



**ENERGY SECURITY BOARD**  
**Retailer Reliability Obligation**

Consultation on National Electricity Law  
amendments  
November 2018

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## 1. Introduction

At the 26 October 2018 COAG Energy Council meeting, Ministers agreed that the Energy Security Board (ESB) will progress development of draft National Electricity Law (NEL) amendments that would give effect to a Retailer Reliability Obligation, including undertaking any further necessary stakeholder engagement. The ESB is to return to Council with a final draft Bill for decision in December 2018.

The ESB is consequently consulting on the attached draft of the *National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Bill 2018 (Reliability Draft Bill)*. This is an amended version of the draft *National Electricity (South Australia) (National Energy Guarantee) Amendment Bill 2018* which was issued for public consultation by the COAG Energy Council on Wednesday, 15 August 2018 (**August Draft Bill**). Submissions are invited by close of business 22 November 2018.

A final detailed design for the Retailer Reliability Obligation under the National Energy Guarantee was published in August 2018, along with the August Draft Bill providing the framework for key design elements. The ESB consulted on the August Draft Bill, with submissions invited between 15 August and 12 September. Thirteen submissions were received with three of these confidential.

## 2. Amendments to the exposure draft Bill to remove the emissions reduction requirement

Given the request from the COAG Energy Council, the ESB has made a number of changes to the August Draft Bill to remove the emissions reduction requirement and related provisions and retain only the reliability obligation. The following aspects have been amended:

- *Commencement by proclamation* – the entire Reliability Draft Bill is expressed to commence by proclamation. This is consistent with the normal approach for legislation passed through the South Australian Parliament, the lead legislator. The ESB's advice is that the Retailer Reliability Obligation should commence on 1 July 2019.
- *Removal of emissions reduction civil penalties* – all civil penalty provisions specific to the emissions reduction requirement have been removed.
- *Removal of emissions reduction requirement* – under the August Draft Bill, the emissions reduction requirement was included within a new division proposed for the National Electricity Law (Part 2A, Division 1). This division provided who would be liable under the emissions reduction requirement and set out the key aspects of the emissions reduction requirement (including compliance). This Division has been removed along with all associated definitions, such as 'liable customer' (a liable party under the reliability obligation is referred to as a liable entity).
- *Removal of the emissions objective* – The concept of an 'emissions objective' (and all related amendments to the National Electricity Law) has been removed from the Reliability Draft Bill.
- *Removal of AEMO emissions registry functions* – all provisions relating to the emissions register have been removed from the Reliability Draft Bill, including all provisions imposing obligations or conferring functions or immunities on AEMO relating to the emissions register.
- *Matters for the Rules* – the August Draft Bill contemplated that certain matters relating to the National Energy Guarantee could be provided for in the National Electricity Rules.

Accordingly, new subject matter areas for the National Electricity Rules were introduced. The Reliability Draft Bill now contains only those subject matter areas that relate to the reliability obligation.

- *Additional consequential changes* – certain other amendments have been made in the Reliability Draft Bill as a consequence of removing the emissions reduction requirement. For example:
  - the August Draft Bill allowed the South Australian Minister to make the initial Rules relating to the National Energy Guarantee. With the removal of the emissions reduction requirement, this additional amendment is not required as the South Australian Minister has the power to make Rules relating to the reliability obligation under the existing section 90F of the National Electricity Law.
  - miscellaneous provisions relating to the interpretation of the National Electricity Law (in the context of the Paris Agreement and the Climate Change Convention) have been removed.

### **3. Amendments to the Retailer Reliability Obligation following consultation**

The ESB has also made a number of changes to the provisions of the August Draft Bill relating to the operation of the reliability obligation following consultation. The following aspects have been amended<sup>1</sup>:

- Section 14E provides for ‘non-liable customers’ to ‘opt-in’ to the reliability obligation. This section has been amended to allow more flexibility as to who can opt in. For example, the person who opts-in no longer necessarily has to be a customer of a retailer (consistent with 14D). The changes provide:
  - for who is eligible to opt-in to the reliability obligation and to allow the Rules to prescribe who else may be eligible
  - that an eligible person can opt-in for some or all of a liable entity’s obligation to comply with the reliability obligation
  - the process for opting-in to the reliability obligation.
- Typographical errors were corrected in section 14H.
- The establishment of a trade repository by or on behalf of the AER was removed from the list of subject matter for the National Electricity Rules (formerly provision 6R of Schedule 1). The ESB has consulted separately on trade repositories (ACCC’s Retail Electricity pricing Inquiry recommendation 6) and will report back to officials in December 2018, as requested. Trade repositories will be considered as part of that process.

A number of other issues were raised in submissions to the August Draft Bill including the following:

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<sup>1</sup> This list uses the Clause numbering in the amended draft Bill. 14E was 14ZC in the August Draft Bill; 14D was 14ZB; and 14H was 14ZF.

- A number of stakeholders were opposed to provisions that, under certain circumstances (to be determined in the Rules), enable AEMO to request to trigger the reliability obligation without a T-3 instrument. The ESB is of the view that some flexibility is required to allow for changing market circumstances where the market is undergoing a transition.
- Some stakeholders were of the view that liable entities should not be required to maintain a net contract position from T-1 to T. They argued this would likely increase costs and stifle liquidity. The ESB is of the view that a key component of the reliability obligation is to provide incentives to liable entities to undertake greater contracting and to provide greater certainty to the market that this contracting will occur well in advance of the expected gap. If parties are more heavily contracted, they will have a greater incentive to bring resources (including demand response) to the market when it is required.
- Some stakeholders raised that the use of contract information collected through the reliability obligation should be limited to the administration of the mechanism and the AER should not be free to use the information for other purposes. The compliance regime has been based on the regime which operates under the National Energy Retail Law (NERL). Since both regimes deal with the AER's interaction with (primarily) retailers, the two regimes should be consistent. This will also help streamline compliance activities (for example the conduct of audits).

#### 4. Consultation timetable

The ESB invites comments from interested parties on the issues and questions set out in this paper by close of business **22 November 2018**. Feedback received will inform the ESB's final draft Bill to be presented to the COAG Energy Council's December 2018 meeting.

Submission close date	COB 22 November 2018
Lodgement details	Email to: <a href="mailto:info@esb.org.au">info@esb.org.au</a>
Naming of submission document	[Company name] Response to National Electricity Law Amendments – Retailer Reliability Obligation
Late submissions	Late submissions will not be accepted
Publication	Submissions will be published on the COAG Energy Council's website, following a review for claims of confidentiality.

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