Energy

National Energy Retail Law: Review of operation in South Australia

Draft Report

November 2015

Issued by the Essential Services Commission of South Australia on 26 November 2015

REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (**Commission**) invites written submissions from members of the community on this paper. Written comments should be provided by **Friday, 19 February 2016.**

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The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

It is preferred that submissions are sent electronically to:

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National Energy Retail Law: Review of operation in South Australia
Draft Report
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Glossary of Terms

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
COAG	Council of Australian Governments
Commission	Essential Services Commission of South Australia
Conservation Council SA	Conservation Council of South Australia
Consumers SA	Consumers' Association of South Australia
Draft Report	This report, providing the draft findings of the NERL review
ERAA	Energy Retailers Association of Australia
MWh	Megawatt hour, which is the equivalent of 1,000 kWh
NERL	National Energy Retail Law, as contained in the National Energy Retail Law (South Australia) Act 2011
NERL regime	Energy customer protection regime administered by the AER, following the adoption of the NERL in South Australia (from 1 February 2013)
NERL review	This review, being conducted in accordance with section 30 of National Energy Retail Law (South Australia) Act 2011
NERL review Issues Paper	Commission's Review of the Operation of the National Energy Customer Framework in South Australia-Issues Paper (February 2015)
NERL review methodology	Commission's NERL Review Methodology-Final Decision (March 2014)
NERL RIS	Regulatory Impact Statement undertaken for the NERL
NERL Second Reading speech	Second Reading speech for the National Energy Retail Law (South Australia) Bill
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
Pre-NERL	Period prior to the commencement of the NERL in South Australia on 1 February 2013
Pre-NERL regime	Energy customer protection regime administered by the Commission prior to the commencement of the NERL in South Australia (that is, prior to 1 February 2013)
REES	Retailer Energy Efficiency Scheme (SA)
RoLR	Retailer of Last Resort

SACOSS	South Australian Council of Social Service
Small customers	South Australian energy customers with an annual electricity consumption of less than 160 megawatt hours or annual natural gas consumption of less than one terajoule
Solar PV	Solar photovoltaic
Solar PV customers	Customers with solar photovoltaic units installed on their properties
TJ	One terajoule (one million megajoule), a unit of energy

Executive Summary

The Commission's draft finding is that the operation of the National Energy Retail Law:

- has furthered the interests of South Australian energy consumers
- has resulted in increased efficiencies, and
- has not adversely affected consumer protection in pursuit of national consistency.

Purpose

Pursuant to section 30 of the National Energy Retail Law (South Australia) Act 2011, the Commission is conducting a review of the operation of the National Energy Retail Law (**NERL**), which came into effect in South Australia on 1 February 2013 (**NERL review**).

The NERL establishes a regulatory regime governing the sale and supply of energy (electricity and reticulated natural gas) to customers served through the national electricity grid or gas pipelines. It provides a range of customer protections for residential and small business customers in their dealings with energy retailers and distributors. It complements other general consumer protection laws such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation.

The NERL is administered by the Australian Energy Regulator (**AER**) and replaces the previous energy regulatory regime administered by the Commission under the Electricity Act 1996 and the Gas Act 1997 (**pre-NERL regime**).

In accordance with the terms of section 30, the NERL review is to focus on the impact of the NERL on South Australian energy consumers and whether its implementation has:

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

That section also provides that the review may address such other matters as the Commission thinks fit.

This Draft Report sets out the Commission's draft review findings, for public consultation. Submissions are welcome and will assist the Commission in finalising the review for submission to the Minister for Mineral Resources and Energy in 2016.

Consumer protection

The Commission's draft finding is that the NERL is operating well in South Australia and that South Australian energy customers, if anything, have benefited from being part of the national customer protection arrangements (noting that the NERL has only been operating in South Australia for a little over two and a half years).

In an overall sense, this is not an unexpected outcome, as the provisions of the NERL generally either reflect, mimic or enhance the protections existing under the Commission's pre-NERL regime. For example, the general requirements as to billing, time to pay bills, dispute resolution and debt recovery processes remain largely unchanged.

In addition, through its public consultation processes during the review, the Commission has been presented with a clear, specific and positive message from stakeholders as to the impacts of the NERL: it has resulted in improved customer access to hardship programs and better data to analyse the experiences of and outcomes for hardship customers. While the pre-NERL regime (which was established prior to market commencement in 2003) did place hardship obligations on retailers, the NERL adopts an approach of requiring specific and approved hardship policies to be implemented by retailers.

Accompanying that message has been explicit acknowledgment from stakeholders that hardship is driven by economic and other factors external to the NERL – the NERL itself does not drive hardship. In that context, stakeholders see the role of the NERL as being to encourage and permit retailers to identify and engage with those customers who are experiencing hardship with a view to maintaining supply and avoiding further accumulation of debt.

The evidence gathered by the Commission supports that view. While there has been an increase in the number of customers identified as being in hardship programs since the commencement of the NERL, econometric analysis shows a significant statistical relationship between hardship customer numbers and the rate of unemployment. It is external factors which drive the absolute numbers of customers experiencing general financial hardship at a point in time and, with energy being an essential service, that general hardship often translates into energy hardship.

Having regard to that context, while there has been an increase in the number of hardship customers since NERL commencement, this has occurred during a time of increasing economic challenge for South Australia. Despite that increase there has not been an increase in the rate of disconnections for residential electricity customers since the commencement of the NERL and, at the same time, there continues to be a high rate of instalment payment plan participation by customers (allowing them to actively manage energy payment obligations).

This suggests that the NERL hardship policy requirements are permitting or requiring retailers to accommodate and assist customers in financial stress. Against a background of deteriorating economic conditions, the hardship programs are being properly employed through the NERL in an effort to avoid increased levels of disconnection. The econometric analysis also supports a component of the increase in hardship numbers being due to the success of the NERL in giving people greater access to the hardship programs.

Retailers have put the view to the Commission that they are keen to assist customers. However, they have also cautioned that, for the hardship regime to be most effective, customers will need to engage with retailers. The Commission understands that hardship is a complex issue for many customers, with issues such as reluctance or embarrassment on the part of customers to admit to financial distress being very real and understandable reactions. However, research into how companies can best engage with customers, and in turn have customers want to engage, is occurring across a range of industries. In this respect the South Australian Council of Social Service's *Better Practice Guide for Energy Retailers* is a useful contribution. Created in collaboration with retailers and the community sector, the guide highlights the need for retailers to focus on early intervention and assessment of customers' capacity to pay.

In this broad context, through the consultation process the issue of financially vulnerable regional customers was raised with the Commission, both in terms of their ability to contact their retailer and in having access to competitive energy market offers, particularly in the case of gas. The Commission recognises the importance of equal treatment of customers regardless of location, and the particular challenges which regional customers can face (distance, technological differences, economic conditions) but has not found or been provided with evidence that the NERL itself has given rise to a deterioration in the level of customer protection for regional customers.

The trend of an increasing number of customer complaints to retailers has continued following the commencement of the NERL. However, this is in part explained by the general economic conditions described above, as well as a period during which retailers were implementing new customer billing systems, some of which proved problematic. There is no evidence which has been brought to the attention of or discovered by the Commission which would suggest that the structure of the NERL itself caused the higher level of complaints.

Of note, in more recent times this trend has slowed and, importantly, there has been a reduction in the overall level of complaints to the Energy and Water Ombudsman SA. This is a positive outcome, indicating that retailers are dealing with complaints more effectively in the first instance, with customers not needing to utilise the Ombudsman's services to obtain resolution of their complaint. No issues have been identified with the complaint performance of network entities under the NERL.

Efficiency

The Commission has adopted a broad economic definition of the term 'efficiency' for the NERL review, to include:

- the level of competitiveness in the energy retail market (allocative efficiency)
- evidence of innovation (dynamic efficiency)
- movement in retailer and distributor operational costs (technical efficiency).

In terms of competitiveness, the Commission has relied on the findings of annual retail energy competition reviews performed by the Australian Energy Market Commission (**AEMC**) to assess the level of competitiveness in the South Australian energy retail market and for evidence on the level of innovation.

The AEMC continues to find that the market is effectively competitive, as it has done since 2008, prior to the commencement of the NERL. The evidence presented to the Commission is that the NERL should assist a more competitive market, with new retailers having entered the market as a result of lower barriers to entry.

In terms of innovation, as the market grows following new entry, the range of retail energy products available to customers has increased. No evidence to the review suggested that the NERL has unduly stifled the development of new product or service offerings.

There was only one instance of concern raised with the Commission that the NERL had removed a protection previously available to South Australian energy customers, with associated innovation considerations. The Conservation Council of South Australia submitted that the effective removal, on commencement of the NERL, of the requirement for retailers to include greenhouse gas information on customer bills on a consistent basis has been a detriment. It put the view that the lack of information for customers is a market failure and may affect the competitiveness of a market, as that group of customers that value such information when making decisions about their energy retailer will be adversely affected.

It is not clear that mandating greenhouse gas intensity information on bills remains the best or only source of information for customers seeking to compare the performance of retailers in this area. The NERL contains minimum information requirements for bills and there is nothing preventing a retailer providing customers with information on greenhouse gas emissions in response to demonstrated demand. This change alone is not considered sufficient to show that the NERL has adversely affected customer protection in pursuit of national consistency.

In terms of cost changes, the Commission undertook surveys of energy retailers and energy distributors in 2014 and 2015 seeking to identify actions taken, savings made, and costs incurred through the progressive adoption of the NERL nationally, up until the end of 30 June 2015. This information was sought at the national (all jurisdictions combined) level for retailers, in an effort to ensure consistent reporting and recognising the difficulties that some retailers might have in identifying South Australian specific costs. The distributor information provided was for South Australia only.

Notwithstanding some of the long individual retailer payback periods identified, the overall picture presented by that evidence is that retailers consider the implementation of the NERL to be a positive outcome.

Retailers stressed to the Commission that any difference in regulatory requirements between states leads to increased costs (or loss of efficiency) for retailers. Those costs are passed on to customers. South Australia has a limited set of derogations or modifications from the standard terms of the NERL, with retailer telephone responsiveness and the small business definition threshold of 160 MWh per annum singled out by retailers as being of material concern to them.

Other matters

Representations were received from consumer groups and retailers during the course of the review that the NERL in its current form may not adequately accommodate market or technological developments that have occurred in the energy industry since it was drafted (during the period 2006 to 2011). For example, the lease arrangements for provision of solar photovoltaic roof panels and battery storage, and the competitive provision of meters.

The Commission notes that the need to review the NERL to maintain its relevance is well recognised. The Council of Australian Governments (COAG) Energy Council agreed at its 23 July 2015 meeting to investigate whether the NERL requires enhancement in light of ongoing change taking place in competitive energy markets, particularly in regard to the introduction of new technologies, products and services.

Stakeholders also suggested during consultation that additional requirements should be incorporated into the NERL, such as the elimination of late payment fees. These suggestions have been noted in this Draft Report for the information of policy makers. However, they are considered out of scope for the purposes of making the findings required by the terms of reference, as those focus on identifying any adverse changes in customer protection arising from the NERL as compared to the pre-NERL regime.

Consultation

This Draft Report follows publication of the NERL review methodology (March 2014). A NERL review Issues Paper was published in February 2015, together with customer questionnaire and time series data.

Nine submissions were received to the NERL review Issues Paper, six from retailers or their association and three from consumer based organisations. A public forum was held in the Adelaide Town Hall – Meeting Hall on Friday, 1 May 2015 and a retailer forum held in Melbourne on Friday, 8 May 2015. The Commission has appreciated the extent of engagement of stakeholders during the course of this review and thanks all those that have made a contribution to date.

Next steps

Submissions are sought on this Draft Report on or before the close of business on Friday, 19 February 2016.

A Final Report is due to be submitted to the Minister for Mineral Resources and Energy in April 2016. Under the terms of the National Energy Retail Law (South Australia) Act 2011, that report is to be tabled in Parliament within six sitting days of receipt by the Minister.

1 Introduction

Pursuant to section 30 of the National Energy Retail Law (South Australia) Act 2011, the Commission is conducting a review of the operation of the National Energy Retail Law (**NERL**), which came into effect in South Australia on 1 February 2013 (**NERL review**).

The NERL establishes a regulatory regime governing the sale and supply of energy (electricity and reticulated natural gas) to customers served through the national electricity grid or gas pipelines. It provides a range of customer protections for residential and small business customers in their dealings with energy retailers and distributors. It complements other general consumer protection laws such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation.

The NERL is administered by the Australian Energy Regulator (**AER**) and replaces the previous energy regulatory regime administered by the Commission under the Electricity Act 1996 and the Gas Act 1997 (**pre-NERL regime**).[1]

Under section 30, the Commission is required to conduct a review of the NERL's operation:

> *30—Review*
>
> *(1) The Commission must conduct a review of the operation of the National Energy Retail Law in South Australia after the expiry of 2 years from the date fixed under section 4* [1 February 2013].
>
> *(2) The review must focus on the impact of the National Energy Retail Law on consumers of energy and whether the implementation of the Law has—*
> *(a) resulted in increased efficiencies; or*
> *(b) adversely affected customer protection in pursuit of national consistency,*
> *and may address such other matters as the Commission thinks fit.*
>
> *(3) The Commission must prepare a report on the outcome of the review and provide a copy of the report to the Minister.*
>
> *(4) The Minister must, within 6 sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.*

The NERL review is therefore fundamentally a comparison of the operation of the NERL (**NERL regime**) with the pre-NERL regime, and an assessment of the NERL's comparative effectiveness.

Importantly, it does not include an assessment of the impact of retail energy price deregulation,[2] which was an event separate from, but coincident with, the commencement of the NERL.[3] Accordingly, while stakeholders may have views on movements in and the impacts of energy prices, those matters are beyond the scope of this review.

[1] The Commission continues to maintain a role in certain aspects of energy regulation, such as setting service reliability standards and certain customer responsiveness standards and targets for the energy network businesses. The Commission is also involved in the licensing and monitoring of off-grid energy operations.
[2] Prior to deregulation, the Commission set the maximum prices energy retailers could charge for standing contracts.
[3] Media release; available at http://www.premier.sa.gov.au/images/news_releases/12_12Dec/energyprice.pdf.

1.1 Review process and consultation

The Commission consulted on the methodology it would use to conduct this review, releasing its final decision in March 2014: NERL Review Methodology-Final Decision (**NERL review methodology**).[4]

An Issues Paper for the NERL review (**NERL review Issues Paper**) was published in February 2015, together with a customer questionnaire and time series data.[5]

Nine submissions were received to the NERL review Issues Paper:[6]

- AGL
- Conservation Council of South Australia (**Conservation Council SA**)
- Consumers' Association of South Australia (**Consumers SA**)
- EnergyAustralia
- Energy Retailers Association of Australia (**ERAA**)
- Lumo Energy
- Origin Energy
- Red Energy
- South Australian Council of Social Service (**SACOSS**).

A public forum was held in the Adelaide Town Hall – Meeting Hall on Friday, 1 May 2015 and a retailer forum held in Melbourne on Friday, 8 May 2015, to receive comments and advice on issues raised in the NERL review Issues Paper.

The issues raised by stakeholders through the consultation process have been carefully considered and, where relevant, certain arguments and submissions have been mentioned in the text of this Draft Report, either by direct quotation or by reference to themes or arguments, to assist stakeholders to understand the proposed positions that have been reached.

However, a failure to reference an argument or submission does not mean that it has not been taken into account in reaching the proposed positions. While not all of the positions received during consultation have been accepted, all views expressed during consultation have assisted in informing the Commission's consideration of each of the relevant issues and the competing viewpoints.

Submissions are sought on this Draft Report on or before the close of business on **Friday, 19 February 2016**.

A Final Report is due to be submitted to the Minister for Mineral Resources and Energy in April 2016. Under the terms of the National Energy Retail Law (South Australia) Act 2011, that report is to be tabled in Parliament within six sitting days of receipt by the Minister.

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[4] Essential Services Commission of South Australia, *NERL Review Methodology*, Final Decision, March 2014, available at www.escosa.sa.gov.au.
[5] Essential Services Commission of South Australia, *Review of the Operation of the National Energy Customer Framework in South Australia*, Issues Paper, February 2015, available at www.escosa.sa.gov.au. Note that the term 'National Energy Customer Framework (NECF)' is equivalent to the term 'NERL regime' used in this Draft Report. NECF is established by the NERL.
[6] Submissions are available at http://www.escosa.sa.gov.au/projects/222/review-of-necf-in-south-australia.aspx.

1.2 Outline of Draft Report

The following chapters of this Draft Report cover:

- Chapter 2: outlines the key elements of the NERL regime and its predecessor state-based scheme, highlighting material differences
- Chapter 3: addresses the term of reference as to whether or not the NERL may have *adversely affected customer protection in pursuit of national consistency* for South Australian energy customers
- Chapter 4: addresses the term of reference as to whether the NERL has *resulted in increased efficiencies* for South Australian energy customers
- Chapter 5: provides an overall assessment of the operation of the NERL in South Australia
- Chapter 6: provides observations on matters raised during consultation that are out of scope for this review
- Chapter 7: outlines next steps in finalising this review.

2 Key elements of the NERL

Draft finding

The Commission's draft finding is that the National Energy Retail Law provides customer protections of at least equal, if anything better, to that which existed under the previous state based scheme.

Key points

- The development of the NERL was largely an exercise in harmonising existing state-based schemes, resulting in few material differences for South Australian energy customers.
- The South Australian derogations or modification to the NERL serve to further reduce the extent of difference between the current and prior customer protection schemes.
- The Australian Energy Regulator is monitoring a greater range of retailer performance indicators than was previously undertaken by the Commission.

2.1 Introduction

This chapter:

- outlines the key elements of the NERL customer protection framework
- identifies any material differences between the NERL and the pre-NERL regimes.

To provide context to those matters, it is useful at this point to provide a brief overview of the pre-NERL regime.

Prior to 1 February 2013, all retailers selling electricity and reticulated natural gas in South Australia were required to be licensed by the Commission. These energy retailers were required, as a condition of their licence, to comply with applicable industry codes issued by the Commission pursuant to the Essential Services Commission Act 2002. Key industry codes relevant to energy retailers now operating under the NERL were:

- Energy Retail Code: regulated the terms and conditions on which retailers were permitted to sell electricity to customers with an annual electricity consumption of less than 160 MWh per annum and gas to customers with an annual gas consumption of less than 1 TJ per annum (small customers). It established a comprehensive consumer protection regime to be applied to such customers, including service standards to be met by retailers. It specified the terms of the standing contract required to be offered by AGL SA (electricity) and Origin Energy (gas), the default contract (to be offered by all retailers) and minimum terms for market contracts (including a cooling-off period).
- Energy Marketing Code: established appropriate standards for the marketing of electricity and gas by retailers to small customers. It required a comprehensive disclosure statement to be made available to a customer entering into a market contract.
- Energy Customers Transfer and Consent Code: in the case of electricity it applied to electricity retailers and ETSA Utilities (now SA Power Networks), and in the case of gas it applied to gas retailers and Envestra (now Australian Gas Networks). It established rules for the transfer of a small customer from one retailer to another, and set standards for explicit informed consent.

- Energy Prepayment Meter System Code: established a consumer protection and regulatory framework within which retailers wishing to sell energy via prepayment systems were required to operate.
- Energy Price Disclosure Code: specified requirements for retailers offering sale contracts to small customers to enable such customers to compare competing offers for the sale of electricity and gas.

2.2 The NERL regime

The NERL regime is a set of national laws, rules and regulations, providing consumer protections in relation to the sale and supply of energy (electricity and reticulated natural gas) to residential and small business[7] customers served through the national electricity grid or gas pipelines. It complements other general consumer protection laws, such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation.

The NERL regulates the relationship between three parties: customers, energy retailers and energy distributors. 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 price, quality, safety, reliability and security of supply of energy.*[8]

As such, the NERO focusses the NERL on the efficiency of the retail energy industry and long term interests of energy customers. It does not directly address other objectives, such as environmental considerations.

Under the NERL, small energy customers are supported by a range of customer protections, which include:[9]

- guaranteed access to an offer of supply for electricity and gas by energy retailers under a direct contractual relationship
- an obligation on distributors to provide customer services such as new connections, connection alterations and ongoing supply services under a direct contractual relationship
- requirements relating to information about and marketing of energy contracts, with the AER to operate an independent price comparator service to enable customers to compare market offers across all retailers
- requirements relating to customer consent, including that customers must give explicit informed consent to enter into a market retail contract
- requirement on retailers and distributors to have, and inform customers of, complaints procedures
- information requirements for planned and unplanned interruptions
- requirements relating to customers with life support equipment
- a customer hardship regime, requiring retailers to develop customer hardship policies that must be approved by the AER, with certain prescribed elements such as flexible payment options, to assist residential customers experiencing longer term payment difficulties

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[7] Small energy customers are defined in South Australia as those South Australian customers with an annual electricity consumption of less than 160 megawatt hours or annual natural gas consumption of less than one terajoule.
[8] National Energy Retail Law (South Australia) Act 2011, section 13.
[9] The information in this section draws in part on the publication Energy Market Reform Working Group, *New Products and Services in the Electricity Market, Consultation on Regulatory Implications,* Consultation Paper, December 2014, p.7, available at https://scer.govspace.gov.au/files/2015/02/Consultation-Paper-new-products-services.pdf .

- limitations on disconnection, including the processes that must be followed, restrictions on when disconnections can occur, additional protections for customers experiencing hardship or financial difficulties, and a prohibition on disconnecting premises where life support equipment is required
- retailer of last resort arrangements, so that a customer can receive an electricity supply from another retailer should the current retailer be unable to continue providing the service (for example if it goes out of business).

The NERL aims to streamline regulatory requirements, increase efficiency through developing a consistent set of rules to apply to business operations across multiple jurisdictions and achieve best practice consumer protection. Electricity and gas retailers seek a single national authorisation from the AER, which when granted allows the retailer to operate in any state or territory in which the NERL operates. Distributors continue to be licensed by state and territory regulators, such as the Commission.

The NERL contains no price setting powers. The South Australian Government deregulated energy retail prices on 1 February 2013, coinciding with the introduction of the NERL in South Australia.

The NERL has been implemented across states and territories at different times:[10]

- Tasmania and the ACT commenced 1 July 2012
- South Australia commenced 1 February 2013
- New South Wales commenced 1 July 2013, and
- Queensland commenced 1 July 2015.

The focus of the NERL is on residential and small business customers, as it was designed on the premise that large customers (those with annual consumption in excess of the small business definition) are in a significant bargaining position in a competitive market and able to negotiate on the basis of (unregulated) terms and conditions.[11]

Nevertheless, large customers receive some protection under the NERL in relation to connection contracts (deemed standard connection contracts apply for all customers and any AER approved deemed contracts relating to classes of large customers) and retailer of last resort (large customers to be supplied on terms and conditions that must be published by registered retailers of last resort). However, unlike the case for residential and small business energy customers, there is no obligation on retailers to offer supply to large customers.[12]

While there are fundamental differences in the architecture between the NERL and the prior state-based scheme, such as retailers being authorised rather than licensed to operate, in relation to customer protections this NERL review concentrates on those changes that directly impact customers.

[10] The NERL has yet to commence in Victoria. The COAG Energy Council has an ongoing commitment to seeking advice from the Victorian and Northern Territory Governments as to the NERL implementation timelines [COAG Energy Council, *Reform Agenda Implementation Plan-Progress Report*, 23 July 2015, available at https://scer.govspace.gov.au/files/2015/07/Council-Implementation-Plan-July-20151.pdf].
[11] South Australian Parliament, House of Assembly, National Energy Retail Law (South Australia) Bill, Second Reading speech (NERL Second Reading speech), Hansard 27 October 2010, p. 1748.
[12] NERL Second Reading Speech, pp. 1749, 1751 and 1755. There is also the negotiated connection contracts for large customers. Note that a customer connection contract means a contract between a distributor and a customer of the kind referred to in section 67 of the NERL.

2.3 What has changed for customers?

For South Australian energy customers there has been minimal difference in the form of the energy customer framework, pre-NERL regime compared with the NERL regime.[13] The essential elements of the pre-NERL regime were adopted in the NERL.

Individual customers with concerns that cannot be resolved by their energy retailer are encouraged to seek the assistance of the Energy and Water Ombudsman SA. There was no change in this service, with the Energy and Water Ombudsman SA operating on the same basis in the NERL regime as in the pre - NERL regime.

This section outlines those differences considered material between the regimes, including differences outlined in submissions.

2.3.1 Adoption of a formal customer hardship policy

While the pre-NERL regime contained the elements of a hardship policy, the NERL has introduced a formal and specifically defined hardship policy.

The elements of the pre-NERL regime customer protection framework are outlined in Box 1. In summary, that framework required retailers to be able to identify customers experiencing hardship and to actively work with those customers, offering flexible payment arrangements and other forms of assistance, with disconnection a last resort.

The requirements outlined in Box 1 concentrate on those required under the then operating Energy Retail Code. Under the NERL specific requirements are imposed on retailers through the National Energy Retail Rules. Whereas, as outlined above, under the state-based regime requirements were imposed by a range of instruments including the retailer's licence, which in turn required adherence to applicable industry codes developed by the Commission. Under the NERL a retailer's authorisation does not impose any such on-going or operational conditions.

The NERL includes obligations similar to those that operated under the Energy Retail Code, but extends to a more specific requirement obliging energy retailers to offer hardship programs to customers experiencing financial difficulty, with hardship policies approved by the AER. The key requirements of the NERL regime hardship framework are outlined in Box 2.

2.3.2 Reduced retailer bill recovery time limit

The harmonisation process involved in the development of the NERL led to changes in the time limits for retailers to undertake a range of actions, which in most cases are not material for the purposes of this NERL review.

However, during the consultation on the NERL review Issues Paper one such change singled out for comment was the period for which a retailer could recover an amount undercharged to customers (due to the retailer's error or omission). The NERL regime limits recovery to the amount undercharged in the nine months immediately prior to the date on which the customer is notified of the undercharging; under the pre-NERL regime the relevant period was 12 months.[14] This represents a change in favour of customers.

[13] As stated on the NERL section of the COAG Energy Council website (viewed 16 October 2015), *"Most residential and small business customers will probably not see much difference in how their electricity and gas is supplied or in their relationship with their retailer"*, available at http://www.scer.gov.au/workstreams/energy-market-reform/national-energy-customer-framework/.

[14] National Energy Retail Rules, rule 30(2)(a) [NERL] and previously the Commission's *Energy Retail Code*, clause 6.5.2(a) [pre-NERL regime], available at http://www.escosa.sa.gov.au/library/101102-EnergyRetailCode-ERC03.pdf .

Box 1: Pre-NERL regime hardship requirements

While, before commencement of the National Energy Retail Law in South Australia, the Commission did not prescribe the form of a retailer's hardship policy, or formally approve a retailer's hardship policy; the customer protections contained in the Commission's Energy Retail Code provided key elements of a hardship policy.

A number of steps were required to be taken by retailers before a customer unable to pay their bill could be disconnected, including offering instalment payment plans, with disconnection a last resort.

If a residential customer requested an instalment payment plan, a retailer was required to take into account the customer's usage needs and capacity to pay in establishing the payment amounts. Once a payment plan was established, a retailer was required to monitor the customer's compliance with the instalment payment plan to identify if the customer might require further assistance with paying energy bills. This assistance could come in various forms, such as:

- information about, and referral to, State Government assistance programs (such as the Residential Energy Efficiency Scheme, the Energy Concession and the Emergency Electricity Payment Scheme)
- assessment of eligibility for participation in the retailer's hardship program.

However, if the customer had two or more previous instalment payment plans cancelled within the last 12 months due to non-payment, retailers were not required to offer the customer another instalment payment plan unless they were satisfied that the customer would comply with the new arrangements.

In addition to encouraging households experiencing financial stress to contact their retailer directly, the Commission required retailers to have in place credit management systems and processes sufficient to allow them to identify customers that may be experiencing payment difficulties (for example, missed payments in a payment plan; large debt accruing; infrequent; short or irregular payments; or defaulting on direct debit arrangements).

The relationship between retailers and financial counsellors was also extremely important. Financial counsellors play an important role in identifying and referring households experiencing broader financial stress to retailers' financial assistance (or hardship) programs. Similarly, through their direct interactions with customers demonstrating financial hardship, retailers could refer customers to financial counsellors to allow them to seek further assistance in managing their financial situation more broadly.

Retailers had considerable flexibility in developing their hardship programs to best meet the needs of their customers. However, hardship policies generally had the following basic elements in common:

- a specialised team within the retailer to support participating customers
- a clearly defined entry and exit point for the program
- protection from credit collection action and disconnection
- flexible payment arrangements that had regard to the customer's usage, capacity to pay and current financial situation
- provision of additional support to customers through referral to third party support agencies, applicable Commonwealth and State Government concessions and access to energy efficiency advice.

It was recognised that the financial circumstances of hardship customers would likely vary greatly. While the financial stress affecting a residential customer's ability to pay energy bills can be as a result of a temporary (although unexpected) change in financial circumstances, the financial situation for some customers means they may be unable to pay for their energy usage on an ongoing basis. Some hardship customers will be able to afford their ongoing energy usage, but may have difficulty addressing debt that has accrued for past usage. Other hardship customers may need specific sustained solutions to manage their energy bills on an ongoing basis, including the need to reduce their consumption to a point that meets their capacity to pay.

While the onus was placed on retailers to work with customers to identify potential energy savings—and in some circumstances provide free or subsidised energy efficient appliances—in other circumstances, it was recognised that the management of a customer's future energy usage could be difficult as it may ultimately require ongoing behavioural change from customers.

Box 2: NERL regime hardship policy[15]

The purpose of a retailer's customer hardship policy is defined in the National Energy Retail Law: to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.[16]

The NERL sets out the minimum requirements for an energy retailer's customer hardship policy and requires energy retailers to offer assistance to customers experiencing financial difficulty.[17] The assistance provided by the hardship program developed for a customer should be tailored to the circumstances of each customer. Under the NERL, all retailers must have their hardship policy approved by the Australian Energy Regulator (AER) before they can sell energy to residential customers.

A retailer's customer hardship policy must include:[18]

- processes to identify customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by the customer
- processes for early response where residential customers are identified as experiencing payment difficulties due to hardship
- flexible payment options including payment plans and Centrepay
- assistance in identifying government concessions and rebates
- an outline of programs that the retailer may use to assist hardship customers
- processes to review the appropriateness of a hardship customer's market retail contract against the retailer's hardship policy[19]
- energy efficiency advice[20]
- any variations specified by the AER and any other matters specified by the National Energy Retail Rules.

The NERL regime requires the AER, when considering whether to approve a retailer's customer hardship policy (or variation), to have regard to the following principles, that:

- the supply of energy is an essential service for residential customers
- retailers should assist hardship customers by means of programs and strategies to avoid disconnection solely due to an inability to pay energy bills
- disconnection of premises of a hardship customer due to inability to pay energy bills should be a last resort option
- residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.

The National Energy Retail Rules require that a payment plan for a hardship customer must have regard to capacity to pay, any amounts owed, and the customer's expected energy consumption over the following 12 months.[21]

Retailers are required to publish their customer hardship policies on their websites. The AER also maintains copies of energy retailer customer hardship policies on the AER website (http://www.aer.gov.au/node/14710).

[15] The material for this information box is sourced from a number of AER publications, including *Annual Report on the Performance of the Retail Energy Market 2013- 14,* 2014, available at https://www.aer.gov.au/retail-markets/performance-reporting/aer-annual-report-on-the-performance-of-the-retail-energy-market-2013-14; AER hardship policy website tab (http://www.aer.gov.au/retail-markets/energy-retailers-customer-hardship-policies); and Australian Energy Regulator, *Review of Energy Retailers' Customer Hardship Policies and Practices*, January 2015, available at https://www.aer.gov.au/node/30060.

[16] NERL, section 43.

[17] NERL, section 43.

[18] NERL, section 44.

[19] NERL, section 48.

[20] Where such processes or programs are requested by a local (state) instrument.

[21] National Energy Retail Rules, rule 72(1)(a).

2.3.3 Extensive performance reporting requirements

A significantly larger number of retailer performance indicators, with greater levels of detail, is being collected by the AER under the NERL than was collected by the Commission under the pre-NERL regime. Consumer groups have made the point that the additional reporting of hardship indicators has been important in gaining a greater understanding of the nature of the hardship in the retail energy sector.[22] The extent of the difference in retailer reporting requirements is shown in Table 2.1.

Table 2.1 Retailer Operational Performance Information - before and after NERL Comparison

Indicator	Pre-NERL Regime[23]	NERL Regime[24]
Customer service		
Time to respond to telephone calls	Yes	Yes
Time to respond to written enquiries	Yes	Yes
Number of complaints by categories	Yes	Yes
Market		
Number of customers on standing/standard contracts	Yes	Yes
Number of customers on market contracts	Yes(1)	Yes
Number of customers on default contracts	Yes	No
Value of energy sales & revenue from sales	Yes	No
Hardship		
Number of hardship program customers	Yes	Yes
Number of customers denied access to hardship program	No	Yes
Number of small customers repaying energy bill debt	No	Yes
Average amount of energy bill debt	No	Yes
Profile of residential customer energy bill debt	No	Yes
Number of customers entering hardship program	Yes(2)	Yes
Average debt on entry into hardship program	No	Yes
Profile of debt of customers entering hardship program	No	Yes
Payment methods of hardship customers	No	Yes
Average debt of hardship program customers	No	Yes
Number of customers successfully managing their payment plans	Yes(2)	No
Number of customers exiting the hardship program	Yes(2)	Yes
Reasons for exiting the hardship program	No	Yes
Number of disconnections of previous hardship program customers	No	Yes
Reconnection of previous hardship program customers	No	Yes
Assistance provided to hardship program customers	Yes(2)	Yes
Case Studies (optional)	No	Yes
Number of residential customers using Centrepay	No	Yes
Number of energy concession customers	Yes	Yes
Number of hardship customers receiving energy concessions	No	Yes
Number of instalment/payment plans	Yes	Yes(3)

[22] Adelaide Public Forum, 1 May 2015.
[23] Essential Services Commission of South Australia, *Energy Retailer Operational Performance Information, Energy Industry Guideline No.2*, EG2/03, July 20004 (as last varied on 1 July 2010), available at http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2_03.pdf.
[24] Australian Energy Regulator, *AER (Retail Law) Performance Reporting Procedures and Guidelines*, July 2011, available at https://www.aer.gov.au/system/files/AER%20(Retail%20Law)%20Performance%20Reporting%20Procedures%20and%20Guidelines%20(July%202011).pdf .

Indicator	Pre-NERL Regime[23]	NERL Regime[24]
Number of residential customers who had their payment plans cancelled for non-payment	No	Yes
Number of residential customers with two or more payment plans cancelled for non-payment	No	Yes
Number of residential customers who successfully completed their payment plan	No	Yes
Number of direct debit customers	Yes	No
Number of direct debit plan terminations due to default	Yes	No
Number and value of security deposits held	Yes	Yes
Number of customers disconnected due to failure to pay amount due	Yes	Yes
Number of residential customers disconnected who were: on a hardship program; received an energy concession; who had been on a payment plan in the previous 12 months; who had been disconnected on more than one occasion in the previous 12 months	No	Yes
Number of reconnections at same premises in same name within 7 days	Yes	Yes
Number of residential customers disconnected who were: on a hardship program; received an energy concession; who had been on a payment plan in the previous 12 months	No	Yes
Number of reconnections at same premises in same name	Yes	Yes
Prepayment Meters (PPM)		
Number of customers with prepayment meters (PPM)	Yes	Yes
Value of PPM energy sales & revenue from sales	Yes	No
Number of PPM self-disconnections –3 or more times in 3 month period	Yes	No
Number of PPM self-disconnection events	No	Yes
Number of PPM customers self-disconnected	No	Yes
Number of PPM self-disconnections –for longer than 240 minutes	Yes	No
Average duration of self-disconnection events	No	Yes
Number of PPM meter removals –meters removed or rendered non-operational during trial period	Yes	No
Number of PPM meter removals –meters removed where customer is facing payment difficulties	Yes	Yes
Number of PPM meter removals –meters removed for other reasons	Yes	No
Number of PPM customers that receive an energy concession	Yes	Yes
Other		
Number and value of embedded electricity generation	Yes	No

Notes:

(1) Derived.

(2) From 2010-11 the Commission introduced an annual hardship program reporting requirement for energy retailers, consisting of: a narrative report of the mode of operation of their existing hardship programs in meeting the requirements of the customer protection measures provided by the Commission's Energy Retail Code; and the provision of a small number of hardship indicators showing annual outcomes, that the Commission considered retailers would already be collecting. The indicators covered: the number of customers that entered the hardship program during the financial year by retailer identification; the number of customers that entered the hardship program during the financial year by customer self-identification; the number of hardship customers successfully exiting hardship programs; and the number of hardship program customers successfully managing their payment plans.

(3) Residential only.

2.3.4 Adoption of direct gas distributor – customer relationship

Retailers are responsible for the sale of energy, and distributors for the physical delivery of energy, to customers. Contracts between retailers, distributors and customers govern the relationship between the parties for the sale and supply of energy services to customers.

The NERL introduced a tripartite contractual relationship for both electricity and gas customers. That regime provides for a contractual relationship (deemed contracts) between distributors and customers in relation to connection and supply (in addition to the contractual relationship customers have with retailers).

This is consistent with the triangular contractual relationship[25] that existed in the pre-NERL regime for SA Power Networks (electricity distributor). However, it represented a change for Australian Gas Networks (gas distributor) from the pre-NERL regime linear contractual relationship, where customers received energy delivered on behalf of retailers and did not have a contractual relationship with their distributor.

The change is intended to favour residential and small business customers, with the expectation that a direct contractual relationship will give incentives to the distributor to pay greater attention to meeting end user requirements.

2.3.5 Removal of requirement to disclose greenhouse gas emissions on electricity bills

As raised by the Conservation Council SA in its submission:[26]

> *The former SA Electricity Regulations (General) section 7ABB and Electricity Act section 24 (da) (iv) required disclosure of greenhouse gas emissions on electricity bills.*
>
> *The regulations required that "the amounts of the greenhouse gas emissions referred to in paragraphs (a) (iv) and (a) (v) must be calculated, in a manner approved by the Commission, by reference to material about emissions coefficients published by the Australian Greenhouse Office of the Department of the Environment and Heritage of the Australian Government".*

This requirement was not carried over to the NERL regime, either in the legislation itself or via a South Australian specific derogation or modification. Conservation Council SA advised that it is concerned that, even if some retailers continue to provide such information on bills, there is now no requirement on retailers to calculate the emissions in accordance with a defined method. This matter is discussed in more detail in Chapter 4.

2.3.6 Derogations

Derogations or modification to the NERL serve to further reduce the extent of difference between the two customer protection schemes (pre-NERL and NERL regimes). The legislative instruments establishing the NERL in South Australia have retained certain pre-NERL regime requirements which continue to bind energy retailers, commonly referred to as modifications or derogations. Refer Chapter 4 for further discussion, in particular Table 4.5 which lists South Australian-specific derogations.

[25] Triangular in the sense that there is: a contract between the distributor and the customer pursuant to which the distributor provides distribution services to the customer; a contract between the retailer and the customer pursuant to which the retailer sells energy to the customer; and an agreement between the distributor and the retailer to coordinate the provision of services to the customer and to allow the customer to make payment to a single service provider.

[26] Conservation Council SA submission to NERL Review Methodology (Essential Services Commission of South Australia, *NERL Review Methodology – Final Decision*), p.3, available at http://www.escosa.sa.gov.au/library/140211-NERLReviewIssuesPaperSubmission-ConservationCouncil.pdf.

3 Customer protection

Draft finding

The Commission's draft finding is that South Australian energy customers have benefited from the adoption of the National Energy Retail Law and that its implementation in South Australia has not adversely affected customer protection in pursuit of national consistency.

Key points

- Hardship customer protections are better defined under the NERL, leading to greater access and better data, but not necessarily better outcomes for the most disadvantaged.
- External economic factors are an important influence on the number of hardship customers existing at any one time and so trends in hardship numbers must be considered within the relevant economic context.
- The level of complaints continues to grow, but retailers appear to be dealing with customer concerns better, with a lower proportion of complaints being directed to the Energy and Water Ombudsman SA.
- 60 per cent of energy retailers achieved the telephone responsiveness standards in 2013-14, with this NERL performance equal to any achieved under the pre-NERL regime.

3.1 Introduction

The NERL review Terms of Reference addressed in this chapter is:

> *The review must focus on the impact of the National Energy Retail Law on consumers of energy and whether implementation of the Law has –*
>
> ...
>
> *(b) adversely affected customer protection in pursuit of national consistency ...*

This chapter:

- compares the performance of the NERL regime with the pre-NERL regime in terms of providing energy customer protections, based on available evidence
- presents the results of analysis which seeks to identify the importance of external factors in explaining any given level of energy disconnections and hardship customer numbers
- presents the results of the General Customer Question survey undertaken as part of the NERL review Issues Paper consultation
- outlines the results of an AER review of the operation of NERL hardship policies.

3.2 Overall consideration of the NERL

As outlined in the Second Reading speech for the NERL Bill, a properly functioning customer protection framework is important for a community that seeks to ensure that its disadvantaged members maintain access to essential services such as electricity and gas.[27] The NERL is premised on supply only being denied in specific circumstances and then only after mandated procedures have been followed.[28]

There is also an expected efficiency dividend from the NERL's customer protection framework. As outlined in the Second Reading speech for the NERL Bill, robust customer protections should encourage customers to participate in a competitive market.[29] Customers that have confidence in the customer protection framework should have more confidence to seek best priced offers from alternative retailers, on the understanding that all retailers will be obliged to provide a set minimum level of customer protection. The Second Reading speech also suggests that a national approach to customer hardship should reduce costs for those retailers operating across state boundaries.[30]

A key challenge for the NERL review is to identify the impact of the NERL on customers from the myriad of other changes that have occurred over the last two and a half years. As SACOSS noted in its submission, NERL implementation coincided with the deregulation of energy retail prices, softening average demand for energy and Australian Competition and Consumer Commission legal actions against energy retailers in relation to the marketing of energy products and services.[31]

3.2.1 Submissions

The evidence provided through submissions was that the NERL has not diminished customer protections and that there is no indication of customer dissatisfaction with the NERL regime.[32] Notably, Consumers SA suggested that the NERL has not been in operation long enough to judge whether it has been better or worse for customers, compared with the previous state-based scheme.[33]

SACOSS suggested that it is not aware of any evidence of systemic worsening of customer service levels that can be attributed to the implementation of the NERL, nor of any evidence that groups of customers are being impacted differently.[34]

One consumer group with a rural constituency noted that the level of service can be routinely poorer in regional areas.[35] The Commission recognises the importance of examining the impact of the NERL on all South Australians, but did not receive evidence that the NERL had resulted in a deterioration in the level of customer protection received for regional customers.

[27] NERL Second Reading Speech, p.1749.

[28] Council of Australian Governments (COAG) Energy Council, *New Products and Services in the Electricity Market*, Energy Working Group, Final Report, July 2015, p.11, available at https://scer.govspace.gov.au/files/2015/08/New-Products-and-Services-Policy-Advice-FINALAugust-2015.pdf.

[29] NERL Second Reading Speech, p.1746.

[30] NERL Second Reading Speech, p.1749.

[31] SACOSS, submission to *Review of NECF in South Australia*, Issues Paper, May 2015, p.5, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-SACOSS.pdf .

[32] Origin Energy, submission to *Review of the Operation of the National Energy Customer Framework in South Australia*, Issues Paper, May 2015, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-OriginEnergy.pdf. Energy Retailers Association of Australia, submission to *Review of the Operation of the National Energy Customer Framework in South Australia*, Issues Paper, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-ERAA.pdf. SACOSS, submission to Issues Paper, p.3.

[33] Consumers SA, submission to Issues Paper, p.1.

[34] SACOSS, submission to Issues Paper, p.3.

[35] Adelaide Public Forum (consumer group).

While some submissions noted customer concern with rising energy prices, as stated in Chapter 2, the NERL contains no price setting powers and concerns over the level of prices from time to time is not a matter for the NERL review.[36]

3.2.2 Discussion

The overall sense the Commission has from the consultation it has undertaken is that the NERL regime is no worse for South Australian customers than was the pre-NERL regime and that there have been some clear improvements, such as a better defined hardship framework.

This is not a surprising outcome, given the minimal overall changes in the consumer protection framework between the pre-NERL regime and the NERL regime (as described in Chapter 2). To the extent that there are differences in outcomes over time, as discussed below those difference are largely explained by external factors, such as changes in economic conditions.

While the NERL review focusses on comparing the NERL regime with the pre-NERL regime (and not the extent to which the NERL may or may not be adequately dealing with any emerging issues), it is notable that the NERL framework has the ability to adapt to emerging issues, through its rule change procedures. This should enable any future issues to be accommodated through a change in the operation of the framework. Major structural changes, if required, would be possible through amendments to the NERL.

3.3 Hardship

Dealing effectively and sensitively with energy hardship issues is a critical component of an energy regulatory regime (as outlined earlier); however, hardship indicators can be difficult to interpret unambiguously. The NERL sets minimum requirements for dealing with hardship. It does not limit the assistance retailers can provide to hardship customers.[37]

The term "hardship" is often used in connection with those customers facing difficulty in paying utility bills but is not always clearly defined. The NERL contains a specific definition:[38]

> *hardship customer means a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy.*

As outlined in more detail in Chapter 2, the NERL hardship framework requires retailers to develop and maintain a customer hardship policy. The purpose of this policy is to identify those residential customers facing payment difficulties due to hardship and assist them to better manage their energy bills on an ongoing basis.[39] Retailers are required to have programs and strategies to avoid disconnection of a hardship customer solely due to inability to pay.

[36] Consumers SA, submission to *Review of the Operation of the National Energy Customer Framework in South Australia*, Issues Paper, May 2015, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-ConsumersSA.pdf .

[37] Australian Energy Regulator, Guidance on AER Approval of Customer Hardship Policies, p.5.

[38] NERL, section 2.

[39] NERL Second Reading Speech, p.1749.

3.3.1 Submissions

While the NERL hardship framework is a refinement and consolidation of previous state-based energy customer protections (as discussed in Chapter 2), evidence gained through consultation supports the view that the NERL framework has promoted greater recognition of the availability of protection measures, and has resulted in improved visibility, better access and a higher degree of assistance being rendered to customers in financial stress.[40]

Retailers and consumer groups also noted that, under the NERL, the AER is collecting a greater number and range of hardship indicators, the analysis of which was providing better insight into the nature of the hardship issue.[41] Nevertheless, as noted by the Energy and Water Ombudsman SA in his 2014 Annual Report, while retailer hardship policies are continuing to develop and become more effective there remain many occasions where disconnection places the customer in a very difficult situation.[42]

SACOSS submitted that it supports the view that the NERL has not introduced any new weaknesses to customer protection. SACOSS stated that it understands there is a group of customers that have accrued debt but do not have capacity to pay for their ongoing consumption.[43] Further, it suggests in such instances, without some other form of intervention or assistance, the NERL will only serve to codify the path to disconnection.[44]

SACOSS produced a report in 2014 on disconnection experience following the first year of the NERL operating in South Australia.[45] The report shows that:

- the cost of basic necessities like electricity impacts greatly and disproportionately on vulnerable and disadvantaged people
- having the power cut off because of an inability to pay energy bills is the worst possible outcome for a vulnerable energy customer
- there is significant diversity in the disconnection performance of retailers
- comparing the disconnection rates of South Australia's five main retailers against their performance in the Victorian market shows that each retailer tends to perform the same in both South Australia and Victoria
- overall, disconnection rates are a function of the individual approach taken by each energy retailer.

A number of submissions supported the proposition that external factors are highly relevant when considering the NERL regime's effectiveness. AGL suggested that difficulties in making payments are most often not related to the customer protection framework, but to other factors such as increases in bills. AGL also suggested there would be merit in monitoring the impacts of economic shocks, such as major factory closures, to provide further insight into any movements in the number of hardship customers and disconnections.

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[40] Consumers SA, submission to Issues Paper, p.2. Adelaide Public Forum (financial counsellor). AGL, submission to *Review of the NECF in South Australia*, Issues Paper, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfTHE NERLinSAIssuesPaperSubmission-AGL.pdf.

[41] EnergyAustralia, submission to *Review of the Operation of the National Energy Customer Framework in South Australia*, Issues Paper, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-EnergyAustralia.pdf. ERAA, submission to Issues Paper, p.1. AGL, submission to Issues Paper, p.1. Adelaide Public Forum and Retailer Forum.

[42] Energy and Water Ombudsman SA, 2014 Annual Report, p.11, available at http://www.ewosa.com.au/images/ewosa/PDFs/EWOSA_AnnualReport_2013-2014.pdf.

[43] SACOSS, submission to Issues Paper, p.2.

[44] SACOSS, submission to Issues Paper, p.2.

[45] SACOSS, *Keeping the power on- April 2014 Update (incorporating South Australia's First Year in the National Energy Customer Framework)*, available at https://www.sacoss.org.au/sites/default/files/public/131126_Keeping%20the%20power%20on%20-%20a%20SACOSS%20response%20to%20electricity%20disconnections%20(edit%20April%202014).pdf.

3.3.2 AER hardship review

The AER released the results of its review of hardship policies and practices under the NERL regime in January 2015. The AER review was undertaken in response to some consumer stakeholders expressing concern over barriers that restrict access to hardship programs and retailers setting unaffordable payment plans. The review covered retailers with residential energy customers in New South Wales, the Australian Capital Territory, South Australia and Tasmania.

The AER's findings include:[46]

- some retailers seemed more committed than others to assist hardship customers:
  - risk that retailers allow debt to get too high before offering assistance
  - lack of additional measures to support hardship customers, effectively meaning that the hardship program is little more than a payment plan
  - concerns over the quality of some performance data, resulting in a number of performance reports needing to be resubmitted
- evidence that retailers with effective hardship policies and practices benefited by being able to maintain a positive and cooperative relationship with customers
- rather than widespread non-compliance, the AER considered that community concerns arose from the broader issues of energy affordability and energy literacy
- importance for retailers to show respect to customers facing hardship
- customers that do not engage with their retailer are most at risk of disconnection:
  - some customers wait too long before seeking assistance
- retailers acknowledged that they are increasingly managing customers who simply cannot afford to pay for their current consumption (let alone contribute to their arrears).

While these findings indicate the importance of external factors (for example, broader issues of energy affordability) and the commitment of individual retailers, none of these findings are considered to point to a concern with the NERL regime framework itself.

3.4 Analysis

The Commission has undertaken a number of separate pieces of analysis to inform its views in undertaking the NERL review. The three pieces of analysis most relevant to informing the level of assistance provided by the NERL regime to hardship customers are:

- trends in energy customer protection indicators for South Australia (section 3.4.1)
- econometric analysis of hardship and disconnection data (section 3.4.2)
- analysis of the results of the customer survey released with the NERL review Issues Paper (section 3.4.3).

The results reported demonstrate the importance of assessing movements in hardship indicators within an overall economic context. The analysis presented shows the importance of external economic factors in explaining the number of hardship customers and disconnections at any one point in time and highlights that it is those factors, not the nature or operations of the NERL regime itself, that

[46] Australian Energy Regulator, Review of Energy Retailers' Customer Hardship Policies and Practices.

give rise to hardship. It is important that, in explaining movements in hardship indicators, regard is had to prevailing economic conditions. For example, it might be expected that the number of hardship customers will increase during a period of increasing unemployment.

But the question is: how much of any change in hardship indicators can be attributed to external factors and how much to the customer protection framework and how the framework is operated?

Quarterly data has been employed in the analysis reported, in particular to improve the explanatory power of the models developed for the econometric analysis. Quarterly data up to first quarter of calendar year 2015 has been used. This enables analysis of trends in the core indicators pre and post- commencement of the NERL on a quarterly basis and hence provides granularity to trends in core indicators for the NERL regime data. The quarterly data used is available in Excel spreadsheet format from the Commission's website and accompanies the release of this paper.[47]

3.4.1 Trends in customer protection indicators

3.4.1.1 Data and methodology

The NERL review methodology identified a set of *customer protection indicators* to be used in assessing the performance of the framework, being:

- hardship program customers (residential customers only, separately for electricity and gas)
- disconnection for non-payment (residential and small business, separately for electricity & gas)
- reconnection in same name (residential and small business, separately for electricity and gas)
- instalment/payment plans (residential customers only, separately for electricity and gas)

The analysis has concentrated on analysing changes in the number of hardship program customers and disconnections. This is because the data for these indicators are the most robust of the above indicators, consistent data is available both pre-NERL regime and NERL regime, and because disconnections should always be a last resort option given the impact on the customer of losing access to supply.

Given the importance that some stakeholders placed on debt data during consultation, the analysis also shows movement in the following debt indicators published by the AER, which are only available for the NERL regime:

- number of energy customers with a debt in the NERL regime (residential and small business, separately for electricity and gas)
- average debt in the NERL regime (residential and small business, separately for electricity and gas).

Given that there is no equivalent pre-NERL regime data, the debt data of itself does not assist in answering the core NERL review question, being how the NERL regime is performing relative to its pre-NERL regime state-based counterpart.

The following graphical analysis is presented in terms of quarterly data for the pre-NERL regime and NERL regime for all retailers combined, using calendar year quarters (for example, 2015:Q1 represents the March quarter for 2015, covering 1 January to 31 March 2015).

[47] Available at http://www.escosa.sa.gov.au/projects/222/review-of-necf-in-south-australia.aspx

3.4.1.2 Customer protection indicators

Hardship indicators can be difficult to interpret unambiguously, particularly in isolation. Figures 3.1 and 3.2 provide graphs comparing the number of hardship program customers, disconnection for non- payment and instalment/payment plans separately for residential electricity and gas customers for all retailers combined pre-NERL regime and NERL regime.

Figure 3.1: Comparison of South Australian (residential) electricity customers on hardship program, instalment payment plans and disconnected due to non-payment: pre and post-NERL commencement

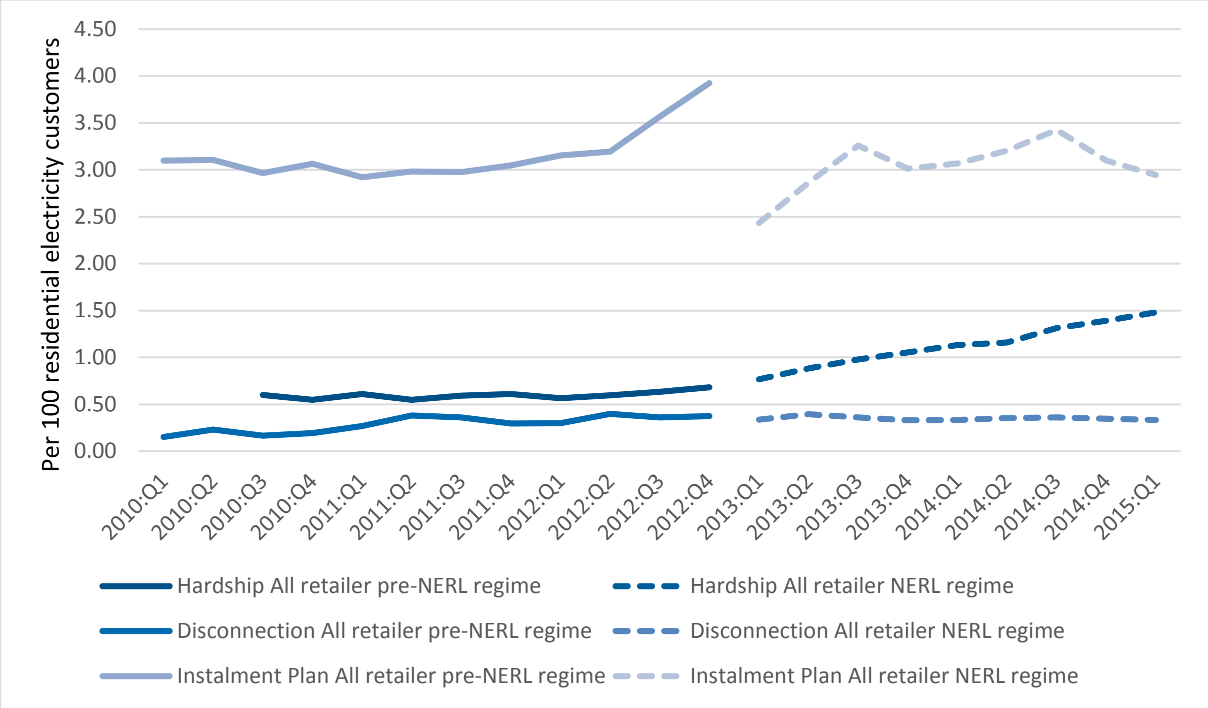

Figure 3.1 shows that the number of residential electricity customers (per 100 customers) on a hardship program has increased in the NERL regime (middle line-Figure 3.1). It was the view of many stakeholders during consultation that the establishment of a formal hardship program under the NERL has raised the profile of this set of customer protections, encouraging a growth in the number of customers entering such arrangements.[48] In support, the number of hardship customers has doubled since NERL commencement (electricity hardship customers increasing from 0.68 in 2012 quarter four per 100 customers to 1.48 in 2015 quarter one).[49] However, as shown in section 3.4.2, it is important to take account of the influence of external factors (for example, prevailing economic conditions).

The number of residential electricity customers on instalment payment plans (per 100 customers) has increased from the level immediately on commencement of the NERL (top line-Figure 3.1) – that is, from the 2.43 per 100 customers at 2013 quarter one (2013:Q1). This could be attributed to the fact that flexible payment options such as payment plans are a part of Hardship Program under the NERL regime. However, the clear disjoint in the instalment plan numbers pre and post commencement of the NERL would appear to largely result from a data issue for at least one (major) retailer, rather than necessarily reflecting an impact arising from the commencement of the NERL.[50]

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[48] Adelaide Public Forum, 1 May 2015.

[49] Refer the time series data, available at *<insert weblink when available>*.

[50] For example, the Commission reported residential electricity instalment plans for Origin Energy of 9.15 per 100 customers as at end December 2012. This compares with the AER published figure of 1.59 per 100 customers as at 30 June 2013.

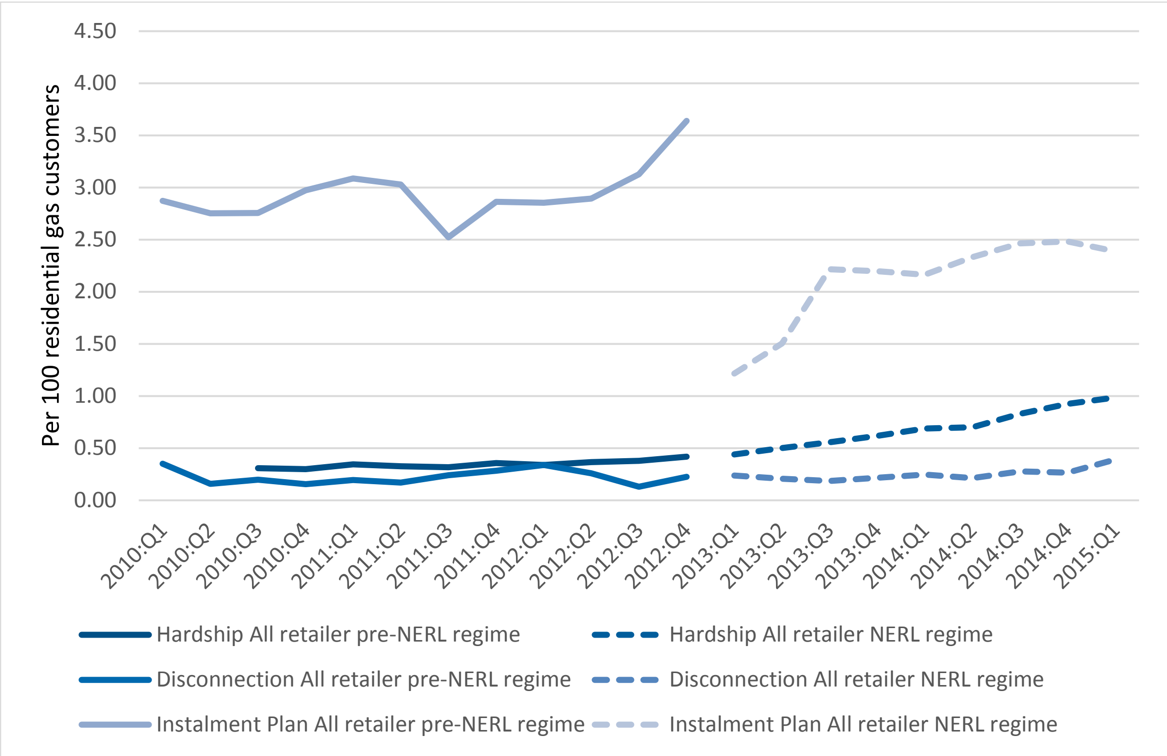
Accordingly, the Commission's attention, for the purposes of the NERL review, is focussed on trends in the number of hardship customers and disconnections.

The number of disconnections per hundred customers was increasing in the pre-NERL regime which would appear to have stabilised in the NERL regime (bottom line-Figure 3.1). So far, the increase in the number of customers in a hardship program has not translated into a decrease in the number of customers being disconnected following commencement of the NERL in South Australia. But once again the importance of external factors must be considered.

There may also be a timing issue with evidence that one or more retailers began re-engaging credit management practices in the period immediately following NERL commencement, following a period of inaction pending bedding down of new billing systems.[51] While the evidence is based on an increase in credit issue complaints, it would be expected that this in turn reflected some increased disconnection activity. Accordingly, the level of disconnection activity immediately following commencement of the NERL in South Australia may reflect some carryover of pre-NERL regime matters, suggesting some potential for the NERL regime disconnection numbers to be inflated. But this should only be to the extent that customers were not adhering to payment arrangements.

Similar trends in these three customer protection indicators are observed for residential gas customers, although there is some increase in gas disconnections towards the end of the data period (Figure 3.2).

Figure 3.2: Comparison of South Australian (residential) gas customers on hardship program, instalment payment plans and disconnected due to non-repayment: pre and post-NERL commencement



The number of disconnections for small business electricity customers (per 100 customers) shows a declining trend in the NERL regime (Figure 3.3). Whereas the number of disconnections for small business gas customers (per 100 customers) declines initially but shows significant increase in 2014:Q2 followed by further increases in 2014:Q4 and 2015:Q1 (Figure 3.4).

[51] Energy and Water Ombudsman SA as reported in Australian Energy Market Commission, *2015 Retail Competition Review*, June 2015, p.209, available at http://www.aemc.gov.au/getattachment/56a8c56f-0aeb-48cc-9097-9f2b5e645428/Final-Report.aspx.

Figure 3.3: South Australian small business electricity disconnections due to non-repayment: pre and post-NERL commencement

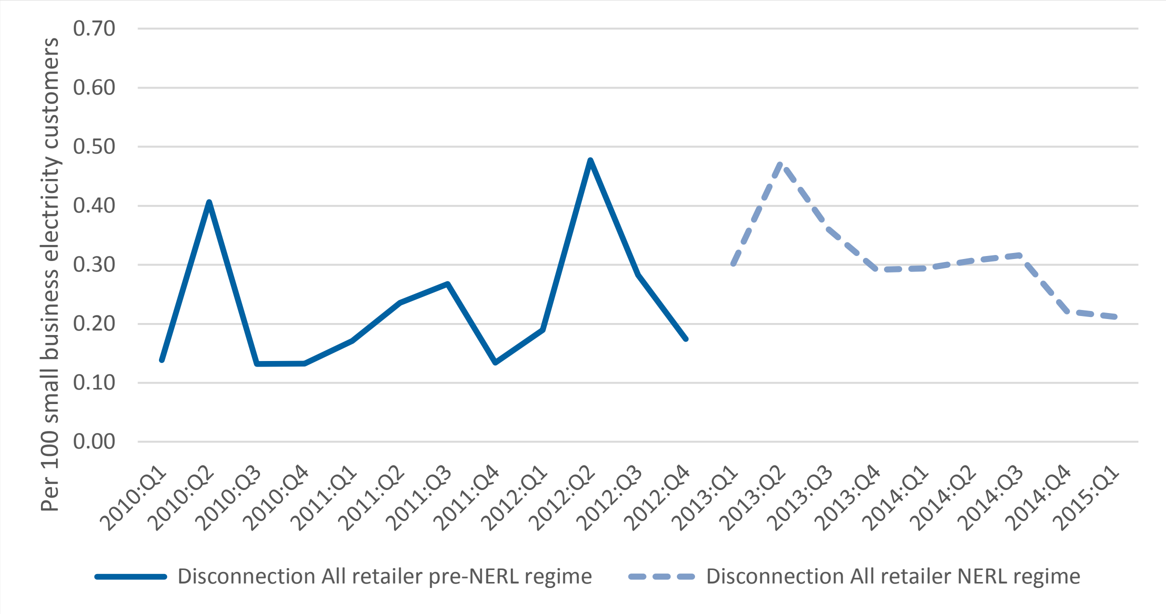
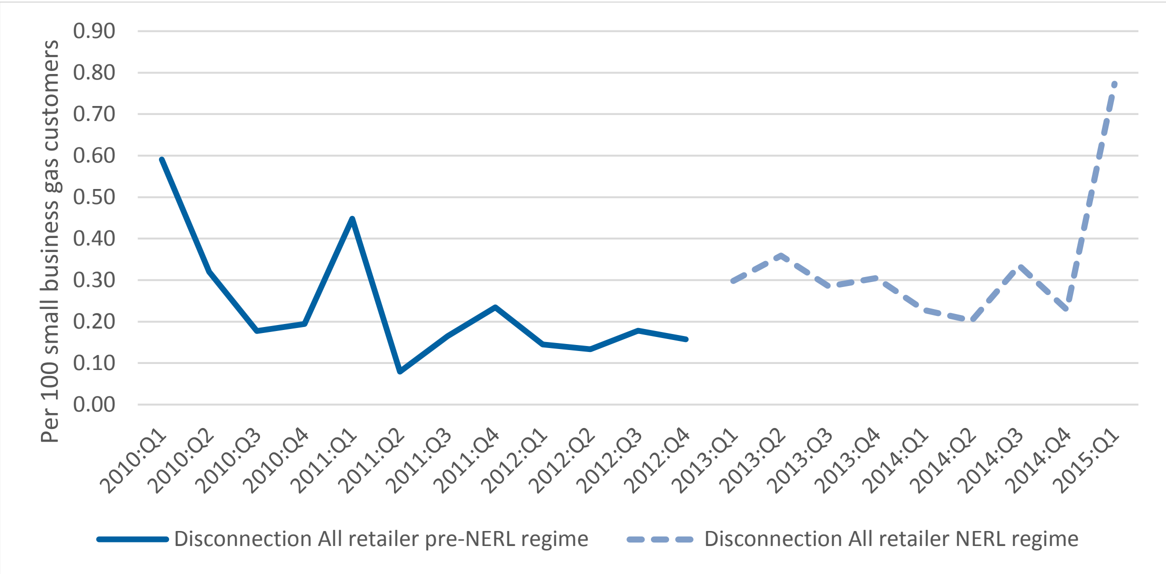


Figure 3.4: South Australian small business gas disconnections due to non-repayment: pre and post-NERL commencement



Figures 3.5 to 3.8 show the number of residential and small business customers with energy debt and average energy debt. As noted above, only NERL regime data is available for this debt data.

Figures 3.5 and 3.7 show a steady decline in the number of residential and small business electricity customers respectively with energy debt. Whereas, Figures 3.6 and 3.8 show that the number of residential and small business gas customers with energy debt declining initially but with variable performance over the following quarters.

Figures 3.5 to 3.8 show that average energy debt has increased over the period since NERL commencement.

Figure 3.5: South Australian residential electricity customers with energy debt and average debt

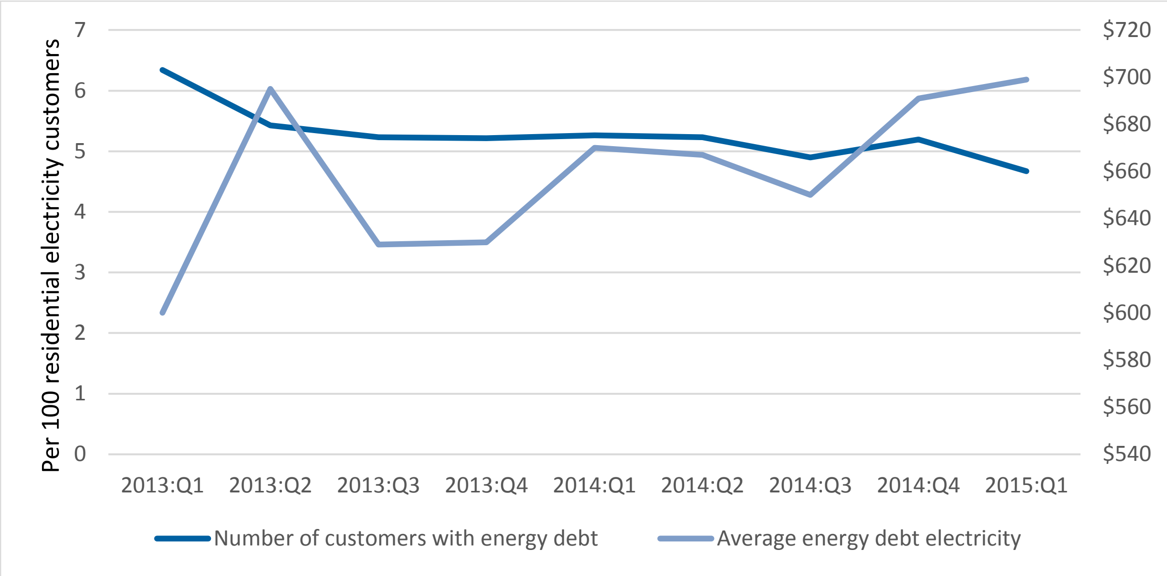


Figure 3.6: South Australian residential gas customers with energy debt and average debt

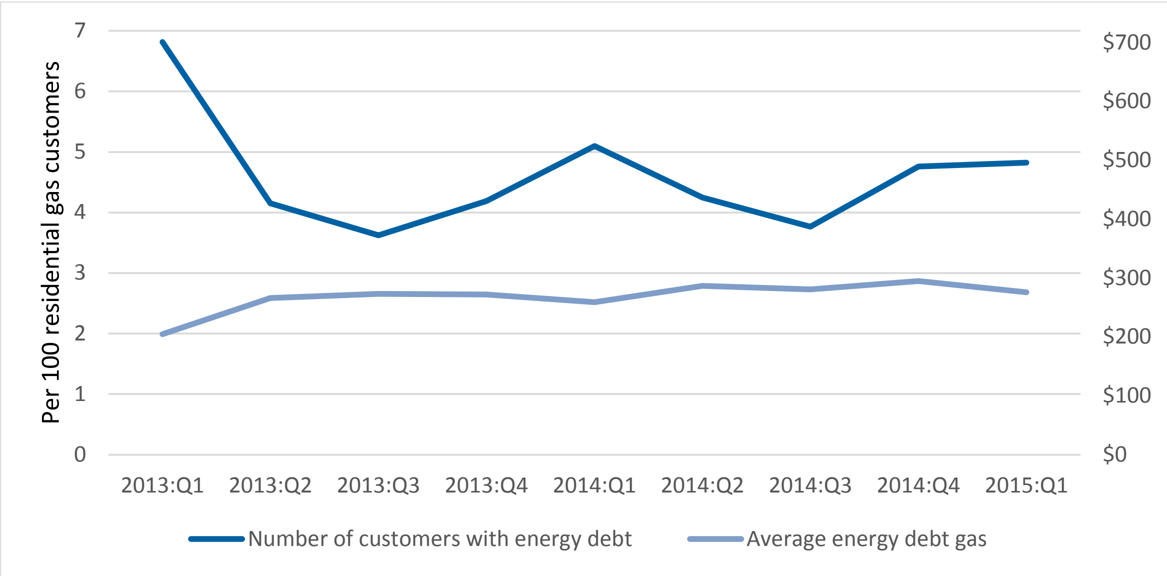


Figure 3.7: South Australian small business electricity customers with energy debt and average debt

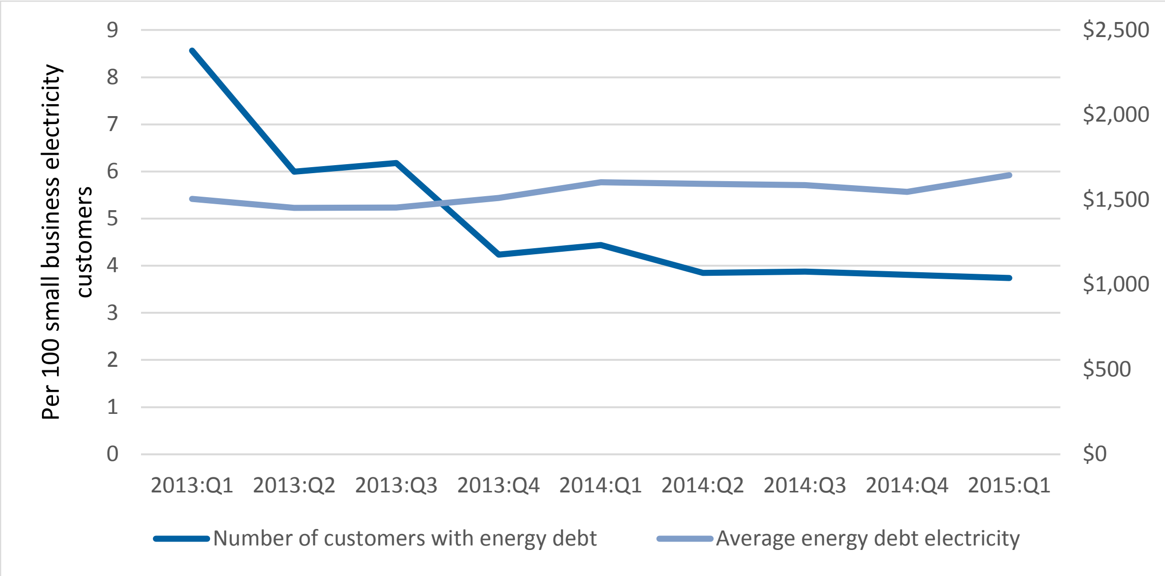
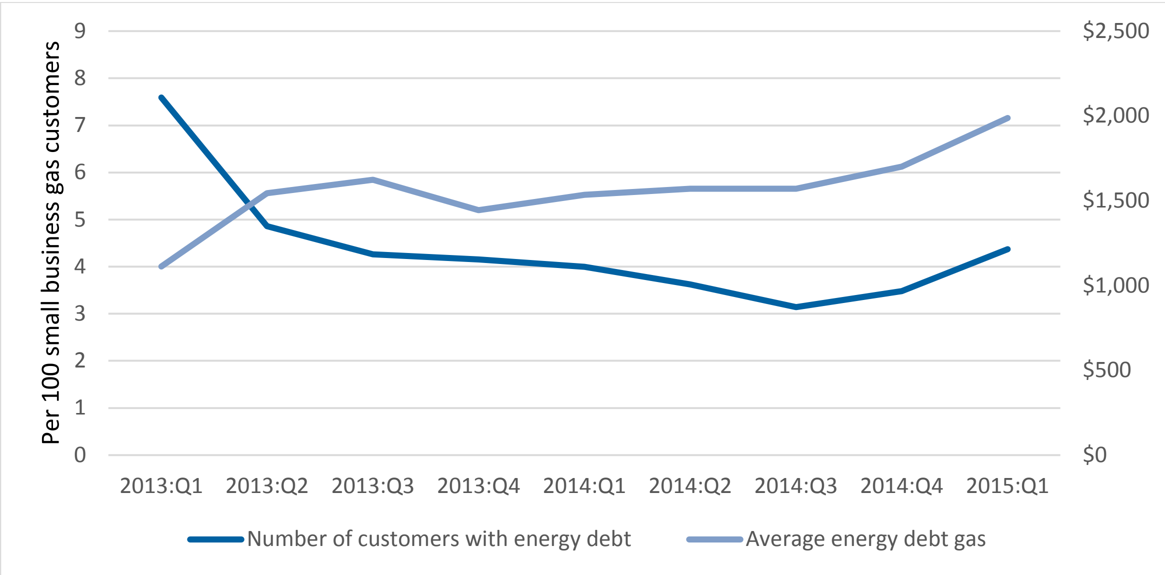


Figure 3.8: South Australian small business gas customers with energy debt and average debt

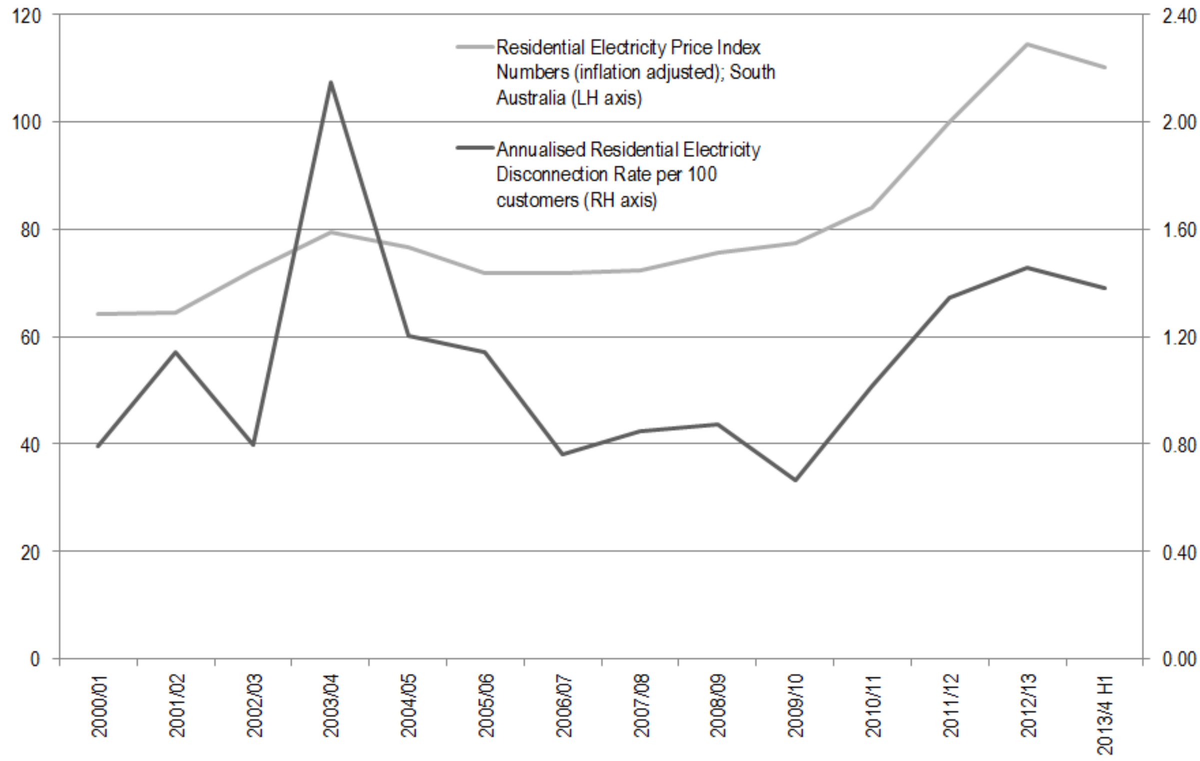


SACOSS, in its submission, provided the results of analysis it had commissioned, showing a relationship between electricity price movements and disconnection rates, reproduced in Figure 3.9 below.[52]

SACOSS submitted data showing that South Australia had the highest electricity disconnection rates in Australia at NERL commencement. While those data are of interest, the NERL review is focussed on identifying changes in indicators for South Australia following the commencement of the NERL in South Australia (in line with the review terms of reference). Also, the staggered implementation of the NERL across jurisdictions limits the usefulness of such comparisons for the purposes of this review.

[52] SACOSS, *Keeping the Power On- April 2014 Update (incorporating South Australia's First Year in the National Energy Customer Framework)*, p.4, April 2014, available at https://www.sacoss.org.au/sites/default/files/public/131126_Keeping%20the%20power%20on%20-%20a%20SACOSS%20response%20to%20electricity%20disconnections%20(edit%20April%202014).pdf .

Figure 3.9: Illustration of the correlation between electricity prices and disconnections (SACOSS)



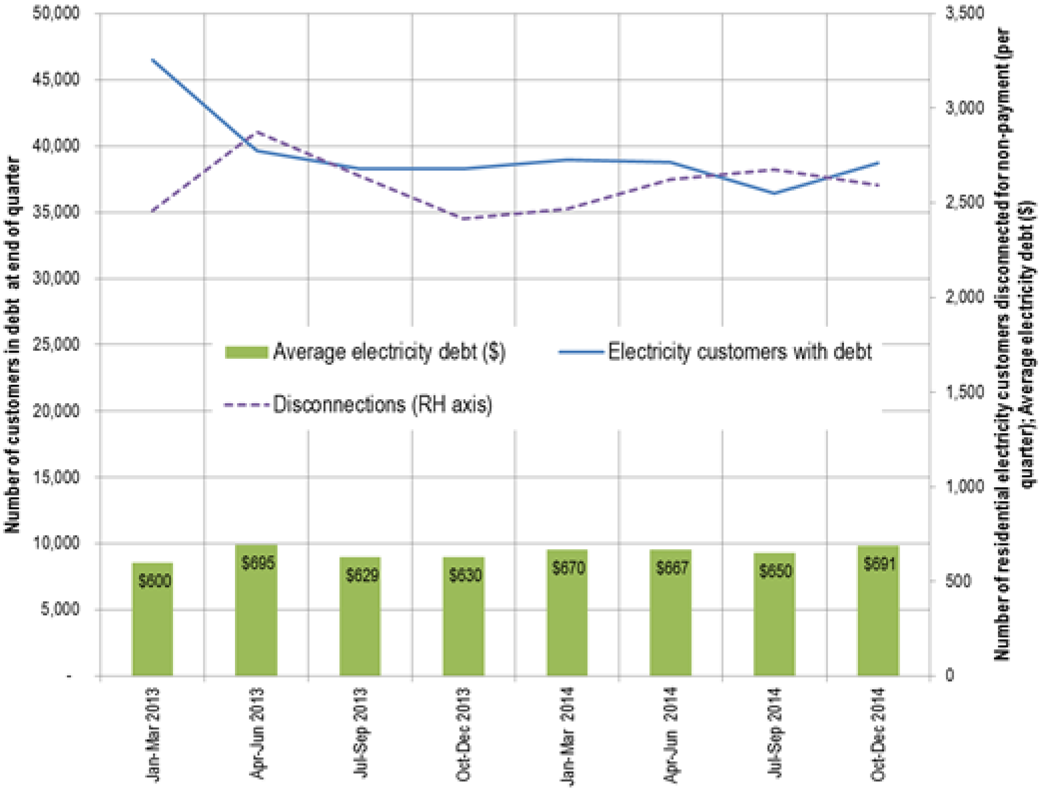
Source: SACOSS *Keeping the Power on*, 2014

SACOSS submitted that it has been monitoring the level of disconnections against the number of residential electricity customers with energy debt and the average level of energy debt (Figure 3.10 reproduces Table 1 from that submission[53]).

SACOSS stated that it interprets the data to show that there are currently no clear signs of positive movement. Certainly, the trend lines in Figure 3.10 appear to show fluctuations in the indicators within fairly tight bands, without obvious decline, on average. Once again, this outcome should be considered in the context of the adverse economic conditions experienced by South Australia over the period of the analysis. That is, maintaining a level of disconnections within a period of declining economic activity might be seen as a positive outcome.

[53] SACOSS, submission to Issues Paper, Table 1, p.2.

Figure 3.10: South Australian residential electricity customers with energy debt, average debt and number of disconnections (SACOSS)



3.4.2 Econometric analysis of customer protection indicators

The econometric analysis presented in this chapter seeks to answer two questions:

- To what extent, if any, are movements in hardship program and disconnection numbers since February 2013 able to be explained by the adoption of the new customer protection framework (that is, the NERL regime)?
- To what extent, if any, are movements in hardship program and disconnection numbers able to be explained by changes in South Australian economic activity or other factors external to the NERL regime?

The results reported demonstrate that the performance of the customer protection aspects of the NERL regime need to be considered within the economic environment that it is operating in at any given time.

In summary, the results of the econometric analysis performed show that factors external to the NERL regime, in particular changes in the unemployment rate, are important in explaining movement in hardship program and disconnection numbers. The implementation of the NERL is only found to be a (statistically) significant factor in the case of hardship customer numbers. However, even in the case of disconnections, it is only possible to say that in respect of the NERL regime itself no material adverse effect can be found from the analysis undertaken.

3.4.2.1 Data and methodology

Time series regression analysis (econometric analysis) was undertaken to examine the impact of external factors on customer protection indicators, where the external factors represent the independent variables and the customer protection indicators represent the dependent variables.

Regression variables were constructed for various hardship indicators as well as the external factors by taking logarithmic values to analyse the impact of external factors on customer protection indicators. Transforming variable values into logarithmic values enables regression results to be directly interpreted as percentage changes.

A dummy variable was constructed to reflect the commencement of the NERL. The dummy variable takes the value of '0' from first quarter of calendar year 2000 to fourth quarter of calendar year 2012 and '1' from first quarter of calendar year 2013 to first quarter of calendar year 2015.[54]

The analysis has been constrained by the availability of data. While the analysis on the disconnection dependent variable had access to 50 observations, analysis on the hardship dependent variable only had access to 19 observations. The Commission did not start collecting hardship customer numbers until the beginning of 2010-11. This means that the hardship customer results should only be taken as an indication of the level of influence at this time.

While instalment plan data was available and used in early modelling, consistently meaningful results were not achieved, which would be expected to have resulted from the data issues discussed in section 3.4.1. As a result, the only customer protection dependent variables modelled and reported on are disconnections and hardship customer numbers. Only residential customers are eligible for inclusion on hardship programs.

The electricity and gas component of the Adelaide Consumer Price Index was used as a proxy measure for energy prices, given data availability issues. This confined modelling of energy price movement impacts to residential customers. In terms of external independent variables, the Commission is able to construct quarterly average price data for residential and small business customers, for electricity and gas, prior to the commencement of the NERL. In response to the Commission's 2014 retailer return for the NERL review, retailers provided annual sales and revenue data for 2013-14, which would enable the construction of an annual price (that is, revenue divided by sales). Although it became clear during the analysis performed in 2015 that quarterly data would be required to have any chance of achieving meaningful results from the modelling, it was deemed too burdensome to request retailers to provide the sales and revenue quarterly data for 2013-14 and 2014-15.

The other two external independent variables employed were the South Australian unemployment rate and underemployment rate. Underemployment provides a measure of those employed people whose labour is not fully utilised. Combining information about the unemployed and underemployed provides a more complete picture of the extent to which customers may be facing reductions in income (and hence disposable income) as a result of changes in external economic factors. Once again, these factors are more relevant to modelling changes in residential customer protection indicators than for small business.

The modelling reported on in this chapter is based on the following quarterly data, for the indicated time periods, for all retailers combined:

- number of residential disconnections by electricity and gas (from 2002:Q4 – Commission then AER)
- number of hardship customers by electricity and gas (from 2010:Q3–Commission then AER)[55]
- South Australian unemployment rate (from 2002:Q4-Australian Bureau of Statistics: 6202.0 table 7)
- South Australian underemployment rate (from 2002:Q4-Australian Bureau of Statistics: 6202.0 table 23)

[54] Unlike for other variables it is not meaningful to take logarithmic value of a dummy variable.
[55] Only residential customers are eligible to apply for a hardship program. Retailers commenced reporting hardship customer data to the Commission from 2010: Quarter 3 (that is, 1 July 2010).

- South Australian electricity and gas price component of the Adelaide Consumer Price Index (from 2002:Q4-Australian Bureau of Statistics: 6401.0 table 9).

The models were tested by lagging the independent variables by up to two quarters.

3.4.2.1.1 Other potential data sources

The inclusion of variables such as wages (part-time and full time) and rents in the small business sector and average quarterly water bills paid by small businesses was considered to explain any movement in customer protection indicators for small business customers. This was not pursued due to the lack of readily available robust quarterly data for the period of the study.

The inclusion of public housing rent and overall rent variables might be useful in explaining the movement in customer protection indicators for residential customers. In response to a request from the Commission, Housing SA was able to provide financial year rental income data for six years along with the number of tenantable properties (including public, Aboriginal and special needs housing programs). Further analysis was not undertaken due to lack of readily available quarterly data.

An attempt was made to analyse disconnection data at a greater level of disaggregation. Following a request from the Commission, SA Power Networks provided data on disconnections by postcode and quarter for the period July 2013 to June 2015. However, on inspection the number of disconnections in the SA Power Networks data was on average 37 per cent higher than the level of disconnections reported by retailers. This is expected to be due to the fact that the retailer data should only cover disconnections due to non-payment, whereas the SA Power Networks' data would cover disconnections for any reason, such as site redevelopment.

Notwithstanding this data issue, further consideration should be given for the SA Power Networks disconnection by postcode data to be explored in future research, such as in analysis utilising the South Australian rank summary 'off the edge' data.[56] This data shows place-based social disadvantage across Australia, the rank of each locality for each variable where data was available. It also shows the average rank for the locality and the number of ranks. For example, for Adelaide, of the 128 localities in South Australia, Adelaide was ranked first for Housing Stress. The average rank for Adelaide was 64th. This average was based upon the ranks of 20 variables (the maximum number available in South Australia). One limitation of this data is that it is based on areas and not suburbs. If the disconnections data can also be grouped into areas then a correlation might be observed between the number of disconnections and socio economic indicators such as low family income and unemployment.

3.4.2.2 Results

As indicated above, various models were run, but the results reported here are for residential electricity customers, all retailers combined.[57] Only statistically significant results for external variables are reported.[58]

For electricity hardship, the model result may be interpreted as a one per cent increase in unemployment rate leads to a 1.06 per cent increase in number of residential electricity customers on a hardship program.[59] For this model, the commencement of the NERL was also important in explaining

[56] Tony Vinson and Margot Rawsthorne, *Off the Edge 2015 – Persistent communal disadvantage in Australia, 2015,* available at http://www.dote.org.au/ .
[57] For gas, only the price variable showed as being statistically significant and then only in explaining movements in gas hardship customer numbers.
[58] Statistical significance as determined using the t-stat and p-value. The value of the R-square coefficient is also reported.
[59] At the 90 per cent confidence level (t=1.78, p=0.098). Best results when no lag applied to the independent variables. The value of the R-square coefficient for this model is 0.9 (high).

hardship customer numbers.[60] As noted above, even using quarterly data this hardship customer analysis is only based on 19 observations.

For electricity disconnections, the model result may be interpreted as a one per cent increase in unemployment rate leads to a 1.22 per cent increase in the number of residential electricity customers disconnected.[61] For this model, the commencement of the NERL is not important in explaining residential electricity disconnection numbers.[62]

3.4.3 General Customer Question survey

3.4.3.1 Data and methodology

The NERL review Issues Paper sought feedback from both consumers and the retail energy industry to provide an additional evidence base for the NERL review. The NERL review Issues Paper indicated that, the first-hand experience of energy customers will be particularly valuable for this review and hence sought energy customers' feedback on their experience since February 2013 through a general customer questionnaire and online survey. The customer survey sought views on:

- customers' experience with the operation of the NERL regime (that is, dealings with their energy company since 1 February 2013)
- whether recent experience was different to that under the previous state-based scheme (that is, dealings with their energy company prior to 1 February 2013).

In addition to notifying stakeholders through the Commission's website, members of the Consumer Advisory Committee assisted the Commission through bringing the survey to the attention of their members. The Energy and Water Ombudsman SA also brought the survey to the attention of its clientele. Even with this level of effort, the Commission received 43 responses in total of which 37 were from residential customers, four from small business customers and two responses stated to be both residential as well as small business customer.

3.4.3.2 Results

The number of responses received through the customer survey is small compared to the total energy customer base in South Australia. Hence, the results cannot be considered as a true representation of the views of majority of energy customers in South Australia. A summary of the results from the survey are presented in Table 3.1.

[60] The coefficient for the dummy NERL variable (0.40) is statistically significant at the 95 per cent confidence level (t=3.47, p=0.004).

[61] With no lag both unemployment and electricity price variables are significant at the 90 per cent confidence level. The unemployment rate variable becomes progressively more statistically significant (at the 95 per cent confidence level) as the independent variables are lagged by one quarter and then two quarters (t=2.22, p=0.031), but the electricity price variable then stops being statistically significant even at the 90 per cent confidence level. The value of the R-square coefficient for this model is 0.3 (low).

[62] The coefficient for the dummy NERL variable (-0.07) is not statistically significant (t=-0.42, p=0.68).

Table 3.1: Summary of feedback received through customer survey

Questions	Options	Number of Reponses
As a general statement, do you find it easy to understand what protections you have as an energy customer and to understand energy contracts being offered to you?	Yes	13
	No	25
Have you had to contact an electricity and/or gas energy company in the past 12 months in relation to any of the following matters:	Understanding your energy bill	13
	Having trouble paying your energy bill	8
	Disconnections or possible disconnections	11
	A market offer you have received for a new energy contract	11
	Complaint about the energy company's service	22
In relation to these matters, were you satisfied with the assistance you received from the energy company?	Yes	8
	No	33
Do you recall experiencing a similar matter in the past (preferably the matter occurred prior to February 2013)? If yes, were you:	More satisfied with the outcome of the most recent experiences?	14
	Less satisfied with the outcome of the most recent experience?	14

Given an expectation that the survey response is likely to be skewed towards customers that are unhappy with the performance of the customer protection framework (both due to the small number of responses and the fact that the survey was voluntary), the fact that there was an equal outcome of surveyed customers more (34 per cent) or less (34 per cent) satisfied with their most recent experience is of interest. This would suggest that there is no evidence to support customers believing the NERL regime to be inferior to the pre-NERL regime.

3.4.4 Customer service

The NERL has not resulted in changes to customer service standards in South Australia, so there was not an expectation that customers would be impacted adversely in this area as a result of its implementation. Retailer telephone and written responsiveness service standards are being maintained through South Australian derogations. Nevertheless, it is appropriate to assess the validity of this expectation. The Commission considers that the evidence supports the draft finding that the NERL has not resulted in a deterioration in customer service outcomes.

The core indicators used to assess customer service performance indicators for both energy retailers and distributors are:

- complaints to retailers (total)
- complaints to the Energy and Water Ombudsman SA

- type of complaints (billing, marketing, transfer etc.) based on Energy and Water Ombudsman SA data
- telephone and written responsiveness (ability for customers facing difficulty to gain access to assistance from their energy retailer).

3.4.4.1 Customer service - complaints

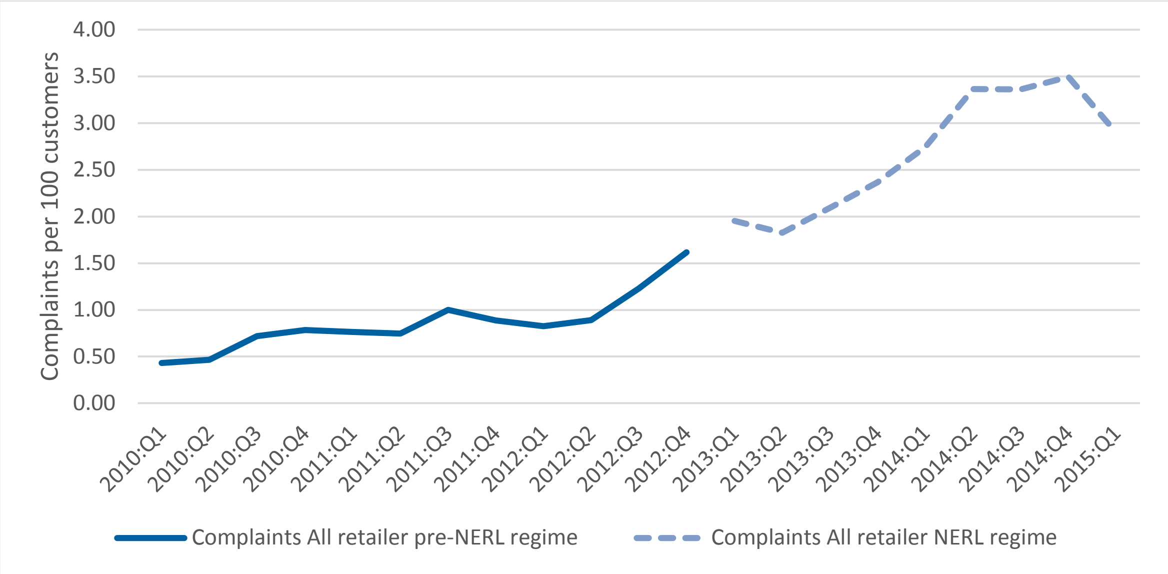
The Australian Energy Market Commission (AEMC) notes that data on customer complaints to retailers is not reported consistently across years and needs to be interpreted with caution, a statement reinforced by retailers at the retailer forum.[63]

Consequently, the Commission has analysed trends in total complaints to energy retailers as an indicator of the aggregate level of complaints received by retailers, but utilised Energy and Water Ombudsman SA data to show trends in complaint categories. This should provide more consistent information on complaint categories, given it is Energy and Water Ombudsman SA staff categorising the complaint against set criteria, with the knowledge of the specifics of the complaints. The Energy and Water Ombudsman SA data is considered more reliable for examining changes in the level of complaints by category from year to year.[64]

Figures 3.11 to 3.16 provide graphs for a selection of complaints data.

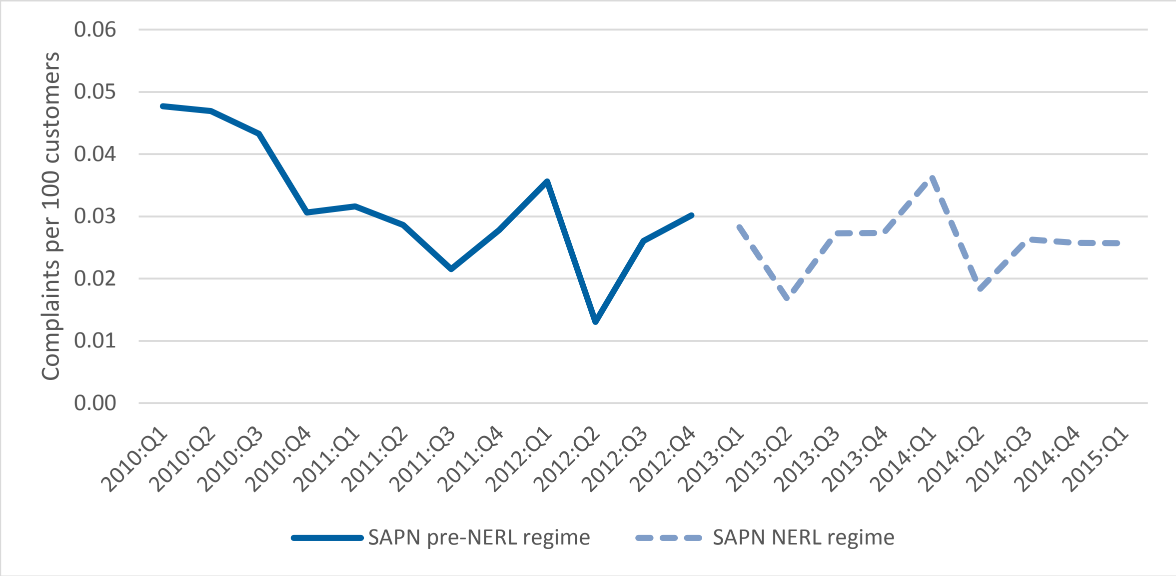
- total complaints (per 100 customers) for all energy retailers pre-NERL regime and NERL regime
- total complaints (per 100 customers) to SA Power Networks pre-NERL regime and NERL regime[65]
- total complaints to the Energy and Water Ombudsman SA by category of complaints pre-NERL regime and NERL regime
- Energy and Water Ombudsman SA complaints relative to complaints to energy retailers and SA Power Networks pre-NERL regime and NERL regime.

Figure 3.11: South Australian total customer complaints to energy retailers: pre and post-NERL commencement



[63] Australian Energy Market Commission, 2015 Retail Competition Review, p.192.
[64] Melbourne retailer forum.
[65] Given the substantial change in customer relationship pre-NERL regime and NERL regime for Australian Gas Networks it is difficult to meaningfully compare performance for the gas distributor. However, the Commission is not aware of any evidence supporting concern with Australian Gas Networks performance in this area.

Figure 3.12: South Australian total customer complaints to SA Power Networks: pre and post-NERL commencement



Complaints to retailers per 100 customers increased following commencement of the NERL, with a decline in the last quarter of available data (Figure 3.11). Complaints to SA Power Networks (per 100 customers) are much lower than achieved by energy retailers and while experiencing some variability in the NERL regime, at the end of the current period of data are lower than immediately following the NERL commencement (Figure 3.12).

There has been a decline in the number of complaints received by the Energy and Water Ombudsman SA over the past two financial years (2013-14 and 2014-15).[66] Even though the type of complaints received by the Energy and Water Ombudsman SA varies over time, the main drivers of complaints are billing, credit management, and sales and marketing (Figure 3.13).

The continuing increase in billing complaints immediately following the commencement of the NERL was in part driven by difficulties of previous years where problems associated with billing system changes implemented by some retailers led to problems impacting customers.[67] Credit management[68] complaints increased in 2013:Q3 (July to September 2013) coinciding with a drop off in billing complaints, specifically in areas such as No Bill or Delay in Billing (Figure 3.14).[69] This reflects retailers re-engaging in credit management activities once billing issues had been resolved.[70]

However, there was a further spike in credit management complaints in 2014:Q4 (October to December 2014) (Figure 3.14). The Energy and Water Ombudsman SA reports that while the hardship programs operated by many retailers are sound, it has noticed that the credit management processes operated by retailers had tightened during 2014-15. The Energy and Water Ombudsman SA also stated its belief that the current economic environment has contributed to the increase experienced in hardship case volumes.[71]

[66] Energy and Water Ombudsman SA, *Annual Report 2014-15*, p.5, available at www.ewosa.com.au.
[67] Energy & Water Ombudsman SA, *Annual Report 2013-14*, p.8, available at www.ewosa.com.au.
[68] Credit Management issues include credit reference, disconnection (including imminent), financial hardship and liability. Liability refers to where consumers dispute the liability for an account that is subject to credit actions. Energy and Water Ombudsman SA, 2014 Annual Report, p.22.
[69] Energy and Water Ombudsman SA, 2014 Annual Report, p.19.
[70] Energy and Water Ombudsman SA, 2014 Annual Report, p.13.
[71] Energy and Water Ombudsman SA, 2015 Annual Report, p.9.

Figure 3.13: South Australian customer complaints to the Energy and Water Ombudsman SA in relation to energy retailers: pre and post-NERL commencement

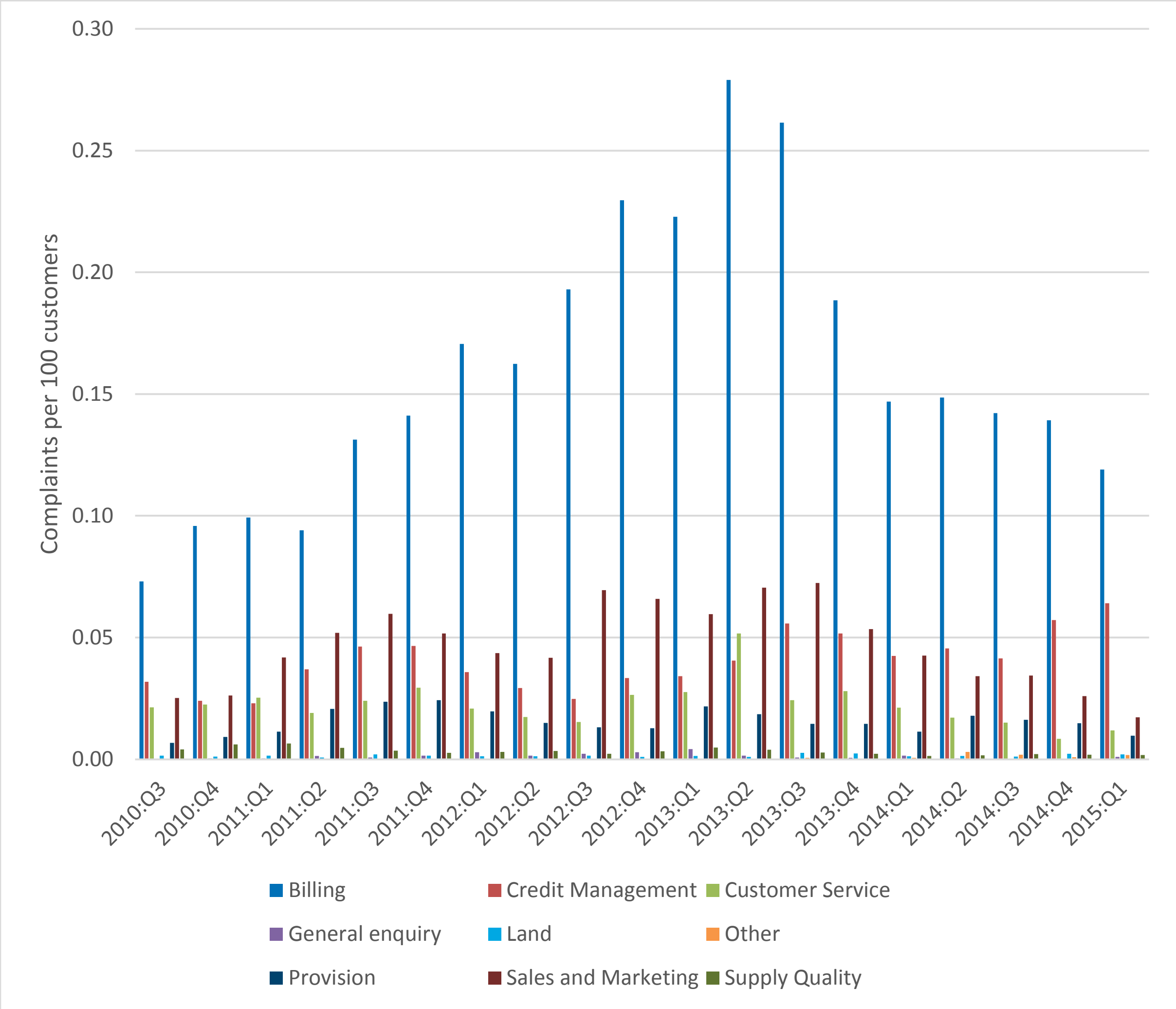
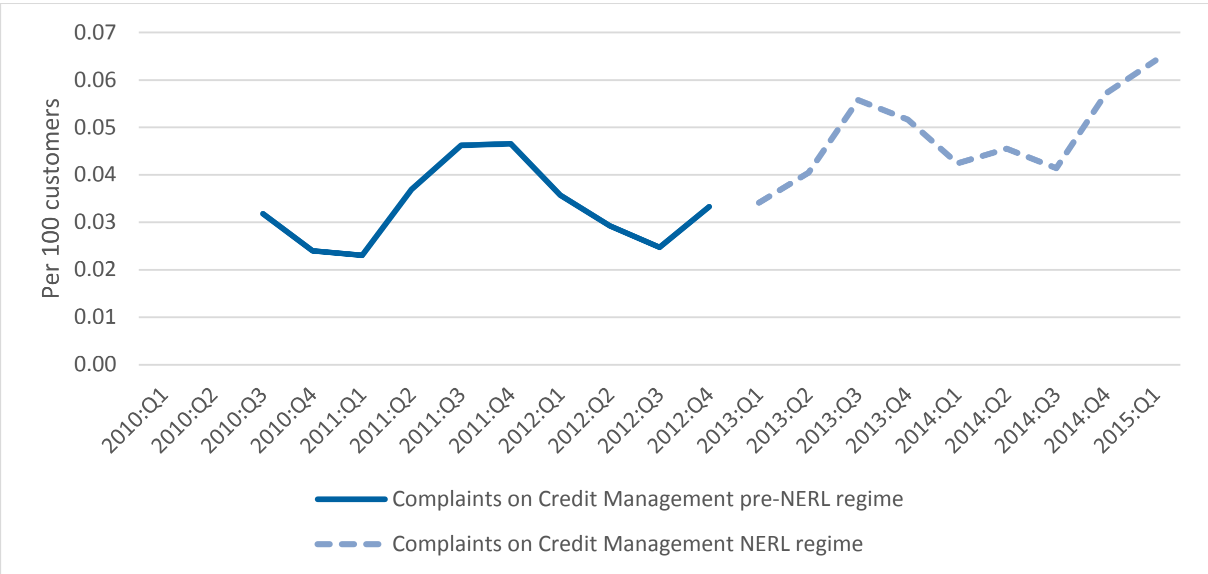


Figure 3.14: South Australian regarding credit management to the Energy and Water Ombudsman SA: pre and post-NERL commencement



Complaints to the Energy and Water Ombudsman SA relative to complaints to retailers and SA Power Networks have declined in the NERL regime period (Figure 3.15 and 3.16). This shows a consistent improvement in the efforts of retailers to deal with customer complaints (Figure 3.15) even though there is an increasing trend in the overall level of complaints (Figure 3.11).

Figure 3.15: South Australian total customer complaints to the Energy and Water Ombudsman SA relative to complaints received by energy retailers: pre and post-NERL commencement

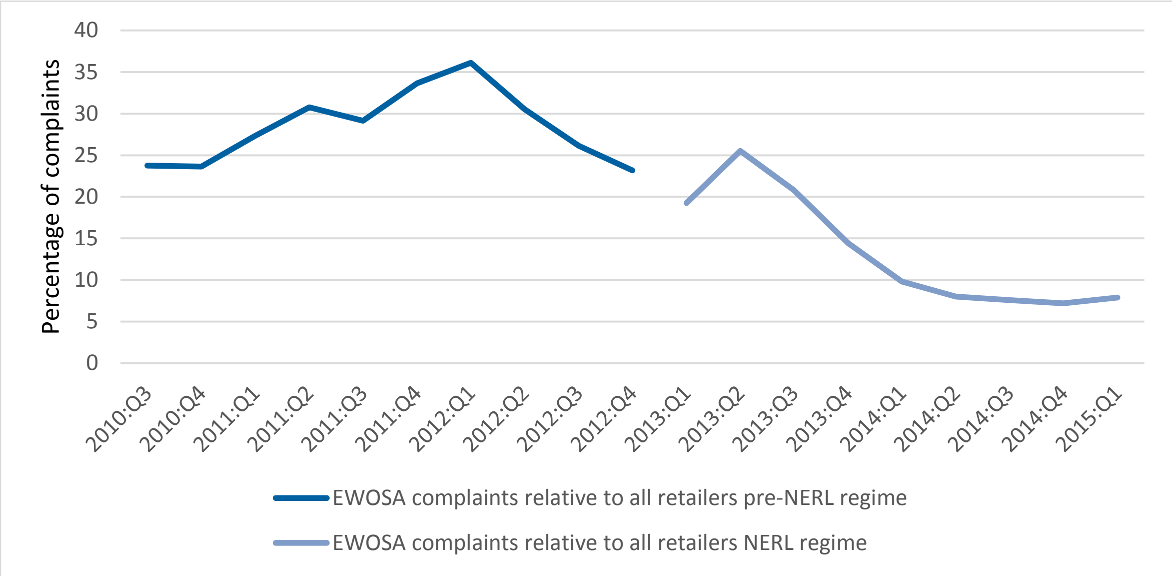
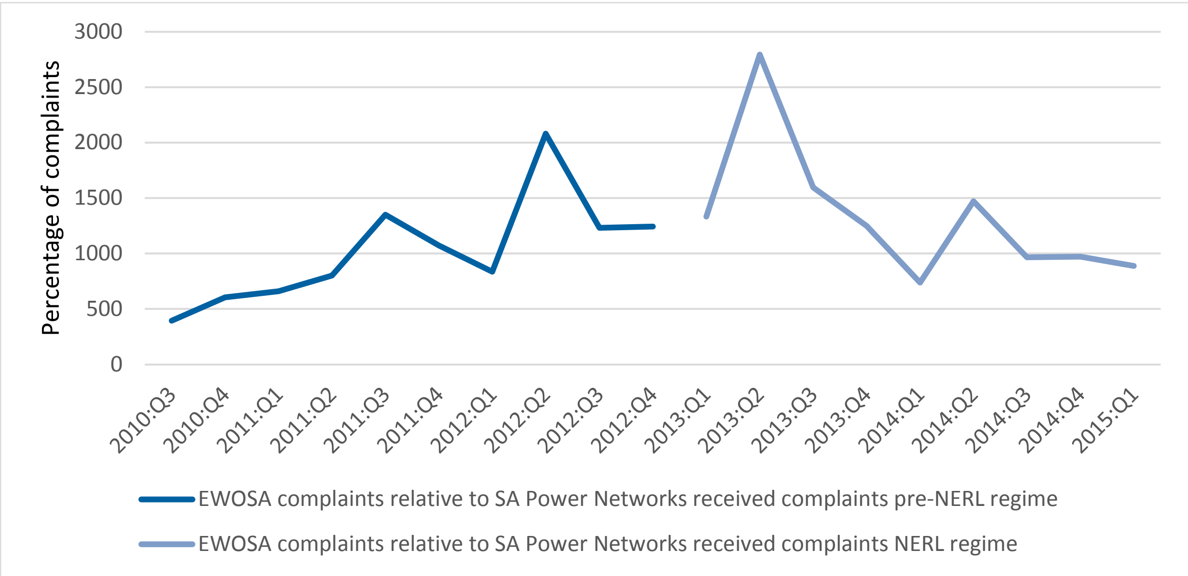


Figure 3.16: South Australian total customer complaints to the Energy and Water Ombudsman SA relative to complaints received by SA Power Networks: pre and post-NERL commencement



3.4.4.2 Customer service – telephone responsiveness

Since 2004-05 the percentage of retailers meeting the annual telephone responsiveness standard (85 per cent of calls answered within 30 seconds) has ranged between 30 to 60 per cent, with 60 per cent achieved in 2013-14, being equal to the highest achieved.

As indicated in the time series data, SA Power Networks has consistently met these standards. There are no such data for Australian Gas Networks, as the gas distributor did not have a direct relationship with customers prior to the NERL commencing and, to date, that data has not been collected for Australian Gas Networks.

3.5 Discussion

The Commission's draft conclusion is that the evidence supports the view that the NERL has not resulted in an adverse outcome for South Australian energy customers in terms of hardship and customer service indicators.

This draft conclusion is made on the basis that, against a backdrop of worsening South Australian economic indicators during the period since the commencement of the NERL (February 2013), the hardship regime under the NERL has been made available to an increasing number of customers – leading to more effective payment and debt management arrangements without an increase in the proportion of customers being disconnected.

Given the positive relationship found between disconnection levels and unemployment rate (section 3.4.2), the lack of increase in disconnection numbers over this short NERL regime period could be seen as positive: absent an effective hardship management regime, it could be anticipated that the outcome during the period would have been a higher level of disconnections.

That the evidence shows the outcome to in fact have been an increase in the level of customers utilising the NERL hardship program protections, rather than being disconnected, indicates a well-functioning customer protection framework.

The Commission acknowledges that there were initial issues with disconnection numbers immediately following NERL commencement. However, as noted above, there may be a timing issue involved, with evidence that one or more retailers began re-engaging credit management practices in the period immediately following NERL commencement, following a period of inaction immediately preceding (pre-NERL regime) when bedding down new billing systems.[72] Accordingly, the level of disconnection activity immediately following commencement of the NERL may reflect some carryover of pre-NERL regime matters, suggesting some potential for the post-NERL regime disconnection numbers to be inflated to some extent for a limited period.

A suggestion made at the Adelaide Public Forum was that the increase in the hardship numbers is not necessarily tied to the economy or showing that greater numbers of people are in hardship, but rather an indicator of the success of the NERL in getting people greater access to the hardship programs. As discussed in the previous section, the econometric analysis provides some support that the positive nature of the NERL hardship policy requirements has of itself made a contribution to the increase in hardship customer numbers (section 3.4.2).

But a more pervasive issue may be how well the NERL regime is able to assist vulnerable customers that are simply not able to afford their current level of consumption. As noted at the Adelaide Public Forum, this may not always result from increased consumption, but can result from energy price increases outpacing any growth in income.

The Commission accepts the point made by some consumer groups that affordable access for an individual customer is impacted by a number of factors including, price, income and available support (for example, concessions) and that not all of these can be addressed by retailers.[73]

[72] Energy and Water Ombudsman SA as reported in Australian Energy Market Commission, *2015 Retail Competition Review*, June 2015, p.209, available at http://www.aemc.gov.au/getattachment/56a8c56f-0aeb-48cc-9097-9f2b5e645428/Final-Report.aspx.
[73] Consumers SA, submission to Issues Paper, p.2.

In that context, the Commission observes that, in addition to government funded concessions (including the Emergency Electricity Payment Scheme), there are other forms of assistance available to energy customers that complement the NERL customer protections, including:

- The Retailer Energy Efficiency Scheme (REES): REES seeks to assist customers reduce energy consumption (and bills) without diminution of service or enjoyment. A component of this South Australian scheme seeks to target priority group customers (financially disadvantaged). While a number of REES services are generally provided at no cost to the customer, large energy savings (whether through REES or customer initiative), such as the replacement of energy inefficient hot water services and refrigerators, generally require the customers to make a material investment which those on low income may find elusive.[74]
- The South Australian Government is funding the Utilities Literacy Program, through the SA Department for Communities and Social Inclusion. This free of charge service, which targets people on low incomes or who have concerns about their energy usage, is delivered by community groups and is designed to support customers to reduce financial hardship associated with electricity, gas and water.[75]

This is not to suggest that no further action could be taken to improve the situation for affected customers, but that the evidence before the Commission is that the NERL has an appropriate program for assisting vulnerable customers which is not inferior to the previous state-based scheme.

Examples of other actions that might be taken to improve outcomes for vulnerable customers include:

- ensuring all retailers fully comply with the NERL hardship provisions (compliance)
- finding ways to encourage customers to seek assistance and to remain engaged. The manner in which vulnerable customers are treated at the individual level by a retailer's call centre operators has an important bearing on a customer's willingness to engage. Vulnerable customers are more likely to seek assistance and stay engaged if treated with respect.
- coordinated provision of energy audits and other energy efficiency measures[76]
- ensuring customers have access to available information and financial assistance.

SACOSS has produced a Better Practice Guideline for Energy Retailers, which highlights the importance of early intervention and customer focused capacity to pay as two high-order priority issues (out of five identified) requiring further action.[77]

There is the potential for technology to assist in the future, such as SMS alerts[78] if consumption is higher than planned (similar to telecommunications download alerts), to avoid bill shock.[79]

Of course, how well any scheme operates in practice depends both on the extent to which the scheme meets the objectives set for it *and* how well it is implemented and operated.

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[74] Consumers SA, submission to Issues Paper, p.2. Adelaide Public Forum (individual).
[75] For more information refer http://yourbestlife.org.au/services/utilities-literacy-program/ and http://www.ucwcsa.org.au/utilities_literacy_program.html . A copy of a presentation is available at http://nilsconference.org.au/assets/files/2015/06/Room-7A-C_presentation_stephen-graham.pdf .
[76] For example, there was a suggestion at the Adelaide Public Forum for further government assistance in helping customers to control their consumption with information and assistance.
[77] SACOSS, submission to Issues Paper, p.2. A copy of the SACOSS *Better Practice Guideline for Energy Retailers* is available at https://www.sacoss.org.au/sites/default/files/public/documents/Reports%20copy%201/Better_Practice_Guidelines_FINAL-min2.pdf.
[78] Short Message Service (SMS), which enables fixed line or mobile phones to exchange short text messages.
[79] Retailer Forum.

The AEMC notes that the quality of a retailer's compliance with its hardship obligations is important for customer outcomes.[80] The AER has found that there was varying levels of retailer commitment to assisting hardship customers in a range of areas, including earlier identification of hardship customers, staff training and innovative approaches to assisting customers. Origin Energy notes that the customers of those retailers that have consistently provided hardship assistance that exceeds regulatory obligations would not have been impacted by the NERL.[81]

The Commission made it clear in the NERL review methodology that it has no intention of assessing the compliance of individual retailers.[82] The Commission is not the regulator administering the NERL regime. The matters identified here are not seen as being issues associated with the framework, rather they identify the potential for further gains from the NERL, were all retailers to be fully committed to assisting hardship customers.

Overall, for the purposes of this NERL review, the Commission has received no evidence that, in the area of hardship, the adoption of the NERL has *adversely affected customer protection in the pursuit of national consistency*. Indeed, both consumer groups and retailers have acknowledged that the NERL has improved the identification and processing of customers who wish to pay their bills but are having difficulty in doing so.

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[80] Australian Energy Market Commission, 2015 Retail Competition Review, p.31.
[81] Origin Energy, submission to Issues Paper, p.2.
[82] Essential Services Commission of South Australia, *NERL Review Methodology*, Final Decision, 2014, p.15, available at http://www.escosa.sa.gov.au/projects/204/nerl-review-methodology.aspx.

4 Efficiency

Draft finding

The Commission's draft finding is that the National Energy Retail Law has resulted in increased efficiencies.

Key points

- While there may be room for debate over the precise monetary quantum of savings, the national administration of uniform legislation should be achieving a material efficiency benefit for retailers seeking to operate across state borders.
- The Commission has relied on the AEMC's competition review findings, which are that the South Australian retail energy market remains effectively competitive, although less so for gas in regional areas – the NERL regime was not identified as an efficiency issue in that review.

4.1 Introduction

The NERL review term of reference addressed in this chapter is:

> *The review must focus on the impact of the National Energy Retail Law on consumers of energy and whether implementation of the Law has –*
>
> *(a) resulted in increased efficiencies; or …*

The Commission is adopting a broad economic definition of the term 'efficiency' for the NERL review, with that term interpreted in a broad sense to include:

- movement in retailer and distributor operational costs (technical efficiency)
- the level of competitiveness in the energy retail market (allocative efficiency)
- evidence of innovation (dynamic efficiency).

This chapter:

- presents the results of a Commission survey of NERL costs and benefits identified by retailers and distributors
- discusses the results of recent competition reviews conducted by the AEMC
- outlines the South Australian derogations to the NERL
- discusses in more detail one instance where a pre-NERL regime customer requirement did not transfer over to the NERL, on the basis of efficiency implications.

4.2 Anticipated positive net benefits

The Regulation Impact Statement prepared for the NERL (**NERL RIS**) identified the potential for energy retailers to achieve significant savings from NERL adoption.[83]

[83] Ministerial Council on Energy Standing Committee of Officials, Regulation Impact Statement, *A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers* (NERL RIS).

It estimated that a broad reform package, incorporating the NERL, could achieve annual savings of $12 million for operating costs, and depreciation of establishment costs, of a retailer entering a new state market.[84, 85]

The 2002 Parer Review estimated cost savings of the order of $805 million in 5 year net present value terms from implementing its recommended governance and regulatory reforms, including a move to a single national regulator, with associated reductions in regulatory risk.[86]

The NERL RIS identified pre-NERL regime inefficiencies such as:[87]

- requirements for retailers to obtain a separate retail licence in each jurisdiction
- inconsistent and varying codes and guidelines between jurisdictions (which include billing, reporting and marketing requirements)
- business processes and systems consequently tailored for each jurisdiction.

For customers, the NERL RIS notes that:[88]

> *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.*

While there may be room for debate over the precise monetary quantum of savings, the Commission accepts the premise that national administration of uniform legislation should achieve a material benefit for retailers seeking to operate across state borders.

Achieving a societally positive outcome will require any net savings achieved by retailers to not be offset by losses incurred by energy customers, for example, through reduced customer protections.[89] At its simplest, the terms of reference for this review can be interpreted in this manner: ascertaining that the NERL has achieved increased efficiencies without adversely impacting customer protection.

For example, the NERL RIS identified potential benefits to both customers and retailers through the adoption of a hardship framework:

- customers: enables vulnerable and disadvantaged customers experiencing payment difficulties to avoid potential de-energisation (energy disconnection) and maintain supply of an essential service
- retailers: enables maintenance of a financial relationship with vulnerable and financially stressed energy customers, improving debt recovery for retailers. Although for retailers there is also the potential cost of prolonged recovery of payments and associated administration costs.

As argued in Chapter 3, it appears that these benefits have been at least in part evidenced during the period of operation of the NERL.

[84] The figure of $12 million represents a RIS update of the original Parer Review estimate of $10 million (NERL RIS, p.11).
[85] Council of Australian Governments, Energy Market Review, *Towards a Truly National and Efficient Energy Market*, (Parer Review), 2002, available at http://www.efa.com.au/Library/ParerFinRpt.pdf.
[86] NERL RIS, p.12. The estimate of $805 million figure was a RIS update of the original Parer Review estimate of $673 million, being the portion of overall benefits derived from improved regulatory certainty (assessed as equivalent to 0.03% of Australian GDP).
[87] NERL RIS, p.11.
[88] NERL RIS, p.7.
[89] Given the NERL affected the operations of energy distributors, it is also important to understand the impact on the costs of SA Power Networks (electricity) and Australian Gas Networks (gas).

4.3 Benefits and costs identified by retailers and distributors

The Commission undertook surveys of energy retailers and energy distributors in 2014 and 2015 to identify actions taken, savings made and costs incurred through the progressive adoption of the NERL (up until 30 June 2015).

That information was sought at the national (all jurisdictions combined) level for retailers, in an effort to ensure consistent reporting and recognising the difficulties that some retailers might have in identifying South Australian specific costs. The distributor information provided was for South Australia only.

The information is commercially sensitive and was provided on the basis that it would be treated confidentially and only used for the purposes of the NERL review. Accordingly, the results are reported in aggregate and not directly attributable to any individual retailer or distributor. Results are, however, separately reported in retailer and distributor groupings.[90]

4.3.1 Energy retailers

While, through the 2014 survey, retailers provided useful qualitative information, there was insufficient consistency with information provided on the quantification of costs and savings, with some retailers providing this information to varying degrees and some not able to provide any data. [91]

The experience of the first survey was discussed with retailers at the NERL review forum of retailers. The suggestion of retailers, which was adopted, was for the Commission to develop a new template for 2015, based on the detail provided by those retailers that had been able to provide quantified benefits and costs in 2014. A copy of the proforma for the 2015 Annual Retailer Return is provided in the time series spreadsheet (Excel format), released with this paper.[92]

In summary, the 2015 Commission Retailer Survey sought details on:

- transition or set up costs according to a number of defined categories, such as:
  - changes to business systems
  - reviewing business processes
  - changing documentation
  - training staff.
- ongoing benefits according to a number of defined categories, such as:
  - net savings from performance and compliance reporting to a single regulator
  - savings from harmonising documentation
  - savings from reduced consultation burden from a single regulator
  - savings from reduced training.
- ongoing costs according to a number of defined categories, such as
  - net costs from any increased NERL regime performance and compliance reporting obligations

[90] Both distributors (SA Power Networks and Australian Gas Networks) agreed to this, notwithstanding that with only two distributors this would mean that it was possible for each to determine the other's details through the process of subtraction.
[91] Essential Services Commission of South Australia, NERL Review Methodology, p.53.
[92] The template was provided in an Excel spreadsheet, together with a tab providing a set of instructions for completion. A copy of the proforma can be located at: http://www.escosa.sa.gov.au/projects/222/review-of-necf-in-south-australia.aspx

– ongoing NERL implementation costs.

4.3.1.1 Quantitative benefits and costs

While the quality and consistency of information improved significantly in the 2015 retailer survey, for varying reasons a number of retailers still faced some difficulty in providing the quantitative information sought. The survey was sent to 15 retailers operating in South Australia, with 14 retailers responding.[93]

Some retailers had not kept detailed records on NERL related costs. Following a suggestion from one retailer, those retailers having difficulty in providing quantitative data were offered the option of using the Australian Energy Market Operator's Order of Magnitude Cost Ranges, which are as follows:

Order Of Magnitude	Range
Small	Up to $100k
Medium	Greater than $100k, up to $500k
Large	Greater than $500k, up to $2m
Very Large	Greater than $2m

The midpoint of the relevant range was used in the Commission's assessment to assign a value, unless a retailer provided a total figure for the relevant section. No retailer used the Very Large range.

The survey produced four broad categories of retailers:[94]

- Category 1: Zero costs or benefits (5 retailers)
- Category 2: Low[95] (2 retailers)
- Category 3: Mid[96] (4 retailers)
- Category 4: High[97] (2 retailers).

Of the Category 1 retailers, three could provide no costs or benefits as they had only entered the small customer market as a result of the NERL's introduction and so had no counterfactual costs. One retailer only operated in South Australia and a non-NERL state for the period and so only faced the costs of South Australia's move to the NERL. The remaining retailer, with less than 1,000 customers, was not able to provide any measured costs or savings.

For the purposes of the Commission's assessment, transfer costs and benefits were excluded as they do not represent resource costs. This led to the exclusion of savings or costs reported in relation to changed credit support arrangements, which might be considered either a transfer between retailers or between retailers and distributors (in the absence of evidence that the NERL has led to a reduced level of risk in this area).[98] One retailer reported avoided licence costs as a benefit, but once again this is a transfer rather than a resource saving.

[93] The failed response was from a small electricity retailer with less than 1,000 South Australian customers. In terms of the AEMC distinction between 'brands' and 'companies' (see section 4.4.3), the 15 retailers referred to here were effectively 15 brands, with a single request going to Dodo (M2), being two brands but with Commander Power and Gas being new to South Australia.
[94] The numbers in brackets sum to 13, as the Commission received a combined return for AGL and Powerdirect.
[95] Based on reported transaction costs of less than $200,000.
[96] Based on reported transaction costs of more than $200,000 but less than $1 million.
[97] Based on reported transaction costs of more than $1 million.
[98] Retailer-distributor credit support requirements are currently the subject of a rule change request being considered by the AEMC, more details available at http://www.aemc.gov.au/Rule-Changes/Retailer-Distributor-Credit-Support-Requirements# .

Payback periods have been calculated for those retailers providing quantified costs and benefit, rather than attempt to calculate a benefit cost ratio for the short period covered by this review.

The value of annual net savings could change materially with Queensland adopting the NERL (after the 30 June 2015 survey end date) and any remaining jurisdictions subsequently.

There is a risk that the Category 4 retailers are attributing a large portion of system upgrades ordinarily required in the general course of business to the NERL. The payback period calculated for one of these retailers was in excess of 20 years.

Three retailers identified delayed implementation costs due to the staggered adoption of the NERL, with a combined total cost of just over $1 million.

On the basis of the survey results, the value of transition costs incurred by retailers by reason of the NERL's establishment was in the order of $16 million, with positive net benefits of $1.6 million per annum, representing an average payback period of 10 years. The payback period drops back to 4.5 years with the exclusion of the Category 4 retailers. As advised earlier, these are national estimates for retailers, not South Australian specific.

Derived payback periods varied significantly between retailers:[99]

- one retailer showed negative net annual benefits
- three retailers showed payback periods of 2 to 3 years
- three retailers showed payback periods of 8 to 10 years
- one retailer showed a payback period in excess of 20 years.

4.3.1.2 Qualitative benefits and costs

As with any benefit cost assessment, not all benefits and costs can be quantified.

Qualitative benefits cited by retailers, for which it was not possible for them to provide dollar estimates, included:

- Victoria adopting the NERL would result in the benefits and efficiencies increasing "exponentially" relative to the cost of implementation
- considerable benefits to retailers from the consistent regulatory framework provided by the NERL that were difficult to quantify
- benefits would have been higher if jurisdiction based derogations did not apply and all jurisdictions had adopted the NERL under the Australian Energy Market Agreement as originally intended.

4.3.1.3 Conclusion

Notwithstanding some of the long payback periods identified, the overall sense the Commission has gained through the consultation process is that retailers consider the implementation of the NERL to be a positive outcome.

4.3.2 Energy distributors

Surveys were undertaken of energy distributors SA Power Networks and Australian Gas Networks in 2014 and 2015.

[99] Sums to 8 retailers as payback is not relevant for Category 1 retailers.

Unlike the case for retailers, the distributor costs reported relate only to costs incurred in South Australia, as SA Power Networks is a South Australian electricity distributor and Australian Gas Networks was able to provide South Australian specific gas data.

4.3.2.1 Quantitative benefits and costs

The combined costs incurred by the energy distributors for the implementation of the NERL total around $7 million until end of June 2015. Distributors report achieving no savings with the implementation of the NERL.

A large proportion of these costs relate to system changes to enable the gas distributor to be able to cater for a Retailer of Last Resort (**RoLR**) event.

4.3.2.2 Qualitative benefits and costs

The only qualitative benefit reported by an energy distributor, associated with the removal from SA Power Networks of RoLR responsibility, is considered a transfer of risk to another party, resulting in a zero net benefit overall.

4.3.2.3 Conclusion

Given that, unlike energy retailing, energy distribution is state-based (notwithstanding they may be part of a national company or affiliated with other distributors), it is not surprising that the South Australian energy distributors were not able to identify any benefits as a result of the NERL (that is, no direct benefits from having national rules operate in more than one jurisdiction).

The key purpose of a RoLR scheme is to ensure continuity of supply to customers in the event of their retailer failing. The scheme is designed to ensure a seamless transfer to a previously determined retailer on the failure of an energy retailer. While the failure of a gas retailer has not occurred in South Australia, the electricity RoLR scheme has been invoked in South Australia.[100]

It is legitimate for such RoLR costs to be assigned to the NERL given that an important component of the NERL is the establishment of a robust RoLR framework. However, the size of the costs reflects the fact that, unlike the case for electricity, there was not a pre-existing gas RoLR scheme. This arose from an assessment of the risk at the commencement of gas full retail contestability that alternative arrangements to a structured RoLR scheme for gas could be established at lower cost.

4.4 Competitiveness of the South Australian energy retail market

The Commission has relied on the AEMC annual competition review findings for the purposes of assessing any competition impacts associated with the commencement of the NERL in South Australia.

There was no call from stakeholders for the Commission to undertake further competition analysis in addition to that already being carried out by the AEMC.

4.4.1 Submissions

Stakeholders were asked in the NERL review Issues Paper to advise whether they believed the Commission could rely on the AEMC work.[101] Retailers were of the view that the Commission should leverage off the AEMC's competition review and not duplicate the AEMC work.[102]

[100] Essential Service Commission of South Australia, Notice to electricity customers of Jackgreen (International) Pty Ltd, December 2009, available http://www.escosa.sa.gov.au/Article/NewsDetail.aspx?id=650.
[101] Essential Services Commission of South Australia, NERL Review Issues Paper, February 2015, Question 8, p.13.
[102] Origin Energy, submission to Issues Paper, p.1. AGL, submission to Issues Paper, p.2. Retailer Forum.

While the impact of the NERL on the competitive effectiveness of the South Australian retail energy market is difficult to measure in isolation, there is no evidence to suggest it has been negative. Retailers support the NERL, while raising concerns over aspects of its implementation such as the staggered adoption across jurisdictions and where adopted having been done so with modifications.[103]

In the South Australian case, commencement of the NERL coincided with the deregulation of energy prices, with the latter likely to have a greater impact on competition. In that sense, the importance of the NERL within a suite of regulation and reforms should not be overplayed. For example, in Origin Energy's view increased competition arising from a price deregulated market is a greater determinant of customer choice, than from the NERL.[104]

There was considerable overall support for the NERL in the submissions. A theme expressed in several retailer submissions was that the NERL, through the standardisation of retailer laws and regulations across jurisdictions, has reduced retailer operating costs, encouraged new entrants and helped to create even more competitive markets.[105] Origin Energy suggested that the NERL has complemented the implementation of energy price deregulation in South Australia, by lowering barriers to entry for new competitors.[106]

Notwithstanding retailer support for the NERL, it is only one of a number of factors affecting a retailer's decision to enter a jurisdictional energy market. For example, while the NERL is not in effect in Victoria, respondents to the AEMC retailer survey stated that the Victorian market remained the preferred entry point for new retailers for reasons of: retail price regulation has been removed; high level of customer awareness and engagement; and conducive wholesale market conditions.[107] Of these factors, while South Australia has the NERL, it has less conducive wholesale market conditions compared with those enjoyed by Victoria.[108]

SACOSS suggested it was not aware of any evidence that could link increased competition to implementation of the NERL. Further, it put the view that some decreased volatility in wholesale market has been observed, but that may be attributed to declining demand.

The submissions made to the Commission support the AEMC 2015 Retail Competition Review finding that there is no evidence that the NERL has reduced retailer ability to make competitive energy offers to vulnerable customers. Origin Energy stated that, on entry to a hardship program, a customer is offered most cost effective product it had available.[109] SACOSS suggested it considered that there was no systemic change, positive or negative.[110]

SACOSS advised it is interested to understand why there were still around 20 per cent of small customers remaining on standing contracts at the time of NERL commencement. It also put the view that the impacts of customers being simply "rolled over" as contracts expire warranted further investigation.[111]

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[103] For an example of a supporting counterfactual, retailer survey respondents identifying factors affecting entry and expansions in the retail electricity market in South East Queensland cited as a policy and regulatory risk that the NERL had not been implemented at that time (Australian Energy Market Commission, 2015 Retail Competition Review, p.67). Similarly for Victoria, respondents identified the failure to commence the NERL as a concern, although acknowledged that harmonisation of the Victorian Energy Retail Code with the NERL had been an improvement (Australian Energy Market Commission, 2015 Retail Competition Review, p.173).
[104] Origin Energy, submission to Issues Paper, p.2.
[105] Origin Energy, submission to Issues Paper, p.1. Energy Retailers Association of Australia, submission to Issues Paper, p.1. Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1. Retailer Forum.
[106] Origin Energy, submission to Issues Paper, p.1.
[107] Australian Energy Market Commission, 2015 Retail Competition Review, p.173.
[108] Although not stated, it might be expected that the relative size of the Victorian market to the South Australian energy retail market might also be a factor influencing new entrant retailers to favour Victoria.
[109] Origin Energy, submission to Issues Paper, p.2.
[110] SACOSS, submission to Issues Paper, p.4.
[111] SACOSS, submission to Issues Paper, p.4.

On the first point, the Commission would note that the trend is still positive, with 16 per cent of small electricity customers on standard contracts as at 31 March 2015. On the second point, the Electricity and Water Ombudsman of NSW noted, in its submission to the AEMC, that it had received complaints from customers of evergreen contracts with a fixed benefit period whose contracts had expired. The outcome was a contract that would continue with a new fixed benefit period, but in most cases involving a reduced discount for customers. The AEMC expects customer awareness of the nature and terms of contracts to improve over time as competition develops.[112] The AEMC notes that work is currently being undertaken by the AER to assist small customers to compare energy offers and make an informed decision.[113]

AGL advised that it supports the NERL for the regulatory stability it sees occurring. AGL suggested that while the NERL is unlikely to ever be uniform in operation across all jurisdictions, it serves to reduce any potential differences, achieving a degree of stability. This stability means that retailers can more predictably allocate resources to address operational and technical compliance requirements.[114]

4.4.2 Findings of AEMC 2014 retail competition review

A summary of the pertinent results of the AEMC 2014 Retail Competition Review[115] was presented in Annexure 2 of the NERL review Issues Paper. As noted in that Annexure:

- The AEMC had found that competition was effective in the South Australian electricity and natural gas retail markets, although less so for gas in regional areas. Competition was less intense in the gas retail market, with the proposition that this may be the result of gas being a secondary consideration for most customers and less attractive proposition for some retailers.
- The AEMC did not expect this competitive position for gas to change much in the short term given tight wholesale conditions and lack of uncontracted capacity on the South East Australian Gas Pipeline.
- The AEMC reported that retailers considered entry, exit and expansion relatively easy in the South Australian energy retail market.
- The AEMC findings lent support to the view that any potential issues affecting competition in the South Australian energy retail market mainly relate to the electricity and gas wholesale market conditions. These had been identified as potential issues in the pre-NERL regime.
- The NERL was not identified as an issue for South Australian competitiveness, but this might be expected because of South Australia benefitting from early adoption of the NERL
  - however, as noted by the AEMC, jurisdictions adopting the NERL have done so retaining state- based measures (modifications or sometimes referred to as derogations).
- There are other state-based schemes that are not within the ambit of the NERL but were suggested in the AEMC 2014 Retail Competition Review to risk having an adverse impact on the level of entry into the energy retail market through creating additional costs, such as solar feed-in tariffs, concession schemes and energy efficiency schemes. This adds to the difficulty of isolating any competitive impacts solely because of the NERL.

[112] Australian Energy Market Commission, 2015 Retail Competition Review, p.265.
[113] Australian Energy Market Commission, 2015 Retail Competition Review, p.35.
[114] AGL, submission to Issues Paper, p.1.
[115] Australian Energy Market Commission, *2014 Retail Competition Review*, Final Report, August 2014, available at www.aemc.gov.au.

4.4.3 Findings of AEMC 2015 retail competition review

Key findings from the most recent AEMC review (AEMC 2015 Retail Competition Review) relating to the South Australian retail energy market include:[116]

- Competition continues to be effective in the South Australian retail electricity market
  - there is a range of energy offers from 13 retail electricity businesses (16 retail electricity brands)[117]
  - one new retail brand has entered since the AEMC 2014 Retail Competition Review, Commander Power & Gas.
- Competition in the retail gas market is effective, but to a lesser degree than for electricity
  - a steady five retail gas businesses (five retail gas brands)
  - however, there are only one or two gas retailers operating in some regional areas.[118]
- The AEMC's overall competition assessment for 2015 is consistent with the AEMC 2014 Retail Competition Review assessment, with the AEMC noting that there had been some minor changes in the South Australian energy retail market in the past year.[119]
- Entry and expansion in the electricity and gas market is not difficult, though views vary across retailers[120]
  - those large retailers with physical generation located in South Australia (vertically integrated) tend to view entry and expansion as not difficult. But those electricity retailers without a physical hedge (that is, locally owned generation facilities) cited a range of difficulties, key being the difficulty in gaining access to competitively priced wholesale hedging products.[121,122] An issue for some retailers is gaining access to gas pipelines.[123]

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[116] Australian Energy Market Commission, 2015 Retail Competition Review, Final Report, 30 June 2015, pp.191-193, available at http://www.aemc.gov.au/News-Center/What-s-New/Announcements/AEMC-releases-annual-report-on-state-of-compet-(1).

[117] For example, AGL wholly owns Powerdirect and so this represents one business but two brands. For more detail see Australian Energy Market Commission, 2015 Retail Competition Review, Figure B.1 (Active retailers in NEM jurisdictions), p.241.

[118]Australian Energy Market Commission, 2015 Retail Competition Review, p.216.

[119] The changes identified by the AEMC were relatively minor, comprising: small decline in market concentration as second tier retailers gain market share; the entry of Commander Power & Gas (the other M2 brand being Dodo) and the combining of second tier retailers Lumo Energy and Red Energy under a common owner (Snowy Hydro); small increase in the proportion of customers satisfied with their electricity retailer; and a drop in the electricity complaints received by the Ombudsman. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.192.

[120] Australian Energy Market Commission, 2015 Retail Competition Review, p.211. Varied views were not confined to the South Australian retail market. For example, in relation to the South East Queensland energy retail market larger retailers also claimed that there were no significant impediments, with other retailer respondents perceiving a range of impediments (AEMC 2015 Retail Competition Review, p.70). Similarly, for New South Wales (AEMC 2015 Retail Competition Review, p.108).

[121] However some smaller retailers reported to the AEMC that price and volatility conditions in the South Australian wholesale electricity had been less variable than in prior years. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.211.

[122] The AEMC's analysis of the degree of liquidity in the OTC exchange traded (futures) market confirms that while liquidity increased slightly from 2012-13, liquidity in the South Australian market remains significantly below the average liquidity ratio in the NEM. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.213.

[123] Other factors of concern to gas retail includes: access to, and price of, gas due to tightening demand and supply conditions; alleged shortcomings of the Adelaide Short Term Trading Market (STTM); and the relatively small size of the South Australian retail gas market compared with the Victorian counterpart. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.215.

- Barriers to entry and expansion do not appear to be significantly impeding competition in the NEM jurisdictions, including South Australia. However, retailers raised concern with a number of jurisdictional specific policies such as concession schemes, the NERL modifications (derogations) and state-based energy efficiency schemes that added costs for reasons such as lack of consistency and design features
  - these concerns were not directed solely at South Australia, but also directed at other NEM jurisdictions.[124]
- Customers continue to actively shop around for energy deals. The majority of South Australian energy customers are aware that they can choose their retailer and are also confident of choosing the best deal for themselves.
- AEMC analysis shows that, for a representative customer, it is possible to find an electricity offer that is $400 per annum cheaper than the most expensive. This for a flat rate market offer[125] with the level of savings differing with energy consumption, discount eligibility and type of contract.
- Retail customers have diverse requirements and it is important that customers have access to clear information about what they are signing up to.[126]

4.4.3.1 Outcomes for retailers

In addition to concerns over access to hedging instruments, second tier retailers also raised with the AEMC the following factors as impediments to entry and expansion in the South Australian energy retail market:[127]

- REES: in addition to being different to other state energy efficiency schemes, particular concern raised over the suggested low obligation thresholds and the requirement to meet priority group (vulnerable customers) targets
- concession scheme and the NERL modifications: South Australian arrangements seen as onerous. The AEMC notes that these concerns were not raised in the 2014 AEMC survey.

These concerns were not confined to South Australia, with second tier retailers raising concerns to the AEMC in relation to the operation of similar schemes in other jurisdictions.

4.4.3.2 Outcomes for energy customers

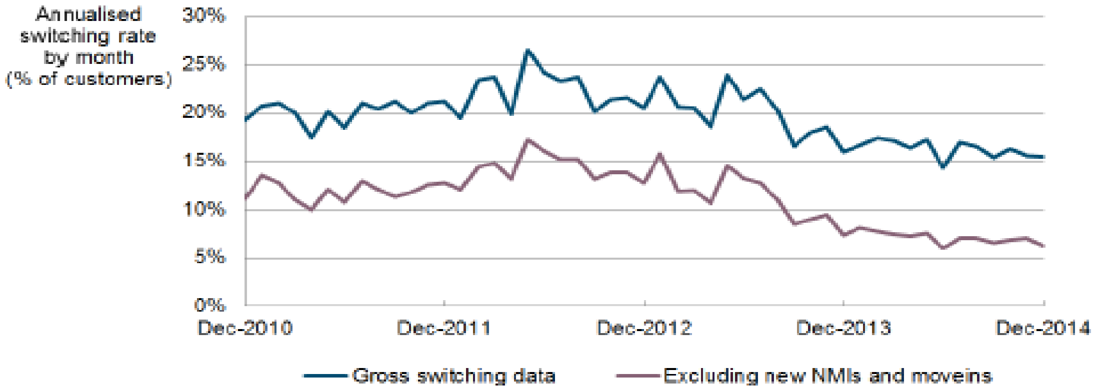
Customer switching

The number of South Australian customers changing electricity retailer (switching) has fallen over the last four years (Figure 4.1, reproducing AEMC Figure 9.3), now significantly lower than in Victoria, but comparable to levels experienced in New South Wales and South East Queensland.[128] Customer switching of retailers is a commonly used indicator of the degree of competitiveness.

[124] Australian Energy Market Commission, 2015 Retail Competition Review, p.23.
[125] Flat rate tariffs are the most common type of tariff, with the customer being charged the same amount for electricity no matter what time of day it is used. Market contracts are those for which the customer has actively entered into a contract with the retailer. Market offers are required to meet certain minimum requirements under the NERL. Standing offers have regulated terms and conditions under the NERR (Rules) and the prices cannot be varied more than once every six months. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.288.
[126] Australian Energy Market Commission, 2015 Retail Competition Review, p.191.
[127] Australian Energy Market Commission, 2015 Retail Competition Review, p.212.
[128] As at December 2014 the electricity small customer switching rates for other jurisdictions, excluding new NMIs and move-ins, were (rates in brackets): Victoria (around 15 per cent), New South Wales (7.5 per cent) and South East Queensland (five per cent). Source: Australian Energy Market Commission, 2015 Retail Competition Review, respective pages 156, p.93 and p.51.

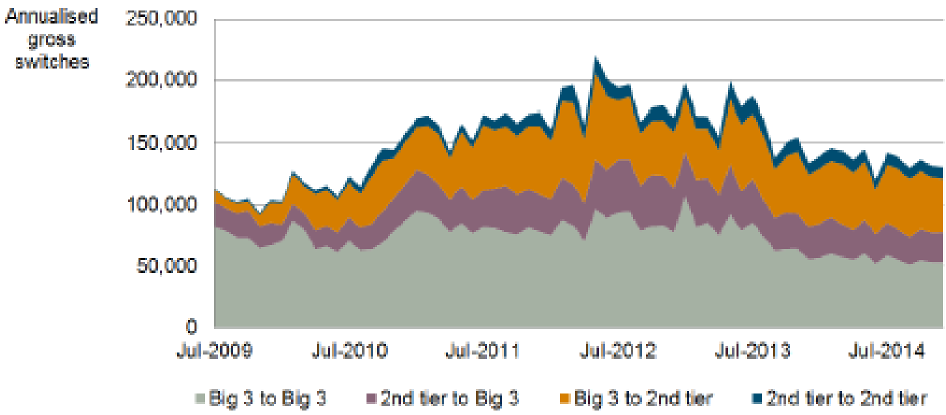
The decline appears to coincide with a reduction in door to door marketing by major retailers since 2013.[129] Retailers surveyed rated as 'high' switching between retailers in South Australia, compared with 'minimal to moderate' for customers changing to different offers with the same retailer.[130]

Figure 4.1 Small customer electricity switching rates in South Australia -retailers combined[131]



Source: AEMO data, AEMC analysis.

Figure 4.2 Small customer electricity switching rates in South Australia -by type of retailer[132]



Source: AEMO data; AEMC analysis

AEMC analysis shows 33 per cent of South Australian small customer electricity switches in December 2014 were from a top three (big three) retailer to a second tier retailer, with around 18 per cent in the opposite direction (that is, second tier to big three).[133] Figure 4.2 (reproducing AEMC Figure 9.23) shows a net transfer from top three to second tier for most of the period 2009 to 2014. Even so, the combined market share of the top three electricity retailers in South Australia as at June 2014 was 81 per cent (the equivalent being 90 per cent for gas).[134]

[129]Australian Energy Market Commission, 2015 Retail Competition Review, p.198. SACOSS also notes that most retailers have moved away from door to door dales and some ACCC prosecutions have reinforced this change, but that the extent to which this can be related to the NERL is unclear (SACOSS, submission to Issues Paper, p.3).
[130] Australian Energy Market Commission, 2015 Retail Competition Review, p.197.
[131] Australian Energy Market Commission, 2015 Retail Competition Review, Figure 9.3, p.197.
[132] Australian Energy Market Commission, 2015 Retail Competition Review, Figure 9.23, p.218.
[133]Australian Energy Market Commission, 2015 Retail Competition Review, pp.217 to 218.
[134] Australian Energy Market Commission, 2015 Retail Competition Review, pp.216 to 217.

SACOSS raised a concern over the treatment of wholly owned subsidiaries in competition indicators. SACOSS argued in its submission that the market share and switching rates for the top three retailers[135] should include the switching rates for Powerdirect as part of AGL, given Powerdirect is a wholly owned subsidiary of AGL Energy.[136] This reflects a concern that including a second tier retailer that is a wholly owned subsidiary of a top three retailer as part of second tier indicators risks overstating the extent of the level of competition prevailing in the retail market.[137]

In the case of South Australia, this is only an issue relevant to the treatment of Powerdirect, which only makes electricity retail offers. While Commander & Dodo (M2) and Lumo Energy and Red Energy (Snowy Hydro) are under common ownership, none of these retailers are top three retailers. For most purposes, the ownership of those retailers that are not top three does not affect the analysis, as these retailers tend to be grouped under a generic heading of 'other retailers' or 'second tier retailers'.

The Commission's NERL review Issues Paper did not distinguish switching rates according to top three retailers and others. However, the market share indicator presented in the NERL review Issues Paper was segmented according to 'top three electricity retailers' and 'other retailers', and did not include Powerdirect as part of AGL.[138]

There can be some debate over the appropriate treatment. One argument for excluding Powerdirect from the AGL figures is that it is being marketed as a separate brand, so customers have the ability to determine whether the Powerdirect offer is sufficiently differentiated from any offer being made by AGL. This was the approach adopted by the Commission in the last report it made on retail energy market development, with Powerdirect separately identified but clearly presented as being owned by AGL Energy.[139]

Nevertheless, the AEMC has combined second tier retailer Powerdirect with AGL in the derivation of its big three retailer market share value of 81 per cent. This is consistent with the SACOSS approach.[140] As the Commission has elected to rely on the AEMC retail competition assessment then this is the approach that has effectively been adopted for the NERL review.

Market offers

While the spread between cheapest and most expensive market contracts was $400 per annum, those customers already on market contracts (84 per cent)[141] would have varying levels of potential savings

[135] In South Australia's case being AGL, Origin and EnergyAustralia for the full period since Full Retail Contestability (FRC), being January 2003 for electricity and July 2004 for gas.
[136]SACOSS, submission to Issues Paper, p.3.
[137] For South Australia, the term "top three retailers" is equivalent to the "big three retailers" term used by the AEMC, being the top three retailers by customer numbers – AGL, Origin Energy and EnergyAustralia. Incumbent retailers (sometimes referred to as 'first tier' retailers) are those retailers that existed prior to full retail contestability and served 'franchise customers'. In South Australia's case, AGL was the incumbent electricity retailer and Origin the incumbent gas retailer. New entrant retailers are sometimes referred to as 'second tier' retailers. However, it appears that the term 'second tier' retailer is coming to mean a retailer that is not a top three retailer and that is the approach that has been adopted in this.
[138] Essential Services Commission of South Australia, NERL review Issues Paper, Figures A.1 and A.2, p.20.
[139] Essential Services Commission of South Australia, *Performance of the South Australian retail energy market-market development,* July –December 2012, Report 3, p.2, available at http://www.escosa.sa.gov.au/library/130606-APR-3-July-Dec2012-RetailMarketDevelopments.pdf.
[140] This compares with a top three (big three) retailer market share of 78 per cent excluding Powerdirect. The AEMC analysis is based on AER data as of June 2014, which in turn has combined Powerdirect customer numbers with AGL's. Source: Australian Energy Market Commission, 2015 Retail Competition Review, p.216 and AER, *State of the energy market 2014*, p.124, available at https://www.aer.gov.au/sites/default/files/State%20of%20the%20energy%20market%202014%20-%20Complete%20report%20(A4)_0.pdf
[141] As at March quarter 2014-15 there were 84% of South Australian small customers on electricity market contracts and 83% on gas market contracts. Source AER *Retail energy market performance update*, available at http://www.aer.gov.au/node/32888.

within this band. The AEMC found that residential customers on average would need to save $210 annually to make it worthwhile to consider switching to another contract.[142]

The confidence of South Australian customers in choosing the right energy option was consistent with the AEMC survey results for the NEM average. Confidence levels vary by customer profile, such as:[143]

- Confidence levels were significantly higher for customers who were either between 18 and 34 years of age, had switched retailer or actively investigated energy offers in the past 12 months.
- Confidence levels were also higher for customers with solar panels and those on special payment or hardship arrangements with their retailer.
- Regional customers were less confident than metropolitan customers.

The AEMC 2015 customer survey supports earlier surveys, including those conducted by the Commission, which show that the search for a better price remains the key reason for customer switching energy retailers or plans.[144] Whether the energy price was subject to change and the presence of an exit fee were relatively important factors for those customers surveyed.

A general lack of awareness of reliable price comparator services remains an issue. The AEMC found low awareness of the Energy Made Easy website among residential and small business retail survey respondents:

- Awareness when the respondent is unprompted remains low at less than one per cent for residential and two per cent for small business customers.
- When prompted, 13 per cent of residential and small business customers said they had heard of the Energy Made Easy website.[145]

This level of awareness is similar to levels reported by the AEMC in 2014 and in the case of South Australian residential customers is five percentage points below the NEM average.[146]

Lack of awareness is not an issue isolated to the NERL regime, as the AEMC findings are consistent with the last survey work undertaken by the Commission.[147] When, in the Commission survey, residential customer respondents were asked the question *are you aware of the ESCOSA Energy Price Comparison Service* (that is, effectively prompted), 13 per cent of metropolitan respondents and nine per cent of regional respondents reported being aware, 12 per cent across the full group. In terms of sources of information used by survey respondents considering switching retailers, three per cent metropolitan and one per cent regional used the ESCOSA Estimator, with 30 per cent of those aware of the Commission's website reporting using it (35 per cent metropolitan and 12 per cent regional).

4.4.3.3 Outcomes for energy customers with affordability issues

The Commission has previously assessed impacts on low income groups as a key competition indicator, to identify the extent to which low income groups might be benefiting from energy market reforms. More recently the Commission undertook an analysis of the South Australian household utility expenditure as reported in the Australian Bureau of Statistics Household Expenditure Survey 2009-10,

[142] Australian Energy Market Commission, 2015 Retail Competition Review, p.198. The equivalent for gas would be annual savings of $170. Small business electricity customers on average would need to achieve annual savings of the order of $710.
[143] Australian Energy Market Commission, 2015 Retail Competition Review, p.195.
[144] Australian Energy Market Commission, 2015 Retail Competition Review, p.198.
[145] Australian Energy Market Commission, 2015 Retail Competition Review, p.205.
[146] Australian Energy Market Commission, 2015 Retail Competition Review, p.205.
[147] Colmar Brunton, *Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information,* Report for the Essential Services Commission of South Australia, August 2010, p. 101, available at http://www.escosa.sa.gov.au/library/100806-ConsumerPreferenceColmarBruntonReportFinal.pdf.

published in September 2011.[148] Unfortunately, this survey is only conducted every six years so the next survey (2015-16) would not be expected to be released before September 2017, which is outside the NERL review timeline.

Given the survey work undertaken by the AEMC in this area for its AEMC 2015 Retail Competition Review, it has not been necessary for the Commission to contemplate replicating any of its earlier work.[149]

According to the AEMC, the results of its 2015 customer survey suggest that those customers with affordability issues, as identified by (i) receiving a rebate or concession; (ii) having entered into a special payment arrangement as a result of financial hardship; or (iii) experiencing payment difficulties were:[150]

- more likely to have investigated their options for an alternative energy contract
- more interested in looking for a better deal
- more likely to have switched retailer, or to a different plan with the existing retailer
- more likely to believe that it is easy to compare energy plans and options
- more concerned about hidden fees and charges
- less trusting of energy companies offering a better deal.

The AEMC suggests that the last concern could be addressed through customers having access to information independent of the retailer. Further, that customers facing affordability issues should also be supported to access concessions and retailer hardship programs.[151]

4.4.3.4 Compliance and enforcement

The AEMC recognises that an important prerequisite to ensuring effective competition is to have effective regulators who in turn effectively enforce the customer protection framework.[152] This underpins customer confidence to engage in the market.

The Commission operated a compliance and enforcement framework when it administered the state- based energy codes in the pre-NERL regime. The Commission was investigating in 2011-12 the issue of some retailers offering discounts without being clear what the discount related to when not a discount off the Commission's previously determined standing contract tariffs.

The AEMC noted the ACCC's stated intent to make energy sector customer protection a priority during 2014.[153] Further, that the ACCC took action in 2014 against a number of energy retailers for breaches of the Australian Consumer Law, including the top three retailers.

While state-based regulators were able to dialogue with the ACCC in the pre-NERL regime, it may be possible that a combination of a national scheme, with a national regulator (AER) closely tied with the ACCC might assist ACCC action in this area. Nevertheless, a number of the ACCC actions related to breaches by a national retailer specifically within South Australia. In any event, it is difficult to see how the current national arrangements would do anything other than assist ACCC enforcement efforts against national retailers for breaching provisions of the Australian Consumer Law.

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[148] Essential Services Commission of South Australia, *South Australian Expenditure on Utilities,* November 2012; available at http://www.escosa.sa.gov.au/library/121129-APR_2012-HouseholdUtilitiesExpenditure.pdf
[149] Essential Services Commission of South Australia, NERL Review Methodology, page 37.
[150] Australian Energy Market Commission, 2015 Retail Competition Review, p.30.
[151] Australian Energy Market Commission, 2015 Retail Competition Review, p.30.
[152] Australian Energy Market Commission, 2015 Retail Competition Review, p.31.
[153] Australian Energy Market Commission, 2015 Retail Competition Review, p.31.

4.5 Innovation

In addition to the product differentiation identified in the AEMC 2015 Retail Competition Review (refer section 4.5.2 below), it was also suggested to the Commission at the Adelaide Public Forum that the creation of products to meet the NERL hardship program requirements had fostered product differentiation, given once developed they could be made available to a broader group of customers. That is, once the business systems have been developed to implement forms of assistance, such as smoothed billing, it becomes a relatively simple exercise to extend such services to customers that might seek them for convenience rather than need.

4.5.1 Findings of AEMC 2014 retail competition review

A summary of the pertinent results of the AEMC 2014 Retail Competition Review[154] was presented in Annexure 2 of the NERL review Issues Paper. Pertinent to innovation (Annexure 2):

- The AEMC found that product differentiation had been limited in most jurisdictions. Most of the retailers surveyed did not expect innovation to occur in retail gas products.
- There appeared to be a level of debate among retailers as to the benefits customers might gain from a retailer providing multiple offers for consideration. The AEMC Review found that larger retailers each offered several different plans (varying contract lengths, fixed benefit periods, graduations of price and non-price inducements), with the retailers stating they did so to meet diverse customer needs. However, smaller retailers tended to offer only a single 'best offer' product, with some of these retailers suggesting that the proliferation of offers from large retailers only served to confuse customers.

4.5.2 Findings of AEMC 2015 retail competition review

A higher level of product differentiation is occurring in those jurisdictions, such as South Australia, which have a choice of a large number of retailers and plans.[155] The AEMC finds that competition through price and product differentiation appears the greatest in Victoria, New South Wales and South Australia.[156]

Examples of innovative offers include initial month or one day per week of "free" electricity and contracts without termination fees.[157] Some retail brands specifically cater to the business market, including small business.[158] Product differentiation has been found to be broadly consistent for urban and rural electricity customers.[159]

Retailers may also differentiate their brand through service quality, which could include call centre operation hours, information provision, hardship and complaints policies, door knocking and cold calling policies, online account access and shop fronts.

[154] Australian Energy Market Commission, *2014 Retail Competition Review*, Final Report, August 2014, available at www.aemc.gov.au.
[155] Australian Energy Market Commission, 2015 Retail Competition Review, p.25.
[156] Australian Energy Market Commission, 2015 Retail Competition Review, p.25.
[157] Australian Energy Market Commission, 2015 Retail Competition Review, p.32. It is worth noting that South Australia has legislatively required each retailer to offer a no early termination fee market contract [Regulation 44C of the Electricity (General) Regulations 2012 and Regulation 36B of the Gas Regulations 2012.].
[158] Australian Energy Market Commission, 2015 Retail Competition Review, p.39. For example, ERM Power, a retailer operating in South Australia, serves small business only.
[159] Australian Energy Market Commission, 2015 Retail Competition Review, p.40.

Product differentiation and innovation can make comparison of energy offers more challenging for customers.[160] However, to the extent this is the case, the response should be to assist customers through better tailored information.

South Australian residential electricity customers have access to a range of offers from multiple retailers. The extent of product differentiation in flat rate market offers for South Australian residential electricity customers is shown in Table 4.1, which reproduces an AEMC 2015 Retail Competition Review table,[161] based on AER Energy Made Easy data as at February 2015. Two major retailers offer contracts in South Australia that do not allow the energy price (price per kWh) or discount level to change for the duration of the contract or benefit period. Around six per cent of South Australian electricity customers have accredited GreenPower.[162]

Table 4.1: South Australian product differentiation: residential electricity flat market offers (February 2015)[163]

	Range	Retailers
All offers	-	14
Unconditional discounts	3%-9%	3
Conditional discounts	1%-20%	12
Other incentives	Yes	5
GreenPower options	10-100%	8
No fixed term / benefit period	Yes	10
Fixed term / benefit period	1-3 years	8
No termination fee	Yes	12
Termination fee	$22-$157.50	8

As a pre-NERL regime comparison, a competition review undertaken by NERA for the Commission includes a summary of offers for residential electricity customers as at March 2007, across 10 retailers, with product differentiation as follows (number of retailers offering in brackets):[164]

- discount on then Standing Contract tariff (10)
- entry rebate (1)
- loyalty rebate (4)
- direct debit rebate (2)
- prompt payment discount (3)
- green energy (5)
- other non-price benefits (7).

160 Australian Energy Market Commission, 2015 Retail Competition Review, p.35.
161 Australian Energy Market Commission, 2015 Retail Competition Review Table 9.1.
162 Australian Energy Market Commission, 2015 Retail Competition Review, p.219. Those on GreenPower as at 30 September 2014.
163 Energy Made Easy accessed on 27 February 2015, AEMC analysis. Australian Energy Market Commission, 2015 Retail Competition Review, Table 9.1, p.219.
164 NERA Economic Consulting, *Review of the Effectiveness of Energy Retail Market Competition in South Australia,* Phase 2 Report for ESCOSA, June 2007, Table H.1, pp.113-117, available at http://www.escosa.sa.gov.au/library/070614-EnergyRetailMarketCompetition-Phase2-Report.pdf.

Table 4.2 South Australian product differentiation: small business electricity flat market offers (February 2015) [165]

	Range	Retailers
All offers	-	13
Unconditional discounts	3%-19%	5
Conditional discounts	1%-20%	9
Other incentives	Yes	4
GreenPower options	10%-100%	5
No fixed term / benefit period	Yes	6
Fixed term / benefit period	1-3 years	12
No termination fee	Yes	9
Termination fee	$22-$150	10

Table 4.3: South Australian product differentiation: residential gas flat market offers[166]

	Urban Area		Rural Area	
	Range	Retailers	Range	Retailers
All offers	-	4	-	2
Unconditional discounts	2%-6%	2	No	0
Conditional discounts	1%-13%	3	1%	1
Other incentives	Yes	2	Yes	1
GreenPower options	Yes	4	Yes	2
No fixed term / benefit period	1-3 years	3	1 year	2
Fixed term / benefit period	Yes	1	Yes	2
No termination fee	$50-$90	3	No	0
Termination fee	-	4	-	2

At the time of the AEMC analysis (February 2015), the level of product differentiation available to small business customers was similar to that available to residential customers, as shown in Table 4.2.

The AEMC analysis results for residential gas and small business gas customers are reproduced as Table 4.3 and 4.4 respectively. The AEMC reported that there were no differences in the type of features offered to South Australian residential and small business gas customers.[167]

[165] Energy Made Easy accessed on 27 February 2015, AEMC analysis. Australian Energy Market Commission, 2015 Retail Competition Review, Table 9.2, p.220.
[166] Energy Made Easy accessed on 21 March 2015, AEMC analysis. Australian Energy Market Commission, 2015 Retail Competition Review, Table 9.1, p.219.
[167] Australian Energy Market Commission, 2015 Retail Competition Review, p.220.

Table 4.4: South Australian product differentiation: small business gas flat market offers[168]

	Urban Area		Rural Area	
	Range	Retailers	Range	Retailers
All offers	-	4	-	3
Unconditional discounts	3%-13%	3	4-6%	1
Conditional discounts	1%-13%	3	1%	1
Other incentives	Yes	1	Yes	0
No fixed term	Yes	4	Yes	3
Fixed term	1-3 years	3	1-2 years	1
No termination fee	Yes	1	Yes	2
Termination fee	$50-$100	3	$110	1
All offers	-	4	-	3

4.6 Derogations

A list of current South Australian modifications to the NERL is provided in Table 4.5, based on an assessment made by the AEMC as at 1 July 2015. The potential for cost impacts becomes greatest the more modifications there are and the more they differ between NERL jurisdictions.

The Council of Australian Governments (COAG) Energy Council is to undertake an assessment of the differences in how jurisdictions have applied the NERL,[169] with a report on opportunities for harmonisation due by mid-2016.[170]

4.6.1 Submissions

Retailers advocated the removal of jurisdictional derogations, on the basis that derogations can undermine the efficiency gains of the NERL, increase costs of compliance, and reduce benefit of a national scheme.[171] Retailers put the view that, where there are differences in obligations, they tend to operate to the highest denominator in an effort to minimise costs.[172]

Some retailers were, however, prepared to support derogations where there is a material benefit to customers that is specific to that jurisdiction.[173]

SACOSS argued that all of the South Australian derogations are important and that it is too early in the implementation of the NERL to consider removing them.[174]

[168] Energy Made Easy accessed on 21 March 2015, AEMC analysis. Australian Energy Market Commission, 2015 Retail Competition Review, Table 9.1, p.219.
[169] COAG Energy Council, Meeting Communique, Adelaide, 11 December 2014, p.2, available at http://www.scer.gov.au/council-meetings/ .
[170] The COAG Energy Council Reform Agenda Implementation Plan Progress Report (Issued 23 July 2015) identifies two work items (i) Individual jurisdictions to report on their NERL derogations by Late 2015 and (ii) a report on opportunities for harmonisation by mid-2016.
[171] Origin Energy, submission to Issues Paper, p.2. EnergyAustralia, submission to Issues Paper, p.1. Energy Retailers Association of Australia, submission to Issues Paper, p.2. AGL, submission to Issues Paper, p.2.
[172] Retailer Forum.
[173] Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1.
[174] SACOSS, submission to Issues Paper, p.4.

Table 4.5: South Australian NERL modifications[175]

Variation	Short Explanation Of South Australian Modification
Application of the Law	As applying to electricity, the NERL only applies to customers whose premises are connected to the National Electricity Market (NEM) network
Consumption thresholds	Small electricity business customer continues to be defined in South Australia as one with annual consumption up to and including 160 MWh p.a.
Small market offer customer	The provisions relating to this sub group of small business customers (40 MWh to 100 MWh for electricity and 400GJ to 1TJ for gas) do not apply in South Australia (in order that this sub group has access to full suite of standard retail contract terms and conditions)
No early termination fee market contracts	Under Regulation 44C, Electricity (General) Regulations 2012 (SA), a NERL retailer must offer a market retail contract to small customers under which the NERL retailer agrees not to directly or indirectly charge a small customer who is a party to the contract a fee for early termination of the contract no matter what the reason for termination may be (similar provisions apply in the case of gas market contracts)
Late payment fees	In accordance with the NERR (model terms and conditions for standard retail contracts, clause 10.4), South Australia by local instrument permits retailers to charge a late payment fee where a bill is not paid by the due date. Such fees are permitted in South Australia providing the fee does not exceed the reasonable costs of the retailer in recovering an overdue amount and must not be applied if the customer has lodged a complaint in accordance with Part 4 of the NERL
Minimum retailer service standards	Minimum standards of service for small customers in relation to retailer responsiveness to written and telephone inquiries
Liability cap – electricity distributor	Liability limited for electricity distributor in relation to failure to supply
Limited notice for planned outages	Distributors are not required to give notice to customers where a planned interruption is less than 15 minutes – due to expire 30 June 2020
Exempt entities	Relates to entities determined exempt by the South Australian Minister. AER must publish the conditions on the AER's website and must consult with the Minister before it varies or revokes a condition determined by the Minister
Small compensation claims regime	South Australia has opted out of the NERL provisions (as has NSW, Tasmania and the ACT)
Extreme weather events	In accordance with the NERL, South Australia by local instrument has defined an extreme weather event as will apply to South Australia. Customers must not be disconnected for failure to pay during such events
Re-energisation after de-energisation for non-payment standards	In accordance with the NERL, timeframe standards for a retailer to organise re-energisation of properties in South Australia following rectification by customer, relating to events such as failure to make a payment in accordance with a payment plan

[175] Based on Australian Energy Market Commission, *Guide to Application of the NERL*, as of 1 July 2015, available at http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NERL . This analysis excludes transitional provisions that are designed to achieve a smooth transition to the NERL or no longer have effect. The transition provisions in the National Electricity Rules are also not covered. The analysis also excludes specific South Australian regulations that are in accord with the NERL (e.g., nominating local area retailers and opting into to the use of prepayment meter systems).

Retailers also advocated for South Australia to move from the current state-specific threshold of 160 MWh to the general NERL small business customer threshold limit of 100 MWh as:[176]

- the threshold is notably higher in South Australia than other states[177]
- retailers require different contracts, billing and pricing arrangements to operate in the South Australian small business market, diminishing the benefit of common systems that the NERL provides[178]
- customers consuming in excess of 100 MWh per annum are sufficiently sophisticated to enter into contractual arrangements not consistent with the National Energy Retail Rules (NERR) – experience of other states demonstrates this[179]
- it creates different reporting obligations between states, making interstate performance comparisons difficult.[180]

The NERL Second Reading speech cites as a key reason for retaining the current 160 MWh threshold being to deal with a transitional issue associated with the retention of price regulation arrangements, which have since been removed.[181]

In relation to the retailer responsiveness standard,[182] retailers advocate South Australia deferring to market competition to improve customer service, rather than seek to impose through regulation as:[183]

- regulated minimum services standards can add to the cost of doing business in South Australia[184]
- regulation assumes which service standards customers value the most[185]
- markets are more effective at signalling changing customer service standards[186]
- the standard is becoming less relevant given advances in platforms for customer communication (for example, email and social media are increasingly more common methods of customers contacting their retailer)[187]
- it is difficult to extract robust data for this standard, due to difficulty in capturing point of origin of mobile calls[188]
- it is difficult for a retailer that has one business call centre number and the business deals with more than energy[189]

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176 Origin Energy, submission to Issues Paper, p.2. Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1. Retailer Forum.
177 Origin Energy, submission to Issues Paper, p.2.
178 Origin Energy, submission to Issues Paper, p.2. Energy Retailers Association of Australia, submission to Issues Paper, p.2. AGL, submission to Issues Paper, p.2.
179 EnergyAustralia, submission to Issues Paper p.2. Energy Retailers Association of Australia, submission to Issues Paper, p.2.
180 AGL, submission to Issues Paper, p.2.
181 NERL Second Reading speech, p.1748.
182 South Australian retailer telephone responsiveness standard (annual best endeavours standard of 85% of calls answered within 30 seconds).
183 Origin Energy, submission to Issues Paper, p.2. Energy Retailers Association of Australia, submission to Issues Paper, p.2. Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1.
184 Origin Energy, submission to Issues Paper, p.2. Energy Retailers Association of Australia, submission to Issues Paper, p.2. AGL, submission to Issues Paper, p.2. Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1.
185 Origin Energy, submission to Issues Paper, p.2.
186 Origin Energy, submission to Issues Paper, p.2. EnergyAustralia, submission to Issues Paper, p.2. Energy Retailers Association of Australia, submission to Issues Paper, p.2.
187 Origin Energy, submission to Issues Paper, p.2. EnergyAustralia, submission to Issues Paper, p.2. Retailer Forum.
188 EnergyAustralia, submission to Issues Paper, p.2. Retailer Forum.
189 Retailer Forum.

- a customer dissatisfied with call centre performance has avenues for address, such as complaining to the retailer, raise their complaint with the Ombudsman or switch to a new retailer.[190]

Similar concerns were expressed in relation to the South Australian energy retailer written responsiveness standard.[191]

In undertaking any benefit cost assessment of derogations such as these retailer standards, as pointed out by one participant to the Adelaide Public Forum, it will be important to determine the cost to retailers to conform to these standards.

One retailer also raised the cost of complying with the requirement for all retailers to have at least one market contract with No Early Termination Fee.[192]

4.6.2 Discussion

The Commission is not intending to form a view as to the continuing merits or otherwise of the South Australian derogations. This should be carried out as a separate exercise, employing robust benefit cost techniques. The Commission would note, however, that while some retailers advocate removal of the No Early Termination Fee market contract, it would seem difficult for retailers to argue that customers can respond to poor service (refer above to comments concerning telephone responsiveness standard) by switching retailers if to do so they would incur a substantial termination cost.

While the retailers are keen to see some derogations removed, SACOSS advocated for some additional derogations, supporting the imposition of a wrongful disconnection fee and a ban on late payment fees, as applies in Victoria.[193]

SACOSS suggested it is concerned that the impact of late payment fees is compounded by the loss of discounts and that this warranted Commission analysis (see more detailed discussion of this point in Chapter 6).[194]

While not a derogation to the NERL,[195] as noted in the AEMC 2015 Retail Competition Review, concession schemes vary considerably amongst jurisdictions. For example, under the South Australian concessions scheme, a customer entitled to a concession must contact the Department as well the retailer when moving to a new retailer but in other states the concession transfer is automatic when the customer contacts the retailer.[196] As noted at the Adelaide Public Forum, this can lead to call centre staff confusion and risk of loss of concession on accounts. But also as noted at the Retailer Forum, retailers were not saying that the South Australian concession scheme framework was necessarily inferior to interstate counterparts, but there are differences that invariably lead to retailers incurring costs.

4.7 Other matters

4.7.1 Customer access to greenhouse information

The Conservation Council of SA raised concern in its submission with the effective removal, on NERL commencement, of the requirement for retailers to include greenhouse gas information on customer

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190 Energy Retailers Association of Australia, submission to Issues Paper, p.2.
191 Red Energy, submission to Issues Paper, p.2. Lumo Energy, submission to Issues Paper, p.2. Retailer Forum.
192 Momentum Energy, personal conversation.
193 SACOSS, submission to Issues Paper, p.6.
194 SACOSS, submission to Issues Paper, p.4.
195 That is, the NERL recognises the sovereignty of jurisdictions to establish and operate concession schemes
196 For more details see South Australian Department for Communities and Social Inclusion, Concessions Finder, Energy, Changing Retailers at http://www.dcsi.sa.gov.au/concessions/pensioner-concession-card/energy.

bills on a consistent basis.[197] Further, that the NERL review should consider the support customers' need for an orderly transition to a low carbon electricity supply.

Formerly, section 24(2)(da)(iv) of the Electricity Act 1996 required retailers to include in each customer bill information relating to *greenhouse gas emissions associated with the customer's electricity consumption*.[198] Under Regulation 20(c) of the Electricity (General) Regulations 2012, the amounts of greenhouse gas emissions were required to be calculated*, in a manner approved by the Commission, by reference to material about emissions coefficients published by the Clean Energy Regulator established under the* Commonwealth's Clean Energy Regulator Act 2011.[199]

The Conservation Council of SA has put the view that a lack of adequate information being made available to customers can be a market failure and affect the competitiveness of a market. In this context, the removal of the requirement for retailers to provide greenhouse gas details would be a loss of information to that group of customers that might depend on such information for decision making purposes.

It would not appear that the Conservation Council of SA could pursue a NERL Rule change to achieve its desired outcome, unless it could demonstrate an improved efficiency outcome. Chapter 2 outlined the efficiency concept underpinning of the National Energy Retail Objective (NERO). The NERO does not directly address environmental considerations. Rule 25 of the NERR lists the items which must be included on a bill for a small customer (which does not include any requirements in relation to the provision of greenhouse information). Clause 224 of the NERL requires the AEMC to have regard to the NERO in exercising any function or power under the NERL, national regulations or NERR. Further, clause 236 requires that the AEMC only make a Rule if it is consistent with the NERO.

Customers seeking to minimise their contribution to greenhouse currently have the options of reducing overall electricity consumption (for example, through changes in lifestyle or the installation of more energy efficient devices); and/or purchasing varying levels of GreenPower (that is, there are options to purchase from 10 per cent to 100 per cent of electricity consumption from renewable resources); and/or installing solar panels or other on-site renewable energy solutions.

It is not clear at this stage that placing greenhouse gas intensity information on bills will provide the best decision making information for customers. While an individual customer can compare trends over time in their individual bills, it may be more relevant for a customer to know the average greenhouse gas intensity by retailer, as a factor in considering which market offer may best meet that customer's overall objectives and needs.

In that context, the Conservation Council SA stated that *there has been no progress on the national front to reform electricity markets to provide factual information to customers about the sustainability and greenhouse performance of electricity companies*.[200] The Commission notes that some energy retailers have indicated a commitment to move to disclose their greenhouse gas emissions.[201]

The NERL contains minimum information requirements for bills and so there is nothing preventing a retailer providing customers with information on greenhouse gas emissions, in response to demonstrated customer demand.

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[197] Conservation Council SA, *Review of the Operation of the National Energy Customer Framework in South Australia-Issues Paper*, May 2015, p.1, available at http://www.escosa.sa.gov.au/library/20150709-ReviewOfNECFinSAIssuesPaperSubmission-CCSA.pdf.
[198] Copy of the legislative provision available at http://www.legislation.sa.gov.au/LZ/C/A/ELECTRICITY%20ACT%201996/2013.01.31/1996.96.UN.PDF.
[199] Copy of the legislative provision available at http://www.legislation.sa.gov.au/LZ/C/R/ELECTRICITY%20(GENERAL)%20REGULATIONS%202012/2013.01.31/2012.199.UN.PDF.
[200] Conservation Council SA, submission to Issues Paper, p.1.
[201] AGL, *Annual Report 2015*, p.11, available at http://www.agl.com.au/~/media/AGL/About%20AGL/Documents/Investor%20Centre/150826_AnnualReport_1466512.pdf.

On balance, this change alone is not considered sufficient to show that the NERL has adversely affected customer protection in pursuit of national consistency.

5 Overall assessment

Draft finding

The Commission's draft finding is that the overall operation of the National Energy Retail Law has furthered the interests of South Australian energy consumers.

Key points

- The Commission has assessed that the NERL has not adversely affected customer protection in pursuit of national consistency (Chapter 3).
- The Commission has assessed that the NERL has resulted in increased efficiencies (Chapter 4).

5.1 Introduction

The NERL review terms of reference addressed in this chapter is:

> *The Commission must conduct a review of the operation of the National Energy Retail Law in South Australia after the expiry of 2 years from the date fixed under section 4 [that is, after 1 February 2015].*

5.2 Overall benefits

The terms of reference require the Commission to make a finding as to whether the overall operation of the NERL has furthered the interests of South Australian energy customers.[202]

The assessment being made here is whether the NERL has delivered an overall positive outcome. Achieving a societal positive outcome requires any net savings achieved by retailers to not be offset by losses incurred by energy customers, such as through reduced customer protections.[203]

The Commission's draft finding is that the overall operation of the NERL has furthered the interests of South Australian energy customers. This is on the basis that:

- the Commission has assessed that adoption of the NERL has not adversely affected customer protection in pursuit of national consistency (Chapter 3)
- the Commission has assessed that the NERL has resulted in increased efficiencies (Chapter 4).
- all matters raised in consultation have been considered in either Chapter 3 or 4 of this report and the Commission is not aware of any other evidence that would result in an adverse overall finding.

[202] As the NERL establishes the National Energy Customer Framework (NECF) both terms are used interchangeably in this paper. Reference to the NERL should be read as including associated statutory instruments, such as the National Energy Retail Rules.
[203] Given the NERL affected the operations of energy distributors, it will also be important to understand the impact on the costs of SA Power Networks (electricity) and Australian Gas Networks (gas).

6 Additional observations

Some matters were raised during consultation that were out of scope for the NERL review. While such matters were not taken into account by the Commission in forming its view on the impact of the NERL for South Australian energy customers, this chapter presents those matters as they may be of interest to policy makers and other stakeholders.

6.1 Stakeholder suggested enhanced protections for the NERL

A number of stakeholders called for consideration of additional customer protections that did not exist under the pre-NERL regime. While these suggestions are outlined below in this section for the benefit of policy makers, they are considered out of scope for the NERL review.

6.1.1 Late payment fees

SACOSS, in its submission, advised of its support for a ban on late payment fees, as applies in Victoria.[204]

The Commission's Energy Retail Code (applying pre-NERL) permitted a late payment fee to be charged provided that it represented the retailer's reasonable costs of recovering the amount from the customer (clause 11.3, customer sale contract standard terms and conditions).[205] This was carried over to the NERL regime by means of section 24 of the National Energy Retail Law (South Australia) Act 2011, which permits such fees in South Australia providing the fee does not exceed the reasonable costs of the retailer in recovering an overdue amount and must not be applied if the customer has lodged a complaint in accordance with Part 4 of the NERL.[206]

In this instance the South Australian Government has made an explicit policy call to continue a pre-existing requirement to operate under the NERL, with the clear proviso that such fees should be restricted to the reasonable costs incurred by the retailer.

During the course of this review, some consumer stakeholders have also raised concern that, when a customer fails to pay a bill, in addition to risking a late payment fee, they are likely to forfeit any on-payment time bonuses which can represent a sizeable discount on the full bill value.[207] In effect, there is a duplicate penalty situation applying to customers who are unable to pay their bill due to financial difficulty. SACOSS noted that energy retailers are typically charging a late payment fee of $12 to $15, compared to a loss of pay on time discounts that could amount to around $100 per quarter for a typical household.[208]

The Commission has not investigated this alleged duplicate penalty, as a similar situation could have applied in the pre-NERL regime and so it is not peculiar to the NERL. It could be a compliance matter to assess whether retailers are meeting the legislative requirement of late payment fees not exceeding reasonable costs. It is also possible that the pay on time discount is being used as a general marketing measure and so there may not be a one-on-one relationship with the cost to the retailer of a late payment.

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[204] SACOSS, submission to Issues Paper, p.6.
[205] Essential Services Commission of South Australia, Energy Retail Code ERC/03, March 2004 (as last varied in November 2010), available at http://www.escosa.sa.gov.au/library/101102-EnergyRetailCode-ERC03.pdf .
[206] Copy of Act available at http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011/CURRENT/2011.6.UN.PDF
[207]See for example, SACOSS, submission to Issues Paper, p.4.
[208] SACOSS, submission to Issues Paper, p.4.

6.1.2 Extreme weather events

A suggestion was made at the Adelaide Public Forum to consider implementing a scheme to temporarily reconnect for periods of extreme weather, those people who had previously been disconnected due to inability to pay but where otherwise yet to reconnect.

The adoption of such a measure would be a policy matter to be addressed by the South Australian Government. It is outside the review terms of reference, given that such a requirement did not exist in the pre-NERL regime.

The Commission has not undertaken a detailed consideration of the merits of this proposal. However, it would appear that this suggestion could be potentially costly and involve practical issues, particularly where the customer would otherwise remain disconnected through a series of extreme weather events. In the absence of the ability to reconnect and disconnect remotely, it is difficult to see how such a solution would be preferable to resolving the factors leading up to the initial disconnection for inability to pay.

6.1.3 Wrongful disconnection penalty payments by retailer

SACOSS advised that it would support the adoption of a wrongful disconnection fee, as applies in Victoria.[209] Wrongful disconnections can occur for circumstances such as disconnecting the wrong premises or disconnecting a customer on a hardship program. In addition to being a compliance matter for the retailer, the retailer would be required to make a compensatory payment to the affected customer, typically $250 per day[210] in Victoria.

Again, this would be a policy matter to be addressed by the South Australian Government and is outside the NERL review terms of reference.

6.2 Improving efficiency under the NERL

Retailers raised concern over the degree of non-uniformity in the application of the NERL across jurisdictions. While South Australia would not appear to have a large number of material modifications (derogations) to the NERL, the following modifications are of concern to retailers:

- retailer telephone and written responsiveness standards
- consumption threshold for small electricity business customers
- no early termination fee market contract.

The Commission's position is that these specific derogations have maintained or improved customer protection so in the transition to the NERL and, in the context of the review terms of reference, they have therefore not resulted in an adverse impact on customer protection. Consequently, as noted above, the matters raised in consultation concerning derogations are presented here in case they may be of interest to policy makers and other stakeholders.

There appears to be a simple message from retailers that *difference* creates *additional cost*.[211] However, any costs arising from derogations or other differences need to be considered against the benefits to the community, to determine the extent of any overall net benefit.

[209] SACOSS, submission to Issues Paper, p.6.
[210] Energy and Water Ombudsman Victoria, available at https://www.ewov.com.au/complaints/assistance-to-lodge-a-complaint/if-the-energy-disconnection-was-wrongful.
[211] For example, the Energy Retailers Association of Australia stated that legislative and regulatory inconsistencies across state borders increase retailer administrative and compliance costs. (Energy Retailers Association of Australia, submission to Issues Paper, p.1).

The general NERL business customer consumption thresholds are subject to review five years after the commencement of the NERL.[212] Red Energy and Lumo Energy support derogations only where it can be shown they achieve a material benefit to customers in the specific jurisdiction that they are enacted in.[213] The Commission notes that the COAG Energy Council is to undertake an assessment of the differences in how jurisdictions have applied the NERL. It would seem good practice for derogations to be reviewed periodically to ensure that the benefits to the relevant community continue to exceed the associated costs.

As evidenced by the results of the AEMC Retailer survey, retailers consider that there are other areas, outside the NERL, that could be assessed for harmonisation, such as concession schemes.

6.3 Emerging challenges to the NERL

The issue as to what cover the NERL is providing or should provide to solar photovoltaic units (**solar PV customers**) and other emerging products and services was raised at both the Adelaide Public Forum and the Retailer Forum. A consumer group member at the Adelaide Public Forum asked whether embedded network customers were adequately covered by the NERL.

As the retail energy market has evolved since the implementation of full retail contestability,[214] the trend appears to be towards entities providing retail services, rather than just energy retailers organising the supply of electricity and gas from conventional networks. The NERL was developed on the basis that customers would purchase under a retail contract electricity generated and transported in the interconnected electricity system.[215] That is, the NERL was designed to *deliver a national framework for regulating retailers and distributors who sell and supply electricity and gas to customers*.[216]

New products and services are permitting customers' greater control over how their electricity is delivered and consumed, including:[217]

- embedded (distributed) generation and storage options (for example, solar PV and battery)
- demand management services such as direct load control, energy advice services
- new business models for selling energy.

Energy sellers need either an authorisation (which requires the supplier to adhere to the full set of NERL customers protections) or exemption to operate under the NERL.[218] As noted by the AEMC, the AER has also consulted on which of these two approaches should be required of business operations providing certain new and emerging products and services.[219] Solar power purchase agreements are an example of an emerging product, where customers pay a business for the energy produced by a solar PV system at their premises.[220]

The NERL customer protections are predicated on a customer having a network connection and a number of the new solar PV products and services potentially enable a customer to go off-grid.[221] The AER has granted exemptions from the full requirements of the NERL to some energy suppliers, such as

[212] Regulation 9 of the National Energy Retail Regulations, available at http://www.legislation.sa.gov.au/LZ/C/R/NATIONAL%20ENERGY%20RETAIL%20REGULATIONS/CURRENT/2012.169.UN.PDF.
[213] Red Energy, submission to Issues Paper, p.1. Lumo Energy, submission to Issues Paper, p.1.
[214] For electricity – January 2003 and gas – July 2004.
[215] COAG Energy Council, New Products and Services in the Electricity Market, Advice to the COAG Energy Council, Energy Working Group, Final Report, July 2015, p.11, available at https://scer.govspace.gov.au/files/2015/08/New-Products-and-Services-Policy-Advice-FINALAugust-2015.pdf.
[216] NERL Second Reading Speech, South Australian Parliament, House of Assembly, Wednesday 27 October 2010, p.1745.
[217] COAG Energy Council, Energy Working Group, New Products and Services in the Electricity Market, Final Report, p.3.
[218] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.4.
[219] Australian Energy Market Commission, 2015 Retail Competition Review, p.43.
[220] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.4.
[221] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.4.

some solar energy suppliers, where such sellers are deemed to have a 'lesser' involvement in the retail energy market, in accordance with the AER's Exempt Selling Guidelines.[222] Some other solar suppliers are not captured at all by the NERL where they only supply equipment and not energy. The AEMC notes that a similar exemption approach has been employed in Victoria (non-NERL).[223]

The NERL provides customer protections in areas such as billing, tariffs, guaranteed access to offer of supply and marketing, which would not currently be available to customers for electricity generated from on premises solar PV systems.[224] This is unless the electricity was being supplied under a solar power purchase agreement charged on a per kilowatt hour basis (because energy is being sold) and then the specific customer protections provided would depend on the conditions of the AER exemption, which are enforceable as if they were the Rules.[225, 226]

At its 23 July 2015 meeting, the COAG Energy Council *agreed to investigate whether the scope of existing energy consumer protections require change in light of consumers having an increasing range of electricity supply options, as well as the appropriate consumer protection framework for off-grid installations*.[227]

There is a risk that customers could receive different protections depending on how they receive their energy supplies. For example, retailers supplying electricity to customers from the grid will be required to supply services consistent with NERL requirements. But other suppliers not involved in the direct supply of grid energy, such as some forms of solar PV leasing arrangements, currently may not need to be authorised under the NERL and as a consequence the customer may not be protected to the extent of that provided by the NERL. There may be an incentive for businesses to structure their business to avoid more stringent customer protection requirements of the NERL.[228] This is by way of explaining the issue, and should not be interpreted as the Commission passing comment on whether all comparable products and services should be regulated under the NERL.

As an example of the rapid growth in solar installation in South Australia, in 2010-11 the installed approved capacity was around 100MW, growing to 670MW by June 2015. The simple average size of a residential solar PV system has also grown from 1.3kW (2008-09) to 3.1kW (2011-12) and then to 5.9kW (2014-15).[229] Solar (residential rooftop PV) share of South Australian electricity generation increased from 1.9 per cent (2011-12) to 5.6 per cent (2013-14).[230]

For the purposes of this NERL review, the Commission does not propose to do any more than note that relevant parties are well aware of the issue of emerging products and services and that work is being undertaken to assess the need for any corresponding amendments being made to the NERL. While the installation of solar PV had ramped up prior to the NERL, the range of alternative services was not as evident. In any case, while the previous state-based regime incorporated inset network and off-grid regimes that allowed exemptions from the full suite of Energy Code obligations, in general it could not be claimed to be any better able to accommodate industry developments than the current NERL framework.

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[222] Australian Energy Market Commission, 2015 Retail Competition Review, p.43.
[223] Australian Energy Market Commission, 2015 Retail Competition Review, p.43.
[224] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.12.
[225] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.17.
[226] NERL Second Reading Speech, p.1753.
[227] COAG Energy Council, *Meeting Communique*, Perth, 23 July 2015, p.4, available at https://scer.govspace.gov.au/files/2015/07/Energy-Council-Communique-23-July-2015-FINAL.pdf.
[228] COAG Energy Council, New Products and Services in the Electricity Market, Final Report, p.3.
[229] Drawn from data supplied to the Commission by South Australian Power Networks.
[230] Australian Energy Market Operator, South Australian Fuel and Technology Report, South Australian Advisory Functions, January 2015, Figure 3, p.7, available at http://www.aemo.com.au/Electricity/Planning/South-Australian-Advisory-Functions/South-Australian-Fuel-and-Technology-Report.

While any changes to the NERL would involve gaining support of multiple jurisdictions, there are also significantly more resources available to analyse any emerging issues and to identify the most appropriate way forward.

7 Next steps

7.1 Timetable for this review

After taking into consideration feedback received on this Draft Report, and other relevant advice, the Commission intends to submit the Final Report on the NERL review to the Minister for Mineral Resources and Energy in April 2016.

The Commission intends to hold a further a Public Forum in February 2016 in Adelaide, subject to sufficient interest. Information relating to that forum will be made available on the Commission's website closer to that time. The Commission is also keen to hold regional forums, again subject to interest.

7.2 Further information

Any queries relating to this consultation should be directed to:

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