

Consultation

The Commission is consulting on proposed amendments to the Electricity Retail Supply Code (ERS Code) (at Appendix A) to implement a fulsome and legally enforceable retailer of last resort (RoLR) scheme in the Territory. Submissions are requested by **5pm (ACST) Monday 9 September 2024**. To facilitate publication, submissions should be provided electronically by email to utilities.commission@nt.gov.au in Adobe Acrobat or Microsoft Word.

Background

The purpose of a RoLR scheme is to ensure that in the event of an electricity retailer failure, arrangements are in place to ensure that relevant customers continue to receive electricity supply. A RoLR scheme is in place in Western Australia through the *Electricity Industry Act 2004*, and other Australian jurisdictions through the National Energy Retail Law.

In the Territory, historically, there have been no RoLR arrangements provided for under legislation; however the *Utilities Commission Act 2000* (UC Act) and the Utilities Commission Regulations 2001 (UC Regulations) (as in force at the time) provided for the Commission to make a code about retail supply in the electricity supply industry that may deal with RoLR arrangements (the ERS Code). While the ERS Code included a RoLR scheme, because the RoLR provisions were not contained in or authorised by overarching legislation, the RoLR scheme was ineffective and may not have been enforceable on the basis of inconsistency with relevant Commonwealth legislation.

The ERS Code was most recently amended in 2023. As part of the 2023 review, and for the reason outlined above, the Commission decided to revoke clause 9 of the ERS Code (which covered RoLR arrangements) and insert a new clause 9, which provides for a modified RoLR scheme as an interim solution until legislative changes could be made by the Territory Government.

The current modified RoLR scheme is not comprehensive nor does it provide sufficient certainty or consumer protection in the event of a retailer failure. To be a fulsome and legally enforceable RoLR scheme, legislative change was needed.

Legislative changes

On 1 July 2024, the Territory Government's legislative changes commenced that, among other things, support the operation of a fulsome RoLR scheme. Specifically, parts 2 and 4 of the *Electricity Legislation Amendment Act 2023* and the Electricity Legislation Amendment Regulations 2024 commenced, amending the UC Act, the *Electricity Reform Act 2000* (ER Act), the UC Regulations, the Electricity Reform (Administration) Regulations 2000 and the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

The legislative amendments support the operation of a fulsome and legally enforceable RoLR scheme in the Territory by resolving the issue of inconsistency with Commonwealth legislation and by providing the required powers for the Commission to implement a RoLR scheme in its ERS Code.

The legislative amendments also enact a variety of other administrative and minor changes, such as removing outdated terminology and moving the authority to make the ERS Code from the UC Regulations to the ER Act.

Proposed changes to the ERS Code

The Commission is amending the ERS Code to ensure it aligns with the new legislative framework and to implement a fulsome and legally enforceable RoLR scheme in the Territory. Accordingly, the Commission has published a draft version 5 of the ERS Code (at Appendix A) for consultation.

The summary table of proposed amendments (at Appendix B) describes changes that would be made to the ERS Code if the Commission decides to amend the Code as shown in the draft version 5.

The framework for the RoLR scheme is spread across the ER Act, the ER Regulations and the ERS Code. Noting that the Commission is only responsible for making the ERS Code, the Commission is unable to amend components of the framework contained within the ER Act and the ER Regulations. Accordingly, the scope of matters which can be considered as part of this review is relatively narrow. Some key proposed clauses included in the draft version 5 of the ERS Code are described (in simplified terms) below:

- The RoLR must submit its proposed RoLR terms and conditions to the Commission for approval within three months of commencement of the clause or within three months of a request by the Commission to undertake a review (draft clause 9.1).
- The RoLR must, if required by an electricity pricing order, submit its proposed RoLR tariffs to the Commission as soon as practicable and in any event no later than one month after the electricity pricing order is made (draft clause 9.2).
- The network provider, the market operator and the RoLR must make and maintain a 'RoLR plan' that supports a timely and coordinated response. The plan must be reviewed every two years and be provided to the Commission (draft clause 9.3).
- The Commission must notify the network provider and the market operator of the occurrence of a RoLR event and the RoLR transfer date (draft clause 9.5). The Commission is required to notify the RoLR and the failed retailer under the ER Act.
- The network provider would be required to transfer all customers of the failed retailer to the RoLR with effect from the RoLR transfer date and cancel any transfers to the failed retailer that would have otherwise been completed (draft clause 9.6.2).
- Prior requests for transfers away from the RoLR continue to be valid (draft clause 9.6.3).
- The market operator would be required to ensure that settlements made under the System Control Technical Code accurately reflect the RoLR transfer date (draft clause 9.6.4).
- The RoLR would have obligations to communicate with customers about its appointment, including publishing information on its website within three business days and writing to customers within 25 business days (draft clause 9.7).

- The failed retailer would have obligations towards its former customers including publishing a notice on its website and resolving complaints (draft clause 9.8).
- The RoLR must apply, within six months of appointment, with a request for a cost recovery scheme (see clause 9.9).

It is proposed that the amendments would commence 30 days after version 5 of the ERS Code is made.

Appendix

Appendix A – Draft version 5 of the ERS Code

Appendix B – Summary table of proposed amendments to the ERS Code