



# **Draft Decision - Opt-in Guidelines**

## **Retailer Reliability Obligation**

March 2020



© Commonwealth of Australia 2020

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications,  
Australian Competition and Consumer Commission,  
GPO Box 3131,  
Canberra ACT 2601  
or [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au).

Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: 1300 585165

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

AER Reference: 10,797,802

#### Amendment Record

Version	Date	Pages
1	19 March 2020	8

---

# Contents

<b>1</b>	<b>Background</b> .....	<b>1</b>
1.1.	Invitation for submissions .....	2
<b>2</b>	<b>Issues raised in submissions to the Issues Paper</b> .....	<b>3</b>
2.1.	<b>Opt-in Register</b> .....	<b>3</b>
2.1.1	Accessibility of information in an opt-in register .....	3
2.1.2	Opt-in applies to a single T-3 Reliability Instrument.....	3
2.1.3	Notification of Market Customers .....	4
2.2.	<b>Opt-in Customer Eligibility</b> .....	<b>4</b>
2.2.1	Opt-in Customer deregistration .....	4
2.2.2	Flexibility of consumption and demand thresholds .....	4
2.2.3	Information provision by Market Customers .....	5
2.2.4	Consent from Market Customers for opt-in.....	6
2.2.5	Availability of meter data .....	7
2.3.	<b>Financial requirements</b> .....	<b>7</b>
2.3.1	Role of AEMO Opt-in Procedures.....	7
2.3.2	Accreditations and licences required to opt-in .....	7
2.4.	<b>Other matters</b> .....	<b>8</b>
2.4.1	Transparency of compliance costs .....	8
2.4.2	Timeframes .....	8

# 1 Background

The Australian Energy Regulator (AER) is responsible for a number of roles under the Retailer Reliability Obligation (RRO), as prescribed by the National Electricity Law (NEL) and National Electricity Rules (the Rules). The AER's roles include administering the RRO opt-in mechanism.

Liable entities, for the purposes of the RRO, are entities registered by AEMO as Market Customers as well as other large customers that are approved by the AER to opt-in to liability under the obligation.

To opt-in, opt-out, or adjust opt-in arrangements, eligible large customers will need to apply to the AER for approval. The AER is required to assess applications based on a set of criteria, and to notify applicants of their opt-in status. The AER is also required to establish and maintain an opt-in register for each T-3 Reliability Instrument that is issued and, to provide transparency, will also maintain a publicly available opt-in register summary.

The RRO Opt-in Guidelines must detail the opt-in process, including

1. the process for establishing and maintaining an opt-in register,
2. information to be contained within an opt-in register,
3. the processes for registering, deregistering or amending registrations,
4. the criteria for assessing opt-in eligibility.

In September 2019, the AER published the RRO Opt-in Guidelines Issues Paper for public consultation. This Draft Decision sets out the key issues raised by stakeholders through this consultation process, and the reasons underpinning the decisions on the draft RRO Opt-in Guidelines.

The engagement timeline for the development of the *RRO Opt-in Guidelines* is set out in Table 1.1 below.

**Table 1. Timeline for the development of the RRO Opt-in Guidelines**

Milestone	Date
Issues Paper and Notice of Consultation	September 2019
Consultation period for written submissions on Issues Paper	November 2019
Draft Guidelines published	19 March 2020
Consultation period for written submissions on Draft Guidelines closes	9 April 2020
Final Guidelines published	June 2020

## 1.1 Invitation for submissions

The AER welcomes submissions on the Draft *RRO Opt-in Guidelines*. The AER has not identified specific questions on these draft guidelines, but invites interested stakeholders to provide written feedback on any aspects of the proposed approach that are of concern, lack clarity, or are otherwise relevant to the development of the *RRO Opt-in Guidelines*.

To be taken into account when developing the final *RRO Opt-in Guidelines*, the AER requests written submissions on the draft guidelines be provided by close of business on 9 April 2020. Submissions can be sent by email to [RRO@aer.gov.au](mailto:RRO@aer.gov.au) with the following email title: For consultation - Draft RRO Opt-in Guidelines.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim.
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be published on the AER website. For further information regarding our use and disclosure of information provided to the AER, see the ACCC/AER Information Policy (June 2014), available on the AER website.

Enquiries about this paper, or about lodging submissions, should be directed to the Consumers and Markets Branch of the AER via [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au).

The remainder of this document is the draft guideline for consultation.

## 2 Issues raised in submissions to the Issues Paper

The AER received four submissions providing feedback on RRO Opt-in issue paper. All submissions are available on the AER website.

All submissions were broadly supportive of the proposed approach to the RRO Opt-in Guidelines.

This Draft Decision highlights a number of issues raised by stakeholders in their submissions and the AER's response.

### 2.1 Opt-in Register

#### 2.1.1 Accessibility of information in an opt-in register

The Issues Paper proposed that opt-in registers would be treated as confidential and not publicly accessible, due to the commercially sensitive nature of some of the information held. To enable a degree of transparency, the Issues Paper proposed that public opt-in summaries would be made available with only high level information about opt-in customers.

In their submissions, stakeholders emphasised the importance of opt-in registers, particularly information about connection points (NMI) remaining confidential. This is consistent with the proposed approach.

The submissions appeared to reflect some confusion about which information would and would not be kept confidential. Section 3.4 of the draft RRO Opt-in Guidelines specify the proposed content of both the confidential opt-in registers and the public summaries.

#### 2.1.2 Opt-in applies to a single T-3 Reliability Instrument

The Energy Users Association of Australia (EUAA) requested in its submission that the RRO Opt-in Guidelines clarify whether a decision to opt-in for one reliability instrument affects opt-in for another. In particular, the EUAA raised concerns that a large customer that opts-in for a given reliability instrument may be required to assume liability under subsequent reliability instruments. The EUAA proposed that there should be an obligation on Market Customers to re-assume liability for future events, so that large customers do not find themselves disadvantaged when negotiating a new retail contract with a Market Customer.

Large customers that are not Market Customers will not be liable entities under the RRO unless they apply to opt-in to liability under a specific reliability instrument, and are approved by the AER. This approval only relates to the specific instrument they have opted in for, and there is no transfer or on-going liability to other instruments. If a large customer, that is not a Market Customer, does not specifically apply to opt-in for a given reliability instrument, liability for its load will remain with the Market Customer responsible for electricity at the connection point(s). As such, no additional obligation on Market Customers is required – the Market Customers are liable by default.

The draft guideline specifies this in section 3.3.

### 2.1.3 Notification of Market Customers

The Issues Paper did not propose that the AER be required to notify relevant Market Customer(s) about approved opt-in applications unless requested. The Market Customer(s) will have been notified of the application by the opt-in customer, and will have access to high-level information about approved applications in the opt-in register summary.

In its submission, the Australian Energy Council (AEC) queried whether the proposed approach introduced the risk of miscommunication between the AER, Market Customers and opt-in applicants. The AEC proposed that the AER should independently notify relevant Market Customers in all circumstances (for example, approved and rejected applications for opt-in registration, deregistration and adjustments).

The AER understands the benefit of clear communication after making decisions on opt-in applications (including registering, de-registering and adjustments). The draft guideline reflects this position and states that each affected party will be notified once a decision by the AER has been made. Market Customers will also have been notified of opt-in applications by the relevant opt-in applicants, and will have visibility of the public opt-in summaries.

## 2.2 Opt-in Customer Eligibility

### 2.2.1 Opt-in Customer deregistration

In its submission on the Issues Paper, the EUAA proposed that, if a large energy user has opted-in and subsequently decides to opt-out more than 12 months before the expected reliability event commencing, it should not have to secure Market Customer consent to do so. The rationale for the proposal is that a 12 month period should be sufficient time for a Market Customer to source suitable contracts to cover the liability for the additional load.

Based on the Rules<sup>1</sup>, the AER must not approve an opt-in customer's application to deregister from all or some of its opt-in liability unless a Market Customer has consented to the application. There is no scope for the AER to require a Market Customer to consent to an opt-in customer's deregistration. As such, this proposal has not been adopted in the draft RRO Opt-in Guidelines.

### 2.2.2 Flexibility of consumption and demand thresholds

The consumption and demand thresholds for large opt-in customer and prescribed opt-in customer eligibility, respectively, are prescribed in the Rules<sup>2</sup>, and there is no scope to amend these thresholds in the Guidelines. However, the Guidelines can prescribe the methodology used to calculate consumption and demand for the purposes of assessing compliance with these thresholds.

---

<sup>1</sup> NER Clause 4A.D.10(d)

<sup>2</sup> NER Clauses 4A.D.4 and 4A.D.6.



### **2.2.2.1 Large opt-in customer consumption threshold**

The AEC has suggested that the Guidelines provide a degree of flexibility when assessing the eligibility of customers against the opt-in consumption threshold. In particular, the AEC indicated that some customers have annual consumption levels close to the threshold, and that assessing eligibility based on consumption in the 12 months immediately preceding the application may not accurately reflect a large customer's typical consumption. Flexibility in the AER's assessment of annual consumption may be required to cater for annual variations in consumption, including those resulting from plant issues or outages.

The AER's proposed approach does allow for some flexibility in demonstrating consumption for the purposes of assessing eligibility against the consumption threshold. The proposed approach allows applicants to provide an alternative annual consumption value if they believe their consumption in the 12 months preceding the application is not indicative of expected annual consumption in the coming years. The AER has maintained this approach, as proposed in the Issues Paper, in the draft RRO Opt-in Guidelines. However, the draft Guidelines provide greater clarity on this option, to ensure large customers are aware of the flexibility available to them if needed.

### **2.2.2.2 Prescribed opt-in customer demand threshold**

The Rules prescribe that an eligible large customer may apply to the AER for approval to register as a prescribed opt-in customer for the entire load at a connection point, or for a percentage of the load at a connection point<sup>3</sup>. If opting-in for a percentage of the load, this percentage must not be less than annual peak demand of 5 MW (the minimum opt-in threshold)<sup>4</sup>.

The AEC proposed, in its submission on the Issues Paper, that it may be beneficial to allow customers the flexibility to nominate a MWh load, rather than a fixed percentage. In particular, the AEC suggests that this could increase flexibility in contracting practices, and may suit customers with volume-based contracting arrangements in place.

The AER is supportive of providing flexibility wherever possible, however has maintained the fixed percentage approach in this instance for compliance and enforcement purposes.

The percentage approach enables the AER to clearly apportion liability for load at a connection point between liable entities at that connection point. If large customers were registered as prescribed opt-in customers for MWh volumes, rather than fixed percentages, apportioning liability for load between entities at a connection point would be more challenging.

## **2.2.3 Information provision by Market Customers**

The Major Energy Users Inc. (MEU) raised the concern, in its submission, that retailers often require their customers to keep details of supply arrangements confidential, and that large customers may be legally restricted from sharing this information with the AER. The MEU

---

<sup>3</sup> NER Clause 4A.D.5(e).

<sup>4</sup> For example, if annual peak demand at a connection point is 50 MW, the large customer must opt-in for at least 10% of load (5 MW).

suggested that the RRO Opt-in Guidelines should require retailers to permit the provision of data to the AER in relation to opting-in.

The AER is not able to use the RRO Opt-in Guidelines to require retailers to waive contract provisions that may exist to restrict data sharing.

For the purposes of assessing opt-in eligibility, the AER would require applicants to provide evidence that they are opting-in for connection points for which they are responsible as well as evidence of their total annual consumption in the region. The AER would not require access to any pricing information. In the case that the applicant has access to its consumption information but is not in a position to share this information with the AER, it is expected that the applicant would request its retailer provide a letter confirming this information for the purposes of the RRO.

The Issues Paper also proposed that opt-in applicants provide the AER with confirmation that they are responsible for electricity supplied to the connection points they are nominating to opt-in for. This confirmation was to note where there are multiple connection points at a single site, so that the AER can ensure potential large opt-in customers are opting-in for all connection points at a single site, or that potential prescribed opt-in customers have aggregated demand from multiple connection points at a single site correctly.

Through its submission on the Issues Paper, ERM raised the concern that retailers may not be aware of all connection points at a single site, and may not be able to provide this information for the purposes of the RRO.

The AER expects that retailers will provide this information to the best of their knowledge. Noting that retailers may not always have access to this information, the AER may also choose to independently verify whether there are multiple connection points at a single site, through consultation with network service providers and other sources.

#### **2.2.4 Consent from Market Customers for opt-in**

The MEU has suggested that retailers and other Market Customers may limit the ability of large customers to opt-in through contracting arrangements, in spite of consent not being required. To ensure that large customers have the opportunity to opt-in, the MEU suggested that the RRO Opt-in Guidelines should introduce a requirement that retailers not unreasonably restrict the ability of large customers to opt-in, or to hinder access to data required in order to opt-in. Further, that the AER should have the power to arbitrate should a large customer believe that its retailer is unreasonably withholding consent to opt-in.

The MEU also raised a similar concern about prescribed opt-in customers. The MEU proposed that the Guidelines may need to address the risk of a large customer being prevented from opting-in as a prescribed opt-in customer by another entity at the connection point (such as the manager of electricity procurement at the site). In response to this risk, the MEU recommended the AER investigate the extent to which other parties are able to prevent a large customer from being able to opt-in as a prescribed opt-in customer.

The opt-in mechanism has been included in the RRO to provide large customers with the opportunity to manage the liability associated with their load, and ensures that Market Customer consent is not required for a large customer to opt-in. The AER views supply

arrangements as a matter for commercial negotiation between retailers and customers, rather than a matter to be regulated through this guideline. However, we remind parties to consider wider obligations, including competition law issues, in proposing contract terms which may limit the ability of customers to manage their own RRO exposure by opting in to the scheme. The NER include a number of provisions to support a retail customer's access to metering data in respect of its connection points.<sup>5</sup> Large customers remain responsible for negotiating contract terms with their retailers that meet their requirements, and are encouraged to consider opt-in opportunities when assessing proposed contract terms.

## **2.2.5 Availability of meter data**

In its submission, ERM identified that some large customers may have meters that will not record demand data for individual settlement periods (currently 30 minutes, changing to 5 minutes in 2021). This will make the calculation of annual maximum coincident demand challenging for these entities.

Given that this is a challenge that is only likely to face a small number of prospective opt-in customers, the issue is not explicitly addressed in the draft RRO Opt-in Guidelines. However, the Guidelines will provide flexibility to resolve such issues on a case by case basis.

## **2.3 Financial requirements**

### **2.3.1 Role of AEMO Opt-in Procedures**

In its submission on the Issues Paper, the AEC indicated that some of the detail required to implement the NER would be included in AEMO's Opt-in Procedures, which have not yet been developed. The AEC proposed that the AER's Guidelines address substantive matters such as the creditworthiness of prospective opt-in customers, rather than leaving it to AEMO.

AEMO has the option to publish Opt-in Procedures but is not required to do so, and the implementation of the NEL and Rules does not require the Procedures to be in place. At present, AEMO has not published Opt-in Procedures. The decision to do so resides with AEMO, and is not a matter for the AER. The RRO Opt-in Guidelines will accommodate the potential for Procedures to be introduced in the future, but will not assume their introduction.

While the AER notes that prospective opt-in applicants would prefer certainty of the potential additional requirements through their inclusion in the Guidelines, it is beyond the scope of the AER's RRO Opt-in Guidelines to introduce credit requirements for applicants. As with other credit-related requirements on market participants, the decision on whether or not these requirements are introduced is the remit of AEMO.

### **2.3.2 Accreditations and licences required to opt-in**

The MEU in its submission to the issues paper asked that the Guidelines address whether large customers seeking to opt-in are required to have an Australian Financial Services Licence (AFSL).

---

<sup>5</sup> See, for example, NER cl. 7.15.5(d).

The AER will not require a large customer to hold an AFSL, or another financial licence or accreditation, in order to be approved as an opt-in customer.

The AER notes that opt-in customers without an AFSL will not be able to access many risk hedging options available to those with an AFSL – such as financial products purchased on the ASX. However, this does not preclude opt-in customers from managing risk through other means, such as with demand management or through a broker.

## **2.4 Other matters**

### **2.4.1 Transparency of compliance costs**

The EUAA noted in its submission that large customers would benefit from some level of transparency of the compliance costs incurred by liable entities under the RRO. The EUAA proposes that this transparency would help large customers to estimate the additional cost premium they might reasonably expect to be passed on from their retailers. Further, this information would enable large customers to make more informed and efficient decisions about opting-in.

Compliance costs incurred under the RRO may vary from one liable entity to another, and not all of these costs are likely to be public information. For these reasons, as well this being beyond the scope of the opt-in guideline, there have been no inclusions on compliance costs in the draft guideline.

### **2.4.2 Timeframes**

The Rules require that the AER approve or reject an application to opt-in as either a large or a prescribed opt-in customer in accordance with the RRO Opt-in Guidelines. Neither the Rules nor the Issues Paper have provided a timeframe in which the AER has to make its decision.

The AEC has suggested that the AER nominate a timeframe to provide some certainty to applicants.

The AER agrees that the Guidelines should provide guidance on decision timeframes, and the draft RRO Opt-in Guidelines state that the AER will endeavour to provide written approval within 30 business days of the application being submitted. The timeframe is non-binding to allow for the potential need for the AER to seek further documents or verification in the decision-making process.