



# ENERGY SECURITY BOARD

T-3 Ministerial lever for the  
retailer reliability obligation

Draft Bill and initial Rules

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## List of Abbreviations

AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ESB	Energy Security Board
GW	Gigawatt
MLO	Market Liquidity Obligation
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NSW	New South Wales
OTC	Over the counter
QLD	Queensland
RRO	Retailer reliability obligation
SA	South Australia
VBB	Voluntary Book Build
VIC	Victoria

## Executive Summary

The Energy Security Board (**ESB**) is progressing a recommendation from its [Post 2025 Market Design final advice](#) to implement a T-3 Ministerial lever for the Retailer Reliability Obligation (**RRO**) for all regions in the National Electricity Market (**NEM**), as is currently in place in South Australia.

The recommendation for the RRO amendment was approved by the Energy National Cabinet Reform Committee (Sep-2021) and endorsed by National Cabinet (Oct-2021).<sup>1</sup>

The RRO amendment is one element in the ESB's broader reform programme addressing challenges of resource adequacy and ageing thermal generation retirement.

### Features of the draft Bill<sup>2</sup> and initial Rules<sup>3</sup> package

Under the existing RRO mechanism, the Australian Energy Market Operator (**AEMO**) forecasts annually whether the reliability standard is likely to be met in each region of the NEM over the coming 10 years. If a material gap is identified three years from the period in question (T-3), AEMO must apply to the Australian Energy Regulator (**AER**) to trigger the RRO.

The draft Bill amends the T-3 trigger so that the relevant Minister has the option to trigger a T-3 reliability instrument for their jurisdiction if it appears to the Minister, on reasonable grounds, that there is a real risk that the supply of electricity will be disrupted to a significant degree during a specified period.

This modification has been applied in South Australia since the commencement of the RRO.

The draft Bill for the National Electricity Law (**NEL**) and draft amendment to the National Electricity Rules (**NER**) are shared in **Attachment A** and **Attachment B** respectively (separate documents).

### Benefits of the change

The proposed amendments are designed to deliver the following policy outcomes:

- provide a supporting policy lever to address reliability concerns in the NEM
- implement a nationally consistent framework by extending the current legislative framework in South Australia to the other jurisdictions
- leverage the existing RRO framework which is well understood by market participants.

### Implementation

The draft Bill allows the Minister of the relevant jurisdiction to make a T-3 reliability instrument for a specified period starting from December 2025.

A transitional arrangement is proposed in the event that legislation is not finalized for this first specified period. The trigger period for this first specified period can be truncated to no less than 24 months. After the cut-off date in December 2023, the trigger period reverts to 36 months (3 years) which is consistent with the principle of the existing RRO mechanism.

### Consultation

The consultation period is two (2) weeks, which reflects the relative simplicity of the proposed amendments and the familiarity of affected market participants with the existing RRO and the South Australian precedent.

The ESB welcomes submissions on this draft Bill and initial Rules by 17 August 2022. The ESB intends to hold a webinar on 9 August 2022 to brief stakeholders and facilitate Q&A (register [here](#)).

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<sup>1</sup> ESB, [Post 2025 market design - final reform package and recommendations](#), published 29 October 2021

<sup>2</sup> The draft 'National Electricity (South Australia) (Ministerial Reliability Instrument) Amendment Bill 2022' (the draft Bill).

<sup>3</sup> The draft 'National Electricity Amendment (Ministerial Reliability Instrument) Rule 2022' under section 90F of the *National Electricity (South Australia) Law* (the initial Rules).

# 1 Introduction

## 1.1 Reliability challenges

The RRO amendment is part of a broader resource adequacy reform package. Reliability is an ongoing concern for all parties; consumers, market participants, investors, jurisdictions and market bodies. The pace of change is accelerating.

Coal-fired generation is withdrawing faster than announced. AEMO's Step Change scenario implies 60% of coal capacity may withdraw by 2030 and all coal-fired generation will cease by 2040.<sup>4</sup> In the last 15 months alone, updated announcements have affected 7GW of coal capacity retirements:

- Mar-2021: Yallourn closure brought forward from 2032 to 2028
- Feb-2022: Eraring closure brought forward from 2031-32 to 2025, Bayswater closure brought forward from 2035 to 2033.

More recently, the reliability of the NEM has been challenged by high thermal fuel costs (affected by global gas prices and local coal supply constraints) and thermal unit outages leading to the market suspension in June 2022.

In parallel, the Step Change scenario forecasts significant investment in variable renewable energy (VRE). The capacity of utility scale VRE resources is expected to triple by 2030 and nearly half the homes in the NEM are expected to have installed distributed VRE by 2032.<sup>5</sup>

There is significant complexity to integrate energy systems (electricity, gas and new technologies) and to coordinate exit and entry. Reliability concerns have initiated the consideration, design and development of longer-term reforms such as orderly exit management arrangements and the capacity mechanism. However, there are short and medium-term reliability gaps that need to be addressed.

The RRO amendment has value as a supporting policy lever in response to:

- generation retirement including the uncertainty of its timing and the market response
- challenges of mothballing rather than closure (the latter is subject to market rules e.g. notice of closure)
- create market signals particularly if the market is illiquid
- encourage contracting by large commercial and industrial participants contracting directly from the wholesale market.

## 1.2 Background to the RRO

The RRO was designed to address challenges to reliability as a result of the integration of VRE and the closures of thermal generators. The RRO came into effect on 1 July 2019 and builds on existing spot and financial market arrangements in the NEM to facilitate investment in dispatchable capacity. The RRO has three main drivers that are designed to collectively lower electricity prices:

- increased contracting, thereby unlocking new investments
- increased contracting in deeper and more liquid contract markets, resulting in a reduction in the level and volatility of spot prices
- increased voluntary demand response.

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<sup>4</sup> AEMO, 2022 Integrated System Plan, <https://aemo.com.au/-/media/files/major-publications/isp/2022/2022-documents/2022-integrated-system-plan-isp.pdf?la=en>, June 2022, p.9

<sup>5</sup> Ibid p. 10

The mechanism operates as follows:

1. AEMO forecasts annually whether the reliability standard is likely to be met (or not) in each region of the NEM over the coming 10 years.
2. If a material gap (defined as a breach of the reliability standard) persists or emerges three years from the period in question (T-3), AEMO must apply to the AER to trigger the RRO.
3. If the RRO is triggered at T-3, liable entities may be required to demonstrate future compliance by entering into sufficient qualifying contracts to cover their share of forecast one-in-two year peak demand during the gap.
4. If one year out from a forecast material gap (T-1), AEMO forecasts the gap remains and the AER issues a T-1 reliability instrument, AEMO may procure reserves through the Retailer Emergency Reserve Trader (**RERT**) mechanism and liable entities may be responsible for costs through the procurer of last resort cost recovery mechanism. At this point, liable entities are required to disclose their net contract positions for the gap period to the AER.
5. If actual peak demand over the gap period (T) exceeds the one-in-two year forecast as set out in the T-1 Reliability Instrument, the AER will assess the compliance of liable entities.

### 1.3 South Australian amendment to the RRO

The *National Electricity (South Australia) Act 1996* (Application Act) applies the NEL in South Australia and provides an option for the South Australian Minister to trigger a T-3 reliability instrument (step 2 in the 5-step process above). This modification has applied in South Australia since the RRO was introduced.

The Minister is required to consult with AEMO and AER in relation to any instrument being proposed.

There is no ability for the Minister to issue a T-1 reliability instrument (steps 4 and 5 in the 5-step process above). This means that, unless a reliability gap is forecast by AEMO at T-1, the obligations under the RRO will cease to operate at T-1 and there would be no requirement for liable entities to submit their net contract position to the AER.

### 1.4 Register of T-3 reliability instruments

As at July 2022, five T-3 instruments have been triggered of which:

- Four were triggered by the South Australian Minister; two have been revoked and the remaining two have not reached the T-1 milestone date.
- One was triggered in NSW by AEMO/AER relating to a specified period in Jan-Feb 2024.

Table 1 summarises the register of T-3 reliability instruments and their status.

**Table 1 Register of T-3 reliability instruments**

State	Period	Triggered by	Status
SA	Jan – Mar 2022	SA Minister	Revoked
SA	Jan – Mar 2023	SA Minister	Revoked
NSW	Jan – Feb 2024	AEMO / AER	Current
SA	Jan – Mar 2024	SA Minister	Current
SA	Jan – Mar 2025	SA Minister	Current

Source: AER, [Register of reliability instruments](#), accessed 11 July 2022

## 1.5 Implications of a T-3 reliability instrument

When a T-3 reliability instrument is made, liable entities are on notice to procure sufficient qualifying contracts to cover their share of a one-in-two year peak demand forecast. The market is expected to respond by contracting or developing new capacity. The additional demand for contracts is expected to facilitate new capacity in the market e.g. generation, storage or demand response.

Liable entities are defined as retailers, other market customers (e.g. large customers acquiring energy directly from the wholesale market) and entities that ‘opt-in’ to manage the liability associated with their load. Liable entities may be required to demonstrate *future compliance* (at T-1) by entering into sufficient qualifying contracts to cover their share of forecast one-in-two year peak demand in the specified period.

In order to meet demand and ensure that smaller market customers will be able to fulfill their obligations under the RRO, certain groups are required to make contracts available to the market (Market Liquidity Obligation) (MLO). The MLO has “the dual benefit of assisting purchasers of the contracts in meeting their contracting obligation under the RRO, while also incentivising MLO groups to invest in dispatchable capacity.”<sup>6</sup>

MLO groups are required to post bids and offers, with a maximum spread, on an approved exchange for standardised products that cover the period of the gap. Table 2 identifies the MLO groups and their level of experience with T-3 reliability instruments. As at July 2022, four out of seven MLO groups are familiar with the requirements as a result of T-3 reliability instruments triggered in SA and NSW.

**Table 2 MLO participants’ experience with T-3 reliability instruments**

MLO group	SA	NSW	VIC	QLD
AGL	●	●	○	
Origin	●	●		
Engie	●			
Snowy Hydro		●	○	
EnergyAustralia		◐	○	
CS Energy				○
Stanwell				○

### Key

- MLO group triggered by T-3 instrument
- ◐ Participant in the AER’s RRO Generator Portal but did not meet the threshold of > 15% market share.
- MLO group identified in the AER’s [Interim Market Liquidity Guidelines](#) August 2019 and AER’s [Determination of MLO groups in SA and QLD](#), June 2020. T-3 instrument has not been triggered.

Note: The MLO does not apply to Tasmania, as the Tasmanian Electricity Supply Industry Act 1995 already requires Hydro Tasmania to offer regulated over the counter (OTC) electricity contracts to authorised retailers operating in the state.

Source: analysis based on register of reliability instruments <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation/register-of-reliability-instruments>, accessed as at July 2022.

<sup>6</sup> AER, [Interim Market Liquidity Guidelines](#) (August 2019), p 16.



AEMO may also conduct a voluntary book build (**VBB**) process which is effectively a bulletin board style platform and process that matches up potential buyers and sellers of qualifying contracts for the forecast reliability gap period. This is an additional mechanism to the MLO for buyers to source contracts and for potential new market entrants to locate off-takers. Participation in the book build is voluntary and the costs of the book build process will be levied on book build participants only.

## 2 Draft Bill and initial Rules

The draft Bill and initial Rules are shared in **Attachment A** and **Attachment B**. This section provides a companion explanation for the proposed drafting.

### 2.1 Approach

The draft Bill is drafted to replicate the approach and language as provided in South Australia under section 19B(1) to (8) of the Application Act, including:

- Reasonable grounds; the Minister may only make a T-3 reliability instrument if it appears, on reasonable grounds, there is a real risk of a reliability gap. There is no requirement for the Minister to make a T-3 reliability instrument.
- Consultation with two of the market bodies; the Minister is required to consult with AEMO and AER in relation to any instrument being proposed.

Jurisdictions may wish to implement through their local regulatory frameworks more detailed requirements regarding the process for the Minister to make a T-3 reliability instrument.

The draft Bill provides that a T-3 reliability instrument made by a Minister must state the region to which it applies. This is limited to all or part of the jurisdiction for which the Minister has responsibility for energy matters. The draft Bill refers to additional requirements which must be included in the reliability instrument such as:

- Period; the first and last days on the relevant period of the reliability gap.
- Trading intervals; it is for these intervals, during the period, for which liable entities may be required to hold net contract positions to meet their share of the one-in-two year peak demand forecast.
- AEMO's one-in-two year peak demand forecast for the period.
- A reliability Instrument made by a Minister does not take effect until it is published under the draft Bill.

The amendment to the RRO will not alter the limitations or exclusions provided for in the existing RRO mechanism, such as:

- There is no ability for the Minister to issue a T-1 reliability instrument. Unless a reliability gap is forecast by AEMO at T-1, the obligations under the RRO will cease to operate at T-1.
- The cut-off to make a T-3 reliability instrument is at least 3 years before the start of the specified period, subject to transitional arrangements.
- Tasmania is excluded from the requirements of the MLO. The MLO does not apply as the Tasmanian Electricity Supply Industry Act 1995 already requires Hydro Tasmania to offer a range of regulated OTC electricity contracts to authorised retailers operating in the state.

This will ensure a nationally consistent framework which is leveraged off the existing RRO framework.

### 2.2 Effective date and transitional arrangements

The intention of the draft Bill is to allow the Minister of the relevant participating jurisdiction to make a T-3 reliability instrument for a specified period beginning in December 2025. For clarity, the first specified period that Ministers (except South Australia) can trigger a T-3 instrument is the summer of 2025/2026.

Whilst 3 years is the preferred notice period to enable AEMO to generate robust reliability forecasts and to allow new supply-side resources to enter the market, a transitional arrangement has been included in the draft Bill to manage timing risk regarding the passing of the legislation.

A Minister will be able to make a T-3 reliability instrument for the period beginning in December 2025 with less than 3 years' notice. A minimum of 24 months' notice has been included in the draft Bill and is deemed reasonable as a transitional arrangement. It is guided by the contracting parameters suggested by proponents to the SA RRO amendment (including the suggestion for a minimum 12 months to close contract positions before T-1). This would mean that a Minister cannot make a T-3 reliability instrument for 2025/2026 after December 2023.

It is noted that this transitional arrangement differs from the South Australian RRO amendment. South Australia introduced a transitional arrangement to shorten its T-3 trigger period to 15 months to address a potential reliability gap within the 3 years after the introduction of the RRO.<sup>7</sup> This cut-off was valid until 1 July 2022.<sup>8</sup> After this date, the South Australian Minister is required to make a T-3 instrument at least 3 years before the start of the specified period.<sup>9</sup>

### 2.3 Harmonising the RRO amendment across the NEM

The draft Bill provides for a smooth transition for the South Australia regulatory framework under section 19B(1) to (8) of the Application Act to transition to the nationally consistent framework. Reliability instruments, which have been made by the South Australian Minister and are still current, will remain valid.

### 2.4 Modification of the National Electricity Rules (NER)

The NER are currently drafted in a manner that recognizes a reliability instrument made by the AER. The NER must be modified to ensure the appropriate operation of the RRO with a Ministerial T-3 reliability instrument. Given the intent to implement a nationally consistent framework, the NER will be modified through an initial set of rules issued by the South Australian Energy Minister. These initial Rules are shared in **Attachment B**.

The intent is for the initial Minister-made Rules to amend the relevant provisions of the Rules to reflect the modifications currently set out in the *National Electricity (South Australia) (Local Provisions) Regulations 2019*. The purpose of these modifications is to ensure the RRO operates in a consistent manner whether the T-3 reliability instrument is made by a Minister or the AER. The modifications therefore seek to recognize a reliability instrument made by a Minister for the purpose of:

- NER 4A.C.4; defining whether a T-3 reliability instrument is related to a T-1 reliability instrument
- NER4A.C.5; providing for the notification of a closed forecast reliability gap at T-1
- NER 4A.D.4; providing for applications to register as large opt-in customers for a forecast reliability gap period
- NER 4A.D.5; providing for applications to register as a prescribed opt-in customer
- NER 4A.D.9; the establishment of an opt-in register by the AER
- NER Chapter 4A, Part G; the operation of the market liquidity obligation
- NER Chapter 4 A, Part H; ensuring a voluntary book build may be conducted.

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<sup>7</sup> Refer to section 19B(8) of the Application Act.

<sup>8</sup> Refer to definition of 'relevant day' in section 19B(9) of the Application Act

<sup>9</sup> Refer to section 19B(7) of the Application Act.

Schedule 2 of the initial Rules (Savings and Transitional Amendment to the NER) differs from the *National Electricity (South Australia) (Local Provisions) Regulations 2019* to reflect the transitional notice period of 24 months rather than the South Australian transitional notice period of 15 months:

- NER Schedule 2 clause 4A.C.3(b)(3); ensures that if a Ministerial T-3 instrument is made in December 2023 for a specified period starting December 2025, then AEMO can only request a T-1 instrument if the reliability forecast in the first year after the shortened T-3 instrument shows a reliability gap at T (reverts to the second year after the transitional arrangement).
- NER Schedule 2 clause 4A.D.7; allows 12 months for customers to decide to apply to the AER to register as a large or prescribed opt-in customer (reverts to 18 months after the transitional arrangement).

### 3 Next steps

The ESB invites comments from interested parties in response to this consultation paper by 17 August 2022. Submissions will be published on the Energy Ministers' website, following a review for claims of confidentiality.

Submission information	
Submission close date	5.00pm AEST 17 August 2022
Lodgement details	Email to: <a href="mailto:info@esb.org.au">info@esb.org.au</a>
Naming of submission document	[Company name] Response to T3 Ministerial lever August 2022
Form of submission	Clearly indicate any confidentiality claims by noting "Confidential" in document name and in the body of the email.
Publication	Submissions will be published on the Energy Ministers' website, following a review for claims of confidentiality.

The next steps in the ESB's forward work program are set out below.

Milestone	Indicative timing
Webinar including stakeholder Q&A	9 August 2022
Submissions due on consultation paper	17 August 2022
Submit draft Bill and initial Rules to Energy Ministers for approval	September 2022

The ESB intends to hold a webinar on 9 August 2022, 12.15 – 1pm AEST. Interested parties are invited to register [here](#).

If Energy Ministers approve the Bill and initial Rules (including stakeholder feedback), then the proposal will be submitted to the SA Parliament for implementation.

Further enquiries on this consultation paper can be sent to the project team at [info@esb.org.au](mailto:info@esb.org.au).

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