the chief executive of the department (the Regulator) under the Electricity Act and the Gas Supply Act. Energy retailers were required, as a condition of their licences, to comply with the applicable Industry Codes issued by the QCA under these Acts.

The Industry Codes were similar to the NERL in that they aimed to promote efficient investment in, and efficient use of, electricity and processed natural gas services for the long-term interests of Queensland consumers with respect to price, quality, safety, reliability and security of supply of electricity and processed natural gas, and the Queensland electricity system. However, the level of detail in each Industry Code was quite different, with the Gas Industry Code taking a minimalist approach while the Electricity Industry Code was more prescriptive.

### **What changed for customers?**

Many of the essential elements of Queensland's pre-NERL regime were adopted in the NERL. However, compared to pre-existing arrangements under the Electricity Act and the Gas Supply Act, the NERL also aimed to improve customer protections in Queensland by<sup>74</sup>:

- placing regulatory obligations on retailers to operate programs to help small customers experiencing financial difficulty due to hardship to manage their energy costs on an ongoing basis
- implementing a clearer and more effective price comparison service (*Energy Made Easy*) to help customers choose the most appropriate customer retail contract for their needs
- establishing a comprehensive 'exempt seller' framework that gives small customers in on-supply situations (such as caravan parks and retirement villages) broadly equivalent protections to other customers
- providing clearer processes and requirements for gas customers around billing and credit management
- applying a National Connections Framework that sets out clear processes for new connections, including response times to customer requests.

In particular, the NERL imposed a number of new obligations on retailers and distributors to strengthen consumer rights and entitlements. Examples are detailed below.

<sup>74</sup> As stated in the [Explanatory Notes](#) to the *National Energy Retail Law (Queensland) Bill 2014*, p.2.



- Bills must be issued to customers on standard retail contracts at least once a quarter – no exceptions.
- Consumers on standard retail contracts have the right to ask for their bills to be smoothed to avoid summer ‘peak’ bills.
- Distributors can no longer ask customers for security deposits.
- More relevant billing information must be provided – bills must include:
  - the value of any rebates and concessions or security deposits held by the retailer
  - ‘benchmarking’ information to help households compare usage to others in their area.
- Better marketing practices that require retailers to hold and respect ‘no contact’ lists and must comply with ‘do not knock’ signs.
- More advanced notice of interruptions to supply.
- Distributors need to assess new connection applications faster.

One of the key changes relates to the adoption of a formal customer hardship policy. Prior to the NERL, Queensland retailers offered support to consumers experiencing financial difficulty due to hardship on a voluntary basis. The adoption of the NERL formalised these arrangements and introduced a specifically defined hardship policy, which aimed to better support customers struggling to pay their energy bills. Additional protections provided under the NERL are detailed below.

- An obligation on retailers to develop hardship policies aimed at helping consumers to manage their bills on an ongoing basis if they are experiencing financial difficulty due to hardship.
- A requirement for all hardship policies to have strategies to proactively identify consumers experiencing financial difficulty due to hardship.
- If there is a dispute over a portion of a bill, the customer is only required to pay the lesser amount until the dispute is resolved.

The NERL also established a comprehensive ‘exempt seller’ framework<sup>75</sup> that gives small customers who are supplied energy via an embedded network (e.g. caravan parks, apartment buildings or businesses in shopping centres) broadly equivalent protections to other energy customers, including<sup>76</sup>:

- access to flexible payment options if a customer is having trouble paying their bill, such as payment extensions and payment plans
- clear and set timeframes for receiving and paying bills, including a regular bill at least once a quarter that shows how much energy the customer has used and the applicable tariffs, fees and charges
- improved access to government concessions.

The NERL also provides a pricing protection for customers in embedded networks, which ensures these customers cannot be charged more than the relevant local area retailer’s standard retail contract. A similar pricing protection existed in Queensland prior to the commencement of the NERL<sup>77</sup>, and additional pricing protections for embedded network customers are now contained in other Queensland legislation<sup>78</sup>.

<sup>75</sup> The AER’s Retail Exempt Selling Guideline sets out the AER’s approach to retail exemptions. A list of the classes of retail exemption and the applicable conditions is available on the AER website - <https://www.aer.gov.au/retail-markets/retail-exemptions/classes-of-retail-exemption-applicable-conditions>.

<sup>76</sup> In 2016, the AER’s Retail Exempt Selling Guideline was amended to impose a mandatory obligation on exempt sellers to claim energy concessions on behalf of their eligible customers.

<sup>77</sup> Prior to 1 July 2015, under the Electricity Act a residential embedded network (on-supply) customer could not be charged more than the standard regulated residential tariff (Tariff 11) set by the QCA.

<sup>78</sup> *Manufactured Homes (Residential Parks) Act 2003*; *Body Corporate and Community Management (Standard Module) Regulation 2008*.

Under the NERL regime, customers also gained access to the AER's *Energy Made Easy* price comparison website, which compares retail electricity and gas offers for customers in Queensland, NSW, South Australia, Tasmania and the ACT.

Individual customers with concerns that cannot be resolved by their retailer can seek the assistance of EWOQ. There was no change to this service, with EWOQ operating on the same basis under the NERL regime compared to the pre-NERL regime.

### **What changed for retailers and distributors?**

Key changes introduced under the NERL affecting retailers include:

- electricity and gas retailers operating in the national framework are no longer licensed by the state regulators and must now seek national authorisation from the AER
- retailers must have a formal hardship policy approved by the AER
- there are more extensive retailer reporting requirements under the NERL.

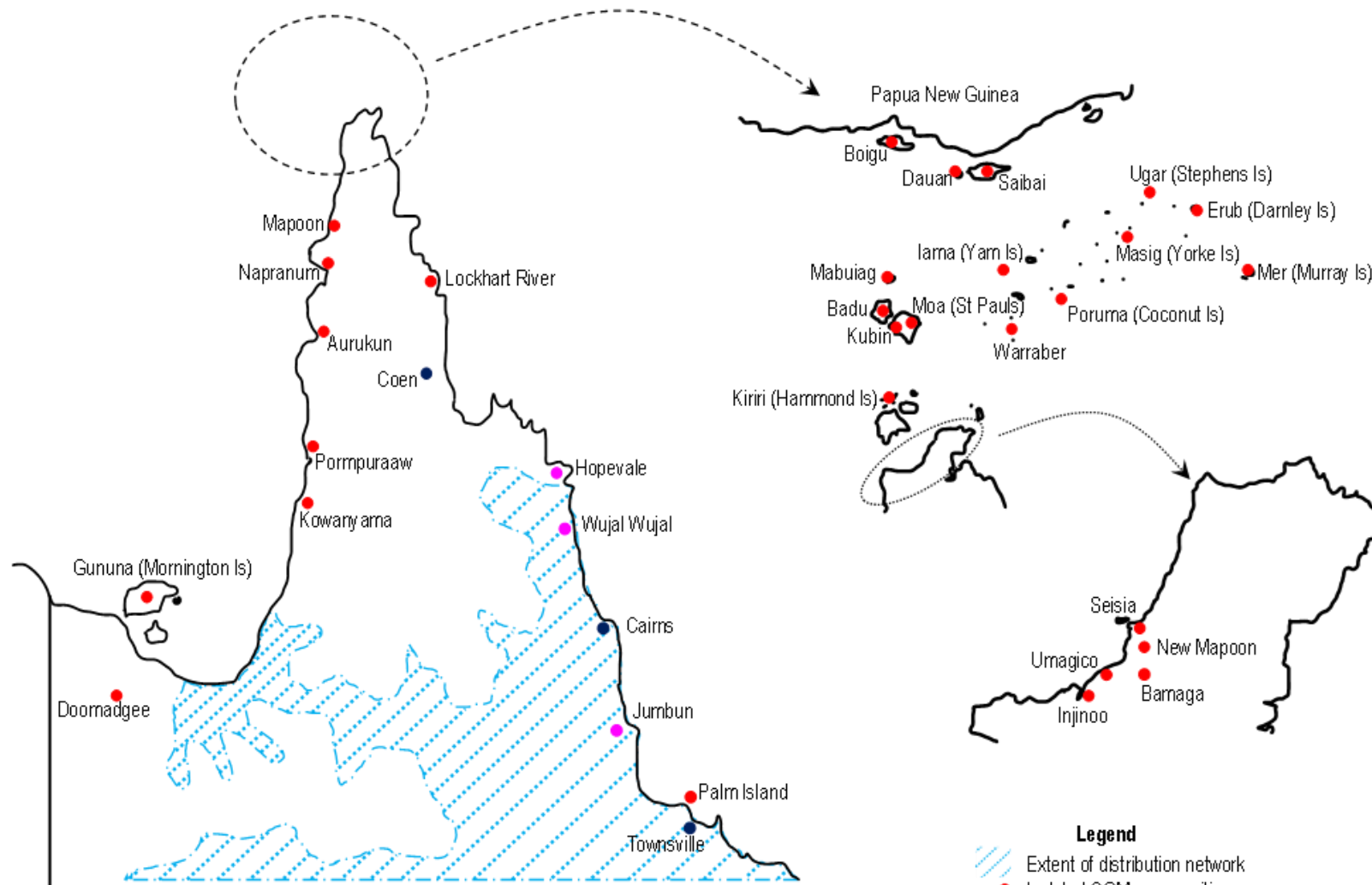
The NERL also introduced a tripartite relationship for electricity and gas customers, which provides for contractual relationships between retailers, distributors and customers for the sale and supply of energy services to customers.

There are also a significantly larger number of retailer performance indicators being collected by the AER under the NERL regime than was collected by the QCA under the pre-NERL regime. Prior to the NERL, the QCA did not report publicly on the performance of retailers in the Queensland market, whereas the AER now publishes data on energy retailer performance and compliance, as well as energy affordability, on a quarterly and annual basis<sup>79</sup>. The range of customer service, market and hardship indicators that retailers are required to report on is contained in the AER's *(Retail Law) Performance Reporting Procedures and Guidelines*<sup>80</sup>.

<sup>79</sup> Refer Schedule, Part 12, NERL.

<sup>80</sup> AER, *(Retail Law) Performance Reporting Procedures and Guidelines*, [version 3](#), effective from 1 January 2019.

## Appendix B – Map<sup>81</sup> showing location of COM communities in Queensland



<sup>81</sup> This map is a compilation information from the following sources: [Map of Australia \(A\) and the Torres Strait \(B\) showing locations...](#) | [Download Scientific Diagram \(researchgate.net\)](#) and [Isolated Networks 2030 Strategy \(ergon.com.au\)](#).